

**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

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR
ATTORNEYS' FEES AND COSTS AND PLAINTIFF'S SERVICE AWARD**

Plaintiffs Philip Angell, Steven Brown, Tonnie Beck, Tammy Morris, and Dawn Burnham (“Plaintiffs”) and Class Counsel respectfully submit petition for seeking attorneys’ fees and costs of approximately 24.3% of the estimated value of the \$33,700,000.00 settlement, which is \$8,189,000.00, to Class Counsel and Service Awards of \$7,500.00 to each of the Named Plaintiffs, in accordance with the terms of the Agreement, and as set forth in the Proposed Order granting final approval of the Agreement that will be submitted along with the forthcoming Motion for Final Approval.¹

¹ This Motion is submitted according to the deadlines agreed to by the Parties and ordered by this Court, which is fifteen days prior to the deadline for Settlement Class Members to object (so that Class Members can review the fee petition prior to the objection deadline). The deadline to file the Motion for Final Approval is not until *after* the objections deadline and fourteen days prior to the

I. STATEMENT OF THE BASIS FOR THE REQUEST

The Parties reached a Settlement that would provide members of the Settlement Class a monetary recovery for the payment of sales tax and regulatory fees associated with the titling and registration of vehicles in Texas as part of GEICO’s actual cash value (“ACV”) payment following the total losses of insured vehicles, which this Court preliminarily approved on March 27, 2024. Dkt. No. 88. As part of the Settlement Agreement, GEICO agreed not to oppose attorneys’ fees and costs of \$8,189,000.00, which is 24.3% of the estimated value of the settlement,² and to pay Service Awards of \$7,500.00 each of the Named Plaintiffs. As set forth below, the fee requested by Class Counsel is well within the market standard for attorneys’ fees and fits comfortably within a substantial body of precedent addressing fee awards in the context of class actions in the Fifth Circuit.

II. MEMORANDUM OF LEGAL AUTHORITY

A. The proposed Settlement is an excellent result and supports the reasonableness of the attorneys’ fees sought.

Plaintiffs already set forth the terms of the proposed Settlement Agreement, which this Court preliminarily approved, and why they represent an excellent result and are fair and reasonable to Settlement Class Members, as set forth in the Motion for Preliminary Approval (Dkt. No. 87), and will do so again in moving for final approval. As such, this fee petition does not repeat

Final Fairness Hearing. The forthcoming Motion for Final Approval will include a proposed Order that will address both the fairness of the proposed Settlement Agreement in general, as well as attorneys’ fees and costs specifically. As such, Plaintiffs and Class Counsel respectfully submit this Court should defer entering an Order addressing attorneys’ fees and costs and Service Award until after the Fairness Hearing.

² The number is actually less. Class Counsel incurred costs of over \$90,000.00 in litigating this case. See Exhibit 1 at ¶ 32. Once those costs are subtracted, the percentage in attorneys’ fees Class Counsel seeks is less than 24.3%. Out of an abundance of caution, however, Class Counsel uses the 24.3% figure.

such points—suffice it to say that securing 100% of sales tax damages and approximately 80% of the maximum Regulatory Fees that could have been secured at trial, securing a tailored and narrow release, a robust Notice plan, and a simple claim process, is fairly viewed as an excellent result. And that Class Counsel secured such favorable terms in an efficient manner and despite arguably difficult contrary law counsels strongly in favor of approving the attorneys’ fees and costs sought here. Phillips Decl. at ¶¶ 12-13.

B. The Standard for Awarding Attorneys’ Fees to Class Counsel

The percentage for attorneys’ fees of 24.3% falls *below* the benchmarks set for attorneys’ fees in other courts in the Fifth Circuit. *See, e.g., Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 863 (E.D. La. 2007) (noting based on extensive empirical analysis that the “benchmark” is 25% and that “most fee awards” fell between 25% and 35% of the settlement benefits); *Shaw v. CAS, Inc.*, No. 5:17-CV-142, 2018 U.S. Dist. LEXIS 136394, at *3 (S.D. Tex. Jan. 31, 2018) (“A review of Fifth Circuit precedent indicates a 30% benchmark fee is reasonable.”); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-CV-1152-M, 2018 U.S. Dist. LEXIS 69143, at *9 (N.D. Tex. Apr. 25, 2018) (“[N]umerous courts in this Circuit have awarded fees in the 30% to 36% range”); *Regmund v. Talisman Energy USA, Inc.*, No. 4:16-cv-02960, 2021 U.S. Dist. LEXIS 92346, at *7 (S.D. Tex. May 12, 2021) (“The Court finds that 25% is well within, and in fact, at the lower end of, typical percentage fee awards in class action settlements in the Fifth Circuit.”). The Fifth Circuit has approved district courts’ “use of the percentage method cross-checked with the *Johnson* factors.” *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012).³

³ The *Johnson* factors—intended to ensure “a reasonable fee”—are: (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted

Courts have long recognized the common fund doctrine, under which attorneys who create a recovery benefitting a group of people may be awarded their fees and costs from the recovery. *See, e.g., Van Gemert*, 444 U.S. at 478. The doctrine serves the “twin goals of removing a potential financial obstacle to a plaintiff’s pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff’s efforts.” *In re Gould Sec. Lit.*, 727 F. Supp. 1201, 1203 (N.D. Ill. 1989). This doctrine also ensures that those who benefit from a lawsuit are not “unjustly enriched.” *Van Gemert*, 444 U.S. at 478. The Fifth Circuit has directed that the fee be based upon a percentage of the class benefit so long as a *Johnson* cross check is performed. *Union Asset Mgmt.*, 669 F.3d at 644. Courts have significant discretion in choosing the proper percentage. *Id.* The fee GEICO agreed not to oppose or otherwise object to is *less* than the percentage that recognized as reasonable in other cases in this Court and others throughout the Fifth Circuit. *See, e.g., Turner*, 472 F. Supp. 2d at 863; *Shaw*, 2018 U.S. Dist. LEXIS 136394, at *3; *Erica P. John Fund*, 2018 U.S. Dist. LEXIS 69143, at *9; *Regmund*, 2021 U.S. Dist. LEXIS 92346.

As numerous courts have recognized, “[t]he percentage of the fund method has a number of advantages: it is easy to calculate; it establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.” *Rawlings*, 9 F.3d at 516. In addition to being far simpler, awarding a percentage of the fund “directly aligns the interests of the class and its counsel.” *Wal-Mart Stores*,

this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717, 720 (5th Cir. 1974).

Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 122 (2d Cir. 2005). This method further incentivizes class counsel to obtain the largest possible recovery in the most efficient manner possible. *Id.*; *Rawlings*, 9 F.3d at 516. By contrast, “the lodestar method has been criticized for being too time-consuming of scarce judicial resources. District courts must pore over time sheets, arrive at a reasonable hourly rate, and consider numerous factors in deciding whether to award a multiplier. With the emphasis it places on the number of hours expended by counsel rather than the results obtained, it also provides incentives for overbilling and the avoidance of early settlement.” *Rawlings*, 9 F.3d at 516-17. In other words, if fees are awarded based (solely) on a lodestar method, attorneys are incentivized to spin wheels and protract litigation to drive up a larger fee.

C. The fee percentage sought is eminently reasonable and is less than the percentages often approved in other class action settlements.

As set forth above, the fee percentage sought here is 24.3% of the total settlement value. *See* Exh. 1 (Phillips Decl.) at ¶¶ 8, 14. This is less than the percentage consistently approved as reasonable in class action settlements by courts throughout the Fifth Circuit, including this Court.

Indeed, a cursory review of class counsel awards approved in this Circuit confirms that the amount sought here falls beneath or on the lower end of the spectrum. *See, e.g., Poe v. United Ass'n of Journeyman & Apprentices of the Plumbing & Pipefitting Indus. of the United States AFL-CIO Local 198 Health and Welfare Fund*, No. 18-00667-BAJ-SDJ, 2021 U.S. Dist. LEXIS 188683 (M.D. La. Sep. 30, 2021) (approving fees of 33 1/3%); *Shaw v. Toshiba Am. Info. Sys.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (“[T]his Court concludes that attorneys’ fees in the range from twenty-five percent (25%) to thirty-three and thirty-four one-hundredths percent (33.34%) have been routinely awarded in class actions.”); *Di Giacomo v. Plains All Am. Pipeline*, No. H-99-4137, 2001 U.S. Dist. LEXIS 25532 (S.D. Tex. Dec. 18, 2001) (approving fees of 30%); *Turner*, 472 F. Supp. 2d at 863; *Shaw*, 2018 U.S. Dist. LEXIS 136394, at *3; *Erica P. John Fund*, 2018 U.S. Dist.

LEXIS 69143, at *9; *Regmund*, 2021 U.S. Dist. LEXIS 92346; *In re Willbros Grp. Inc.*, 407 F. Supp. 3d 689, 690 (S.D. Tex. 2018) (approving fees of 30% of settlement benefits).

D. The requested fees are reasonable given the *Johnson* factors crosscheck.

The *Johnson* factors to be utilized as a crosscheck to ensure the reasonableness of a fee are (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. 488 F.2d at 720. But, not all the *Johnson* figures need be considered. *See, e.g., Uselton*, 9 F.3d at 854 (“[R]arely are all the *Johnson* factors applicable; this is particularly so in a common fund case.”). Review of the *Johnson* factors confirms that fees constituting 24.3% or less of the settlement benefit is eminently reasonable here.

1. The time and labor required

Class Counsel expended significant time and resources on this action, accumulating a lodestar of approximately \$3.262 million dollars. Phillips Decl. at ¶¶ 26-32; *see also Burford v. Cargill, Inc.*, No. 05-0283, 2012 U.S. Dist. LEXIS 161232, at *8 (W.D. La. Nov. 8, 2012) (because the case required “enormous amount of time and labor... this factor supports a substantial attorney award.”). This time was spent on numerous issues, including (i) propounding multiple rounds of written discovery, (ii) reviewing thousands of pages of production documents, (iii) deposing GEICO’s corporate representatives and other witnesses thoroughly on the issues raised in this suit,

(iv) retaining three experts and providing expert reports, (v) taking and defending expert depositions concerning the entitlement to and computation of class damages, liability, and class-certification related issues, (vi) reviewing voluminous claims data produced by GEICO in discovery that contained tens of millions of lines of data; (vii) litigating multiple motions to dismiss and to compel appraisal, (viii) briefing class certification, (ix) briefing a Rule 23(f) petition for appeal, (x) briefing a full appeal of class certification after interlocutory review was granted, (xi) conducting oral argument in front of the Fifth Circuit in New Orleans, (xii) conducting oral argument in front of this Court as to the merits on a motion to dismiss and as to class certification, etc. Phillips Decl. at ¶¶ 15, 21. And this lodestar amount is after the exercise of billing judgment and exclusion of hundreds of hours—in an abundance of caution that likely veered into the realm of overly-conservative—to ensure no time is included that is even arguably duplicative, overlapping, or unnecessary. *Id.* at ¶¶ 26-32.

