

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

KOSMOE MALCOM, et al., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

GEICO INDEMNITY COMPANY,
GOVERNMENT EMPLOYEES INSURANCE
COMPANY, and GEICO GENERAL
INSURANCE COMPANY, Maryland
corporations,

Defendants.

CIVIL ACTION

FILE NO.: 5:20-cv-00165-MTT

**PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES AND
COSTS AND APPROVAL OF INDIVIDUAL SETTLEMENTS**

Plaintiffs Nicholus Johnson (“Johnson”), Kosmoe Malcom (“Malcom”), Aqueelah Coleman (“Coleman”), and Todra Washington (“Washington”) (collectively “Plaintiffs”), individually and on behalf of the Settlement Class, file this Unopposed Motion for Attorneys’ Fees and Costs and Approval of Individual Settlements. Defendants GEICO Indemnity Company (“GEICO Indemnity”), GEICO General Insurance Company (“GEICO General”), and Government Employees Insurance Company (“Government Employees”) (collectively, “GEICO” or “Defendants”) do not oppose this Motion.

This case is the first case alleging that auto insurers have underpaid title ad valorem tax (“TAVT”) when adjusting first party total loss claims. Georgia’s TAVT statutory system is unique. No other state has replaced its sales tax with a TAVT like Georgia has done. *See* Declaration of Christopher Hall (“Hall Decl.”) at ¶ 10. The statutory scheme in O.C.G.A. § 48-5C-1 has been revised by the Georgia legislature 15 times since its inception on March 1, 2013. *Id.* at ¶ 9. The vehicle valuations for payment of TAVT has changed multiple times, and the data to determine vehicle valuations is complicated and subject to different interpretations depending on the data source. *Id.*

This case was hotly contested and heavily litigated. The procedural history shown below is tortured, and the legal work by Plaintiffs’ counsel to achieve the settlement result was substantial. The time committed and trepidation experienced by the representative plaintiffs relating to these untested theories also was substantial. Plaintiffs respectfully submit that the Court should grant this Motion.

I. FACTS.

This is a class action lawsuit on behalf of GEICO Georgia insureds who submitted covered first party auto total loss claims with dates of loss during the class period. Third Amended

Complaint (“TAC”) (Doc. 108) at ¶ 1. All Settlement Class Members were insured under form auto insurance policies with identical material terms. *Id.* at ¶ 2; Plaintiffs’ Statement of Material Facts (Doc. 130-1) at ¶ 26; Hall Decl. at ¶ 4. Plaintiffs allege that GEICO failed to pay the proper TAVT due on the claims required under Georgia law to buy a vehicle to replace the total loss vehicle. TAC at ¶ 121.

A. Plaintiffs’ Total Loss Claim and GEICO’s Alleged Breach.

Plaintiffs entered into Georgia private passenger auto policy agreements to be insured by GEICO under terms contained in form policies (the “Policies”) with material total loss physical damage terms that were the same for all Plaintiffs and all class members. TAC at ¶ 2. The Policies provided physical damage coverage for Plaintiffs and class members’ total loss vehicles. Doc. 130-1 at ¶ 26. The Policies required GEICO to pay actual cash value on total loss claims. *Id.* at ¶¶ 31-32. Actual cash value is defined in the Policies as “the replacement cost of the auto or property less depreciation or betterment.” *Id.* at ¶ 32.

Plaintiffs allege that the “replacement cost” on a total loss vehicle includes the title ad valorem tax that would be due to in fact replace the vehicle. TAC at ¶ 32. Georgia law imposes TAVT on the purchase of vehicles pursuant to O.C.G.A. § 48-5C-1(b)(1)(A). Expert Report of Greg Elton (“Elton Report”) (Doc. 51-7) at ¶¶ 5-12.

Each Plaintiff and class member suffered a total loss of their GEICO insured vehicle. Doc. 130-1 at ¶ 76. Plaintiffs allege that they and each class member were underpaid on the TAVT due on their total loss claims. *Id.*

B. Class Member Claims.

Discovery has revealed that over 31,000 class members submitted first party total loss claims during the class period and were not paid the full TAVT due under their GEICO Policy.

Hall Decl. at ¶ 5. The total underpayments are approximately \$5,100,000.00. *Id.* The average class member TAVT underpayment is approximately \$164.00. *Id.*

C. Procedural Background.

On April 29, 2020, Plaintiff Malcom and former Plaintiffs Tamara Ewing (“Ewing”), and Kwanze Gardner (“Gardner”) filed a putative class action Complaint in the United States District Court for the Middle District of Georgia, Case No. 5:2020-cv-00165 against GEICO Indemnity, GEICO General, and Government Employees. The Complaint alleged that GEICO underpaid the TAVT and license plate transfer fees¹ to its Georgia insureds on auto insurance total loss claims. Doc. 1.

