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Divided en banc Sixth Circuit joins five other circuits in rejecting class certification for car insurance negotiation adjustment disputes

by C. Allen Garrett Jr.

Takeaway: We have written before about class actions involving disputes about automobile insurers' valuation of wrecked vehicles deemed a total loss. *See, e.g.*, Seventh Circuit rejects claimed "methodological" duty in reversing class certification of totaled car valuation dispute . The Sixth Circuit recently joined five other Courts of Appeals in rejecting certification of a class action challenging an insurer's "negotiation adjustment," but in a deeply divided en banc decision (with three different opinions) issued after a divided panel decision had affirmed the trial court's grant of class certification. *Clippinger v. State Farm Auto. Ins. Co.*, --- F.4th ----, 2026 WL 1113480 (6th Cir. Apr. 24, 2026).

Named plaintiff Jessica Clippinger, a Tennessee policyholder, had her 2017 Dodge minivan totaled in a 2019 accident. 2026 WL 1113480, at *2. State Farm valued the van using an "Autosource Report" which identified advertised prices for comparable vehicles and then applied a "typical negotiation adjustment" (TNA) reducing those prices on the assumption that buyers typically negotiate below the listed amount. *Id.* at *2-3. The Report valued Clippinger's van at $14,490, and she initially accepted that amount. *Id.* at *3. Clippinger later filed a putative class action alleging the TNA systematically undervalued totaled vehicles in breach of the insurance policy and the implied duty of good faith. After State Farm invoked the policy's appraisal process, two of three appraisers valued her van at $18,476, and State Farm paid Clippinger over $4,000 more than its original offer. *Id.* The district court certified a class of roughly 90,000 Tennessee customers whose actual cash value (ACV) payments had been reduced by the TNA. *Id*. at *3-4. After a divided panel affirmed, the en banc court reheard the case. *Id*. at *4.

The majority opinion—written by Judge Murphy and joined by nine other judges—reversed, agreeing with five other circuits that individual issues predominate over common ones under Rule 23(b)(3). *Id.* at *1-2, *9. Addressing commonality first, the majority assumed without deciding that Clippinger's proposed common question—whether the TNA accurately reflects the modern used-car market—satisfied Rule 23(a)(2). *Id.* at *8. It found the question had sufficient "cohesion" (because it asked about market averages yielding a single yes-or-no answer) but questioned its "centrality," reasoning that a jury's finding on the TNA's general accuracy would not resolve whether State Farm breached its promise to pay ACV to any specific class member. *Id.* at *6-7.

The stricter predominance inquiry, however, precluded certification of the damages claims. The majority held that a single individual question would dominate: the actual cash value of each class member's

vehicle. *Id.* at *8. This valuation would require fact-intensive, vehicle-specific review of year, make, model, mileage, options, and condition, as illustrated by the three different appraiser valuations in Clippinger's own case. *Id.* at *8-9. The court concluded that the parties would need to present "individual proof" on a "plaintiff-by-plaintiff" basis for all 90,000 class members. *Id.* at *9.

The majority also held that the district court's proposed damages model—recalculating each ACV by removing the TNA from the Autosource Report—would violate the Rules Enabling Act, 28 U.S.C. § 2072(b). *Id.* at *10. Because neither the policy nor the Tennessee regulation limited State Farm to a single valuation method, confining State Farm to the Autosource Reports would abridge its substantive right to introduce alternative evidence (*e.g.*, Kelley Blue Book data, expert appraisals, or other comparables) showing it paid ACV despite the TNA. *Id.* at *10–11. The approach would also harm absent class members whose vehicles the Report undervalued by more than the TNA (again, consistent with Clippinger's own appraisal, which exceeded the Report by roughly $4,000). *Id.* at *10-11.

The majority distinguished *Jama v. State Farm Mutual Automobile Insurance Company*, 113 F.4th 924, 927 (9th Cir. 2024), as involving a Washington regulation that categorically prohibited any negotiation adjustment. *Id.* at *11. Tennessee's regulation does not categorically prohibit the TNA, but instead only requires payment of fair market value—a case-by-case inquiry*Id.* The court also distinguished *Hicks v. State Farm Fire & Casualty Co.*, 965 F.3d 452 (6th Cir. 2020), because Kentucky law (unlike Tennessee law) treated any ACV overestimation as an error in the insured's favor (thereby eliminating individualized inquiries). *Id.* at *11–12.

Judge Bush joined the majority in full but wrote separately to raise four additional points. *Id.* at *12 (Bush, J., concurring). First, he found no "common question" because the class members either agreed to ACV (thus being estopped from claiming breach) or received an individual appraisal-determined ACV. *Id.* at *12-14. Second, he found a typicality divergence between class members whose ACV fell below the Autosource figure and those whose ACV exceeded it. *Id.* at *14-15. Third, he viewed the required individual damages trials that would be required as rendering a class action impractical and ultimately driving up premiums or prompting insurers to adopt individual arbitration agreements. *Id.* at *15-17. Finally, he flagged a numerosity concern for any proposed class action where most of the class members lack standing. *Id.* at *17-18.

Judge Gibbons, joined by six judges, dissented, arguing the district court did not abuse its discretion because common liability questions predominate. *Id.* at *18 (Gibbons, J., dissenting). The dissent would have found that Clippinger satisfied Rule 23(a)(2) because whether the TNA produced "an artificially reduced amount" rather than ACV could be resolved "in one stroke" through common evidence about market conditions. *Id.* at *19–20. The dissent also would have affirmed the district court's predominance analysis as consistent with *Hicks*, which upheld class certification despite varying damages. *Id.* at *20-21. Judge Gibbons challenged the majority's claim that ACV calculations require fact-intensive individual inquiries, noting that the Autosource Report already accounted for vehicle-specific factors and that State Farm's own witnesses agreed it did so correctly (with Clippinger only challenging the TNA). *Id.* at *21-22.

As for the five circuits that had rejected certification in analogous cases, the dissent observed that other circuits declined interlocutory review of certifications in similar contexts and that two of the adverse decisions drew dissents. *Id.* at *22–23. The dissent read *Jama* as permitting class certification "when the challenged adjustment categorically results in all class members receiving less than the ACV" and disagreed with limiting certification to adjustments "categorically barred by law." *Id.* at *23-24.

After challenging the TNA as facially unlawful under Tennessee regulations, the dissent maintained that class certification would not abridge State Farm's substantive rights because individualized valuation evidence could be presented in later damages proceedings. *Id.* at *25-26. Judge Gibbons emphasized the deferential abuse-of-discretion standard, noting that two judges confronted with identical records could reach opposite conclusions without either abusing discretion. *Id.* at *26.