This would equate to a lodestar multiplier of 2.51, utilizing normally-approved and accepted rates and conservatively projecting remaining time to be expended on this litigation, which is well within the multiplier range that courts throughout the Fifth Circuit, including this Court, have deemed reasonable. *Id.* at ¶¶ 28-32; *see also, e.g., In re Enron Corp. Securities, Derivatives, and ERISA Litigation*, 586 F. Supp. 2d 732, 803 (S.D. Tex. 2008) (approving a multiplier of 5.2); *Di Giacomo*, 2001 U.S. Dist. LEXIS 25532, at *11 (noting “courts typically apply multipliers ranging from one to four” and approving attorneys’ fees that equated to a 5.3 multiplier); *Regmund*, 2021 U.S. Dist. LEXIS 92346 (finding a multiplier of 2.1 was eminently reasonable given authority approving much higher multipliers); *Ahearn v. Fibreboard Corp.*, No. 6:93cv526, 1995 U.S. Dist. LEXIS 11524 (E.D. Tex. Jul. 21, 1995) (“The multiplier of 4.8 is well

within the range of multipliers awarded in other complex cases.”⁴ As numerous courts have explained, the availability of a multiplier is of considerable importance to acknowledge the risk borne by Class Counsel in complex cases which require significant cost—as this one did—with uncertain or even unlikely success, as was the case here, given the only authority from the Fifth Circuit on a similar case was to reject the insured’s claims for sales tax and fees.

As such, this factor counsels in favor of approving the requested fees and costs.

2. Novelty and difficulty of the issues

“Most class actions are inherently complex.” *Moore v. Aerotek, Inc.*, No. 2:15-cv-2701, 2017 U.S. Dist. LEXIS 102621, at *10 (S.D. Ohio June 30, 2017). This case is no exception. The proposed settlement here was not reached until Class Counsel had conducted extensive pre- and post-suit analysis and investigation, consulted about the novel and difficult issues raised, thoroughly researched the law and facts, engaged in discovery and extensive data analysis, assessed the risks of prevailing at both the trial court and appellate levels, engaged in contentious litigation, fully briefed multiple motions to dismiss and compel appraisal, fully briefed and secured class certification, fully briefed a 23(f) appeal and then fully briefed that appeal on the merits after interlocutory review was granted, engaged in oral argument at the Fifth Circuit, and so forth. One court in a substantially similar total-loss class action characterized it as a “complex class action” that involved “novel areas of law.” *Sos v. State Farm Mut. Auto. Ins. Co.*, No: 6:17-cv-890-PGB-LRH, 2021 U.S. Dist. LEXIS 52898, at *10 (M.D. Fla. Mar. 19, 2021).

Moreover, Class Counsel litigated this case under a novel theory with adverse law and a complicated class certification analysis. As previously stated, the only authority from the Fifth

⁴ Again, the actual multiplier is somewhat lower, because it does not subtract the over \$90,000.00 in costs expended by Class Counsel in litigating this matter.

Circuit prior to this case *rejected* a similar theory brought by the insured on the merits. *Singleton v. Elephant Ins. Co.*, 953 F.3d 334 (5th Cir. 2020) (affirming dismissal of claim that ACV of totaled autos includes sales tax and fees under Texas law). And the Fifth Circuit on several occasions has held that class certification is inappropriate in the context of claims challenging the ACV payments for total-loss insured autos. *See, e.g., Sampson v. United Servs. Auto. Ass’n*, 83 F.4th 414 (5th Cir. 2023); *Bourque v. State Farm Mut. Auto. Ins. Co.*, 89 F.4th 525 (5th Cir. 2023). These authority demonstrate the complexities and hurdles that Class Counsel, in this case, were able to successfully navigate to achieve a favorable settlement. This factor strongly weighs in favor of the attorneys’ fees and costs sought here.⁵

3. Customary Fee

As set forth above, the percentage sought here—24.3%—is less than the amount customarily approved by district courts in this circuit. *See supra*, Sec. II(C); *see also Claudet*, 2020 U.S. Dist. LEXIS 103040, at *35 (finding the “customary fee” factor weighed in favor of approving requested fees because courts “routinely award up to one-third of the total settlement award in attorney fees”). As such, this factor also counsels in favor of the attorneys’ fees and costs sought here.

4. Whether the fee is fixed or contingent

This case was taken purely on a contingent basis, and thus the risk of non-success was borne entirely by Class Counsel. Phillips Decl. at ¶ 14. As such, Class Counsel should be

⁵ Of course, this inherently means the skill required to navigate such issues was significant—and as such, the “skill required” factor also counsels in favor of approving the requested amount in attorneys’ fees and costs. *See, e.g., Claudet v. Cytec Ret. Plan*, No. 17-10027, 2020 U.S. Dist. LEXIS 103040, at *34 (E.D. La. Jun. 12, 2020) (finding this factor weighed in favor of approving the requested fees and costs because “[t]he challenging legal questions and the nature of the class action required Class Counsel to have specialized knowledge and legal skill in order to reach a favorable outcome.”).

“rewarded” for “accepting the risk” of unsuccessful results—the costs of which they would have entirely borne—and yet “achieving successful results.” *See Turner*, 472 F. Supp. 2d at 866. This factor counsels in favor of approval of the requested attorneys’ fees and costs. *See Claudet*, 2020 U.S. Dist. LEXIS 103040, at *35 (“Class Counsel litigated this matter on a contingency basis, undertaking significant risk and requiring a substantial financial investment without guaranteed victory...[T]his factor weighs in favor of approval.”); *Bowers v. Windstream Ky. East, LLC*, No. 3:09-CV-440-H, 2013 U.S. Dist. LEXIS 157242, at *13 (W.D. Ky. Oct. 31, 2013) (“Given the huge risk to counsel in taking this case on a contingency basis, to award fees and expenses based on one-third of the direct cash payments credit and rebates in the case is most reasonable and fair”) (cleaned up); *see also Carr v. Guardian Healthcare Holdings, Inc.*, 2022 U.S. Dist. LEXIS 32094, at *8 (S.D. Oh. Jan. 19, 2022) (approving fees equal to one-third of class recovery in part because “Class Counsel litigated this case on a wholly contingent basis with no guarantee of recovery.”).

5. The amount involved and amounts obtained

The value of the benefits rendered to the Settlement Class is substantial. Upon submission of a claim, Settlement Class Members who were not paid ACV Sales tax as part of the original claim payment will receive 100% of the ACV Sales Tax damages that could have been secured at trial and Settlement Class Members will receive 80% of their Regulatory Fee damages. *Id.* at ¶ 11. This far exceeds amounts that other courts have found to be significantly beneficial and favoring a requested award of attorneys’ fees and costs. *See, e.g., Kemp v. Unum Life Ins. Co. of Am.*, No. 14-0944 2015 U.S. Dist. LEXIS 166164, at *29 (E.D. La. Dec. 11, 2015) (finding this factor favored approval of attorneys’ fees where settlement secured “half” of potential damages); *In re Polyurethane Foam Antitrust Litig.*, 2015 U.S. Dist. LEXIS 23482, at *17 (N.D. Oh. Feb. 26, 2015) (“A settlement figure that equates to roughly 18 percent of the best-case-scenario classwide

overcharges is an impressive result in view of these possible trial outcomes.”); *Shane Grp. Inc. v. Blue Cross Blue Shield of Mich.*, 833 F. App'x 430, 431 (6th Cir. 2021) (noting that 32% of alleged damages was a “substantial recovery”); *Erica P. John Fund*, 2018 U.S. Dist. LEXIS 69143, at *22 (approving fees constituting 33.3% of settlement benefits where settlement benefits constituted “11.8% to 42.9%” of potential damages).

As such, this factor weighs in favor of approving attorneys’ fees and costs here.

6. Experience, ability, and reputation of the attorneys⁶

Class counsel have extensive experience litigating cases involving whether sales tax and/or title and tag transfer fees are including in the actual cash value of insured vehicles across the county, including against GEICO, and have secured dozens of million-dollar and multi-million dollar settlements, gaining extensive knowledge of the claims and defenses at issue, as well as GEICO’s specific defenses relating to data systems and their own particular policy language and policy and procedures. Phillips Decl. at ¶ 22; *see also BleachTech, LLC v. UPS, Inc.*, 2022 U.S. Dist. LEXIS 128736, at *25-26 (E.D. Mich. Jul. 20, 2022) (“[T]he skill of legal counsel should be commensurate with the novelty and complexity of the issues, as well as the skill of the opposing counsel. Litigation of this action required counsel highly trained in class action law and procedure as well as the specialized issues presented here.”). One of the undersigned, Mr. Hall, developed the theory and brought the first case in the country alleging the theory at issue in this case.

This factor strongly counsels in favor of the requested attorneys’ fees and costs here.⁷

⁶ This Court already appointed the undersigned as Class Counsel, having found them sufficiently skilled and experienced under Rule 23(g)—presumably based in part on the declarations and resumes submitted by Class Counsel in the courts of class certification briefing—a decision that was affirmed by the Fifth Circuit. So, although the declarations submitted as Composite Exhibit 2 and by Mr. Phillips include some discussion of the various attorney’s experience and previous success, the point is not pressed here.

⁷ The remaining factors—the nature and length of the relationship, time constraints, and preclusion

E. Application for Service Award

As noted above, a \$7,500.00 Service Award is sought for the Named Plaintiffs for serving as Class Representatives. While the Settlement provides for modest Service Awards to the Named Plaintiffs to compensate them for filing the Action and the time they dedicated to the prosecution of this Action for the benefit of the Class, courts recognize that such contribution awards are appropriate and do not grant preferential treatment. *See Johnson*, 2013 U.S. Dist. LEXIS 74201, at *14 (recognizing appropriateness of incentive awards). And the proposed Service Awards fall well within the range of awards approved by numerous courts, including courts in this Circuit. *See Liberte Capital Grp. v. Capwill*, No. 5:99-cv-818, 2007 WL 2492461, at *1 (N.D. Ohio Aug. 29, 2007) (“Incentive awards, where appropriate, generally range from a few thousand dollars to \$85,000.00”) (collecting cases); *see also Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving a \$25,000 incentive award); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 973 (E.D. Tex. 2000) (approving incentive awards of \$25,000 to each of two named plaintiffs); *In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 504 (N.D. Miss. 1996) (approving incentive awards of \$10,000.00 to each of the four named plaintiffs). And the requested amount here is consistent with or below amounts this Court has often deemed reasonable. *See, e.g., Regmund*, 2021 U.S. Dist. LEXIS 92346, at *14 (approving \$7,500.00 service award as reasonable);

The \$7,500.00 service awards are eminently appropriate here given Plaintiffs’ efforts to protect the interests of the Settlement Class, the time and effort expended pursuing these matters, as well as the substantial benefit bestowed on the Class. Plaintiffs regularly communicated with Class Counsel, reviewed documents, assisted and participated in settlement negotiations, sat for

of other employment—are either neutral or weigh in favor of approval. Class Counsel do not press those issues, as the others clearly counsel in favor of approving the requested attorneys’ fees.

deposition and expended significant time doing so and preparing to do so, and generally acted in a fashion that was consistent with a class representative of the highest ethical standards. Phillips Decl. at ¶ 17; *see also In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1089 (S.D. Tex. 2012) (In analyzing appropriateness of service awards, “courts look to: (1) the actions the plaintiff has taken to protect the interests of the class; (2) the degree to which the class has benefitted from those actions; and (3) the amount of time and effort the plaintiff expended in pursuing the litigation.”). Here, Plaintiffs were essential to Class Counsel’s ability to prepare and bring this case and, at \$7,500.00, the requested Service Awards are at the low end of the spectrum that have been held reasonable by Fifth Circuit courts and other courts throughout the country.