On June 30, 2020, GEICO filed a Motion to Dismiss. Doc. 20.

On July 21, 2020, Plaintiffs Ewing, Malcom, and Gardner filed a First Amended Complaint. Doc. 23.

On August 3, 2020, GEICO filed a Motion to Dismiss the First Amended Complaint. Doc. 28. On August 24, 2020, Plaintiffs Ewing, Malcom, and Gardner filed a response in opposition to the Motion to Dismiss. Doc. 29. On September 8, 2020, GEICO filed a reply in support of the Motion to Dismiss. Doc. 30. On October 9, 2020, the Court granted in part and denied in part the Motion to Dismiss. Doc. 31. On October 23, 2020, GEICO filed an Answer to the First Amended Complaint. Doc. 33.

On January 19, 2021, Plaintiffs filed a Motion for Leave to File Second Amended Complaint. Doc. 37. On February 9, 2021, GEICO filed a response and took no position on Plaintiffs’ Motion for Leave to File Second Amended Complaint. Doc. 40. On February 10, 2021,

¹ Plaintiffs ultimately did not seek certification of license plate transfer fees. No claims for license plate transfer fees are released by the Agreement.

the Court granted leave for Plaintiffs to file a Second Amended Complaint. Doc. 41. On February 16, 2021, Plaintiffs filed their Second Amended Complaint. Doc. 42. On March 18, 2021, GEICO filed their Answer to Plaintiffs' Second Amended Complaint. Doc. 43.

On August 23, 2021, Plaintiffs filed their Motion for Class Certification and Incorporated Memorandum of Law. Doc. 51. On September 9, 2021, GEICO filed their Response in Opposition to Plaintiffs' Motion for Class Certification. Doc. 56. On March 11, 2022, GEICO filed a Notice of Supplemental Authority relating to the Motion for Class Certification. Doc. 83. On March 16, 2022, Plaintiffs filed a Response in Opposition to GEICO's Supplemental Authority. Doc. 84. On May 19, 2022, the Court granted Plaintiffs' Consolidated Motion to Certify the Class. Doc. 89.

On June 2, 2022, GEICO filed a Motion for Reconsideration of the Order certifying the class. Doc. 91. On June 16, 2022, Plaintiffs filed a Response in Opposition of GEICO's Motion for Reconsideration. Doc. 94.

On June 23, 2022, the Parties filed a Joint Notice of Filing Proposed Notice Plan. Doc. 96.

On July 6, 2022, Plaintiffs filed a response to motion for reconsideration seeking leave to file a third amended complaint to add a new party. Doc. 98. On July 18, 2022, GEICO filed a response in opposition to Plaintiffs' request to amend the complaint and add a party. Doc. 103. On July 25, 2022, Plaintiffs filed a reply in support of their request to amend the complaint and add a party. Doc 104.

On July 29, 2022, GEICO filed a Motion for Limited Reopening of Discovery. Doc. 105. On August 3, 2022, the Court held a hearing on the Motion for Reconsideration of the Order on motion to certify the class. Doc. 106. On August 5, 2022, the Court granted Plaintiffs' Motion to Amend or Substitute Party and granted GEICO's Motion for Limited Reopening of Discovery. Doc. 107.

On August 11, 2022, Plaintiffs Ewing, Malcom, Gardner, Coleman, and Washington filed their Third Amended Complaint adding Plaintiff Nicholus Johnson (“Johnson”). Doc. 108. On August 25, 2022, GEICO filed an Answer to the Third Amended Complaint. Doc. 110.

On October 11, 2022, the Court dismissed Plaintiff Gardner with prejudice. Doc. 123.

On October 11, 2022, the Court denied GEICO’s Motion for Reconsideration of the Order granting class certification. Doc. 124.

On October 11, 2022, GEICO filed a Motion for Summary Judgment. Doc. 127.

On October 11, 2022, Plaintiffs filed a Motion for Summary Judgment. Doc. 129.

On October 25, 2022, the Court entered an Order Amending the Order granting Consolidated Motion for Class Certification (Doc. 89) only on the issue of Plaintiff Ewing and substituting Plaintiff Johnson as a designed class representative for Plaintiff Ewing. Doc. 133.

