IN THE SUPREME COURT OF THE STATE OF OREGON

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

Petitioners on Review,

and

MARY KATHLEEN BECHERER, *et al.*,

Plaintiffs,

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,

Respondents on Review.

SC No. S072933

CA No. A183140

Multnomah County Circuit Court
Case No. 20CV33885

RESPONSE TO PETITION FOR REVIEW

Review of the Decision of the Court of Appeals
On Appeal from the Limited Judgments of the
Multnomah County Circuit Court
The Honorable Steffan Alexander

Date of Court of Appeals Decision: April 8, 2026
Author of Decision: JOYCE, J.
Concurring in Opinion: ORTEGA, P.J.; HELLMAN, J.
(Counsel on next page)

May 2026

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I. INTRODUCTION

This case arises out of a class action against PacifiCorp for property damage from wildfires that were separated by hundreds of miles and caused by different events. As class fissures and evidentiary gaps became apparent during trial, Plaintiffs scrambled for solutions and convinced the trial court to tell the jury that it could *assume* the trial evidence applied to all class members. But given the divergences within the class, the Court of Appeals properly and unanimously held that "the trial court erred when it instructed the jury that it could 'assume that the evidence at the trial applies to all class members.'" App-42. Plaintiffs claim that the Court of Appeals made an erroneous and sweeping ruling that will govern class action trials going forward, but they simply mischaracterize the Court's decision. The panel's unanimous decision is correct, case-specific, and narrow; and it is unsuited to this Court's review.

The parties should go back to the trial court with the Court of Appeals' guidance and litigate this case correctly. This Court's review would only delay resolution of the litigation because nearly a dozen additional and dispositive trial errors are waiting in the wings, including certifying the first-ever Oregon wildfire class action and awarding noneconomic damages for wildfire property damages. As a result, if this Court were to grant review, and even if it were to reverse the Court of Appeals' decision, those issues would all need to be resolved. For these and many other reasons, the best course is to deny review

and remand for new trial proceedings, which will facilitate resolution of this long-running litigation.

First, the decision below was correct. *See* ORAP 9.07(14). At trial, Plaintiffs were required to prove liability and causation with evidence common to "all class members." App-7. But, as the Court of Appeals carefully explained, Plaintiffs failed to do so, particularly in the Santiam Canyon where they did not offer any proof that any spot ignitions attributable to PacifiCorp spread throughout the class boundary or damaged class properties ahead of the Beachie Creek Fire. In the absence of such proof, Plaintiffs leaned into the trial court's instruction to the jury that it could "assume that the evidence at the trial applies to all class members." App-22-23. While that instruction might be proper in a traditional class action with a common injury and common evidence of liability and causation, it was demonstrably improper here, where differences between and within the fires meant that "the jury could not * * * simply 'assume' that the evidence applied 'to all class members.'" App-32. The prejudice from this erroneous instruction is apparent given that Plaintiffs repeatedly implored jurors to assume that evidence applied classwide despite material differences among class members. App-39-40.

Second, the instructional error is so closely tied to the specific evidence presented at this particular trial that it is unlikely to recur or affect nonparties, and it does not present a significant question of law. *See* ORAP 9.07(1)-(6). The

decision below expressly acknowledges that while "in certain class action proceedings certain evidence can apply 'classwide,' to resolve certain issues," this instruction was erroneous in this particular case, "in view of the class that was certified, the evidence at trial, and plaintiffs' theories of causation." App-33, 43. In other words, this case does not involve a sweeping (or even broadly applicable) rule of law requiring this Court's intervention.

Nor do the questions presented address "significant" issues warranting this Court's review. *See* ORAP 9.07(1). The Court of Appeals did not announce any new legal principles, interpret a statute or constitutional provision, or modify the common law. Instead, it applied this Court's well-established precedent to the unique facts of this case. *See* ORAP 9.07(5), (9)-(10). The Court of Appeals reached its decision on narrow and case-specific grounds that are unlikely to affect anyone else, including because the "unique and complex" circumstances of this case are not likely to recur. App-38; *see* ORAP 9.07(3).