Thus, Class Counsel respectfully requests that this Court grant the Service Awards to the Plaintiffs.

CONCLUSION

Plaintiffs respectfully request the Court approve the requested amounts in attorneys’ fees and costs and for the Service Awards, and enter an order of final approval including the content of the proposed Order which will be submitted with Plaintiff’s Motion for Final Approval, including, as relevant here:

1. Approving Defendant’s agreement to pay and directing payment of attorneys’ fees and costs of \$8,189,000.00, in accordance and under the terms of the Agreement;
2. Approving Defendant’s agreement to pay and directing payment of the Service Award of \$7,500.00 to each Named Plaintiff.

Dated: June 10, 2024

Respectfully submitted,

/s/ Jake Phillips

Jacob Phillips

JACOBSON PHILLIPS PLLC

478 E. Altamonte Dr., Ste. 108-570
Altamonte Springs, FL 32701
(407) 720-4057
jacob@jacobsonphillips.com

Edmund A. Normand (admitted *pro hac vice*)
NORMAND PLLC
3165 McCrory Place, Suite 175
Orlando, FL 32803
Tel: (407) 603-6031
Fax: (888) 974-2175
ed@normandpllc.com

Richard Daly (attorney in charge)
Texas Bar No. 00796429
John Scott Black
Texas Bar No. 24012292
DALY & BLACK, P.C.
2211 Norfolk St., Suite 800
Houston, TX 77098
Tel: (713) 655-1405
Rdaly@dalyblack.com
jblack@dalyblack.com

Andrew Shamis
Texas Bar No. 24112322
Angelica M. Gentile
Texas Bar No. 24112322
SHAMIS & GENTILE, P.A.
14 N.E. 1st Ave., Suite 705
Miami, Florida 33132
Tel: (305) 479-2299
ashamis@shamisgentile.com

Scott Edelsberg
Florida Bar No. 088733
EDELSBERG LAW, PA
20900 NE 30th Ave., Ste. 417
Aventura, FL 33180
Tel: (305) 975-3320
scott@edelsberglaw.com

Christopher B. Hall (admitted *pro hac vice*)
HALL & LAMPROS, LLP
400 Galleria Parkway, Suite 1150
Atlanta, GA 30339

Tel: (404) 876-8100
Fax: (404) 876-3477
chall@hallandlampros.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court which will send notice of electronic filing to all counsel of record.

/s/ Jake Phillips
Jacob Phillips, Esq.

EXHIBIT 1

**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

DECLARATION OF JACOB L. PHILLIPS

1. My name is Jacob L. Phillips. I am over the age of majority, provide this declaration voluntarily, and it is based on personal knowledge.

2. I am a partner in the law firm Jacobson Phillips PLLC and am one of counsel of record representing Plaintiffs in the above-styled lawsuit.

3. This is a class action lawsuit on behalf of GEICO Texas insureds who submitted covered first party auto total loss claims with dates of loss during the class period. Second Amended Complaint (SAC), at ¶¶ 1-4, 17-20, 102-104. All Settlement Class Members¹ were insured under form auto insurance policies with identical material terms. *Id.* at ¶ 2, 20.

¹ Capitalized terms herein shall have the definition provided for them in the Agreement.

4. Discovery has revealed that approximately 310,000 class members submitted first party total loss claims during the class period and were not (1) paid regulatory fees associated with the titling or registration of a vehicle in Texas, which Plaintiff contends were due under their GEICO Policy (“Transfer Fees”), and, (2) for a subset of that group during part of the class period, were not paid sales tax with respect to leased vehicles for which a total loss claim was made. Ex. E to Motion for Class Certification (“Cert Motion”), at 23; Ex. C to Cert Motion at 2–3.

5. Titling a vehicle requires payment of a \$28.00 or \$33.00 fee, depending on county. Ex. K to Cert Motion (Kuntz Decl.), at 7. Registration fees include a state base fee of \$50.75, along with county fees that are mandatory for insureds in those counties. *Id.* at 8–9. Moreover, vehicles must pass safety/inspection prior to registration, the fee(s) for which are \$7.50 or \$14.25. SAC at ¶ 53.

6. In Texas, sales tax of 6.25% is imposed on every vehicle transaction. Tex. Transp. Code §§ 152.021(a)-(b). Sales tax calculated as a percentage of the purchase price is owed even if the car is to be leased—and invariably, such tax is passed to the lessee. Ex. J to Cert Motion, at ¶¶ 5–6.

7. The Motion for Preliminary Approval seeks certification of two Settlement Classes: the Sales Tax Class and the Regulatory Fees Class.

8. The total amount of benefits that GEICO has agreed to make available for the Settlement Classes is approximately \$33,700,000.00. Agreement, ¶¶ 3, 38.

9. The procedural background recounted in the Motion for Preliminary Approval is true and correct.

10. The Agreement was reached pursuant to arms-length negotiations without collusion. Specifically, the parties participated in multiple mediation sessions before the

Agreement was reached. The negotiation process was rigorous and highly contested by sophisticated counsel, and conducted under the supervision of a neutral mediator, Rodney Max. Further, there are no side agreements not reflected in the Agreement.

11. The Agreement provides payment of sales tax in the amount of 6.25% of the Sales Tax Class Member's adjusted vehicle value (100% of applicable state sales tax sought) to Plaintiffs and all class members who submit a claim (Agreement at ¶ 38(a)), less any amounts previously paid in sales tax and less the Class Member's pro-rata share of any Class Counsel Fee Award. Regulatory Fees Class Members who submit a claim will be entitled to \$80.00 in Regulatory Fees (approximately 80% of Regulatory Fees alleged to be owed), less any amounts previously paid in Regulatory Fees and less the Class Member's pro-rata share of any Class Counsel Fee Award. *Id.* ¶ 38(b). The cash benefit available to class members in the settlement is approximately \$33,700,000.00. Agreement at ¶ 38(A). The amount of Regulatory Fees depends on county (because the counties impose different local fee amounts). We, along with Mr. Kuntz, determined the per-county fee and, based on those amounts and population size per county, calculated that the average Regulatory Fee amount that would have been recovered if Plaintiffs have fully prevailed at trial would have been approximately \$100.00. So, the \$80.00 Regulatory Fee amount GEICO agreed to pay constitutes approximately 80% of the potential damages.

12. In this action, Plaintiffs sought to recover Sales Tax and Regulatory Fees under an unsettled legal theory with inconsistent authority. Numerous courts have held that sales tax and title and registration fees are not part of a totaled vehicle's ACV, including the Fifth Circuit applying Texas law. *See, e.g., Singleton v. Elephant Ins. Co.*, 953 F.3d 334 (5th Cir. 2020); *Pieczonka v. Progressive Select Ins. Co.*, 840 F. App'x 856 (6th Cir. 2021); *Thompson v.*

Progressive Universal Ins. Co., 420 F. Supp. 3d 867 (W.D. Wis. 2019). The Agreement resolves these issues in favor of the Settlement Classes.

13. This was a highly contested lawsuit relating to a controversial legal theory that to my knowledge is without precedent in the State of Texas, except that the Fifth Circuit rejected similar claims in *Singleton*, albeit under different policy language.

14. The proposed Agreement provides that Class Counsel may apply for attorneys' fees and costs not to exceed \$8,189,000.00 (24% of the Cash Settlement Benefits). Agreement at ¶¶ 38, 47. Class Counsel took this case on a purely contingent basis. Had Plaintiffs not prevailed in this case, Class Counsel would have entirely borne the cost and time expended.

15. Notably, Plaintiffs and Class Counsel have expended significant costs—including retaining and paying numerous experts, taking depositions and paying for deposition costs, copying costs, discovery costs, soft costs, and so forth, and have expended thousands of hours of time, including reviewing tens of millions of lines of data in the extensive spreadsheet data, reviewing tens of thousands of documents, litigating multiple motions to dismiss and to compel appraisal, briefing class certification, briefing a Rule 23(f) petition for appeal, briefing a full appeal of class certification after interlocutory review was granted, conducting oral argument in front of the Fifth Circuit in New Orleans, conducting oral argument in front of this Court as to the merits on a motion to dismiss and as to class certification, etc. Moreover, this litigation has included numerous complicated issues relating to the merits, class certification, and novel issues of Texas law, including whether the TPPCA is strict liability or instead includes a reasonableness component.

16. There is no conflict of interest between the named Plaintiffs and the members of the Settlement Classes. To the contrary, their interests are perfectly aligned, as this Court found in

granting class certification of the litigation Class. Because there are no substantive changes to the Class Definitions beyond timing (the difference being that the proposed Settlement Class runs through the date on which preliminary approval is granted, rather than ending on the date the litigated classes were certified), certification of the Settlement Classes is proper for the same reason that his Court granted class certification, which the Fifth Circuit affirmed.

17. Plaintiffs have been active participants throughout this litigation, including by: (a) gathering and providing documents to counsel to be produced to GEICO, (b) engaging in the presuit investigation process by submitting documents and policies to counsel to review, speaking in person and/or over phone or email to discuss various questions counsel had, (c) providing deposition testimony, and (d) seeking to understand what “class actions” are and what it means to be a fiduciary and a class representative. Plaintiffs are further committed to representing the Classes and ensuring that their interests are protected to the best of their ability. Plaintiffs were insured under GEICO policies, and suffered damages due to GEICO’s failure to pay Sales Tax and/or Regulatory Fees attendant to the replacement of a totaled vehicle. Plaintiffs have standing to pursue their claims against GEICO.

18. In entering into the Agreement, Plaintiffs manifested their belief that the Agreement reached is beneficial to the Settlement Classes.

19. Moreover, class counsel is experienced in litigating class actions and complex litigation, including successfully litigating a class action with similar issues. Plaintiff and Class Counsel will adequately protect the interests of the Settlement Classes.

20. The average Sales Tax and/or Regulatory Fees for each class member ranges from approximately \$80.00 to several hundred dollars. These are relatively small amounts when compared to the cost of litigating a breach of contract case against a large insurance company.