On November 11, 2022, GEICO filed a response in opposition to Plaintiffs’ Motion for Summary Judgment. Doc. 137. On November 11, 2022, Plaintiffs filed a response in opposition to GEICO’s Motion for Summary Judgment. Doc. 139. On November 15, 2022, GEICO filed a reply in support of GEICO’s Motion for Summary Judgment. Doc. 146. On November 15, 2022, Plaintiffs filed a reply in support of Plaintiffs’ Motion for Summary Judgment. Doc. 149.

On November 18, 2022, the Parties filed a Joint Motion to Amend/Correct Notice (Doc. 151), which the Court granted on December 5, 2022. Doc. 153.

On December 12, 2022, the United States Court of Appeals for the Eleventh Circuit denied GEICO’s petition for permission to appeal the order on class certification pursuant to Fed. R. Civ. P. 23(f). Doc. 155.

On January 24, 2023, the Court set the matter for trial on July 17, 2023. Doc. 156.

On April 14, 2023, Plaintiffs filed an Emergency Motion to Amend Order on motion to

certify class. Doc. 159

On May 9, 2023, GEICO filed a Motion to Decertify the Class and Motion to Exclude the testimony of Plaintiffs' expert Jeffrey Martin. Docs. 166 and 167.

On May 9, 2023, the Court denied Plaintiffs' Emergency Motion to amend. Doc. 168.

On May 19, 2023, GEICO filed a Motion for Clarification of the Court's Order denying Plaintiffs' Emergency Motion to Amend. Doc. 169. On May 19, 2023, the Court granted the Motion for Clarification. Doc. 171.

On May 30, 2023, Plaintiffs filed responses in opposition to GEICO's Motion to Decertify the Class, and to GEICO's Motion Exclude the Testimony of Expert Jeffrey Martin. Docs. 173 and 174.

On June 12, 2023, Plaintiffs gave Notice of Provision of Class Notice. Doc. 177.

On June 13, 2023, GEICO filed replies in support of its Motion to Decertify the Class and its Motion to Exclude expert Jeffrey Martin. Docs. 178 and 179.

On June 13, 2023, GEICO filed a Motion for Leave to file supplement relating to pending motions. Doc. 180. On June 16, 2023, Plaintiff filed a response in opposition to GEICO's Motion for Leave to file supplement relating to pending motions. Doc. 181. On June 20, 2023, the Court denied GEICO's Motion for Leave to file a supplement relating to pending motions. Doc. 182.

On June 20, 2023, Plaintiffs filed pretrial disclosures. Doc. 183.

On June 27, 2023, the Parties filed a Joint Motion to Hold in Abeyance Rulings on Pending Motions due to scheduled mediation. Doc. 184. On June 28, 2023, the Court granted the Joint Motion to Hold in Abeyance. Doc. 185.

The Parties participated in a mediation on July 14, 2023 before mediator Rodney Max and reached a settlement agreement in principal. Declaration of Rodney Max ("Max Decl.") (Doc. 192-

6) at ¶¶ 13-18. On July 18, 2023, the Parties filed a Motion to Stay the case pending settlement. Doc. 186. On July 20, 2023, the Court granted the Motion to Stay. Doc. 187.

Initial notice of the settlement was provided to class members on March 4, 2024. Hall Decl. at ¶ 51. A second notice was provided on April 3, 2024. *Id.* To date, there have been no objections to the settlement. *Id.*

II. The Agreement Provides an Excellent Result for An Untested Legal Theory with Complex Class Certification and Data Issues.

Plaintiffs obtained an excellent result with this untested case taken to the brink of trial and just before the Court was to rule on summary judgment.

A. The Agreement Provides 100% Payment of TAVT.

The Agreement provides payment of 100% of TAVT in the amount alleged to be owed to Plaintiffs and all class members who submit a claim. Oct. 16, 2023 Declaration of Christopher Hall (“10/16/23 Hall Decl.”) (Doc. 192-2) at ¶ 8; Settlement Agreement (“Agreement”) (Doc. 192-1) at ¶¶ 114, 148. The cash benefit available to class members in the settlement is approximately \$5,100,000.00. Agreement at ¶114; 10/16/23 Hall Decl. at ¶ 8; Martin Decl. (Doc. 193-1) at ¶ 8.

On March 1, 2013, Georgia eliminated sales tax on motor vehicle purchases and replaced it with TAVT. O.C.G.A. § 48-5C-1(b)(1)(A); Elton Report (Doc. 51-7) at ¶¶ 5-6. From then until December 31, 2019, Georgia law required that TAVT be determined by applying the TAVT percentage rate to the vehicle’s fair market value (“FMV”) as of the purchase date, as set forth in the Georgia Motor Vehicle Assessment Manual for Title Ad Valorem Tax.² *Id.* at ¶ 16 and exhibits A/1, A/2, and A/3. The applicable Assessment Manuals for the class period are available at

² Approximately 98.5% of vehicles are listed in the Assessment Manual. Martin Report (Doc. 51-9) at ex. A (column F identifies 1,085 out of 1,100 claims for which the eservices website has TAVT FMV).

