

Notable Q3 Updates In Insurance Class Actions

By **Kevin Zimmerman** (November 7, 2025)

This article is part of a quarterly column that follows insurance class action litigation across the country. This installment focuses on a new circuit split in total loss valuation class actions and negative results for insurers in cost-of-insurance class actions.



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The third quarter of 2025 was another eventful quarter for total loss valuation class actions. The U.S. Court of Appeals for the Fourth Circuit and the U.S. Court of Appeals for the Ninth Circuit followed the lead of other circuits, rejecting certification of classes challenging certain adjustments utilized in total loss vehicle valuations. Soon after, however, the U.S. Court of Appeals for the Sixth Circuit bucked that trend and affirmed certification of a similar class.

Elsewhere in the automobile insurance space, a California federal court rejected a new total loss class action theory involving retained salvage vehicles.

In the life insurance space, insurers continue to face negative results in cost-of-insurance class actions. However, the Ninth Circuit reaffirmed that class certification was not appropriate for putative class claims involving allegedly deficient termination notices relating to life insurance policies.

Sixth Circuit Diverges on Total Loss Valuation

Cases across the country have challenged insurers' use of third-party valuation services to estimate the preaccident value of totaled vehicles. The cases typically involve challenges to certain "adjustments" used to value the totaled vehicle.

As reported previously, cases such as *Drummond v. Progressive Specialty Insurance Co.* from the U.S. Court of Appeals for the Third Circuit and *Schroeder v. Progressive Paloverde Insurance Co.* from the U.S. Court of Appeals for the Seventh Circuit, both decided in July, recently rejected class certification in total loss valuation cases.[1]

As the Seventh Circuit explained in *Schroeder*, the insurance contracts at issue did not impose a "methodological duty" to use any particular method to value the totaled automobiles.[2] So, application of the disputed adjustment would not result in a breach of contract "so long as [the insurer] ultimately pays its insureds the actual cash value of their totaled cars." [3]

And that question — whether any particular insured was paid the actual cash value of their totaled vehicle — would require "individualized evidence about each putative class member's car and each comparable car included in her car's valuation report." [4] Class certification was therefore inappropriate.

On Aug. 25, the Fourth Circuit followed suit. Following the reasoning of *Drummond* and *Schroeder*, the Fourth Circuit held in *Freeman v. Progressive Direct Insurance Co.* that the insurer's "mere use of" the disputed adjustment "did not dictate whether it breached its contractual duty to pay actual cash value." [5] Instead, a breach of contract could only be determined by comparing what the insurer offered and paid with individualized evidence

about the actual value of each vehicle "based on the unique characteristics of each vehicle and the market in which it was valued." [6] That, again, precluded class certification.

On Sept. 12, the Ninth Circuit also agreed. As the court explained in *Ambrosio v. Progressive Preferred Insurance Co.*, even if the insurer applied the allegedly unlawful adjustment, there would be no breach of contract if the insurer's valuation resulted in a fair market value. [7] The court also distinguished its 2024 opinion in *Jama v. State Farm* because, unlike the adjustment at issue in that case, there was nothing "facially unlawful" about the insurer's use of the adjustment here. [8]

The U.S. District Court for the Eastern District of Missouri also applied this reasoning in a Sept. 30 decision to deny class certification in *Bartee v. Progressive Advanced Insurance Co.* [9] As in other cases, the insured asserted that the insurer applied a "categorically impermissible deduction" to total loss valuations that "breaches the terms of their insurance policies." [10]

However, as recognized by the circuit courts above, the insurer's use of the allegedly impermissible deduction did not automatically establish that any insured was actually paid less than the actual cash value of their vehicle. [11] Instead, that core liability question could only be determined based on the "facts surrounding the particular insured's [covered] loss." [12]

However, the Sixth Circuit charted a different course. [13] In *Clippinger v. State Farm Automobile Insurance Co.*, decided on Oct. 9, the court analyzed the use of a "typical negotiation adjustment" to value total loss automobile insurance claims. [14]

Over a lengthy dissent, the court held that a class could be certified based on the plaintiff's argument that application of the adjustment was always a breach of contract and forbidden by state regulations. [15] According to the court, any disputes as to whether the insurer actually paid more than the vehicle's actual cash value were "damages issues" that "do not preclude certification on predominance grounds." [16]

The Sixth Circuit's opinion stands in stark contrast to the weight of authority from the Third, Fourth, Fifth, Seventh and Ninth circuits. The insurer from *Clippinger* also intends to seek en banc review and was granted an extension to file that petition. Interested parties should keep a close eye on next steps in this case.

