

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

KOSMOE MALCOM, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. 5:20-cv-165 (MTT)
)	
GEICO INDEMNITY COMPANY, et al.,)	
)	
Defendants.)	
)	

ORDER

The Court has reviewed Plaintiffs’ Unopposed Motion for Preliminary Approval of the Settlement Agreement and Release, First Amendment to Settlement Agreement and Release, and Individual Expanded Releases, entered into between Plaintiffs, individually, and on behalf of the proposed Settlement Class, and Defendants GEICO Indemnity Company, Government Employees Insurance Company, and GEICO General Insurance Company (“Defendants”). Upon careful review, the Court finds as follows:

WHEREAS, this Preliminary Approval Order incorporates the Settlement Agreement and Release as amended by the First Amendment (hereafter “Agreement”) and the terms used herein shall have the meaning and/or definitions given to them in that Agreement, as submitted to the Court with the Motion for Preliminary Approval.

NOW, THEREFORE, pursuant to Federal Rule of Civil Procedure 23(e), upon the agreement of the Parties, and after careful consideration,

IT IS HEREBY ORDERED as follows:

1. The Court incorporates the definitions in the Agreement.

2. The Court preliminarily finds that the Agreement proposed by the Parties is fair, reasonable, and adequate and likely to be approved at a Final Approval Hearing such that giving Notice is justified. The representations, agreements, terms, and conditions of the Settlement, as embodied in the Agreement, are preliminarily approved pending a Final Approval Hearing on the Settlement as provided herein. The Court preliminarily finds that the Settlement meets the considerations set forth in the amended Rule 23(e)

3. The Settlement was negotiated with the assistance of a mediator, and appears to be the result of extensive, arm's length negotiations between the Parties after Class Counsel and Defendants' Counsel had investigated the claims, litigated essential matters regarding the claims, and tested the strengths and weaknesses of the claims through extensive litigation. At this preliminary stage, the Court finds that the Settlement appears not to be collusive, nor to have no obvious defects; and falls within the range of reasonableness.

4. The Court preliminarily finds that it will likely certify at the Final Approval stage a Settlement Class, for purposes of the Settlement only, consisting of:

All insureds covered under an Automobile Insurance Policy issued by GEICO providing auto physical damage coverage for comprehensive or collision loss, who during the period April 29, 2014 through December 31, 2019 had a total loss and made a comprehensive or collision first-party claim that GEICO determined to be a covered total loss claim, whose claim was adjusted and paid as a total loss, and (1) whose total losses were of Vehicles That Had a Fair Market Value Listed in the TAVT Assessment Manual and who were not paid the full TAVT due on their claims based on fair market value in the TAVT Assessment Manual; or (2) whose total losses were not Vehicles That Had a Fair Market Value Listed in the TAVT Assessment Manual but whose total losses were Vehicles Listed in the DRIVES Assessment Manual Data and who were not paid the full TAVT due on their claims based on the fair market value in the DRIVES Assessment Manual Data.

The Court preliminarily finds that this Settlement Class meets the relevant requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) in that, for settlement purposes: (a) the number of Settlement Class Members is so numerous that joinder is impracticable; (b) there are questions of

law and fact common to the Settlement Class Members; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class Members; (d) the Class Representatives are adequate representatives for the Settlement Class, and has retained experienced counsel to represent her; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. The Court therefore preliminarily certifies the proposed Settlement Class.

5. For purposes of the Settlement only, the Court preliminarily finds and determines that it will likely find at the Final Approval stage, pursuant to Federal Rule of Civil Procedure Rule 23(a)(1), that Plaintiffs will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the Action, and therefore appoints them as Class Representatives.

6. For purposes of the Settlement only, and pursuant to Federal Rule of Civil Procedure 23(a)(1), the Court appoints the following as Class Counsel to act on behalf of the Settlement Class and the Class Representatives with respect to the Settlement:

SHAMIS & GENTILE, P.A.
Andrew Shamis, Esq.
14 NE 1st Avenue
Suite 1205
Miami, FL 33132

LINDSEY & LACY, PC
Tom Lacy
200 Westpark Dr.
Suite 280
Peachtree City, GA 30269

NORMAND PLLC
Edmund Normand, Esq.
Jacob Phillips, Esq.
3165 McCrory
Pl #175
Orlando, FL 32803

HALL & LAMPROS LLP
Chris B. Hall, Esq.
300 Galleria Parkway, Ste. 300
Atlanta, GA 30339

EDELSBERG LAW
Scott Edelsberg, Esq.
Christopher Gold, Esq.
20900 NE 30th Avenue
Suite 417
Aventura, FL 333180

BAYUK PRATT
Bradley W. Pratt, Esq.
4401 Northside Parkway
Suite 390
Atlanta, GA 30327

7. JND Legal Administration is appointed as Settlement Administrator and shall abide by the terms and conditions of the Agreement that pertain to the Settlement Administrator.