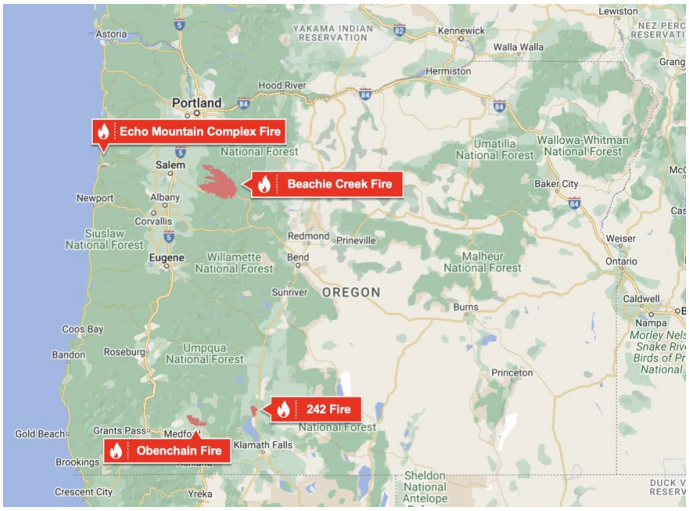
Third, discretionary review would not expedite ultimate resolution of this litigation and is not necessary to correct a serious or irreversible injustice. *See* ORAP 9.07(14)(a). There are nearly a dozen other dispositive errors beyond instructional error—on class certification, noneconomic damages, and other issues—that independently require reversal. The most efficient course is to allow this case to return to the trial court, where the trial court can implement the Court of Appeals' ruling and guidance, and the parties can revisit potential

resolution. PacifiCorp respectfully asks this Court to deny the petition for review so that the major roadblocks to a full and fair resolution can be resolved on remand.

II. BACKGROUND

A. Plaintiffs' Complaint And Theory For Class Certification

On September 30, 2020, Plaintiffs filed a putative class action alleging property damage claims on behalf of real and personal property owners within four geographic areas affected by wildfires that occurred during a historic windstorm on Labor Day 2020. ER-50.



(TCF-03/17/2023 (Defendants' Motion to Decertify).)

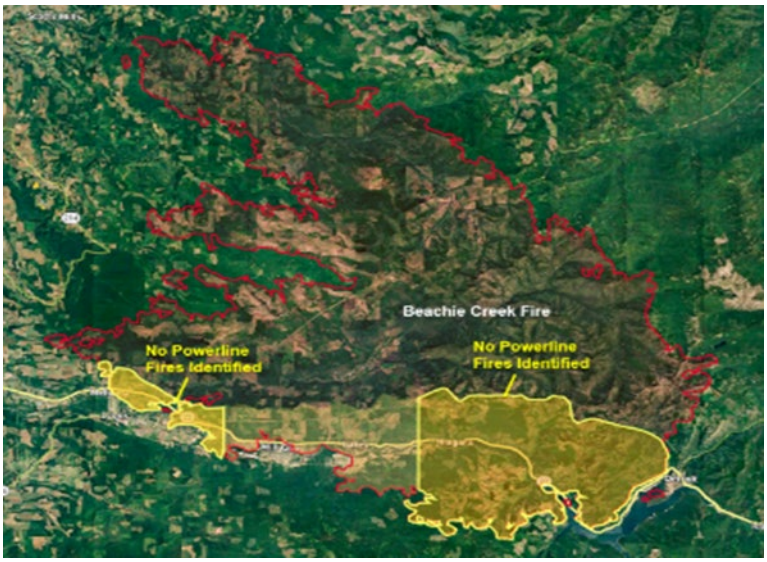
The four "fire areas" shared little in common. They were separated by hundreds of miles. They had different ignition points, and the fires spread and affected different properties in different ways. Each feature of the case—causation, liability, and damages—necessarily defied classwide adjudication.