<https://dor.georgia.gov/georgia-motor-vehicle-assessment-manual-title-ad-valorem-tax>. *Id.* at ¶ 7. The TAVT percentage to be applied to the assessment value was 6.75% in the class period April 29, 2014 through December 31, 2014, and 7% for the class period January 1, 2015 through December 31, 2019. Elton Report (Doc. 51-7) at ¶ 11; O.C.G.A. § 48-5C-1(b)(1)(A) (all prior versions). The Agreement requires full payment of TAVT based on these percentage rates applied to the fair market value in the applicable Assessment Manual. 10/16/23 Hall Decl. at ¶ 9; Agreement at ¶ 148.

B. The Agreement Provides Robust Notice And Easy Claim Submission.

The Settlement provides a robust notice and easy claim submission. All class members will receive a postcard notice with a detachable pre-filled, return addressed, and pre-paid postage claim form to simply sign and place in the mail. Agreement at ¶ 104. The postcard notice is attached to the Motion for Preliminary Approval (Doc. 192-3). The claim form attached to the postcard notice does not require the insured to provide any information other than to sign the claim form and provide a corrected address if needed. *Id.*

The Agreement also requires a second reminder postcard notice in the same form that also includes a detachable pre-filled, return addressed, and pre-paid postage form to simply sign and place in the mail. Agreement at ¶ 123.

The Agreement also requires email notice that will include a hyperlink to a pre-filled claim form to make a claim on the Settlement Website. Agreement at ¶¶ 122-124. The email notice is attached to the Motion for Preliminary Approval (Doc. 192-4). A second reminder email also will be sent to each class member, which also will have a hyperlink to a pre-filled claim form to make a claim on the Settlement Website. Agreement at ¶¶ 122-124.

The Agreement requires a long form notice and other important case documents to be

available to class members on the settlement website www.GaAutoLossClass.com. Agreement at ¶¶ 83, 103. The long form notice is attached to the Motion for Preliminary Approval (Doc. 192-5).

Members of the Settlement Class may alternatively submit claim forms online electronically with a “Submit a Claim” button at the Settlement Website (www.GaAutoLossClass.com) by providing one of the following in addition to their name and address: 1) the unique claim number found on the Notices; or 2) the claim number associated with the Total Loss. Agreement at ¶ 143. *See Braynen v. Nationstar Mortg., LLC*, 2015 WL 6872519, at *18 (S.D. Fla. Nov. 9, 2015) (robust notice plan is evidence that the terms of settlement are fair and reasonable).

The Agreement also provides for a toll-free number for class members to submit questions and request additional information. Agreement at ¶ 118 (f).

C. The Agreement Provides an Expanded Class.

One issue in this lawsuit was whether to identify claimants based on the pdf TAVT Assessment Manual effective January 1 of each year, or the end-of-year Assessment Manual Data provided in Excel format by the Georgia Department of Revenue. See Doc. 159. The difference between the two manuals is that (1) the Excel format includes more vehicles because some vehicles are added to the manual after January 1 through the year by way of updates; and (2) the Excel format includes updates to the pdf data, but only if the update to the data results in a decreased fair market value resulting in a lower TAVT.³ Agreement at ¶ 148. The Settlement resolves both issues in favor of Class Members: (1) the Settlement includes any total loss claim for a vehicle in either

³ The updates were implemented only if the updated fair market value of the vehicle decreased. Martin Declaration (Doc. 118-1) at ¶ 3.

the pdf or Excel formats (the more expansive Excel data provides recovery to more class members); and (2) the Settlement provides payment based on the higher pdf fair market valuation if the total loss vehicle was in fact listed in the pdf TAVT Assessment Manual. *Id.* For those claimants whose vehicles were not in the January 1 pdf version, but whose vehicles were added during the year: they are included in the class by use of the Excel data. *Id.* For those claimants whose vehicle fair market values were reduced during the year due to updates, they receive the TAVT payment based on the *higher* original pdf value. *Id.* The Agreement also provides for payment of any TAVT underpayment relating to approximately 31 total loss claims insured by GEICO affiliate GEICO Casualty Company.

