

ENTERED

March 27, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PHILIP ANGELL, STEVEN BROWN,
TONNIE BECK, TAMMY MORRIS, and
DAWN BURNHAM, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

GEICO ADVANTAGE INSURANCE
COMPANY, GEICO INDEMNITY
COMPANY, GOVERNMENT
EMPLOYEES INSURANCE COMPANY,
GEICO COUNTY MUTUAL INSURANCE
COMPANY, and GEICO CHOICE
INSURANCE COMPANY,

Defendants.

CASE NO. 4:20-cv-00799

CLASS ACTION

**ORDER PRELIMINARILY APPROVING SETTLEMENT
AND DIRECTING NOTICE TO THE CLASS**

Plaintiffs Philip Angell, Steven Brown, Tonnie Beck, Tammy Morris, and Dawn Burnham (“Plaintiffs”) and Defendants GEICO Advantage Insurance Company, GEICO Indemnity Company, Government Employees Insurance Company, GEICO County Mutual Insurance Company, and GEICO Choice Insurance Company (“Defendants”) (collectively, the “Parties”) have agreed, subject to approval by the Court, to settle this Action upon the terms and conditions in the Settlement Agreement (“Agreement”) (Dkt. No. 87); and

Plaintiffs have filed an unopposed motion for preliminary approval of class settlement, seeking, among other things, that the Court (1) certify the proposed classes for settlement purposes; (2) grant preliminary approval of the Agreement; (3) direct notice to the settlement classes; and (4) set a final approval hearing.

The Court has read and considered the Agreement and the exhibits thereto and has read and considered all other papers filed and proceedings had herein, and is otherwise fully informed, and for the reasons set forth below, the Court **GRANTS** Plaintiffs' motion for preliminary approval of the Settlement.

IT IS HEREBY ORDERED:

1. This Preliminary Approval Order incorporates by reference the definitions in the Agreement.

2. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action including, without limitation, the Settlement Class Members, to enter this Order.

3. The Court preliminarily approves the Settlement set forth in the Settlement Agreement submitted with the Motion (Ex. A to Motion), and preliminarily finds the Settlement to be fair, reasonable, and adequate to the Settlement Classes. The Court finds that the Settlement was arrived at in good faith, following extensive arm's-length negotiations, including participation with an independent mediator. The Court also finds that, at the final approval stage, the Court "will likely be able to" approve the Settlement under the criteria described in Federal Rule of Civil Procedure ("Civil Rule") 23(e)(2) and certify the settlement class under the criteria described in Civil Rules 23(a) and 23(b)(3). *See* Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii). These findings are subject to a final determination to be made after the Fairness Hearing set forth below in this Order. GEICO shall retain all rights to contest liability, including on appeal if the Settlement is not ultimately approved. Neither the Settlement Agreement, nor any of its terms or provisions, shall be construed as an admission or concession by GEICO of the truth of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever, except that GEICO may file this Order in any action that may be brought against it in order to support a defense or counterclaim based on

principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

4. For purposes of the preliminary approval of the Settlement only, the Court finds as to the Settlement Classes that: (a) the Settlement Class Members are so numerous as to make joinder of them impracticable; (b) there are questions of law and fact common to the Settlement Classes as to the reasonableness of the settlement among other common issues in the litigation, and such questions predominate over any questions affecting only individual members of the Settlement Classes; (c) Plaintiffs' claims and defenses asserted thereto are typical of the claims of Settlement Class Members and the defenses asserted thereto; (d) Plaintiffs and Class Counsel have fairly and adequately protected the interests of the Settlement Class Members throughout this litigation; and (e) a class action is superior to all other available methods for fairly and efficiently resolving this litigation, considering: (i) the interest of the Settlement Class Members in individually controlling the prosecution of separate actions; (ii) the extent and nature of the litigation concerning the controversy already commenced by the Settlement Class Members; (iii) the desirability and undesirability of concentrating the litigation of these claims in a particular forum; and (iv) the difficulties likely to be encountered in the management of a class action. Moreover, the Court has considered the factors set forth in Rule 23(e) and has concluded that the preliminary approval and notice to the Settlement Class Members is appropriate and warranted.