The Santiam Canyon exemplifies the fissures within the class. There was "no evidence" that PacifiCorp "contribut[ed] to the spread of the fire in the Santiam Canyon," which was caused by the lightning-caused Beachie Creek Fire—as the Oregon Department of Forestry confirmed. ER-848. Plaintiffs claimed there were an unspecified number of PacifiCorp-attributed "spot fires." But they never sought to identify them all, never showed where or how they spread, and never disputed that lightning caused at least some of the property damage. App-17-20. There were thus significant differences *between* the fires and *within* each fire.

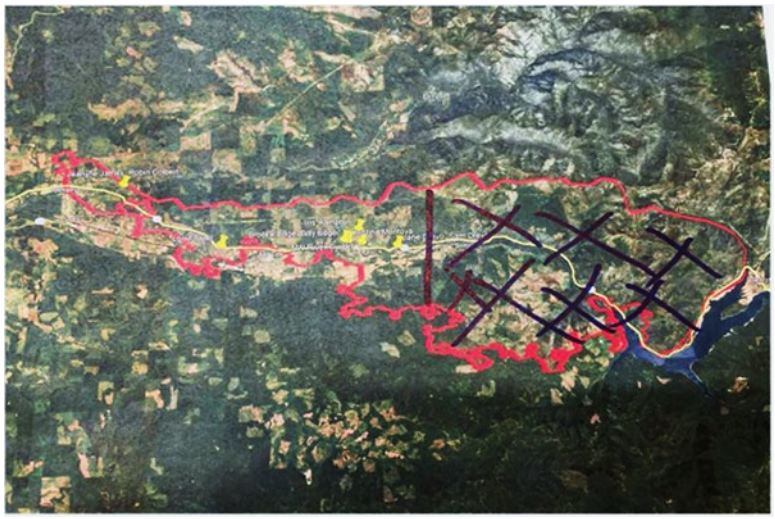
Nevertheless, Plaintiffs asked the trial court to certify a *single* class of thousands of real and personal property owners whose property was allegedly damaged within the four fire areas—and they promised to use common evidence to prove their case. In the Santiam Canyon, Plaintiffs claimed that common evidence would show that several alleged power-line-caused fires had created a single "conflagration" that spread and caused all the property damage before the Beachie Creek Fire arrived. Based on that promise, the trial court certified a class. ER-53-77. The court also bifurcated proceedings. Phase I would adjudicate classwide liability and individual damages for the class representatives, and Phase II would address the individual claims of the remaining class members. ER-51-52.

B. The Phase I Liability Trial And Phase II Damages Trials

Phase I confirmed the divisions within the claims of the thousands of property owners. Plaintiffs and PacifiCorp presented conflicting evidence about the various fires, which occurred in widely disparate locations and implicated individualized liability and causation issues. *See* App-16-21. In the Santiam Canyon, despite having promised to prove causation and liability by "common evidence," Plaintiffs produced no evidence showing that there was "one conflagration" caused by PacifiCorp. (TCF-02/16/22 (Plaintiffs' Supplemental Brief).) On the contrary, as trial went on, substantial geographical and temporal holes emerged in Plaintiffs' case. The lightning-caused Beachie Creek Fire damaged class members' property before any of PacifiCorp's alleged "spot fires" began. Tr-4814:7-21; DTX-8526, 8528, 8537. And as the following demonstrative shows, PacifiCorp did not even have power lines or equipment in significant portions of the Santiam Canyon, *see* 06/07/2023-Tr-8376:9-25:



Plaintiffs realized that they could not prove PacifiCorp was liable for a massive portion of the Santiam Canyon class area, and at the close of evidence they attempted to cure the problem by "ex-ing" out in black marker nearly half of the area within the class boundary.



ER-256.

In so doing, Plaintiffs essentially admitted that they lacked classwide evidence and lacked evidence for much of the Santiam Canyon. The trial court nevertheless maintained certification of the entire class—including the Santiam Canyon. ER-319-20; ER-527-28; ER-693-94.

