

# Notable Q1 Updates In Insurance Class Actions

By **Kevin Zimmerman** (May 8, 2026)

*This article is part of a quarterly column that follows insurance class action litigation across the country. This installment provides further guidance illuminating the contours of Rule 23 and highlights the importance of attention to the specific contract or forms at issue in a case.*

In the first quarter of 2026, circuit courts from around the country issued important decisions with potentially far-reaching implications for insurance class actions — and class actions more generally.



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In the U.S. Court of Appeals for the Tenth Circuit, the court reaffirmed the application of the statute of limitations with respect to claims for illusory or deficient policy forms. Meanwhile, the U.S. Court of Appeals for the Fourth Circuit reversed class certification of an Employee Retirement Income Security Act imprudent investor class, based on fundamental differences between defined benefit plans and defined contribution plans.

Finally, the U.S. Court of Appeals for the Sixth Circuit issued two different opinions in cases challenging depreciation in homeowners insurance claims. In the first, the court held that a state-by-state Erie analysis was required to determine the propriety of a class challenging nonmaterial depreciation across multiple states. In the second, the court affirmed dismissal of putative class claims challenging material depreciation, holding that the plaintiff's reliance on authority interpreting other contracts did not override the plain language of the contract before it.

## **Tenth Circuit affirms dismissal of untimely illusory UM/UIM class action.**

In *Thom Hollis v. Farm Bureau Property and Casualty Insurance Co.*, the plaintiff brought putative class claims against his insurer relating to allegedly "illusory" uninsured/underinsured motorist, or UM/UIM, coverage.[1]

According to the plaintiff, his insurer failed to disclose that it was collecting "multiple premiums" for UM/UIM coverage, which made his rejection of stacked UM/UIM coverage illusory.[2] However, the U.S. District Court for the District of New Mexico dismissed the plaintiff's claims because they were based on alleged deficiencies in policy forms that he first received more than six years prior to filing his complaint — and thus were outside the applicable statute of limitations.[3]

On Feb. 27, the Tenth Circuit affirmed. The plaintiff asserted that the statute of limitations should be tolled by "information learned in another case in 2022," but the Tenth Circuit rejected that this constituted "extraordinary circumstances" necessary to toll the statute of limitations.[4]

Even if the plaintiff may have learned additional "details" or "information" about how Farm Bureau calculated its UM/UIM premiums in the years since he first rejected stacked coverage, that information "does not bear on the 2013 policy documents," which formed the core factual basis for his claims.[5]

The court also rejected the plaintiff's argument that anytime policy documents "are later determined to be deficient or ambiguous and the insurer has not previously stated as such, the limitation period is tolled." [6] As the court explained, there was "no support for the notion that in New Mexico, statutes of limitation do not apply to actions involving insurance policies." [7]

What mattered for the statute of limitations was when the plaintiff "knew, or should have known, of the factual basis for his claim" — not when the plaintiff "understood whether the facts are enough to prevail on a legal claim." [8]

Here, dismissal was proper because the plaintiff "knew, or should have known, of the factual basis for his claims (which center around his express rejection of UM/UIM coverage) when he received these materially identical documents in 2013." [9]

Hollis is a useful case for defendants facing claims relating to allegedly illusory or inaccurate policy forms. If the policy forms were first provided to the plaintiff outside the statute of limitations period, the plaintiff's claims may be time-barred.

#### **Fourth Circuit reverses Rule 23(b)(1) certification of ERISA imprudent investment claims.**

In Trauernicht v. Genworth Financial Inc., two former employees of Genworth Financial brought claims under ERISA Sections 502(a)(2) and 409(a) alleging that the investments in their defined contribution retirement plans performed "significantly worse" than other similar investments that the plan could have offered. [10]

According to the plaintiffs, a "simple weighing of the merits and features" of other available plans would have raised "significant concerns for prudent fiduciaries." [11]

The U.S. District Court for the Eastern District of Virginia certified the plaintiffs' putative class claims under Rule 23(b)(1), which permits class certification when prosecution of separate claims could result in "incompatible standards of conduct" for the party opposing the class. [12]

According to the district court, since ERISA Section 502(a)(2) claims are brought "on behalf of the Plan," allowing individual investors' claims to proceed alongside the "plan-wide action" would "lead to incompatible standards of conduct for Genworth, thus satisfying Rule 23(b)(1)(A)." [13]

The district court also held that the plaintiffs' claims satisfied Rule 23(b)(1)(B) because resolution of the plan's derivative claims "would, as a practical matter, be dispositive of the interests of other participants' claims on behalf of the Plan." [14]

The Fourth Circuit, however, in its March 10 decision, rejected this view based on the differences between defined benefit plans and defined contribution plans. [15]

For defined benefit plans, assets are held collectively and then used to pay the fixed benefits that the employer promised to plan participants. [16] Thus, "a plan participant injured by a fiduciary's breach must, by necessity, seek losses on behalf of the plan as a whole." [17]