21. Plaintiffs' counsel gained sufficient information about the strengths and weaknesses of the Plaintiffs' case to make a reasoned judgment about the desirability of settling the cases on the terms set forth in the Agreement. Counsel developed a complete understanding of the case by propounding multiple rounds of written discovery, reviewing thousands of pages of production documents, deposing Defendant's corporate representatives thoroughly on the issues raised in this suit, retaining three experts and providing expert reports and taking and defending expert depositions concerning the entitlement to and computation of class damages, and reviewing voluminous claims data produced by GEICO in discovery that contained tens of millions of lines of data.

22. Through these efforts, Plaintiffs have gained a complete understanding of all issues in this litigation. Also Class Counsel has collectively litigated numerous substantively identical claims against GEICO in Florida, Indiana, Ohio, California, New Jersey, and Georgia—including six cases in which class certification was granted and five cases that were litigated through summary judgment—and have, through those cases, obtained comprehensive knowledge of GEICO's internal procedures, practices, data systems, and data retention policies, which have significantly assisted us in assessing the pro and cons of the claims and the likelihood of success.

23. Attorneys' fees and costs were negotiated after resolution of the class damages.

24. I have extensive experience successfully litigating class actions, including cases very similar to the present case. I have been lead counsel in cases where class certification was obtained against opposition on more than 15 occasions, have litigated numerous appeals in the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuit Courts of Appeal, as well as state appellate courts in Florida, Ohio, and Missouri, and have been lead counsel in dozens of class action settlements securing hundreds of millions of dollars on behalf of class members.

25. Between them, counsel for the Plaintiffs have extensive and significant experience in class litigation, complex business litigation, appellate litigation, insurance litigation, and hundreds of trials in numerous contexts, as well as experience litigating all over the State of Texas. *See* Dkt. No. 60-2, ¶¶ 5–22 and Composite Exhibit 2 attached hereto.

26. In addressing the time expended and lodestar amounts discussed herein, billing judgment was exercised by all firms involved in this litigation, both specifically and generally. Generally, we intentionally set forth a division of labor to *avoid* duplication and unnecessary time expended as much as possible. For example, I and Chris Hall were primarily responsible for writing briefs, I handled oral argument for class certification and was primarily responsible for appeals, including oral argument. Scott Edelsberg and Ed Normand were primarily responsible for mediation. Chris Hall was primarily responsible for all work on damages and data analysis. Andrew Shamis was primarily responsible for all client-related work, including discovery, depositions, and client communication. Chris Hall, Ed Normand, and myself were responsible for expert-related work, including defending and taking depositions and assisting in preparing expert reports. Daly & Black were primarily responsible for work relating to the TPPCA claim. Obviously, there was overlap in accordance with best practices to ensure that representation was vigilant and excellent—and we believe the results in this case support that the representation in this matter was, indeed, excellent. But consistent with these broad principles, for categories for which the firms were not primarily responsible, billing judgment was exercised by subtracting—fully or partially—in those categories for which the firms were not responsible. As just an example, I did not include in the below-mentioned times approximately 20 hours devoted to data analysis, 12 hours devoted to mediation, 6 hours devoted to preparing the motion for preliminary approval,

and 4 hours devoted to document review, all in an abundance of caution to ensure time that is even arguably duplicative or unnecessary is not included.

27. I have reviewed the time entries and declarations from co-counsel, and can attest that similar billing judgment was exercised to similarly avoid the possibility of duplicative or unnecessary time, as reflected, *inter alia*, in the declarations submitted as composite Exhibit 2. For example, Edelsberg Law, P.A., did not include over 10 hours devoted to assisting with appellate brief drafting and review, and did not include approximately 8 hours in preparing witnesses for deposition and reviewing pleadings; Shamis & Gentile did not include approximately 15 hours in document review, nor any time expended by associates or paralegals, which likely constituted over 100 hours; Hall & Lampros did not include dozens of hours in editing and reviewing briefs relating to appraisal and 12(b)(6)-related issues; and Normand PLLC did not include at least 10 hours in reviewing filings and preparing for hearings. Another example: Edelsberg Law, P.A., Jacobson Phillips PLLC, and Daly & Black did not include nearly 100 hours in staff or paralegal time—again, in an abundance of caution—just to ensure no duplicative or overlapping time was included for time spent by staff and non-attorneys. And Daly & Black did not include approximately 60 hours expended by Mr. Black, a senior partner, because it was predominantly spent on strategy and co-counsel communications, and was therefore *arguably* duplicative.

28. Jacobson Phillips PLLC's total lodestar was as follows:

Timekeeper	Rate	Hours	Total
Jacob Phillips	\$723.00	712.0	\$514,776.00
Josh Jacobson	\$515.00	30.5	\$15,707.50
Joey Phillips	\$75.00	15.0	\$1,125.00
			\$531,608.00

29. These were prepared from contemporaneous time records regularly prepared and maintained by Jacobson Phillips PLLC in the usual course and manner of my firm. We maintain detailed records regarding the amount of time spent, and the lodestar calculation is based on current billing rates, including rates that have been approved as reasonable by other federal and state district courts, billing records by other firms with attorneys of similar experience and time, and other factors deemed relevant in the Fifth Circuit and across all jurisdictions.

30. Based on the declarations submitted as Composite Exhibit 2, the total lodestar for all firms is \$3,112,529.00.

31. Based on my experience in dozens of total-loss class actions settlements, including against GEICO, I conservatively estimate that at least an additional 300 hours will be required in preparing for and conducting the final fairness hearing, assisting in the claim process, and otherwise completing this litigation and bringing this case to final judgment. At a blended rate of \$500.00 per hour, this would add an additional \$150,000.00 in lodestar. For example, in one case, we spent well over 300 hours, relative to class members, assisting class members in submitting or clarifying claims—to say nothing of drafting a motion for final approval, preparing for and attending the final fairness hearing, and responding to any objections. So, this estimate can be fairly characterized as conservative.

32. So, under a total estimate lodestar of \$3,262,529.00, the relevant multiplier to get to the unopposed fee request of \$8,190,000.00 would be 2.51, which is eminently reasonable. And even this is an overstatement, because Class Counsel expended costs of over \$90,000.00 in litigating this matter.

33. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Further the declarant sayeth naught.

Dated: June 10, 2024

/s/ Jake Phillips

Jacob Phillips, Esq.

Attorney for Plaintiffs and Settlement Classes

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.	§	CLASS ACTION NO. 4:20-CV-00799
GEICO ADVANTAGE INSURANCE	§	
COMPANY, GEICO INDEMNITY	§	
COMPANY, GOVERNMENT	§	
EMPLOYEES INSURANCE COMPANY,	§	
GEICO COUNTY MUTUAL INSURANCE	§	
COMPANY, AND GEICO CHOICE	§	
INSURANCE COMPANY,	§	
DEFENDANTS.	§	
	§	
	§	
	§	

**DECLARATION OF SCOTT A. EDELSBERG
IN SUPPORT OF PLAINTIFFS’ UNOPPOSED MOTION FOR
ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS**

I, Scott Edelsberg, pursuant to section 1746 of title 28 of the United States Code, declare:

1. I am the managing partner at Edelsberg Law. Edelsberg Law is a class action firm that litigates cases in a broad range of industries, including banking, insurance, data privacy, deceptive and unfair trade practices and product liability. *See Firm Resume* attached hereto.

2. I have been licensed to practice law in the State of Florida since 2013. I have also been licensed to practice law in the State of California since 2019. And I am a member of the bars of numerous federal district courts.

3. I am one of the counsel of record representing Plaintiffs and my firm has been appointed as Class Counsel in this action along with the other firms. I have personal knowledge of the matters stated herein and, if called upon, I could and would testify competently to those matters. I submit this

Declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs, and Approval of Individual Settlements.

4. I have extensive experience successfully prosecuting complex class actions. Edelsberg Law regularly engages in complex litigation involving auto insurance and has frequently been appointed as class counsel by courts throughout the country, including cases like the present case. *See Davis, et. al. v. Geico Casualty Company, et. al.*, No. 19-cv-02477 (S.D. Ohio 2023); *Andrews v. State Auto Mut. Ins. Co.*, No. 2:21-CV-5867 (S.D. Ohio 2023); *Arevalo, et. al. v. USAA Casualty Ins. Co., et. al.*, No. 2020CI16240 (Bexar County, Texas 2023); *Jacques, et. al. v. Security National Ins. Co.*, No. CACE-19-002236 (Fla. 17th Cir. Ct. 2022); *McPheeters v. United Services Automobile Association and Garrison Property and Casualty Ins. Co.*, No. 1:20-CV-00414-TSB (S.D. Ohio 2022); *Hinds-Thomas et al. v. LM General Ins. Co. et al.*, No. 22SL-CC04131 (Circuit Court of St. Louis County, MO); *Petit Beau, et. al., v. Ocean Harbor Casualty Ins. Co.*, No. CACE-18-029268 (Fla. 17th Cir. Ct. 2021); *Ostendorf v. Grange Indem. Ins. Co.*, No. 2:19-CV-1147 (S.D. Ohio 2020).

5. My duties in this litigation included pre-suit investigation by reviewing numerous intake documents; overseeing case development and assignment of work and tasks among Edelsberg Law; formulating and implementing an effective litigation strategy; reviewing and revising case documents, including but not limited to, Plaintiffs' complaint and amended complaints, Plaintiffs' opposition to Defendants' motion to dismiss, Plaintiffs' motion for class certification and related filings; reviewing and revising the Plaintiffs' responses to Defendants' discovery requests; overseeing and coordinating the Plaintiffs' deposition preparation and depositions; analyzing documents and data produced by Defendants; damages analyses; preparing for and engaging in settlement negotiations and mediation, including numerous hours negotiating the material terms of the settlement; reviewing and editing the mediation briefs; negotiating the settlement and settlement papers; discussing the notice and administration plans with co-counsel and the Settlement Administrator to ensure compliance with due

process; communicating with the Settlement Administrator; coordinating and monitoring the notice program; reviewing and revising Class Counsel’s motions in support of preliminary and final approval of the Settlement and an award of attorney’s fees, costs, and individual settlement awards. I provided assistance while being mindful to avoid duplicative efforts both within my firm and with co-counsel. Based on this work and my experience I fully endorse this settlement.

6. Throughout this litigation, my firm and I have endeavored to operate efficiently and to avoid unnecessary duplication both internally within my firm and externally as we divided tasks and responsibilities among co-counsel. Based on my experience in complex class action litigation, it is my judgment that the number of hours expended were reasonable and necessary for my firm’s representation of Plaintiffs’ and the Settlement Classes. Note that I did not include any time by staff or paralegals—an amount I estimate to be at least 60 hours—in an abundance of caution in case any such work was duplicative or unnecessary based on work by staff or paralegals employed by co-counsel firms.