D. The Agreement Provides a Limited Release.

The release is narrow. Agreement at ¶ 91. Class members release claims only for TAVT and sales tax. They do not release any claim for any other type of fee, or any claim for vehicle valuation or any other type of claim underpayment. *Id.*

E. The Agreement Resolves a Case With Unsettled Legal Issues.

To counsel's knowledge, Georgia is the only state that imposes a title ad valorem tax in this manner. 10/16/23 Hall Decl. at ¶ 10. Counsel believes this case was the first case alleging failure of an insurer to pay the proper TAVT. *Id.* No court has decided how the TAVT regulation should be applied to total loss claims. *Id.* The Agreement resolves these issues in favor of the Settlement Class. *Id.*; Agreement at ¶ 148.

III. The Court Should Approve the Award for Attorneys' Fees and Costs.

The Settlement provides that Class Counsel may apply for attorneys' fees not to exceed \$1,504,500.00, with costs of up to \$86,000.00. Agreement at ¶ 114 (total payment for fees and costs of \$1,590,500); Hall Decl. at ¶ 12. The percentage for attorneys' fees of 29.5% falls within

the Eleventh Circuit benchmark for attorneys' fees, which is 20-30% of the benefit to the class. *See Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017) (“[I]n this circuit we have identified twenty to thirty percent of the common fund as a ‘benchmark’ for an attorney’s fee award.”); *see also In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019) (“In this Circuit, courts typically award [attorneys’ fees] between 20-30% [of the class benefit], known as the benchmark range.”).

Class Counsel is entitled to a reasonable fee award from the common fund. Fed. R. Civ. P. 23(h); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Lunsford v. Woodforest Nat’l Bank*, 2014 WL 12740375, at *11 (N.D. Ga. May 19, 2014). The Eleventh Circuit provides that the amount of attorneys’ fees in common fund cases “shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).

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 Eleventh Circuit has directed that the fee be based upon a percentage of the class benefit. *See Camden I*, 946 F.2d at 774-75. Courts have significant discretion in choosing the proper percentage. *Id.* at 774 (“There is no hard and fast rule...the amount of any fee must be determined upon the facts of each case.”). Courts should look at factors such as the time at which settlement

was reached, any substantial objections, the economics of class actions, the *Johnson* criteria⁴, and any other “unique” circumstances. *Id.* at 775. The Eleventh Circuit prescribed that a fee award of 50 percent of the benefit is the upper limit; and that most fee awards fall between 20-30 percent. *Id.* at 774-75.

Generally, where attorneys’ fees are negotiated in settlement (after other terms are agreed), courts apply Eleventh Circuit law when analyzing the reasonableness of the fee under Rule 23(h). *See Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694-95 (S.D. Fla. 2014) (analyzing reasonableness of attorneys’ fees under Rule 23(h) upon settlement of state-law claims under Eleventh Circuit law and noting that “[t]he ‘common fund’ analysis is appropriate even where the fee award will be paid separately by Defendants”). And under Eleventh Circuit law, courts have found that the lodestar is irrelevant. *See, e.g., Belin v. Health Ins. Innovations, Inc.*, 2022 WL 1126006, at *3 (S.D. Fla. Mar. 10, 2022) (“[t]he Eleventh Circuit made clear in *Camden I* that [a] percentage of the fund is the exclusive method for awarding fees in common fund class actions.”); *In Re: Takata Airbag Products Liability Litigation*, 2022 WL 1669038, at *8 (S.D. Fla. Apr. 4, 2022) (“Eleventh Circuit precedent...uniformly applies the *Camden I* percentage-of-the-fund method to class settlements resolving state-law claims”).

District courts in the Eleventh Circuit analyze the following twelve factors from *Johnson* to determine the reasonableness of a percentage-of-recovery fee award:

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee

⁴ *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974).

awards in similar cases.

Lunsford, 2014 WL 12740375, at **11–12 (citing *Camden I*, at 772 n.3).

The above factors support Class Counsel’s requested fee of \$1,504,500.00, which is approximately 29.5 percent of the cash benefit. Hall Decl. at ¶ 12; Martin Decl. (Doc. 193-1) at ¶ 8 (class benefit is approximately \$5,100,000.00). Such percentages are well within the Eleventh Circuit guidelines.

A. Results obtained for the Class (Factor 8).

“The most critical factor in determining a fee award’s reasonableness is the degree of success obtained[.]” *Farrar v. Hobby*, 506 U.S. 103, 114 (1992); *see also Camden I*, 946 F.2d at 773 (recovery is “best determinant” of the reasonableness of attorneys’ fees in a common fund case) (citation omitted). Here, Class Counsel obtained recovery for claimants of 100% of the underpaid TAVT, with an expanded class including all total loss vehicles, with a very narrow release, and with robust notice. This is an excellent result.