However, for defined contribution plans — like the plan at issue in this case — a plaintiff may seek monetary relief on behalf of the plan "for the losses sustained with respect to the

plan assets in his individual account." [18]

In turn, recovery for such loss would be paid "not to the plan generally" but to "the participant's individual retirement account." [19] Thus, when Section 502(a)(2) claims are brought in the context of a defined contribution plan, they are "individualized monetary claims" that cannot be joined under Rule 23(b)(1). [20]

The Fourth Circuit further held that the individualized nature of Section 502(a)(2) claims for defined contribution plans precluded the plaintiffs from establishing commonality under Rule 23(a)(2). [21]

The plaintiffs hoped to establish classwide injury by broadly comparing the performance of the funds selected by the plan to alternative comparator funds. [22] However, because the comparator funds underperformed certain funds held by members of the class, many putative class members may have "suffered no injury." [23]

Commonality also required the district court to address "whether class members suffered different injuries resulting from their different circumstances" — such as which funds the class members selected and when. [24]

The district court improperly avoided all this by relying on what it viewed as the "inherent" commonality of Section 502(a)(2) claims. [25] That was error and required reversal.

### **Sixth Circuit analyzes the scope of class certification for claims brought on behalf of policyholders in multiple states.**

In *Generation Changers Church v. Church Mutual Insurance Co.*, the plaintiff challenged its insurer's depreciation of "non-material costs — like labor" when calculating the actual cash value of losses for homeowners claims under Tennessee law. [26] The plaintiff also challenged its insurer's conduct on behalf of a putative class of policyholders in nine additional states. [27]

The U.S. District Court for the Middle District of Tennessee certified a class of insureds from four of the states after concluding that the states' statutes or highest courts had addressed the issue of nonmaterial depreciation. [28] As to the six other states, the district court declined to certify a class because it found the "authorities provided by [plaintiff] insufficient" to resolve the legality of nonmaterial depreciation in those states. [29]

On appeal, the Sixth Circuit reversed and remanded, holding that the plaintiff might be able to pursue claims on behalf of insureds in five of the six uncertified states.

As the Sixth Circuit recognized in its Feb. 23 opinion, courts have adopted "two differing approaches to address this question: the 'standing approach' and the 'class certification approach.'" [30] But the court declined to resolve which approach was appropriate to resolve the issue because "neither approach" barred the plaintiff from pursuing its claims from the other states.

Under the standing approach, the plaintiff had sufficient Article III standing to pursue claims on behalf of policyholders in each of the 10 states because the plaintiff's alleged injury was "sufficiently similar" to the injuries of each of the putative class members. [31] According to the court, every class member in every state suffered the same alleged injury: "a reduced ACV payment from Church Mutual." [32]

Under the class certification approach, the district court also erred by failing to conduct an Erie analysis as to how each state would resolve the legality of nonmaterial depreciation.[33]

The district court had denied certification as to six of the states because the plaintiff had not proven the state's legislature or highest court had addressed the issue of nonmaterial depreciation.[34] But in the Sixth Circuit's eyes, this was not good enough.

The district court should have conducted an actual Erie analysis for each state to predict how each state's highest court would resolve the legality of nonmaterial depreciation.[35] The Sixth Circuit thus remanded to the district court to conduct this inquiry.

Though the Sixth Circuit did not say so explicitly, its analysis implicitly holds that the class certification approach is the correct approach for determining the propriety of multistate classes.

For one of the states, Vermont, the district court did not abuse its discretion by declining to certify a class in that state, because the plaintiff had "offered only a single, non-binding advisory bulletin as proof of Vermont law." [36]

However, that would not have been the result for Vermont under the standing approach, where the court held that each putative class member suffered the same alleged injury: a reduced ACV payment. The Sixth Circuit was careful to say that it was not determining the correct approach, but its holding suggests that the class certification approach is the required inquiry.

### **Sixth Circuit affirms dismissal of putative depreciation class.**

In *Schoening Investment LP v. Cincinnati Casualty Co.*, the plaintiff brought putative class claims under a commercial insurance policy, arguing that its insurer improperly deducted depreciation from a repair-cost insurance settlement.[37]

The policy at issue required the insurer to pay "the cost of repairing or replacing the lost or damaged property" and instructed that the insurer would determine the property's repair or replacement "in accordance with the applicable terms of" a separate valuation provision.[38]

In turn, the valuation provision directed the insurer to determine the value of the property at "actual cash value," defined as "replacement cost less a deduction that reflects depreciation." [39]

The plaintiff had also purchased optional replacement cost coverage, which entitled it to a depreciation-free payment — but only under certain conditions. The optional coverage required the plaintiff to actually repair the property to receive a depreciation-free payment, but the plaintiff had never actually done so. He was thus left with "only a payment for 'Actual Cash Value' less a 'deduction that reflects depreciation.'" [40]

The plaintiff pointed to various other aspects of the policy to upend this conclusion, but, in its March 25 opinion, the Sixth Circuit rejected each argument.

