IN THE COURT OF APPEALS OF THE STATE OF OREGON

JEANYNE JAMES, *et al*., individually and on behalf of all others similarly situated

Plaintiffs-Respondents, Cross-Appellants,

and

MARY KATHLEEN BECHERER, et al.,

Plaintiffs-Respondents,

and

OREGON DEPARTMENT OF JUSTICE,

Creditor-Respondent,

v.

PACIFICORP, an Oregon corporation; and PACIFIC POWER, an Oregon registered electric utility and assumed business name of PACIFICORP,

Defendants-Appellants Cross-Respondents.

No. A183140

Multnomah County Circuit Court No. 20CV33885

APPELLANTS' PETITION FOR RECONSIDERATION—APPELLATE COMMISSIONER ORDER

EMERGENCY MOTION UNDER ORAP 7.35

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 6

A. Class Certification, Bifurcation, and Phase I 6

B. The Phase II Damages Trials 8

III. ARGUMENT 10

A. The Order Misconstrues the Scope of the Court's Jurisdiction in This Class Action. 10

B. The Order's Interpretation of ORS 19.270(7) Is Erroneous. 15

C. The Order Incorrectly Conflates Subject-Matter Jurisdiction with Inherent Appellate Stay Authority. 20

D. This Court Has the Jurisdiction and Authority to Issue a Stay and Should Exercise It. 27

IV. CONCLUSION 28

TABLE OF AUTHORITIES

Page(s)

Cases

Armatta v. Kitzhaber,
149 Or App 498, 943 P2d 634 (1997) 23

Blair v. Blair,
199 Or 273, 247 P2d 883, 260 P2d 960 (1953).....23

State ex rel. Gattman v. Abraham,
302 Or 301, 729 P2d 560 (1986).....11, 14, 15, 18

Gillespie v. Kononen,
310 Or 272, 797 P2d 361 (1990).....16

Guinasso v. Pac. First Fed. Sav. & Loan Ass'n,
89 Or App 270, 749 P2d 577 (1988), *rev den*, 305 Or 672 (1988), *and rev den*, 305 Or 672 (1988), *and rev den*, 307 Or 658 (1989) 11

Helms Groover & Dubber Co. v. Copenhagen,
93 Or 410, 177 P 935 (1919).....23, 25

Laack as Tr. of Laack Family Tr. v. Botello,
338 Or App 333, 567 P3d 474 (2025).....21

Livesley v. Krebs Hop Company,
57 Or 352, 97 P 718, 107 P 460, 112 P 1 (1910) 23

Robinson v. Children's Servs. Div.,
140 Or App 429, 914 P2d 1123 (1996).....16

Stachlowski as Tr. of Thomas P. Moyer Irrevocable Tr. v. 1000 Broadway Bldg. Ltd. P'ship,
305 Or App 174, 470 P3d 376 (2020).....13

Voth v. Snake River Corr. Inst.,
171 Or App 392, 15 P3d 629 (2000).....16

State ex rel. Walraven v. Dept. of Corr.,
358 Or 71, 362 P3d 1163 (2015).....5, 23, 24

Weldon v. Bd. of Licensed Prof'l Counselors & Therapists,
353 Or 85, 293 P3d 1023 (2012) 26

Westwood Homeowners Assn., Inc. v. Lane County,
318 Or 146, 864 P2d 350 (1993) 26

White v. Vogt,
258 Or App 130, 308 P3d 356 (2013) 21

Statutes

2005 Or Laws ch 568 § 4 18

ORS 19.010 18

ORS 19.033(1) 18

ORS 19.270(1) 11, 18, 25

ORS 19.270(1)(a)-(e) 19

ORS 19.270(7) 5, 15, 16, 17, 18, 19, 21, 25, 26

ORS 19.335 24

ORS 19.350 24

ORS 19.425 16

ORS 174.010 17

ORS 477.089 13

Other Authorities

Black's Law Dictionary 999 (8th ed 2004) 16

ORAP 6.25, 7.35, and 7.55(4) 1

ORCP 32 A(4) 11

ORCP 67 B 14

Oregon Constitution, Article III, section 1 26

Written Testimony of Gerald Watson, Oregon Law Commission Report, Judgments Work Group, HB 2359 (LC 892), February 17, 2005 (HB 2359A, House Judiciary Committee, April 20, 2005, Ex. G) 19

Testimony of Bradd Swank, Special Counsel, Government Relations, Oregon Judicial Department Office of State Court Administrator (HB 2359A, Senate Judiciary Committee, June 2, 2005, Ex. D).....19

Webster's Third New Int'l Dictionary 1394 (2002) 16

APPELLANTS' PETITION FOR RECONSIDERATION—APPELLATE COMMISSIONER ORDER

Pursuant to ORAP 6.25, 7.35, and 7.55(4), PacifiCorp and Pacific Power (collectively, "PacifiCorp") petition for reconsideration of the Order Denying Motion to Stay Trial Court Proceedings, issued by the Appellate Commissioner on September 23, 2025 ("Order").[1] For the reasons outlined below, the Appellate Commissioner erred in concluding that this Court lacks the jurisdiction or authority to issue a stay of the proceedings contemplated in Case Management Order No. 11 (TCF 07/28/2025) ("CMO No. 11"). Accordingly, PacifiCorp petitions for reconsideration of the Order and requests that the Court grant the Motion to Stay, for the reasons outlined therein.