B. The Time and Labor Involved.

Substantial time and labor was required in litigating this case. Class Counsel invested over 2,000 hours litigating this case. Hall Decl. at ¶¶ 37-42. A lodestar cross check is unnecessary in the Eleventh Circuit. *E.g., South v. Progressive Select Ins. Co.*, 2023 WL 2733548, at *4 (S.D. Fla. Mar. 21, 2023) (“courts in this Circuit regularly award fees based on a percentage of recovery, without discussing lodestar at all.”). Although unnecessary, Class Counsel’s lodestar for cross check purposes is \$1,392,929.50 Hall Decl. at ¶ 40.⁵ The requested attorneys’ fees as a

⁵ The Hall Declaration at ¶ 40 provides the cross-check rates and hours. This Court has approved similar partner rates in previous class action settlement approval orders. *Thompson v. State Farm Fire & Cas. Co.*, No. 5:14-CV-00032 (MTT), 2019 WL 13076640, at *8 (M.D. Ga. Jan. 14, 2019) (approving fee application with rates submitted of up to \$850 per hour as shown in fee petition at

percentage of the common fund are \$1,504,500.00, which results in a cross-check multiple of 1.080, which is well within the guidelines. *Id.* at ¶ 41. *Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 WL 10518902, at *7 (S.D. Fla. Oct. 17, 2016) (holding that a lodestar multiple of 3.58 is reasonable and “well within the range previously accepted”); *In re Ethicon Physiomesher Flexible Composite Hernia Mesh Prod. Liab. Litig.*, 2022 WL 17687425, at *13 (N.D. Ga. Nov. 14, 2022) (awarding plaintiffs’ attorneys’ fee and noting that courts commonly award lodestar multiples of between 2 and 4.5). Class Counsel’s work was justified in view of the issues and how the case was defended. As a result, this factor supports the requested fee.

C. The Questions and Difficulty of the Questions Involved.

This case involved issues of first impression relating to the application of O.C.G.A. § 48-5C-1(b)(1)(A), and how sales tax must be paid by insurers pursuant to the statute. These legal issues required analysis and briefing relating to legislative and statutory history, and regulatory, statutory, and common law. Plaintiff engaged two experts: Greg Elton, who is the former Georgia Department of Revenue employee charges with overseeing collection of TAVT; and Jeffrey Martin who is a statistician and economist with extensive experience

5:14-cv-00032-MTT, Doc. 209-2); *Gumm v. Ford*, No. 5:15-CV-41 (MTT), 2019 WL 2017497, at *12 (M.D. Ga. May 7, 2019) (approving an award of attorneys’ fees in a prisoner rights class action where the underlying hourly rates in fee petition submitted for partners were between \$650 to \$805) (attorneys’ fees summary at 5:15-cv-00041-MTT, Doc. 241); *see also Swaney v. Regions Bank*, No. 2:13-CV-00544-RDP, 2020 WL 3064945, at **7–8 (N.D. Ala. June 9, 2020) (finding realized hourly rates of \$791 reasonable for class counsel in a TPCA class action); *Pinon v. Daimler AG*, No. 1:18-CV-3984-MHC, 2021 WL 6285941, at *19 (N.D. Ga. Nov. 30, 2021), *aff’d sub nom. Ponzio v. Pinon*, 87 F.4th 487 (11th Cir. 2023) (approving the followings rate in a product defect class action: “for partner attorneys with over 30 years of experience, \$894 per hour; for partner attorneys with 11–30 years of experience, \$742 per hour; for partner attorneys and associate attorneys with 8–10 years of experience, \$658 per hour). Moreover, some of the counsel here also were counsel in *Roth v. GEICO*, No. 16-62942 (S.D. Fla.) where the Court (at Doc. 333) approved the magistrate’s Report and Recommendation (Doc. 328) awarding hourly rates of \$750 per hour for counsel Hall, Lampros, Pratt, and Normand. The fee awards were later vacated at the request of plaintiffs and defendants pursuant to a global settlement of *Roth* and another consolidated case.

analyzing huge sets first party total loss claims data from insurers including GEICO, USAA, Allstate, Progressive, and others. There were also complex factual issues requiring expert involvement to analyze voluminous data for over 31,000 claims over a 5-year period. Hall Decl. at ¶¶ 5, 9-10.

