Notable Q2 Updates In Insurance Class Actions

By **Mark Johnson and Mathew Drocton** (August 22, 2024)

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While we saw a lively first quarter in the property and casualty insurance class action space, the second quarter proved to be more muted.

No large waves were made in labor depreciation and total-loss vehicle class actions. But a new offensive theory emerged for insurance companies — an indemnification suit against the vehicle valuation provider over class action claims.

A pair of medical payment class actions rounded out the quarter, with both courts affirming insurers' rights to adjust or deny claims based on policy language.

Labor Depreciation Claims Survive Dismissal

Plaintiffs recently had success in two labor depreciation class actions with a single-state class, in contrast to the multistate class actions.

On June 3, in Scott v. Safeco Insurance Co. of America, the U.S. District Court for the Western District of Missouri followed its earlier decision in Brown v. State Farm to deny the insurer's motion for judgment on the pleadings against labor depreciation claims.[1]

On Aug. 29, 2023, in Brown, the Western District of Missouri had rejected the U.S. Court of Appeals for the Eighth Circuit's interpretation of Missouri law and adopted a state intermediate court of appeals' decision that labor depreciation was impermissible absent express language to the contrary in the policy.[2]

In the latest iteration of the battle over labor depreciation claims in Missouri, the Scott court found that regardless of whether the policy defines actual cash value or does not include the word "depreciation," without policy language allowing it, labor cannot be depreciated in determining actual cash value payments.

On July 11, the U.S. District Court for the District of Arizona decided similarly in Shumway v. Allstate Vehicle and Property Insurance Co., denying the insurer's motion to dismiss another labor depreciation class action.[3] The court first rejected merits-based arguments under a motion to strike based on standing, then rejected those same arguments under a merits analysis.

The court concluded that claims were not time-barred by a contractual one-year limitation period because the insurer had not established prejudice under Arizona law: "The mere late filing of a claim is an insufficient basis for enforcing the policy's limitation period."[4]

The court also refused to dismiss a declaratory relief claim, as it was not clear that it was duplicative of the breach of contract claim, although there was no discussion of a future unstated property damage claim alleged by the plaintiff.[5] Finally, the court let stand class allegations, finding them too premature to decide.[6]

Total-Loss Vehicle Valuation Class Actions Continue

The total-loss vehicle class actions challenging the use of projected sales adjustments continue to trend toward the insureds.

Most recently, a couple of Carolina federal courts reached opposite conclusions. On June 10, in Henson v. Progressive Premier Insurance Co. of Illinois, the U.S. District Court for the Eastern District of North Carolina followed the rationale from the line of cases challenging the use of care, custody or control reports to value total-loss vehicle claims and held that predominance cannot be met because determining whether an insured was paid less than actual cash value requires an "individualized inquiry not susceptible to class-wide proof or resolution."[7]

But on May 8, in Freeman v. Progressive Direct Insurance Co., the U.S. District Court for the District of South Carolina found predominance was satisfied and granted certification because "[f]raming the issue as whether the application of PSAs breached … policies … resolves" the predominance concerns.[8]

On May 23, in Ameriprise Captive Insurance Company v. Audatex North America Inc., the U.S. Court of Appeals for the Second Circuit provided a glimmer of hope for an insurer's claim against the valuation services provider. The insurer settled a class action claim alleging that the use of Audatex resulted in the undervaluation of vehicle claims.

Following the settlement, the insurer brought suit against Audatex, arguing that its agreement with Audatex requires indemnification for claims or losses "arising out of … work product provided by [Audatex]."[9] The U.S. District Court for the Southern District of New York dismissed the insurer's indemnification claim, finding that the provision did not cover the undervaluation claims, but the Second Circuit reversed.[10]

The court found that the insurer's allegations that Audatex provided valuations used to value total-loss vehicles, which included the adjustment at issue in the class action, are sufficient to withstand a motion to dismiss.[11]

Inherent Diminished Value Class Action Rejected, Again

On Oct. 19, 2021, in a case called McGilloway v. Safety Insurance Company, the Massachusetts Supreme Judicial Court previously held that insurers must pay third-party claimants inherent diminished value.[12]

Following that decision, on June 20, 2023, the Suffolk County Superior Court of the Commonwealth of Massachusetts denied class certification in that case, finding that in determining whether a class member suffered diminished value, "individualized proof, analysis, and findings would be required to determine whether any putative class member's vehicle suffered some amount of IDV and, if so, how much."[13]

The plaintiff subsequently sought to amend the complaint to include additional expert support that inherent diminished value always exists in a subset of circumstances, but on May 31, Suffolk County Superior Court of the Commonwealth of Massachusetts rejected the motion as an improper attempt to relitigate class certification.[14]

Salvage Vehicle Class Action Rejected

In USAA Casualty Insurance Co. v. Letot, on Jan. 10, the Texas Supreme Court reversed

certification of a class of insureds whose vehicles the insurer allegedly converted by filing salvage title paperwork with the Texas regulator.[15] The court rejected certification of an injunctive relief class because the plaintiff could not establish a likelihood of future injury — that is, of being struck by another USAA-insured driver.[16]

The court also rejected certification of a damages class, but on predominance grounds.