7. The following table summarizes Edelsberg Law’s lodestar, and for each timekeeper reflects: (i) his or her title or position; (ii) the total number of hours he or she worked; (iii) his or her current hourly rate; and (iv) his or her lodestar. In assembling this summary lodestar, I personally vetted the time. This summary does not include any time related to the fee motion or supporting documents, including this declaration. This summary also does not include any time billed by any paralegals or support staff.

Timekeeper	Position	Hourly Rate	Total Hours	Lodestar
Scott Edelsberg	Partner	\$750	525.25	\$393,937.50
Chris Gold	Partner	\$750	28	\$21,000.00
Rachel Dapeer	Of Counsel	\$750	42.25	\$31,687.50
TOTALS:				\$446,625.00

8. These records were prepared from contemporaneous time records regularly prepared and maintained by Edelsberg Law in the usual course and manner of my firm. Edelsberg Law maintains detailed records regarding the amount of time spent by my firm, and the lodestar calculation is based on my firm's current billing rates. These records are attached hereto as Exhibit B.

9. I have personal knowledge of the hourly rates charged by Edelsberg Law attorneys and support staff included in the foregoing table. The hourly rates for the attorneys of my firm are the usual and customary rates set by the firm for each individual for matters of this complexity and in this legal market or similar markets. These hourly rates are the same as, or comparable to, the rates accepted by courts in other class action litigation. My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work and that have been approved by courts in other class actions within this legal market, this Circuit and nationwide.

10. Based on the foregoing, I am able to conclude that the rates charged by my firm are commensurate with those prevailing in the market for such legal services furnished in complex class action litigation such as this. My firm's rates have been approved in numerous other complex class action cases in federal courts, including but not limited to: *Davis, et. al. v. Geico Casualty Company, et. al.*, No. 19-cv-02477 (S.D. Ohio 2023) (ECF No. 229); *South, et. al. v. Progressive Select Insurance Company, et. al.*, No. 19-cv-21760 (S.D. Fla. 2023) (ECF No. 258); *Soto-Melendez v. Banco Popular de Puerto Rico*, No. 3:20-cv-01057 (D.P.R. 2023) (ECF No. 128); *Black v. USAA Casualty Ins. Co.*, No.: 1:21-cv-01363-LMM (N.D. Ga. 2023) (ECF No. 69); *Andrews v. State Auto Mut. Ins. Co.*, No. 2:21-CV-5867 (S.D. Ohio 2023) (ECF No. 51); *Ostendorf v. Grange Indem. Ins. Co.*, No. 2:19-CV-1147 (S.D. Ohio 2020) (ECF No. 46).

11. In my judgment and based on my experience in complex class action litigation and other litigation, the number of hours expended, and the services performed by my firm, were reasonable and necessary for my firm's representation of Plaintiffs.

12. I am prepared to provide the Court with any further documentation or explanation regarding Edelsberg Law's lodestar, upon request by the Court.

13. I have represented Plaintiffs and the class purely on a contingency fee basis in this matter and have not received any payment for my time, effort, or expenses to date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of June 2024, at Miami, Florida.

By: /s Scott Edelsberg
SCOTT EDELSBERG

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

CLASS ACTION NO. 4:20-CV-00799

**DECLARATION OF RICHARD D. DALY
IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES**

I, Richard D. Daly, declare as follows:

1. My name is Richard D. Daly. I am over 21 years of age, of sound mind, capable of executing this Declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.
2. I submit this declaration in support of Class Counsel's application for Attorneys' Fees, Costs and Class Representative's Service Award.
3. I am one of several co-lead counsel for Plaintiffs and the certified class in the above-styled litigation. I am the co-founder and co-owner of Daly & Black, P.C.

I. BACKGROUND

4. I am a litigation attorney with more than twenty-seven years of experience. I am a 1996 graduate of the University of Illinois School of Law in Champaign-Urbana, IL. I graduated in the top 10 in my class, magna cum laude and Order of the Coif. I am also a 1993 graduate of the University of California at Los Angeles (UCLA). I am licensed to practice law in Texas, Colorado, Nebraska, and Kentucky and am admitted to practice in multiple federal district and appellate courts.

5. Over the course of my career I (or my firm) have been named a Super Lawyer, American Registry Most Honored Professional, U.S. News, Best Law Firm, Top 100 U.S. Verdicts, one of “Houston’s Top Lawyers”, “Rising Star”, National Law Journal’s Law Firm of the Year for Insurance Law, and multiple other awards.

6. I founded Richard Daly Law Firm in 2010, which merged into Daly & Black, P.C. in 2014 with co-founder John S. Black (formerly of Gibbs & Bruns). My firm offices at 2211 Norfolk St., Ste. 800, Houston, TX 77098.

7. Before founding Richard Daly Law Firm and then Daly & Black, P.C., I practiced law with Caddell & Chapman in Houston, Texas for 3 and ½ years, and prior to that, for 10 years at Gardere Wynne Sewell, LLP (now Foley & Lardner). During my time with Caddell & Chapman and Gardere Wynne Sewell, I established an outstanding record representing clients in complex litigation across the United States. While at Caddell & Chapman I represented multiple plaintiffs in class actions across the United States. Caddell and Chapman is, and has been for some time, one of the premiere boutique class action firms in the United States.

A. Insurance Litigation Experience

8. In 2009, while at Caddell & Chapman I began to represent insureds against their insurers in first-party insurance litigation. The first case I handled resulted in a \$10 million policy limit settlement for the Park Memorial Condominium Association on Memorial Drive in Houston, Texas. After that I began to focus almost exclusively on first-party plaintiff's litigation throughout the country.

9. Since 2009 I have represented thousands of insureds against their insurers throughout the country. While our firm handles first-party litigation throughout the country, the vast majority of our cases are in the State of Texas. I have become an expert on bad faith, breach of contract and Texas Prompt Payment of Claims Act cases in the State of Texas, as well as attorney's fees.

10. I have been asked to speak at multiple CLEs including both the Texas Bar Association - Insurance Section, and the American Bar Association – Insurance Section on litigating first party insurance cases. In 2017 my law partner, John Black, and I were asked by Governor Abbot to attend multiple meetings at the Governor's office to consult on proposed changes to the Texas Insurance Code as a result of issues arising from Hurricane Harvey. In 2023 I was asked to attend a dinner at the Louisiana Governor's mansion to consult on proposed changes to Louisiana law as a result of Hurricane Ida. In 2023 we received the honor of National Law Journal Insurance Law Firm of the Year. We were runner up for the award in 2022 and are nominated again for the award in 2024.

B. Additional Experience

11. Due to our firm's growing reputation, we now represent thousands of insureds across the country ranging from small residential cases to very large commercial cases. We currently represent the Lubbock Independent School District in a nine-figure claim due to massive damage from a 2019 and 2020 hail storm that was underpaid by its insurers. Representing a state entity

such as a large school district requires authorization and approval from the State Attorney General, which we received.

12. Daly & Black, P.C. is clearly one of the most experienced firms and undoubtedly a leader in first party insurance litigation in the State of Texas. The firm has multiple state and federal district court and appellate opinions. Cited below are just a few of them: *See In Re Hanover Casualty Co.*, 2024 WL 47476 (Tex.App.—Houston [14th Dist.] 2018); *Marchbanks v. Liberty Insurance Corporation*, 602 S.W.3d 817 (Tex. 2020); *Leedy v. State Farm Lloyds*, 2016 WL 519135 (N.D. Tex. 2016); *Lacross v. Liberty Insurance Corp.*, 2017 WL 11633155 (S.D. Tex. 2017); *In re James River Insur. Co.*, 2023 WL 4487722 (Tex.App.—Amarillo 2023); *Montgomery v. State Farm Lloyds*, 2024 WL 2369415 (5th Cir. 2024); *Bagley v. Allstate Fire and Casualty Ins. Co.*, 2019 WL 634067 (N.D. Tex. 2019); *Radcliff v. Allstate Texas Lloyd's*, 2023 WL 2948723 (S.D. Tex. 2023); *Rodriguez v. Safeco Ins. Co. of Ind.*, 2022 WL 6657888 (N.D. Tex. 2022).

II. THE WORK PERFORMED IN THIS LITIGATION

13. As described above, the attorneys in my firm (along with my co-counsel) have the experience and ability required to zealously and competently pursue this litigation on a classwide basis. Our firm was brought in to assist in navigating the complex issues that arise in Texas first-party insurance litigation, with a particular emphasis on the Texas Prompt Payment of Claims Act (“TPPCA”). The Court may remember that it initially denied relief under the TPPCA, but allowed Plaintiffs’ counsel to submit additional briefing, after which the Court reversed its initial decision, allowing Plaintiffs to proceed with a TPPCA claim. That decision was upheld by the Fifth Circuit Court of Appeals which held that the TPPCA is a strict liability statute.

14. I performed an extensive amount of work in this case that resulted in the settlement before the Court. I have created a spreadsheet, organized chronologically by activity, listing attorney name, date, and hours expended on the particular activity or project. I certify that the hours expended as listed in the spreadsheet, were actually expended on the topics stated, and that the hours expended and rate claimed were reasonable.

15. Some of the major tasks performed are described below.

A. Initial Investigation and Filing of Lawsuit.

16. I began investigating this case in 2019, including researching the legal issues and vetting potential class representatives. I assisted in drafting the Complaint and filed the case on March 5, 2020. I also worked closely with the co-counsel to ensure that the class was adequately represented by class representatives dedicated to pursuing this case.

B. Discovery and Discovery Related Motion Practice

17. I assisted in propounding, answering, and reviewing written discovery, including multiple rounds of interrogatories, requests for admission and requests for production, review of Defendants' voluminous document production and responses to written discovery.

C. Defeating Defendants' Motion to Compel Appraisal

18. In addition to the motion practice regarding discovery issues discussed above, there was extensive motion practice on other matters throughout this case. The first substantive victory in this case was defeating Defendants' Motion to Compel Appraisal (briefing and orders including, for example, Dkt. Nos. 22-22.2, 24, 28-28.2, 29, and 30.)

D. Obtaining Class Certification

19. One of the major accomplishments in this case was obtaining and defending class certification. The battle for class certification included heated arguments. GEICO first argued

that Plaintiffs did not possess Article III standing to prosecute their claims. Plaintiffs also overcame all of GEICO's arguments that Plaintiffs failed to adequately establish that the Rule 23(a) prerequisites were satisfied. GEICO attempted (without success) to raise three individual issues which would have precluded a finding of predominance. All three were rejected by the Court. Ultimately the Court granted certification.

E. Interlocutory Appeal.

20. In addition to successful litigation this Court, Plaintiffs were also successful in defeating Defendants' motion for interlocutory appeal of the Court's class certification order in the Fifth Circuit Court of Appeals.

F. Obtaining Settlement in Favor of the Class.

21. With the Court's finding that the Texas Prompt Payment of Claims Act applied to this case, along with the Fifth Circuit's finding that the statute was a "strict liability" statute, Plaintiffs and their counsel had a significant amount of leverage that ultimately led to settlement of the claims. I attended the mediation and explained in excruciating detail how the TPPCA works under Texas law and why it was so important to this case.