This case was difficult because a loss on either issue of (1) application of the statute or (2) construction of the policy regarding sales tax, would have been fatal to the entire case. Hall Decl. at ¶ 44. The inability to reconcile conflicting “pdf” vs. DRIVES vehicle fair market value data also threatened class certification and could have been fatal to achieving a class result at the trial court or on appeal. *Id.*

D. The Skill Needed to Perform the Services Properly.

Proper case management and effective representation in any complex class action involving a large class such as this one requires the highest level of experience and skill. This case was no different. Class Counsel had the necessary experience and skill. Plaintiff engaged two highly experienced experts Jeffrey Martin and Greg Elton relating to these complex issues. Class Counsel has a significant history litigating complex against GEICO insurers, and this experience was important to securing the excellent result. Hall Decl. at ¶¶ 24-35.

E. The Preclusion of Other Employment.

Due to the substantial time commitment, both firms forewent other fee and profit-generating opportunities in pursuit of this case. Hall Decl. at ¶ 44. This factor favors approval of the requested fee.

F. The Customary Fee.

Complex civil litigation customarily is handled on the basis of a contingent fee because the class representatives typically cannot afford to pay on an hourly basis. Contingent

agreements typically provide for fees from 25 to 40 percent, far more than the fee sought here. *See, e.g., Blum v. Stemson*, 465 U.S. 886, 903 n.20 (1984) (Brennan, W., concurring)(usual practice in tort litigation is contingent fees of one-third of any recovery).

Further, Class Counsel negotiated contingent fee agreements with the class representative providing for payment of 33 percent of a common fund, or such amounts as awarded separately from the fund. Hall Decl. at ¶ 46. This factor favors approval of the requested fee.

G. Whether the Fee is Fixed or Contingent.

This action was prosecuted entirely on a contingent fee basis. *Id.* If Plaintiff had not achieved a recovery, Class Counsel would have received nothing and, in fact, would have suffered a direct out-of-pocket loss of all expenses due to the fact that they advanced all the expenses of the litigation. Numerous courts have recognized that such risk deserves extra compensation and is a critical factor in determining the reasonableness of a fee. *See, e.g. In re Dun & Bradstreet Credit Svcs. Cons. Lit.*, 130 F.R.D. 366, 373 (S.D. Ohio 1990); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 889 F.2d 21 (11th Cir. 1990); *In re Cont. Ill, Sec. Lit.*, 962 F.2d 566, 569 (7th Cir. 1992).

H. Time Limitations Imposed by the Client or Circumstances.

There were times during this litigation when Class Counsel worked under considerable time pressure due to various deadlines. Hall Decl. at ¶ 47. Rapid fire motions for reconsideration, a motion to exclude an expert witness, and motions to decertify the class occurred often with expedited briefing. *Id.* This factor justifies higher fee as time pressure in cases of this sort is expected. *Id.*

I. The Experience, Reputation and Ability of the Attorneys.

Class Counsel have considerable experience, skill and reputation in both complex civil litigation and class actions. Hall Decl. at ¶¶ 23-36. This factor also supports the requested fee.

J. The Undesirability of the Case.

This case was undesirable to the extent that it would be a difficult case of first impression with substantial risk. There was inconsistent data between online pdf information and DRIVES data maintained electronically at DOR. Hall Decl. at ¶ 44. The data issues were the subject of heated dispute including *Daubert* motions and motions to reconsider class certification. All Class Counsel shared these concerns and weighed the risky nature of the case before proceeding. *Id.*

K. The Nature and Length of the Relationship with the Client.

Class Counsel had no prior relationship with the Plaintiffs before this case. Hall Decl. at ¶ 48. Class Counsel does not believe that this factor supports an adjustment of the fee award.

L. Awards in Similar Cases.

The fees sought by Class Counsel here is consistent with - and in fact lower than - fees in similar cases in terms of size, complexity, benefit to the class, the effort required, and the likelihood of success. According to published studies, fees in common fund class actions typically average much more than what Class Counsel seek in this case. *See, e.g., Shaw v. Toshiba America Info. Sys., Inc.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000) (“Empirical studies show that ... fee awards in class actions average around one-third of the recovery”); *In re Checking Account Overdraft Litig.*, 2014 WL 11370115 at *18 (citing a 2010 study showing that awards in the Eleventh Circuit were consistent with a fee of 30 percent of the settlement benefit). Indeed, there are many decisions awarding fees of 30 percent or higher in other

complex class actions, including many cases in this circuit.⁶

M. Other Factors.

The economics of class actions require that Class Counsel be adequately compensated; otherwise consumers will find it increasingly hard to find good lawyers to take their cases. As one court observed:

[C]ourts ... have acknowledged the economic reality that in order to encourage “private attorney general” class actions brought to enforce ... laws on behalf of persons with small individual losses, a financial incentive is necessary to entice capable attorneys, who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-consuming cases for which they may never be paid.

