Notable Q2 Updates In Insurance Class Actions

By **Kevin Zimmerman** (August 19, 2026)

This article is part of a quarterly column that follows insurance class action litigation across the country. This installment discusses three decisions on total loss valuation class actions from a circuit court, a federal district court and a state appellate court, as well as a novel ruling on depreciation in wildfire claims.

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The second quarter of 2026 brought multiple important developments in total loss valuation class actions. In these cases, plaintiffs challenged certain adjustments used by third-party valuation services to estimate the preaccident actual cash value of totaled vehicles.

Most notably, the U.S. Court of Appeals for the Sixth Circuit, sitting en banc in Clippinger v. State Farm Automotive Insurance Co., resolved a prior circuit split regarding the propriety of class certification in total loss valuation class actions.

On April 24, the en banc Sixth Circuit reversed course from the court's prior panel opinion and joined the U.S. Courts of Appeals for the Third, Fourth, Fifth, Seventh and Ninth Circuits in holding that class certification was not appropriate.

The prior week, the U.S. District Court for the Northern District of Illinois had taken this analysis a step further, holding, in Holmes v. Progressive Universal Insurance Co., that class certification was also inappropriate for misrepresentation-based theories in this space. The court there rejected class certification of the plaintiff's theory that their insurer failed to disclose material facts regarding its application of the disputed adjustment.

Meanwhile, the day before the Sixth Circuit's en banc ruling, the Court of Appeals of Ohio, Eighth Appellate District, adjudicating total loss valuation claims, reaffirmed, in Stewart v. Farmers Insurance of Columbus Inc., that contractual appraisals can moot putative class claims.

Outside the total loss valuation space, on June 30, the U.S. District Court for the Northern District of California resolved an important novel issue regarding the scope of permissible depreciation for wildfire insurance claims. Analyzing both the text of the applicable statute and its legislative history, the court held that insurers cannot depreciate sales tax when calculating the actual cash value of property under fire insurance policies.

The en banc Sixth Circuit resolves the prior circuit split on class certification in total loss valuation class actions.

As reported in the updates for the third and fourth quarters of 2025, a circuit split had developed over the propriety of class certification in cases challenging adjustments used by third-party valuation services to estimate the preaccident actual cash value of totaled vehicles. The Third, Fourth, Fifth, Seventh and Ninth Circuits held that class certification was inappropriate as a result of individualized issues as to which class members were paid less than they were owed under their insurance contracts.[1]

On the other hand, the Sixth Circuit initially held in Clippinger v. State Farm that class certification would be appropriate based on the plaintiffs' argument that application of the adjustment was always a breach of contract and forbidden by state regulations.[2]

On April 24, the en banc Sixth Circuit vacated the court's prior panel opinion and joined the other circuit courts, holding that class certification was not permissible "because individual issues about the unique value of each used car will dominate all other matters."[3]

The valuation tool at issue in Clippinger used the advertised value of comparable vehicles for sale in the market to estimate the actual cash value of a totaled vehicle.[4] The plaintiffs challenged an adjustment that reduced the estimated value of the comparable vehicles to account for negotiations that may lower their final sales price, arguing that the adjustment improperly undervalues the comparator vehicles and thus the totaled vehicle.

However, the court concluded that even if the plaintiffs were correct about the illegality of the adjustment, the plaintiffs could not pursue that theory on a class basis:[5] To determine whether the insurer paid less than the actual cash value of any vehicle in the class, a jury "would have to consider unique evidence about each vehicle's value."[6]

The court further noted that the individual valuation question would "'predominate' over all other questions under Federal Rule of Civil Procedure 23(b)(3)."[7] Simply removing the allegedly unlawful adjustment could not establish an injury for any class member because it would "wrongly read Rule 23 to eliminate [the insurer's] 'substantive right' to present unique evidence that it paid fair market value to a specific class member despite its use of the adjustment."[8]

While the Sixth Circuit initially bucked the trend of circuit courts rejecting class certification in these cases, the court's en banc decision brings the Sixth Circuit in line with all the other circuit courts to address the propriety of class certification in this space. The circuit courts now uniformly hold that class certification is not appropriate in total loss valuation class actions.

The Northern District of Illinois rejects class certification of misrepresentation-based claims in a total loss valuation class action.