To address the failure of classwide proof, Plaintiffs asked the trial court to instruct the jurors that they "may assume that the evidence at the trial applies to all class members." ER-258. PacifiCorp objected, noting that "[w]hatever the manner of proof, whether it's common or individualized, [Plaintiffs] still have their burden of proving their case as to the entire class and each of its

members." App-23. And although common-evidence instructions may be proper in some circumstances, they may not be given when—as here—there are material differences between class members on the issues of causation and liability. *See id.*; 06/05/2023-Tr-8007:11-8008:6. The trial court gave the improper jury instruction anyway. ER-258.

Plaintiffs then relied heavily on that instruction in closing argument. *See* App-26-27, 39-40. Plaintiffs told jurors that you "can assume that the evidence that came in applies to the class members as a whole," specifically noting that "there's no better example if you're thinking about who was harmed by the fires"—different plaintiffs who were allegedly harmed in different parts of the Santiam Canyon, as well as plaintiffs harmed by Echo Mountain. App-27. Plaintiffs also encouraged the jury to find PacifiCorp liable for all the damage within the Santiam Canyon, so long as evidence established that utility-caused activity was "a cause" of harm to any individuals in any part of the Santiam Canyon. *Id.*

The jury returned a liability verdict in favor of both the individual class representatives and the entire class. ER-290-312. The Phase I limited judgment incorporated the jury's verdict on classwide liability and became the foundation for Phase II—jury trials designed to adjudicate individual economic and noneconomic damages in groups of approximately 10 class members at a time. More than 170 damages trials were scheduled to follow the Phase I verdict, and

nineteen Phase II trials have been completed (most Phase II trials have now been stayed).

Outside of this class action, PacifiCorp has paid over a billion dollars in claims and settled thousands of cases. But this class action—years later—remains pending, with no apparent end in sight.

C. PacifiCorp's Appeals

PacifiCorp has appealed each limited judgment entered to date—with several independent appeals pending before the Court of Appeals. In the appeal at issue here (from the limited judgments following the Phase I trial and the first two Phase II trials), PacifiCorp assigned error to 13 legal rulings that pervade the entire litigation and fall into three categories: (1) the class certification rulings; (2) the jury instruction to assume that any evidence applied classwide (and other evidentiary and instructional errors); and (3) the rulings allowing the jury to award Plaintiffs noneconomic damages that are categorically unavailable under Oregon's wildfire damages statute, *see* ORS 477.089(1)(a), and common law.

D. The Decision Below

On April 8, 2026, the Court of Appeals reversed, unanimously concluding that the trial court's instruction that the Phase I jury "may assume that the evidence at the trial applies to all class members" was prejudicial error based on the "unique and complex circumstances" of this case. App-38-43. That decision

effectively vacated all twenty verdicts entered so far because they were all predicated on the faulty Phase I verdict. Although the instructional error was one of several dispositive issues, the Court declined to address most of PacifiCorp's remaining assignments of error. App-41.

On May 13, Plaintiffs petitioned this Court for review.

III. REASONS FOR DENYING REVIEW

The Court of Appeals' decision correctly applied settled law to the unique and complex circumstances presented by this case, is narrow and case-specific, and is otherwise ill-suited to review by this Court under the traditional discretionary-review factors. The three-member panel's correct decision was unanimous; Plaintiffs did not request reconsideration; and the case was not decided en banc. *See* ORAP 9.07(11)-(14). This Court should deny review.

A. The Court Of Appeals' Decision Was Correct.

The Court of Appeals correctly held that the trial court erred by instructing jurors that they could "assume that the evidence at the trial applies to all class members." App-24, 39-41; *see* ORAP 9.07(14).

1. The Trial Court Erred.

It is black-letter law that a defendant has a right to defend itself against each and every claim—and that a court can instruct a jury to infer that individual evidence applies to the whole class only when there is no "material variation [between] the members of the class," and all class members are affected "to the

same degree and in the same way." *Strawn v. Farmers Ins. Co.*, 350 Or 336, 359, 258 P3d 1199 (2011). But here, there were material differences between and within the fire areas at issue—particularly in the Santiam Canyon, where there were multiple localized spot fire ignitions and the lightning-caused Beachie Creek Fire indisputably burned through the class area. App-11, 17-18, 32-35. Those significant divergences within the class made the trial court's instruction—that jurors could "assume" that evidence applied classwide—erroneous under the "unique and complex" facts of "this case." App-38, 43.

