IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

YVONNE BELANGER, individually and on behalf of other similarly situated individuals,

Plaintiff,

v. **No. 19-cv-00317-WJ-SCY**

ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY;
ALLSTATE INDEMNITY INSURANCE COMPANY;
ALLSTATE INSURANCE COMPANY;
ALLSTATE ASSURANCE COMPANY;
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY; ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY; and ALLSTATE NORTHBROOK INDEMNITY COMPANY

Defendants.

UNOPPOSED MOTION AND MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' PETITION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND AWARD OF INCENTIVE FEE TO NAMED PLAINTIFF

Class Plaintiff and her counsel respectfully submit this Motion and Memorandum for (1) attorney fees and costs, and (2) class representative incentive/service fees.

Pursuant to Fed. R. Civ. P. 23(h) and to the Settlement Agreement reached by the parties and before the Court for final approval, Defendants (hereinafter, "Allstate") have agreed that they will not object to an award of attorneys' fees, inclusive of gross receipt tax, not to exceed $2,250,000.[1] Allstate denies all liability and allegations of wrongdoing but agrees that it will pay

[1] See *In re Samsung Top-Load Washing Mach. Mktg., Sales Practices & Products Liab. Litig.*, 997 F.3d 1077, 1088 (10th Cir. 2021) (To our knowledge, no court has adopted a *per se* rule against inclusion of "kicker" and "clear-sailing" agreements in settlements. (Internal citations omitted.)

the allowed fees and, not to exceed $2,250,000, over and above all sums that it will pay to members of the class pursuant to the Settlement, should such Settlement be approved by the Court. As detailed, *infra*, counsel seek an award of fees, in the amount of $2,250,000, inclusive of costs and gross receipts tax.

Counsel have achieved this Settlement after years spent in developing this case, successfully contesting a dispositive motion in this and other similar cases, and intensive settlement negotiations with Allstate. The proposed Settlement, if approved by the Court, will allow Allstate's insureds to receive the amount of Uninsured / Underinsured Motorist Coverage (UM/UIM Coverage) that was offset and establishes a simplified mechanism to provide compensation to those who previously were injured in automobile accidents in which a motorist may be at fault or comparatively at-fault. This lawsuit arises out of Allstate's application of the offset and the Class Representative and Settlement Class Members not being provided underinsured motorist benefits.

In addition, the Settlement provides an opportunity to readjust claims at no cost or attorney fee to policy holders so that they may receive underinsured motorist coverage that Allstate offset. The Settlement also provides automatic payment to class members whose family members died as a result of a car crash and where Allstate applied an offset. Finally, the offset provides up to a $2,200,000 fund for Option 2 Settlement Class Members, i.e., those not involved in accidents but who paid premiums for insurance coverages which Plaintiffs argue were never provided, to receive up to an 18% return of their UM/UIM premiums.

Accordingly, Class Plaintiff and her counsel respectfully request that the Court enter an Order granting their petition and awarding the requested fees in accordance with precedent in litigation of this sort.

It is well settled that a fee award is appropriate where a common fund for the benefit of class members is created through the efforts of counsel. *See In re Home Depot Inc.,* 931 F.3d 1065, 1081 (11th Cir. 2019)(Internal quotations omitted) (Usually, when courts have applied the constructive common-fund doctrine, the parties at least agreed to a cap on the attorney's fees)[2]*,* *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole"); *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994). The rationale for this is straightforward: attorneys' fees are appropriately awarded under the common fund doctrine because if they were not, "persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigants' expense." *See Van Gemert*, 444 U.S. at 478. Here, as set forth below, the proposed award of attorney fees does not draw from or diminish the common fund at all but is agreed to be paid by Defendant as a separate feature of the settlement without reduction of the substantial benefits secured for the class members.