Mashburn v. Nat’l Healthcare, Inc., 684 F. Supp. 679,687 (M.D. Ala. 1988); *see also, e.g. In re Checking Account Overdraft Litig.* 2014 WL 11370115 at **17-18 (holding if class counsel is not awarded a bonus, “very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing”) (citing *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d sub nom. Behrens v. Wometco Enterprises*, 899 F.2d 21 (11th Cir. 1990)).

IV. The Court Should Approve Reimbursement to Class Counsel for their Expenses.

The Agreement provides that Class Counsel may apply for attorneys’ fees not to exceed \$1,504,500.00, with costs of up to \$86,000.00. Agreement at ¶ 114(d) (total payment for fees and

⁶ *See, e.g., Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294–95 (11th Cir. 1999) (33 1/3 percent); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d. 1330, 1359 (S.D. Fla. 2011) (30 percent); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2012 WL 12540344 at *2 and n. 2 (N.D. Ga. Oct. 26, 2012) (awarding fee of 33 and 1/3 percent and listing other cases awarding fees based on similar or higher percentages); *In re Friedman’s, Inc. Securities Litig.*, 2009 WL 1456698 at *4 (N.D. Ga. May 22, 2009) (approving 30 percent fee); *Wolff v. Cash 4 Titles*, 2012 WL 5290155 at **5-6 (S.D. Fla. Sept. 26, 2012) (noting that fees in the Eleventh Circuit are “roughly one-third” of the benefit to the class).

costs of \$1,590,500.00). Class counsel have expended \$89,644.67 in costs (including class administration fees to be paid). All of the expenses for which Class Counsel seek reimbursement are reasonably and necessarily incurred on behalf of the class. Hall Decl. at ¶¶ 38-39; *see, e.g., Waters*, 190 F.3d at 1298 (recognizing that Class Counsel entitled to expenses in addition to an award of fees).

V. The Court Should Approve The Separate Release and Payment to Plaintiff.

Each of the representative plaintiffs answered extensive document requests and interrogatories and submitted to lengthy depositions. Hall Decl. at ¶ 50. They were never promised a reward, and agreed to represent the class members despite an uncertain outcome. *Id.* Representative plaintiffs selflessly agreed to forego any service award if there is a class member objection because they do not want to delay final resolution on behalf of the class. *Id.*

Only after negotiating the class settlement, the Parties considered a more expansive release of claims by Plaintiffs. Plaintiffs agreed to settle all potential claims and agreed to a more expansive release (beyond the release for claims relating to TAVT) for \$5,000.00 each. *Id.* at ¶ 49. *see also*, Individual Releases attached to Hall Declaration. Although the Eleventh Circuit held incentive or service awards that compensate a class representative solely for her time and for bringing a lawsuit unlawful, here Plaintiffs are being paid \$5,000.00 not as “a salary, a bounty, or both,” but in exchange for agreeing to a broader (separate) release of claims than the release applicable to the other class members. *See Black v. USAA Casualty Insurance Company*, 1:2021-cv-01363 (N.D. Ga.) (Doc. 69 at ¶ 57) (12/14/23) (final approval order approving separate release to representative plaintiff that was not a salary, bounty, or both);⁷ *Sinkfield v. Persolve Recoveries*,

⁷ *Black v. USAA* was filed after the present case and also alleges failure to properly calculate TAVT. The Hall, Lacy, Edelsberg, and Shamis firms were class counsel in *Black* and also are class

LLC, 2023 WL 511195, at *3 n.2 (S.D. Fla. Jan. 26, 2023) (“Because the Plaintiff is being paid this \$1,500.00, not as “a salary, a bounty, or both,” but in exchange for agreeing to a broader of claims than the release the other class members have given, this payment does not violate the strictures of *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1258 (11th Cir. 2020).”); *Broughton v. Payroll Made Easy, Inc.*, 2021 WL 3169135, at *4 (M.D. Fla. July 27, 2021) (same). Plaintiffs will not allow this issue to defeat or delay payment to class members. If an objection is made (or the Court does not approve the payment), Plaintiffs have agreed that the individual release and payment will be null and void. Hall Decl. at ¶ 49.

CONCLUSION

Plaintiffs respectfully request that the Court grant the requested attorneys’ fees, and costs, and the separate settlement of named Plaintiff.

This 18th day of April 2024.

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counsel here. The defendant in *Black* followed the proceedings in this case closely and the parties were able to resolve the case much more efficiently without the same contentious litigation. Hall Decl. at ¶ 52.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, April 18, 2024, I filed the foregoing *Motion for Approval of Attorneys' Fees, Costs, and Individual Releases* on the Court's ECF to the below counsel:

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