C.A. No. 24-5421

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JESSICA CLIPPINGER,
on behalf of herself and all others similarly situated,
Plaintiff-Appellee,

v.

STATE FARM AUTOMOBILE INSURANCE COMPANY,
Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Tennessee (Memphis)
D. Ct. No. 2:20-cv-02482-TLP-cgc
The Honorable Thomas L. Parker, District Judge

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, AND THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Sixth Circuit Case Number: 24-5421

Case Name: *Clippinger v. State Farm Automobile Insurance Co.*

Name of counsel: Adam G. Unikowsky

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Not applicable.

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Not applicable.

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Not applicable.

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All parties have consented to the filing of this brief.

IDENTITY AND INTEREST OF *AMICI 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 in cases involving class actions.

The American Property Casualty Insurance Association (APCIA) is a national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years.

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

On issues of importance to the insurance industry, APCIA advocates sound public policies on behalf of its members and their policyholders in legislative and regulatory forums, and submits *amicus* briefs in significant cases before federal and state courts.

The National Association of Mutual Insurance Companies (NAMIC) consists of over 1,300 member companies, including six of the top ten property/casualty insurers in the United States. NAMIC supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve, and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

Class actions like the one at issue here are becoming ubiquitous. In these cases, individuals seek to represent massive classes pursuing enormous recoveries because of an alleged methodological error in automotive insurers' calculation of totaled vehicles' value. *Amici* fear that approving class certification here will not only attract class actions to this Circuit but also embolden district courts in circuits where the law remains

unsettled to certify unwieldy classes asserting meritless claims unsuitable for classwide resolution. *Amici* therefore have a deep interest in the Court rejecting class certification here.

SUMMARY OF THE ARGUMENT

The District Court erred in holding that Plaintiff satisfies Rule 23's commonality and predominance requirements. Plaintiff claims that State Farm failed to pay the actual cash value (ACV) of class members' totaled cars. Her theory is that State Farm's use of the typical negotiation adjustment (TNA) rests on outdated assumptions. But that showing would not establish State Farm's liability to any—much less every—class member. The District Court certified the class on the assumption that the question at issue is whether the mere use of TNAs in and of itself is a contractual breach. But nowhere does the contract prohibit the mere use of TNAs, and the District Court should not have certified a class based on an incorrect legal theory.

ARGUMENT

I. Plaintiff Failed to Prove Commonality and Predominance.

The District Court concluded that there was a question "common to the class," Fed. R. Civ. P. 23(a)(2), which "predominate[d] over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Those

conclusions were wrong. No common question exists. Even if one did, individual questions would predominate.

A. Common questions do not exist, much less predominate, because ACV must be assessed on a vehicle-by-vehicle basis.

Plaintiff did not prove that any common question exists, much less that it predominates over individualized questions. Plaintiff seeks to certify a class of State Farm's insureds who purchased an insurance policy that promises to pay the "actual cash value" of totaled cars. To estimate ACV, State Farm uses a system designed by third-party Audatex. Audatex applies the "typical negotiation adjustment" to account for the fact that many used cars sell for less than list price. Order, RE 202, Page ID # 6923. Plaintiff claims that TNAs are "not fair" because they are "not based on current market realities." Order, RE 202, Page ID # 6924.

But even if that were true, the use of TNAs does not necessarily result in a payment below ACV for any class member, let alone *all* of them. The insurance policy provides that the parties are initially given the option to simply agree on an ACV and does not prescribe any given methodology for estimating ACV in that initial process. The insurance policy further contemplates that if there is a dispute over ACV, three appraisers will be selected—one by the plaintiff, one by the defendant, and

absent agreement, one by the court—and their appraisals will be used to determine the amount State Farm owes. Order, RE 202, Page ID # 6925. These appraisers are not bound by the Audatex valuation. As such, they are free, when appropriate, to determine a valuation that is lower than the Audatex valuation would have been even without the use of TNAs. Moreover, in some cases—such as in Plaintiff's own case—an appraisal will occur and the insured will receive *more* than State Farm's ACV valuation. In that scenario, State Farm's use of TNAs to establish an initial estimate will not cause any financial harm to the insured.