The Settlement establishes a fair, reasonable and accessible process by which all claims based upon premiums paid or uninsured/underinsured motorist benefits which were not paid after an automobile accident involving an Allstate insured that occurred after January 2004, in which an at fault motorist caused the damages to an Allstate insured and the Settlement Class Member did not receive underinsured motorist benefits because of the application of the offset. This is the equivalent of a common fund established for the benefit of settlement class members, along with

[2] Unlike here, the parties in *In re Home Depot Inc.*, agreed that the attorney's fees would be paid separate from and in addition to the class fund, ***however***, the parties left the amount of those **fees undetermined**. Here, the parties in this case agreed to an attorney fee amount only *after* the parties negotiated the class's claims and substantial terms of the agreement, and analyzing those fees based on the likely payouts to class members.

up to $2,200,000.00 for Option 2 Class Members. The Settlement also expressly authorizes Plaintiffs to request up to $2,250,000 as payment for counsels' fees, gross receipts tax and expenses. The Parties agree that the payment of counsels' fees and costs by Allstate shall be paid separate from the payment of insureds' claims; thus the payment of counsels' fees in no way dilutes the recoveries of class members who file claims under the Settlement.

Six recent (unpublished) decisions in the United States District Court for the District of New Mexico also support the reasonableness of this request: C*andelaria v. Health Care Serv. Corp.*, 2020 U.S. Dist. LEXIS 207337 (D.N.M. November 4, 2020), *Montgomery v. Cont'l Intermodel Group-Trucking LLC*, 2021 U.S. Dist. LEXIS 68946 (D.N.M. April, 2021), *Anderson Living Trust, Martin and Bhasker*. These very recent decisions of this District Court awarded comparable attorney fees and class representative service fees from class action settlement funds.

In *Candelaria*, United States District Judge Kenneth J. Gonzales awarded 35 percent (%) of the gross settlement amount for an attorney fee, and a service award of $5,000 to each named plaintiff. Judge Gonzales cited to several earlier cases in the District Court of New Mexico, which previously awarded attorney fees as a percentage of the common settlement fund in class actions, without a lodestar analysis. Judge Gonzales noted that awards have been approved as high as 58 percent (%) and cited cases in which fees of 33 percent (%) and 39 percent (%) were awarded.

In *Montgomery, supra*, United States Magistrate Judge Gregory J. Fouratt approved the settlement and a request for attorney fees equal to 31.47 percent (%) of the gross settlement fund (33 percent (%) minus the value of eleven (11) class members identified after the fairness hearing). Judge Fouratt included the following two footnotes, Nos. 5 and 6, in his order:

> (5) District courts in New Mexico routinely approve attorneys' fees based on **a percentage of fund method without a lodestar cross- check**. *See Candelaria v. Health Care Serv. Corp.*, No. 2:17-cv- 404-KG-SMV, 2020 U.S. Dist. LEXIS 202390, at *15-

16 (D.N.M. 2020); *see also Barela v. Citi Corp.*, No. 1:11-cv-506-KG-GBW, ECF 93 (D.N.M Sept. 15, 2014) (awarding **percentage of fund in wage and hour case without lodestar cross check**); *Ramah Navajo v. Jewell*, 167 F. Supp. 3d at 1241-42 (D.N.M. 2016); *Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1097 (D.N.M. 1999); Ramah Navajo Chapter v. Kempthorne, Case No. CIV 90-0957 LH/KBM, 2008 U.S. Dist. LEXIS 143974, 2008 WL 11342943, at *5 (D.N.M. Aug. 27, 2008) (same); *Robles v. Brake Masters Sys.*, Inc., Case No. CIV 10-0135 JB/WPL, 2011 U.S. Dist. LEXIS 14432, 2011 WL 9717448, at *19 (D.N.M. Jan. 31, 2011); *Acevedo v. Sw. Airlines Co.*, 1:16-CV-00024-MV-LF, 2019 U.S. Dist. LEXIS 213691, 2019 WL 6712298, at *1 (D.N.M. Dec. 10, 2019), report and recommendation adopted, 2020 U.S. Dist. LEXIS 4571, 2020 WL 85132 (D.N.M. Jan. 7, 2020); *Daye v. Cmty. Fin. Serv. Ctrs.*, LLC, 1:14-cv-759-KK-KBM, ECF 195 (D.N.M. August 15, 2019); *J.O. v. Dorsey, et al.*, No. 1:11-cv-254-MCA-GBW, ECF 157 (D.N.M. Nov. 19, 2014); *Willett v. Redflex Traffic Systems, Inc.*, No. 1:13-cv-1241-JCH-LAM (D.N.M. Nov. 24, 2016); *Dejolie v. T&R Market, Inc.*, No. 1:17-cv-733-KK-SCY (D.N.M. Dec. 10, 2018); *Jones v. I.Q. Data Int'l, Inc.*, No. 1:14-cv-130-PJK-GBW, ECF 65; *Yazzie v. Gurley Motor Co.*, No. 1:14-cv-555-JAP-SCY, ECF 196 (D.N.M. Oct. 28, 2016). Nonetheless, this Court required Class Counsel to submit billing records so the Court could conduct a lodestar cross-check as part of its reasonableness review. The Court has performed that cross-check and considered its results in evaluating the fairness and reasonableness of Class Counsel's fee request. [Note, the court's opinion does not indicate the results of this submission, nor the "multiplier".]

