

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DIANE MCCOY, individually and)
on behalf of all others similarly)
situated,)

Plaintiff,)

v.)

GEICO INDEMNITY COMPANY, a)
foreign corporation)

Defendant.)

Civil Action No.
3:20-CV-05597-BRM

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

Dated: December 12, 2024

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Plaintiff Diane McCoy (“Plaintiff”), individually and on behalf of the Settlement Class, files this Memorandum in support of Plaintiff’s Unopposed Motion for Attorneys’ Fees, Costs, and Service Award, requesting that the Court award attorneys’ fees and costs of \$520,482.00, approximately 27.5% of the estimated value of the settlement of \$1,892,662.20, and a Service Award of \$6,500.00 to Plaintiff McCoy in accordance with the terms of the Agreement, and as set forth in the Proposed Order granting final approval of the Agreement.

I. STATEMENT OF THE BASIS FOR THE REQUEST

After litigating this action on a wholly contingent basis for four years, the Parties reached a settlement, memorialized by the Agreement,¹ which if approved would provide members of the Settlement Class payment of mandatory title transfer fees and registration transfer fees (“Transfer Fees”) required under New Jersey law to buy a replacement vehicle. This Court preliminarily approved the Agreement on September 4, 2024. Dkt. No. 84. Under the Agreement, Defendant agreed not to oppose attorneys’ fees and costs awarded by the Court up to \$520,482.00, which is 27.5% of the estimated value of the settlement, and to pay a Service Award of \$6,500.00 to the Named Plaintiff. As set forth below, the fee requested by Class Counsel represents the market standard for attorneys’ fees and fits comfortably

¹ Capitalized terms used herein shall have the definitions provided in the Class Action Settlement Agreement and Release filed at Dkt. No. 78-3.

within a substantial body of precedent addressing class counsel fee awards in the Third Circuit, and the costs and service award requested are reasonable and appropriate.

II. ARGUMENT

A. The Proposed Settlement Is an Excellent Result and Supports the Reasonableness of the Attorneys' Fees Sought.

Plaintiff has already set forth the terms of the proposed Agreement, which this Court preliminarily approved, and why they are excellent results and are certainly fair and reasonable to Settlement Class Members, which is set forth in the Motion for Preliminary Approval (Dkt. No. 78-1) and the Declaration of Edmund Normand, attached as Exhibit 2 thereto, and will do so once again in moving for final approval. As such, this fee petition does not repeat such points—suffice it to say that securing 90% of the damages sought that could have been obtained at trial, an extremely tailored and narrow release, a robust Notice plan, and an extremely simple claim process is an excellent result. And that Class Counsel was able to secure 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.

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

The Third Circuit employs a dual-method approach for awarding attorneys' fees in class action cases, utilizing both the lodestar and percentage-of-recovery methods. *In re Budeprion XL Mktg. & Sales Litig.*, No. 09-md-2107, 2012 U.S. Dist.

LEXIS 91176 (E.D. Pa. July 2, 2012); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The *Gunter* factors provide a comprehensive framework for assessing the reasonableness of fees, and the requirement for a robust assessment by district courts ensures fairness and consistency. *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524, (3d Cir. 2009). This approach ensures that attorneys are fairly compensated for their efforts while protecting the interests of the class members. *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, ¶ 51 (W.D. Pa. 1997).

The percentage for attorneys' fees of 27.5% falls within the benchmarks set for attorneys' fees in other courts in the Third Circuit, including the District of New Jersey. "Courts within the Third Circuit often award fees of 25% to 33% of the recovery." *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at *42 (D.N.J. Nov. 9, 2005) (citing *In re Linerboard Antitrust Litig.*, No. 1261, 2004 U.S. Dist. LEXIS 10532 (E.D. Pa. June 2, 2004) (approving 30% fee of a \$202 million settlement in an antitrust class action)); *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995) (explaining that in common fund cases "fee awards have ranged from nineteen percent to forty-five percent of the settlement fund"); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) (explaining that "the award of one-third of the

fund for attorneys' fees is consistent with fee awards in a number of recent decisions within this district").