Central District of California Rejects Total Loss Salvage Value Theory

Following a total loss automobile accident, insureds typically must transfer title for their vehicles to receive the full preaccident value of their vehicle, without a reduction for the retained salvage. [17] In *Gonzalez v. Progressive*, the plaintiffs challenged that procedure, arguing that California law permitted insureds to keep the damaged vehicle, including its salvage value, without a reduction in the total loss payment. [18]

The U.S. District Court for the Central District of California, however, rejected that theory in its Sept. 12 decision.

As the court explained: "To accept Plaintiffs' interpretation of the Policy would allow insured individuals to double recovery — the ACV and the salvage value of the vehicle." [19] However, "neither the Policy nor California law" provided the plaintiff a right to receive both the full actual cash value settlement payment and keep the damaged vehicle. [20]

The plaintiffs filed an amended complaint, and the parties are currently briefing a motion to dismiss the amended complaint.

More Negative Outcomes for Insurers in Cost-of-Insurance Class Actions

Flexible premium life insurance policies provide both insurance and investment components. Insureds may pay more than the minimum required premium into an interest-bearing accumulation or cash value account; then, each month, the insurer deducts a cost of insurance or monthly deduction charge from that account.

In cost-of-insurance class actions, insureds allege that insurers charge inflated cost-of-insurance charges that are based on inappropriate or nonpermitted factors. These cases have been litigated for years, and the third quarter of 2025 brought more decisions unfavorable to insurers.

In *Newton v. Brighthouse Life*, the insurance contract stated that the cost of insurance rates would be based "only on our future outlook for mortality and expenses."^[21] The insured asserted that annual increases to the cost of insurance rates must have been based on other improper economic factors such as profitability or interest rates because life expectancy and mortality had improved since the policies were issued.^[22]

The U.S. District Court for the Northern District of Georgia held on Sept. 5 that the interpretation of the common policy form was a common question susceptible to classwide resolution.^[23] While the plaintiff's fraud claims were not typical of the class, the court certified the plaintiff's breach of contract, declaratory relief and Georgia Racketeering Influenced and Corrupt Organizations Act claims.^[24]

The U.S. District Court for the Southern District of New York reached a similar result on Sept. 25 in *Martin v. Brighthouse Life Insurance Co.*^[25] The plaintiff there alleged that the insurer failed to decrease or review the cost of insurance rates in response to improving societal life expectancy.^[26]

Citing to prior cost-of-insurance cases from New York federal courts, the court held that the plaintiff's claims involved common questions of whether, under the policies at issue, the insurer was required to decrease the cost of insurance rates based on improved mortality.^[27] The court also rejected the argument that variations in state breach of contract laws would preclude class certification.^[28] The court thus certified a nationwide class of policyholders sharing the plaintiff's policy type.

Finally, in *Young v. Columbus Life Insurance Co.*, the U.S. District Court for the Southern District of Ohio, in a Sept. 30 decision, rejected an insurer's attempt to dismiss cost-of-insurance claims at the pleading stage.^[29] The insured argued that the insurer improperly utilized "non-mortality-related expenses" to determine the cost of insurance rates and failed to reduce the cost of insurance rates in response to improving societal mortality.^[30]

The court granted the insurer's motion to dismiss conversion claims because those claims were based only on a contractual right.^[31] However, the court denied the insurer's motion to dismiss the contractual-based claims, relying, in part, on prior precedent in cost-of-insurance cases.^[32]

Declined Class Certification For Ninth Circuit Claims Involving Allegedly Deficient Notice

California statutes require life insurers to provide policyholders with certain kinds of notice before a policy lapses for failure to pay a premium.[33] In *Farley v. Lincoln Benefit Life Co.*, the U.S. District Court for the Eastern District of California certified a class of insureds asserting California Unfair Competition Law claims stemming from an insurer's alleged failure to provide the statutorily required notices.[34]

However, the Ninth Circuit reversed class certification on Aug. 29.[35] As the court explained, it was bound by its prior interpretation of the notice statutes in its 2024 decision in *Small v. Allianz Life Insurance Co.*[36] There, the court held that the notice statutes did not provide a cause of action for a mere violation only but instead required evidence that the alleged statutory violation caused some actual harm to the insured.[37]

That precluded certification of even a Rule 23(b)(2) class in *Farley*. As the court explained, Rule 23(b)(2) certification was only appropriate where a single injunction or declaratory judgment would "provide relief to each member of the class." [38] However, class members who were not injured by the failure to receive the notice — for example, those who voluntarily lapsed their policies — were "not entitled to relief and, at the very least, would not benefit from the requested injunction." [39]

Conclusion

It remains to be seen whether the circuit split created by the Sixth Circuit in *Clippinger* will survive en banc review. Either way, the body of other appellate precedent rejecting class certification in total loss valuation cases will likely lead to the proliferation of new class action theories in the automobile insurance space.