8. Pursuant to Fed. R. Civ. P. 23(e), the terms of the Agreement (and the Settlement provided for therein) are preliminarily approved and likely to be approved at the Final Approval Hearing because:

(A) the Class Representatives and Class Counsel have adequately represented the class;

(B) the Settlement was negotiated at arm's length;

(C) the relief provided for the Class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the Class, including the method of processing Class-Member claims, if required;

(iii) the terms of any proposed award of attorneys' fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the Settlement treats Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

9. Having reviewed the proposed Notice Program submitted by the Parties, (hereinafter referred to collectively as "the Notices"), the Court approves, as to general form and content, such Notices for the purpose of notifying the Settlement Class as to the proposed Settlement, the Final Approval Hearing, and the rights of the members of the Settlement Class. Those Notices contain all of the essential elements necessary to satisfy the requirements of federal law, including the Federal Rules of Civil Procedure and federal and state due process provisions, including the class definition, the identities of the Parties and their counsel, a summary of the terms of the Settlement, information regarding the manner in which objections may be submitted

and the deadline for doing so, information regarding opt-out procedures and deadlines, and the date and location of the Final Approval Hearing.

10. The Court directs the Settlement Administrator to effectuate Notice to the Settlement Class in accordance with the Notice Program. The Notices shall be updated by the Settlement Administrator to include the date and time of the Final Approval Hearing as set forth below. The Court finds and determines that the Notices constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfy the requirements of due process, the Federal Rules of Civil Procedure, and all other applicable law and rules.

11. Any person falling within the definition of the Settlement Class may, upon request, be excluded or “opt-out” from the Settlement Class. In the event a Settlement Class member wishes to be excluded from the Settlement and not to be bound by this Agreement, that person must sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice must be postmarked on or before the last day of the Opt-Out Deadline. Any member of the Settlement Class who timely and properly requests exclusion in compliance with these requirements will thereafter be excluded from the Settlement Class, not become a Settlement Class Member, will not have any rights under the Settlement, will not be entitled to receive a Settlement Class Member Payment, and will not be bound by the Agreement or the Final Approval Order. Any members of the Settlement Class who fail to submit a valid and timely opt-out request shall be bound by all terms of the Agreement and the Final Approval Order. If the Policyholder submits the opt-out request, then all insureds on the GEICO automobile policy shall be deemed to have opted-out of the Settlement with respect to that policy, and the Policyholder and insured shall not be entitled to a payment under the Settlement.

12. Any Settlement Class Member who wishes to object to the Settlement, Class Counsel's application for Class Counsel Fees or a Payment for an Expanded Release for the Class Representative, or to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Class, or why a final judgment should not be entered thereon, may do so, as set forth in the Agreement. A valid objection must include: (a) the name of the Action; (b) the objector's full name, address and telephone number; (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (d) the identity of all counsel who represent the objector; (e) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (f) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (g) a statement as to whether the objector or counsel intent to appear at the Final Approval Hearing and whether they will request permission to address the Court at the Final Approval Hearing; and (h) the objector's signature. The Parties must file any briefs in response to any objection on or before 10 days prior to the date of the Final Approval Hearing. Class Counsel and/or GEICO may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure if approved by this Court upon written motion showing good cause to conduct such discovery. Any Settlement Class Member who does not make his or her objections in the manner and by the Objection Deadline shall be deemed to have waived any objection(s) and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

13. The Notices shall be updated by the Settlement Administrator to include the specific Opt-Out Deadline, Claim Deadline and Objection Deadline.

14. Prior to the Final Approval Hearing, Class Counsel shall file with the Court and

serve on all Parties a declaration of the Settlement Administrator certifying that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly requested exclusion from the Settlement Class or served objections, detailing the number of Claim Forms that were timely and validly submitted, and other information as may be necessary to allow the Parties to seek and obtain Final Approval.

15. All pretrial proceedings in this action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

16. This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or as any sort of precedent, or for any other purpose, in any proceeding in any court, administrative agency, or other tribunal.

17. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of

this Court.

18. Class Counsel and Defendant's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Agreement, including making, without the Court's further approval, minor form or content changes to the Notices they jointly agree are reasonable or necessary.

19. An in-person Final Approval Hearing will be held in the Courtroom of Chief Judge Marc T. Treadwell, Georgia, on June 6, 2024 at 9:30 a.m. EST, to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the Final Approval Order should be entered in substance materially the same as the Final Approval Order submitted by the Parties with the Motion for Final Approval; (c) whether to approve Class Counsel's application for attorneys' fees, and for Expanded Release payments for the Class Representatives; and (d) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Settlement Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

20. The Parties must file all moving papers and briefs in support of Class Counsel's application for attorneys' fees, and for a Separate Payment for an Expanded Release to the Class Representatives, no later than fifteen (15) days before the objection deadline.

21. Class Counsel must file a Motion for Final Approval no later than forty-five (45) days before the date set forth herein for the Final Approval Hearing.

22. The Court hereby sets the following schedule of events:

EVENT	PROPOSED DEADLINE
Send Mailed Notice and Email Notice	90 days after Preliminary Approval Order
Send Second Mailed Notice and Second Email Notice	30 days after First Mailed Notice
Plaintiff's Application for Attorney's Fees, Costs, and Expenses, and for Payments to Named Plaintiffs for Expanded Releases	15 days before the Objections Deadline
Plaintiff's Motion for Final Approval	30 days before Final Approval Hearing
Opt-Out Deadline	30 days after Second Mailed Notice
Objection Deadline	30 days after Second Mailed Notice
Claims Deadline	45 days after Second Mailed Notice
Final Approval Hearing	June 6, 2024 at 9:30 a.m. EST

SO ORDERED, this 5th day of December, 2023.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT