

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

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

Plaintiff,

vs.

Civil No. 1:19-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.

**NOTICE OF SUBMISSION OF ATTORNEYS' FEES ACCOUNTINGS**

Plaintiff, by and through her undersigned counsel, respectfully submit the following attorneys' fees accounting

1. Pursuant to the Court's May 6, 2024, Order (Doc. 101), Plaintiffs' counsel has been ordered to submit attorneys' fees accountings in support of Class Plaintiff's Petition for Award of Attorneys' Fees, Costs and Award of Incentive Fee to Named Plaintiff (Doc. 97).
2. Attached as Exhibit 1, and filed under seal, are attorneys' fees accountings for the Law Office of Kedar Bhasker where each task is attributable only to this case. See Exhibit 1.
3. Attached as Exhibit 2, and filed under seal, are attorneys' fees accounting for the Corbin Hildebrandt, P.C. where each task is attributable only to this case. See Exhibit 2.

4. Attached as Exhibit 3, and filed under seal, are attorneys' fees accounting for the Law Office of Geoffrey R. Romero where each task is attributable only to this case. See Exhibit 3.
5. Attached as Exhibit 4, and filed under seal, are the costs associated with this case.
6. The hourly rate for Law Office of Kedar Bhasker is \$500/hr.
7. The hourly rate for Law Office of Corbin Hildebrandt is \$500/hr.
8. The hourly rate for Law Office of Geoffrey R. Romero is \$500/hr.
9. It is Plaintiff's understanding that the Court has requested attorneys' fees accounting considering recent New Mexico federal case law adopting the heightened scrutiny standard under certain circumstances when assessing reasonableness of attorneys' fees.
10. Heightened scrutiny has been applied by some New Mexico Districts based on the Court's understanding of clear-sailing and kicker agreements. See *Charlie v. Rehoboth McKinley Christian Health Care Services*, 2023 WL 4591167, at \*12 (D.N.M. July 18, 2023) ("Because the attorney fee agreement in this case has both "clear sailing" and "kicker" provisions, binding Tenth Circuit precedent thus requires the Court to view it with heightened scrutiny.").
11. At the final fairness hearing in this case, the Court received information from both parties about the details of the benefit of settlement to the class as it did in the *Charlie* case referenced above. Notably, the attorneys in the *Charlie* case sought an attorney fee of \$300,000.00 and the Court determined that the benefit to the class, after class notice was sent out and class members signed up for the class, was merely \$45,319.30, in addition to \$206,112 in administrative costs, for a total of \$251,431.30. *Id.*, at \*5.

12. The Court went on to recognize that there was no common fund established in *Charlie*. *Id.*, at \*12 and 13 (“The settlement reached, and the way it was reached, is inconsistent with a common fund or constructive common fund. Consequently, it is not a case where the Tenth Circuit has expressed a preference for the percentage-of-fund approach.”).
13. Ultimately, the Court conducted an in-camera review of the plaintiff’s attorneys’ time sheets and proceeded to award attorneys’ fees pursuant to the lodestar method, without a multiplier.
14. In this case, Plaintiff filed a petition for attorneys’ fees on March 15, 2024, Doc. 97 and the Court held a fairness hearing on March 27, 2024, Doc. 98. Originally, the Plaintiff’s petition for attorney’s fees suggested that this settlement is appropriate for common fund characterization due to the substantial guaranteed pay out to class members. Doc. 97. At the final fairness hearing, the Court heard testimony from Defendant’s counsel that Allstate as of that date is obligated to provide, and class members are entitled to receive, payment in the amount of \$2,200,000 for return of premiums and \$1,042,333.00 for confirmed fatalities. Additionally, at the time of the final fairness hearing, the proposed administrator, Epiq, had invoiced defendant costs in the amount of \$206,951.58. That amount has since increased to date to \$212,112.73. Therefore, unlike the *Charlie* case, the measurable benefits, when compared to the requested attorneys’ fees, is not dwarfed by class counsel’s request in fees. *Charlie*, at \*4. The total of measurable benefits in this case amounts to at least \$3,454,445.73. This amount increases to \$4,298,445.73 in consideration of the party’s’ joint status report filed April 30, 2024 where it was reported that Defendant will pay out Option 1 claims for class

members and has already resolved claims outside of the class due to the filing of this complaint.

15. As stated above, when comparing the *Charlie* case to this case, the measurable benefits awarded to class members and Defendant's insureds as a result of Plaintiffs' counsels' efforts, the attorneys' fees requested in this case is dwarfed by the measurable benefits described above.
16. Due to the significant amount of measurable benefits described above, it is debatable whether this case is appropriate for a hybrid approach. *Charlie* at \*2, citing *In re Home Depot* and *In re Samsung* ("The Court advises the parties that it is inclined to adopt a hybrid approach where it assesses the reasonableness of the attorney fees agreement using a percentage-of-fund approach that uses the amount actually paid to the class rather than a percentage of the theoretical maximum that could be paid to the class. The Court would then cross-check that amount with a lodestar calculation.").
17. In the event that the Court applies a pure lodestar approach to this case, Plaintiff requests that a multiplier of eight (9) be applied to the final number of hours and fees. In this case, Plaintiff's counsel has submitted total hours of 483.77 at a reasonable billing rate of \$500/hr for a total of, \$241,885.99. See Exhibits 1-3.
18. Applying a lodestar multiplier under the *Johnson* factors set out in Plaintiff's petition for attorneys' fees would provide reasonable attorneys' fees in this case of \$2,176,973.91.
19. Plaintiff also incurred costs in the amount of \$17,475.00. See Exhibit 4.
20. Specifically, this case presents novel and difficult issues, unlike the common variety issues presented in *Charlie* and other similar data breach cases. *Charlie* \*