Awards of 33% have regularly been found acceptable in common fund settlements in this District. *See, e.g., In re Merck & Co., Inc., Vytorin ERISA Litig.*, No. 08-285, 2010 U.S. Dist. LEXIS 12344, 2010 WL 547613, at *13-14 (D.N.J. Feb. 9, 2013) (awarding attorney fee of 33%, plus expenses, from the common fund); *Milliron v. T-Mobile USA, Inc.*, No. 08-4149, 2009 U.S. Dist. LEXIS 101201, 2009 WL 3345762, at *14 (D.N.J. Sept. 10, 2009) (approving attorney fee of 33 1/3%, plus expenses, on common fund amount of \$13.5 million); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) (approving 33% fee award).

Courts have long recognized the common fund doctrine, under which attorneys who create a recovery benefiting a group of people may be awarded their fees and costs from the recovery. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). 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.

In the Third Circuit, there are “two basic methods for evaluating the reasonableness of a particular attorney fee request - the lodestar approach and the percentage-of-recovery approach. Each has distinct attributes suiting it to particular types of cases.” *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 248 (D.N.J. 2005) (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig. (Prudential I)*, 962 F. Supp. 450, 478 (D.N.J. 1997)). The percentage-of-recovery method is used in common fund cases, as courts have determined that “class members would be unjustly enriched if they did not adequately compensate counsel responsible for generating the fund.” *Varacallo*, 226 F.R.D. at 249 (quoting *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 128 (D.N.J. 2002)). “While either the lodestar or percentage-of-recovery method should ordinarily serve as the primary basis for determining the fee, the Third Circuit has instructed that it is sensible to use the alternative method to double check the reasonableness of the fee.” *Varacallo*, 226 F.R.D. at 249 (*Prudential I*, 962 F. Supp. at 478).

Courts have significant discretion in choosing the proper percentage. *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 153–54. Here, the fee that Defendant has agreed not to oppose or otherwise object to—\$520,482.00—is on the low end of the percentage range that has been recognized as reasonable in similar-sized cases. *In*

re Remeron Direct Purchaser Antitrust Litig., 2005 U.S. Dist. LEXIS 27013, at *42.

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 v. Prudential-Bache Props.*, 9 F.3d 513, 516 (6th Cir. 1993). 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, 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 pour 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.

The award for attorneys' fees is within the Court's discretion and the percentage for attorneys' fees of 27.5% falls within the benchmarks set for attorneys' fees in other New Jersey District cases. *Halley v. Honeywell Int'l, Inc.* 861 F.3d 481 (3d Cir. 2017); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294 (3d Cir. 2005) (holding that fees within the range of 25-31% of the total settlement were fair and reasonable). Considering the fee percentages routinely approved by other courts in this Circuit confirms that the amount sought here is eminently reasonable, and, if anything, falls on the lower end of the spectrum. *See In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013 at *46 (noting that to determine the market price for an attorney's services in the class context, the Court should look to evidence of negotiated fee arrangements in comparable litigation where "Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation."); *see also In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000); *In re Orthopedic Bone Screws Prods. Liab. Litig.*, No. 97-381, 2000 U.S. Dist. LEXIS 15980 at *7 (E.D. Pa. Oct. 23, 2000); *Durant v. Traditional Invest., Ltd.*, No. 88-9048, 1992 U.S. Dist. LEXIS 12273 at *7 n.7 (S.D.N.Y. Aug. 12, 1992); *In re Ins. Brokerage Antitrust Litig.*, 297

F.R.D. 136, 156 (holding that counsel's requested 33% fee amount was within the range of privately negotiated contingent fees.).

D. The Fees Requested Are Reasonable Given the *Gunter* Factors.

When using the percentage-of-recovery method, the Third Circuit has articulated several factors, known as the *Gunter* factors, that district courts should consider when assessing the reasonableness of the fee. *Supra*. These factors include: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301 (3d Cir. 2005) (citing *Gunter*, 223 F.3d at 195 n.1) (the "*Gunter* factors"). The district court need not apply these factors in a formulaic way, as certain factors may be afforded more weight than others. *In re Rite Aid*, 396 F.3d at 301. The district court should engage in a robust assessment of these factors. *Id.* at 302; *see also Gunter*, 223 F.3d at 196.

1. Size of the Fund and Number of Persons Benefitted

As recited elsewhere in this Memorandum, the size of the fund Defendant has agreed to make available to settlement class members is \$1,892,662.20. A total of

30,921 notices were mailed to settlement class members. In addition to those persons making a claim for transfer fees under the Agreement, Defendant has also agreed as part of this settlement to pay all applicable transfer fees on total loss claims in the State of New Jersey going forward, a future benefit to many thousands of insureds outside the Settlement Class. Agreement at ¶ 38.

The proposed Agreement provides that Class Counsel may apply for attorneys' fees and costs not to exceed \$520,482.00. Agreement at ¶ 47; Normand Decl. at ¶ 9. As such, this factor weighs in favor of approving attorneys' fees and costs here.

2. Presence or Absence of Objections by Settlement Class Members

As of the last claims report dated December 08, 2024, no objections to the Agreement in any respect have been received by Settlement Class Members. *Cf. Del. Cnty. Emps. Ret. Sys. v. Adapthealth Corp.*, No. 21-3382, 2024 U.S. Dist. LEXIS 120714, at *10 (E.D. Pa. July 10, 2024) (“The lack of any objection supports approval of the settlement.”). As such, this factor counsels in favor of approving attorneys' fees and costs.

3. Skill and Efficiency of Class Counsel

Class counsel have extensive experience litigating cases involving whether sales tax and/or transfer fees are included in the actual cash value of insured vehicles across the county and have secured dozens of multi-million dollar settlements,

evincing extensive knowledge of the claims and defenses at issue. Normand Decl. at ¶¶ 10, 20, 28; *see also* Dkt. No. 78-2, Ex(s) 2-6 (firm resumes of class counsel demonstrating decades of combined class action experience and numerous recent favorable results reached in substantially similar cases); *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.”). This factor strongly counsels in favor of the requested attorneys’ fees and costs here.

4. Complexity and Duration of Litigation

“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 various motions, including Plaintiff’s Motion for Class Certification, 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). This factor therefore supports approval of the requested fees and costs.

5. Risk of Non-Payment

This case was taken by class counsel on a purely contingent basis, and as such, class counsel fully bore the risk of non-payment in the event the case could not be brought to a successful conclusion. Moreover, given the vigorously contested nature of the action, there was a substantial risk to class counsel of non-payment. *See In re Domestic Drywall Antitrust Litig.*, No. 2437 13-MD-2437, 2018 U.S. Dist. LEXIS 118758, at *48 (E.D. Pa. July 17, 2018) (finding risk of non-payment factor supported fee request where “success in th[e] litigation was in no way guaranteed” and the case was taken on a contingent basis, so “there was a risk of nonpayment in the event that the class was unsuccessful at trial”).

6. Amount of Time Devoted by Class Counsel

Class Counsel has expended significant time and resources on this action, accumulating a lodestar of over \$689,082. Exhibit 1 (Normand Decl.), ¶ 10. This time was spent on numerous issues, including (i) pre-suit investigation; (ii) reviewing and analyzing policies and state laws and regulations; (iii) drafting the Complaint; (iv) briefing motions related to experts and Plaintiff’s Motion for Class Certification; (v) propounding written discovery, (vi) reviewing troves of production documents, (vii)

retaining experts and providing expert reports, (viii) reviewing voluminous claims data produced by Defendant in discovery. *Id.* ¶¶ 11–12; *see also* Declaration Daniel Ferri (“Ferri Decl.”) and attendant exhibits, attached as Exhibit 2.

The substantial time expended by counsel in litigating this case means that there is no multiplier required here. Class counsel’s combined fees totaled \$689,082, while the unopposed fee sought is only \$520,482, inclusive of costs. Therefore, upon this request, class counsel are only seeking a fee award representing a multiplier of 0.755 (a “negative multiplier”) of the lodestar expended in the prosecution of the case, a significant benefit and savings to the Settlement Class. *E.g., Castro v. Sanofi Pasteur Inc.*, No. 11-7178 (JMV)(MAH), 2017 U.S. Dist. LEXIS 174708, at *27 (D.N.J. Oct. 20, 2017) (“This is sometimes referred to as a ‘negative multiplier,’ meaning that counsel is receiving less than they would have received if they had instead been paid on an hourly basis.”).

As no multiplier is necessary or requested here, this factor counsels strongly in favor of approving the requested fees and costs. *See Castro*, No. 11-7178 (JMV)(MAH), 2017 U.S. Dist. LEXIS 174708, at *27 (“Because the lodestar cross-check results in a negative multiplier, it provides strong evidence that the requested fee is reasonable.”).