In the life insurance space, cost-of-insurance class actions remain difficult to defend. However, as exemplified by the Ninth Circuit's recent opinion in *Farley*, establishing common evidence of an actual injury remains critical for class certification.

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[1] *Drummond v. Progressive Specialty Ins. Co.*, 142 F.4th 149, 159 (3d Cir. 2025). *Schroeder v. Progressive Paloverde Ins. Co.*, 146 F.4th 567 (7th Cir. 2025).

[2] *Schroeder*, 146 F.4th at 579.

[3] *Id.* at 571.

[4] *Id.* at 576-77; see also *Drummond*, 142 F.4th at 159.

[5] *Freeman v. Progressive Direct Ins. Co.*, 149 F.4th 461, 469 (4th Cir. 2025).

[6] Id.

[7] *Ambrosio v. Progressive Preferred Ins. Co.*, No. 24-2708, --- F.4th ---, 2025 WL 2628179, at *4 (9th Cir. Sept. 12, 2025).

[8] Id. (discussing *Jama v. State Farm Mutual Automobile Insurance Company*, 113 F.4th 924 (9th Cir. 2024)).

[9] *Bartee v. Progressive Advanced Ins. Co.*, No. 4:22-CV-00342-MTS, 2025 WL 2829109 (E.D. Mo. Sept. 30, 2025).

[10] Id. at *3.

[11] Id. at 6-7.

[12] Id. at *7 (quotations omitted, alterations in original).

[13] *Clippinger v. State Farm Auto. Ins. Co.*, No. 24-5421, --- F.4th ---, 2025 WL 2861217 (6th Cir. Oct. 9, 2025).

[14] Id. at *3.

[15] Id. at *13.

[16] Id.

[17] *Edgar Gonzalez, et al. v. Progressive Select Insurance Company, et al.*, Case No. 24-cv-2284, ECF No. 60 (C.D. Cal. Sept. 12, 2025).

[18] Id. at *4-5.

[19] Id. at 6.

[20] Id. at 7.

[21] *Newton v. Brighthouse Life Ins. Co.*, No. 1:20-cv-02001-AT, 2025 U.S. Dist. LEXIS 173057 (N.D. Ga. Sep. 5, 2025).

[22] Id. at *4.

[23] Id. at *5.

[24] Id. at *11.

[25] *Martin v. Brighthouse Life Ins. Co.*, No. 21-CV-02923 (MMG), 2025 U.S. Dist. LEXIS 189249, 2025 WL 2731710 (S.D.N.Y. Sept. 25, 2025).

[26] Id. at *1.

[27] Id. at 11.

[28] Id. at *13.

[29] *Young v. Columbus Life Ins. Co.*, No. 1:22-cv-553, 2025 U.S. Dist. LEXIS 193218, 2025 WL 2781300, at *2 (S.D. Ohio Sept. 30, 2025).

[30] *Id.* at *2.

[31] *Id.* at *8-9.

[32] *Id.* at *3-8.

[33] See Cal. Ins. Code §§ 10113.71-10113.72.

[34] See *Farley v. Lincoln Benefit Life Co.*, No. 2:20-CV-02485-KJM-DB, 2023 WL 3007413 (E.D. Cal. Apr. 18, 2023), reconsideration denied, No. 2:20-CV-02485-KJM-DB, 2023 WL 5488426 (E.D. Cal. Aug. 24, 2023), rev'd and remanded, 150 F.4th 1197 (9th Cir. 2025).

[35] *Farley v. Lincoln Benefit Life Co.*, 150 F.4th 1197 (9th Cir. 2025).

[36] *Id.* at 1201-02 (citing *Small v. Allianz Life Insurance Co. of North America*, 122 F.4th 1182 (9th Cir. 2024)).

[37] *Id.*

[38] *Id.* at 1204-05 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011)).

[39] *Id.* at 1205.