…

(6) *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1257 (D.N.M. 2012) ("**Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingency fee basis**."); *Cook v. Rockwell Int'l Corp.*, 2017 U.S. Dist. LEXIS 181814, 2017 WL 5076498, at *1-2 (D. Colo. Apr. 28, 2017) (explaining forty percent fee falls within acceptable range in Tenth Circuit); *Shaw v. Interthinx, Inc.*, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (finding **1/3** of $6 million dollar fund, or $2 million, in wage and hour case to be "well within the percentage range approved in similar cases") (collecting cases); *Campbell v. C.R. England, Inc.*, 2015 U.S. Dist. LEXIS 134235, 2015 WL 5773709, at *6 (D. Utah Sept. 30, 2015) (awarding 1/3 of $5,000 fund in FLSA collective action). *Blanco v. Xtreme Drilling & Coil Services, Inc.*, 2020 U.S. Dist. LEXIS 126155, 2020 WL

> 4041456, at *5 (D. Colo. July 17, 2020)(awarding **38% fee** of $850,000 settlement in wage hybrid action because it was in "line with the customary fees and awards in similar cases"); *Peck*, 2018 U.S. Dist. LEXIS 28630, 2018 WL 1010944, at *3 (D. Colo. Feb. 22, 2018) (finding **37.5% fee** in wage and hour hybrid action to be "well within the range for a contingent fee award") (collecting cases); *Farley.*, 2014 U.S. Dist. LEXIS 154059, 2014 WL 5488897, at *4 (D. Colo. Oct. 30, 2014) (**30.3% fee** of $2.3 million fund in wage and hour hybrid action); *Whittington*, 2013 U.S. Dist. LEXIS 161665, 2013 WL 6022972, at * 6 (explaining that the **fees and costs of 39%** of the fund were "within the normal range for a contingent fee award" in wage and hour hybrid class action); *Shaulis v. Falcon Subsidiary LLC*, 2018 U.S. Dist. LEXIS 164775, 2018 WL 4620388, at *2 (D. Colo. Sept. 26, 2018) (finding 1/3 of common fund to be reasonable because the award was similar to fee awards in "similar wage and hour cases in this District"); *Williams*, 2007 U.S. Dist. LEXIS 67368, 2007 WL 2694029, at *6 (awarding **35% fee** in employment class action); 4 *Newberg On Class Actions* § 14:6 (4th ed. 2002) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions **average around one- third of the recovery**."); *Enegren v. KC Lodge Ventures LLC*, 2019 U.S. Dist. LEXIS 177192, 2019 WL 5102177, at *9 (D. Kan. Oct. 11, 2019) (awarding 40% of fund in wage collective action); *In re Bank of Am. Wage & Hour Employment Litig.*, 10-MD-2138-JWL, 2013 U.S. Dist. LEXIS 180056, 2013 WL 6670602, at *3 (D. Kan. Dec. 18, 2013) (awarding 18.25 million plus up to $900,000 in costs from $73 million dollar settlement fund in hybrid wage case). [emphasis added]

In *Montgomery*, Judge Fouratt further approved an incentive or service award to the named representative of $25,000.

