

Liability vs. Damages in Class Certification Analysis Addressed by Fifth Circuit

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In analyzing class certification issues, courts have said that common issues may predominate in some cases even though damages would have to be determined individually for each class member. But what about where some class members have *no* damages? Recent federal appellate decisions have said that situation presents an issue of *liability*, not damages. A subtle distinction, but one that can make all the difference. Where liability cannot be determined class-wide, courts have held that the predominance requirement is not satisfied.

[Sampson v. United Services Automobile Association](#), — F.4th —, 2023 WL 6533181 (5th Cir. Oct. 6, 2023), is one of a series of cases brought against auto insurers challenging how they value vehicles that are total losses. The plaintiffs alleged that the insurer's use of a software product called CCC violated a Louisiana statute because CCC was not a "generally recognized motor vehicle industry source" within the meaning of the statute. The district court certified a class, and the Fifth Circuit agreed to hear an interlocutory appeal from that ruling.

In seeking class certification, the plaintiffs proposed to use National

Automobile Dealers Association (NADA) guidebook values, although there were other options that undisputedly would comply with the statute, including Kelley Blue Book (KBB). The insurer presented evidence that 9.2% of claims were valued less than the NADA value, but above the KBB value, so if KBB was chosen, there would be no recovery. The Fifth Circuit vacated the class certification decision, agreeing with a Ninth Circuit decision in a similar case last year ([see my blog post here](#)), which held that where vehicles would have to be valued individually, and on some claims there would be no injury, the predominance requirement for class certification was not satisfied. The Fifth Circuit explained that “a district court’s wide discretion to choose an imperfect estimated-damages model at the certification stage does not carry over from the context of damage to the context of liability.” Where the plaintiffs’ evidence could not establish liability (injury) on a class-wide basis, that was insufficient.

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