

**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.

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| CIVIL ACTION

| FILE NO.: 5:20-cv-00165-MTT  
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**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF UNOPPOSED MOTION  
FOR ATTORNEYS' FEES AND COSTS AND APPROVAL OF INDIVIDUAL  
SETTLEMENTS**

Plaintiffs Nicholas Johnson (“Johnson”), Kosmoe Malcom (“Malcom”), Aqueelah Coleman (“Coleman”), and Todra Washington (“Washington”) (collectively “Plaintiffs”), individually and on behalf of the Settlement Class, file this Supplemental Brief in Support of the Unopposed Motion for Attorneys’ Fees and Costs and Approval of Individual Settlements. Doc. 197 (the “Motion” or “Plaintiffs’ Motion”). The GEICO Defendants do not oppose the pending Plaintiff’s Motion. On May 17, 2024, the Court granted leave for Plaintiffs to file this supplemental brief with timesheets and to address the recent decision *Drazen v. Pinto*, No. 21-10199, 2024 WL 2122466, at \*18 (11th Cir. May 13, 2024). Doc. 199.

**I. Plaintiffs Provide Timesheets in Support of the Lodestar Calculations.**

Plaintiffs’ Motion identified a total lodestar of \$1,392,929.50 for Class Counsel. Mot. at 13-14. Plaintiffs’ Motion also identified the experience of the lawyers, the hours worked, and the hourly rates used to calculate the lodestar. *See* Motion at pp. 13-15; Hall Declaration (Doc. 197-1) at ¶¶ 23-52. Plaintiffs’ Motion disclosed that the fee request of \$1,504,500.00 would result in a multiplier of 1.080 over the lodestar. Mot. at p. 15. No class member objected to the attorneys’ fee request. Hall Decl. (Doc. 197-1) at ¶ 51.

Plaintiffs attach here declarations by Christopher Hall of Hall & Lampros (Exhibit 1, “Hall Decl.”), Edward Normand of Normand Law (Exhibit 2, “Normand Decl.”), Jacob Phillips of Jacobson Phillips (Exhibit 3, “Phillips Decl.”), Scott Edelsberg of Edelsberg Law (Exhibit 4, “Edelsberg Decl.”), Andrew Shamis of Shamis Gentile (Exhibit 5, “Shamis Decl.”), Bradley Pratt of Buyak Pratt (Exhibit 6, “Pratt Decl.”), and Tom Lacy of Lindsey & Lacy (Exhibit 7, “Lacy Decl.”), attaching time sheets for each firm involved in this case and providing information similar to that in the Motion as to the hours worked, their experience, and rates. Plaintiffs’ lodestar of \$1,392,929.50 is identified in the time sheets, which show:

<b>Timekeeper</b>	<b>Law Grad Year</b>	<b>Firm</b>	<b>Hours</b>	<b>Rate (\$)</b>	<b>Total (\$)</b>
Chris Hall	1996	Hall & Lampros	1014	750.00	760,500.00
Andrew Lampros	1997	Hall & Lampros	6.8	750.00	5,100.00
Gordon Van Remmen	2015	Hall & Lampros	246	400.00	98,400.00
Tom Lacy	1996	Lindsey & Lacy	22.7	750.00	17,025.00
Bradley Pratt	2004	Buyak Pratt (formerly Pratt Clay)	6.8	750.00	5,100.00
Ed Normand	1990	Normand Law	22.8	750.00	17,100.00
Amy Judkins	2016	Normand Law	0.8	475.00	380.00
Jacob Phillips	2015	Jacobson Phillips (formerly with Normand Law)	56.5	600.00	33,900.00
Josh Jacobson	2017	Jacobson Phillips (formerly with Normand Law)	1.5	525.00	787.50
Scott Edelsberg	2012	Edelsberg Law	209.25	750.00	156,937.50
Rachel Dapeer	2011	Edelsberg Law	43.75	750.00	32,812.50
Chris Gold	2011	Edelsberg Law	38	750.00	28,500.00
Andrew Shamis	2012	Shamis Gentile	308	750.00	231,000.00
Jana Sherwood (paralegal)	Paralegal	Normand Law	17.6	225.00	3,960.00
Devi Ramprasad (paralegal)	Paralegal	Normand Law	8.1	175.00	1,417.50
Giselle Jase (clerk)	Paralegal	Normand Law	0.1	95.00	9.50
<b>Total</b>					<b>\$1,392,929.50</b>