Plaintiffs insist that the "assume" instruction was merely intended to tell the jury that "[a]bsent class members need not appear in court and may rely on class representatives to present evidence that will prove their claims." Pet. 17. But their argument ignores the actual language of the instruction, which expressly told jurors to apply any evidence that PacifiCorp may have harmed some class members to reach a determination that PacifiCorp had harmed *all* class members, even though Plaintiffs had not offered proof of such harm, particularly in the Santiam Canyon. App-32-33. It also ignores the fact that Plaintiffs themselves invited jurors to use the instruction in precisely the manner they now abjure. App-39-40.

Plaintiffs also try to justify review by claiming that the panel "announced a new standard without identifying its source or providing trial courts a framework for applying it." Pet. 15. But the panel carefully applied established

principles of due process and class action law. Class actions may not "deprive the defendants of valuable procedural and substantive rights by preventing them from asserting what appears to be a bona fide defense." *Bernard v. First Nat. Bank of Oregon*, 275 Or 145, 159, 550 P2d 1203 (1976); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 US 338, 366-67 (2011). That is precisely why *Strawn* permits common inference instructions only where the underlying proof is actually common—but precludes them where the record contains material variations. As the Court of Appeals explained, a common-inference assumption "might be appropriate in some class action[s]" "where every important issue is truly capable of proof through common evidence." App-11. But not in "*this case*"—where there were material variations both *within* and *across* the fire areas that prevented the use of common evidence. *Id.* (emphasis added).

First, there were material variations *within* the fire areas, particularly in the Santiam Canyon. The Court of Appeals correctly concluded that "it is not apparent that the jury could 'assume' that evidence of the fire at '832 North Santiam Highway' * * * also 'applies' to, for example, a different plaintiff, whose property was destroyed miles away, in a different part of the Santiam Canyon, due to a different fire caused by a different ignition." App-32. This is particularly true given that the Santiam Canyon spans over 70 square miles and the lightning-caused Beachie Creek Fire indisputably burned through the same area. *Id*. Plaintiffs *themselves* directly confirmed this fact when they attempted

to have the class boundary redrawn at trial and the entire eastern portion of the Santiam Canyon "excis[ed] from the * * * boundary." App-24-25.

Second, there were also material variations *across* the fire areas. The Court of Appeals correctly concluded that "evidence that PacifiCorp caused fires that forced firefighters to evacuate the Santiam Canyon," for example, had no "application to PacifiCorp's liability to plaintiffs in, for example, the South Obenchain Fire boundary." App-33. Nor could evidence "that an individual saw an ignition on Echo Mountain * * * and had property destroyed by the Echo Mountain Complex Fire" be "'assumed' to apply to plaintiffs over a hundred miles away whose property was destroyed by a different wildfire entirely." *Id.*

Plaintiffs argue that the verdict form required fire-by-fire liability determinations. Pet. 19, 23. But that does not address the problem of differences within each fire area—particularly the Santiam Canyon. Being asked to decide fire-by-fire liability does not prevent jurors from applying evidence across class members within a particular fire—no matter how different and varied that fire area may be. Additionally, "the [trial] court instructed the jury that it was to 'interpret the class questions according to *these instructions* and the verdict form." App-37. Those instructions told jurors they (1) "can answer the class questions based on evidence that applies to the class as a whole" and (2) "may assume that the evidence at the trial applies to all class members"—language Plaintiffs exploited in closing. App-37, 40.

Plaintiffs also rely heavily on the fact that the instruction at issue was a pattern instruction from California. But the instruction is not even mandatory in California, let alone in Oregon. And regardless, the pattern instruction says it is intended for the "common type of case" rather than "unique and complex" proceedings. App-38. Counsel have found no California case that has ever used (let alone required) this pattern instruction in a wildfire class action or even certified a wildfire class action in the first place. *See, e.g.*, *Perkin v. San Diego Gas & Elec. Co.*, 225 Cal App 4th 492, 508 (2014) (wildfire class lacked commonality and superiority); *see also Downing v. San Diego Gas & Elec. Co.*, 2010 WL 4233033, at *3 (Cal Ct App Oct. 27, 2010) (non-precedential) (wildfire class lacked commonality). Plaintiffs' request to transform an optional California instruction into a mandatory Oregon instruction is baseless.

