

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

ERIK KNIGHT and JUNG KIM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

PROGRESSIVE NORTHWESTERN  
INSURANCE COMPANY, PROGRESSIVE  
DIRECT INSURANCE COMPANY,  
PROGRESSIVE CASUALTY INSURANCE  
COMPANY, PROGRESSIVE SPECIALTY  
INSURANCE, and PROGRESSIVE  
CLASSIC INSURANCE COMPANY, Ohio  
corporations,

Defendants.

Case No.: 3:22-cv-00203-JM

**DECLARATION OF HANK BATES IN SUPPORT OF PLAINTIFFS' MOTIONS FOR  
(i) FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AND  
(ii) ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

I, Hank Bates, declare and state as follows:

1. I am a partner at Carney Bates & Pulliam, PLLC. My firm, along with Jacobson Phillips PLLC, Normand PLLC, Edelsberg Law, P.A., Shamis & Gentile P.A., and Bailey & Glasser, LLP (collectively "Class Counsel") serve as co-counsel of record for Plaintiffs Eric Knight and Jung Kim (Plaintiffs) against Progressive Northwestern Insurance Company ("Progressive Northwestern"), Progressive Direct Insurance Company ("Progressive Direct"), Progressive Casualty Insurance Company ("Progressive Casualty"), Progressive Specialty Insurance Company ("Progressive Specialty"), and Progressive Classic Insurance Company ("Progressive Classic") (collectively "Progressive" or "Defendants") in this Action.

2. I make this Declaration in support of Plaintiffs' Motions for (i) Final Approval of

Class Action Settlement and (ii) Attorneys' Fees, Litigation Expenses, and Service Awards. I have personal knowledge of the facts set forth in this Declaration based on active participation in all aspects of the prosecution and resolution of the Action. If called upon to testify, I could and would testify competently to the truth of the matters stated herein.

## **II. Overview of the Litigation, Mediation, and Settlement**

3. Plaintiff Knight filed his class action complaint on August 4, 2022 (the "Knight Action"). *See* ECF No. 1. After Progressive Northwestern responded with an answer, ECF No. 3, the parties engaged in discovery and, on January 25, 2024, Plaintiff Knight moved for class certification. *See* ECF No. 41. The Motion for Class Certification was supported with voluminous evidence, including four expert reports. *See* ECF Nos. 41-1–41-21. Progressive opposed the motion, ECF No. 46, supported by reports of its own experts, among other evidence. *See* ECF Nos. 46-1–46-28. Plaintiff Knight filed a reply in support of the Motion for Class Certification on April 25, 2024. *See* ECF No. 51.

4. After the Motion for Class Certification was fully briefed, the Court held a hearing on class certification on May 30, 2024. *See* ECF No. 64. On July 1, 2024, the Court informed the parties via email that the Court "is going to grant Plaintiff's motion to certify the class" and requested a Notice Program. *See* ECF No. 74. Thus, on July 19, 2024, Plaintiff Knight submitted a Motion for Court to Approve Notice Program for Certified Class and Incorporated Brief, which was disputed. *See* ECF Nos. 74, 77, 102.

5. The parties continued vigorously litigating this action, including briefing several substantive motions. Plaintiff Knight moved to exclude the expert testimony of Progressive's experts Jonathan Walker and Marc Spizzirri, while Progressive moved to exclude the expert testimony of Plaintiff Knight's experts Kirk Felix, Jeffrey Martin, Dr. Michelle Lacey, and Jason

Merritt. *See* ECF Nos. 78, 80, 81, 83, 84. These motions were fully briefed. *See* ECF Nos. 108, 109, 110, 112, 113, 114, 126, 127, 128, 129, 130, 132. Progressive also moved for summary judgment, ECF Nos. 86–87, which Plaintiff Knight opposed, ECF Nos. 115–116. *See also* Progressive’s Reply, ECF Nos. 133–134.

6. On December 19, 2024, this Court entered an order granting Plaintiff Knight’s Motion for Class Certification. *See* ECF No. 141. The Court found that the proposed class of Progressive Northwestern insureds meets every requirement of Federal Rule of Civil Procedure of 23(a) and 23(b)(3), including that Plaintiff Knight is an adequate and typical Class member and that common issues predominate concerning the contractual claim. *Id.* Plaintiff Knight filed a Notice Program shortly after the Court granted the motion, ECF No. 145, which the Court entered with minor modifications, ECF No. 153.

7. The deadline to request exclusion from the Class Certification phase was May 12, 2025. Epiq received two requests for exclusion from the Class Certification phase. *See* Declaration of Cameron R. Azari, Esq. on Implemental and Adequacy of Settlement Notice Plan (“Supp. Azari Decl.”) ¶ 21 and Ex. 7.

