Case No. 26-90010

In the United States Court of Appeals
for the Fifth Circuit

JAMES SIMS, TERRIE SIMS, NEAL COMEAU, LILIANA COMEAU, JENNIFER SIDDALL, JON HOWELL, TERRY DUHON, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Plaintiffs-Respondents

v.

ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, ALLSTATE INDEMNITY COMPANY,

Defendants-Petitioners

On Rule 23(f) Petition Challenging Order Granting in Part Class Certification by the United States District Court for the Western District of Texas, San Antonio Division

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-PETITIONERS' RULE 23(f) PETITION

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Sims, et al. v. Allstate Fire & Cas. Ins. Co., et al., No. 26-90010

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiffs-Respondents

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2. Terrie Sims
3. Neal Comeau
4. Liliana Comeau
5. Jennifer Siddall
6. Jon Howell
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Defendants-Petitioners

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Amicus Curiae

1. The Chamber of Commerce of the United States of America, *amicus curiae*, is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership interest in the Chamber.

2. Rick Houghton (Counsel for *Amicus Curiae*)

3. Christian McGuire (Counsel for *Amicus Curiae*)

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IDENTITY AND INTEREST OF *AMICUS CURIAE* [1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the Courts. To that end, the Chamber regularly files *amicus* briefs in cases, like this one, that raise issues of concern to the Nation's business community, including cases involving class actions.

SUMMARY OF THE ARGUMENT

This Court should grant Defendants-Petitioners' Rule 23(f) petition because most of the class lacks standing. The Chamber agrees that the named Plaintiffs' claims are not justiciable. *See* 23(f) Pet. at 8–13. But even if some named Plaintiffs had standing, over 50% of the proposed class does not. *See id.* at 11. That creates an insuperable obstacle to class

[1] Pursuant to Federal Rule of Appellate Procedure 29, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

certification because Article III does not allow a federal court to exercise jurisdiction over uninjured class members. The District Court's failure to address this threshold issue alone justifies the petition.

The Court should also grant the petition because common issues do not predominate. Predominance fails because liability turns on whether each Plaintiff was underpaid "actual cash value" or "ACV," and Texas law permits ACV to be determined using several methodologies. Because those methodologies can yield different results, Defendants have the right to show, on a plaintiff-by-plaintiff basis, that no underpayment occurred. That highly individualized inquiry precludes class-wide proof of liability and forecloses predominance.

ARGUMENT[2]

I. A substantial portion of putative class members lack standing, and courts must enforce this Article III requirement at the class-certification stage.

Standing is "required before a federal district court can exercise subject matter jurisdiction." *Abraugh v. Altimus*, 26 F.4th 298, 303 (5th Cir. 2022). And "[w]ithout jurisdiction the court cannot proceed *at all* in

[2] This brief omits internal citations, alterations, and quotation marks in quoted materials unless otherwise indicated.

any cause." *N.A.A.C.P. v. City of Kyle, Tex.*, 626 F.3d 233, 237 (5th Cir. 2010) (emphasis in original).

A "party invoking federal jurisdiction" must establish standing at each of "the successive stages of the litigation." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). A plaintiff must demonstrate standing "with the manner and degree of evidence required" for that stage. *Id.* For example, "general factual allegations of injury" may suffice at "the pleading stage," but in "response to a summary judgment motion," a plaintiff must support his allegations "by affidavit or other evidence." *Id.*

Those standing rules apply to each individual class member. "[S]tanding is not dispensed in gross." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). Thus, "[e]very class member must have Article III standing in order to recover individual damages." *Id.*

The question is *when* a court must evaluate putative class members' standing. This Court "has not yet decided whether standing must be proven for unnamed class members" at the class-certification stage. *Flecha v. Medicredit, Inc.*, 946 F.3d 762, 768 (5th Cir. 2020). Neither has the Supreme Court. *See TransUnion*, 594 U.S. at 431 n.4.

But standing's basic logic dictates the answer: "courts may not certify a damages class under Rule 23" if "the proposed class includes both injured and uninjured class members." *Lab'y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 332, (2025) (Kavanaugh, J., dissenting from cert. dismissal as improv. granted). "Certification of a class is the critical act which reifies the unnamed class members and, critically, renders them subject to the court's power." *Cruson v. Jackson Nat'l Life Ins. Co.*, 954 F.3d 240, 250 (5th Cir. 2020). Yet a court cannot "proceed *at all*" with class members' claims if there is no standing. *City of Kyle*, 626 F.3d at 237. So standing must be evaluated at class certification.

Only this approach treats class certification like any other stage of litigation. *See Flecha v. Medicredit, Inc.*, 946 F.3d 762, 770 (5th Cir. 2020) (Oldham, J., concurring) ("It's unclear to me why these venerable principles would not apply with equal force at the class-certification stage."). For example, the Supreme Court has already held that an intervenor who asserts an individual claim for relief must "possess Article III standing in order to intervene of right under Federal Rule of Civil Procedure 24(a)(2)." *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 435 (2017). The Court reasoned that a litigant who "seek[s]

separate money judgments" "must have Article III standing in order to pursue relief." *Id.* at 440. The same goes for a class member with a damages claim. If the class member lacks standing to pursue the claim, the court lacks jurisdiction to include the claim in class proceedings.

