No. 13-430

IN THE
# Supreme Court of the United States

SEARS, ROEBUCK AND CO.,
*Petitioner*,

v.

LARRY BUTLER, ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
*Respondents*.

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER


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*Willett v. Baxter Int'l, Inc.*,
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## OTHER AUTHORITY

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## BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

The Product Liability Advisory Council ("PLAC") respectfully submits this brief as *amicus curiae* in support of petitioner Sears, Roebuck and Co. ("petitioner" or "Sears").[1]

## STATEMENT OF INTEREST

PLAC is a non-profit association with over 100 corporate members representing a broad cross-section of American and international product manufacturers.[2] These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of product manufacturers. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product-liability defense attorneys in the country are sustaining (non-voting) members of PLAC.

Since 1983, PLAC has filed more than 1,000 briefs as *amicus curiae* in both state and federal courts, in-

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Pursuant to Supreme Court Rule 37.2, *amicus curiae* states that petitioner and respondents, upon timely receipt of notice of PLAC's intent to file this brief, have consented to its filing.

[2] A list of PLAC's current corporate membership is attached to this brief as Appendix A.

cluding this Court, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product liability.

PLAC's members have an interest in this case because the decision below endorses a lax and misguided approach to Rule 23's predominance requirement. Under the Seventh Circuit's ruling, predominance is satisfied as long as there is a single purportedly common issue, without regard to whether countless other individualized issues pervade. The Seventh Circuit's approach also endorses consumer class actions in which the vast majority of the class has no injury. These holdings contravene *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013) and other recent Supreme Court precedent, as strongly suggested by the Court's decision to vacate the Seventh Circuit's first ruling in this case.

The Seventh Circuit's approach to class certification also presages a toxic litigation environment for manufacturers doing business in the United States. Under the Seventh Circuit's reasoning, predominance would be satisfied in all low-value putative consumer class actions involving *any* alleged defect – even if it affected only a single consumer of a mass-produced product. This approach poses a significant threat to businesses and consumers alike because it will translate into many more class actions, with far less merit, driving up litigation costs for manufacturers – and ultimately, consumer prices.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Just last Term, this case was before the Court on a petition for a writ of certiorari from an order of the Seventh Circuit, holding that two consumer classes of allegedly defective washing machines satisfied the requirements for class certification. The petitioner challenged the orders on the ground that the classes were overbroad because the alleged defects never manifested in the vast majority of their members' machines. Petitioner also argued that common issues did not predominate because the machines at issue had varying designs. This Court vacated the Seventh Circuit's order and remanded the case for further consideration in light of the Court's ruling in *Comcast*, 133 S. Ct. 1426. See *Butler v. Sears, Roebuck & Co.*, 133 S. Ct. 2768 (2013). Among other things, *Comcast* clarified the predominance requirement of Rule 23(b)(3) and made clear that a case is not suitable for class treatment where the plaintiff seeks damages for injuries that do not pervade the class.

On remand, the Seventh Circuit essentially reinstated its prior opinion, concluding that *Comcast* has no relevance to this case. According to the court, predominance is still satisfied as to both classes because each presents one common issue of defect – in one class, whether the machines produce mold and odors, and in the other, whether some of the machines' central control units ("CCUs") are prone to erroneously shutting the machines down. Pet. App. 4a-5a. Thus, it would be more "efficient" to try the issue of defect as a class. *Id.* at 4a. The Seventh Circuit also concluded that overbreadth is not a problem but a virtue in that, if Sears is correct that the clas-

ses are overbroad, the result of certification would be "a judgment that would largely exonerate Sears." *Id.* at 5a.

In the Seventh Circuit's view, *Comcast* had no bearing on this case because it holds only that "a damages suit cannot be certified to proceed as a class action unless the damages sought are the result of the class-wide *injury* that the suit alleges." *Id.* at 6a. Here, by contrast, the Seventh Circuit thought that the alleged injury was classwide because each machine had the potential to develop moldy odors. *Id.* at 7a. And in any event, "damages of individual class members" could be resolved in individual proceedings. *Id.* at 8a.[3]

The Seventh Circuit's conclusions cannot be reconciled with *Comcast*, which rejected the notion that a plaintiff can seek damages on behalf of all class members for injuries that did not pervade the class. The classes here present a similar problem: the plaintiff seeks recovery for all members of both classes, but the proposed injuries – mold and odor in one class, CCU errors in the other – do not pervade the classes. This problem is not resolved by the Seventh Circuit's self-assurances about efficiency. Indeed, the trial plan that court contemplates would be grossly

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[3] The Seventh Circuit's ruling was issued on the heels of a decision by the Sixth Circuit, which similarly held that claims involving allegedly odor-producing washing machines were properly certified notwithstanding *Comcast*. See *Glazer v. Whirlpool Corp.*, 722 F.3d 838 (6th Cir. 2013). The defendant in *Glazer* has also filed a petition for certiorari. See *Whirlpool Corp. v. Glazer*, No. 13-431 (U.S. filed Oct. 7, 2013). In light of the overlapping issues in *Butler* and *Glazer*, *amicus curiae* in the present case have also filed a brief in support of certiorari in *Glazer*.

inefficient – requiring individual proceedings that would impose a cost far outstripping any potential recovery.

If left to stand, the court's opinion would bode ill for American businesses, which would face a mounting horde of purported "class" litigation premised on alleged defects that affect but a handful of consumers. The court's highly pliable approach to predominance significantly lowers the bar to certification and strips defendants of critical protections against unfair aggregate litigation. The inevitable increase in the cost of doing business would be passed along to consumers, leaving only plaintiffs' lawyers to benefit. This Court should grant review to prevent these results, to clarify Rule 23's predominance requirement in light of *Comcast*, and to resolve a growing split among the federal courts of appeals over whether classes may be certified where only a small portion of the class members were actually injured by an alleged defect in a defendant's product.

## ARGUMENT

### I. The Seventh Circuit's Decision Cannot Be Reconciled With *Comcast*.

Despite recognizing that its prior ruling was vacated and remanded "for reconsideration in light of *Comcast*," Pet. App. at 2a, the Seventh Circuit concluded that the "*Comcast* decision" did not "cut the ground out from under [its earlier] decision ordering that the two classes be certified," *id.* at 3a. This conclusion reads *Comcast* too narrowly and ignores a clear implication of its holding: classes that encompass class members who have no injury are impermissibly overbroad.

In *Comcast*, this Court made clear that a class cannot be certified on a theory that would result in compensation for class members who have no injury. There, the plaintiffs commenced a putative antitrust class action against Comcast, alleging that it entered into agreements with other cable providers that violated federal antitrust laws and caused injury by eliminating competition and causing prices to remain above competitive levels. 133 S. Ct. at 1430. The plaintiffs proposed four theories of antitrust impact, each of which supposedly increased cable rates, but the district court limited them to "the theory that Comcast engaged in anticompetitive clustering conduct, the effect of which was to deter the entry of overbuilders in the Philadelphia" cable market. *Id.* at 1431 (internal quotation marks and citation omitted). The district court certified the class, finding that damages based on this theory – overbuilder-deterrence impact – could be calculated on a classwide basis, even though the model employed by plaintiffs' expert "did not isolate damages resulting from any one theory of antitrust impact." *Id.* The Third Circuit affirmed the class certification ruling. *Id.*

This Court reversed, holding that damages must be "capable of measurement on a classwide basis." *Id.* at 1433. The Court explained that the damages model put forth by the plaintiffs in *Comcast* improperly "assumed the validity of all four theories of antitrust impact initially advanced by respondents." *Id.* at 1434. It thus "failed to measure damages resulting from the particular antitrust injury on which [the defendants'] liability [was] premised." *Id.* at 1433. The district court had only accepted one of the four theories of antitrust impact advanced (reduced

overbuilder competition), and any damages awarded to the class therefore had to be attributed to that theory alone. Because the proffered damages model was not so limited, the Court concluded that "[q]uestions of individual damage calculations [would] inevitably overwhelm questions common to the class," defeating predominance and rendering class-wide treatment improper. *Id.*

*Comcast* makes clear that the classes here cannot be certified. The injuries complained of in this case are mold and odor problems, as well as defects in the CCUs of various washing machines. And as *Comcast* explains, properly certified classes could only recover damages attributable to these problems. But the class definitions here are not so limited; rather, they sweep in all owners of various washing machines – as opposed to those that have actually exhibited an odor, mold or CCU problem. These classes are significantly overbroad because the vast majority of class members have never experienced any of these problems with their washers. In fact, with respect to the odor and mold class, the evidence revealed that *over 95%* of the class members did not experience any problem with their washers. See Pet. at 8. The complaint rate among potential class members of the CCU class was similarly low. *Id.* at 9. Thus, under *Comcast*, certification should have been denied because the relief sought far outstrips any plausible theory of injury within the class.

The Seventh Circuit did not see it that way. In reinstating its prior ruling, the court of appeals held that *Comcast* had no effect on the certifiability of the odor/mold and CCU classes because the problem in *Comcast* was the effort to try liability and damages in the same proceeding. According to the court of ap-

peals, "fundamentally, the district court in our case, unlike *Comcast*, neither was asked to decide nor did decide whether to determine damages on a class-wide basis." Pet. App. at 7a-8a. Thus, the court concluded, the issue of defect could be resolved on a classwide basis, with separate hearings to determine (if defects were established) the additional elements of injury and any damages of individual class members. *Id.* at 8a. Such a bifurcated approach made class certification proper in the Seventh Circuit's view because it would promote "efficiency." See *id.* at 5a, 7a.

The Seventh Circuit's rationale badly misreads both *Comcast* and the record in this case. As a preliminary matter, the Seventh Circuit was wrong that the district court was not "asked to decide . . . whether to determine damages on a class-wide basis," as the plaintiffs sought class certification with respect to damages. See Pet. at 12 (internal quotation marks and citation omitted). And in any event, the Seventh Circuit's suggestion that *Comcast* would have come out differently if only the plaintiffs had sought to bifurcate damages is not plausible. Indeed, the *Comcast* dissent proposed precisely this approach. See 133 S. Ct. at 1437 n.* (Ginsburg and Breyer, J.J. dissenting) (noting that a "class may be divided into subclasses for adjudication of damages" or that, "at the outset, a class may be certified for liability purposes only, leaving individual damages calculations to subsequent proceedings," citing the issues-class provision of Rule 23 and other sources). But the dissent's view did not carry the day. See Sean Wajert, *Seventh Circuit affirms ruling despite Comcast*, Shook Hardy & Bacon LLP, Aug. 23, 2013, http://www.lexology.com/library/detail.aspx?g=25297 8f4-f0bc-4481-ad5c-33783cda6fbd (noting that, in

*Comcast*, the Supreme Court "clearly disapproved of the traditional approach that damages were not part of the predominance requirement").

This case illustrates why damages cannot be ignored in the predominance analysis. By focusing exclusively on the purported "efficiency" of resolving the issue of defect in a common proceeding, the Seventh Circuit failed to consider the extreme inefficiency inherent in the individualized follow-on proceedings it contemplates. Even if plaintiffs were to prevail on the issue of defect in a common proceeding, no one would be able to recover any breach-of-warranty damages until other issues relating to breach, causation, injury, and damages were litigated, one case at a time. The costs of litigating the individual follow-on proceedings would be certain to exceed the value of any recovery – particularly in light of the fact that the overwhelming majority of class members have not sustained any of the alleged injuries. This is hardly an "efficient" mode of litigation. Thus, even on its own terms, the Seventh Circuit's predominance analysis makes no sense.

More fundamentally, the Seventh Circuit read *Comcast* too narrowly in concluding that it is only relevant to damages issues. *Comcast*'s reasoning extends not only to variations in damages but more fundamentally to efforts to use the class device to seek recovery for a theory of injury that does not actually pervade the class. In *Comcast*, the plaintiffs sought damages for four theories of injury when only one pervaded the class; here, the plaintiffs seek damages for two theories of injury when *none* pervades the class. This absence of uniform injury (or anything close to it) is reason enough to deny certification under *Comcast*. See 133 S. Ct. at 1430

("the existence of individual injury" must be "capable of proof at trial through evidence that [is] common to the class rather than individual to its members") (internal quotation marks and citation omitted); see also *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 725 F.3d 244, 253 (D.C. Cir. 2013) (relying on *Comcast* for the proposition that plaintiffs must be able to "offer common evidence of *classwide injury*" to establish predominance) (emphasis added); *Martin v. Ford Motor Co.*, No. CIV.A. 10-2203, 2013 U.S. Dist. LEXIS 92572, at *18-22, *61 (E.D. Pa. July 2, 2013) (relying on *Comcast* to deny class certification in case involving allegedly defective axles on Ford Windstars because the vehicles at issue differed in age and usage, and "the rear axles on approximately 83.2% of the Windstars at issue have not malfunctioned").[4]

For all of these reasons, the Seventh Circuit's attempt to cast *Comcast* as irrelevant is implausible and led it to the wrong result. Because *Comcast* makes clear that individualized issues of damages

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[4] As the petition makes clear, the alleged defects in this case – moldy odor or a problem with the CCU – manifested only in a small percentage of the putative class members' washing machines. See Pet. at 8-9, 21. Although plaintiffs claim that the prospect that the machines *could* develop odor or CCU problems constitutes an "injury" of sorts, such an "injury" – even if it could be supported under state law – is obviously quite different from that suffered by a consumer who has actually experienced an odor or CCU problem. As such, class certification would remain improper because the entire class would not be bound together by a common theory of injury. See *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (even bare commonality depends on a showing that "the class members 'have suffered'" not just any injury, but "'*the same* injury'") (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)) (emphasis added).

and injury defeat predominance, the Court should grant the petition and reverse.

## II. The Seventh Circuit's Decision Threatens To Create Grave Risks For American Business.

The decision below also cries out for review because it threatens an explosion of overbroad class actions that seek classwide compensation based on idiosyncratic product defects that affect only a handful of consumers.

The Seventh Circuit's ruling loosens class certification requirements by approving class treatment absent proof of uniform injury or damages. Indeed, plaintiffs' lawyers have already taken note of the lax approach to class certification signaled by the ruling in *Butler*. See, *e.g.*, Barry Barnett, *Enemy of My Enemy Tack Doesn't Sway Seventh Circuit; Narrow Read of Comcast on Class Cert*, Blawgletter, Aug. 29, 2013, http://blawgletter.typepad.com/bbarnett/2013/08/enemy-of-my-enemy-tack-doesnt-sway-seventh-circuit-narrow-read-of-comcast-on-class-cert.html (celebrating the Seventh Circuit's decision to "g[i]ve the back of its hand to those who claim that *Comcast*" changed class-action law). And the ruling has already been cited by other courts to support lax certification standards in classes including uninjured members. See, *e.g.*, *Slipchenko v. Brunel Energy, Inc.*, No. H-11-1465, 2013 U.S. Dist. LEXIS 124159, at *43-44 (S.D. Tex. Aug. 30, 2013) (certifying class of employees whose employer allegedly failed to provide them with notices of their right to continued health care coverage; "'If the issues of liability are genuinely common issues . . . the fact that damages are not identical across all class members should not

preclude class certification.'") (quoting *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013)).

This development adversely affects businesses and consumers alike. Loose certification requirements raise the stakes of litigation and the risk of gargantuan verdicts – not to mention bankruptcy. Mark Moller, *The Anti-Constitutional Culture of Class Action Law,* Regulation 50, 53 (Summer 2007). In reaffirming class certification notwithstanding *Comcast*, the court of appeals attempted to sweep aside this problem by explaining that Sears ought to "welcome" class certification because if most of the class is uninjured, the result would be "a judgment that would largely exonerate Sears." Pet. App. at 5a. But this view is unrealistic because class actions rarely go to trial. Rather, as the Seventh Circuit itself has previously recognized, companies often face "intense pressure to settle" after certification in light of the potentially devastating effect of a class verdict. See *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1298-99 (7th Cir. 1995) (further noting the court's "concern with forcing . . . defendants to stake their companies on the outcome of a single jury trial").

This pressure to settle exists regardless of the merits of the case; "[f]ollowing certification, class actions often head straight down the settlement path because of the very high cost for everybody concerned, courts, defendants, plaintiffs of litigating a class action . . . ." Bruce Hoffman, Remarks, *Panel 7: Class Actions as an Alternative to Regulation: The Unique Challenges Presented by Multiple Enforcers and Follow-On Lawsuits*, 18 Geo. J. Legal Ethics 1311, 1329 (2005) (panel discussion statement of Bruce Hoffman, then Deputy Director of the Federal Trade Commission's Bureau of Competition). Indeed, "certification

is the whole shooting match" in most cases, and defendants faced with improvidently certified, meritless lawsuits feel "intense pressure to settle" before trial, culminating in "judicial blackmail." See David L. Wallace, *A Litigator's Guide to the 'Siren Song' of 'Consumer Law' Class Actions*, LJN's Product Liability Law & Strategy (Feb. 2009); *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996) ("These settlements have been referred to as judicial blackmail.").

The decision below can only exacerbate this problem. In addition to existing pressures to settle substantively meritless claims, manufacturers will now face settlement pressure from wildly overbroad classes like those certified here – in which less than 5% of class members were conceivably harmed by the alleged odor/mold defect, and fewer still by the alleged CCU defect. Classwide settlements in such cases would indisputably result in overcompensation by sending free money to class members who would never be able to recover (or even think to bring suit) individually against the defendant. See *Supreme Laundry List*, Wall St. J., Oct. 9, 2012 ("Without the governor of common injury required by *Wal-Mart*, product liability suits and consumer class actions become the tool of plaintiffs[']  lawyers who gin up massive claims in the hope that companies will settle").