5. Consistent with the Agreement, the Court preliminarily and conditionally approves the following Settlement Classes:

Regulatory Fees Class:

All Insureds covered under any Texas private passenger automobile insurance policy that defined "Actual Cash Value" under Section III of the policy as "the replacement cost of the auto or property less *depreciation* and/or *betterment*"

issued by GEICO Advantage Insurance Company, GEICO Indemnity Company, Government Employees Insurance Company, GEICO County Mutual Insurance Company, and GEICO Choice Insurance Company and their subsidiaries or related insurance companies (collectively, "GEICO") who made a first-party physical damage claim from **March 5, 2016, through March 18, 2024** that GEICO paid as a total loss under comprehensive or collision coverage and who do not timely opt-out from the settlement class. The Regulatory Fees Class does not include any members of the Sales Tax Class.

Sales Tax Class:

All Insureds covered under any Texas private passenger automobile insurance policy that defined "Actual Cash Value" under Section III of the policy as "the replacement cost of the auto or property less *depreciation* and/or *betterment*" issued by GEICO who made a first-party property damage claim on a leased vehicle from **March 5, 2016, through March 18, 2024** that GEICO paid as a total loss under comprehensive or collision coverage and who did not receive full state Sales Tax based on the adjusted vehicle value of the totaled vehicle as part of the settlement payment and who do not timely opt-out from the settlement class.

Excluded from the Classes are:

- (1) GEICO, all present or former officers and/or directors of GEICO, the Neutral Evaluator, Class Counsel, and a Judge of this Court;
- (2) Claims for which GEICO received a valid and executed release;
- (3) Claims where GEICO paid full Sales Tax and Regulatory Fees; and
- (4) Claims subject to binding appraisal and/or arbitration where full Sales Tax and Regulatory Fees were paid.

6. The Court preliminarily approves and appoints Plaintiffs as Class Representatives, and Normand PLLC, Daly & Black, P.C., Edelsberg Law, P.A., Shamis & Gentile, P.A., Hall & Lampros, LLP, and Jacobson Phillips PLLC as Class Counsel.

7. The Court preliminarily approves and appoints Plaintiffs as Class Representatives.

8. The Court approves the Notice Program as to both form and content.

9. All dates that are set forth in or that otherwise flow from the Preliminary Approval Order shall be added to the Short Form Notice before it is sent to Settlement Class Members.

10. The Court finds the Notice Program constitutes the best notice practicable under the circumstances and constitutes valid and sufficient notice to all Persons entitled thereto, complying fully with the requirements of Fed. R. Civ. P. 23 and due process.

11. The Court finds that the Class Action Fairness Act Notice given by the Settlement Administrator on behalf of GEICO is in full compliance with 28 U.S.C. § 1715(b).

12. The Court approves the Notice Program and directs mailing of the Short Form Notice by first-class mail and by email as set forth in the Agreement and directs the Settlement Administrator to follow the procedures set forth the Agreement for delivery of notice.

13. The Court approves the Claim Forms, the content of which is without material alteration from Exhibits 1, 2, and 7 to the Agreement.

14. The Claims Submission Deadline after which the Claim Forms shall be deemed untimely shall be thirty (30) days after the second Postcard Notice is first sent (or 45 days after the first Postcard Notice is sent).

15. The Court approves the Settlement Websites as described in the Agreement, which may be amended during the course of the settlement as appropriate and agreed to by the Parties, and which shall be maintained for at least 180 days after the Claims Deadline.

16. The Court appoints JND Legal Administration as the Settlement Administrator.

17. The Court directs the Settlement Administrator to create, maintain, and establish the websites described in the Agreement and approved herein. The Websites shall be accessible on or before the date on which the first Postcard Notice is sent.

18. The Court directs the Settlement Administrator to maintain a toll-free telephone system containing recorded answers to frequently asked questions, along with an option permitting

potential Settlement Class Members to record a message to be returned by the Settlement Administrator.

19. The Settlement Administrator shall file proof of completion of the Notice Program on or before ten (10) days prior to the Final Approval Hearing, along with the list of all Persons who timely requested exclusion from the Settlement Class.

20. Each Settlement Class Member who wishes to exclude himself or herself from the Settlement Classes must submit an appropriate, timely request for exclusion, postmarked no later than the Opt-Out Deadline, to the Settlement Administrator at the address in the notice, and that complies with the requirements in Paragraph 74 of the Agreement. Any exclusion must be exercised individually by a Settlement Class Member or his or her Legally Authorized Representative, not as or on behalf of a group, class, or subclass.

21. Any Settlement Class Member who does not submit a timely, written request for exclusion from their applicable Settlement Class will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member never received actual notice of the Action or this Proposed Settlement.