The lodestar identified in this table is the same lodestar total identified in the Motion.<sup>1</sup>

Some of the timesheets submitted show hours greater than the hours listed above. This is because the lawyers have continued to work on the case, including the motion for final approval. Rather

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<sup>1</sup> The total fees from the Edelsberg Law firm are the same as identified in the Hall Declaration filed with the Motion, but the table in that Hall Declaration (Doc. 197-1) mistakenly included *combined* time of Mr. Edelsberg and Ms. Dapeer as being solely Mr. Edelsberg. See Declaration of Scott Edelsberg at ¶ 8. That is corrected here. There is no difference in the total lodestar for the case or the total lodestar for the Edelsberg firm.

than increase the claimed lodestar, Plaintiffs' counsel stands by the lodestar that was submitted at the time of Plaintiffs' Motion.

## **II. The Hours Worked Are Reasonable.**

The Motion shows that the hours are reasonable and explains the extensive procedural history and work done on the case, the novelty and uncertainty relating to case claims, and how it was highly contested, with pending motions for summary judgment at the time of pretrial disclosures 30 days before trial. Plaintiffs refer the Court to the Motion at pp. 3 through 7 showing the extensive work on the case, which supports the reasonableness of the hours worked. Plaintiffs' Motion also examines each of the factors in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974) in support of the fee award. Mot. at pp. 10-12. These *Johnson* factors also support the reasonableness of Plaintiffs' counsel's hours. *In re Home Depot Inc.*, 931 F.3d 1065, 1090–91 (11th Cir. 2019) (courts may consider *Johnson* factors relating to reasonableness of hours worked and hourly rates).

## **III. The Hourly Rates Are Reasonable for This District and Division.**

In determining a reasonable hourly rate, the Court itself can verify whether the requested hourly rates are reasonable. *See e.g., King v. Farris*, No. 5:08-CV-186CAR, 2009 WL 2143790, at \*1 (M.D. Ga. July 14, 2009), *aff'd*, 357 F. App'x 223 (11th Cir. 2009) (holding that the court is an expert on the question of reasonable hourly rates and the court “may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment”) (citing *Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir.1994)) (internal quotation omitted). Courts may consider the *Johnson* factors when determining the reasonable hourly rates. *In re Home Depot*, 931 F.3d at 1090–91.

The Motion shows that this contingency case was fiercely contested by defense lawyers in

the New York office of one of the largest firms in the world, Eversheds Sutherland. Plaintiffs' counsel went toe to toe with the well-heeled firm on complex liability and class certification issues. The maximum rates of \$750.00 for the lawyers are supported by their work in this case, and their experience and skill which is set out in the Hall's Declaration (Doc. 197-1) filed with the Motion and in the declarations attached here. Ex. 1, Hall Decl. at ¶¶ 5-7; Hall Decl. (Doc. 197-1) at ¶¶ 23-27; Normand Decl. at ¶¶ 7-15; Phillips Decl. at ¶¶ 2-3, 7-8; Edelsberg Decl. at ¶¶ 4-6, 10-12, 16-17; Shamis Decl. at ¶¶ 4-11; Pratt Decl. at ¶¶ 6-10; and Lacy Decl. at ¶¶ 6-7. The declarations support the hourly rates of all lawyers who worked on the case.

The Motion shows that the hourly rates are reasonable. Mot. at pp. 13-14. Attorneys Christopher Hall, Andrew Lampros, Ed Normand, and Bradley Pratt had rates of \$750.00 per hour previously approved in *Roth v. GEICO General Ins. Co.*, No. 16-62942 (S.D. Fla.) (Fort Lauderdale Division) and *Jones v. GEICO General Ins. Co.*, 6:17-cv-00891 (M.D. Fla.) (Orlando Division). The *Roth* court (at Doc. 333) approved the magistrate's report and recommendation (Doc. 328) awarding Hall, Lampros, Pratt, and Normand fees based on an hourly rate of \$750.00 per hour for similar legal work and then associate Jacob Phillips for \$525.00 per hour and Gordon Van Remmen for \$475.00 based on work performed in the years 2016-2019.<sup>2</sup> The *Jones* court approved hourly rates of \$750.00 per hour for Hall, Lampros, Normand, and Pratt and \$525.00 per hour for Phillips, and \$450.00 per hour for Van Remmen submitted by declaration supporting a motion for attorneys' fees (Doc. 210-2) for similar legal work performed in the years 2017-2020. *Roth* and *Jones* were litigated years before the present case. Attorneys Hall, Lampros, Normand, and Pratt each had more experience for the present case, but still seek the older case rates. Jacob

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<sup>2</sup> 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.

Phillips and Gordon Van Remmen became partners after the *Roth* and *Jones* cases and have much more experience supporting their higher rates today. *See also*, Ex. 1, Hall Decl. at ¶¶ 6-7; Normand Decl. at ¶¶ 7-10; Pratt Decl. at ¶¶ 6-8.

Messrs. Shamis, Edelsberg, Gold, Dapeer, and Lacy have substantial experience in insurance and class action litigation, which supports the rates requested by them and the lawyers in their firms. *See* Edelsberg Decl. at ¶¶ 4-6, 10-12, 16-17; Shamis Decl. at ¶¶ 4-11; and Lacy Decl. at ¶¶ 6-7.

The Motion shows that the rates requested are similar to rates in other complex cases approved in the Middle District of Georgia, Macon Division. Mot. at p.13 fn.5. This Court has approved similar rates in previous class action settlement approval orders. *See 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 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). The rates requested also are similar to rates in other complex cases approved in this Circuit. *See 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). The rates of all lawyers who worked on this case are reasonable and in line with other cases in this district and division as well as this Circuit.

#### **IV. A Multiplier is Proper.**

Plaintiffs' Motion disclosed that the fee award requested is a 1.080 multiple over lodestar. Mot. at p. 14. No class member objected. Hall Decl. (Doc. 197-1) at ¶ 51. A multiplier was earned in this case under a lodestar analysis or percentage of common fund analysis.

When considering a multiplier adjustment for fee awards, courts in the Eleventh Circuit consider factors such as whether the fee was based on a contingency and the quality of the work. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 772 (11th Cir. 1991) ("That lodestar figure may then be adjusted upward or downward for certain factors known as multipliers, such as contingency and the quality of the work performed, to arrive at a final fee."); *see also In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 356 (N.D. Ga. 1993) (finding a multiplier of 1.83 appropriate due to contingency nature of the fee in a class action settlement); *Id.* at 356–57 (finding a multiplier warranted based on "the exceptional skill and representation provided by plaintiffs' counsel" in a class action involving complex questions of law and fact); *Daimler AG*, 2021 WL 6285941, at \*18 ("A contingency fee often justifies a larger award of attorneys' fees because, if the case is lost, an attorney realizes no return for investing large amounts of time and resources in the case.") (citing *In re Friedman's, Inc. Sec. Litig.*, No. 1:03-cv-3475-WSD, 2009 WL 1456698, at \*3 (N.D. Ga. May 22, 2009)).

Plaintiffs' counsel respectfully submit that their quality of work on this contingency matter supports the multiplier. The requested multiplier of 1.080 in this contingency fee case is well within (and even lower than) the range of multipliers approved by courts in this Circuit. *See Cox*

*v. Cmty. Loans of Am., Inc.*, No. 11-177-CDL, 2016 WL 9130979, at \*3 (M.D. Ga. Oct. 6, 2016) (holding lodestar multipliers “in large and complicated class actions range from 2.26 to 4.5 while three appears to be the average”); *Daimler AG*, 2021 WL 6285941, at \*19 (finding a “multiplier of just 1.39 ... is well within the range of multipliers approved by courts in this circuit” for attorneys’ fees in a class action settlement); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 04-CV-3066-JEC, 2008 WL 11234103, at \*3 (N.D. Ga. Mar. 4, 2008) (approving fee with lodestar multiplier between 2 and 3 in a class action settlement); *Davis v. Locke*, 936 F.2d 1208, 1215 (11th Cir. 1991) (affirming district court’s enhancement of lodestar by a multiplier of 1.6 to compensate, among other things, for the risk associated with a contingency fee).

**V. *Drazen* Should Not Apply.**

The application of *Drazen v. Pinto*, No. 21-10199, 2024 WL 2122466 (11th Cir. May 13, 2024) should not impact the Court’s decision on the Motion. Plaintiffs’ requested fees are proper under a lodestar or common fund approach. Plaintiffs do not believe, however, that *Drazen* should apply. *Drazen* held that a settlement, which provided for some coupon payments in addition to “claims made” cash payments, was a coupon settlement governed by the attorneys’ fee strictures of Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1732. *Id.* at \*\*33-34. The *Drazen* court also stated that it was improper to treat a “claims made” settlement as a common fund settlement for purposes of calculating and awarding attorneys’ fees. *Id.* at \*\*31–32. This statement relating to “claims made” settlements was unnecessary to the ultimate holding that CAFA applies. *Id.* at \*33 (“[W]e hold that CAFA applies to this settlement, so its attorney's fees provisions govern how to calculate attorney's fees in this case.”). The statements relating to common fund attorneys’ fees was *dicta*.



The *Drazen* court also did not follow binding precedent. The court acknowledged *Poertner v. Gillette Co.*, 618 F.App'x 624 (11th Cir. 2015) which holds a claims made settlement permits percentage recovery of fees based on the common fund but found *Poertner* was not binding because it was unpublished and allegedly too dissimilar to the facts of the *Drazen* case. *Drazen*, 2024 WL 2122466, at \*32. The *Drazen* court made a mistake when trying to distinguish *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291, 1294–95 (11th Cir. 1999) by suggesting it was not a “claims made” settlement. *Drazen*, 2024 WL 2122466, at \*32; cf. *Waters*, 190 F.3d at 1297 (“In addition to the district court’s careful consideration of the *Johnson* factors and awareness that the **actual claims made** could be less than the gross settlement fund, our conclusion that the award is not an abuse of discretion is supported by the following observations.”) (emphasis added).

*Drazen* goes on to suggest that *Waters* may in fact apply, but that it relied on inapplicable cases:

Second, even if *Waters* applied, all of the cases it cites—including *Boeing*, which Class Counsel cited at oral argument—are common fund cases, save one. The one exception is *Strong v. BellSouth Telecomms., Inc.*, 137 F.3d 844, 852–53 (5th Cir. 1998). There, the Fifth Circuit held that “it was not an abuse of discretion for a district court judge to consider the actual award paid out to the class in determining whether a fee application was reasonable.” *Waters*, 190 F.3d at 1296. In sum, these cases do not apply in the situation here. Moreover, the only claims-made case cited or relied upon used the actual relief paid out to class members in calculating the attorney's fee.

*Drazen*, 2024 WL 2122466, at \*32. The *Drazen* court misses the point. Disagreement with *Waters* (or the cases *Waters* relies on) does not change the fact that it is binding precedent.

The *Drazen* court also ignored *Arkin v. Pressman, Inc.*, 38 F.4th 1001, 1008 (11th Cir. 2022) (finding a claims made TCPA settlement created a common fund from which fees based on a percentage of funds available were permitted) and *Carter v. Forjas Taurus, S.A.*, 701 Fed. Appx. 759, 767 (11th Cir. 2017)(unpublished) (holding a claims made settlement created a common fund

from which fees based on a percentage of funds available was permitted). *Drazen* was not an *en banc* decision. It therefore was prohibited from ignoring the prior binding precedent. *United States v. Brown*, 342 F.3d 1245, 1246 (11th Cir. 2003) (“Under the prior precedent rule, we are bound by our prior decisions unless and until they are overruled by the Supreme Court or this Court *en banc*.”). Plaintiffs respectfully submit that *Drazen*’s statements relating to claims made settlements are dicta and contrary to binding precedent. *Id.*

#### **VI. Plaintiffs’ Motion Should Be Granted Regardless of the Application of *Drazen*.**

The Court need not decide whether the *Drazen* court’s statements relating to claims made cases were *dicta* or in violation of precedent. This is because Plaintiffs’ requested fee award should be granted based on both the common fund or lodestar approach.

The requested fees are proper under the common fund approach as explained in Plaintiffs’ Motion. The requested fees also are proper based on a lodestar analysis also shown by Plaintiffs’ Motion. Plaintiffs’ time sheets attached hereto allow the Court to verify the time entries.

Plaintiffs request that the Court award lodestar plus a small 1.080 multiplier, which is proper in any event. Due process has been satisfied to class members based on the detailed information about fees, lodestar, attorney experience, rates, and amount of work that was filed with the initial Motion and available to potential objectors. The fact that the *Drazen* court had doubtful authority to overturn binding precedent supports this conclusion.

#### **VII. There Are No Due Process Concerns.**

Plaintiffs provided notice to the class of the requested fees, costs and expenses, and individual class representative settlements. See Doc. 192-3 (Postcard Notice), Doc. 192-4 (Email Notice), and Doc. 192-5 (Longform Notice). Plaintiffs’ Motion was filed 15 days before the objection deadline. Doc. 197. In the Motion and supporting Hall Declaration, Plaintiffs identified

their lodestar, the experience of counsel, the work performed, the multiplier of lodestar being requested, and the expenses of the case. Doc. 197. Of 32,260 class members, no class member objected. Hall Decl. (Doc. 197-1) at ¶ 51.

The requested fee award is proper under either the common fund or lodestar approach and class members were advised of the propriety of an award under either approach in the notices and Plaintiffs' Motion.

### CONCLUSION

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

This 22<sup>nd</sup> day of May 2024.

/s/Christopher B. Hall  
Christopher B. Hall  
Georgia Bar No. 318380  
Hall & Lampros, LLP  
300 Galleria Parkway, Suite 300  
Atlanta, GA 30339  
Telephone: (404) 876-8100  
Facsimile: (404) 876-3477  
chall@hallandlampros.com

W. Thomas Lacy  
Georgia Bar No. 431032  
Lindsey & Lacy, PC  
200 Westpark Drive, Suite 280  
Peachtree City, GA 30269  
Telephone: 770-486-8445  
tlacy@llptc.com

Bradley W. Pratt  
Georgia Bar No. 586673  
Pratt Clay LLC  
4401 Northside Parkway  
Suite 520  
Atlanta, GA 30327  
Telephone: (404) 949-8118  
bradley@prattclay.com

Scott Edelsberg, Esq. (pro hac vice)  
Edelsberg Law, PA  
20900 NE 30th Ave., Suite 417  
Aventura, FL 33180  
Telephone: (305) 975-3320  
scott@edelsberglaw.com

Andrew J. Shamis  
Georgia Bar No. 494196  
Shamis & Gentile, P.A.  
14 NE 1st Ave., Suite 1205  
Miami, FL 33132  
Telephone: (305) 479-2299  
Facsimile (786) 623-0915  
ashamis@shamsigentile.com

Rachel Dapeer (pro hac vice)  
Dapeer Law, P.A.  
300 S. Biscayne Blvd, #2704  
Miami, FL 33131  
Telephone: 305-610-5223  
rachel@dapeer.com

Edmund A. Normand (pro hac vice)  
Jacob L. Phillips (pro hac vice)  
Appearing Pro Hac Vice  
Normand PLLC  
Post Office Box 1400036  
Orlando, FL 32814-0036  
Telephone: (407) 603-6031  
ed@ednormand.com  
jacob.phillips@normandpllc.com

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this day, May 22, 2024, I filed the foregoing *Plaintiffs' Supplemental Brief in Support of Unopposed Motion for Attorneys' Fees and Costs and Approval of Individual Settlements* on the Court's ECF to the below counsel:

Valerie Strong Sanders  
Eversheds Sutherland (US) LLP  
999 Peachtree St NE  
#2300  
Atlanta, GA 30309  
valeriesanders@eversheds-sutherland.com

Kymberly Kochis  
Alexander Fuchs  
Eversheds Sutherland (US) LLP  
1114 Avenue of the Americas  
The Grace Building, 40th Floor  
New York, New York 10036  
kymkochis@eversheds-sutherland.com

/s/Christopher B. Hall  
Christopher B. Hall