Plaintiffs oppose the Petition and intend to file a response.

I. INTRODUCTION

On July 28, 2025, the trial court issued an order that is unprecedented in Oregon, if not the nation. CMO No. 11 would require the Oregon judicial system to adjudicate claims for billions of dollars in damages against a public utility, PacifiCorp, in 160 jury trials involving over 1,900 class members in the next two-and-a-half years—all based on flawed determinations regarding class

[1] Attached to this Petition are copies of the following: (1) Appellants' Motion to Stay Trial Court Proceedings (August 8, 2025); (2) , (3); and (4) Order Denying Motion to Stay Trial Court Proceedings issued by the Appellate Commissioner (September 23, 2025).

certification, noneconomic damages and other issues that are the subject of an ongoing appeal. For the reasons PacifiCorp explained in the Motion to Stay, permitting such trials to move forward without first addressing the faulty legal determinations on which they are based would irreparably harm PacifiCorp and unnecessarily risk PacifiCorp's ability to supply power (thereby disrupting the daily lives of over two million people across six western states), at enormous cost to the parties and the judicial system—all to pursue trials and judgments that could well be rendered moot. (Motion to Stay at 1-8.)

The foundation for that unprecedented process—and the existential threat that it poses to one of the state's largest electric utilities—is the January 4, 2024, limited judgment following the first phase of this class action ("Phase I"). The Phase I limited judgment adjudicated PacifiCorp's liability to the entire class (and necessarily incorporated all of the trial court's rulings involving the class up to that date). Based on the Phase I verdict and while it was on appeal, the trial court then ordered additional "Phase II" trials, in which the Phase I liability findings—as the trial court repeatedly informs each Phase II jury—are "conclusive." Appeals from five of those Phase II limited judgments have followed, all of which incorporate and rely on the Phase I judgment. The issues before the Court—described in over 200 pages of principal briefing (and counting) and amicus briefs from a diverse array of parties—reflect the full sweep of this case. They include whether class

certification (the bifurcation of class liability and individual damages trials for class members) was appropriate, whether Plaintiffs established class-wide liability to the property owners in the Santiam Canyon, whether class members may seek the noneconomic damages that are the focus of the Phase II trials, and whether the verdicts that resulted in that class-wide liability (and on which each class member depends in the damages trials) were legally flawed for several other reasons. Each of those issues is the first of its kind in Oregon. No Oregon trial court had ever certified a class like the one at issue here; no Oregon trial court had ever overlooked class causation issues like those at issue here; and no Oregon trial court had ever permitted plaintiffs who suffered property loss from a one-time event like a fire to seek noneconomic damages. If PacifiCorp is correct that the trial court got even *one* of these issues wrong, then all 160 trials contemplated under CMO No. 11, and the mountain of resources it takes to conduct them, will be for naught.

On August 8, 2025, PacifiCorp filed a Motion to Stay Trial Court Proceedings explaining the legal, practical, and constitutional problems with CMO No. 11. Notwithstanding the state-wide importance of the issues, and the broad sweep of questions and matters that the Court already has before it, the Appellate Commissioner denied the Motion without even addressing its merits. Instead, the Order concluded that, because the Phase I and Phase II limited judgments currently on appeal purportedly "resolve" only the individual

"claims" of the named class members whose damages were decided, this Court lacks the authority even to consider staying 160 forthcoming trials involving 1,900 other class members that would subject PacifiCorp to billions in potential liability over the next two years, not to mention have all of the other impacts outlined in the Motion.

This is yet another first-of-its-kind ruling in this unprecedented litigation. PacifiCorp is unaware of any Oregon court ever concluding that while a limited judgment is on appeal, Oregon appellate courts lack the inherent authority to stay trial court proceedings that depend on the findings and verdict within that limited judgment. Certainly the Appellate Commissioner's Order cited no such example, and multiple pronouncements of the Supreme Court state the contrary—that Oregon appellate courts have precisely the inherent stay authority on which PacifiCorp relies here.

The Order is wrong several times over, and the Court should reconsider it. First, the Order misconstrues what is actually on appeal (and, therefore, the scope of this Court's jurisdiction). The Phase I proceedings and class verdict did not, as the Order appears to suggest, determine only the "claims of the named plaintiffs." (Order at 2.) That is not, of course, how class actions work. Instead, the Phase I verdict resolved PacifiCorp's liability as to *all* class members, and the trial court has accordingly instructed every Phase II jury that the Phase I jury's liability "findings" are "conclusive," may not be

"question[ed]," and must instead be treated as "established in [every Phase II] trial." (Declaration of Brad Daniels in Support of Appellant's Motion to Reconsider ("Daniels Dec."), Ex. 2 (TCF 01/24/2024 (Final Jury Instructions)).) In treating this case as a run-of-the-mill, multi-party case, the Order fails to acknowledge the nature of this action; that the named class action plaintiffs acted and continue to act in a representative capacity; that Phase II and CMO No. 11 would not exist without the "conclusive" class-wide liability findings and predicate rulings of the trial court, which are clearly on appeal; or that the Court will also be reviewing the decisions underlying Phase II in that appeal and several others.