In other words, Article III contains no class-action exception. "Rule 23's requirements must be interpreted in keeping with Article III constraints." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997). Any alternate approach would call into question the very "idea of separation of powers." *TransUnion*, 594 U.S. at 422.

As a result, the named plaintiffs at class certification must prove that the putative class members have standing with "the manner and degree of evidence required" for that stage. *Lujan*, 504 U.S. at 561. A preponderance of the evidence satisfies Rule 23. *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 228 (5th Cir. 2009). Accordingly, "certification is not precluded simply because a class *may* include persons who have not been injured by the defendant's conduct." *Mims v. Stewart Title Guar. Co.*, 590 F.3d 298, 308 (5th Cir. 2009) (emphasis added).

But a district court can never exercise jurisdiction over a putative class if a large proportion of the members are known to be uninjured.

This Court has already noticed the "real" constitutional issues that would arise if "there are undoubtedly many unnamed class members . . . who lack the requisite injury to establish Article III standing." *Flecha*, 946 F.3d at 768. Conducting class proceedings that involve a substantial number of uninjured class members willfully flouts the constitutional limits on judicial power.

Ignoring Article III's standing requirement at the class-certification stage harms businesses, consumers, retirees, and workers. "Classes that are overinflated with uninjured members raise the stakes for businesses that are the targets of class actions. . . . That reality in turn can coerce businesses into costly settlements that they sometimes must reluctantly swallow rather than betting the company on the uncertainties of trial." *Lab'y Corp*, 605 U.S. at 333 (Kavanaugh, J., dissenting from cert. dismissal as improv. granted). The ripple effects of such settlements "raise the costs of doing business," which are passed on "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." *Id.*

Here, the District Court's failure to analyze class members' standing warrants granting the Rule 23(f) petition. Most class members received full payment for their claims before this suit was filed, depriving them of any justiciable injury. *See* 23(f) Pet. at 11. The District Court's apparent refusal to consider this problem flouted Article III.

II. Even if standing exists, the District Court erred in concluding that a common question predominates.

A. The District Court certified a class based on a question that does not establish liability.

Plaintiffs argued that they satisfied predominance "because the case turns on a single, predominating question: whether, as a matter of law, Defendants breached their . . . policies by withholding labor as depreciation." Dkt. 196 at 10. The District Court agreed, certifying a class on that basis. *Id.* at 10, 18; Dkt. 208 at 7–9. That was an error. The District Court's ruling conflicts with *Sampson v. United Services Automobile Association*, 83 F.4th 414 (5th Cir. 2023), and warrants review.

Under Texas law, a plaintiff seeking to recover for breach of an insurance policy must prove injury. *Quibodeaux v. Nautilus Ins. Co.*, 655 F. App'x 984, 987 (5th Cir. 2016). Here, that means showing that

Plaintiffs received less than ACV. The policies obligate payment of ACV, which the policies leave undefined. *See* Dkt. 196 at 2–3. But Texas law equates ACV with "fair market value." *Singleton v. Elephant Ins. Co.*, 953 F.3d 334, 337 (5th Cir. 2020).

In Texas, ACV is not fixed to a single formula. As the District Court recognized, Dkt. 196 at 12, ACV may be estimated using different methodologies—namely, the comparable sales method, the cost method, and the income method. *City of Harlingen v. Est. of Sharboneau*, 48 S.W.3d 177, 182–183 (Tex. 2001). "All three methods are designed to approximate the amount a willing buyer would pay a willing seller for the property." *State v. Cent. Expressway Sign Assocs.*, 302 S.W.3d 866, 871 (Tex. 2009).

These approaches can yield divergent valuations. *See State v. Moore Outdoor Props., L.P.*, 416 S.W.3d 237, 242 (Tex. App.—El Paso 2013, pet. denied). Parties may therefore offer competing valuations as evidence of ACV. *Cf. Gunnarson v. State*, 2020 WL 913050, at *8 (Tex. App.—Austin Feb. 26, 2020, pet. denied). A payment calculated using one permissible method may support a finding that ACV was satisfied, even if another would produce a different valuation. *See Sampson*, 83 F.4th at 420–21 &

n.5. Thus, liability turns on whether the payment satisfied ACV—not which methodology the insurer employed or whether it withheld certain amounts in calculating the payment. *See id.* at 422–23. Accordingly, excluding a particular amount within one methodology does not establish that the insured received less than ACV in breach of the policy.