For example, the court rejected the plaintiff's argument that the valuation provision only applies to "covered property" as a whole (that is, the "whole building"). [41] As the court recognized, it was "fortunate" for the plaintiff that "covered property" includes partial

property; otherwise, the insured might not have been able to "recover anything in the first instance." [42]

The court also recognized that the plaintiff's argument did not make sense "against the backdrop of the contract as a whole." [43] The plaintiff had paid for optional additional coverage that allowed it to receive a payment without depreciation. But the plaintiff's whole argument was that it was entitled to the same coverage under the "baseline contract." [44]

As the court explained, that would make the additional coverage "unnecessary" and raised the question of "why [plaintiff] paid for the additional coverage in the first place." [45]

More broadly, the court rejected the plaintiff's argument that "a host of cases and treatises" supported payment for repair costs without a depreciation deduction. [46]

The court did not disagree that there was a body of precedent supporting the plaintiff's theory — at least under other insurance contracts. [47] But the dispositive issue was the language of the contract in this case, which expressly defined actual cash value to include a deduction for depreciation.

As the court succinctly concluded: "The difference in language demands a difference in meaning." [48]

## **Conclusion**

While arising in the insurance space, the cases above also provide helpful guidance for class action litigants more generally.

As exemplified by Hollis, the statute of limitations remains an important defense for claims relating to allegedly deficient forms or documents provided to the plaintiff and other putative class members.

The Trauernicht opinion stems from the differences between defined benefit and defined contribution plans, but the court's discussion of these differences illuminates the appropriate contours of a Rule 23(b)(1) class.

Generation Changers provides important guidance to litigants and lower courts about the intersection of Rule 23 and Article III, for claims brought on behalf putative class members in other states. Finally, Schoening Investment reminds litigants that even if "a host of cases and treatises" support one side's position under similar contracts, what ultimately matters is the language of the specific contract at issue.

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***Disclosure: BakerHostetler represented the defendants in Hollis v. Farm Bureau and Schoening Investment v. Cincinnati Casualty discussed above.***

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[1] See *Hollis v. Farm Bureau Prop. & Cas. Ins. Co.*, No. 1:24-CV-00720-WJ-GJF, 2025 WL 872557, at \*1 (D.N.M. Mar. 19, 2025).

[2] *Hollis v. Farm Bureau Prop. & Cas. Ins. Co.*, No. 25-2059, 2026 WL 555505, at \*1 (10th Cir. Feb. 27, 2026).

[3] *Hollis*, 2025 WL 872557, at \*4-7.

[4] *Hollis*, 2026 WL 555505, at \*4.

[5] *Id.* at \*4-5.

[6] *Id.* at \*5-6.

[7] *Id.*

[8] *Id.* at \*6.

[9] *Id.*

[10] *Trauernicht v. Genworth Fin., Inc.*, 169 F.4th 459, 464 (4th Cir. 2026).

[11] *Id.*

[12] See *Trauernicht v. Genworth Fin., Inc.*, No. 3:22-CV-532, 2024 WL 3835067, at \*12 (E.D. Va. Aug. 15, 2024) (quoting Fed. R. Civ. P. 23(b)(1)).

[13] *Id.*

[14] *Id.* at \*13.

[15] See *Trauernicht*, 169 F.4th at 467-68.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 468.

[19] *Id.*

[20] *Id.* at 471-72.

[21] *Id.* at 472.

[22] *Id.* at 473.

[23] *Id.*

[24] *Id.* at 474.

[25] *Id.*

[26] *Generation Changers Church v. Church Mut. Ins. Co.*, 168 F.4th 354, 360 (6th Cir. 2026) ("In this context, labor costs refer to non-materials such as the laborers' equipment costs, the cost of removing the damaged property, and the laborers' overhead and profit related to restoring the property to its condition immediately before the loss").

[27] *Id.*

[28] *Id.* at 361.

[29] *Id.*

[30] *Id.* at 362.

[31] *Id.* at 366.

[32] *Id.*

[33] *Id.* at 365.

[34] *Id.*

[35] *Id.* at 365-67.

[36] *Id.* at 367.

[37] *Schoening Inv. LP v. Cincinnati Cas. Co.*, 170 F.4th 1006, 1009 (6th Cir. 2026).

[38] *Id.*

[39] *Id.* at 1009-10.

[40] *Id.* at 1010.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 1013.

[44] *Id.* at 1012.

[45] *Id.* at 1012-13.

[46] *Id.* at 1011-12.

[47] *Id.* at 1012

[48] *Id.* (quoting *Gallo v. Moen Inc.*, 813 F.3d 265, 270 (6th Cir. 2016)).