Second, the Order adopts a cramped and incorrect interpretation of the jurisdictional statute, ORS 19.270(7). On its face, the statute limits an appellate court's jurisdiction to the "matters decided by the limited or supplemental judgment," not to the "claims" of specific individuals whose damages were decided. By ignoring this distinction, the Order misinterprets that statute's text, context, and legislative history.

Third, the Order incorrectly conflates appellate courts' subject-matter jurisdiction to decide issues on appeal with what the Supreme Court has recognized as the "inherent power to grant a stay of proceedings pending an appeal." *State ex rel. Walraven v. Dept. of Corr.*, 358 Or 71, 86, 362 P3d 1163, 1171 (2015). The appellate power to stay trial court proceedings does

not require appellate subject-matter jurisdiction over every aspect of the trial court proceeding to be stayed. Indeed, the very premise of a motion for a stay of trial court proceedings is that the trial court *still has* at least some jurisdiction. Otherwise, there would be no (lawful) trial court proceedings to stay, and no reason for inherent stay authority to exist, in the first place. Here, the fact that the trial court continues to exercise jurisdiction to adjudicate the amount of damages to class members—when PacifiCorp's liability to those same people and their entitlement to those damages is on appeal—does not limit this Court's inherent authority to stay the CMO No. 11 proceedings.

And finally, this Court can and should reach the merits of PacifiCorp's Motion to Stay and grant it. As PacifiCorp explained in that Motion[2], all the relevant factors—the threat of irreparable harm, the likelihood of success, and the balance of interests—overwhelmingly support granting a stay in these circumstances.

II. BACKGROUND

A. Class Certification, Bifurcation, and Phase I

PacifiCorp adopts and incorporates by reference Section II (Background) in its Motion to Stay. (*See* Appellants' Motion to Stay Trial Court Proceedings at 8-29.) As relevant to the jurisdictional issues discussed in the Order, the trial

[2] The Motion to Stay is attached as an appendix and incorporated by reference herein.

court both certified a class and bifurcated the proceedings in this case. The court decided to first hold a "Phase I" trial, which would adjudicate class-wide liability and individual damages for the class representatives. That trial would be followed by "Phase II" trials that would adjudicate individual damages for non-class representatives.

After the trial court issued its class certification order on May 23, 2022, the case proceeded for nearly another year, including motions for summary judgment. Throughout that time the trial court issued rulings and orders that applied to *both* the individual plaintiffs *and* the class. The Phase I trial commenced on April 24, 2023, and concluded on June 12, 2023. The jury returned a verdict in favor of both the individual plaintiffs and the class on five claims for relief. The jury also awarded punitive damages to the entire class.

Plaintiffs moved for entry of a limited judgment following Phase I. In their motion, the named plaintiffs stated that they were moving for entry of judgment "individually and representing a class" and sought judgment for PacifiCorp's liability to the named plaintiffs and the class. (TCF 08/25/2023 (Plaintiffs' Motion for Entry of Limited Judgment and Money Award).) The limited judgment describes the class and includes an exhibit identifying individuals and entities that are excluded from the class. The limited judgment attaches the Phase I jury verdicts and states that the case was bifurcated between liability and damages for class members.

The trial court signed the Phase I limited judgment on December 22, 2023, and the judgment was entered on January 4, 2024. (TCF 01/04/2024 (Limited Judgment).) PacifiCorp filed a notice of appeal on January 4, 2024, and again moved for a stay before the trial court on January 4, 2024.[3] The trial court denied PacifiCorp's motion on January 5, 2024. Based on the limited record before it at the time, this Court denied PacifiCorp's motion to stay on February 14, 2024. (*See James v. PacifiCorp* (A183140), Order Allowing Reconsideration and Denying Motion for Stay Pending Appeal, February 14, 2024 ("Reconsideration and Stay Order").)

B. The Phase II Damages Trials

In October 2024 the trial court entered a case management order that scheduled 11 Phase II damages trials for 2025. The issues to be tried in those Phase II trials are tightly circumscribed, because the trial court has held, and the Phase II juries are instructed, that Phase I issues have conclusively established PacifiCorp's liability to the class. The only issue to be tried in Phase II is the amount of damages.

The complaints, jury instructions, and verdict forms used in Phase II reflect that approach. Class members initially file "short form" complaints that

[3] PacifiCorp had also moved for stays in the trial court in 2023. The trial court denied those motions as well.

contain no underlying factual allegations, but (in "check the box" style) identify the types and categories of damages claimed. (Daniels Dec., Ex. 1 (TCF 09/25/2023 (Short-Form Complaint)).) In addition to incorporating the class-action complaint, the short-form complaints state: "Plaintiff(s) expressly incorporate(s) by reference the jury verdicts from Phase 1, as if fully set forth herein." (*Id*. ¶ 1-2.)

In the jury instructions, the Phase II juries are given 12 findings made by the Phase I jury and instructed:

> I instruct you to accept the above findings made by the jury in Phase I as conclusive. This means that although no party has offered (or will offer) evidence to prove the above findings in this trial, you must accept the findings as conclusive. Conclusive means that you may not question the above findings made in Phase I and must treat them as established in this trial.

(Daniels Dec., Ex. 2 at 3 (TCF 01/24/2024 (Final Jury Instructions)).)

And, in the verdict form, the Phase II juries are given just two (or sometimes one) fill-in-the-blank questions per class member: "What are [Plaintiff's] economic damages as a as a result of the Defendant's liability for the [wildfire]?" and "What are [Plaintiff's] noneconomic damages as a as a result of the Defendant's liability for the [wildfire]?" (Daniels Dec., Ex. 3 (TCF 01/24/2024 (Final Verdict Form)).)

To date, nine Phase II trials have concluded. Plaintiffs have moved for entry of limited judgments after each trial. After entry of the limited judgments following the first two Phase II damages trial, PacifiCorp amended its notice of appeal to include those limited judgments, which are part of Case No. A183140 (which also includes the Phase I appeal). To avoid any further delay in that appeal, PacifiCorp moved for assignment of different case numbers to the future appeals from the limited judgments. Those appeals are Case Nos. A187954, A188268, and A188629.

III. ARGUMENT

A. The Order Misconstrues the Scope of the Court's Jurisdiction in This Class Action.

Citing the definition of a limited judgment, the Appellate Commissioner asserts that the Phase I "judgment determines the claims of the named plaintiffs, but does not resolve the claims of the class members." (Order at 2.) The implied assertion is that the Court's jurisdiction is limited to the individual *damages* claims of the named plaintiffs (and the individual class members whose claims have been the subject of later limited judgments) and extends no further.

That assumption is wrong and conflates the proper form of judgment with the scope of the Court's jurisdiction in this class action. This Court acquired jurisdiction of "the cause" when PacifiCorp filed its notice of appeal.

ORS 19.270(1). As the court explained in *State ex rel. Gattman v. Abraham*, 302 Or 301, 310–11, 729 P2d 560 (1986), pursuant to that text, the scope of the Court's jurisdiction is both broad and a contextual inquiry:

> We hold that ORS 19.033(1) means that the appellate court has "jurisdiction" of the issue or matter on appeal, be it a case, action at law, suit in equity, cause of action, cause of suit, proceeding, or claim for relief. The purpose of the statute is to give the appellate court jurisdiction of the issue or subject matter of the appeal to the exclusion of the lower court except as provided in the statute. * * * It was not the intention to oust the trial court of jurisdiction of those parts of the litigation which are not directly involved in the appeal. "Cause" must have been chosen by the legislature because it has a broad meaning and may include a case or proceeding or any part thereof depending upon the circumstances from which an appealable judgment might be entered under ORS 19.010.

(Citation omitted.)

Here, PacifiCorp's principal appeal, Case No. A183140, was from the Phase I limited judgment and the first two Phase II trials. The parties to THE Phase I limited judgment are not only individual plaintiffs with individual claims, but class representatives of a certified class.[4] As class representatives, they act in a dual capacity—as individual parties and as representatives of other class members. *See* ORCP 32 A(4); *Guinasso v. Pac. First Fed. Sav. & Loan*

[4] Although PacifiCorp maintains that the class was not properly certified, that position does not impact the jurisdictional analysis.

Ass'n, 89 Or App 270, 273-74, 749 P2d 577 (1988), *rev den*, 305 Or 672 (1988), *and rev den*, 305 Or 672 (1988), *and rev den*, 307 Or 658 (1989). And because they stood in that representative capacity and litigated on behalf of all other class members, the trial court's rulings and orders, and ultimately the jury's verdict, are binding on the class. Contrary to the Order's assumption, the scope of Phase I was not limited to adjudicating the individual plaintiffs' damages claims, nor is this Court's jurisdiction limited to those individual claims.

The terms of the Phase I limited judgment make that clear. Entered on behalf of plaintiffs and the class, it describes the named plaintiffs as acting both individually and representing a class. It describes the nature of the class, who is excluded from the class, and the verdicts that the class obtained—through class counsel and individual plaintiffs acting in a representative capacity. Any suggestion that the issues or subject matter of the Court's jurisdiction is limited to the individual claims of the named plaintiffs is inconsistent with those terms.

It is also inconsistent with how Phase II trials have proceeded. The trial court has instructed every Phase II jury to "accept" the "findings made by the jury in Phase I as conclusive." (Daniels Dec. Ex. 2 at 3 ("you must accept the findings as conclusive").) Lest there be any question, the trial court emphasizes that juries "may not question the * * * findings made in Phase 1" but "must treat them as established in this trial." (*Id*.)

The parties' briefs also demonstrate both the breadth of the issues that are within the Court's jurisdiction and the parties who are litigating those issues. *See Stachlowski as Tr. of Thomas P. Moyer Irrevocable Tr. v. 1000 Broadway Bldg. Ltd. P'ship*, 305 Or App 174, 187, 470 P3d 376 (2020) (analyzing positions on appeal to determine the issues or subject matter before the court). PacifiCorp's opening brief in Case No. A183140, for example, raises twelve assignments of error that span the scope of class and liability issues in the case, including whether Plaintiffs established class-wide causation and liability and whether the class is entitled to noneconomic damages under Oregon common law and ORS 477.089. Plaintiffs' answering brief is filed by class counsel on behalf of both the individual plaintiffs and the class, and it addresses all of those issues, as well as asserting on cross-appeal that the class is entitled to prejudgment interest and requesting reversal of the trial court's offset ruling on behalf of the class.

As a result, the issues and matters within this Court's jurisdiction encompass the liability verdict on which all class members are relying to adjudicate their damages in Phase II, all the class-wide and other rulings leading up to that verdict, and the whole swath of legal issues on which the Phase II damages trials (including the trials contemplated by CMO No. 11) depend: the trial court's class certification order; the trial court's post-certification legal rulings (including rulings regarding allowable damages); the

adjudication of class-wide liability questions; and the instructional, evidentiary, and other rulings leading up to the jury's verdicts in Phase I and Phase II, Trial Nos. 1 and 2—all of which are applicable to the entire class and are deemed "conclusive." To suggest otherwise ignores entirely the class action character of this case, the bifurcation that resulted in a liability finding to the class, and the fact that, post-certification, the trial court's legal rulings and the Phase I jury's findings applied across the entire class. It therefore defies reality to suggest that this Court's jurisdiction is limited to only the individual damages claims of the named class representatives when the legal rulings underlying those claims apply to the entire class.

The Order's citation to *Gattman* does nothing to alter this conclusion. In *Gattman*, a mandamus proceeding, the trial court entered a judgment pursuant to ORCP 67 B in favor of one defendant. The trial court then concluded that a notice of appeal from that judgment divested the trial court of jurisdiction to try the remaining claims against the other defendant. The Supreme Court disagreed, holding that the trial court retained jurisdiction "to try the remaining claims against other parties not affected by the judgment." *Id.* at 303.

Gattman is, of course, not a case about stays at all; the word *stay* does not appear in the opinion. The *Gattman* court only considered whether the trial court had jurisdiction to proceed, not whether the appellate court had inherent authority to stay additional proceedings. As a result, to the extent that *Gattman*

is relevant to the scope of the Court's jurisdiction to decide matters on appeal, it merely holds that a trial court is not divested of jurisdiction to try "remaining claims against other parties not affected by the judgment." Here, no one contends that the Phase II trials are "not affected by the [Phase I] judgment." Indeed, the whole point of (1) certifying the case as a class action and then (2) bifurcating Phase I from Phase II was so that Phase II trials *would be* "affected by the [Phase I] judgment."

This case is nothing like *Gattman* or other cases involving claims or requests for relief against one party that are divisible from the claims against another party. Here, the subject matter and issues affecting the class (including class members entitlement to damages) are clearly before the Court. And the trial court's continuing jurisdiction to calculate the amount of damages does not affect this Court's jurisdiction to determine whether those damages are lawful in the first instance.

B. The Order's Interpretation of ORS 19.270(7) Is Erroneous.

ORS 19.270(7) provides:

> If a limited or supplemental judgment is appealed, the jurisdiction of the appellate court is limited to the matters decided by the limited or supplemental judgment, and the trial court retains jurisdiction over all other matters in the proceeding.

In the Order, the Appellate Commissioner concludes that the "'matters decided' by the limited judgments are the claims of the named plaintiffs or

class members in whose favor the judgments are entered." (Order at 3.) That interpretation of ORS 19.270(7) is inconsistent with the text, context, and legislative history of that statute.

First, although phrased as a limitation, the text of ORS 19.270(7) is broad. It uses the phrase "matters decided," and in legal parlance "matter" has an expansive scope. *See, e.g., Black's Law Dictionary* 999 (8th ed 2004) (defining "matter" as a "subject under consideration , [especially] involving a dispute or litigation; case"); *Webster's Third New Int'l Dictionary* 1394 (2002) (defining "matter" as, *inter alia*, "subject of interest or relevance" and "subject of disagreement, strife, or litigation"). In *Voth v. Snake River Corr. Inst*., 171 Or App 392, 399, 15 P3d 629, 633 (2000), for example, the court concluded that "under any reasonable understanding, a motion to waive fees is, at the least, a legal 'matter.'" Pursuant to the plain terms, the Court's jurisdiction encompasses all matters, or subjects under consideration, that are determined by the limited judgment, including the legal rulings and orders on which that judgment depends. *See* ORS 19.425 ("Upon an appeal, the appellate court may review any intermediate order involving the merits or necessarily affecting the judgment appealed from"); *Gillespie v. Kononen*, 310 Or 272, 797 P2d 361 (1990) (discussing review of prejudgment orders); *Robinson v. Children's Servs. Div*., 140 Or App 429, 433, 914 P2d 1123 (1996) (discussing party's right to assign error on appeal to legal issues resolved before trial).

The Appellate Commissioner's Order alters the phrase "matters decided" to mean "[***claims conclusively***] decided" (or "resolved") by the limited judgments. (*See* Order at 3 ("This court's jurisdiction is expressly limited by statute to addressing the matters—***that is, the claims***—that have been ***conclusively*** decided by those judgments[.]") (emphasis added); *id*. at 3 ("The ***claims*** at issue in the 'current and future damages trials' are not ***matters*** that have been decided by the limited judgments.") (emphasis added).) But that is not the language that the legislature used. The terms "claims" and "conclusively" do not appear in ORS 19.270(7), although the legislature certainly could have used the common term "claim" in combination with a narrower verb, such as "resolved" or "adjudicated," or adverb such as "conclusively." The legislature did not take that approach, however, and that textual choice must be respected, not ignored or changed. *See* ORS 174.010 ("In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted[.]"). Accordingly, this Court's jurisdiction extends to any "matter decided" in Phase I—including PacifiCorp's liability, causation, class certification, and damages eligibility. Each of the Phase II trials is premised on the trial court and Phase I jury's resolution of these "matters."