Against that backdrop, the question that the District Court deemed predominant does not resolve liability for any putative class member. Even assuming labor depreciation cannot be withheld under the cost method, that does not establish ACV of an individual insured's property or whether an insured was underpaid in breach of his or her policy. A policyholder could still have received full ACV (or more) depending on the property, loss, and valuation method. Yet by automatically treating withheld depreciation as damages, and those damages as proof of liability, Plaintiffs and the District Court wrongly collapse the distinct elements of injury and damages and bypass the individualized ACV determinations that liability requires, including Defendants' right to present competing valuation evidence under different permissible methodologies.

That deficiency is fatal to predominance. "The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). While common questions may predominate "even though other important matters will have to be tried separately, such as damages," *id.*, that principle does not extend to injury or liability, *Sampson*, 83 F.4th at 422. Class certification is improper where injury or liability cannot be shown by class-wide proof, including where a defendant is entitled to show, for each putative class member, that different valuation methods demonstrate no underpayment. *See Bourque v. State Farm Mut. Auto. Ins. Co.*, 89 F.4th 525, 528 (5th Cir. 2023) (noting that, in *Sampson*, "class certification was only proper if plaintiffs could prove injury—*i.e.*, underpayment—on a class-wide basis").

That is precisely the problem here. The issue the District Court identified as common—whether labor depreciation was withheld—does not answer whether any class member received less than ACV in violation of their policy. The issues that govern liability—what ACV was, which valuation method applies, and whether underpayment occurred—

require individualized proof, such as the nature of each property, the loss, and the parties' competing ACV valuations.

Because injury itself depends on those individualized determinations, they are not ancillary damages questions; they are the core liability issues in the case. Thus, individualized issues necessarily predominate. The District Court therefore erred in concluding that Plaintiffs satisfied predominance.

B. The District Court's decision conflicts with *Sampson*.

Sampson confirms that predominance fails where liability turns on a measure—like ACV—that may be gauged using multiple permissible methodologies.

There, Louisiana law required ACV to be calculated using certain methodology categories. *Sampson*, 83 F.4th at 417. The plaintiffs sought to establish class-wide liability by relying on a single methodology that purportedly produced higher values than the insurer's method. *Id.* This Court vacated class certification, reasoning that the plaintiffs had failed to show that their preferred methodology equated to ACV as a matter of fact or law, particularly given that other legally permissible methodologies could "also be treated as proof of ACV." *Id.* at 420, 423.

The multiplicity of allowable methods was dispositive. Why? Because the insurer had "the due process right to argue, for each individual plaintiff, that damages should be determined by a different legally permissible method that would produce lower damages . . . (or no damages at all)." *Id.* at 420. The result was "an explosion of predominance issues," *id.*, foreclosing class certification, *see Bourque*, 89 F.4th at 528–29.

Sampson applies with full force here. Like Louisiana, Texas law conditions liability on proof of injury and permits ACV to be determined using multiple methodologies. *Quibodeaux*, 655 F. App'x at 987; *Sharboneau*, 48 S.W.3d at 182–83. Defendants therefore have the same right recognized in *Sampson*: to show, on a plaintiff-by-plaintiff basis, that a different legally permissible methodology yields diminished—or no—injury. *Sampson*, 83 F.4th at 420. That right is incompatible with class-wide adjudication of liability. *See Bourque*, 89 F.4th at 528–29.

Where, as here, the existence of injury (and liability for breach) depends on individualized valuation, the result is an "explosion of predominance issues." *Sampson*, 83 F.4th at 420. The District Court erred in concluding otherwise. And because Defendants may invoke other

valuation methods to negate injury altogether, the cost approach accepted by the District Court does not "equate[] to ACV *in fact*" and cannot "serve as a determinant of injury and liability *as a matter of law*." *Id.* at 423 (emphasis in original). Accordingly, class certification was improper.

III. The District Court's class-certification order warrants immediate appellate review.

This case merits review under Rule 23(f) because it presents the important and unresolved question whether district courts must ensure that absent class members have standing at the class-certification stage. Neither the Supreme Court nor this Court have decided when the standing requirement applies to absent class members. The District Court's decision underscores the need for guidance. By certifying a class that includes a large proportion of uninjured class members, the District Court risks extending federal jurisdiction beyond its constitutional limits.

Review is independently warranted because the District Court's decision threatens to undermine *Sampson*. It raises the recurring and important question whether district courts may certify an insurance class action under Texas law despite insurers' right to present competing ACV

valuations, thereby depriving insurers of the opportunity to contest an essential element of a plaintiff's breach-of-contract claim. Absent review, courts may continue to certify classes based on methodologies that do not establish injury or liability for breach, directly contrary to *Sampson*'s holding that liability cannot be determined class-wide where multiple permissible valuation methods exist.

CONCLUSION

This Court should grant the Rule 23(f) petition for leave to appeal.

Respectfully submitted,

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Using the Court's ECF filing system, I served this brief on April 16, 2026 upon the counsel of record listed below.

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) because it contains 2,594 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.1.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and 5th Cir. R. 32.1 and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

/s/ Christian McGuire