Thus, no common question exists. Commonality requires not just "the raising of common 'questions'—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). Here, Plaintiff contends that TNAs are based on outdated assumptions and should not be used. In other words, she contends that the common question is: "should State Farm have used TNAs?" But no common answer to that question could drive the resolution of the litigation. Suppose

Plaintiff proves that TNAs are inaccurate and should never be applied. That finding would not drive the resolution of the litigation with respect to *any* class member, because that finding would not answer the question that matters: did State Farm breach the contract by paying less than ACV? For every class member, the determination of whether State Farm breached would still require an individualized analysis of whether the amount of money the class member received is lower than ACV.

Even if Plaintiff could prove commonality, she could not prove predominance. Individualized issues predominate for a straightforward reason: it is *inevitable* that there will be individual liability trials with respect to *every single* class member. Even if Plaintiff were to prove that TNAs rest on outdated assumptions about the market for used cars, that fact would teach precisely nothing about whether State Farm is liable to any particular class member. For every single class member, the court would still have to ask the question: was the payment *in fact* lower than ACV? Under the insurance policy's appraisal provision, that question would depend on the outcome of the appraisal of each class member's car.

Even if State Farm did not demand an appraisal as to some class members and left the jury to determine ACV, individualized case-by-case

assessments would still be needed. The asserted flaw in TNAs, if proven, might be one piece of relevant evidence supporting the insured's case, but a jury would still have to weigh that evidence alongside all the other insured-specific evidence before making a determination regarding that particular insured. Because the court would need to review particularized evidence with respect to every putative class member before determining whether any of them suffered a breach and resulting damages, individualized questions predominate.

B. The reasoning of the District Court and panel is wrong.

The District Court and panel erred in finding that Rule 23's commonality and predominance requirements were satisfied.

First, they erred in concluding that Plaintiff's legal theory established commonality. According to the District Court, "Plaintiff argues that she and all putative class members suffered a legal injury—breach of contract—when State Farm paid them an improperly reduced actual cash value of their total loss vehicles using the Audatex valuation report that applied a TNA." Order, RE 202, Page ID # 6936. The panel's analysis of this issue was similar: "The central legal question here was whether the application of the TNA 'means' that 'Defendants are not

calculating ACV as contractually required but are, instead, calculating an artificially reduced amount.'" Panel Op. at 11.

This reasoning is irreconcilable with the plain language of the insurance policy. The insurance policy states that State Farm will pay the actual cash value of a car—not that State Farm will employ any particular methodology in calculating that amount. Order, RE 202, Page ID # 6921. Thus, if State Farm pays the actual cash value of the car to an insured—as it undisputedly did to Plaintiff—there is no breach.

To be sure, Plaintiff *argues* that the bare use of TNAs would constitute a breach. The panel focused on this point: "the plaintiffs had *claimed* in their motion for class certification that the 'breach element' of their breach of contract claim was subject to common proof." Panel Op. at 11 (emphasis added). But under Rule 23, a court may not accept a plaintiff's legal theory as gospel. "The Rule does not set forth a mere pleading standard." *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (internal quotation marks omitted). "Rather, a party must …be prepared to prove that … *in fact*" Rule 23(a)'s requirements are satisfied. *Id.* (internal quotation marks omitted). Under *Comcast*, the District Court erred in

certifying the class without scrutinizing the legal theory underpinning—and ultimately, defeating—Plaintiff's theory of classwide liability.

This requirement may result in a partial analysis of the merits of the plaintiff's claim at the class-certification stage. But that is an inevitable and common feature of class-action litigation. The Supreme Court has repeatedly "emphasized that it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question," and "[s]uch an analysis will frequently entail overlap with the merits of the plaintiff's underlying claim." *Comcast*, 569 U.S. at 33-34 (internal quotation marks omitted). That is precisely the case here. The relevant inquiry for commonality under Rule 23 is: "would proof that TNAs are generally inaccurate establish State Farm's liability with respect to each class member?" That question overlaps with the relevant inquiry for liability: "did State Farm breach the contract by using TNAs?" But notwithstanding this overlap, the court needed to resolve the commonality question prior to class certification.