8. Progressive filed a Rule 23(f) petition with the Eighth Circuit Court of Appeals seeking interlocutory review of the order granting class certification. *See* ECF No. 155. After the petition was fully briefed, the Eighth Circuit denied the petition. *See* ECF No. 158 (8th Cir. Judgment); ECF No. 159 (Mandate of 8th Cir. in accordance with judgment of March 27, 2025).

9. After the Court granted class certification, Plaintiff Knight moved in limine to exclude any evidence of NADA and KBB guidebook values. *See* ECF No. 144. Progressive opposed the motion, ECF No. 151, which was relevant to the motions to exclude Progressive’s experts. On February 27, 2025, the Court held a hearing concerning the motions to exclude. *See*

ECF No. 154. The Court partially granted Plaintiff Knight's motion to exclude Marc Spizzirri, while denying Progressive's motions to exclude Felix, Lacey, and Merritt. *Id.* As the case approached trial, Plaintiff Knight also successfully obtained a protective order preventing Progressive from taking a last-minute deposition pursuant to a subpoena of J.D. Power & Associates. *See* ECF Nos. 156, 160, 163, 164.

10. While the *Knight* Action was ongoing, Class Counsel filed a second similar complaint against Progressive Direct, which also insures Arkansas citizens. Specifically, on October 4, 2024, Plaintiff Kim filed a class action complaint against Progressive Direct in the Circuit Court of Faulkner County, Arkansas (the "Kim Action"). *See Kim v. Progressive Direct Ins. Co.*, No. 4:25-cv-00145-JM, ECF No. 1 (Feb. 20, 2025) (notice of removal). The case is materially identical to this case except for being brought against a different Progressive entity, Progressive Direct. *See Kim Action*, ECF No. 2 (Complaint). Plaintiff Kim served a copy of the complaint on Progressive Direct on January 21, 2025, after which a notice of removal was timely filed. *See Kim Action* ECF No. 1. Progressive Direct answered the complaint on March 6, 2025. *See Kim Action Kim* ECF No. 7. After Judge Wilson recused himself, the Kim Action was randomly reassigned to this Court. *See Kim Action* ECF No. 16.

11. Recognizing the efficiencies of a potential global resolution, the Parties informed the Court on March 20, 2025 that they had agreed to a private mediation encompassing both the *Knight* and *Kim* Actions. *See* ECF No. 166. To prepare for mediation, Class Counsel undertook an extensive and thorough review of the voluminous data produced by Progressive concerning all Settlement Class Members and the data supporting calculation of the PSA Impact Amount. Using its analysis of this data and other information gained in discovery, Class Counsel prepared a detailed mediation brief that set forth Plaintiffs' legal and factual positions. This rigorous

preparation ensured that Plaintiffs entered mediation with a fully developed, data-driven strategy aimed at achieving a fair and informed resolution for the Classes.

12. Finally, on April 16, 2025, the Parties participated in a full-day mediation with Steven R. Jaffe, an experienced and respected mediator. As a result of the mediation process, the Parties were able to negotiate a term sheet that, in addition to agreeing to resolve the pending lawsuits against Progressive Northwestern and Progressive Direct, also agreed to resolve claims against three other underwriters insuring Arkansas citizens: Progressive Casualty, Progressive Specialty, and Progressive Classic.

13. Following mediation, the Parties finalized and executed the Settlement Agreement, memorializing the terms and conditions of the Settlement and embodying all relevant exhibits thereto. The Parties have entered no agreements outside the Settlement Agreement.

14. On May 8, 2025, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class Action Settlement, with a supporting memorandum of law and supporting declarations. *See* ECF Nos. 176-179. As part of the Settlement, on that same date, Plaintiffs also moved unopposed to file an Amended Class Action Complaint, ECF No. 175, which the Court granted, effectively consolidating the Knight and Kim Actions. *See* ECF Nos. 180 and 181.

15. As further detailed in Plaintiffs' preliminary approval papers (*see* ECF Nos. 176-179), the Settlement secures an excellent recovery for the following Settlement Classes:

**Progressive Northwestern Class:** All persons who made a first-party claim on a policy of insurance issued by Progressive Northwestern Insurance Company to an Arkansas resident where the claim was submitted from August 4, 2017, through the date an order granting Preliminary Approval is entered, and Progressive determined that the vehicle was a total loss and based its claim payment on an Instant Report from Mitchell where a Projected Sold Adjustment was applied to at least one comparable vehicle.

**Progressive Direct Class:** All persons who made a first-party claim on a policy of insurance issued by Progressive Direct Insurance Company to an Arkansas resident where the claim was submitted from October 4, 2019, through the date an order

granting Preliminary Approval is entered, and Progressive determined that the vehicle was a total loss and based its claim payment on an Instant Report from Mitchell where a Projected Sold Adjustment was applied to at least one comparable vehicle.