In *Anderson Living Trust*, an oil royalty class action, *supra*, Chief United States Judge William P. Johnson approved the proposed findings and recommended disposition of United States Magistrate Judge Carmen E. Garza allowing the request for attorney fees equal to 40 percent (%) of the gross settlement fund or $2,244,000.00 and litigation expenses in the amount of $102,661.43 to be paid to class counsel. *See Anderson Living Tr. v. Energen Res. Corp.*, 2021 WL 3076910, at (D.N.M. July 21, 2021).

Most recently, Judge Riggs and Judge Ritter entered final approval and judgment in similar auto insurance class actions regarding the *Schmick* offset. *See Bhasker v. Fin. Indem. Co.*, 2023 WL 4534548, at *1 (D.N.M. July 13, 2023) and *Martin v. Progressive et al.*, No. 19-cv-00004-JHR-SCY, Docs. 70 and 71. Notably, the New Mexico District Courts approved the attorneys' fees and incentive fees that were requested and agreed to by the parties. Each of those cases involved the same Class Counsel as the case herein and each were similarly complex, lengthy, and taken on a contingency fee basis years ago.

I. HISTORICAL OUTLINE OF THE LITIGATION

It can be stated with reasonable certainty that this has been a long and highly contested automobile insurance consumer class action case in the United States District Court of the State of New Mexico. After nearly five (5) years of litigation and waiting on parallel litigation to resolve, the parties have negotiated a Settlement Agreement that provides significant monetary relief to the Class in the form of an unlimited settlement fund for class members that qualify for Option 1 benefits and a guaranteed distribution of $2,200,000.00 for Option 2 settlement class members.

There can be no doubt that Class Counsel's time and money expended in representation of the Class in this case and parallel cases has precluded employment by other clients. Only attorneys with extensive class action experience, well-established reputations, substantive legal expertise in consumer and automobile insurance law and the necessary patience and financial resources could competently handle this complex case. Plaintiff herein and her Class Counsel have patiently pursued these claims without compensation to prosecute this matter against a highly specialized and capable nationally recognized counsel, with offices across the United States.

It is also significant that many reputable attorneys throughout New Mexico declined to participate in this case at its various stages, given the initial uniform denials of these claims, the

tremendous risk, case costs and time expenditures for which there was no guaranteed return.

II. REQUESTED AWARD OF ATTORNEY FEES AND EXPENSES

The court-approved Class Notice was emailed and mailed to all Class Members and any Notices that were returned undeliverable from the Allstate payment address list were followed up diligently by Class Counsel and additional Notices to new names and addresses that were ascertained. See , Declaration of Geary Godfrey Senior Project Manager, Epiq Class Action & Claims Solutions, Inc. ("Epiq"). Not a single objection was received, and six opt-outs have been received, as of the date of this pleading. No objectors have been identified. Id.

In *In re Samsung Top-Load Washing Mach. Mktg., Sales Practices & Prods. Liab. Litig.*, 997 F.3d 1077 (10th Cir. May, 2021), the Tenth Circuit affirmed the district court's attorney fee and cost award to the class counsel of approximately one-third (1/3) of the maximum settlement valuation, a multiplier of 1.3. Further, the *Samsung* court found that a majority of common fund fee awards fall between twenty (20) and thirty (30) percent (%) with an upper limit of fifty percent (50%) as a general rule. Id.

In another recent case in this District, *Acevedo v. Southwest Airlines Co.*, 2019 U.S. Dist. LEXIS 213691 (D.N.M. December 10, 2019), U.S. Magistrate Judge Laura Fashing found that a class action requested attorney's fee of 33.33 percent (%) was justified by the *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d at 717-719 factors and was within the normal range. The court further stated the court has recognized in other cases fees in the range of 30-40 percent (%) of any amount recovered are common in complex litigation and other cases taken on a contingency fee basis. Note, the opinion did not state whether a "lodestar" or "multiplier" was calculated.

In the instant proceeding, the Notice sent to all Class Members indicated that attorney fees were requested of $2,250,000.00. Not a single objection was heard. The *Johnson* factors

are as follows:

> (i) the time and labor required; (ii) the novelty and difficulty of the question presented in the case; (iii) the skill requisite to perform the legal service properly; (iv) the preclusion of other employment because of acceptance of the case; (v) the customary fee; (vi) whether the fee is fixed or contingent; (vii) any time limitations the client or circumstances imposed; (viii) the amount involved and the results obtained; (ix) the attorneys' experience, reputation, and ability; (x) the undesirability of the case; (xi) the nature and length of the professional relationship with the client; and (xii) awards in similar cases.

When applying the above elements and taking into consideration the "heightened scrutiny" developed by the 10th Circuit in *In re: Samsung* case, this Court should approve the requested attorneys' fees after considering the following:

Factor No. 1: Ms. Yvonne Belanger was involved in a crash on September 2nd, 2014 and suffered significant injuries that went uncompensated. She has remained patient for nearly ten years to obtain the benefits she believed she paid for. Over the last several years, Plaintiff's counsel has filed, defended, and attended motion hearings. It can be said with reasonable certainty that work done in those cases has helped resolve this case. Plaintiff's counsel has prepared for and attended multiple mediation sessions in this specific case, conducted by the same seasoned mediator who mediated two other such UIM/offset cases for the same Class Counsel. Plaintiffs' counsel help craft a fair and reasonable settlement agreement where thousands of individuals received notice not only in New Mexico but also across the United States. See Dkt. 96-1.

Factor No. 2: The issue of statutory and contractual offsets in New Mexico insurance law has been litigated for many years. However, since 1985, following the New Mexico Supreme Court's decision in *Schmick*, auto-insurance carriers, like Allstate, have been able to apply the complicated offset without negative consequences. In fact, Allstate and other carriers charged a premium for UIM coverage which the Supreme Court of New Mexico only recently identified as

"illusory". See *Crutcher v. Lib. Mut. Ins.*, 2022-NMSC-001. Since 1985, not a single lawyer had ever challenged the offset like Plaintiffs' counsel has. The initial *Bhasker* class action has paved the way for similar class actions like this one, creating similar relief for insureds of other major insurance carriers in resolved class action cases which Plaintiff's counsel has filed. The legal issues in this case were novel, and no other lawyer or law firm since 1985 believed or had the sense that the offset could and should be challenged as Class Counsel has. Class Counsel's efforts led directly to the ruling by the New Mexico Supreme Court in *Crutcher*, which has led to unprecedented benefits to all other similarly situated New Mexico insureds, including Plaintiff herein.

Significantly, numerous courts have acknowledged the heightened risk presented by cases such as this where there is no road map and have recognized that counsel's acceptance of the risk supports an award of a substantial fee. See*, e.g., Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, Case No. Civ. A. 03- 4578, 2005 WL 1213926 at *12 (E.D.Pa. May 19, 2005). The lengthy proceedings and the extended negotiations leading to the Settlement attest to the fact that this litigation has been difficult and complex, justifying the award of a significant fee. See *Pinto v. Princess Cruise Lines, Ltd.*, 513 F.Supp.2d 1334, 1342 (S.D.Fla. 2007) ("The voluminous papers of the case themselves testify that this was no simple piece of litigation").

Factor No. 3 and 9: The skill requisite to perform legal service properly is very specialized as to automobile insurance matters. This discussion addresses *Johnson* factors 3 and 9. Courts in this District and in the Tenth Circuit traditionally consider these factors in combination. See*, e.g., Lane v. Page*, 862 F.Supp.2d 1182, 1253 (D.N.M., Browning, J. May 22, 2012); *In re Thornburg,* 912 F.Supp.2d at 1255; *Droegemueller*, 2009 WL 961539 at *3; *Merit Energy Co.*, 2009 WL 3378526 at *3. Plaintiff's counsel are all well-known and highly skilled New Mexico litigators.

For example, attorney Geoffrey R. Romero has many years of experience in insurance company specific class action litigation in this Court and state court. *See Stanforth v. Farmers Ins. Co. of Arizona*, 2014 WL 12625578, at *1 (D.N.M. June 25, 2014, Judge Robert C. Brack)(Court approving UM/UIM equalization class action settlement under Rule 23(b)(2) and (b)(3)), and *Casados v. Safeco Ins. Co. of Am.*, 2015 WL 11089526, at *1 (D.N.M. June 9, 2015)(same). *Lucero v. Progressive Halcyon et al.*, D-202-CV-2008-03951 (same).

