

# Notable Q1 Updates in Insurance Class Actions

2025 Q1

By Mathew Drocton

The first quarter of 2025 was filled with the refinement of old theories in the property and casualty space. In the total loss vehicle space, countless cases have challenged the methodology of insurers' valuation processes. But this quarter, a court considered a specific challenge to the use of a federal tax credit in determining a vehicle's value. For years, insurers have moved to enforce appraisal provisions to resolve valuation disputes, with varying levels of success. This quarter, the U.S. Court of Appeals for the Second Circuit placed significant constraints on the time for seeking appraisal.

The labor depreciation cases – another well-trodden theory – saw a new challenge that seeks to prevent an insurer from depreciating materials for repair claims. A district court dismissed a case at the pleading stage, and that case has since been appealed to the Sixth Circuit.

Prior quarterly updates reported on a theory challenging the use of a “new construction” setting in Xactimate, a software used to value property claims. This quarter, one court has rejected that theory in a summary judgment motion.

Lastly, a trio of new data cases that challenge insurers' collection and use of insureds' driving history cropped up this quarter.

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## Total Loss Vehicle Cases: New Theories and Rulings on Appraisal

In the personal automobile insurance space in recent years, insurers have faced two main types of cases: (1) **how** insurers value vehicles, i.e., the third-party valuation provider, such as CCC Information Services, Mitchell and Audatex, and (2) **what** is included in the settlement, e.g., sales tax, titling fees, and registration fees.

On March 10, in *Katz v. Esurance Prop. & Cas. Ins. Co.*,

the U.S. District Court for the Eastern District of New York considered a motion to dismiss the second type of case – an alleged improper failure to pay sales tax for a leased vehicle.<sup>1</sup> In a report and recommendation, the magistrate recommended dismissal of the bad faith, deceptive acts, conversion and negligence claims as duplicative of the breach of contract claim.<sup>2</sup> The court also considered and denied a motion to strike the class allegations, finding the motion premature and pertaining to issues to be decided upon a motion for class certification.<sup>3</sup>

In another total loss valuation case – *Milligan v. GEICO Gen. Ins. Co.* – the Second Circuit on March 13 issued an important decision on the time constraints for demanding appraisal.<sup>4</sup> Many insurance policies contain appraisal provisions that allow the insurer or the insured to submit to third-party appraisers disputes over the value of loss. Insurers frequently seek appraisal to resolve putative class actions in the early stages. In the *Milligan* policy, and as in many other policies, the appraisal provision contained a requirement that appraisal be demanded “within 60 days after proof of **loss** is filed.”<sup>5</sup> The *Milligan* plaintiff sought to avoid appraisal by arguing that the insurer's request was untimely, as it came more than 60 days after the insurer was notified of the loss.<sup>6</sup> The insurer disputed this interpretation and instead argued that the triggering date for the 60-day period was the date a dispute arose over

the settlement amount.<sup>7</sup> The Second Circuit rejected the insurer's interpretation and affirmed the district court's denial of the motion to compel appraisal.<sup>8</sup> Since it's pretty common for valuation disputes to arise more than 60 days after the notification of loss, the *Milligan* decision may prove to be a barrier to future appraisal motions.

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## A Couple of Notable Wins for Insurers in Labor Depreciation Cases

For years, insurers around the country have faced lawsuits challenging the ability to depreciate labor costs in adjusting property claims. Insureds seek to draw a distinction between materials used in construction, such as shingles on a roof, and the labor, such as installing the shingles. In doing so, insureds argue that only materials, not the labor, depreciate over time and thus insurers may not apply depreciation to the labor portion of an estimate.

In the Q4 update, we wrote on a report and recommendation from the U.S. District Court for the Western District of Missouri in the *Cortinas v. Liberty Mut. Personal Ins. Co.* labor depreciation case.<sup>9</sup> There, the insurer moved to enforce the policies' appraisal provisions to resolve the dispute and tendered payment in accordance with the appraisals. The magistrate issued a report and recommendation for granting summary judgment for the claims in which the insureds accepted the appraisal awards and denying summary judgment for the claims in which the insureds declined the appraisal awards.<sup>10</sup> This quarter, the district court adopted the report and recommendation in full.<sup>11</sup>

On March 13, in *Schoening Investments, LP v. Cincinnati Casualty Company*, the U.S. District Court for the Southern District of Ohio considered a new theory; for repair claims, an insurer also may not depreciate materials (not just labor).<sup>12</sup> The plaintiff's claim relied on a Supreme Court of Ohio decision to argue that the policy defined actual cash value to essentially mean replacement cost.<sup>13</sup> On the insurer's motion to dismiss, the court rejected the plaintiff's interpretation and dismissed the complaint with prejudice.<sup>14</sup> The plaintiff has since appealed the dismissal to the Sixth Circuit.<sup>15</sup>

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## Estimating Class Action Dismissed

On March 25, the U.S. District Court for the Middle District of Pennsylvania granted summary judgment in favor of an insurer in an action challenging the settings in Xactimate used to value property damage claims.<sup>16</sup> The insuring agreement provided for payment of the "cost of repair or replacement" with "similar construction."<sup>17</sup> The plaintiff in *Bellotti v. State Farm Fire and Casualty Company* alleged that the insurer breached the policy and underpaid the plaintiff's claim by using a "new construction" labor efficiency setting in Xactimate.<sup>18</sup> The insurer used that setting because

the plaintiff's repair work would essentially result in a condition of new construction for the home.<sup>19</sup> The district court granted summary judgment in the insurer's favor on all claims, finding that the policy did not provide for "any method of computation within the provision, much less any language that requires a singular method of computation."<sup>20</sup>