G. Settlement and Negotiation of Attorneys' Fees

22. At all points during settlement negotiations, all counsel for Plaintiffs made clear that we would not begin to discuss attorneys' fees until after we agreed on the compensation to the class members. This is standard practice to ensure there are no conflicts, or appearances of conflicts. *See* Federal Judicial Center, *MANUAL FOR COMPLEX LITIGATION*, FOURTH § 21.7 (2004) ("[T]he simultaneous negotiation of class relief and attorney fees creates a potential conflict."); *Acosta v. Trans Union, LLC*, 240 F.R.D. 564, 584-585, 2007 U.S. Dist. LEXIS 16245, *70-71 (C.D. Cal. 2007) ("Attorneys fees are subsidiary to the issue of settlement and should be considered

subsequent to reaching a tentative settlement by the parties.”); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207 (D.N.J. 2005) (favorably noting that “Class Counsel did not begin negotiating their fee until all of the settlement terms for the Class had been fully negotiated; *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 572, 576-77 (D.N.J. 1997), *aff’d*, 148 F.3d 283, 335 (3rd Cir. 1998) (noting that parties properly negotiated settlement before negotiating attorneys’ fees); *In re NFL Players’ Concussion Injury Litig.*, 2015 U.S. Dist. LEXIS 52565, *55-56 (E.D. Pa. Apr. 22, 2015) (noting that the parties were careful not to discuss fees until after an agreement was reach on compensation for class members); *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 308 (3d Cir. 2005) (noting “special danger of collusiveness” when fees “were negotiated simultaneously with the settlement”).

23. As all counsel for Plaintiffs demanded, we did not begin negotiating the amount of attorneys’ fees until the end of the final day of mediation, after the compensation to the class was agreed. The attorneys’ fees were negotiated through the mediator, Rod Max, who is a very experienced mediator who has settled multiple class actions with the same issues. Because the fees will be paid by Defendants, Defendants were incentivized to, and did in fact, negotiate the fee amount. Defendants negotiated the fee down to amount below the 25% and 30% benchmarks recognized in this Circuit.

III. LODESTAR

A. Reported Lodestar Amount

24. Daly & Black, P.C. reports a reduced lodestar in the amount of \$359,100.00.

B. Lodestar Reduced by Writing Off Significant Amount of Time

25. The lodestar reflected above does not reflect all the work devoted to this litigation. John Black, the other principal at Daly & Black, P.C., spent more than 60 hours devoted to this litigation; however, most of that time was spent discussing issues with me relating to strategy and law. I made the decision not to include any time for Mr. Black out of an abundance of caution that such work might be deemed “duplicative”. The same is true for paralegal work. I did not include any Daly & Black, P.C. paralegal work out of an abundance of caution because it could arguably be deemed duplicative as well since the majority of paralegal work was done by paralegals at co-counsel’s respective firms. I also went through my own time records and deleted or reduced certain entries where I felt the time was potentially either duplicative or excessive. Accordingly, Daly & Black’s actual is significantly higher than what is being reported and requested above.

C. The hours expended were actually expended on the topics and activities stated.

26. I hereby verify that the hours expended as reported were actually expended on the activities and topics stated therein. I recorded my time electronically which was used to generate the filed spreadsheet. I also oversaw the work and time performed by James Willis and Melissa Wray and believe it to be accurate.

D. The hours expended were reasonable.

27. The number of hours devoted to this litigation was reasonable. Plaintiffs’ counsel avoided duplication of efforts as best we could. Of course there are certain activities that all of Plaintiffs’ counsel had to be jointly involved in for thorough representation and a joint understanding of all issues as the attorneys divvied up the work necessary to prevail. Courts have been critical of multiple attorneys doing overlapping work on a case, billing for conferences among multiple attorneys, and multiple attorneys working on the same projects, reviewing the same documents, and attending the same hearings. This was absent from this case. Additionally, almost all the briefs

were written entirely by one attorney, with some, but minimal comments by other attorneys. I believe that the hours devoted to this litigation by Plaintiff's counsel pales in comparison to the number devoted by Defendants' counsel.

28. I exercised billing judgment in determining the number of hours used to calculate the lodestar. As described above, I wrote off (or never included) time expended by every Daly & Black, P.C. attorney and paralegal other than myself and James Willis.

E. Billing rates used to calculate lodestar are reasonable

29. As the Court is aware, in Texas state court the attorneys trying a case may designate themselves as experts on attorneys' fees and testify to the jury as to the reasonable and necessary attorneys' fees for a particular case. I have been testifying in front of juries as an expert on attorneys' fees for almost 20 years. My rate has been attacked by Defendants multiple times over my career, yet it has never been reduced by any Court.

30. Several years ago while preparing for attorneys' fees testimony I started to suspect that my hourly rate was low compared to other attorneys of comparable skill, education, and reputation. This was not surprising considering that almost 100% of my work is handled on a contingent basis, so I was not keeping up with standard rates in the Houston area. Accordingly, I informally surveyed many of my colleagues at firms like Foley & Lardner (the predecessor to my former firm, Gardere Wynne Sewell), Caddell & Chapman, Susman Godfrey, Pillsbury Winthrop Shaw & Pittman, Greenberg Traurig, King & Spaulding, and others. I found that the stated hourly rates at Daly & Black, P.C. were sufficiently lower than attorneys with similar backgrounds, experience, education, and skill at those firms. Accordingly, I raised my rate to \$1,000/hour, Melissa Wray's rate to \$1000/hour, and James Willis's rate to \$800/hour, which is still below market, and thus, very reasonable. As is understandable, most firms hesitate to disclose their rates publicly; and thus

I will not divulge the precise rates discovered in my survey here; however, I would be happy to produce it to the Court in camera if requested.

31. The Court may also wish to examine Defendants' counsel's billable rates to help judge whether Relator's counsel's rates are fair. *Ruiz v. Estelle*, 553 F. Supp. 567, 589 (S.D. Tex. 1982) ("In an action for which no adequate parallel can be found, the best example of a fee paid for similar work is that paid by opposing counsel in the same action."). In *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010), the Supreme Court held that the delay in receiving fees in a federal fee-shifting statute case justifies awarding attorneys' fees using the attorneys' current rates rather than the rates at the time the services were rendered.

IV. JOHNSON FACTORS

(1) The time and labor required for the litigation

32. Prosecution of this case required a great deal of time and labor beginning late 2019 and continuing through today. As stated above, attorneys at Daly & Black, P.C. expended more than 382.2 hours on this litigation.

(2) The novelty and complication of the issues

33. This case involved several issues that were novel and complex. Because this case is a class action, it involved two separate sets of issues: the set of issues associated with getting a class certified, and the set of issues associated with the merits of the case (as well as various issues related to discovery, evidence, and motion practice.) Regarding class certification, the case involved novel and complex issues regarding the standing of the class representative, and the predominance of common issues. This case involved novel issues regarding the TPPCA in the face of ever-changing law by the Texas Legislature and Supreme Court. It also involved novel and

complex issues regarding the interpretation of replacement cost value insurance policies. Accordingly, the issues in this case were novel and complex.

(3) The skill required to properly litigate the issues

34 A high level of skill was required to properly litigate the issues in this case. In class actions, it is important to properly define the class, decide which claims to pursue, and decide what damages to seek in order to maximize the ability to both get a class certified and to recover on the merits. As explained above, I have experience and expertise in class action litigation, but even more experience in first-party litigation and particularly the TPPCA, which was required to properly litigate the issues in this case. My skill enabled me to assist in settling this case favorably.

(4) Whether the attorney had to refuse other work to litigate the case

35. While I certainly worked on other matters during the pendency of this case, my focus on this litigation has required me to refuse to work on more cases, meaning that if I had not been focusing my practice on this case over the past few years, I would have been able to take on more work on other cases.

(5) The attorney's customary fee

36. My customary fee is a 40% contingency fee for cases that resolve before appeal and 45% for cases that involve an appeal. The only other hourly case that I have handled in recent history was for the Lubbock Independent School District. While still a "contingent" hourly case, the fee approved by the Texas Attorney General was \$1,000/hour for all shareholders at Daly & Black, P.C., including myself, Melissa Wray and James Willis. It also has a multiplier component and a cap of 35% of amounts recovered.

(6) Whether the fee is fixed or contingent

37. My fee is contingent, and I would have recovered no fee, and would not have been able to recover my expenses, had I not been successful in this litigation.

(7) Whether the client or case circumstances imposed any time constraints

38. The case imposed time constraints in the form of the scheduling orders and deadlines that were set in this case, but the time constraints were nothing beyond those ordinarily set in litigation.

(8) The amount involved and the results obtained

39. Courts have recognized that the most important factor to consider is the result obtained by Class Counsel. This most important factor weighs very heavily in favor of awarding Class Counsel the full fee sought. This settlement provides for 100% of ACV sales tax and approximately 80% of regulatory fees sought. [Dkt. No. 87]

(9) The experience, reputation, and ability of the attorneys

40. As stated above (¶¶ 4 - 22), Class Counsel has excellent experience, reputation and ability (including in complex class action litigation) that enabled the class to obtain the result of a full and complete victory as opposed to a loss or an early settlement for coupons or a small percentage of damages sought.

(10) Whether the case was “undesirable”

41. This case was undesirable in that Defendants are large corporations with substantial resources, which defended this case vigorously. Defendants challenged every issue at class certification (including adequacy of class counsel and adequacy of the class representative), and appealed the class certification order to the Fifth Circuit.

(11) The type of attorney-client relationship and whether that relationship was long standing

42. It is unlikely that counsel will represent Plaintiffs again. It is likely a one-time case.

(12) Awards made in similar cases.

43. Awards in similar cases of 25% and 30% of the common fund are common, while Plaintiffs' counsel seeks less than 25% of the amount made available to class members.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

DATED: June 7, 2024, Houston, Texas.

/s/ Richard D. Daly

Richard D. Daly

**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

DECLARATION OF EDMUND A. NORMAND

The undersigned, Edmund A, Normand, declares as follows:

1. My name is Edmund A. Normand. I am over the age of majority, provide this declaration voluntarily, and it is based on personal knowledge. I have reviewed all time sheets submitted herein.
2. I have been licensed to practice law in the state of Florida since 1990.
3. I am the shareholder in the law firm Normand PLLC and am one of counsel of record representing the Plaintiffs in the above-styled lawsuit. This declaration is submitted in support of the Motion for Final Approval of the Class Action Settlement Agreement and the Motion for Attorneys' Fees and Costs and Plaintiffs' Service Awards.
4. Class Counsel took this case on a purely contingent basis. As such, we assumed

significant risk of nonpayment or underpayment.

5. Class Counsel took on these risks knowing full well their efforts may not bear fruit. Fees were not guaranteed—the retainer agreement Counsel has with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and in the case of class settlement, approved by the Court.

6. I make a deliberate effort not to duplicate efforts to be efficient, and because the firm takes matters on a contingency basis. The lawyers and staff exercised billing judgment and did not bill all of the time that we spent in the matter, including time reviewing pleadings and other case documents.

Timekeeper	Law Grad Year	Hours	Rate (\$)	Total (\$)
Ed. Normand-Attorney	1990	823.7	925.00	761,922.50
Amy Judkins-Attorney	2016	47.5	475.00	22,562.50
Janna Sherwood-Paralegal		43.7	225.00	9,832.50
Michelle Montecalvo-Paralegal		149.9	195.00	29,230.50
Devi Ramprasad-Paralegal		26.2	195.00	5,109.00
Kaitlyn Thompson-Paralegal		6.4	125.00	800.00
Julie Masters-Legal Assistant		9.9	75.00	742.00

7. I submit that my rate in this case of \$925 per hour is reasonable and commensurate with rates charged by lawyers with similar experience for similar complex work in Houston and the Southern District of Texas. My rate of \$925 per hour has been approved in other class action cases. In *Roth v. GEICO General Ins. Co.*, No. 16-62942 (S.D. Fla.) (Fort Lauderdale Division), the court (at Doc. 333) approved the magistrate's report and recommendation (Doc. 328) awarding my fees based on an hourly rate of \$750.00 per hour for legal work performed in the years 2016-2019. The Roth fee award was later vacated only at the

request of plaintiffs and defendants pursuant to a global settlement of cases, including separate agreements on fees. In *Jones v. GEICO General Ins. Co.*, 6:17-cv-00891 (M.D. Fla.) (Orlando Division) the court (Doc. 215 at ¶ 53) approved hourly rates of \$750.00 per hour for me that was submitted by declaration supporting the motion for attorneys' fees (Doc. 210-2) for legal work performed in the years 2017-2020. In *Arevalo, et al., v. USAA Casualty Ins. Co.*, Cause No.: 2020-CI-16240, District Court, Bexar County, TX, (filed 2020), the court approved hourly rates of \$925 per hour for me that was submitted by declaration supporting the motion for attorneys' fees for legal work performed in the years 2020 to 2023. In *Davis, et al., v. Geico*, Case No.: 2:19-cv-02477-EAS-EPD, (S.D. Ohio, Columbus Div., filed 2019) the court approved hourly rates of \$925.00 per hour for me that was submitted by declaration supporting the motion for attorneys' fees for legal work performed in the years 2019-2024.

8. Normand PLLC are experienced and successful class action litigators at the trial and appellate level, including in similar total-loss litigation related to underpayment of actual cash value under comprehensive and collision coverage.

9. Normand PLLC is a consumer class-action and complex-litigation firm. While Normand PLLC is involved in a variety of different types of litigation at the trial and appellate level, Normand PLLC specializes in class actions involving complex insurance litigation and unfair and misleading practices in a variety of industries.

10. Normand PLLC has extensive experience successfully litigating insurance class actions, including ones similar to the present case. Cases in which Normand PLLC attorneys have been appointed class counsel include *Roth v. GEICO*, Case No. 16-cv- 62942-WPD (S.D. Fla., filed 2016), a case in which final judgment was entered in favor of a certified class of 3,677 members, and which was the first total-loss case concerning leased vehicles asserting similar

claims as the present case, and the first one to one to claim that the failure to pay title transfer fees was a breach of contract; *Sos v. State Farm Mutual Insurance Company*, Case No. 6:17-cv-890-orl-18KRS (M.D. Fla., filed 2017) (Byron, J.), in which a class of over 3,000 insureds was certified and final judgment entered in favor of the named plaintiff, and which also concerned leased-vehicle total-loss insureds claiming failure to pay sales tax and title transfer fees, the case was affirmed on appeal at the 11th Circuit; and *Jones v. Geico*, Case No.: 6:17-cv-891-Orl-40KRS (M.D. Fla., filed 2017) (Byron, J.), in which summary judgment was entered in favor of a certified class of over 220,000 total-loss insureds for GEICO's failure to pay title and tag transfer fees after a total-loss (and the case subsequently settled and final approval and judgment was granted in July, 2020). Additional cases include *Paris v. Progressive*, Case No.: 19-21760-CIV-DIMITROULEAS, S.D. FL, filed 2019), later consolidated with *South v. Progressive*, Case No.: 19-21760-CIV-DIMITROULEAS, (S.D. FL, filed 2019); *Andrews v. State Auto Mutual Ins. Company*, Case No.: 2:21-cv-05867, (S.D. Ohio, filed 2021); *Smith v. Nationwide Agribusiness Ins. Company*, Case No.: CV-21-953473, Court of Common Pleas, Cuyahoga County, OH, (filed 2021); *Ryan v. Allstate Fire & Casualty Ins. Co.*, Case No.: 2019-11871-CIDL, Circuit Court, Volusia County, FL, filed 2019); *Wright v. Geico*, Case No.: 3:20-cv-00823-BAJ-SDJ, (M.D. LA, filed 2020), *Yancey v. Trumbull Ins. Co.*, Case No.: 21-cv-00827, N.D. IL, filed in 2021), and *Wagner v. Safeco Ins. Co.*, Case No.: CI20-10735, Douglas County District Court, NE, filed in 202).

11. In another case in the Middle District, *Venerus v. Avis Budget*, Case No. 6:13-CV-921-CEM-GJK (M.D. Fla., filed 2013), Normand PLLC was appointed class counsel for a certified class of over 200,000 foreign renter customers of Avis Budget who rented a vehicle in Florida. In that case, summary judgment was entered in favor after Plaintiff proved her

allegations that Avis Budget solicited premiums of \$12.44 per day in exchange for the promise to procure an insurance policy from a licensed insurance company, but instead pocketed the premiums and never purchased the insurance policy. The Judge decertified a class and that was overturned on appeal at the 11th Circuit Court. Eventually the case settled with payments made to class members across the world.

12. I am the sole shareholder/partner and founder of Normand PLLC. I graduated from the University of Texas School of Law *cum laude* and have been a member of the Florida Bar since 1990.

13. I previously was elected shareholder in 1996 at Wooten, Honeywell & Kest (one of the oldest personal injury firms in Central Florida, with previous partners that included a Mayor of Orlando, a Senator, and numerous Orange County judges). That firm was later re-named Wooten, Kimbrough & Normand P.A. I was also honored with the highest Tier One ranking for Orlando in the Best Law Firms Report issued by U.S. News & World Report Magazine for four consecutive years, was named a Top 100 Trial Lawyers in Florida by the National Trial Lawyers Association, repeated Florida SuperLawyer nominee for Class Actions, and was elected to the American Board of Trial Advocates. I am Co-Chair of the Florida Justice Association Consumer Law group, and I was Director and President of the Central Florida Trial Lawyers Association (2012).

14. I am a member of the Federal Bar, Florida Bar, Orange County Bar Association, and am certified to practice in the 5th and 11th Circuits, the Middle, Southern, and Northern Districts of Florida, and numerous federal district courts.

Further declarant sayeth not.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this July 10, 2024.

/s/Ed Normand
Edmund A. Normand

**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,

CASE NO. 4:20-cv-00799

Plaintiffs,

v.

CLASS ACTION

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

Defendants.

_____ /

DECLARATION OF CHRISTOPHER B. HALL

1. My name is Christopher B. Hall. I am over the age of majority, provide this declaration voluntarily, and it is based on personal knowledge.
2. I am a partner in the law firm Hall & Lampros, LLP (“Hall & Lampros”) and am one of counsel of record representing Plaintiffs in the above-styled lawsuit.
3. I have been licensed to practice law in the State of Georgia since 1996.
4. My work on this case was extensive and involved briefing drafting complaints, briefing dispositive motions, taking and prepping for depositions, briefing the motion for class certification, claims data discovery and analysis, working closely with the experts relating to class certification and damages issues, and participating in settlement negotiations.

5. Lawyers at Hall & Lampros make a deliberate effort not to duplicate efforts and to be efficient, and because the firm takes matters on a contingency basis. Hall & Lampros lawyers kept records of these hours contemporaneously and they are true and correct. Hall & Lampros lawyers exercised billing judgment and did not bill all of the time that spent in the matter, including time reviewing pleadings and other case documents. The lodestar which is reflected in the time records for Hall & Lampros lawyers is:

Timekeeper	Law Grad Year	Firm	Hours	Rate (\$)	Total (\$)
Chris Hall	1996	Hall & Lampros	320.8	1000	320,800
Gordon Van Remmen	2015	Hall & Lampros	16.3	600	9,780

6. The rates set forth here are supported by my extensive experience and success in high-value complex litigation. I am a 1996 honors graduate of the University of Georgia School of Law. I received my undergraduate degree from the University of Virginia in 1991. The first part of my career was with Lord Bissell & Brook, LLP (now Locke Lorde) where I worked on complex insurance coverage cases and antitrust litigation. I left Lord Bissell to start my firm in 2003. Since then, I have litigated, tried to verdict, and settled many multi-million-dollar cases and class actions and collective actions.

7. I have successfully litigated class actions against GEICO that – like what is sought in the present case – recovered unpaid and underpaid sales tax and fees on first party total loss claims. Such cases include *Ewing v. GEICO*, 5:20-cv-00165-MTT (N.D. Ga.) (settlement of certified class of 32,000 class members who were underpaid title ad valorem tax); *Roth v. GEICO*, Case No. 16-cv- 62942-WPD (S.D. Fla., filed 2016), a case in which final judgment was entered in favor of a certified class of 3,677 members, and which was the first total-loss case concerning leased vehicles to claim sales tax and the first one to one to allege it was a breach of contract to

fail to pay title transfer fees as part of ACV; *Joffe v. GEICO Indemnity Co.*, No. 18-cv-61361-WPD (S.D. Fla.) (consolidated for settlement with Roth and involving over 8,000 class members); *Jones v. GEICO*, Case No.: 6:17-cv-891-Orl-40KRS (M.D. Fla., filed 2017) (Byron, J.), in which summary judgment was entered in favor of a certified class of over 220,000 total-loss insureds for GEICO's failure to pay title and tag transfer fees after a total-loss (and the case subsequently settled and final approval and judgment was granted in July, 2020); and *Davis et al v. Geico Casualty Company et al*, 2:2019-cv-02477 (S.D. Oh.) (40,000 class member settlement approved in 2023).

8. I also was lead counsel in a similar case that is believed to be the first class action alleging that actual cash value includes sales tax without precondition in *Bastian v. United Services Automobile Association, et al.*, No. 3:13-cv-01454-TJC-MCR (M.D. Fla.) (Corrigan, J.) which resulted in summary judgment in favor of the plaintiffs and eventually a settlement involving over 50,000 class members. *See also Black v. USAA Casualty Insurance Company*, 1:2021-cv-01363 (N.D. Ga.) (class action settlement involving 8,200 class members approved in 2023).