There can be no question but that the hard-fought Settlement would not have been possible if Plaintiff were not represented by such experienced and skilled lawyers. Plaintiff's counsel are highly skilled and specialized attorneys who used their substantial experience and expertise to prosecute complex litigation. This factor should carry significant weight because the Plaintiff and Settlement Class Members likely would not have obtained the favorable relief from Allstate without the assistance of counsel with a high level of skill and expertise and risk tolerance. *See, In re Qwest Communications International, Inc., Securities Litig.*, 625 F.Supp.2d 1143, 1150 (D. Colo. 2009) ("This factor augurs toward a substantial fee award"). Where Class Counsel's knowledge and experience ... significantly contributed to a fair and reasonable settlement" this factor supports a request for a large amount of attorneys' fees. *See Thornburg Mortg. Securities*, 912 F.Supp.2d at 1256, *citing Merit Energy*, 2009 WL 3378526. In awarding a substantial fee to class counsel, the District Court for the Northern District of Texas said "[t]he substantial and creative recovery obtained for the Class, short of trial, is just the sort of result the percentage-fee method was designed to reward. The skill and acumen of counsel have produced unprecedented benefits to the Class." *Schwartz v. TXU Corp.*, Nos 3:02-CV-2243, etc., 2005 WL 3148350 at *31 (N.D.Tex. Nov. 8, 2005), remanded for limited further consideration of injunction order, 162 Fed.Appx. 376.

Plaintiff's counsel in this case also successfully argued and briefed the certified question of law in *Crutcher* where the New Mexico Supreme Court determined that minimum limits underinsured motorist coverage on a policy like Mr. Crutcher's, is misleading because it is likely that a person in his position would not benefit from underinsured motorist coverage even though the insurance carrier collected a premium for it. *See Crutcher*, 2022-NMSC-001.

Factor No. 4: The preclusion of other employment is solely based upon the time involved to represent the Class Members in this matter versus the time that could have been spent on other matters, including other auto-insurance class actions which are currently pending with representation by Class Counsel, herein. Each of Plaintiff's counsel's firms is successful in its own right. Class Counsel has wide and deep experiences in often tedious, cost intensive, risky complex consumer and personal injury litigation, multiparty litigation, class actions and liberal joinder cases under N.M. R. Civ. P. 23, and, such as in this case, is all typically against preeminent firms in New Mexico and out of state "boutique/specialty" firms nationwide.

Factor No. 5: The customary fee is explained above, and the requested fee in this case is an educated estimation based on verified data from Allstate.[3] The requested attorney's fees of $2,250,000 is well within the range of the customary percentage the parties have agreed to and which the reported cases have established. The customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed on the class." *Merit Energy*, 2009 WL 3378526 at *3; *see Lucken Partnership*, 2010 WL 5387559 at *2 (noting that class counsel's fee request that equated 33 1/3% of the common fund "is in

[3] *See McNeely v. National Mobile Health Care, LLC*, Case No. 07-933, 2008 WL 4816510 at * 15, n.9 (W.D.Okla. Oct. 27, 2008) ("class counsel's willingness to prosecute this matter on a contingent basis ... ordinarily shifts the analytical focus away from hours spent on the case to the ultimate result class counsel has obtained").

accordance with attorney fees awards that have been approved in similar class action cases....”). Significantly, the fee is in no way borne by the class members. Each class member receives his or her benefits without any reduction or dilution of those benefits to pay attorney fees. *In re Samsung,* *1092. (Simply put, where class members were receiving compensation equivalent to or in excess of actual damages, it cannot be said that class counsel and defendants negotiated terms that favored attorneys’ fees and costs at the expense of adequate and reasonable compensation for the class.).

Factor No. 6: As indicated herein, the fee was contingent upon the outcome and the Plaintiff’s attorneys have labored to this point for nearly five (5) years without knowing the outcome or whether they would even ever obtain compensation.