Unlike the panel majority, Judge Murphy was *dubitante* on commonality, but ultimately was nonetheless "content to assume," Panel Op. at 35 (Murphy, J., dissenting), that commonality was satisfied. Rather

than leaving that issue undecided, the Court should hold that commonality was not satisfied. To be sure, in this case, if the Court holds that predominance has not been established, commonality is a moot point. But that is not true in all class actions: class actions seeking injunctive relief under Rule 23(b)(2) require a showing of commonality but not predominance. The Court should ensure that the commonality requirement has teeth rather than opening a loophole that will lead to commonality being satisfied in every case.

Second, the District Court's and panel's predominance rulings were also wrong. The District Court concluded that the question "did State Farm breach the contract by using TNAs?" is a common question as to liability. But even if so, the ultimate question of breach will turn on individualized questions regarding the proper calculation of ACV, so individualized liability questions will predominate over common liability questions. And even if, as the District Court appeared to believe, individualized issues pertained only to damages, the predominance requirement would still not be met. For each class member, Plaintiff seeks to recover the delta between the amount each class member actually received and the ACV to which the class member was allegedly entitled.

For Plaintiff herself, that amount is $0, but for other class members, that amount will vary. Because determining ACV will require class-member-by-class-member damages calculations, individual issues predominate.

The District Court credited Plaintiff's assertion that "each total loss vehicle should be valued by running every step of State Farm's methodology except the TNA." Order, RE 202, Page ID # 6941. Of course, that methodology will be inaccurate with respect to Plaintiff herself, because Plaintiff has already received the appraised value of her car. But even setting that point aside, Plaintiff's damages model cannot possibly produce an accurate result with respect to every class member. Again, while Plaintiff has *asserted* that "each total loss vehicle should be valued by running every step of State Farm's methodology except the TNA," *id.*, Plaintiff has not *defended* the proposition that this means of calculating damages would be accurate. And the proposition is indefensible. A fact-finder could not possibly assume that, in every single case, the appraised value of a car will be identical to the Audatex valuation without the use of the TNA. As Judge Murphy explained: "The jury will have to rely on … car-specific evidence for each class member to determine the value of that member's car. The jury will then have to compare the fair market

value that it estimates to the amount that State Farm paid the class member." Panel Op. at 37 (Murphy, J., dissenting).

The panel acknowledged that there were individualized issues but shrugged them off as "*damages* issues and not *merits* issues." Panel Op. at 17. According to the panel, "*even if damages will have to be tried separately*, a common answer on whether the TNA is a breach of contract can be generated through common proof and takes center stage in this case." *Id.* That reasoning has two flaws. The first is that "the TNA" is not even arguably "a breach of contract" given the explicit language of the insurance policy requiring State Farm to pay ACV. Second, whether a class member has received too little money *is* a merits issue—indeed, it is the *sine qua non* of her breach-of-contract claim. *See Ambrosio v. Progressive Preferred Insurance Co.*, 154 F.4th 1107, 1111 (9th Cir. 2025) (explaining that "the existence of the [challenged adjustment] does not necessarily indicate measurable damages, which is required to prove a breach of contract"). Permitting the District Court here to merely assume Plaintiff's damages theory was erroneous in light of the need for a "rigorous" Rule 23 analysis. *Comcast*, 569 U.S. at 33.

As Judge Murphy explained, Panel Op. 37-41 (Murphy, J.,

dissenting), the panel majority's approach is irreconcilable with the approach of other circuits. The panel decision subjects every business holding contracts with large numbers of customers to improper class actions, so long as one plaintiff can find some purported, isolated error in the business's ordinary mode of calculating fees or costs. The Court should align itself with other circuits lest it transform this Circuit into a magnet for meritless class-action litigation.

CONCLUSION

The District Court's class-certification order should be reversed.

Dated: February 20, 2026

Respectfully submitted.

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I hereby certify that this brief complies with the word limit set forth in Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 2,570 words. I further certify this brief is less than one-half of the length of the supplemental brief ordered by the Court.

I further certify that this brief complies with the typeface requirements set forth in Federal Rule of Appellate Procedure 32(a)(5)(A) and with the type-style requirements set forth in Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared using 14-point Century Schoolbook font in Microsoft Office Word 365.

Dated: February 20, 2026

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I hereby certify that on this day, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system.

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