Plaintiffs also suggest that the trial court's instruction was appropriate because class certification was proper—and that the standard of review requires respecting the trial court's "discretion." Pet. 21. Not so. An instructional error is reviewed *de novo* for legal error. *Bellshaw v. Farmers Ins. Co. of Oregon*, 326 Or App 605, 620, 533 P3d 40 (2023). And class certification error cannot bless an instructional error. While the class-certification and instructional errors are related, due process and class action principles *preclude* the instruction here—given the "unique and complex" circumstances of this case. App-38.

2. The Trial Court's Error Was Prejudicial.

Consistent with this Court's well-settled precedent, the Court of Appeals carefully reviewed the record before determining that the "erroneous instruction was prejudicial" based on the "record as a whole and in the light of the parties' theories at trial." App-39-40; *Purdy v. Deere & Co.*, 355 Or 204, 212, 324 P3d 455 (2014). It noted that Plaintiffs made the instruction a focal point of their trial strategy. Although they now attempt to downplay it, Plaintiffs' counsel "emphasize[d]" this instruction during "closing argument," telling the jury the instruction meant they could "'assume that the evidence that came in applies to the class members as a whole.'" App-39.

As the Court of Appeals noted, Plaintiffs leveraged that instruction both within and across the different fire areas. They tried to bypass their evidentiary failings in the Santiam Canyon, for instance, by "arguing to the jury that it could find PacifiCorp liable for the harm" to "every plaintiff in the Santiam Canyon" if PacifiCorp "start[ed] any particular fire in the Santiam Canyon." App-39-40. Plaintiffs utilized the instruction as a shortcut past their burden of proof for each plaintiff, which was more than sufficient for the Court of Appeals to conclude there was a genuine "risk of the jury misunderstanding its task based on the instruction." App-39.

Plaintiffs do not attempt to explain why they "amplifie[d]" the instruction to the jury. App-39. Instead, they try to excuse any harm by relying on the

special verdict form the trial court used. Pet. 22. But the Court of Appeals explained why the verdict form failed to cure the prejudice. Although the verdict required separate answers for the four fire areas, the jury was instructed to answer those questions assuming that "all the evidence was applicable to all class members"—a problem that is not cured by asking for fire-by-fire answers. App-37-38.

The prejudice to PacifiCorp on the Santiam Canyon claims was especially stark. Plaintiffs argued the jury could assume the universal applicability of evidence *within* the Santiam Canyon to *all* Plaintiffs in the canyon and thus "assume that PacifiCorp's admission to starting any particular fire in the Santiam Canyon was sufficient" to find liability across the entire canyon. App-40. PacifiCorp was therefore prejudiced regardless of whether the jury answered the fire-specific questions by assuming evidence from one fire area applied to another, or by assuming evidence within one part of a fire area applied throughout the rest of that area. App-39-40. In the same way, the jury finding liability by a different margin for Santiam Canyon reveals nothing about whether the jury was led astray by Plaintiffs' argument that any spot fire within the Santiam Canyon sufficed to prove liability. In either case, asking the jury separate questions did nothing to prevent a verdict based on improper evidentiary assumptions. App-40.

Finally, Plaintiffs' reliance on the jury's question during deliberations is unpersuasive. Whether a verdict for the named plaintiffs "automatically extend[s] to the rest of the class," Pet. 24, has nothing to do with what evidentiary assumptions the jury may make in reaching that verdict. Nor is this Court's time well spent granting review to read the tea leaves of what a jury's question and the trial court's noncommittal answer might reveal about the jury's deliberations.

The record amply supports the Court of Appeals' finding of prejudice, and this Court has no need to grant review simply to engage in a record-heavy review of the application of an uncontested legal standard.

