

No. \_\_\_\_\_

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**IN THE SUPREME COURT OF OHIO**

APPEAL FROM THE COURT OF APPEALS  
EIGHTH APPELLATE DISTRICT  
CUYAHOGA COUNTY, OHIO  
CASE NOS. CA-101073 AND 101136 (CONSOLIDATED)

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WESTGATE FORD TRUCKSALES, INC.,  
Individually and on behalf of Plaintiff Class,  
*Plaintiff/Appellant,*

v.

FORD MOTOR COMPANY,  
*Defendant/Appellee.*

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**PLAINTIFF/APPELLANT WESTGATE FORD TRUCK SALES, INC.'s  
MEMORANDUM IN SUPPORT OF JURISDICTION**

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## I. INTRODUCTION

This is the largest breach of contract action in Ohio history. A nationwide class of 3,400 Ford dealers claims that Ford breached its standard franchise agreement (“SFA”) through its operation of a wholesale pricing scheme known as Competitive Price Assistance, or the “CPA Program.” In a previous trial in this matter, a jury determined that Ford’s breach caused the dealers nearly \$2 billion in damages (including interest), \$11 million of which were incurred by the Ohio class representative, Westgate Ford Truck Sales, Inc. (“Westgate”). The case was reversed on appeal and re-tried. In the proceeding here, the trial court’s review of an extensive evidentiary record led it to conclude that this second jury “lost its way” in deliberating the question of Ford’s breach. The trial court therefore entered judgment for the dealers on that issue. The court below reversed that judgment, relying on a deeply flawed legal analysis to wrongly (and permanently) deprive the dealers of any remedy for the harm Ford caused.

In addition to depriving the dealers of any remedy, the appellate court’s misguided analysis injected profound confusion into two fundamental aspects of Ohio law. First, the decision below creates open conflict on a basic and frequently recurring issue of contract law. Specifically, the court below held that once contract language is deemed ambiguous—thus necessitating the use of extrinsic evidence to ascertain its meaning—questions of contractual meaning and breach are then *never* subject to later judicial resolution, even when the extrinsic evidence provides no support for one party’s position. That holding is directly contrary not only to decisions from other Ohio courts, but also to rulings across the country, all of which uniformly acknowledge that extrinsic evidence, once admitted, can be sufficiently one-sided to allow a court to resolve the issue of breach as a matter of law. And, given that litigated contracts are often held to be ambiguous, the confusion created by the lower court’s ruling—unless corrected by this Court—will result in ongoing difficulties for litigants and lower courts.

Second, the decision below clouds the legal framework governing appellate review of a trial court's order granting a new trial. Here, the trial court found that the jury's verdict was against the manifest weight of the evidence. In reviewing that order, the Court of Appeals made two important mistakes. First, it held that the trial court's order was not sufficiently express in granting the new trial, and that this "silence" should be treated as a *denial*, a result contrary to the record, the Ohio Rules of Civil Procedure, and this Court's precedent. Second, under settled law, the *only* question on appeal should have been whether there was competent, credible evidence to support the trial court's order. The appeals court instead asked whether sufficient evidence supported *the jury's verdict*—the wrong standard. As new trial motions are a staple in jury trials, these errors as to the appellate framework threaten confusion in scores of cases.

Accordingly, Westgate respectfully urges this Court to accept jurisdiction.

## **II. STATEMENT OF THE CASE AND THE FACTS**

### **A. Background of the Claim that Ford Breached Its Franchise Agreement.**

This breach of contract action has been pending for over ten years, and has involved three separate trips to the court of appeals. The contract at issue is Ford's SFA, which explicitly states that its purpose is to set forth Ford's responsibilities as the producer and seller of products in the wholesale market and the dealer's responsibilities as the reseller of products in the retail market. The claims of breach primarily center around Paragraph 10, which requires Ford to sell trucks to its dealers "in accordance with the prices, charges, discounts and other terms of sale set forth in price schedules or other notices *published by the Company to the Dealer ...*" (the "Published Pricing Requirement") (emphasis added). In this lawsuit, the dealers contend that Ford's operation of the CPA Program breached the Published Pricing Requirement and allowed Ford to control dealer profits in order to maximize the portion of retail dollars that flowed back to Ford.

Since at least the 1960s, Ford's SFA has included the Published Pricing Requirement.

Before implementing the CPA Program, Ford sold all of its products under the SFA—cars, light trucks, medium duty trucks, heavy duty trucks and replacement parts—at prices and discounts that Ford set forth in schedules and price lists published to dealers. In the early 1980s, though, Ford changed the way it priced medium- and heavy-duty trucks. It raised its published wholesale prices on those products to levels far above the retail prices the trucks could command in the marketplace, and then used deal-specific discounts. Ford managers confirmed that by 1988, Ford’s inflated wholesale prices required dealers to seek such discounts on 100% of purchased medium- and heavy-duty trucks in order to resell them. The CPA Program was the mechanism Ford used to administer the now-necessary discounts.

Under this program, Ford required dealers to negotiate a proposed retail price with a customer and report that price to Ford. Only then would Ford provide that dealer with a deal-specific wholesale price—one just below the anticipated retail price. Because Ford set its wholesale price for the deal *after* learning the retail price, Ford could—and did—use the CPA program to control dealer profits. The unrefuted evidence showed that Ford CPA managers had a policy of setting wholesale prices to restrict the dealer to a 4% margin. For the first few years of the program, Ford enforced that policy by “charging back” dealers, confiscating any profit that exceeded Ford-approved levels. Later, Ford enforced the policy by reducing the amount of discount an offending dealer received on future deals. Either way, the program allowed Ford to retain for itself the lion’s share of the profit in every deal, at the expense of its dealers.

**B. Background of the Lower Court’s Legal Errors.**

Westgate sued Ford in the Cuyahoga County Court of Common Pleas on behalf of the dealer class. The trial court granted class certification, which Ford unsuccessfully appealed to the Eighth District. This Court denied jurisdiction. On remand, the trial court granted the dealers summary judgment on liability, finding that the Published Pricing Requirement was

unambiguous, and that Ford's operation of the CPA program breached that requirement. A jury then determined that Ford's breach caused the dealers \$781 million in damages. After adjusting that amount for interest, the trial court entered judgment for approximately \$2 billion.

Ford again appealed, claiming that the trial court had erred in finding the Published Pricing Requirement to be unambiguous. This time, in a 2-1 decision, the appeals court agreed with Ford, holding that certain terms in Paragraph 10 were ambiguous:

Specifically, it is unclear what Paragraph 10 means when it refers to "other notices" and in its requirement that publication is made "in accordance with" the TRUCK TERMS OF SALE BULLETIN

In reaching that decision, of course, the Eighth District did not consider—nor should it have—any extrinsic evidence of meaning. Rather, it reviewed the contract's four corners and found that ambiguity existed, a result that merely opened the door to extrinsic evidence on remand. This Court again denied jurisdiction over a further appeal.

On remand, the parties tried the case to a new jury, addressing breach, affirmative defenses, and damages. In light of the Eighth District's finding of ambiguity, the dealers put in substantial extrinsic evidence regarding the meaning of Paragraph 10—the parties' purpose in adopting the provision, the parties' original understanding of the provision as reflected in their conduct before the introduction of CPA, etc. For example, one witness explained that the Published Pricing Requirement was the only provision that protected the dealers against overreach by Ford into the retail market. Ford's promise to sell at prices and terms that were published meant that the dealers would know their prices up front, would know that other dealers were not getting better terms, and would know that if the dealer negotiated higher prices with a particular customer, the dealer—not Ford—would keep that incremental retail profit.

With regard to the two specific pieces of contract language the Eighth District had deemed ambiguous—"other notices" and "in accordance with"—there was no conflicting

evidence at trial. Westgate introduced evidence that Paragraph 30 of the SFA expressly stated that any “notice” referenced in the SFA must be a written instrument delivered to the dealer via first class or registered mail. Ford’s own manager agreed that CPA prices were not “set forth in price schedules or other notices” thus defined. And Westgate never disputed that CPA prices were “in accordance with” the provisions of Ford’s own Terms of Sale Bulletins—documents that Ford characterized as “background provisions.” Rather, Westgate simply claimed that CPA prices and discounts were not *published*, a position with which Ford’s executives all agreed.

The only evidence Ford presented, by contrast, was evidence intended to show that the dealers—most of whom had virtually their entire savings invested in their dealerships—had “voluntarily” participated in the CPA program. (Of course, if a dealer did not participate, his wholesale prices would have exceeded the retail price in the market, making it impossible for the dealer to meet its Ford-mandated sales objectives and exposing the dealer to potential franchise termination.) While Ford contended that the parties’ conduct, *i.e.*, participating in the program—conduct that first arose decades after Ford drafted the contracts—was evidence of contractual meaning, its principal argument was that, whatever the contract originally meant, competitive changes in the truck market resulting from deregulation in the early 1980s—six years *after* Westgate signed its dealer agreement—required changes to the pricing model. Ford argued that it had acted reasonably in light of competitive conditions, and that the dealers, through their conduct, had modified the contract terms or waived their right to published prices—affirmative defenses that require a showing of voluntariness under a heightened burden of proof.

In returning a verdict in Ford’s favor, the jury answered only the first of five special interrogatories, indicating that Westgate had failed to establish breach. The jury did not consider *at all* the questions of affirmative defenses or damages.

After the verdict, Westgate moved for JNOV on the issue of breach and/or a new trial. Westgate noted that the record contained no actual evidence supporting a finding of no breach, or at the very least, that the jury's verdict was against the manifest weight of the evidence and worked a substantial injustice on the dealers. The trial court agreed. First, it found that, even construing the evidence in Ford's favor, reasonable minds could only conclude that Ford had breached the Published Pricing Requirement:

The Court finds the jury clearly lost its way in its deliberation as the evidence cannot sustain the verdict. Even considering the evidence in a light most favorable to Ford, reasonable minds could not construe the evidence to differ from the conclusion that defendant breached the contract.

Recognizing that the Eighth District had previously held Paragraph 10 to be ambiguous, the court observed that the extrinsic evidence had "overwhelming[ly]" resolved that ambiguity:

The evidence was overwhelming in resolving any ambiguity that Ford's implementation of the Appeal CPA program thwarted the purpose of the contract and intent of the parties that the dealers were to exploit the retail market. The evidence did not support Ford's interpretation of the ambiguous language when considered in relation to the contract's purpose, the rules of contract construction, and the extrinsic evidence adduced at trial.

The court also noted that, by using transaction-specific pricing, where Ford set prices based on information that it required the dealers to provide about the anticipated retail sale, "Ford expropriated any potential negotiated profit from Westgate's retail sale." Finally, the court addressed Ford's argument about the parties' conduct, holding that "reasonable minds could not differ with the conclusion that the dealer's conduct reflected a lack of options, not a new interpretation of ambiguous contract language." It thus granted JNOV on breach.

In the alternative, the court granted a new trial. In its written ruling, the court only expressly addressed the new trial as to the affirmative defenses and damages. There was no doubt, however, that its determination that there was no evidence supporting the jury's finding of non-breach carried with it a lesser-included determination that, in the event an appeals court

disagreed on the propriety of JNOV, the court intended to grant a new trial. Indeed, the court directly addressed that issue in its bench ruling made after oral argument on February 7, 2014. At the time, the court intended that ruling to be its only ruling on the motion, *see* Tr. 3856, so the court took great care in announcing its decision. In addition to finding that “there is not substantial evidence to support Ford’s contention that they did not breach the contract,” *i.e.*, the JNOV standard, the court then also found that “[t]he verdict is not sustained by the evidence in the record, weighing the evidence and the credibility of the witnesses in the sense only that a manifest injustice has occurred,” *i.e.*, the new trial standard. *Id.* In short, there was no question the trial court granted both a JNOV and a new trial.

Ford again appealed, and the Eighth District again reversed a judgment in favor of the dealers. The court’s grounds for its second reversal, however, reflected two fundamental errors. On the issue of JNOV, the Eighth District determined “that the trial court’s decision granting the JNOV contravened the law of the case.” More specifically, the Eighth District found that its holding in the previous appeal—that Paragraph 10 was ambiguous—precluded the trial court from later resolving the issue of breach as a matter of law based on the extrinsic evidence presented at trial. The court opined that, because it had previously determined that both parties’ theoretical (*i.e.*, not based on any extrinsic evidence) interpretations of Paragraph 10 were “reasonable,” the question of breach had to go to the jury and “***nothing at trial could alter this determination.***” In other words, once a contract is deemed ambiguous—thus allowing for consideration of extrinsic evidence—a trial court ***cannot*** then grant summary judgment, a directed verdict or JNOV, even if the extrinsic evidence wholly fails to support one party’s position. Importantly, that was the Eighth District’s sole basis for its decision on the JNOV.

As for the new trial, the Eighth District made two findings. First, it found that “the trial court denied Westgate’s Civ.R. 59 motion for a new trial in its silence.” Perhaps recognizing the overwhelming evidence that the trial court had in fact granted a conditional new trial, the appeals court also addressed, in passing, the new trial grant on the merits. On that issue, though, rather than applying the proper standard (*i.e.*, did credible, competent evidence support the trial court’s grant), the appeals court instead asked whether there was sufficient evidence to support the jury’s verdict—the wrong inquiry.

### **III. THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST**

Ohio’s Constitution grants this Court jurisdiction over cases involving issues of “public and great general interest.” Const. Art. IV, § 2(B)(2)(e). This case presents two such issues.

First, this case creates profound confusion on a basic and frequently recurring issue of contract law. In particular, the court below dramatically changed the consequences of a judicial determination that a contractual provision is ambiguous. Under well-settled and long-standing law, that determination means *only* that the parties are able to present extrinsic evidence of contractual meaning. According to the court below, though, it now *also* means that a court is powerless to determine breach as a matter of law once that evidence is considered, no matter how one-sided the evidence may be. That holding directly contradicts other Ohio appellate decisions. For example, the Fourth District has expressly stated the exact opposite:

When contractual terms are ambiguous, a court may consider extrinsic evidence to ascertain the intent of the parties and the meaning of the contract’s terms. Ordinarily, summary judgment is inappropriate when contractual language is ambiguous, because a question of fact remains. ***But if the extrinsic evidence demonstrates that no genuine issue of material fact exists, we conclude that summary judgment may still be appropriate.***

*Lewis v. Mathes*, 2005-Ohio-1975, ¶ 25 (4th Dist.) (emphasis added, citations omitted); *see also Century III Assoc. v. Marmaxx Operating Corp.*, 2005-Ohio-7085, ¶¶ 27-32 (11th Dist.)

(granting summary judgment on ambiguous contract after consideration of extrinsic evidence); *GZK, Inc. v. Schumaker Ltd. P'ship*, 2003-Ohio-5842, ¶¶ 15-25 (2d Dist.) (“We conclude that there were no genuine issues of material fact and that when extrinsic evidence is considered in addition to the written Agreement, it is clear as a matter of law that GZK successfully exercised its right of first refusal ....”).

Nor is the conflict limited to Ohio law. The Eighth District’s holding—that a previous determination of ambiguity means that the interpretive question must go exclusively to the jury—has been resoundingly rejected by courts across the country:

It is often stated that the existence of ambiguity in contractual language is a “question of law” for the court, and the resolution of any such ambiguity is a “question of fact” for the jury. *As with any other factual issue, however, the court may resolve ambiguity in contractual language as a matter “of law” if the evidence presented about the parties’ intended meaning is so one-sided that no reasonable person could decide the contrary.*

*3Com Corp. v. Banco do Brasil, S.A.*, 171 F.3d 739, 746-47 (2d Cir.1999) (emphasis added). *See also, e.g., Penford Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 662 F.3d 497, 505 (8th Cir.2011) (granting judgment as a matter of law when extrinsic evidence unequivocally supports one party); *Girardeau Contractors, Inc. v. Missouri Highway & Transp. Comm’n*, 644 S.W.2d 360, 363 (Mo.Ct.App.1982) (“Even if the contract could be considered ambiguous, that does not necessarily mean that there is a jury question. The court itself must still declare the meaning of the contract unless the evidence admitted raised a real issue of fact to be resolved by the jury.”). These are but some of the many cases recognizing this basic contract law principle. The decision below contradicts all of them—holding that once a contract is labeled ambiguous, that becomes “law of the case” that forever precludes later judicial resolution of contractual meaning.

Moreover, while the original finding of ambiguity (in the first appeal) was made as a matter of Michigan law (as the contract has a Michigan choice-of-law provision), the decision

below rests on *Ohio* law. Indeed, the court cited exclusively Ohio law, both in discussing the test for contractual ambiguity and the implications of such a finding. *See* Op. at ¶ 14. Even more importantly, the court specifically made its erroneous law-of-the-case holding—*i.e.*, its holding that an earlier finding of ambiguity precludes a later judicial determination of meaning; the key issue here—solely as a matter of Ohio law. *Id.* at ¶ 13.

In sum, the Eighth District’s decision threatens widespread confusion in the lower courts. Judges in contract cases often hold a written agreement is ambiguous. Until now, the impact of that holding was well understood: a party can submit extrinsic evidence. Now, though, if the Eighth District is right, that finding also prevents a court from *ever* later resolving the contract’s meaning as a matter of law, and eviscerates the trial court’s judicially-recognized *duty* to set aside a verdict that does not conform to the evidence. Before Ohio ventures down that uncharted course—a path at odds with courts across the country—this Court should consider the issue.

The decision below also threatens grave confusion on the appropriate handling of motions for new trial, an issue that arises in many, if not most, jury trials. This is true in two regards. First, the decision below contradicts this Court’s precedent on the appropriate handling of a trial court’s order that does not expressly address a conditional new trial motion after granting a JNOV. Under this Court’s precedent, an ambiguous order granting a JNOV in response to a party’s combined motion for JNOV or in the alternative a new trial is properly understood to include an “implied conditional grant” of the new trial motion. *See White Motor Corp. v. Moore*, 48 Ohio St.2d 156, 161-62 (1976). That only makes sense, of course, as a determination that there is *no* meaningful evidence in support of the verdict (which is required to grant JNOV), necessarily carries with it a determination that the verdict is “not sustained by the weight of the evidence,” warranting a new trial. *See* Civ.R. 59(A)(6). Here, however, the

decision below holds that any ambiguity in the trial court's order should instead be read as a *denial* of the motion, a result directly contrary to *White Motor Corp.*

Second, the Eighth District also created conflict and confusion concerning the analytical framework that applies to reviewing a trial court's grant of a new trial on weight-of-the-evidence grounds. According to this Court:

When in the exercise of discretion a trial court decides to grant a new trial and that decision is supported by competent, credible evidence, a reviewing court must defer to the trial court. In such a case, the reviewing court may not independently assess whether the verdict was supported by the evidence, because ***the issue is not whether the verdict is supported by competent, credible evidence, but rather whether the court's decision to grant the new trial is supported by competent, credible evidence.***"

*Harris v. Mt. Sinai Med. Ctr.*, 2007-Ohio-5587, ¶ 46 (emphasis added). In other words, the appeals court does not review the evidence in the light most favorable to the jury verdict, but rather in the light most favorable to the new-trial order. *Rohde v. Farmer*, 23 Ohio St.2d 82, 94 (1970). This deferential standard of review reflects the reality that the trial judge has seen and heard the witnesses and is better positioned than an appeals court to determine from the surrounding circumstances and atmosphere of the trial that the jury's verdict resulted in manifest injustice. *Id.*; see also *Longstreth v. Kafantaris*, 2003-Ohio-797, ¶ 23 (11th Dist.) (in making its determination regarding a new trial, "the trial court must review the evidence presented at trial and pass upon the credibility of the witnesses") (citing *Rohde*). The decision below, however, cannot be squared with such decisions. Instead, the court looked to whether there was sufficient evidence to support ***the jury's verdict***, and when it concluded there was, it found that the trial court had abused its discretion in granting a new trial. By asking the wrong question, the court below not only got the wrong answer here, but created confusion warranting this Court's review.

Moreover, the errors below not only threaten confusion among the lower courts, but they work an overwhelming injustice here. A previous jury found that Ford's breach of the SFA

caused substantial harm to its medium- and heavy-duty truck dealers. The trial court, who sat through weeks of evidence, concluded as a matter of law that Ford breached the SFA. The appeals court, however, wrongly deprived the plaintiffs of that judgment. Without this Court's intervention, the dealers will have no recourse for the substantial harm they suffered. Before the plaintiffs are irrevocably deprived of their claims, this case warrants a closer look.

#### IV. ARGUMENT

##### Westgate's Proposition of Law No. 1:

*Determining that a contract provision is ambiguous merely allows parties to offer extrinsic evidence of meaning; it does not preclude a court from later determining breach as a matter of law if that evidence overwhelmingly favors one party.*

Both the standards for finding a contract ambiguous, and the implications for such a holding, are well settled. As the court below correctly noted, determining whether a contract is ambiguous is a matter of law for the court. Op. at ¶ 14. A contractual provision is ambiguous if it is reasonably susceptible to more than one meaning. *Id.*

The court below erred, however, in assessing the implications of such a finding. The sole implication of a finding of contractual ambiguity is that the parties are free to offer extrinsic evidence of meaning. *See Lewis v. Mathes*, 2005-Ohio-1975, ¶ 25 (4th Dist.). Absent such a finding, of course, the parties are not allowed to do so; rather the contract is enforced according to its plain (*i.e.*, unambiguous) terms.

To be sure, as a general matter, once a contractual term is held ambiguous, the meaning becomes a question of fact. As court after court has found, though, like any other question of fact, the meaning of an ambiguous contract provision can be resolved as a matter of law when the evidence only supports one meaning. *See supra* at 8-9. There is no basis for treating the question of fact presented by an ambiguous contract term any differently from any other question of fact—generally reserving such questions for a jury, but understanding that, if the evidence is

sufficiently one-sided, resolution as a matter of law is appropriate. *See, e.g., 3Com Corp., Penford Corp., and Girardeau Contractors, supra.* That is what the trial court found here.

Of course, the court of appeals was entitled to review the trial court's grant of JNOV *de novo*. *See Environmental Network Corp. v. Goodman Weiss Miller, LLP*, 2008-Ohio-3833, ¶ 23. Had it done so, the appeals court would have found—like the trial court—that no reasonable person could conclude that Ford met its obligations under the SFA. Unfortunately, however, the appeals court declined to even make that inquiry, instead holding, as a matter of law, that the previous finding of ambiguity prevented the trial court from taking the issue from the jury. The court of appeals erred in adopting that approach, and this Court should reverse.

**Westgate's Proposition of Law No. 2:**

***When a trial court grants JNOV, but its order is ambiguous on the question of whether it granted a new trial in the alternative on weight-of-the-evidence grounds, the court's order should be understood to include an implied order granting new trial. See White Motor Corp. v. Moore, 48 Ohio St.2d 156 (1976).***

The court below likewise erred in its treatment of the trial court's grant of a new trial. Under Rule 50(C), when a party has combined a request for a JNOV with a request for a new trial, the trial court is to “rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed.” Civ.R. 50(C). Here, there is no question that the trial court intended to grant the conditional new trial. The judge said exactly that in his oral ruling on the combined motion, a ruling that was “dictated into the record,” and thus is part of the ruling on the motion for JNOV. *See* Civ.R. 50(E). In that ruling, the Court expressly noted that the verdict failed both under the JNOV standard *and* under the new trial standard. *See supra* at 6-7. Its subsequent written order was consistent with its prior oral one.

In such cases, this Court has concluded that the order granting the JNOV carries with it an “implied conditional grant” of the new trial order. *White Motor Corp.* That rule only makes

sense—a trial court’s finding that no reasonable person could have reached the jury’s conclusion necessarily implies that the verdict was contrary to the weight of the evidence. The court below was thus wrong to conclude that the trial court’s silence on the issue was equivalent to a denial.

At most, the Eighth District should have found that, if the trial court was silent, that meant that the court had not ruled on the new trial motion *at all*. But, in that event, the Eighth District lacked jurisdiction over the appeal. “A motion for new trial tolls time under App.R. 4. *Consequently, until a pending Civ.R. 59(A) motion is resolved, no appealable order exists.*” *Robinson v. Spurlock*, 2012-Ohio-1510, ¶ 12 (4th Dist.) (emphasis added). Thus, the only proper course would have been to dismiss the appeal and remand for the trial court to rule on the motion. What the court could *not* do, though, was treat the motion as *denied*, especially in light of the undisputed record evidence showing that the trial court granted it.

**Westgate’s Proposition of Law No. 3:**

***When a trial court grants a new trial on weight-of-the-evidence grounds, that order cannot be reversed if there is competent, credible evidence to support it.***

Once it wrongly concluded that it must treat the trial court as having denied the motion for a new trial, the Eighth District then gave only passing consideration to the alternate possibility—that the court had in fact granted the motion. Perhaps not surprisingly, given its cursory after-the-fact consideration of the issue, the appeals court applied the wrong standard.

Once a trial court has granted a new trial on manifest weight of the evidence grounds, an appellate court’s review of that order is severely constrained. As shown above, the *sole* question is whether competent, credible evidence supports the trial court’s order, a deferential standard that reflects the fact that the trial court judge was present at trial, and the appeals court judges were not. *See supra* at 11 (citing, *e.g.*, *Harris v. Mt. Sinai Med. Ctr.*, 2007-Ohio-5587); *see also Rohde v. Farmer*, 23 Ohio St.2d 82, 94 (1970) (same).

That standard is easily met here. Carefully considering all of the evidence he had heard—none of which supported Ford’s reading of the contract—the trial judge concluded that the jury lost its way, and that, on the facts here, a manifest injustice occurred. There was certainly competent, credible evidence to support that conclusion. In particular, the trial court relied on two things—that the purpose of the contract, and the Published Pricing Requirement in particular, was to assign to Ford the operations in the *wholesale* side of the market and to the dealers the operations in the *retail* side of the market. Patrick Cayce, a former high-level Ford executive turned truck dealer, testified in that regard, and the plaintiffs’ economic expert likewise opined that published-pricing requirements are often used to accomplish that goal. This evidence was both competent and credible, and it thus sufficed to support the trial court’s determination on that issue. Second, the court found that the evidence showing that the dealers had participated in the CPA program—the *only* extrinsic evidence that Ford presented that even arguably went to meaning—should be discounted as the dealers’ participation was not “voluntary.” And there was certainly sufficient competent and credible evidence to support that finding. Indeed, Mr. Cayce testified using almost those exact words. He explained that the truck dealers could not survive based on Ford’s artificially-inflated “wholesale” prices, and thus faced the choice to participate or to go out of business. In light of that evidence, the lower court’s decision reversing the new trial grant was error, and this Court should correct it.

V. **CONCLUSION**

Westgate respectfully urges the Court to accept review and reverse the decision below.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 22, 2015, a copy of the foregoing was served by regular U.S. mail upon the following:

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