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GIBSON DUNN

Class Actions Update July 28, 2026

Class Actions 2026 Second Quarter Update

This update provides an overview of key class action-related developments from the second quarter of 2026 (April through June).

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I. The Sixth Circuit (Sitting En Banc) and the Fourth Circuit Reject Class Certification on Commonality and Predominance Grounds

This past quarter, two federal appellate decisions provided helpful illustrations of the closely linked commonality and predominance requirements of Rules 23(a) and (b)(3).

1. The Sixth Circuit's decision in *Clippinger v. State Farm Automobile Insurance Co.*, 173 F.4th 817 (6th Cir. 2026) (en banc), is the latest in a series of decisions from that court, including *Speerly v. GM, LLC*, 143 F.4th 306 (6th Cir. 2025) (en banc) (covered in a prior update here), and

Generation Changers Church v. Church Mutual Insurance Co., 168 F.4th 354 (6th Cir. 2026) (covered here), emphasizing the rigorous analysis that Rule 23 demands before any class may be certified.

As explained in previous updates, in *Clippinger* a divided Sixth Circuit panel had affirmed certification of a class of roughly 90,000 Tennessee insureds challenging the insurer's use of a "typical negotiation" adjustment—which adjusts the advertised prices of comparable used vehicles to account for the fact that buyers usually negotiate below sticker price—when estimating the "actual cash value" of totaled vehicles. That decision created a 5–1 split with the Third, Fourth, Fifth, Seventh, and Ninth Circuits, each of which had held that such "total loss" classes founder on Rule 23(b)(3)'s predominance requirement. The Sixth Circuit granted rehearing en banc, vacated the panel opinion, and has now reversed the certification order outright, restoring a nationwide circuit consensus. 173 F.4th at 823, 833-34.

The en banc court explained that the plaintiff's proposed "common" question—whether advertised used-car prices generally exceed actual sales prices—could not sustain a class. Although that question could yield a single answer, it was not *central* to class members' breach-of-contract claims: because each policy promised to pay each insured only the actual cash value of her vehicle, no class member could recover unless the court assessed the actual cash value of that class member's car. *Id.* at 828-32. Those member-by-member valuation disputes would predominate over any common issues. *Id.* at 832-34. The court also rejected the plaintiff's proposed workaround of limiting the defendant to a modified version of its original valuation, explaining that doing so would violate the Rules Enabling Act by stripping the defendant of its substantive right to present vehicle-specific evidence that it paid actual cash value. *Id.* at 834-37.

Clippinger emphasizes not only that supposedly common questions must drive the resolution of the claims, but also that a defendant's rights to raise individualized issues are just as important for purposes of assessing Rule 23(b)(3) predominance. Together with *Speerly* and *Generation Changers*, *Clippinger* also confirms that courts must evaluate certification with an eye toward how a classwide trial would actually unfold—and that certification cannot be obtained or defended through shortcuts that trade away the parties' substantive rights.

(Gibson Dunn represents the insurer in *Clippinger*.)

2. The Fourth Circuit further underscored the commonality requirement, vacating a class-certification order for insufficient analysis in *Overby v. Anheuser-Busch, LLC*, 178 F.4th 175 (4th Cir. 2026).

In *Overby*, the district court certified a class of hourly brewery workers seeking pay under Virginia law for allegedly uncompensated pre- and post-shift tasks, relying on the common questions of whether Anheuser-Busch "compensate[d] class members for time spent on" those tasks and whether the "failure to provide such compensation violates Virginia law." *Id.* at 180. The Fourth Circuit vacated the order. Applying *Stafford v. Bojangles' Restaurants, Inc.*, 123 F.4th 671 (4th Cir. 2024) (covered in a prior update), the court of appeals explained that "[o]ne can always frame a question in such an abstract manner as to elicit a common response," but that framing can "obscure more significant subquestions not susceptible to easy class-wide resolution." 178 F.4th at 182.

As the Fourth Circuit explained, the district court improperly presupposed answers to threshold inquiries requiring individualized resolution, including: whether each class member performed the challenged tasks at all (employees hired after February 2022 were never subject to the since-discontinued COVID-19 protocols), whether they performed the tasks on brewery premises (many donned protective gear at home), and which legal standard governed (Virginia overhauled its overtime statute mid-class period). *Id.* at 183-84. The district court's sweeping class definition—which "effectively encompasses all hourly employees"—compounded these errors by presuming that every hourly employee had a viable claim. *Id.* at 184-85.

Overby underscores that courts must stress-test high-level framings of both the common questions and the class definitions for issues requiring individualized resolution. For defendants, that means probing what a proposed common question quietly assumes and what members a class definition sweeps in. *Id.* at 185-86.