The court held that:

> [i]ndividual issues would almost surely overwhelm the common issue of whether USAA exercised dominion and control over class members' property when it filed Reports concerning their vehicles. Notably, the threshold question of standing may itself present an insurmountably individualized inquiry under these circumstances.[17]

Medical Payments Class Claims Rejected

On April 25, in Allstate Insurance Co. v. Revival Chiropractic LLC, the Florida Supreme Court[18] weighed in on a certified question from the U.S. Court of Appeals for the Eleventh Circuit about the amount of reimbursements for medical expenses an insurer is required to pay under a personal injury protection policy.[19]

The provider billed amounts lower than the maximum charges specified by a statutory schedule, and then the insurer paid 80% of the billed charges.[20] Importantly, under the policy in question, the insurer agreed to pay 80% of reasonable medical services and the methodology for determining the amount paid will be pursuant to the statutory fee schedule limitations or any other limitations.[21]

The court explained that under an earlier ruling, it had held that the statutory schedule of maximum charges was only an optional method of capping reimbursements rather than an exclusive method for determining reimbursement rates.[22] The overriding statutory mandate was that insurers pay 80% of reasonable expenses. Because the policy allowed the insurer to diverge from the statutory schedule of maximum charges and pay 80% of charges, the insurer acted within the policy and statutory framework to pay 80% of charges below the maximum amount specified by the schedule.[23]

On June 6, the Eleventh Circuit put to rest another medical payments class action in Sisia v. State Farm Mutual Automobile Insurance Co.[24]

In Sisia, on April 18, 2023, the Eleventh Circuit had previously upheld dismissal of illusory coverage claims as time-barred but let stand a claim for breach of contract, alleging that the insurer was required to pay all medical expenses.[25]

On appeal a second time, it affirmed dismissal of the medical payments claim. The court held that because the insurance policy requires payment of only those expenses that it deems "reasonable" and "necessary" — not all medical expenses — the breach of contract claim was properly dismissed.[26]

Takeaways

Labor depreciation class actions continue their trend in favor of insureds on the merits.

Courts continue to split on class certification in total-loss vehicle class actions over whether

the permissibility of a projected sales adjustment can be decided in gross or instead requires an individual assessment of each vehicle's value.

A putative class action challenging titling practices presents insurmountable predominance issues, while standing continues to be a sometimes-useful tool for challenging injunctive relief classes.

Medical payment claims falter for insureds based on carefully crafted policy language that provides insurers with discretion in determining payment practices.

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[1] Scott v. Safeco Ins. Co. of America, Civil Action No. 2:23-cv-04008-MDH, 2024 WL 2819259 (W.D. Mo. June 3, 2024).

[2] Brown v. State Farm Fire & Cas. Co., No. 2:23-cv-04002-MDH, 2023 WL 5599630 (W.D. Mo. Aug. 29, 2023); In re State Farm Fire & Cas. Co., 872 F.3d 567, 576 (8th Cir. 2017).

[3] Shumway v. Allstate Vehicle and Prop. Ins. Co., No. CV-23-00699-PHX-DLR, 2024 WL 3376087 (D. Ariz. July 11, 2024).

[4] Id. at *5.

[5] Id.

[6] Id. at *6.

[7] Henson v. Progressive Premier Ins. Co. of Illinois, No. 5:22-CV-00182-M, 2024 WL 3051264, at *10 (E.D.N.C. June 10, 2024).

[8] Freeman v. Progressive Direct Ins. Co., No. 1:21-cv-03798-DCC, 2024 WL 2044782, at *18 (D.S.C. May 8, 2024).

[9] Ameriprise Captive Ins. Co. v. Audatex North America, Inc., No. 23-957, 2024 WL 2350315, at *1 (2d Cir. 2024).

[10] Id.

[11] Id. at *3.

[12] McGilloway v. Safety Ins. Co., 174 N.E.3d 1191, 1197 (Mass. 2021).

[13]McGilloway v. Safety Ins. Co., No. 1784CV02089-BLS2, 2023 WL 4108693, at *4 (Mass. Super. Ct. June 20, 2023).

[14] McGilloway v. Safety Ins. Co., No. 1784CV02089-BLS2, 2024 WL 3030292, at *2

(Mass. Super. Ct. May 31, 2024).

[15] USAA Cas. Ins. Co. v. Letot, 690 S.W.3d 274 (Tex. 2024).

[16] Id. at 281.

[17] Id. at 284.

[18] Allstate Ins. Co. v. Revival Chiropractic, LLC, 385 So.3d 107 (Fla. 2024).

[19] Revival Chiropractic LLC v. Allstate Ins. Co., 2024 WL 2698024, No. 21-10559 (11th Cir. May 24, 2024).

[20] Revival Chiropractic, 385 So.3d 107.

[21] Id. at 109-10.

[22] Id. at 111-13, discussing MRI Associates of Tampa, Inc. v. State Farm Mutual Auto. Ins. Co., 334 So.3d 577 (Fla. 2021).

[23] Id. at 113-16.

[24] Sisia v. State Farm Mut. Auto. Ins. Co., No. 23-14201, 2024 WL 2861832 (11th Cir. June 6, 2024), rehearing denied, Doc. No. 2-1 (July 25, 2024).

[25] Sisia v. State Farm Mut. Auto. Ins. Co., No. 22-12833, 2023 WL 2989832 (11th Cir. Apr. 18, 2023).

[26] Sisia, 2024 WL 2861832 at *2.