7. Awards in Similar Cases

As set forth above, the percentage for attorneys' fees of 27.5% falls within the benchmarks set for attorneys' fees in other New Jersey District cases. *Halley v. Honeywell Int'l, Inc.* 861 F.3d 481 (3d Cir. 2017); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294 (3d Cir. 2005) (holding that fees within the range of 25-31% of the total settlement were fair and reasonable).

E. Application for Service Award.

As noted above, a \$6,500.00 Service Award is sought for Plaintiff Diane McCoy as Class Representative to compensate her for filing the Action and the time she dedicated to the prosecution of this Action for the benefit of the Class. The Third Circuit has consistently approved such awards, provided they are fair, reasonable, and adequate.

“Incentive awards are not uncommon in class action litigation” *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (quotation omitted); *see also Bredbenner*, 2011 U.S. Dist. LEXIS 38663, at *63 (same). These payments “compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation.” *Bredbenner*, 2011 U.S. Dist. LEXIS 38663, at *64 (quotation omitted). Incentive awards also “‘reward the public service’ of contributing to the enforcement of mandatory laws.” *Id.* (quoting *In re Cendant*, 232 F. Supp. 2d at 344). “Judges [in this

Circuit] have not hesitated to assure that those undertaking class litigation are not penalized for placing a class's interest above their own.” *Cullen*, 197 F.R.D. at 145 (citing *In re SmithKline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525 (E.D.Pa.1990)); *see also In re Corel*, 293 F. Supp. 2d at 498 (same).

The proposed \$6,500.00 Service Award falls well within the range of awards approved by numerous courts, including courts in this Circuit. *See Chakejian v. Equifax Info. Servs.*, 275 F.R.D. 201, 220 (awarding named plaintiff \$15,000 and noting that sum is within the range of incentive awards recently accepted by other courts); *see also Bredbenner*, 2011 U.S. Dist. LEXIS 38663, at *68 (\$10,000); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 616 (D.N.J. 2010) (\$10,000); *Mehling v. N.Y. Life Ins. Co.*, 248 F.R.D. 455, 467 (E.D. Pa. 2008) (\$7,500 and \$15,000); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 U.S. Dist. LEXIS 569, at *23 (E.D. Pa. Jan. 3, 2008) (\$30,000); *In re Linerboard Antitrust Litig.*, 2004 U.S. Dist. LEXIS 10532, at *57-58 (\$25,000).

The \$6,500.00 service award amounts to approximately .003% of the \$1,892,662.20 settlement fund value. The service award requested is appropriate here in light of the efforts made by Plaintiff McCoy to protect the interests of the Settlement Class, the time and effort she expended pursuing these matters, as well as the substantial benefit recovered for the Class. Plaintiff

regularly communicated with Class Counsel, reviewed documents, assisted and participated in settlement negotiations, and generally acted in a fashion that was consistent with a class representative of the highest ethical standards. Normand Decl., ¶ 15. A Service Award is warranted here given Plaintiff was essential to Class Counsel's ability to prepare and bring this case and, at \$6,500.00, is at the low end of Service Awards that have been held reasonable by district courts in this Circuit and throughout the country.

Thus, Class Counsel respectfully requests that this Court grant the Service Award to the Named Plaintiff.

F. Application for Reasonable Costs.

Class Counsel has incurred costs exceeding \$23,437.23 in costs for expert fees, printing, copying, filing, and *pro hac* costs, and so forth. Normand Decl., ¶ 12. Pursuant to the Agreement, however, Class Counsel is only seeking reimbursement of the \$520,482.00 amount discussed above, inclusive of both attorneys' fees and costs. This amount is reasonable—and is far less than costs actually incurred (and reimbursed) in similar class action litigation.

III. CONCLUSION

Plaintiff respectfully requests the Court approve the requested amounts in attorneys' fees and costs and for the Service Award, 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 and directing payment of attorneys' fees and costs of \$520,482.00 from the settlement fund, in accordance with and under the terms of the Agreement;
2. Approving Defendant's agreement to pay and directing payment of the Service Award of \$6,500.00 to the Named Plaintiff.

Respectfully submitted this 12th day of December 2024

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