B. The Petition Seeks Error Correction On A Narrow Issue That Does Not Warrant This Court's Review.

The decision below acknowledged that while evidence can apply classwide in "certain class action[s]" to resolve "certain issues," the trial court's instruction here was erroneous "in view of the class that was certified, the evidence at trial, and plaintiffs' theories of causation." App-33, 43. That narrow and case-specific conclusion—turning on the "unique and complex circumstances" of the case, App-38—falls well short of the standard for this Court's review.

1. The Instructional Error Is Not A Significant Issue Of Law.

The instructional error does not implicate *any* of the seven examples of significant issues of law listed in ORAP 9.07(1). It does not involve a constitutional provision, the interpretation of a statute, the constitutionality of a

statute, the legality of a governmental action, the jurisdiction of the Court of Appeals or the trial court, or the proposed modification of a principle of common law. *See* ORAP 9.07(1). In passing, Plaintiffs suggest that the instructional error here implicates "the use or effect of a trial court procedure." *See* Pet. 14. But Plaintiffs do not explain what "trial court procedure" is implicated. Nor can it possibly be true that any case involving a challenge to jury instructions necessarily implicates a "rule of trial court procedure" and therefore a "significant issue of law" warranting this Court's review.

But even if the Petition did concern "the use or effect of a trial court procedure," it does not address an issue of "first impression" meriting review. ORAP 9.07(5). The Petition concerns the limited and case-specific question regarding when a court can instruct a jury to assume that individual evidence applies to the whole class. But as explained (*supra* 10-12), this Court has already decisively resolved that question. The trial court's instruction was error under a straightforward application of *Strawn*.

2. The Jury Instruction Ruling Has No Important Effects Beyond This Case.

Plaintiffs do not even argue, nor could they, that the instructional issue decided by the Court of Appeals will "aris[e] often." ORAP 9.07(2). It will not. As the decision below correctly concluded, the common-evidence instruction at issue here was improper because of the "unique and complex circumstances" of

this case, namely: (1) the unusual "class that was certified," which was the first-ever class action involving multiple fires located hundreds of miles apart; (2) the particular "evidence at trial," which was not susceptible to classwide proof on causation and liability; and (3) "plaintiffs' theory of causation," particularly the unprecedented "substantial factor" theory in the Santiam Canyon. App-38, 43.

Unable to identify an "important" legal issue with the Court of Appeals' opinion, Plaintiffs attempt to manufacture one—asserting late-breaking accusations that the author of the unanimous decision created "unfortunate appearance-of-justice concerns." Pet. 13 n.3. But their belated suggestion that recusal was required is meritless. *See, e.g.*, ORS 14.210(1)(d) (listing disqualification criteria—none of which apply here); *see also, e.g.*, *State v. Langley*, 363 Or 482, 498-99, 424 P3d 688 (2018) (affirming denial of motion to disqualify in similar circumstances). And their assertions are a transparent attempt to encourage review of a case that does not merit it.

Nor does the decision below affect "many people," at least beyond the class members with judgments in this case. ORAP 9.07(3). This Court does not typically grant review to correct case-specific errors, class action or not. The jury instruction issue is indelibly tied to the "unique and complex circumstances" of the case. App-38. Parties must generally show "importance beyond the particular case" and issues that "transcen[d] the importance of the case to the litigants." *1000 Friends of Oregon v. Bd. of Cnty. Comm'rs, Benton Cnty.*, 284

Or 41, 44, 584 P2d 1371 (1978). But the narrow instructional decision has no significant precedential importance or practical effect beyond this case. *See* App-38.

C. There Is No Other Compelling Reason To Grant Review.

This Court's intervention at this stage of the proceedings would not prevent a serious or irreversible injustice or provide any significant benefits to the parties or the public. It would only prolong the litigation, frustrate settlement, and delay final resolution of Plaintiffs' claims, particularly given the litany of trial-court errors that will require correction regardless of the instructional question presented here.