In Holmes v. Progressive, the Northern District of Illinois, on April 15, rejected a plaintiff's attempt to seek certification of a total loss valuation class under alternative liability theories. The plaintiffs in Holmes alleged that their insurer failed to pay the actual cash value of their totaled vehicles by utilizing a similar "projected sold" adjustment.[9]

Likely in response to the Seventh Circuit's decision last year in Schroeder v. Progressive, rejecting class certification of a total loss valuation class action, the plaintiffs first attempted to "chang[e] their legal theory" to assert that Progressive "breached its Policy by utilizing a 'statistically invalid' methodology."[10] Under the revised theory, the plaintiffs asserted that the breach stemmed from the "deliberate choice to use a non-compliant methodology, not in the dollar amount of each insured's claim."[11]

However, the court rejected the plaintiffs' delayed attempt to alter their theory in this manner, holding that the plaintiffs had previously disclaimed this theory when responding to a motion to dismiss.[12] Fact and expert discovery had already closed, so it would unduly prejudice the defendants to allow the plaintiffs "to revive this disclaimed theory" at the late stage of the case.[13]

The court then also rejected class certification of the plaintiffs' theory that their insurer "failed to disclose material facts" regarding its application of the disputed adjustment.

As the court explained, an alleged failure to disclose is not, itself, actionable; instead, the insurer could only be liable "to the extent those omissions proximately caused actual damage to Plaintiffs and the putative class members."[14] To prevail on the claim, the plaintiffs would therefore have to introduce evidence that each class member was "deceived" by the insurer's failure to disclose the adjustment and that "they suffered damages as a result."[15]

But as the court explained, doing so would "require extensive individualized analyses."[16] Consumers may have chosen to purchase their insurance "for a multitude of reasons beyond the methodology [the insurer] used to value total cars," so there was no common evidence that could establish that the failure to disclose the adjustment affected every consumer's purchasing decision.[17]

And without that kind of common evidence, class certification was not appropriate.

Holmes shows that misrepresentation-based theories are not likely to change the trend of courts rejecting class certification in total loss valuation class actions.

Just as breach of contract theories require plaintiffs to show that every putative class member was paid less than the actual cash value of their vehicle, misrepresentation theories require plaintiffs to show that every putative class member was actually injured by the alleged nondisclosure of the adjustment. In either situation, individualized liability inquiries defeat class certification.

Ohio appellate court reaffirms that contractual appraisals can moot putative class claims.

Similar to the claims in Clippinger and Holmes, the plaintiff James Stewart brought putative class claims challenging a condition adjustment used by Farmers Insurance when valuing total loss automobile insurance claims.[18]

However, after the complaint was filed, the plaintiff's insurer demanded an appraisal of the vehicle pursuant to the policy's appraisal clause.[19] The plaintiff resisted appraisal, but the Cuyahoga County Court of Common Pleas compelled the plaintiff to submit to the appraisal process, as specified in the contract.[20]

The appraisal ultimately resulted in a valuation higher than the insurer's initial valuation, so the insurer issued a check to the plaintiff for the difference between the original amount and the appraisal award.[21] Even though the plaintiff refused to cash the check, the Eighth Appellate District determined on April 23 that this process and payment mooted the plaintiff's putative class claims and required dismissal.

As the court explained, the appraisal process was not a settlement offer intended to "pick off" a putative class representative.[22] Instead, the payment "was issued as a result of a binding contractual provision in the policy that was previously enforced by a court order."[23]

Since the insurance policy rendered that appraisal award as binding, the plaintiff had now been paid "what [he] claimed [his insurer] did not pay him."[24] There could be no breach of contract and so no controversy.[25]

The court went on to explain that its holding was based on "the circumstances surrounding the case before us," and that, in a different case, "individual and class claims on this issue may survive the mootness doctrine."[26] But Stewart is still a good reminder for litigants about the important implications of appraisal clauses — or other alternative valuation procedures — in insurance policies.

California federal court clarifies the scope of permissible depreciation for wildfire insurance claims.

On the last day of the second quarter, the Northern District of California resolved a novel question regarding insurance for wildfire claims.[27] Ruling on cross-motions for summary judgment in Melissa Pitkin v. State Farm Fire And Casualty Co., the court determined that Section 2051(b) of the California Insurance Code does not permit an insurer to depreciate sales tax when calculating the actual cash value of property covered by fire insurance.