22. Each Settlement Class Member who has not submitted a timely request for exclusion from the Settlement Classes, and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or to intervene in the Action, must follow the procedures set forth in Paragraph 75 of the Agreement. The right to object to the Settlement must be exercised individually by a Settlement Class Member or his or her attorney or Legally Authorized Representative, and not as a member of a group, class, or subclass.

23. The Settlement Administrator shall receive requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications, and only the Settlement

Administrator, the Parties, the Court, the Clerk of the Court, and their designated agents shall have access to these documents, except as otherwise expressly provided in the Agreement.

24. The Settlement Administrator shall promptly furnish to Class Counsel and Counsel for Defendants copies of any and all objections, written requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession, as set forth in the Agreement.

25. The Court hereby stays all proceedings in the Action until further order of the Court, except that the Parties may conduct such limited proceedings as may be necessary to implement the Proposed Settlement or to effectuate the terms of this Agreement.

26. As an initial point, the Court notes that there is a “strong judicial policy favoring the resolution of disputes through settlement” and that a presumption is made in favor of the settlement's fairness, absent contrary evidence. *Smith v. Crystian*, 91 Fed. Appx. 952, 955 (5th Cir. 2004) (quoting *Parker v. Anderson*, 667 F. 2d 1204, 1209 (5th Cir. 1982)). The “public interest favoring settlement is especially apparent in the class action context where claims are complex and may involve a large number of parties, which otherwise could lead to years of protracted litigation and sky-rocket expenses.” *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 843 (E.D. La. 2007) (citation omitted). Even for straightforward claims, approval of settlement is favored where settlement “avoids the risks and burdens of potentially protracted litigation.” *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 620 (E.D. La. 2006).

27. The Court finds that, for purposes of preliminary approval, both procedural and threshold requirements set forth in Fed. R. Civ. P. 23(e)(2) appear to be satisfied. Moreover, each

of the factors listed in *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983) support a finding that the Agreement is fair, reasonable and adequate.

28. The first *Reed* factor is the existence of fraud or collusion, which overlaps with Fed. R. Civ. P. 23(e)(2)(B)'s requirement that negotiations occur at arm's length. Here, the parties vigorously litigated the claims through discovery, class certification, and interlocutory appeal under Fed. R. Civ. P. 23(f). *See Diaz v. Hillsborough County Hosp. Auth.*, 2000 U.S. Dist. LEXIS 14061, at *15-16 (M.D. Fla. Aug. 7, 2000) (years of contested litigation prior to settlement demonstrates lack of collusion). Thus, the Plaintiffs and Class Counsel were provided with sufficient information and knowledge of the claims, issues, and defenses prior to negotiating and settling the claims. *See In re Educ. Testing*, 447 F. Supp. 2d 612, 620 (E.D. La. 2006) (noting that "the question is . . . whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed . . ."). Moreover, the negotiations were conducted under the oversight of Rodney A. Max, a well-respected mediator, and were clearly conducted at arm's length. *See generally Celeste v. Intrusion Inc.*, 2022 U.S. Dist. LEXIS 226841, at *12 (E.D. Tex. Dec. 16, 2022) ("The parties entered the proposed settlement agreement after a full-day mediation—which 'suggests the settlement was not the result of improper dealings.'" (quotation omitted); *see also City Partnership Co. v. Atlantic Acquisition Ltd. Partnership*, 100 F.3d 1041, 1043 (1st Cir. 1996) ("When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement."); *Diaz v. Hillsborough County Hosp. Auth.*, 2000 U.S. Dist. LEXIS 14061, at *15-16 (M.D. Fla. Aug. 7, 2000) (years of contested litigation prior to settlement demonstrates lack of collusion). Furthermore, there is no evidence of fraud or collusion. *See Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062, 2018 U.S. Dist. LEXIS

227456, at *33 (W.D. Tex. Aug. 20, 2018) (“The Court may . . . presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary.”).

29. Fed. R. Civ. P. 23(e)(2)(C)-(D) prescribes four substantive factors relevant to the class settlement analysis: the costs and risk of trial and appeal, the method of claim distribution, the terms of attorneys’ fees, and whether class members are treated equitably relative to each other. For purposes of preliminary approval, these factors weigh in favor of approval. First, the likelihood of success absent settlement is uncertain. And given this uncertainty, the benefits secured through the Agreement are sufficiently fair and reasonable, especially considering the complexity of this case and likely duration of the remaining litigation. Additionally, the claim-processing method, which requires Settlement Class Members merely to confirm the accuracy of a pre-filled, postage-prepaid Claim Form or to correct any mistakes, is simple and straightforward. Finally, the Parties did not discuss attorneys’ fees until after they reached an agreement concerning the substantive terms of the Agreement. Moreover, the Class Members are treated identically for all material elements of the Agreement.