If this Court grants review, and even if it reverses, that would not simply reinstate the trial verdicts. There are nearly a dozen additional assignments of error—in this appeal alone—that independently require reversal of the trial court's limited judgments.[1] The trial court violated established remedial rules,

[1] These independent grounds for reversal, numbered by PacifiCorp's remaining assignments of error, include: (1) granting Plaintiffs' motion for class certification; (2) rejecting PacifiCorp's repeated motions to decertify; (5) changing the class from an issues class to a liability class without undertaking any class certification analysis; (6) denying PacifiCorp's motions for directed verdict and judgment as a matter of law on the issue of Plaintiffs' legally unavailable noneconomic damages; (7) instructing jurors that noneconomic damages were available in the absence of physical injury; (8) refusing to issue instructions delineating categories of noneconomic damages that may not be awarded; (9) denying PacifiCorp's motions in limine to preclude evidence and argument on unrecoverable noneconomic damages; (10) denying PacifiCorp's motions for directed verdict on the grounds that noneconomic damages are

awarding hundreds of millions in noneconomic and punitive damages that are prohibited by the common law and barred by statute. *See* Op. Br. 74-94. It violated established causation principles—excusing Plaintiffs' failure to establish causation and papering over it with erroneous instructions. *See id.* at 95-101. And it violated established class-action rules, permitting class certification despite the absence of common proof and the wide variance between and within the fires. *See id.* at 32-43, 70-74. Reversing on the narrow instructional question at issue here would not likely change the outcome—it would only lop off one issue for roughly a dozen others to spring forward.

Letting this case return to the trial court straightaway will not only ensure new trial proceedings with proper instructions, it will also encourage settlement and expedite ultimate resolution of the litigation. The underlying fires occurred nearly six years ago. But the trial court's rulings—particularly on class certification—have hampered the timely resolution of individual claims. These individual claims are nowhere near resolution. Nearly two hundred trials remain. Well over a thousand plaintiffs wait on the dockets. And at the current pace, it may be years—likely into the 2030s—until this case resolves.

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statutorily barred in wildfire property damage cases; (11) granting Plaintiffs summary judgment on PacifiCorp's individual causation defenses before the Phase II trials; and (12) prohibiting PacifiCorp from introducing evidence in Phase II that specific harms complained of by Phase II Plaintiffs were caused by the lightning-caused Beachie Creek Fire.

That intractable delay was a predictable result of the trial court's class-certification decision. But that decision can be reconsidered on remand. While the Court of Appeals did not formally reach the issue, it "emphasiz[ed] that * * * the trial court has the authority on remand to reconsider its class certification decision and reconsider whether a single class is appropriate in this case." App-43. Such reconsideration would not only correct errors under class-action law but also facilitate the resolution of the litigation. Other jurisdictions resolve wildfire disputes far more quickly; in California, for example, similar claims have been resolved within a year. Outside of this class-action litigation, PacifiCorp has settled virtually all claims arising from the Labor Day wildfires—and has already paid over a billion dollars in fire claims and settled over two thousand cases outside of this class action. Reply Br. 11. The sooner this case returns to the trial court, the sooner the remaining issues that prevent its efficient resolution can be resolved. There is little justification for the Court to weigh in—and compelling reason for it to stay its hand.

IV. CONCLUSION

The Court should deny the Petition for Review.

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CERTIFICATE OF COMPLIANCE WITH
BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

I certify that this brief complies with the 5,000-word count limitation for responses to petitions for review in ORAP 9.10(3) and that the word count of this brief as described in ORAP 5.05 is 4,935 words.

I certify that font size in this brief is Times New Roman 14-point for both the text of the brief and the footnotes, as required by ORAP 5.05.

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CERTIFICATE OF FILING AND SERVICE

I certify that on May 27, 2026, I filed the original of this **RESPONSE TO PETITION FOR REVIEW** with the Appellate Court Administrator by the Court of Appeals' eFiling system.

I further certify that on May 27, 2026, I caused true copies of this **RESPONSE TO PETITION FOR REVIEW** to be served upon the parties listed via e-service on the Oregon Court of Appeals website and via email pursuant to the agreement of the parties.

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