IN THE SUPREME COURT OF OHIO

Case No. 2024-1696

BETHEL OIL & GAS, et al.,

Appellees,

vs.

REDBIRD DEVELOPMENT, LLC, et al.,

Appellants.

On Appeal from the Ohio Court of Appeals Fourth Appellate District
Case No. 23 CA 5

BRIEF OF *AMICI* THE AMERICAN ASSOCIATION FOR JUSTICE, AND THE OHIO ASSOCIATION FOR JUSTICE, IN SUPPORT OF THE AFFIRMING THE JUDGMENT BELOW

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STATEMENT OF INTERESTS OF *AMICI CURIAE*

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employee rights cases, consumer cases, and other civil actions. Throughout its more than 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

The Ohio Association for Justice (OAJ) is the only statewide, non-profit association of attorneys whose mission is to preserve the constitutional right and protect access to the civil justice system for all Ohioans as provided for in the Seventh Amendment to the United States Constitution, and Ohio's Open Courts clause, Ohio Const. Sec. 16, Art. 1. OAJ was founded in 1954.

Here, the Plaintiffs' injuries are damage to their ability to participate in Ohio's $1.7 Billion oil and gas industry. Several of the Appellants and *Amici* supporting them laud the impacts of oil and gas drilling on interested parties in Ohio. None seem to acknowledge, however, that damage to those interests is illustrated by the Plaintiffs' losses in this matter.

All of the parties and *Amici Curiae* ought to be able to agree on this: uncertainty is bad for business and litigants alike. The Appellants clearly do not like the "no set of facts" standard now discarded by the United States Supreme Court, but they are far less clear about how a new "plausibility" standard would affect this case. *Twombly* and

Iqbal have not re-written Civil Rule 8, nor otherwise revolutionized pleading. No Appellant nor *Amici* supporting them has made it clear how adopting a new standard of review would work, in this case, or generally. Should this Court incline to adopt the new standard adopted by the Federal Courts, it should take care to decrease uncertainty within Ohio pleading practice, not increase it.

STATEMENT OF FACTS

The Plaintiffs/Appellees in this case are participants in the multi billion-dollar oil and gas industry in Ohio. Bethel Oil & Gas, LLC and the Lanes own the mineral, oil, and gas interests in approximately 3,800 acres in southeast Ohio, some in Washington County, and some in Athens County. *Bethel Oil & Gas, LLC. v. Redbird Devt. LLC*, 4th Dist. Case No. 23CA5, 2024-Ohio-5285, at ¶ 4. Their Complaint details four specific wells within these holdings that have become inoperable because of contamination of fracking waste. Fracking waste is a combination of brine and various chemical agents, many of which are toxic. No Defendant-Appellant disputes that four of the Appellees' wells have become contaminated, and therefore worthless.

The Defendants were sixteen named persons and businesses that are engaged in the disposal of fracking waste fluid using "injection wells." The Fourth District, in the Judgment on appeal at fn. 1, noted that the appeal involved fourteen of those sixteen Defendants. The fifth group of Defendants identified by the Court of Appeals, J.D. Drilling Company and James E. Diddle ("JDDC") have not appealed the Judgment of the Fourth District. The twelve Appellants herein are the four groups identified in fn. 1. This case will not be entirely disposed of by this appeal. Moreover, many of the same Defendants were also sued by another oil and gas production company, Wilson Energy,

LLC, who also identified wells damaged by fracking fluid contamination. See *Wilson Energy LLC vs. Redbird Devt. LLC*., 4th Dist. Case No. 23CA4, 2024-Ohio-5609 (reversed and remanded on the basis of *Bethel Oil*, No. 23CA5). The *Wilson Energy* case involves many of the same parties, counsel, and issues. This Court has accepted jurisdiction on that matter also, and holds it for decision herein. Case No. 2025-0029.

In sum, the Bethel Oil Plaintiffs have identified four contaminated wells of theirs. The *Wilson Energy* Plaintiffs identified over thirty more in the same region. The Ohio Department of Natural Resources issued a report connecting the Red Bird operations to some, but not all, of the damaged wells identified by the Plaintiffs. At page 4 of their Memorandum in Support of Jurisdiction, Appellants K&H Partners and Tallgrass Operations say that the ODNR report contains the decidedly confounding phrase that fracking wasted migrated "up to more than five miles" [*sic*]. The Court of Appeals determined correctly that consideration of the ODNR report lay outside the pleadings. *Bethel Oil & Gas*, 2024-Ohio-5285, at ¶ 50. In their merit brief, at p. 10, the Red Bird Appellants make it clear that they reserve the right to dispute the findings and methods of the ODNR report. As detailed in the Appendix to the Court of Appeals decision under appeal, other Defendants have used the same report to claim that it establishes a factual predicate for the Plaintiffs' losses against Red Bird, only, and not them.

Whether this Court finds that the ODNR report should or should not have been considered, the parties' arguments have tended to establish a few things. One, it is clear that the harm to the Bethel (and Wilson) Plaintiffs' property occurred *underground*. There is disputed, but publicly available information stating that fracking waste can travel "up to more than" five miles. Whether fracking waste can plausibly

migrate five miles, or eleven, or twenty is not a matter within the knowledge of lay persons. About three dozen wells are damaged in the region where at least sixteen operators inject fracking waste. This case will not turn on witness testimony regarding which hunter's shot injured a plaintiff, or which of multiple vehicles caused injury to a plaintiff. The Bethel and Wilson Plaintiffs are entitled to prove which of the known injection well operators in their area is or are responsible for damaging their interests.

The trial court in this case accepted the Defendants' invitation to find that Plaintiffs' claims "fail to provide Defendants with notice as to which other wells they allegedly damaged, when they damaged them, or how they damaged them. Plaintiffs have failed to ***establish*** proximate cause …." Opinion of 1/3/23, p. 2, emphasis added. Much of the trial court's three page opinion recites law. By contrast, the appeal under review of the Fourth District spans 118 pages, including the Court's appendix outlining the variations in the Defendants' positions. Some of the Appellants herein actually take the position that the Complaint failed to give them notice of plausible claims *because it was too long*. To "establish" proximate cause evokes plaintiffs' trial burden, rather than their burden at the pleadings stage. Moreover, not a single Appellant in this case accounts for a principle well known in tort law: a single injury can have more than one cause.

Finally, all Appellants say they want this Court to "affirm" or reinstate the trial court's outright dismissal of this case. However, none say much about whether Ohio law requires the opportunity to amend the complaint. Ohio law, and that of American jurisdictions generally does. "[T]he "outright refusal to grant the leave without any

justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules."
S.J. v. City of Pontiac, No. 24-1823, 2025 U.S. App. Lexis 12424, at *10 (6th Cir. 2025), quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). *Accord Peterson v. Teodosio*, 34 Ohio St.2d 161, 175, 297 N.E.2d 113 (1973). The Bethel Appellees assigned error in the Fourth District as to the trial court's refusal to allow amendment. The Fourth District stated repeatedly that had it not found the Complaint sufficient, it would have remanded to allow for amendment. If this Court should find that any different result might obtain under a new standard of review, this case must be remanded to the Fourth District for application of a new standard, rather than dismissed outright.

LAW AND ARGUMENT

Appellants and their supporting *Amici* repeat one main overarching policy concern: that information technology has made discovery more expensive, not less. Appellants and their *Amici* do not speak to the overarching policy concern stated explicitly in the Civil Rules, and through many of this Court's precedents: that cases ought to be decided on their merits. Appellants do not advance any rule that promotes the resolution of controversies on their merits. Rather, they propose a rule that creates an additional, ill defined barrier to *reaching* the merits.

The sole proposition of law under review is: "Ohio's pleading standard under Civil Rule 8 includes the plausibility requirement outlined by the United States Supreme Court in *Iqbal* and *Twombly*." The Appellants arguments are long on the perceived

horrors of civil litigation, and very short on how adopting *Twombly* and *Iqbal* might affect the outcome of this case, if at all.

I. SHORT AND PLAIN MEANS SHORT AND PLAIN.

No party proposing re-writing Ohio Civil Rule 8(A), nor has the United States Supreme Court revisited Fed. R. Civ. Proc. 8(a). This Court has often repeated that the purpose of the Civil Rules is to effect justice on the merits, not on technicalities. In a per curium opinion joined by C.J. Thomas Moyer, this Court wrote:

> 'The spirit of the Civil Rules is the resolution of cases upon their merits, not upon pleading deficiencies.'. Decisions on the merits should not be avoided on the basis of mere technicalities; pleading is not '"a game of skill in which one misstep by counsel may be decisive to the outcome[;] * * * [rather,] the purpose of pleading is to facilitate a proper decision on the merits."

Cecil v. Cottrill, 67 Ohio St.3d 367, 371-372, 618 N.E.2d 133 (1993), quoting *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175; 63 O.O.2d 262, 269; 297 N.E.2d 113, 122 (1973), and *Conley v. Gibson* 355 U.S. 41, 48; 78 S.Ct. 99, 103, 2 L.Ed.2d 80, 84 (1957).

Indeed, the very purpose of the Civil Rules, in both the federal and Ohio Courts, was to streamline civil litigation:

> The intent and effect of the rules [was] to permit the claim to be stated in general terms; the rules are designed to discourage battles over mere form of statement and to sweep away the needless controversies which the codes permitted that served either to delay trial on the merits or to prevent a party from having a trial because of mistakes in statement.

Matthew Cook, et al., *The Real World: Iqbal/Twombly The Plausibility Pleading Standard's Effect on Federal Court Civil Practice*," 75 Mercer L. Rev.861, 864 (2024)[1], quoting the 1954-1955 Advisory Committee on the Rules of Civil Procedure. "[A] claim had to precisely word each cause of action to survive." *Id*., p. 866. The *Real World*

[1] Available at https://digitalcommons.law.mercer.edu/jour_mlr/vol75/iss3/5

authors detail pre-rules absurdities that the Rules are intended to remedy, such as distinctions between the words "promised" and "agreed" as determining whether an action was properly pleaded. *Id*. 866-867.

Appellants here decry the potential burdens of discovery, seemingly unaware of the Rules' purpose of ending burdensome motion practice. *Id*., pp. 869-870 (detailing historical efforts both in England and the United States to reduce motion practice at the pleadings stage). The *Real World* authors draw heavily from the work of Judge Charles E. Clark, in his advise to the Advisory Committee, quoting him:

> When the rules were adopted there was considerable pressure for separate provisions in patent, copyright, and other allegedly special types of litigation. Such arguments did not prevail; instead there was adopted a uniform system for all cases—one which nevertheless **allows some discretion to the trial judge to require fuller disclosure** in a particular case by **more definite statement**, **discovery and summary judgment, and pre-trial conference**.
> ***
> [W]here a bona fide complaint is filed that charges every element necessary to recover, summary dismissal of a civil case for failure to set out evidential facts can seldom be justified. **If a party needs more acts, it has a right to call for them under Rule 12(e)** of the Federal Rules of Civil Procedure. And any time a claim is frivolous an expensive full dress trial can be avoided by invoking the summary judgment procedure under Rule 56. [Emphasis added.]

Id., p. 876. These safeguards are built into the Civil Rules. Ohio adds its frivolous conduct statute, R.C. § 2323.51, providing all parties a remedy against claims or defenses that are not based in fact or law.

The Appellants here are not seeking a more definite statement as provided by Ohio Civ. R. 10, nor protective discovery orders to tailor the proceedings, nor seeking clarity at any pre-trial conference. They are seeking to avoid liability absolutely. They seek to shift the losses of the Plaintiffs' inability to use their property onto the parties in this case who are *not* engaged in the disposal of fracking waste fluid. The Civil Rules

were adopted and interpreted to reduce motion practice around pleadings. Adoption of the Proposition of Law will invite defendants to move to dismiss even well pleaded complaints by labeling them "conclusory, threadbare," or "implausible" as a matter of course. It is already common for plaintiffs' counsel to detail the bases of a claim, only to have to re-state the same factual allegations when opposing a Rule 12 Motion mischaracterizing the pleadings. Indeed, the Redbird Appellants maintained that they could not even determine which wells were damaged, while other parties have submitted color coded maps showing the locations of each well. Which is it? Where one trial court judge found grounds to write three pages saying essentially that he is not sure of the claim's specifics, three Court of Appeals judges found and wrote a complete explanation.

No one disputes that the Appellees' wells are contaminated. No one disputes that the contamination travels underground, over distances of miles. Some Appellants say the Appellees' claims are not plausible because an office of the State of Ohio blamed the Red Bird Appellants, but the Red Bird Appellants hasten to dispute ODNR's conclusion. It is certainly fair to expect the Appellees to take evidence to trial showing which Defendants more likely than not contributed to the Appellees' losses. Where at least sixteen companies are engaged in injection disposal in the area affecting three dozen contaminated wells, it is absurd to require the Plaintiffs to know which of the fracking disposal operations contributed and how much in order to enter court in the first place.

Only one certainty would result if this Court were to graft a "plausibility" requirement onto on Ohio's existing pleadings jurisprudence: motions. The crowded

dockets the Appellants describe would become more crowded with new Rule 12 motions intended to test the application of the new standard to existing cases. The "*Real World*" authors undertake a survey of several District Courts, and every Federal Circuit Court's wrangling with how to apply the new *Twombly/Iqbal* standards. 75 Mercer L. Rev., 888-906. As detailed by Cook, *et al*., to pronounce that "Ohio adopts *Iqbal*" does not imply that Ohio courts will do so uniformly. Indeed, this case offers little clarity on how adopting a "plausibility" requirement would change practice in Ohio.

II. NONE OF THE APPELLANTS ADDRESS THE SUBSTANTIVE LAW APPLICABLE TO THIS CASE.

It is shocking that with twelve Appellants forming a chorus to decry notice pleading, not one of them engages with long and well-established Ohio law governing injuries caused jointly by multiple tortfeasors. At ¶¶ 77-85, the Fourth District Court of Appeals engaged in a detailed discussion of the law governing injuries caused by more than one tortfeasor. One of these, *Schindler v. Std. Oil Co*., 166 Ohio St. 391 (1957), is directly on point. The plaintiff in *Schindler* sued multiple oil companies, identifying that one of more of them was likely responsible for contamination of the plaintiff's property. This case predated Ohio's adoption of the Civil Rules and the liberal pleadings standards by twenty years. Even without the "no set of facts" standard that the Appellants say will ruin the state, the result was the same. The Appellants make no attempt to illustrate how following *Twombly/Iqbal* would yield a different result, because they all stay silent on substantive law that applies here.

It is not that the Court of Appeals did not spell out the law. Starting at ¶ 66, the Fourth District discussed the truism that a tort can have more than one proximate

cause. Starting at ¶ 77, the Court of Appeals detailed the application of *Pang v. Minch*, 53 Ohio St.3d 186, 197-198, 559 N.E.2d 1313 (1990) to the Bethel Oil complaint. In its syllabus, this Court stated in *Pang*:

> 5. Where a plaintiff suffers a single injury as a result of the tortious acts of multiple defendants, the burden of proof is upon the plaintiff to demonstrate that the conduct of each defendant was a substantial factor in producing the harm.
>
> 6. Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor. *Ryan* v. *Mackolin* [1968], 14 Ohio St. 2d 213, 43 O.O. 2d 326, 237 N.E. 2d 377, overruled to the extent inconsistent herewith; 2 Restatement of the Law 2d, Torts [1965], Section 433B[2], adopted.)
>
> 7. 2 Restatement of the Law 2d, Torts (1965), Section 433B(2) is applicable where a single, indivisible injury is proximately caused by the successive tortious acts of multiple defendants.

Pang v. Minch, 53 Ohio St.3d 186, 187, 559 N.E.2d 1313 (1990), syllabus. *Pang*'s application is obvious, explicitly detailed in the judgment on appeal, but nevertheless completely ignored by every single Appellant. They cannot demonstrate how this case would come out any differently with a new standard of review when they make no attempt to apply it. This Court applied and reaffirmed *Pang* just two years ago. *State ex rel. Hunt v. City of E. Cleveland*, 171 Ohio St.3d 796, 2023-Ohio-407, 220 N.E.3d 792, ¶ 24. There is no question that *Pang* remains good law.

Appellees, together with the Wilson Plaintiffs, have identified over thirty affected wells. They are contaminated with fracking waste fluid, a process that occurs underground, and at a distance of miles. Plaintiffs joined sixteen companies engaged in injection disposal in the area. The law does not require pleading which of them did how much at the pleadings stage, particularly in a case where that evidence is under

the ground. Even through trial, the law requires that the plaintiffs must establish which defendants' conduct was a "substantial factor" in the plaintiffs' harm. *Pang's* holding and reasoning are directly from the Restatement of Torts. Surely the Appellants are not entitled to negate the application of these long established rules, without even acknowledging that they exist.

The Appellees here are accused of "shotgun pleading." In point of fact, the shotgun cases illustrate the Restatement sections explicitly adopted in *Pang*. In 1948, the Supreme Court of California decided a case that to this day is familiar from tort textbooks, *Summers v. Tice*, 33 Cal.2d 80, 199 P.2d 1 (1948). In that case, a hunting party had three members, two of whom fired at the same time, injuring the third. As both tortfeasors knew of their companion down range, both were deemed to be negligent. The court reasoned:

> …[W]e believe it is clear that the court sufficiently found on the issue that defendants were jointly liable and that thus the negligence of both was the cause of the injury or to that legal effect. It found that both defendants were negligent and "That as a direct and proximate result of the shots fired by *defendants, and each of them*, a birdshot pellet was caused to and did lodge in plaintiff's right eye and that another birdshot pellet was caused to and did lodge in plaintiff's upper lip." *** It thus determined that the negligence of both defendants was the legal cause of the injury -- or that both were responsible. Implicit in such finding is the assumption that the court was unable to ascertain whether the shots were from the gun of one defendant or the other or one shot from each of them. The one shot that entered plaintiff's eye was the major factor in assessing damages and that shot could not have come from the gun of both defendants. It was from one or the other only.

Summers, 33 Cal.2d at 84. This case was decided three generations ago, and even then, the Restatement drew from a body of law stating the rules when a single harm could have been caused by more than one tortfeasor. The shotgun cases underpin the Restatement, and *Pang*, and *Schindler*. The law does not simply throw up its hands

and blame a plaintiff because her injury may have been caused by more than one tortfeasor. Appellants are not entitled to ignore the substantive law applicable to this case—as detailed by the Court below—in the hope that a new pleading standard may somehow, and with no elaboration, un-do the substantive law that applies here.

III. APPLYING *TWOMBLY/IQBAL* WOULD NOT CHANGE THE OUTCOME IN THIS CASE.

Finally, examination of what *Iqbal* actually says compels the conclusion that it does not help the Appellants in this case. Summarizing, the new "plausibility" requirement was first stated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and specifically in reference to whether "parallel conduct" plausibly stated "the agreement necessary to make out" an antitrust claim. Recall, the issue of whether antitrust cases, or copyright cases, *etc*. should have their own pleadings rules was contested at the time the federal courts adopted the civil rules. That position lost. Pleadings standards must be applicable to all types of cases, some of which may not even presently being imagined. *Twombly* was an anti-trust case. *Iqbal* was a civil rights case. This is a mineral rights case.

It was *Ashcroft v. Iqbal*, 556 U.S. 662, 677-679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) that clarified that the "plausibility requirement" first stated in *Twombly* does apply generally in the federal courts. But as in *Twombly*, the facts are not similar enough to provide guidance to this Court for this case. *Iqbal* turned on whether the Attorney General of the United States and the Director of the FBI could be personally liable for discriminatory conduct against Muslim Americans following 9/11. Stating the generally applicable federal standard, the court began with Fed. Civ. R. 8:

> We turn to respondent's complaint. Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is [*678] entitled to relief." As the Court held in *Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, the **pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.** *** Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.*, at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929.
>
> To survive a motion to dismiss, a complaint must contain **sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face.**" *Id.*, at 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929. A claim has facial plausibility when the plaintiff pleads **factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged**. *Id.*, at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid.* Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*, at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 [emphasis added].

Iqbal, *id*., 677-678.. The Court went on to draw a sharp distinction between the presumption of truth as applied to factual statements, as opposed to it applying to legal conclusions:

> Two working principles underlie our decision in *Twombly.* First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Id.*, at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we "are not bound to accept as true a legal conclusion couched as a factual allegation" (internal quotation marks omitted)). Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. *Id.*, at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F.3d at 157-158. But

> where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged--but it has not "show[n]"--"that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).
>
> In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Iqbal, 556 U.S. at 678-679. To say how *Iqbal* would defeat Bethel Oil's right to redress its losses, Appellants should begin with which statements in the Complaint are legal conclusions not "entitled to the assumption [sic] of truth." Factual allegations are still entitled to the presumption of truth under *Twombly* and *Iqbal*,

It is not merely plausible that one or more actors engaged in fracking fluid waste disposal using injection wells contaminated the Plaintiffs' oil and gas producing wells. It is inescapable. *Iqbal* does not permit deferential review to asserted *legal conclusions*, but does not alter the law as to factual ones. Nothing in *Iqbal* requires a plaintiff to know and plead which one of multiple possible actors contributed what percentage of the harm to the plaintiff. *Iqbal* did not overrule *Summers*, nor speak to the well developed law governing multiple tortfeasors, contributing causes of harm, or joint and several liability. Again, no Appellant makes any attempt to demonstrate how adopting *Iqbal* would bear on the *Schindler* and *Pang* cases, as the Court of Appeals applied them here. *Twombly* and *Iqbal* have no bearing on the substantive issues in this case.

CONCLUSION

Appellants cannot show how modification of Ohio's pleadings rules would affect the holding of the Fourth District Court of Appeals without addressing the substantive law stated in the opinion under review. It has never been the law, in Ohio or beyond, that a plaintiff must know and say at the initiation of the suit which of several likely tortfeasors is responsible for the Plaintiff's harm. Moreover, Appellants give too sparing attention to the fact that the remedy for a Complaint that is factually lacking is to amend the Complaint, not to extinguish a plaintiff's ability to pursue her rights.

This case does not illustrate deficiencies in Ohio's pleadings rules. *Amici* submit that this Court should AFFIRM the judgment of the Fourth District Court of Appeals.

Respectfully submitted,

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SERVICE

This is to certify that the foregoing Brief of *Amici Curiae* The American Association for Justice, and the Ohio Association for Justice was served via email on this 14th Day of July, 2025 as follows:

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