II. The Seventh Circuit Confirms That Speculation Cannot Satisfy Rule 23's Numerosity Requirement

Rule 23(a)(1) requires a plaintiff seeking class certification to prove that the proposed class is "so numerous that joinder of all members is impracticable." Numerosity is often uncontested, largely because many putative classes number in the thousands. But even if there is no genuine dispute over the proposed class size, a plaintiff still must meet its evidentiary burden to establish numerosity. A recent Seventh Circuit decision confirms that numerosity can prove to be a genuine bar to certification.

In *Hossfeld v. Allstate Insurance Co.*, 179 F.4th 1046 (7th Cir. 2026), the plaintiff sued Allstate under the Telephone Consumer Protection Act after a telemarketing company placed twelve calls to his phone number even though he had allegedly asked Allstate not to call him. *Id.* at 1050-52. The plaintiff moved to certify a class of other call recipients, identifying 33 numbers (including his own) on Allstate's internal do-not-call list that had been called as part of the same telemarketing campaign. *Id.* at 1052. He asserted that there must be additional class members because Allstate and its vendors supposedly failed to coordinate their do-not-call lists, but he provided no supporting evidence for that assertion. The district court denied class certification for lack of numerosity. The Seventh Circuit affirmed, holding that a plaintiff "must produce more than speculation as to the size of the class," and that the key inquiry under Rule 23(a)(1) "is not the number of class members alone but the practicability of joinder." *Id.* at 1060. The plaintiff's 33-member class was insufficiently numerous, and he made no argument that joinder of the identified members would be impracticable.

Hossfeld demonstrates that a plaintiff cannot satisfy Rule 23(a)(1) by identifying a large group of people supposedly affected by the defendant's conduct and asking the court to presume that a sufficient number of them are similarly situated.

III. Three Recent Decisions Refine the Contours of CAFA Jurisdiction

The Class Action Fairness Act of 2005 (CAFA) remains one of the most important tools for defendants to move class and "mass" actions out of state court and into federal court. CAFA relaxes traditional diversity requirements and grants federal jurisdiction over qualifying class actions with minimal diversity and more than $5 million at stake. But there are exceptions to CAFA's reach, and three recent appellate decisions sharpen the lines around removability.

1. The Seventh Circuit this past quarter confirmed that courts can *sua sponte* raise the "local event or occurrence" exception to CAFA jurisdiction. That exception excludes from "mass action" treatment any case where the claims "arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State." 28 U.S.C. § 1332(d)(11)(B)(ii)(I).

In *Craig v. City of Richmond, Indiana*, 179 F.4th 535 (7th Cir. 2026), 150 plaintiffs sued over an industrial fire that burned for over a week, and the defendants removed the case to federal court as a "mass action" under CAFA. *Id.* at 537. The Seventh Circuit held that CAFA's "local event or occurrence" exception is *jurisdictional*, meaning the court can raise it *sua sponte* at any time, and plaintiffs are not bound by the usual 30-day deadline to seek remand. *Id.* at 539-40. The court also read the "event or occurrence" concept broadly, treating the fire as a single triggering event even though the plaintiffs alleged years of underlying misconduct by multiple defendants whose conduct "contribute[d] to the same injury-causing event." *Id.* at 540-44. The decision shows that defendants weighing removal of a localized mass tort cannot assume that pointing to multiple actors or a long causal chain will keep the case in federal court, *see id.* at 543-44, and cannot count on the plaintiffs' failure to seek remand to preserve federal jurisdiction, *see id.* at 540.

2. The Seventh Circuit also clarified, based on a recent Supreme Court decision, that amended complaints can destroy or restore CAFA jurisdiction.

In *Zurbriggen v. Twin Hill Acquisition, Inc.*, 178 F.4th 1081 (7th Cir. 2026), airline employees brought a putative class action over allegedly defective uniforms but later amended their complaint to drop the class allegations so they could proceed to bellwether trials. *Id.* at 1084-86. Applying *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025), the Seventh Circuit reasoned that because a plaintiff is "master of the complaint," each amended pleading effectively remakes the suit—including its jurisdictional basis. *Zurbriggen*, 178 F.4th at 1087. Dropping the class allegations may therefore have stripped the court of CAFA jurisdiction because the action was no longer "filed under" Rule 23. *Id.* But the plaintiffs then filed a further amended complaint that reinvoked CAFA and re-pleaded its requirements, which the court held re-established federal jurisdiction. *Id.* at 1088.