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## COVID-19 Premium Refund Cases Continue To Falter

Following the COVID-19 pandemic, insurers issued premium refunds because insureds were driving less, which resulted in fewer claims. Several putative class actions challenged the dollar amounts of those refunds. In one previously reported case – *Day v. GEICO Cas. Co.* – the U.S. District Court for the Northern District of California granted summary judgment in favor of the insurer, concluding that the amounts were not unfair or otherwise violative of California's Unfair Competition Law.<sup>21</sup> The *Day* ruling has since been appealed to the Ninth Circuit, where it remains pending.<sup>22</sup>

Most recently, on March 21, in *Blain v. Liberty Mut. Fire Ins. Co.*, the U.S. District Court for the Southern District of California denied class certification of another COVID-19 premium refund case.<sup>23</sup> The court did so on predominance grounds after striking the plaintiff's damages expert. Interestingly, the expert was the same one used in *Day* and his model was largely a replica.<sup>24</sup> But unlike in *Day*, *Blain* declined to admit the expert's analysis of damages – *Day* never ruled on a *Daubert* motion – and denied class certification on that basis, finding that the plaintiff "failed to sufficiently demonstrate that calculation of a reasonable percent refund is possible."<sup>25</sup> After denying class certification, the court stayed proceedings pending the outcome of the *Day* appeal.<sup>26</sup>

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## Driving History Data Suits Rev Their Engines

A trio of lawsuits has been filed against Allstate and its entities alleging that the insurer improperly collected and monetized the driving history of millions of insureds. On Jan. 13, in *Texas v. The Allstate Corporation*, the state of Texas filed suit against Allstate and several subsidiaries in the District Court of Montgomery, Texas.<sup>27</sup> Texas alleges that Allstate collects geolocational data of its insureds via mobile devices and harvests data from the insureds' phones.<sup>28</sup> According to the complaint, Allstate accomplishes this data collection by integrating its software with third-party apps.<sup>29</sup> Two similar putative class actions were filed against Allstate in the U.S. District Court for the Northern District of Illinois on Feb. 5 and Feb. 11.<sup>30</sup>

## Conclusion

The motor vehicle valuation and labor depreciation theories continue to be the most active. But slight variations on old theories – inability to consider tax credits in valuing vehicles and inability to depreciate materials on repair claims for property loss – are cropping up.

An important tool for resolving putative class actions in the property and casualty space – appraisal – experienced a major limitation by the Second Circuit. It is too early to tell whether other courts will follow the Second Circuit's opinion and require appraisal to be invoked within 60 days of the notice of loss, regardless of when the dispute arose. But insurers may want to respond by being as diligent as possible with appraisal invocation.

Finally, data collection and use suits saw a sharp rise this quarter. In Texas, the lawsuit is driven by the government. This will be an area to watch in the coming months.

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### Endnotes

- 1 *Katz v. Esurance Prop. & Cas. Ins. Co.*, No. 24-CV-955, 2025 WL 750937 (E.D.N.Y. Mar. 10, 2025).
- 2 *Id.* at \*8-11.
- 3 *Id.* at \*15.
- 4 *Milligan v. GEICO Gen. Ins. Co.*, Nos. 22-2950 & 23-7422025 WL 799276 (2d Cir. March 13, 2025).
- 5 *Id.* at \*1.
- 6 *Id.* at \*4.
- 7 *Id.*
- 8 *Id.* at \*7.
- 9 *Cortinas v. Liberty Mut. Personal Ins. Co.*, No. SA-22-CV-544-OLG (HJB), 2025 WL 233589 (W.D. Tex. Jan. 13, 2025).
- 10 *Id.* at \*9.
- 11 *Cortinas v. Liberty Mut. Personal Ins. Co.*, No. SA-22-CV-00544-OLG-HJB, 2025 WL 1062093, at \*1 (W.D. Tex. Apr. 8, 2025).
- 12 *Schoening Investment, LP v. Cincinnati Casualty Company*, No. 1:24-cv-137, 2025 WL 815707, at \*1 (S.D. Ohio Mar. 13, 2025).
- 13 *Id.* at \*2.
- 14 *Id.* at \*16.
- 15 *Schoening Investment LP v. Cincinnati Casualty Company*, No. 25-3273 (6th Cir.).
- 16 *Belotti v. State Farm Fire and Casualty Company*, No. 3:22-CV-1284, 2025 WL 904697, at \*1 (M.D. Pa. Mar. 25, 2025).
- 17 *Id.* at \*3.
- 18 *Id.* at \*1.
- 19 *Id.*
- 20 *Id.* at \*4.
- 21 *Day v. GEICO Casualty Company*, 580 F. Supp. 3d 830 (N.D. Cal. 2022).
- 22 *Day v. GEICO Casualty Company*, Case No. 24-2201 (9th Cir.).
- 23 *Blain v. Liberty Mut. Fire Ins. Co.*, No. 22-cv-00970-AJB-MMP, 2025 WL 886966, at \*18 (S.D. Cal. Mar. 21, 2025).
- 24 *Id.* at \*8.
- 25 *Id.* at \*18.
- 26 *Id.* at \*23.
- 27 *Texas v. The Allstate Corporation* (Mont. Dist. Ct. Jan. 13, 2025).
- 28 *Id.* at ¶¶ 2-4.
- 29 *Id.* at ¶ 3.
- 30 *Arellano et al. v. The Allstate Corporation et al.*, No. 25-cv-1256 (N.D. Ill. Feb. 5, 2025); *Mahoney et al. v. Allstate Corporation et al.*, No. 25-cv-1465 (N.D. Ill. Feb. 11, 2025).

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