Section 2051 was amended in 2004 to specify how insurers must calculate actual cash value under fire insurance policies.[28] Under the statute, an insurer is permitted to make a "fair and reasonable deduction for physical depreciation," but "the deduction for physical depreciation shall apply only to components of a structure that are normally subject to repair and replacement during the useful life of that structure."[29]

The plaintiffs argued that the text of the statute limited depreciation to "only wear-and-tear of tangible components," which does not include sales tax.[30] But the insurer countered that the legislative history of the statute showed that "physical depreciation" should not be read to apply to the sales tax component of the replacement cost for property.[31]

Starting with the text of the statute, the court held that the modifier "physical" narrowed the permissible scope of depreciation to loss in value "arising from the physical condition of the property."[32] But sales tax did not fit within that definition because it "does not deteriorate with age" and does not "possess a physical condition capable of deterioration."[33]

Turning next to the legislative history, the court recognized that portions of that history suggest that the phrase "physical depreciation" was intended solely to prohibit depreciation of labor costs associated with repairing structures.[34] But even so, the court reasoned that "it does not follow that every non-property component of [replacement cost] is depreciable."[35]

Even though the legislative history "arose from disputes over labor depreciation," the ultimate rationale articulated by the commissioner of insurance "was broader: depreciation is limited to changes in the value of 'physical property.'"[36]

Still, the court recognized that there was no controlling authority and at least some prior support for the insurer's position.[37] So, the insurer's contrary interpretation could not be considered bad faith, and the plaintiff could not pursue punitive damages.[38]

Conclusion

After the second quarter of this year, there is even more authority rejecting class certification of total loss valuation theories — whether through traditional breach of contract claims or misrepresentation-based claims.

However, after the Northern District of California's decision in Pitkin, insurers should carefully assess whether their depreciation practices comply with California law. Insurers should also assess whether statutes, regulations or insurance policies in other states similarly restrict depreciation to physical depreciation.[39] Plaintiffs in those states may use such language as a hook for the next insurance class action theory.

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[1] See Drummond v. Progressive Specialty Ins. Co., 142 F.4th 149 (3d Cir. 2025); Schroeder v. Progressive Paloverde Ins. Co., 146 F.4th 567 (7th Cir. 2025); Freeman v. Progressive Direct Ins. Co., 149 F.4th 461 (4th Cir. 2025); Ambrosio v. Progressive Preferred Ins. Co., 154 F.4th 1107 (9th Cir. 2025).

[2] Clippinger v. State Farm Auto. Ins. Co., 156 F.4th 724 (6th Cir. 2025).

[3] Clippinger v. State Farm Auto. Ins. Co., 173 F.4th 817, 823 (6th Cir. 2026) (en banc).

[4] Id.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Holmes v. Progressive Universal Ins. Co., No. 22 C 894, 2026 WL 1026165, at *1 (N.D. Ill. Apr. 15, 2026).

[10] Id. at *4.

[11] Id.

[12] Id. at *3-4.

[13] Id. at *4.

[14] Id.

[15] Id. at *6.

[16] Id.

[17] Id. at *6-7.

[18] Stewart v. Farmers Ins. of Columbus, Inc., 2026-Ohio-1451, ¶ 4.

[19] Id. ¶ 7.

[20] Id. ¶ 8.

[21] Id. ¶ 11.

[22] Id. ¶ 30.

[23] Id.

[24] Id.

[25] Id.

[26] Id. ¶ 34.

[27] Melissa Pitkin v. State Farm Fire And Casualty Company, No. 23-CV-00924-WHO, 2026 WL 1879726, at *5 (N.D. Cal. June 30, 2026).

[28] Id. at *8.

[29] Cal. Ins. Code § 2051(b).

[30] Pitkin, 2026 WL 1879726, at *5.

[31] Id. at *5.

[32] Id. at *7.

[33] Id.

[34] Id. at *10.

[35] Id.

[36] Id.

[37] Id. at *14, 17.

[38] Id. at *14, 17.

[39] See, e.g., In re PES Holdings, LLC, No. 19-11626 (LSS), 2021 WL 6012781, at *5 (Bankr. D. Del. Dec. 15, 2021) (analyzing an insurance policy that defined actual cash value as "Replacement Cost less deduction for physical depreciation").