While the procedural posture is somewhat unusual, *Zurbriggen* suggests that CAFA jurisdiction is not "locked in" at the time of filing and that defendants must reassess jurisdiction following amended pleadings. The decision also signals broader tension (which the court of appeals flagged but did not resolve) over whether older case law holding that post-filing developments do not defeat CAFA jurisdiction survives *Royal Canin*, particularly in the removal context. *See id.* at 1088 & n.3.

3. The Sixth Circuit held that CAFA's 30-day removal deadline is not subject to equitable tolling.

Ewalt v. GateHouse Media Ohio Holdings II, Inc., 176 F.4th 880 (6th Cir. 2026), involved a case that "ping-pong[ed]" between state and federal court. *Id.* at 882. After the district court erroneously remanded a CAFA case to state court following denial of class certification—which, under the correct rule, does *not* defeat CAFA jurisdiction, *id.* at 884-85—the defendant tried to re-remove months later once the plaintiffs had renewed their certification bid, *id.* at 882-83. The district court, trying not to punish the defendant for the court's error, equitably tolled the removal deadline. *Id.* at 885. The Sixth Circuit reversed, relying on the Supreme Court's recent holding in *Enbridge Energy, LP v. Nessel*, 146 S. Ct. 1074 (2026), that § 1446(b)(1)'s 30-day removal clock *cannot* be equitably tolled. *Ewalt*, 176 F.4th at 885.

The decision shows that a defendant that wants to preserve federal jurisdiction must act within the statutory window and affirmatively contest an erroneous remand *when it happens*, rather than waiting for a later opening, because courts have no authority to reopen the removal window after the fact. *See id.* at 885-86.

Taken together, this trio of decisions underscores that CAFA jurisdiction is procedurally exacting. Clients facing potential class or mass actions should involve counsel early to preserve every jurisdictional argument before a deadline—or an amendment—forecloses it.

IV. A Flurry of Arbitration-Agreement Enforcement Cases

This last quarter also saw a variety of decisions illustrating difficulties that defendants may face in seeking to enforce agreements to arbitrate, particularly where there is some question about which people or entities may validly invoke the agreement.

In *Olson v. FCA US, LLC*, 176 F.4th 612 (9th Cir. 2026), the Ninth Circuit rejected a vehicle manufacturer's bid to enforce an arbitration agreement in a lease between the plaintiff and a dealership. *Id.* at 615. The plaintiff, who later became a named plaintiff in a putative class action alleging a headrest defect, had signed a lease defining "you" and "your" as the lessee and "we," "our," and "us" as the dealership. The lease delegated questions about the scope of the arbitration provision to the arbitrator, and the manufacturer argued that the delegation clause required the arbitrator, not the district court, to decide whether the dispute was arbitrable. *Id.* at 616. The district court disagreed, and the Ninth Circuit affirmed, treating what the manufacturer had framed as a question of the *scope* of the agreement instead as a question of whether a valid arbitration agreement *existed* between the manufacturer and the plaintiff at all. *Id.* at 616-17.

Schlacks v. Chheda, 174 F.4th 1061 (8th Cir. 2026), reflects the same pattern of courts' construing purported scope questions as formation questions. There, a limited partnership agreement contained an arbitration provision with a delegation clause committing questions of arbitrability to the arbitrator. The signatory sought to compel arbitration against two non-signatories who had entered into a separate agreement with the signatory's principal. The Eighth Circuit declined: "[R]egardless of whether these questions are within the scope of the delegation provision, the court cannot enforce that provision unless a valid contract exists between the parties." *Id.* at 1067.

And in *Jackson v. Protas, Spivok & Collins LLC*, 176 F.4th 317 (4th Cir. 2026), the Fourth Circuit held that a debt-collection law firm retained by a signatory could not enforce the arbitration agreement between its client and the plaintiff borrower. *Id.* at 319. The dispute turned largely on the meaning of a single word—"servicing"—in the promissory note's arbitration provision, which the court construed to mean the collection of payments and maintenance of the payment schedule, *id.* at 321, not litigation activity by outside counsel. The court emphasized that the agreement did not extend to the signatories' agents or representatives, and that "in the absence of broader language, the law firm is a stranger to the agreement." *Id.* at 323.

Olson, *Schlacks*, and *Jackson* illustrate that delegation clauses may not carry threshold disputes to the arbitrator when a non-signatory is involved. Courts may first ask whether a valid agreement exists between the litigants. Businesses that anticipate that their affiliates, manufacturers, vendors, agents, or outside professionals may wish to invoke an arbitration clause might consider saying so expressly—for example, by extending the clause to identified categories of third parties—rather than relying on general delegation language or equitable doctrines after the fact.

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