14, *In re N.M. Indirect Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶ 75, 140 N.M. 879, 907, 149 P.3d 976, 1004, citing *Goldberger*, 209 F.3d at 49–50 citing, *In re Bausch & Lomb, Inc. Sec. Litig.*, 183 F.R.D. 78, 82, 87, 88 (W.D.N.Y.1998)(“using a multiplier of two where the “case did not present any especially novel or difficult issues,” litigation coincided with government action, and news investigations exposed “a serious risk of liability”).

21. Other cases that were not novel have had multipliers ranging from 1 to 5. See, e.g., *In re Infospace, Inc.*, 330 F.Supp.2d 1203, 1215–16 (W.D.Wash.2004) (using a multiplier of 3.5 in a “garden variety securities case that did not present novel issues of law”); *O’Keefe*, 214 F.R.D. at 304, 311 (noting that a \$4,896,783 award, 15% of \$32,645,220, yields a multiplier of “2.95 using class counsel’s estimated reasonable hours and 6.08 using [the defendant’s] estimated reasonable hours”; concluding that neither multiplier seems unreasonable); *Kuhnlein*, 662 So.2d at 315 (concluding that a multiplier of five is reasonable “to alleviate the contingency risk factor involved and attract high level counsel to common fund cases”); see also *In re Cendant*, 243 F.3d at 742–43 (concluding that a multiplier of three would be acceptable even though the “case was neither legally nor factually complex[,] ... did not require significant motion practice or discovery[,] ... and the entire duration of the case from the filing of the Amended Complaint to the submission of a Settlement Agreement ... was only four months”); *In re Prudential*, 148 F.3d at 341 (recognizing that multipliers ranging from one to four are often awarded in common fund cases). In the related Arizona Microsoft case, the court awarded fees to plaintiffs’ counsel by using a multiplier of 3.42. *Friedman*, 141 P.3d at 835.

22. New Mexico state courts have allowed multipliers up to 25. *Imming v. De La Vega*, 2023 WL 1434061, at \*10 (N.M. Ct. App. Feb. 1, 2023), cert. denied, *Imming v. De La Vega*, 2023-NMCERT-008, ¶ 52, 547 P.3d 98 (“Based on the district court's critical evaluation of Plaintiff's fee request and the court's explanation of its award, we conclude that the lodestar award for Plaintiff's attorney fees was not an abuse of discretion, and further, that a 25 percent multiplier was not against the “logic and effect of the facts and circumstances before the court.”) citing *In re N.M. Indirect Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶ 6 (internal quotation marks and citation omitted).
23. The Plaintiff's attorneys undertook this case before any argument or ruling came down in the *Crutcher* case on a theory that was scoffed at by insurance companies. No other plaintiff's attorneys were willing to take this risk. They undertook the general and specific class action and underinsurance motorist coverage issues education and retained expert guidance in this case and others similarly situated well before the *Crutcher* ruling without any guaranty they would be paid.
24. The results in *Crutcher* led Defendants to reach out to Plaintiff's counsel and the proposed fees negotiated between them at arm's length and with a professional mediator were consistent with the fee percentages negotiated and approved in two prior offset cases, also mediated by the same nationally recognized mediator. See *Bhasker v. FIC*, 17-cv-260-KWR, Doc. 189, filed July 13, 2023 and *Martin et. al. v. Progressive et. al.*, 18-cv-4-JHR-SCY, Doc. 70, filed August, 8, 2023. The courts in both of those cases approved the similarly negotiated, calculated, and proposed attorneys' fees.

25. The benefits to New Mexico consumer go beyond the amounts reported to date by Epiq. Defendant and its subsidiaries acknowledged and made an institutional decision to pay out consumers after *Crutcher* and this Court denying Defendant's motion to dismiss which are not included in Epiq's figures and establish real tangible value for all New Mexico consumers going forward in requiring that a meaningful dialogue take place about the practical effects of underinsured motorist coverages and offsets. The public policy of New Mexico is to incentivize attorneys to take even risky cases such as the case at bar by providing for precisely the sort of reasonable fees proposed to Plaintiff's counsel in this case based on the value the attorneys' effort brought to the New Mexico public.

Respectfully submitted,

/s/ Kedar Bhasker

Kedar Bhasker  
BHASKER LAW  
2741 Indian School Rd. NE  
Albuquerque, NM 87106  
Phone: (505)407-2088  
Fax: (505) 709-3279  
Kedar@bhaskerlaw.com

Corbin Hildebrandt  
CORBIN HILDEBRANDT P.C.  
2741 Indian School Rd. NE  
Albuquerque, NM 87106  
Phone: (505) 998-6626  
Fax: (505) 336-7743  
corbin@hildebrandtlawnm.com

Geoffrey Romero  
LAW OFFICES OF GEOFFREY R.  
ROMERO  
4801 All Saints Rd. NW Ste. A  
Albuquerque, NM 87120  
(505) 247-3338  
geoff@geoffromerolaw.com

*Counsel for the Plaintiff*

