Notable Q4 Updates In Insurance Class Actions

By **Mathew Drocton** (February 28, 2025)

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In the fourth quarter of 2024, the total loss vehicle valuation cases challenging the nonpayment of sales tax and fees trended in favor of policyholders at both the merits and class certification stages.

Policyholders have also generally had success at the merits and class certification stages of the labor depreciation cases. But this quarter, use of an appraisal clause led to summary judgment in an insurer's favor on some claims. This may prove a useful blueprint for future defenses.

Meanwhile, insurers have been facing a variety of privacy class actions over the past several years, challenging the manner in which insurers track and share consumer data. For the most part, insurers have successfully fended off those challenges. This quarter, the trend continued with an insurer achieving 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 Services Automobile Association, the U.S. Court of Appeals for the Sixth Circuit reversed the U.S. District Court for the Western District of Michigan'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 from 2021 – Wilkerson v. American Family Insurance Co. – in which the court defined actual cash value to mean "market value."[5]

On Jan. 2, 2025, in Chambers v. Farmers Insurance of Columbus, the Ohio Court of Appeals, Eighth Appellate District, 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 Insurance Co., on Aug. 6, 2024, the U.S. District Court for 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 Insurance Co., the Michigan Circuit Court for Washtenaw County 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 Casualty Insurance Co., the U.S. District Court for the Western District of Texas denied an insurer's motion to dismiss a putative class action challenging the depreciation of nonmaterials (labor).[10] The court followed the U.S. Court of Appeals for the Fifth Circuit's 2020 decision in Mitchell v. State Farm Fire & Casualty Co., which held, under Mississippi law, an insurance policy was ambiguous as to whether labor may be depreciated.[11]

In Cortinas v. Liberty Mutual Personal Insurance 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]

U.S. Magistrate Judge Henry Bemporad recommended granting summary judgment against those plaintiffs who accepted the appraisal awards, but for those plaintiffs who did not accept them, the court recommended denying the insurer's motion for summary judgment.[14]

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 Challenge of Insurer's Failure to Offer Collision Coverage

In Gondola v. Progressive Direct Insurance Co., a new putative class action was filed in November in Massachusetts Superior Court, 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 Health Information to ISO

In Brown v. State Farm Mutual Auto Insurance Co., the U.S. District Court for the Northern District of Illinois considered a slew of privacy claims linked to an insurer's handling of personal health information 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, 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 Services Auto. Association, on Jan. 6, the U.S. District Court for 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

This quarter proved to be a continuation of prior trends for property and casualty insurance class actions.

As in the previous quarters, insurers struggled with defending the merits and class certification of the sales tax and fee cases, as well as the labor depreciation class actions. Appraisal clauses have been used with limited success in defending the sales tax and fee cases, but this quarter, an insurer employed appraisal clauses with moderate success to its defense of a labor depreciation class action.

Insurers continue to feel out new theories for privacy class actions. Unlike the vehicle valuation and labor depreciation cases, the privacy class actions have not culminated into a single theory, and insurers have achieved success in dismissing these cases at the pleading stages.

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[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.