

Property and Casualty Insurance Class Action Update

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By Mathew G. Drocton

Sales tax and fee cases continued the trend in favor of insureds, with a merits victory in the Sixth Circuit and a class certification victory in an Ohio state court.

On the labor depreciation front, Texas proved to be the active jurisdiction this quarter. One Texas federal court followed the Fifth Circuit's ruling in *Mitchell* (a case under Mississippi law), suggesting labor depreciation is similarly inappropriate under Texas law. In another Texas federal court, an insurer used the appraisal process to score summary judgment victories against some of the named plaintiffs.

Privacy class actions continue to persist, but an insurer achieved a victory in a case challenging the transmittal of personal health information.

Sales Tax and Fees: Insureds Prevail in Class Certification and Merits Decisions

On Oct. 11, 2024, in *Marchek v. United Servs. Auto. Ass'n*, the Sixth Circuit reversed a trial court's dismissal of a complaint seeking sales tax as part of a total-loss motor vehicle settlement.¹ There, the policy defined actual cash value as "the amount it would cost, at the time of loss, to buy a comparable vehicle."² Relying on dictionary definitions, the Sixth Circuit construed this to mean "the total quantity of money that is required to acquire possession of a comparable vehicle."³ Since a purchaser must pay sales tax in order to take possession of a vehicle, the court reasoned that the definition of actual cash value encompasses sales tax.⁴ In reaching this conclusion, the court distinguished another Sixth Circuit case – *Wilkerson v. American Fam. Ins. Co.*, 997 F.3d 666 (6th Cir. 2021) – in which the court defined actual cash value to mean "market value."⁵

On Jan. 2, 2025, in *Chambers v. Farmers Ins. of Columbus*, an Ohio state appellate court materially affirmed class certification in a challenge to an insurer's nonpayment of sales tax.⁶ Notably, the court found the predominance requirement was satisfied because "all members of the putative class will prevail or fail based upon the interpretation of the policy."⁷

Progressive received final approval of class settlements in New York and Michigan. In *Buffington v. Progressive Advanced Ins. Co.*, on Aug. 6, 2024, the Southern District of New York approved a claims-made settlement of a class action challenging the nonpayment or underpayment of sales tax for total-loss motor vehicle claims.⁸ And on Nov. 21, 2024, in *Ubillus v. Progressive Marathon Ins. Co.*, a Michigan state court approved a \$61 million settlement paid out on a claims-made basis.⁹

Labor Depreciation: Texas Claims Survive Pleading Stage, but Other Claims Falter Due to Appraisal

For a second time, on Aug. 21, 2024, in *Sims v. Allstate Fire and Cas. Ins. Co.*, the Western District of Texas denied an insurer's motion to dismiss a putative class action challenging the depreciation of non-materials (labor).¹⁰ The court followed the Fifth Circuit's decision in *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020), which held, under Mississippi law, an insurance policy was ambiguous as to whether labor may be depreciated.¹¹

In *Cortinas v. Liberty Mut. Personal Ins. Co.*, on Jan. 13, 2025, the Western District of Texas issued a report and recommendation on

the insurer's motion for summary judgment.¹² There, the insurer successfully moved to compel appraisal of several defendants and tendered replacement cost payments in accordance with the appraisal awards.¹³ The magistrate recommended granting summary judgment against those plaintiffs who accepted the appraisal awards,¹⁴ but for those plaintiffs who did not accept them, the court recommended denying the insurer's motion for summary judgment. The court reasoned that the policy did not entitle the plaintiffs to replacement cost (these plaintiffs did not complete repairs, which was a condition of receiving replacement cost), and therefore the insurer was not obligated to pay replacement cost.¹⁵ Put another way, the insurer's offer to pay replacement cost under the appraisal awards was a settlement offer, not compliance with its contractual obligations.¹⁶

Automobile Insurance Coverages: New Case Filed Challenging Insurer's Failure to Offer Comp/Collision Coverage

In *Gondola v. Progressive Direct Ins. Co.*, a new putative class action was filed, alleging that the insurer violated Massachusetts unfair and deceptive business practices laws by declining to offer the insured comprehensive and collision coverage.¹⁷

Privacy: Dismissal of Claims Challenging Transmittal of PHI to ISO

In *Brown v. State Farm Mut. Auto Ins. Co.*, the Northern District of Illinois considered a slew of privacy claims linked to an insurer's handling of personal health information (PHI) following an automobile claim.¹⁸ The plaintiff alleged that the insurer improperly transmitted insured health information from accidents to Insurance Services Office Inc.¹⁹ On Jan. 13, 2025, the trial court dismissed the complaint based on immunity and lack of publicity, among other reasons, but also granted the plaintiff leave to amend.²⁰

Medical Payments: Medical Bill Audit Class Action Survives Motion to Dismiss

In *Abraham v. United Servs. Auto. Ass'n*, on Jan. 6, 2025, the Central District of California considered and dismissed all but one claim challenging an insurer's use of a third-party "Medical Bill Audit" process to review (and allegedly improperly reduce) bills for MedPay coverage.²¹ The court declined to dismiss an Unfair Competition Law claim seeking prospective injunctive relief, finding that the plaintiffs would have an inadequate remedy at law, but dismissed the remaining claims with leave to amend.²²

Conclusions

1. Merits and class certification defenses in sales tax and fee cases continue to be an uphill battle for insurers.
2. The appraisal process provides insurers with a useful tool to defend the merits of labor depreciation cases.
3. Insurers continue to face, and fend off, privacy class action lawsuits.

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Endnotes

- 1 *Marchek v. United Servs. Auto. Ass'n*, 118 F.4th 830, 837 (6th Cir. 2024).
- 2 *Id.* at 834.
- 3 *Id.* at 835.
- 4 *Id.* at 836.
- 5 *Id.* at 837.
- 6 *Chambers v. Farmers Ins. of Columbus, Inc.*, No. 113659, 2025 WL 17827, at *9 (Ohio Ct. App. Jan. 2, 2025).
- 7 *Id.* at *9.
- 8 *Buffington v. Progressive Advanced Ins. Co.*, No. 7:20-

- CV-07408 (S.D.N.Y. Aug. 6, 2024) (ECF No. 168).
- 9 *Ubillus v. Progressive Marathon Ins. Co.*, No. 19-0000741-CK (Mich. Ct. App. Nov. 21, 2024).
- 10 *Sims v. Allstate Fire and Cas. Ins. Co.*, No. SA-22-CV-00580-JKP, 2024 WL 3908739, at *4 (W.D. Tex. Aug. 21, 2024).
- 11 *Id.* at *9.
- 12 *Cortinas v. Liberty Mut. Personal Ins. Co.*, No. SA-22-CV-544-OLG (HJB), 2025 WL 233589 (W.D. Tex. Jan. 13, 2025) (Report and Recommendation).
- 13 *Id.* at *2.
- 14 *Id.* at *8.

- 15 *Id.* at *9.
- 16 *Id.*
- 17 *Gondola v. Progressive Direct Ins. Co.*, No. 2484CV02902 (Mass. Super. Ct. Nov. 11, 2024).
- 18 *Brown v. State Farm Mut. Auto. Ins. Co.*, No. 23 C 6065, 2025 WL 81340 (N.D. Ill. Jan. 13, 2025).
- 19 *Id.* at *1.
- 20 *Id.* at *9.
- 21 *Abraham v. United Servs. Auto. Ass'n*, No. EDCV 24-1182-KK-SPx, 2025 WL 211970 (C.D. Cal. Jan. 6, 2025).
- 22 *Id.* at *5-8.

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