Overcompensation is as much a problem for consumers as it is for business. As Judge Minor Wisdom once explained, damages paid in litigation to those consumers who are actually injured "are presumably incorporated into the price of the product and spread among" all purchasers. *Willett v. Baxter Int'l, Inc.*, 929 F.2d 1094, 1100 n.20 (5th Cir. 1991). But when

compensation is potentially available to all consumers – injured and uninjured alike – manufacturers will act to include those costs in the price of goods. See *id.* The result is that, "instead of spreading a concentrated loss over a large group, each [consumer] would cover his own [potential recovery] (plus the costs of litigation) by paying a higher price . . . in the first instance." *Id.*; see also, *e.g.*, Lisa Litwiller, *Why Amendments to Rule 23 Are Not Enough: A Case for the Federalization of Class Actions*, 7 Chap. L. Rev. 201, 202 (2004) ("Businesses spend millions of dollars each year to defend against the filing and even the threat of frivolous class action lawsuits. Those costs, which could otherwise be used to expand business, create jobs, and develop new products, instead are being passed on to consumers in the form of higher prices.") (internal quotation marks and citation omitted). It is precisely this sort of economic system – which Judge Wisdom saw "little reason to adopt" – that the court embraced below.

For these reasons too, the Court should grant certiorari in order to ensure that the Seventh Circuit, and other courts of appeals that continue to embrace overbroad class actions, do not become the next haven for class action abuse, to the detriment of the judicial system, our economy, and American consumers.

## CONCLUSION

For the foregoing reasons, and those stated by petitioner Sears, Roebuck and Co., the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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# APPENDIX A

**Corporate Members Of The Product Liability Advisory Council**

3M
Altec, Inc.
Altria Client Services Inc.
Anadarko Petroleum Corporation
AngioDynamics, Inc.
Ansell Healthcare Products LLC
Astec Industries
Bayer Corporation
BIC Corporation
Biro Manufacturing Company, Inc.
BMW of North America, LLC
Boehringer Ingelheim Corporation
The Boeing Company
Bombardier Recreational Products, Inc.
Bridgestone Americas, Inc.
Brown-Forman Corporation
Caterpillar Inc.
CC Industries, Inc.
Celgene Corporation
Chrysler Group LLC
Cirrus Design Corporation
Continental Tire the Americas LLC
Cooper Tire & Rubber Company
Crane Co.
Crown Cork & Seal Company, Inc.
Crown Equipment Corporation
Daimler Trucks North America LLC
Deere & Company
Delphi Automotive Systems
Discount Tire
The Dow Chemical Company
E.I. duPont de Nemours and Company

Eisai Inc.
Eli Lilly and Company
Emerson Electric Co.
Engineered Controls International, LLC
Exxon Mobil Corporation
Ford Motor Company
General Electric Company
General Motors LLC
Georgia-Pacific Corp.
GlaxoSmithKline
The Goodyear Tire & Rubber Company
Great Dane Limited Partnership
Harley-Davidson Motor Company
Honda North America, Inc.
Hyundai Motor America
Isuzu North America Corporation
Jaguar Land Rover North America, LLC
Jarden Corporation
Johnson & Johnson
Kawasaki Motors Corp., U.S.A.
Kia Motors America, Inc.
Kolcraft Enterprises, Inc.
Lincoln Electric Company
Lorillard Tobacco Co.
Magna International Inc.
Mazak Corporation
Mazda Motor of America, Inc.
Medtronic, Inc.
Merck & Co., Inc.
Meritor WABCO
Michelin North America, Inc.
Microsoft Corporation
Mine Safety Appliances Company
Mitsubishi Motors North America, Inc.
Mueller Water Products

Nissan North America, Inc.
Novartis Pharmaceuticals Corporation
Novo Nordisk, Inc.
PACCAR Inc.
Panasonic Corporation of North America
Peabody Energy
Pella Corporation
Pfizer Inc.
Pirelli Tire, LLC
Polaris Industries, Inc.
Porsche Cars North America, Inc.
Purdue Pharma L.P.
RJ Reynolds Tobacco Company
SABMiller Plc
Schindler Elevator Corporation
SCM Group USA Inc.
Shell Oil Company
The Sherwin-Williams Company
Smith & Nephew, Inc.
St. Jude Medical, Inc.
Stanley Black & Decker, Inc.
Subaru of America, Inc.
Techtronic Industries North America, Inc.
Teva Pharmaceuticals USA, Inc.
TK Holdings Inc.
Toyota Motor Sales, USA, Inc.
Vermeer Manufacturing Company
The Viking Corporation
Volkswagen Group of America, Inc.
Volvo Cars of North America, Inc.
Wal-Mart Stores, Inc.
Whirlpool Corporation
Yamaha Motor Corporation, U.S.A.
Yokohama Tire Corporation
Zimmer, Inc.