9. I also have extensive experience in antitrust, RICO litigation, pharmacy benefits management litigation as specially appointed state attorney general. *See e.g., Blessing v. Sirius XM Radio, Inc.*, No. 1:09-cv-10035 (S.D.N.Y.) (developed theory of case and class counsel in \$180 million antitrust class action settlement); *State of West Virginia ex rel. Patrick Morrissey, Attorney General v. Wells Fargo Insurance Services of West Virginia, Inc. and Wells Fargo Insurance Services USA, Inc.*, No. 05-C-115-W, Circuit Court of Hancock County, West Virginia (appointed special assistant attorney general to litigate antitrust and consumer protection lawsuit representing State of West Virginia against Wells Fargo relating to insurance practices that settled in 2016 for \$8 million); *Medco Health Solutions, Inc. et al. v. West Virginia Public Employees Insurance Agency*, 02-c-2764, Circuit Court of Kanawha County, West Virginia (appointed special assistant

attorney general representing public health insurance agency with approximately 180,000 covered lives in breach of contract and fiduciary duty counterclaims against Pharmacy Benefit Manager resulting in \$5.5 million settlement); *West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. Bank of America, N.A., et al.*, No. 08-02516 (S.D.N.Y.) (appointed special assistant attorney general in claims on behalf of West Virginia government agencies alleging antitrust price fixing relating to the sale of municipal bond derivatives); *Acosta v. SMART, LLC et al.*, No. 1:2022-cv-01209 (2023 federal RICO settlement relating to visa fraud scheme involving dozens of workers).

10. My partner Andrew Lampros also worked on this case and has extensive experience in class action litigation, including the *Roth, Davis, Joffe, Jones, Bastian, Sirius XM* cases above. Mr. Van Remmen also was extensively involved in this case and the *Roth, Davis, Joffe, Jones, Bastian*, and other class action matters.

Further the declarant sayeth naught.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th day of June 2024.

/s/ Christopher B. Hall

Christopher B. Hall

**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.

CLASS ACTION

Case No. 4:20-cv-00799

**DECLARATION OF ANDREW J. SHAMIS
IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

I, Andrew J. Shamis, pursuant to section 1746 of title 28 of the United States Code, declare:

1. I am the managing partner at Shamis & Gentile, P.A. ("Shamis & Gentile") where I head the firm's class action and mass torts divisions. Shamis & Gentile is a class action firm that litigates cases in a broad range of industries, including banking, insurance, data privacy, deceptive and unfair trade practices and product liability. *See* Firm Resume attached hereto.

2. I have been licensed to practice law in the State of New York and State of Florida since 2013. I have also been licensed to practice law in the State of Georgia, Arizona, Texas, Ohio, and Illinois since 2021 and the State of Missouri and the State of Washington since 2024. I am also a member of the bars of numerous federal district courts.

3. I am one of the counsel of record representing Plaintiffs and my firm has been preliminarily appointed as Class Counsel in this action along with the firms of Hall & Lampros LLP, Jacobson Phillips LLP, Daly & Black, P.C., Edelsberg Law, P.A., and Normand PLLC. I have personal knowledge of the matters stated herein and, if called upon, I could and would testify competently to those matters. I submit this Declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs, and Approval of Individual Settlements.

4. I have extensive experience successfully prosecuting complex class actions. Shamis & Gentile regularly engages in complex litigation involving auto insurance and has frequently been appointed as class counsel by courts throughout the country, including cases like the present case. *See Davis, et. al. v. Geico Casualty Company, et. al.*, No. 19-cv-02477 (S.D. Ohio 2023); *Andrews v. State Auto Mut. Ins. Co.*, No. 2:21-CV-5867 (S.D. Ohio 2023); *Arevalo, et. al. v. USAA Casualty Ins. Co., et. al.*, No. 2020CI16240 (Bexar County, Texas 2023); *Jacques, et. al. v. Security National Ins. Co.*, No. CACE-19-002236 (Fla. 17th Cir. Ct. 2022); *McPheeters v. United Services Automobile Association and Garrison Property and Casualty Ins. Co.*, No. 1:20-CV-00414-TSB (S.D. Ohio 2022); *Hinds-Thomas et al. v. LM General Ins. Co. et al.*, No. 22SL-CC04131 (Circuit Court of St. Louis County, MO); *Petit Beau, et. al., v. Ocean Harbor Casualty Ins. Co.*, No. CACE-18-029268 (Fla. 17th Cir. Ct. 2021); *Ostendorf v. Grange Indem. Ins. Co.*, No. 2:19-CV-1147 (S.D. Ohio 2020).

5. My years of experience representing individuals in complex class actions contributed to an awareness of Plaintiffs' settlement leverage, as well as the needs of Plaintiffs and the proposed Settlement Classes. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

6. My primary duties in this litigation included pre-suit investigation by reviewing numerous intake documents; reviewing and analyzing policies and state laws and regulations;

overseeing case development and assignment of work and tasks among Shamis & Gentile; formulating and implementing an effective litigation strategy; reviewing and revising case documents, including but not limited to, Plaintiffs' complaint and amended complaints, Plaintiffs' opposition to Defendants' motion to compel appraisal and motion to dismiss, Plaintiffs' motion for class certification and related filings; reviewing and revising the Plaintiffs' responses to Defendants' discovery requests; overseeing and coordinating the Plaintiffs' deposition preparation and depositions; analyzing documents and data produced by Defendants; damages analyses; preparing for and engaging in settlement negotiations and mediation, including numerous hours negotiating the material terms of the settlement; reviewing and editing the mediation briefs; negotiating the settlement and settlement papers; discussing the notice and administration plans with co-counsel and the Settlement Administrator to ensure compliance with due process; communicating with the Settlement Administrator; coordinating and monitoring the notice program; reviewing and revising Class Counsel's motions in support of preliminary and final approval of the Settlement and an award of attorney's fees, costs, and individual settlement awards. I provided assistance while being mindful to avoid duplicative efforts both within my firm and with co-counsel. Based on this work and my experience I fully endorse this settlement.

7. The other partners and attorneys of Shamis & Gentile that worked on this matter and the duties and tasks undertaken by each are as follows:

- a. Edwin E. Elliott: Mr. Elliott's primary duties in this litigation included undertaking all aspects of the discovery, including drafting and revising discovery documents and reviewing and analyzing Defendant's production of documents, drafting and revising Plaintiffs' responses to two sets of requests for production and interrogatories propounded by Defendants, and one set of requests for admissions as well as any amendments thereto; assisting with preparing Plaintiffs' for their depositions; reviewing, revising, and editing various case documents; and client communications.

- b. Angelica Gentile: Ms. Gentile's primary duties in this litigation included initial presuit factual investigation, communicating and coordinating with Defense counsel regarding case management, and reviewing and revising case filings.
- c. Joshua Moyer: Mr. Moyer's primary duties in this litigation included assisting all aspects of the discovery, including reviewing and revising Plaintiffs' responses to Defendant's discovery requests, preparing Plaintiffs' for their depositions and defending Plaintiffs' depositions; and participating in meet and confers with opposing counsel regarding Plaintiffs' discovery responses.¹

8. Throughout this litigation, my firm and I have endeavored to operate efficiently and to avoid unnecessary duplication both internally within my firm and externally as we divided tasks and responsibilities among co-counsel. Based on my experience in complex class action litigation, it is my judgment that the number of hours expended were reasonable and necessary for my firm's representation of Plaintiffs' and the Settlement Classes.

9. In the exercise of billing judgment, I did not include any time by associates or by paralegals or staff, which I estimate to exceed 100 hours. Moreover, in an abundance of caution, I cut a combined 50 hours from myself and Ms. Gentile. In both instances, this cut was merely to protect against even the possibility of duplicative or unnecessary expenditure of time.

10. The following table summarizes Shamis & Gentile's lodestar, and for each timekeeper reflects: (i) his or her title or position; (ii) the total number of hours he or she worked; (iii) his or her current hourly rate; and (iv) his or her lodestar. In assembling this summary lodestar, I personally vetted the time. This summary does not include any time related to the fee motion or supporting documents, including this declaration. This summary also does not include any time billed by any paralegals or support staff.

¹ Mr. Moyer is no longer at Shamis & Gentile.

Timekeeper	Position	Hourly Rate	Total Hours	Lodestar
Andrew J. Shamis	Partner	\$750	496.25	\$372,187.50
Joshua M. Moyer	Partner	\$750	77.75	\$50,537.50
Edwin E. Elliott	Partner	\$650	65.25	\$42,380.00
Angelica Gentile	Partner	\$750	199.75	\$149,812.50
TOTALS:			849.00	\$614,917.00

11. These records were prepared from contemporaneous time records regularly prepared and maintained by Shamis & Gentile in the usual course and manner of my firm. Shamis & Gentile maintains detailed records regarding the amount of time spent by my firm, and the lodestar calculation is based on my firm's current billing rates.

12. I have personal knowledge of the hourly rates charged by Shamis & Gentile attorneys and support staff included in the foregoing table. The hourly rates for the attorneys of my firm are the usual and customary rates set by the firm for each individual for matters of this complexity and in this legal market or similar markets. These hourly rates are the same as, or comparable to, the rates accepted by courts in other class action litigation including courts in this Circuit. My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work and that have been approved by courts in other class actions within this legal market, this Circuit and nationwide. Different timekeepers within the same employment category (e.g., partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (e.g., years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms in comparable markets.

13. Based on the foregoing, I am able to conclude that the rates charged by my firm are commensurate with those prevailing in the market for such legal services furnished in complex class action litigation such as this. My firm's rates have been approved in numerous other complex class action cases in federal courts, including but not limited to: *Davis, et. al. v. Geico Casualty Company, et. al.*, No. 19-cv-02477 (S.D. Ohio 2023) (ECF No. 229); *South, et. al. v. Progressive Select Insurance*

Company, et. al., No. 19-cv-21760 (S.D. Fla. 2023) (ECF No. 258); *Soto-Melendez v. Banco Popular de Puerto Rico*, No. 3:20-cv-01057 (D.P.R. 2023) (ECF No. 128); *Black v. USAA Casualty Ins. Co.*, No.: 1:21-cv-01363-LMM (N.D. Ga. 2023) (ECF No. 69); *Andrews v. State Auto Mut. Ins. Co.*, No. 2:21-CV-5867 (S.D. Ohio 2023) (ECF No. 51); *Ostendorf v. Grange Indem. Ins. Co.*, No. 2:19-CV-1147 (S.D. Ohio 2020) (ECF No. 46).

14. In my judgment and based on my experience in complex class action litigation and other litigation, the number of hours expended, and the services performed by my firm, were reasonable and necessary for my firm's representation of Plaintiffs.

15. I am prepared to provide the Court with any further documentation or explanation regarding Shamis & Gentile's lodestar, upon request by the Court.

16. I have represented Plaintiffs and the class purely on a contingency fee basis in this matter and have not received any payment for my time, effort, or expenses to date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of June 2024, at Miami, Florida.

By: /s Andrew J. Shamis
ANDREW J. SHAMIS