**Other Underwriters Class:** All persons who made a first-party claim on a policy of insurance issued by Progressive Casualty Insurance Company, Progressive Specialty Insurance Company, or Progressive Classic Insurance Company to an Arkansas resident, and Progressive Casualty Insurance Company, Progressive Specialty Insurance Company, or Progressive Classic Insurance Company to an Arkansas resident where the claim was submitted within five years prior to the date an order granting Preliminary Approval is entered,<sup>1</sup> and Progressive determined that the vehicle was a total loss and based its claim payment on an Instant Report from Mitchell where a Projected Sold Adjustment was applied to at least one comparable vehicle.

16. Under the Settlement, every Settlement Class Member who submits a simple claim form will receive 100% of their PSA Impact Amount. Attorney's fees, litigation costs, and costs of notice and administration are paid separately by Defendants so there is zero reduction in any Settlement Class Member's individual payment.

17. More specifically, the Settlement makes available approximately \$13.2 million: (i) for the Progressive Northwestern Class, the average PSA Impact Amount is 4.02% of the ACV of each Settlement Class Members total loss vehicle, for a total of approximately \$8,534,836; and (ii) for the Progressive Direct and Other Underwriter Class, the average PSA Impact Amount is 3.17% of the ACV of each Settlement Class Members total loss vehicle, for a total of approximately \$4,676,937. *See* ECF No. 179 at ¶¶ 20-21. Distributions will occur between 45 days to 60 days after the Effective Date. ECF No. 179-1 (Settlement Agreement) at ¶ 10(d). In addition to these cash benefits, under the Settlement, Defendants are to separately pay (i) attorneys' fees up to \$3,963,531, (ii) Class Counsel's out-of-pocket litigation costs up to \$112,000, (iii) costs of notice

---

<sup>1</sup> As the Preliminary Approval Order was entered on May 19, 2025, the class period begins on May 19, 2020.

and administration up to \$101,745; and (iv) service awards up to \$15,000. Thus, the total Settlement value is \$17,404,049.

18. On May 19, 2025, this Court entered its Preliminary Approval Order (ECF No. 184) finding (1) that it likely will be able to approve the Settlement as fair, reasonable, and adequate under Rule 23(e)(2); (2) that it likely will be able to certify a class for purposes of judgment on the Settlement under Rules 23(a) and (b)(3); (3) that the proposed plan of notice to the Settlement Classes comports with due process and is reasonably calculated to apprise Settlement Class Members of the nature of the action, the scope of the Settlement Classes, the terms of the Settlement Agreement, the rights of the Settlement Class Members to object and to opt out, and the Final Fairness Hearing; and (4) scheduling a Final Fairness Hearing to determine whether this Court should enter a Judgment finally approving the Settlement and an order of dismissal of this action based upon the Settlement.

### **III. Notice to the Settlement Classes**

19. In accord with Paragraph 7 of the Settlement Agreement and the Court's Preliminary Approval Order, notice of the proposed Settlement to Settlement Class Members was made by (1) email (the "Email Notice") to Settlement Class Members for whom Progressive provided an associated e-mail address; (2) postal mail (the "Postcard Notice") to identified Settlement Class Members with an associated mailing address; and (3) posting a long-form notice (the "Long-Form Notice") on the Settlement Website in both English and Spanish. *See Supp. Azari Decl.* at ¶¶ 12-16, 18, and Exs. 1-4. The Notice Plan provides robust notice to the classes -- three rounds of email notice as well three rounds of postcard notice.

20. The Notices included the following information: (1) a description of the class action and the proposed Settlement, (2) the rights of Settlement Class Members to request exclusion from

the Settlement Classes or to object to the Settlement and instructions about how to exercise those rights, (3) specifics on the date, time and place of the Final Fairness Hearing, and (4) information regarding Class Counsel’s anticipated fee application and the anticipated request for the Class Representatives’ service awards. *See id.* at Exs. 1-4.

21. Both the Email Notice and the Postcard Notice included a link for the Settlement Website, which further included the following: (1) a “Contact Us” page with the Settlement Administrator’s contact information; (2) important case documents, including the Settlement Agreement and the Court’s Preliminary Approval Order; (3) important case dates and deadlines, including the deadlines to opt out and object; (4) a summary of Settlement Class Members’ options; and (5) the date, time, and location of the Final Fairness Hearing. *See id.* at ¶ 18. Moreover, in accord with the Settlement Agreement and the Court’s Preliminary Approval Order, Plaintiffs’ Motion for Award of Attorneys’ Fees, Litigation Costs, and Service Awards, along with the supporting memoranda, will be posted on the Settlement Website, when available.

22. Epiq estimates that the Settlement Notice Plan’s individual notice efforts reached approximately 99% of the identified Settlement Classes, which was further enhanced by the Settlement Website. Supp. Azari Decl. at ¶¶ 7, 17, 27. This *exceeds* the range deemed reasonable by the Federal Judicial Center. *See id.* at ¶ 27; *see also* Federal Judicial Center, *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*, at 3 (describing a notice plan as “reasonable” if it has a “reach between 70-95%”).

23. Currently, Epiq has received no requests for exclusion and no objections to the Settlement. *See id.* at ¶ 22.<sup>2</sup> The deadline for exclusions and objections is August 7, 2025. Thus,

---

<sup>2</sup> As set forth in paragraph 7, previously, during the Class Certification phase, Epiq received two requests for exclusion. The Class Certification Exclusion Report, which identifies those two opt-outs, is attached to the Supplemental Azari Declaration as Attachment 7. *See* Supp. Azari Decl. at ¶ 21.



Class Counsel will provide the Court an update on whether any requests for exclusions were submitted and respond to any substantive objections after the deadline has expired.

#### **IV. Factors Supporting Final Approval of the Class Action Settlement**

24. Plaintiffs and Class Counsel have zealously and skillfully represented the interests of the proposed Settlement Classes and committed substantial resources to the resolution of the Settlement Classes' claims.

25. Plaintiffs and Class Counsel performed significant work in identifying and litigating the claims of Plaintiffs and the Settlement Class Members prior to entering the Settlement, including engaging in extensive factual investigation; drafting the initial and amended complaints; completing both fact and expert discovery and reviewing voluminous discovery materials; engaging in substantial motions practice (including Defendants' motion to dismiss, Plaintiffs' motion for class certification, Progressive's petition for interlocutory review of the class certification order, motions for summary judgment, *Daubert* briefs, and motions in limine); conducting pre-trial preparations and engaging in pre-trial proceedings; and participating in a full-day mediation. Indeed, this case was not successfully settled until the very eve of trial.

26. Thus, by the time the Settlement was reached, Plaintiffs and Class Counsel were well informed about the strengths and weaknesses of their claims and Defendants' defenses. This is especially true given that Class Counsel are simultaneously litigating virtually identical cases in approximately 20 other states, including two others that were also settled on the eve of trial in the Southern District of New York (*Volino, et. al. v. Progressive Casualty Ins. Co., et al.*, (S.D.N.Y.), No. 1:21-cv-06243-LGS (hereinafter, "*Volino*")), and in the Northern District of Georgia (*Brown et al. v. Progressive v. Progressive Mountain Ins. Co. et. al.*, No. 3:21-cv-00175-TCB (hereinafter, "*Brown*")). Suffice it to say, Class Counsel have a meticulous and comprehensive understanding of the issues in this case, the strengths and weaknesses of the claims and defenses, and the pros

and cons of potential settlement terms.

27. As such, the Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determined the contours of the proposed Settlement Classes, and reached a fair and reasonable compromise after negotiating the terms of the Settlement at arm's length and with the assistance of a neutral mediator.

28. Plaintiffs Knight and Kim have actively participated in this matter. Each provided relevant information regarding his or her total loss claim and worked with counsel to prepare and review the complaints and other pleadings. Additionally, Plaintiff Knight provided extensive deposition testimony, met with trial counsel to prepare to testify at trial, and was prepared and willing to do so. Each Plaintiff communicated regularly with counsel throughout the case.

29. The total amount of funds made available to the Settlement Classes (\$13,211,773) represents approximately 100% of the PSA damages alleged by Plaintiffs under the damages model they were prepared to present at trial. Compensatory damages are calculated as the difference between what each Class Member received in ACV benefits and what they would have received if the PSA deduction had not been applied—the “PSA Impact Amount.” The average cash payment is approximately \$506, which is calculated by dividing the \$13,211,773 in currently estimated available funds by the currently estimated total of 26,068 claims within the Settlement Classes.

30. For the Progressive Northwestern Class, the PSA Impact Amount is 4.02% of the Actual Cash Value of each Settlement Class Members total loss vehicle. That Actual Cash Value Amount is reflected in Progressive's data under the column “Valuation\_ACVAmt.” The Total PSA Impact Amount that is available to be claimed by the Progressive Northwestern Class is

estimated to be \$8,534,836. The average cash payment for members of the Progressive Northwestern Class is approximately \$519.

31. For the Progressive Direct Class and Other Underwriters Class, the PSA Impact Amount is 3.17% of the Actual Cash Value of each Settlement Class Members total loss vehicle. That Actual Cash Value Amount is reflected in Progressive's data under the column "Valuation\_ACVAmt." The Total PSA Impact Amount that is available to be claimed by the Progressive Northwestern Class is estimated to be \$4,676,937. The average cash payment for members of these two classes is approximately \$484.

32. The reason for the difference between the PSA Impact Amounts between the Settlement Classes is due to their differing statute of limitations periods and that the percentage of the PSA deductions has been decreasing over time. The PSA Impact Amount is uniformly applied to each Settlement Class Member in an equal manner. To ensure fair treatment, individual recoveries will vary depending on the value of the totaled vehicle (claims for totaled vehicles with higher ACVs will receive proportionately larger recoveries).

33. Progressive will pay 100% of the PSA Impact Amount to Settlement Class Members who submit a claim.

34. The claims process involves a simple and straightforward Claim Form, written in plain language to encourage Settlement Class Members to file claims. The Claim Form is streamlined, requiring only the minimal information necessary to confirm membership in the Settlement Classes and to direct financial payments to Settlement Class Members without requiring the submission of additional documents. *See* Supp. Azari Decl. at Exs. 5-6. Settlement Class Members are able to submit their Claim Forms online via the Settlement Website or by simply detaching, completing and mailing the provided postcard (postage paid). Moreover, the

Settlement Class Members receive ample notice and reminders to file claims – three rounds each of Postcard and Email notice.

35. As an additional benefit to the Classes, Progressive has agreed to separately pay (1) attorneys' fees up to \$3,963,531, (2) Class Counsel's out-of-pocket litigation costs up to \$112,000, (3) costs of notice and administration up to \$101,745; and (4) service awards up to \$15,000. So, there is zero reduction in any Settlement Class Member's individual payment.

36. Based on Class Counsel's thorough examination and investigation of the facts and law relating to Plaintiffs' claims on behalf of the Settlement Classes and given the costs, risks, and delay of further litigation, Class Counsel believe the proposed Settlement is an excellent result and in the best interest of the Settlement Classes. Class Counsel's extensive investigation and years of hard-fought litigation—here and in jurisdictions throughout the country—informed us about the strengths and weaknesses of Plaintiffs' claims, and allowed us to conduct an informed, fair, and objective evaluation of the value and risks of continued litigation.

37. Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain. Plaintiffs still would have had to prevail at trial to recover. Though Plaintiffs and Class Counsel strongly believe in the strength of their claims, Progressive was ready to mount an aggressive defense with experienced advocates. Practically speaking, Progressive has a significant war chest and the ability to take this case through trial, judgment, and subsequent appeals.

38. Class Counsel is also mindful that absent the proposed Settlement, Progressive would continue to challenge liability, would prepare a competent defense at trial, and would likely file a motion to decertify the Litigation Classes or appeal any judgment favorable to Plaintiffs, as well as appeal the Order granting class certification.

39. The risks of maintaining a class-wide judgment through appeal is not hypothetical. Thus far, three appellate courts have reviewed orders certifying classes that challenged Progressive's application of Projected Sold Adjustments. One court affirmed the order. *Davenport v. Progressive Direct Ins.*, 2025-Ohio-2449, 2025 WL 1902437 (OH Ct. App., 8th Dist.). The two others reversed. *Schroeder v. Progressive Paloverde Ins. Co.*, No. 24-1559, 2025 WL 2083855, at \*1 (7th Cir. July 24, 2025); *Drummond v. Progressive Spec. Ins. Co.*, 142 F.4th 149 (3d Cir. 2025). While Plaintiffs are confident this Court's certification order would be affirmed, experience shows there are no guarantees in litigation. And if the certification order was reversed following a trial win, Settlement Class Members would receive no recovery from this action and be left to fend for themselves in individual actions.

40. Based on the foregoing, it is Class Counsel's professional opinion that the relief provided by the proposed Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Classes, and we respectfully recommend it to the Court for final approval.

41. Class Counsel have conferred with Plaintiffs who also support the proposed Settlement.

**V. Factors Supporting an Award of Attorneys' Fees, Litigation Costs, and Service Awards.**

42. Class Counsel's fee request of \$3,963,531 represents 30% of the available cash benefits of \$13,211,773 or roughly 23% of the total Settlement value of \$17,404,049, which includes separately paid (1) attorneys' fees up to \$3,963,531, (2) Class Counsel's out-of-pocket litigation costs up to \$112,000, (3) costs of notice and administration up to \$101,745; and (4) service awards up to \$15,000. See *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-CV-4321NKL, 2015 WL 3460346, at \*4 (W.D. Mo. June 1, 2015) ("it is appropriate to base the percentage on the gross cash benefits available for class members to claim, plus the additional

benefits conferred on the class by the KAMO Defendants’ separate payment of attorneys’ fees and expenses, and the expenses of administration.”) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980)); *see also Jones v. Monsanto Company*, 38 F.4th 693, 700 (8th Cir. 2022) (finding that “the district court did not abuse its discretion in including the amount allocated *cy pres* in calculating the attorney’s fee” because “the funds that are ultimately allocated *cy pres* were available for class members to claim” and “[i]f the court affirms the adequacy of the notice to the class, then the court cannot fault plaintiffs’ counsel for the fact that class members, for myriad possible reasons, did not submit enough claims to exhaust the Common Fund”); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) (“The entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not.”).

43. The percentage of the recovery method is an appropriate basis on which to award Class Counsel a fee in this case.

44. Moreover, a fee award of either 30% or 23% is well within approved norms of class litigation in both the Eighth Circuit and Arkansas. *See Rodriguez v. GC Pizza LLC*, No. 4:20CV3106, 2025 WL 1555128, at \*5 (D. Neb. June 2, 2025) (finding one-third of the settlement fund was “well in line with other attorney’s fee awards in this Circuit”); *Bingollu v. One Source Tech., LLC*, No. 22-CV-77 (DTS), 2024 WL 4249549, at \*4 (D. Minn. Sept. 20, 2024) (finding request for one-third of the settlement fund “reasonable”); *Niewinski v. State Farm Life Ins. Co.*, No. 23-04159-CV-C-BP, 2024 WL 4902375, at \*5 (W.D. Mo. Apr. 1, 2024) (granting attorneys’ fees of one-third of \$65,000,000 settlement); *Phillips v. Caliber Home Loans, Inc.*, No. 19-CV-2711 (WMW/LIB), 2022 WL 832085, at \*7 (D. Minn. Mar. 21, 2022) (awarding Class Counsel

(which included Carney Bates & Pulliam, PLLC) attorneys' fees of one third of the Settlement Fund); *Williams v. State Farm Mutual Automobile Ins. Co.*, Case No. 4:11-cv-00749-KGB (E.D. Ark. June 1, 2018), slip opinion at p. 12 (awarding Class Counsel (which included Carney Bates & Pulliam, PLLC) fees of \$6.57 million, or 30% of the settlement amount of \$21.9 million); *Nelson v. Wal-Mart Stores, Inc.*, No. 2:05CV000134WRW, 2009 WL 2486888, at \*1 (E.D. Ark. Aug. 12, 2009) (awarding attorneys' fees in the amount of one third of the total settlement fund); *see also Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (noting that courts within the Eighth Circuit frequently award attorneys' fees between 25% and 36% of the settlement); *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017) (affirming fee award of one-third of the gross settlement fund).

45. Additionally, consideration of all the applicable factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974) strongly supports the requested fee award. *See In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018); *In re Xcel Energy Inc. Securities Derivative and "ERISA" Litig.*, 364 F. Supp. 2d 980, 993 (D. Minn. April 8, 2005).

46. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determine all the contours of the proposed Settlement Classes, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's length and with the assistance of a neutral mediator. Class Counsel have significant experience in litigating class actions of similar size, scope, and complexity to the instant action. Class Counsel regularly engage in major complex litigation, have the resources necessary to conduct litigation of this nature, and have frequently been appointed class counsel by courts throughout the country. *See* ECF 41-12 (Decl. of Hank Bates in Support of Plaintiffs'

Motion for Class Certification) at Exs. 1-4 (firm resumes).

47. Class Counsel have invested significant time and resources into this action. Class Counsel litigated this case to the very eve of trial, performing such tasks as: extensive pre-suit factual investigation; drafting the complaints; engaging in fact and expert discovery regarding the merits of Plaintiffs' claims and class certification; successfully certifying the Classes; engaging in substantial motions practice, including summary judgment, *Daubert* briefing, and interlocutory appeals; participating in a full-day mediation; achieving a very favorable Settlement on behalf of the Settlement Classes; drafting the Settlement Agreement and all related exhibits; presenting the proposed Settlement to the Court and obtaining an order directing notice to the Settlement Classes; and working with the Settlement Administrator to implement the Court-approved Notice Plan and to address any other issues that may arise.

48. Class Counsel have devoted extensive hours to the prosecution of this Action. Moreover, Class Counsel's work in this litigation is far from over. Class Counsel will commit significant ongoing time and resources to presenting the Settlement to the Court at the Final Approval Hearing, the continued administration of the Settlement, responding to Settlement Class Member's inquiries concerning the Settlement, and overseeing and coordinating distribution of the settlement funds to the Settlement Class Members. Based on Class Counsel's experience in other cases, this ongoing work will likely involve approximately 150 total additional hours until fully resolved.

49. From the outset of the case, Plaintiffs and Class Counsel recognized that the case presented substantial litigation risks. Indeed, the claims in this action involve complicated forensic, technical, and legal issues concerning Defendants' systemic practice of applying "Projected Sold Adjustments" ("PSAs") when calculating the actual cash value ("ACV") of total-loss vehicles,



requiring Class Counsel to develop an understanding of how Defendants process total loss claims and the exact manner in which Defendant applied PSAs, class size, class damages, and more. Had the litigation continued, these issues would have required extensive expert testimony at trial.

50. Despite the clear risks involved in pursuing this litigation, Class Counsel undertook this matter on a contingency basis with no guarantee of recovery and have committed substantial resources of attorney and staff time, in addition to out-of-pocket costs, towards investigating, litigating, and settling the matter. In doing so, Class Counsel also assumed the risk of the significant delay associated with achieving a final resolution through trial or any appeals.

51. Progressive has presented a vigorous defense throughout the litigation and has been represented by highly experienced lawyers from King & Spalding, a prominent law firm with more than 1,300 lawyers in 25 offices globally. Notwithstanding this formidable opposition, Class Counsel developed a strong case and negotiated settlement terms that are highly favorable to Settlement Class Members.

52. Plaintiffs and Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain. Additionally, absent a settlement, the success of any of Defendants' defenses could deprive Plaintiffs and the Settlement Class Members of any potential relief whatsoever.

53. Although a lodestar crosscheck is "not required" in the Eighth Circuit, performing such a crosscheck here confirms that the requested fee is reasonable and should be approved. *See Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017); *PHT Holdings II, LLC v. N. Am. Co. Life & Health Ins.*, 2023 WL 8522980, at \*7 (S.D. Iowa Nov. 30, 2023).

54. Each co-counsel firm reviewed and vetted their time records to isolate time devoted

to this specific Action. Based on review of my firm's timesheets and the submissions provided to me by my co-counsel, Class Counsel so far worked a total of 2,308.1 hours prosecuting this matter on behalf of the Settlement Classes, yielding a lodestar of \$1,703,724.64 when using Class Counsel's customary rates for complex class action litigation:

<b>Firm</b>	<b>Hours</b>	<b>Lodestar</b>
Carney Bates & Pulliam, PLLC	353.8	\$ 299,902.64
Jacobson Phillips PLLC	225	\$ 170,675.00
Normand PLLC	450.8	\$ 260,136.00
Edelsberg Law, P.A.	386.5	\$ 345,135.00
Shamis & Gentile P.A.	503.7	\$ 359,442.50
Bailey & Glasser, LLP	388.3	\$ 268,433.50
<b>Total</b>	<b>2,308.1</b>	<b>\$1,703,724.64</b>

55. The hours and lodestar set forth above only includes time devoted specifically to this Action. Class Counsel also is litigating companion cases against Progressive based on the same conduct and theory across the country in numerous jurisdictions and devoted a significant amount of time to those cases as well. The deadlines for discovery cutoff, class certification motion and expert reports in many of these cases preceded the deadlines in this case. Given the significant overlap of factual proof and both plaintiff and defense experts, when we turned to this case, we were able to work with great efficiency in prosecuting this case to the eve of trial. So, although Class Counsel is not including any of that time devoted to other cases here, it is worth noting for the Court that the aforementioned amounts are very conservative compared to the amount of hours expended across all the cases that were beneficial and relevant to this case.

56. Class Counsel's requested fee yields a multiplier of approximately 2.3. This is consistent with multiplier amounts approved in this district and the Eighth Circuit. *See Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (observing a lodestar multiplier of 5.3 is within the bounds of reasonableness); *Huyer*, 849 F.3d at 399–400 (observing lodestar multipliers of up to 5.6 times class counsel's lodestar to be in the reasonable range for a lodestar crosscheck); *In re*

*T-Mobile Customer Data Security Breach Litigation*, No. 23-2744, 2024 WL 3561874, at \*6 (8th Cir. July 29, 2024) (observing that in a case that settled early in the litigation, a multiplier of 5.3 is on the “high” side of reasonableness); *Feldman v. Star Trib. Media Co. LLC*, No. 22-CV-1731 (ECT/TNL), 2024 WL 3026556, at \*7 (D. Minn. June 17, 2024) (finding the lodestar amount to yield a multiplier of 2.97, which “is within a reasonable range for a class settlement in this Circuit”); *Niewinski*, 2024 WL 4902375, at \*5 (approving lodestar multiplier of 2.64); *Nelson*, 2009 WL 2486888, at \*2 (approving lodestar multiplier of 2.5); *In re Charter Commc’ns, Inc., Sec. Litig.*, No. 4:02-cv-1186-CAS, 2005 WL 4045741, at \*18 (E.D. Mo. Jun. 30, 2005) (finding 5.61 lodestar multiplier reasonable).

#### **VI. Class Counsel’s Reasonably Incurred Litigation Costs.**

57. To fund the litigation, each of the Class Counsel firms contributed to a litigation fund, which covered common litigation expenses such as expert fees, deposition expenses, mediation costs, and so forth. Those costs amount to \$76,045.16, as shown in the following chart:

<b>Expense Category</b>	<b>Amount</b>
Mediation Services	\$5,625.00
Experts and Consultants	\$29,925.46
Transcription Services	\$494.70
Notice	\$40,000.00
<b>Total</b>	<b>\$76,045.16</b>

Each firm accrued additional costs that were not paid for out of the litigation fund, including travel and depositions expenses. I have reviewed the costs incurred by my firm and my co-counsel that were not paid by the litigation fund. Those costs amount to \$42,375.52.<sup>3</sup> As such, the total litigation expenses incurred by Class Counsel in this Action are \$118,420.68.

<sup>3</sup> This is the sum of, per firm, CBP (\$2,943.33), Normand (\$5,692.47), Jacobson Phillips (\$1,892.31), Edelsberg (\$3,014.53), Shamis & Gentile (\$2,302.57), and Bailey Glasser (\$26,530.31).

58. My firm's costs paid outside the litigation fund total \$2,943.33, broken down in the following chart:

**Carney Bates & Pulliam, PLLC's Litigation Expenses (Separate from Litigation Fund)**

<b>Expense Category</b>	<b>Amount</b>
Filing, Pro Hac Vice, and Court Fees	\$1,087.50
Federal Express/Courier	\$67.21
Travel and Meals	\$1,632.62
Transcription Services	\$156.00
<b>Total</b>	<b>\$2,943.33</b>

My co-counsel's costs paid outside the litigation fund total \$39,432.19, broken down in the following chart:

<b>Firm</b>	<b>Costs</b>
Jacobson Phillips PLLC	\$1,892.31
Normand PLLC	\$5,692.47
Edelsberg Law, P.A.	\$3,014.53
Shamis & Gentile P.A.	\$2,302.57
Bailey & Glasser, LLP	\$26,530.31
<b>Total</b>	<b>\$39,432.19</b>

59. While Class Counsel's out-of-pocket litigation expenses total \$118,420.68, they are requesting the lower, agreed-upon amount of \$112,000.00.

60. Class Counsel are prepared to provide the Court with any further documentation or explanation regarding Class Counsel's litigation expenses, including detailed invoice and payment records, upon request by the Court.

## **VII. Class Representatives' Service Awards**

61. Class Counsel is of the opinion that Plaintiffs' active involvement in this case was critical to its ultimate resolution. Without their willingness to assume the risks and responsibilities of serving as Class Representatives, we do not believe such a favorable result could have been achieved.

62. Plaintiffs took their role as Class Representatives seriously, devoting significant amounts of time and effort to protecting the interests of Settlement Class Members. Specifically, both Plaintiff Knight and Plaintiff Kim assisted with the initial factual investigation, including collecting documents; reviewed the complaints and other case filings; worked with Class Counsel concerning case developments; participated in the mediation process; and reviewed and discussed the terms of the Settlement reached in this case. In addition, Plaintiff Knight also provided extensive deposition testimony and was in the process of preparing to testify at trial and was prepared to relocate to Little Rock for the duration of the trial. In light of their work, the requested service awards of \$10,000 for Plaintiff Knight and \$5,000 for Plaintiff Kim, to be paid separately by Progressive, are eminently reasonable. *See In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2013 U.S. Dist. LEXIS 27155, at \*6 (D. Minn. Feb. 27, 2013) (approving service awards of \$7,500 and \$5,000); *Niewinski*, 2024 WL 4902375, at \*5 (approving service awards of \$25,000); *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-CV-4001, 2020 WL 2892819, at \*3 (W.D. Ark. June 2, 2020) (approving service awards of \$9,500 each); *Braden v. Foremost Ins. Co. Grand Rapids, Michigan*, No. 4:15-CV-4114, 2018 WL 4903268, at \*5 (W.D. Ark. Oct. 9, 2018) (approving service awards of \$10,000 each); *Caligiuri*, 855 F.3d at 867 (affirming service awards of \$10,000 each and noting “courts in this circuit regularly grant service awards of \$10,000 or greater”).

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

Executed on this 1st day of August 2025, in Little Rock, Arkansas.

/s/ Hank Bates  
Hank Bates