Factor No. 7: The time limitations and circumstances imposed followed the federal court’s scheduling orders. The parties have kept to the Court’s scheduling orders in this case.

Factor No. 8: The result achieved is a major factor to consider in making a fee award. See *Hensley* v. *Eckerhart*, 461 U.S. 424, 436 (1983) (the “critical factor is the degree of success obtained.”) In cases such as this one where “the recovery [is] highly contingent and ... the efforts of counsel were instrumental in realizing recovery on behalf of the class,” the results obtained may be given greater weight. See *Brown*, 838 F.2d at 456.

And the results obtained here are objectively broad, equitable and impressive in scope. In the end, the Settlement Agreement provides an effective date of the Settlement as far back as January 1, 2004. It applies to anyone covered by any of the automobile policies of the Defendants who had an accident during any time between January 1, 2004 and July 11, 2022 who filed a claim and was not paid or was paid less that he or she would have had Allstate not applied the Offset.

Further, the value of the benefits that the Settlement confers on class members are substantial and significant. For example, according to the claims administrator's declaration, there were several fatalities confirmed by Defense Counsel, where those estates alone are eligible to receive $1,042,333 in automatic payments. See Dkt. 96-1.

Additionally, according to the claims administrator, there are currently 64 claimants where Allstate previously reviewed the class member's claim for UIM coverage where the aggregate additional policy coverage limits potentially available for the Option 1 claimants' policies is currently estimated by Allstate to be $1.9 million. See Dkt. 96-1. Furthermore, there are 844 Settlement Class Members who have been identified within the Option 1 population in the Class List where additional information has been requested. Assuming a recovery of $25,000 limits for these claims, the estimated valuation of these Option 1 claims could be as much as $22,100,000. The exact amount of this valuation may increase if additional claims are approved under Option 1 or the limits are higher or may be lower due to claims having no additional value to recover. Id. To this point, claims are still being received and processed by the claims administrator, and Esurance class members will have until May 1, 2024 to file claims. Therefore, the Settlement has received overwhelming support from the Class. Id. Counsel has obtained a Settlement of real worth to class members – both financial and in terms of peace of mind. This factor weighs strongly in favor of counsel's fee application.

Factor No. 10: The case was not only undesirable to other attorneys in the context of the time and risk involved, as well as with respect to the difficulty of class certification in a state that has applied the offset for over 40 years.

Factor No. 11: Ms. Belanger was originally represented by a different law office for her car crash of September 2nd, 2014 and was later referred to Class Counsel to explore her options

regarding the offset and her underinsured motorist benefits.

Factor No. 12: Clearly, in awards in similar cases, as noted above and discussed in the footnotes from Judge Fouratt (*Montgomery*), the percentage of the gross settlement, from which undersigned Counsel has requested attorney fees be awarded, is in line with or less than awards in many class actions litigated in this district and others.

III. THE COURT SHOULD GRANT INCENTIVE AWARDS TO THE NAMED PLAINTIFFS.

The Petition seeks an incentive award of $10,000 for the named Plaintiff. In contrast to some class representatives who did not endure over five years of litigation, Ms. Belanger has taken an active part in the prosecution and mediation of this action. She has demonstrated behavior exemplifying exactly how class representatives are supposed to genuinely represent a class or class of people. She attended mediation in person.

> The purpose of incentive awards for class representatives is to encourage people with significant claims to pursue actions on behalf of others similarly situated.

Tennille, 2013 WL 6920449 at *14. *See also Droegemueller*, 2009 WL 961539 at *5 (noting that incentive awards to named class representatives "reward[s] individual efforts taken on behalf of the class"). Should the Court agree to award named Plaintiff this incentive, Allstate has agreed that it will pay the incentive award separately from its payments to claimants pursuant to the Settlement.

IV. CONCLUSION.

For the foregoing reasons Plaintiff, Ms. Yvonne Belanger, respectfully requests that the Court grant her petition, award the requested attorneys' fees and expenses, including the agreed to incentive fee to the named Plaintiff.

Respectfully submitted,
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