Context is also contrary to the Order's constrained view of the Court's jurisdiction and interpretation of ORS 19.270(7). As noted, in *Gattman*, the court interpreted former ORS 19.033(1) (renumbered to ORS 19.270(1)) to mean "that the appellate court has jurisdiction of ***the issue or matter on appeal***, be it a case, action at law, suit in equity, cause of action, cause of suit, proceeding, or claim for relief," and that jurisdiction "include[s] a case or proceeding or any part thereof depending upon the circumstances from which an appealable judgment might be entered under ORS 19.010." 302 Or at 310-11 (emphasis added). The text of ORS 19.270(7) echoes that interpretation, which is to ensure that the appellate court's jurisdiction is interpreted broadly and contextually, and not to make jurisdiction depend on narrow or technical disputes over what is or is not a "claim."

Additional context further confirms that the Order's emphasis on what "claims" are on appeal is erroneous. ORS 19.270(7) was not part of the original comprehensive judgment legislation passed in 2003. The legislature added that section in 2005 as part of HB 2359 (2005)—"clean up" legislation following the 2003 bill. In the same bill, the legislature removed from Chapter 18 all references to "claim" (including the definition of "claim") and replaced those references with "requests for relief." 2005 Or Laws ch 568 § 4 (amended ORS 18.005). Interpreting "matters decided" to be the same as "claims resolved"—with all of the attendant complexities that the term "claim" would

introduce—would not only be contrary to the text, but would contravene the legislature's decision to delete all references to "claim" from the judgment statutes, given the potentially confusing scope of that term as it may apply in the judgment context. *See* Written Testimony of Gerald Watson, Oregon Law Commission Report, Judgments Work Group, HB 2359 (LC 892), February 17, 2005 (HB 2359A, House Judiciary Committee, April 20, 2005, Ex. G) (discussing elimination of use of the term "claim" when determining what types of decisions are appropriate subjects of a judgment).

The legislative history also supports PacifiCorp's analysis of appellate jurisdiction here. ORS 19.270(7) arose out of a concern that introducing a new category of judgments might have invited jurisdictional disputes at the trial court level, given the general understanding that a notice of appeal divests the trial court of jurisdiction. *See* Written Testimony of Bradd Swank, Special Counsel, Government Relations, Oregon Judicial Department Office of State Court Administrator (HB 2359A, Senate Judiciary Committee, June 2, 2005, Ex. D). The focus and intent of ORS 19.270(7) was not to unduly restrict the appellate court's jurisdiction. It certainly was not intended to address an appellate court's authority to issue a stay after a notice of appeal gave it jurisdiction over the "cause." Rather, similar to the carve outs in ORS 19.270(1)(a)-(e), ORS 19.270(7) was designed to ensure that a notice of appeal from a limited judgment would not deprive the trial court of continuing

jurisdiction to address other "matters" that were independent of a limited or supplemental judgment. In this case, for the reasons outlined above, CMO No. 11 and the Phase II damages trials are not independent of the issues, matters, and parties on appeal.

C. The Order Incorrectly Conflates Subject-Matter Jurisdiction with Inherent Appellate Stay Authority.

The Order's jurisdictional analysis also proceeds from a fundamentally flawed premise. In its discussion, the Order assumes that the Court's jurisdiction is limited to deciding the claims of the specific individual class members whose claims are the subject of the limited judgments on appeal, and therefore the Court's inherent authority to issue a stay is similarly restricted to only the specific proceedings that will decide (or have decided) those individual class members' claims. (Order at 3 ("The proceedings to resolve the remaining class members claims are matters over which the trial court retains jurisdiction, and over which, under the statute, this court does not have jurisdiction."); *id*. at 4 ("in the court's view, its lack of jurisdiction over the class members' claims that are not conclusively resolved by the limited judgments on appeal also limit its authority to grant a stay as to those claims."). In other words, the Order appears to assume that, unless the Court has jurisdiction over the damages claims of specific individual class members on appeal, it lacks "jurisdiction" to stay any trial court proceeding involving those

claims, even if that further proceeding involves the same class, same class certification order, same defendant, same legal issues, same liability verdict, and same subject matter over which the Court clearly has appellate jurisdiction.

That approach confuses this Court's subject matter jurisdiction to *decide* specific questions—which is limited by ORS 19.270(7)—with its inherent authority to *stay* further proceedings involving the same parties and same cause, which is not so limited. Similar to its discussion (and conflation) of "claims" and "matters," the Order conflates the "proceedings" of the trial court (that is, the continuing process of adjudication) with the "matters" that the trial court and appellate court will decide. But they are not the same.

On the one hand, as the discussion above indicates, ORS 19.270(7) was enacted to avoid an argument that appeal of a limited judgment deprived the trial court of jurisdiction to decide questions or address matters that were not "decided by" the limited judgment. ORS 19.270(7). This Court has interpreted ORS 19.270(7) consistent with that view. *Laack as Tr. of Laack Family Tr. v. Botello*, 338 Or App 333, 337, 567 P3d 474 (2025) ("In applying ORS 19.270(7), we have concluded that, when jurisdiction is vested by an appeal of a limited or supplemental judgment, ***we lack jurisdiction to decide specific issues memorialized in other judgments that were not appealed***.") (emphasis added); *White v. Vogt*, 258 Or App 130, 139-40, 308 P3d 356 (2013) (court lacked jurisdiction to consider assignment of error related to denial of

summary judgment, which was the subject of an earlier limited judgment that was not appealed). That approach makes sense. The trial court needs to retain jurisdiction to make decisions on matters that are not the subject of a current appeal from a limited judgment—to avoid confusion as to which court is deciding what question and to prevent the appellate court from prematurely deciding issues that may be the subject of future judgments (or deciding issues that were the subject of other judgments that were not appealed).

But subject matter jurisdiction to decide a specific question is not equivalent to the scope of inherent authority to issue a stay. For that reason, the Order's statement that "the court is not persuaded that it has inherent authority to stay proceedings over which it does not have jurisdiction" is a non sequitur. (Order at 3.) PacifiCorp is not asking this Court to assume jurisdiction over, and to calculate, the amount of damages to which class members are entitled—the specific questions that will be the subject of the CMO No. 11 trials. Nor is PacifiCorp is asking this Court to decide an issue that will be the subject of a later appeal from other limited judgments. Instead, PacifiCorp is requesting that the Court exercise its inherent authority to stay further trial court proceedings involving the same parties and same case that is in front of it. There is a fundamental and important distinction between what the appellate court is doing in the two different circumstances—deciding an issue that the trial court will decide first versus stopping the trial court from

proceeding further on a part of the case, when doing so would cause irreparable harm and otherwise meets the factors sufficient to support a stay.

The consequences of the Order's analysis are constitutionally suspect and portend dire practical consequences. First, there is no question that this Court has inherent authority to issue stays. *State ex rel. Walraven,* 358 Or at 86 (quoting *Helms Groover & Dubber Co. v. Copenhagen*, 93 Or 410, 416, 177 P 935 (1919)) ("[i]t is the general rule that either the lower or appellate court, according to the circumstances, has inherent power to grant a stay of proceedings pending an appeal even where there is no statute entitling a party to such stay."); *Blair v. Blair*, 199 Or 273, 287, 247 P2d 883, 260 P2d 960 (1953) ("[T]he granting of appellate jurisdiction necessarily vests in this court the power to stay * * * an order [transferring custody] pending an appeal, and that such power is of the incidental nature required to make the granted jurisdiction effective."); *Livesley v. Krebs Hop Company*, 57 Or 352, 356–57, 97 P 718, 107 P 460, 112 P 1 (1910) (concluding that court has incidental power to issue restraining order); *Armatta v. Kitzhaber*, 149 Or App 498, 501, 943 P2d 634 (1997) (Court of Appeals has inherent authority to stay an injunction that bars the state from enforcing a provision of a ballot measure enacted by the voters). For that authority to mean anything, it has to reach beyond proceedings to answer the specific questions that the appellate court already has before it. If the result were otherwise, the scope of an appellate

court's subject matter jurisdiction would always overlap exactly with the appellate court's authority to issue a stay, rendering that authority a nullity in every situation when the trial court continues to exercise valid jurisdiction. Put another way, it is exactly ***because*** the trial court continues to exercise jurisdiction over a part of the case not on appeal that gives rise to the necessity for this Court's inherent authority to issue stays. Otherwise, there would never be anything to stay in the first place.

The Order posits that an appellate court might exercise its inherent stay authority in only two narrow circumstances: an "order" that the trial court "refrain from proceeding with a matter where jurisdiction of the cause in question is in the Court of Appeals," or a stay of a "judgment." (Order at 3.) But the first of these—enjoining a trial court from acting *sans* jurisdiction—is not a "stay" at all. And the second—a stay of a judgment—has statutory authorization; "inherent" authority is not strictly necessary. ORS 19.335; ORS 19.350. In other words, the Order simply reads away entirely inherent appellate authority to stay trial court proceedings. That conclusion is inconsistent with the Supreme Court's statement in *Walraven* that appellate courts have "inherent power to grant a stay of proceedings pending an appeal even where there is no statute entitling a party to such stay." 358 Or at 86. And the Appellate Commissioner's justification for disregarding *Walraven*—that an appellate court only has "inherent authority to grant a stay [over]

matters over which it has acquired jurisdiction"—makes no sense. Again, an appellate court does not *need* to grant a stay when it has acquired jurisdiction; it can simply (as the Order says) "order the trial court to refrain from proceeding" given that "jurisdiction of the cause in question is in the Court of Appeals."

The practical implications of the Order's conclusion are extremely troublesome. There are several circumstances in which a trial court may continue to exercise jurisdiction after a notice of appeal, including exercising "those powers in connection with the appeal as are conferred by law," ORS 19.270(1), enforcing a judgment or injunction, and continuing a case after a limited or supplemental judgment is entered. Depriving the appellate court of authority to act (under the guise of a lack of jurisdiction) to address potential irreparable harm resulting from the trial court's proceedings would effectively render its inherent stay authority meaningless, including in cases involving issues of statewide importance when a trial court is determined to push forward notwithstanding compelling arguments for a pause in proceedings. Oregon courts have recognized inherent stay authority for more than 100 years. *Helms Groover & Dubber Co. v. Copenhagen*, 93 Or. 410, 415, 177 P.935 (1919). The Court should not now disclaim that authority.

In addition, if ORS 19.270(7) is interpreted to limit the Court's inherent authority, including its authority to issue a stay, to only the claims of specific

class members whose damages will be decided as part an appeal that includes issues that will determine the claims of other class members, then it is constitutionally suspect. In *Weldon v. Bd. of Licensed Prof'l Counselors & Therapists*, 353 Or 85, 293 P3d 1023 (2012), the Supreme Court considered wither a statute purporting to limit the ability of a court to grant a stay violated Article III, section 1, of the Oregon Constitution. Consistent with the above discussion, the court observed that courts have "inherent power to grant stays to preserve the subject matter of an appeal and to avoid irreparable damage to the parties." *Id*. at 94. After a detailed analysis of the statute at issue, the court ultimately concluded that the statute at issue was intended "to *grant* courts statutory power to enter injunctions, not to *deprive* them of their inherent judicial power to enter stays." *Id*. at 99. In reaching that conclusion, the court also noted that its construction allowed it to harmonize the statute with related statutes and avoid constitutional problems. *See id*. at 101 (citing *Westwood Homeowners Assn., Inc. v. Lane County*, 318 Or 146, 160, 864 P2d 350 (1993) (court construes statute to satisfy constitution and avoid constitutional problems); *State v. Duggan*, 290 Or 369, 373, 622 P2d 316 (1981) (statute construed to avoid serious constitutional difficulty))

This Court should reach a similar result with respect to ORS 19.270(7) and the scope of its authority in this case. For the reasons outlined above, ORS 19.270(7) was designed to preserve the trial court's subject matter

jurisdiction over distinct questions not addressed in the limited judgment, not to deprive the appellate court of the ability to exercise its stay authority when appropriate to do so. Nothing in the text or context of that statute suggests a broader intent to deprive courts of their inherent authority to issues stays in aid of or consistent with their appellate jurisdiction. And avoiding constitutional problems counsels against such an interpretation.

D. This Court Has the Jurisdiction and Authority to Issue a Stay and Should Exercise It.

The Order's analysis and conclusion are erroneous. For all of the reasons stated in PacifiCorp's Motion to Stay and Reply in Support of the Motion to Stay, this Court must act now. Even in the last 20 days, more complaints have been filed, more deadlines are being triggered, and more party and judicial resources are being expended on depositions, discovery, pretrial tasks, and all other work necessary to defend against $250 million in liability, 160 separate times. An avalanche of work and commitment—by the parties, the court, and the judicial system—is beginning now and only increasing, but there is no dispute that there is a substantial possibility that all of that work will be wasted and have to be re-done if PacifiCorp succeeds even in part on its appeal. Given the impasse of the parties, and the trial court's determination to proceed on the current untenable path, immediate action by this Court is necessary.

IV. CONCLUSION

The Court should reconsider the Order and immediately enter an order staying the proceedings scheduled in CMO No. 11 pending the outcome of this appeal, which should be expeditiously handled.

DATED: September 25, 2025

STOEL RIVES LLP

s/ Brad S. Daniels

Per A. Ramfjord, OSB No. 934024
per.ramfjord@stoel.com
Brad S. Daniels, OSB No. 025178
brad.daniels@stoel.com
Reilley D. Keating, OSB No. 073762
reilley.keating@stoel.com
Telephone: (503) 224-3380

and

Alison L. Plessman
aplessman@hueston.com
Stephanie W. Xiao
sxiao@hueston.com
HUESTON HENNIGAN LLP
523 West 6th Street, Suite 400
Los Angeles, CA 90014
Telephone: (213) 788-4340

Douglas J. Dixon
ddixon@hueston.com
HUESTON HENNIGAN LLP
620 Newport Center Drive, Suite 1300
Newport Beach, CA 92660
Telephone: (949) 229-6840

and

Blaine Evanson, *pro hac vice*
bevanson@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, California, 92612
Telephone: (949) 451-3800

Attorneys for Defendants-Appellants

APPENDIX

DATE	DESCRIPTION	PAGE(S)
August 8, 2025	Appellants' Motion to Stay Trial Court Proceedings	APP-1 – APP171
August 29, 2025	Plaintiffs-Respondents' Response in Opposition to Appellants' Motion to Stay Trial Court Proceedings	APP-172 – APP-216
August 29, 2025	Declaration of Alexander G. Tievsky in Support of Plaintiffs-Respondents' Response in Opposition to Appellants' Motion to Stay Trial Court Proceedings	APP-217 – APP-700
September 5, 2025	Appellants' Reply in Support of Motion to Stay Trial Court Proceedings	APP-701 – APP-739
September 23, 2025	Order Denying Motion to Stay Trial Court Proceedings	APP-740 – APP-743