30. The factors set forth in *Reed*, 703 F.2d 170 that do not overlap with Fed. R. Civ. P. 23(e)(2)—the opinions of class counsel and range of possible recovery—also weigh in favor of preliminary approval. Class Counsel are familiar with GEICO’s data systems, business practices, and procedures, and have extensive experience and knowledge of the claims and defenses at issue, and their opinion is that the Agreement is favorable to and in the best interest of the Settlement Class. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (holding that “absent fraud, collusion, or the like,” a court “should be hesitant to substitute its own judgment for that of counsel[.]”); *see also Brent v. Midland Funding, LLC*, 2011 U.S. Dist. LEXIS 98763, at *49-50 (N.D. Oh. Sep. 1, 2011) (“The Court gives great weight to the recommendation of experienced

counsel for the parties in evaluating the adequacy of the settlement.”). Additionally, the recovery for Settlement Class Members is satisfactory considering the possible range of recovery and uncertainty of damages. *See Hays v. Eaton Grp Attys., LLC*, No. 17-88-JWD-RLB, 2019 U.S. Dist. LEXIS 17029, at *28 (M.D. La. Feb. 4, 2019) (“[A] settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.”) (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990)).

31. A hearing shall be held on **Thursday, August 1, 2024, at 10:30 a.m.**, for the purpose of determining (a) whether the proposed Agreement is fair, reasonable and adequate and should be finally approved by the Court; (b) whether a Final Judgment granting approval of the Agreement and dismissing the Action with prejudice should be entered; (c) whether the Class Representatives should receive an incentive award and in what amount; (d) whether Class Counsel should receive a fees and costs award and in what amount; and (e) any other matters the Court may deem just and proper.

32. Any application for Class Counsel Fee Award and Service Awards, shall be filed with the Court at least fifteen (15) days prior to the deadline to the Objection and Opt-Out Deadlines.

33. All other papers in support of the Agreement or responding to objections or motions to intervene shall be filed at least fifteen (15) days prior to the Final Approval Hearing.

34. The Court may adjourn the Final Approval Hearing from time to time and without further notice to the Settlement Class Members. The Court reserves the right to approve the Agreement at or after the Final Approval Hearing with such modifications as may be consented to by the Parties and without further notice to the Settlement Class Members. The Court further reserves the right to enter a Final Judgment, dismissing the Action with prejudice as to GEICO

and against the Plaintiffs and the Settlement Class Members at or after the Final Approval Hearing and without further notice to the Settlement Class Members.

35. The following schedule is established to guide the Parties in conducting the Notice and claims administration process:

PRELIMINARY SCHEDULE

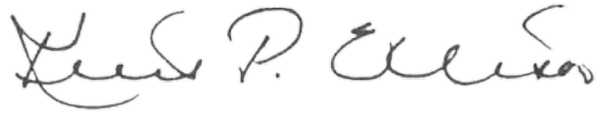
#	Action	Deadline
1	Website Notice Posted by Settlement Administrator	May 26, 2024
2	Deadline for Settlement Administrator to mail out first Postcard Notice	May 26, 2024
3	Deadline for Settlement Administrator to mail out second Postcard Notice and to send Email Notice	June 10, 2024
4	Deadline for Settlement Class Members to opt-out of the Agreement	June 25, 2024
5	Deadline for submission of Notice of Intent to object to agreement	June 25, 2024
6	Deadline for Settlement Class Members to file claims	July 10, 2024
7	Deadline for Class Counsel to file their Motion for Final Approval of the Settlement	July 18, 2024
8	Deadline for Class Counsel to file the Motion for Attorneys' Fees, Costs, and Service Award	June 10, 2024
9	Deadline for Settlement Administrator to file proof of completion of Notice, along with complete and accurate list of	July 22, 2024

	Settlement Class Members requesting exclusion	
10	Final Settlement Approval Hearing	August 1, 2024 at 10:30 a.m. Courtroom 3A, Houston, TX

The Parties may make reasonable adjustments to the notice deadlines without prior Court approval.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 27th day of March, 2024.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE