Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

KEDDRICK BROWN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PROGRESSIVE MOUNTAIN INSURANCE COMPANY,

Defendant.

MICHELLE BOST, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PROGRESSIVE PREMIER INSURANCE COMPANY OF ILLINOIS,

Defendants.

Consolidated Case No.:
3:21-cv-00175-TCB

DECLARATION OF JACOB PHILLIPS IN SUPPORT OF PLAINTIFFS' PETITION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

I, Jacob Phillips, declare and state as follows:

1. I am a partner at Jacobson Phillips PLLC ("Jacobson Phillips"). Jacobson Phillips, along with Carney Bates & Pulliam, PLLC ("CBP"), Normand PLLC ("Normand"), Edelsberg Law, P.A. ("Edelsberg"), Shamis & Gentile P.A. ("Shamis & Gentile"), Bailey Glasser LLP ("Bailey Glasser"), Irby Law LLC ("Irby Law"), Law Offices of Todd Lord ("Lord Law"), and Lober & Dobson serve as co-counsel of record in this case.

2. I make this Declaration in support of Plaintiffs' Unopposed Motion for Final Approval and in support of Plaintiffs' Motion for 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.

3. This declaration addresses factual issues concerning the factors relevant to the reasonableness of attorneys' fees as part of a class action settlement, as set forth in *Camden Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991) and *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717, 720 (5th Cir. 1974).

I. Incorporation of Earlier Declaration

4. In the interests of brevity and to avoid redundancy, I hereby incorporate by reference the procedural history of this case included in the declaration submitted by Hank Bates. ECF No. 245.

5. Moreover, I incorporate by reference the description of the Settlement terms found in ECF No. 245-1. In broad strokes, however, the Settlement provides 49% of potential compensatory damages, less a deduction for attorneys' fees, costs, and Service Awards, which will be distributed directly to Class Members without the need for a claiming process and without any reversion to Progressive absent unexpected circumstances.[1] Instead, Class Members will receive the *entirety* of the cash fund, after deduction for fees and expenses.

II. Risks Attendant to Continued Litigation

6. Class Counsel took significant risks in bringing this action and would face more risk if this action were to proceed to trial. Class Counsel undertook representation in this Action on a purely contingent basis. If this case had been unsuccessful, Class Counsel would have recovered nothing in attorneys' fees. Moreover, Class Counsel agreed to bear the costs of litigation. So, if this case had

[1] If there are any uncashed funds, such funds will be redistributed to class members who elected an electronic payment and/or who cashed the original check. Only if the Settlement Administrator determined that any further re-distributions would be economically infeasible would such de minimus amount revert to Progressive.

been unsuccessful, Class Counsel, not the Named Plaintiffs, would have borne the lost costs expended in this litigation.

7. This case carried significant risks. The theory of liability in this case is that used auto dealers price vehicles to market, meaning that the list price of used autos reflects its market value or market price. Progressive, however, applied a "projected sold adjustment" to the list prices of the comparable vehicles utilized in its vehicle valuation reports, which lowered its determination of the vehicle's ACV. In other words, while Class Counsel (and Plaintiffs) contended that the list price of used autos is reflective of market value, Progressive contended that used autos are priced *above* market value and are uniformly negotiated down from there to its actual market value or price.[2] That was the genesis of the dispute and, thus, of our claim. Class Counsel contended (and still does) that because Progressive promises to pay ACV in the event of a total loss and to determine ACV based on the vehicle's market value, age, and condition, and because the list prices of used autos are reflective of market value, that Progressive's application of the PSAs constituted a substantive breach of its insurance Policy.

[2] As discussed below, during discovery in the companion *Volino* case, Class Counsel uncovered, in February 2022, that Progressive and its vendors were basing their calculation of the PSAs on transactional data from across the country of used auto sales but were deleting or excluding all transactions where a vehicle sold for list price or for more than list price. But, at the time this case was filed, Class Counsel was unaware of that practice.

8. When this case was filed, that theory of liability—that application of a negotiation deduction (the PSAs) constituted a substantive breach of the specific terms of the insurance contract—was untested. As far as I'm aware, no other law firm or litigant had brought a case under such theory,[3] and, certainly, there was no case law addressing that theory either as to the merits or as to the appropriateness (or not) for class treatment. As class action attorneys, we consider untested theories without any case law precedent or regulatory actions to be inherently risky, for at least two reasons. First, regardless of the pre-suit investigation and conclusions of Class Counsel as to the merits (both factual and legal) and persuasiveness of the case's theory, there is simply no way to know how a court will view novel and original theories of liability where there is no case law precedent or regulatory actions to consider or follow. That carries an inherent and significant risk. Second, with no path to follow, we had to create from scratch all discovery, deposition questions, and briefing. This increases the risk because it necessarily means that significantly more hours and work will have to be invested into the case. Said another way, in a well-trodden claim or theory of liability where there are legal precedents

[3] This is the second case that Class Counsel filed against Progressive, and was filed shortly after the *Volino* case in the Southern District of New York. So, technically, one such case existed, but we were the ones who filed it, and no ruling as to the merits or class certification had occurred prior to the filing of this case.

That being written, when discussing the difficulties and risks inherent to litigating a novel and completely new theory of liability, I am necessarily referring to this case and several others filed around the same time, which were then litigated concurrently.

and successful case preparations to follow (and thus less work that needs to be invested into a case), an unsuccessful resolution is not as costly because less time, hours, and costs will have been invested on the case.

9. As such, even standing alone, this reality—an untested and original theory of liability without any precedent, preceding regulatory action, or existing litigation to follow—was inherently risky. But such risks were even higher here because of the surrounding context involving auto total-loss litigation prior to and at the time this case was filed.

10. Prior to and concurrent with the filing of this action, there had been and was other litigation involving claims that insurance companies were undervaluing the ACV of total-loss vehicles, throughout various jurisdictions and states. Those cases fell into two different buckets. In one bucket were claims contesting the entirety of the vehicle valuations because they were offered by an allegedly improper source (usually based on a given state regulation), rather than on the plaintiff's preferred guidebook source (usually NADA). In the other bucket were cases primarily challenging adjustments as insufficiently disclosed rather than substantively illegitimate. So, at the time this action was filed and during the litigation, Plaintiffs and Class Counsel had to contend with negative authority denying motions for class certification in actions challenging ACV valuation determinations on different theories. *See Lara v. First Nat'l Ins. Co. of Am.*, 25 F.4th

1134 (9th Cir. 2022); *Sampson v. United Servs. Auto. Ass'n*, 83 F.4th 414 (5th Cir. 2023); *Richardson v. Progressive Am. Ins. Co.*, 2022 U.S. Dist. LEXIS 8783 (M.D. Fla. Jan. 18, 2022); *Curtis v. Progressive Northern Ins. Co.*, 2020 U.S. Dist. LEXIS 83429 (W.D. Ok. May 12, 2020); *Signor v. Safeco Ins. Co.*, 2021 U.S. Dist. LEXIS 71382 (S.D. Fla. Feb. 18, 2021); *Desai v. Geico Cas. Co.*, 574 F. Supp. 3d 507 (N.D. Oh. 2021). Additionally, Plaintiffs have had to contend with negative authority from various courts that rejected on the merits claims that insurance companies had breached their contract by undervaluing the ACV of total-loss vehicles. *See South v. Progressive Select Ins. Co.*, 558 F. Supp. 3d 1258 (S.D. Fla. 2021); *Signor v. Safeco Ins. Co. of Ill*, 72 F.4th 1223 (11th Cir. 2023); *Curtis v. Progressive N. Ins. Co.*, 2022 U.S. Dist. LEXIS 5111 (W.D. Ok. Jan. 11, 2022).

11. In the end, Class Counsel successfully demonstrated that such cases are distinguishable. But, at minimum, the poor track record of facially similar claims concerning whether insurance companies are undervaluing ACV and whether such claims are suitable for class treatment magnified the inherent risk of this litigation. Indeed, after this action was filed, we brought materially similar claims in different states and jurisdictions against Progressive. Although the vast majority of the courts have granted certification of the class, three federal district courts have denied class certification of those claims. *Kroeger v. Progressive Universal Ins. Co.*, 2023 U.S. Dist. LEXIS 231824 (S.D. Io. Nov. 20, 2023); *Henson v. Progressive Premier Ins.*

Co. of Ill., 2024 U.S. Dist. LEXIS 109026 (E.D. N.C. Jun. 10, 2024); *Ambrosio v. Progressive Preferred Ins. Co.*, 2024 U.S. Dist. LEXIS 36963 (D. Ariz. Mar. 4, 2024). While Class Counsel believes those cases were wrongly decided, they further demonstrate that this litigation carried significant risks. And at the time of settlement, several of the companion cases that had been certified by a district court were pending on interlocutory appeal, two of which (the *Drummond* case in the Third Circuit and the *Schroeder* case in the Seventh Circuit) had been fully briefed and oral argument had already occurred. If settlement had not occurred, and either or both of those opinions were issued and reversed class certification, that would've no doubt been used by Progressive in this case to seek decertification or to argue on appeal that certification should not have been granted.

12. The risk of litigation was further heightened by the quality of Progressive's representation. Progressive retained and was represented by Jeffrey Cashdan and his team at King & Spalding. We were aware of Mr. Cashdan and his team's well-deserved reputation as skilled and determined litigators, both as it pertains to class actions in general and as to auto total-loss class actions in particular. Indeed, several of the Class Counsel firms have litigated against King & Spalding (including Mr. Cashdan and his team in particular) in other contexts. So, we knew that the risks of litigation were heightened by what would be skilled and tough representation. That has been borne out in this litigation—King & Spalding, while

remaining eminently professional throughout the litigation, has skillfully and zealously defended its clients.

III. Magnitude and Complexities of this Litigation

13. The magnitude and complexity of this litigation was immense, and this case was vigorously litigated, which is relevant to several of the relevant *Johnson* factors—namely, (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) time limitations imposed by the client or the circumstances; (5) the experience, reputation, and ability of the attorneys; and (6) the undesirability of the case. Class Counsel spent a significant amount of time researching the claim, Progressive's insurance policies, and the common law and statutes relevant to valuation of total-loss insured vehicles prior to filing. And then, after filing, we briefed multiple motions to dismiss, a motion for class certification, opposition to a Rule 23(f) petition, cross-motions for summary judgment, *Daubert* motions, and extensive pre-trial filings, attended multiple merits and pre-trial hearings, and brought this case to the very eve of trial, to the point where travel and lodging had been booked for a jury trial. Moreover, our claims concerned the overlap of numerous topics and industries, including the appraisal industry, the used auto industry, data and statistical analysis, and the insurance industry. And because Progressive and its vendors did

not retail all the transactional data where vehicles had sold for list price or more, we purchased such data from two different vendors and state DMVs.

14. As such, Class Counsel retained four experts—two statisticians, an appraiser, and a used auto industry expert—and assisted in preparing expert reports, understanding the issues and areas of expertise at play, and the underlying analysis.

15. Progressive also retained three experts—a used car industry expert, an appraiser, and a PhD economist—which required Class Counsel to once again analyze swaths of data, research, and underlying materials (constituted of tens of thousands of pages and spreadsheet inputs), and ultimately to depose such experts.

16. As part of the discovery process, Class Counsel served multiple rounds of interrogatories and requests to produce to Progressive, JD Power, and Mitchell, which eventually led to production of tens of thousands of documents, as well as dozens of spreadsheets containing hundreds of thousands of claims, tens of millions of vehicle purchase transactions, and hundreds of millions of data inputs, all of which had to be closely analyzed and reviewed.

17. Consider just the transactional data (i.e., data containing the sold and list prices of used autos offered for sale and sold across the country). This transactional data constituted the primary justification advanced for applying the PSAs. So, in effect, it was extremely possible—perhaps likely—that the outcome of this case turned on analysis of the transactional data, making it critical for Class

Counsel to intensively and painstakingly analyze and review such data. We did so—notwithstanding that this data was constituted of tens of millions of transactions and hundreds of millions of data inputs. And as a result of our efforts, we were the first people in the country to uncover that Progressive's vendors were *deleting and excluding data* that undermined its PSA thesis—*i.e.*, all transactions where vehicles sold for list price or more—notwithstanding that this practice had been ongoing *for decades* without anyone uncovering it. And because of the aforementioned failure to retain a huge portion of the data, we also purchased and then created, with assistance from an expert statistician, our own database of list and sold prices of used autos, which consisted, yet again, of millions of transactions and tens of millions of data inputs.

18. Additionally, because some of the critical issues in this case involved third-party vendors, Class Counsel was not only facing litigating against a multi-billion-dollar insurance company, but also a multi-billion dollar consumer company (JD Power) and the second-largest appraisal software company (Mitchell), thereby, in effect, tripling the complexity and difficulty of this litigation.

19. The complexity and magnitude of this case was also magnified upon the granting of class certification, after which Class Counsel was required to devise and implement a Notice plan for more than 90,000 class members. This required intensive analysis of Progressive's spreadsheets and documents.

20. In sum, this litigation was extremely complex, data-intensive, and broad in scope.

IV. Ability and Reputation of Attorneys

21. One of the relevant factors to the reasonableness of a requested fee is the ability, skill, and reputation of the class attorneys.

22. The pertinent factual details of the Settlement are set forth in the declaration previously submitted by Hank Bates. ECF No. 245. And the explanation as to why the substantive and procedural structure of the proposed Settlement are so positive and successful is set forth in the declaration by Brian Fitzpatrick submitted contemporaneously with this Declaration.

23. To that, I simply add the experience and resume of Class Counsel. Between them, Class Counsel have extensive and significant experience in class litigation, complex business litigation, appellate litigation, insurance litigation, and class trials in numerous contexts, as well as experience litigating all over the country and in the Northern District of Georgia.

24. As it pertains to auto total-loss litigation in particular, Class Counsel have successfully secured dozens of favorable settlements in the context of whether the ACV of totaled vehicles includes sales tax and/or title fees; have secured favorable case law on the merits of whether application of a negotiation adjustment constitutes a breach of contract (Class Counsel litigated *Smith v. S. Farm Bureau*

Cas. Ins. Co., 18 F.4th 976, 978 (8th Cir. 2021), a case that has been critical to briefing on the merits of this case); and have successfully secured class certification and/or defeated summary judgment in numerous companion cases to this one throughout the country.

25. Each specific firm's expertise and experience are included in the exhibits attached to ECF No. 59-12.

V. Time and Labor Expended[4]

26. In addressing the time expended and lodestar amounts discussed herein, billing judgment was exercised by all firms involved in this litigation, both specifically and generally. Generally, we established a division of labor to avoid duplication and unnecessary time expended. For example, Hank Bates took the lead on coordinating the litigation and overall strategy, took key depositions, and was involved in expert preparation, particularly Dr. Lacey, and reviewing the pivotal motions practice. Lee Lowther and I were primarily responsible for writing briefs, discovery, handling appeals, preparing expert reports, and oral arguments for class certification and summary judgment/Daubert. Hank Bates and I were responsible for analyzing Dr. Walker's expert report and I deposed Dr. Walker. Ed Normand was primarily responsible for Mark Spizzirri's expert report and deposition. Scott

[4] The other relevant factors are addressed in the briefing and in Professor Fitzpatrick's declaration. Because my factual knowledge is not critical to those factors, I am not addressing them here.

Edelsberg, Hank Bates, and Brent Irby were primarily responsible for mediation. Andrew Shamis was primarily responsible for designing and implementing the Notice. Hank Bates was primarily responsible for damages analysis for analyzing the Kinney expert report and taking his deposition. Andrew Shamis and Lober & Dobson primarily responsible for all client-related work, including discovery, depositions, and client communication. Bailey Glasser was primary trial counsel, and handled all pre-trial filings and trial preparation, with Brian Glasser handling all pre-trial hearings, and with assistance from myself and Lee Lowther given our familiarity with the record and litigation history. Of course, there was overlap in accordance with best practices to ensure that representation was vigilant and excellent—and we believe the results in this case support that the representation in this matter was, indeed, excellent.

27. Consistent with these broad principles, for categories for which the firms were not primarily responsible, billing judgment was exercised by subtracting—fully or partially—in those categories for which the firms were not responsible. A few examples: I subtracted all time spend on communications with co-counsel (approximately 44 hours) to ensure there was no duplication. Scott Edelsberg subtracted all paralegal time (approximately 13 hours) to ensure there was no duplication or unnecessary time expended. Andrew Shamis subtracted 10 hours spent on mediation for the same reasons. And so forth.

28. I have reviewed the time entries from co-counsel and can attest that similar billing judgment was exercised to similarly avoid the possibility of duplicative or unnecessary time.

29. All firms kept and recorded time contemporaneously, and, if the Court so requests, can submit the individual time entries *in camera* or by category. These time entries constitute thousands of pages, however, and, because both Eleventh Circuit law and Professor Fitzpatrick's opinion (and advice to Class Counsel) is that fees are and should be determined by the percentage of the fund, we are providing only the total hours and lodestar. But, we are happy to submit the individual time entries or other methods of categorization, including declarations from each firm, should the Court so wish.

30. My firm's total lodestar is $712,500.00. These were prepared from contemporaneous time records regularly prepared and maintained by my firm in the usual course and manner of my firm. We maintain detailed records regarding the amount of time spent, and the lodestar calculation is based on current billing rates for the relevant market, billing records by other firms with attorneys of similar experience and time, and other factors deemed relevant in the Eleventh Circuit and across all jurisdictions.

31. The billing rates utilized by CPB, Normand PLLC, Edelsberg Law P.A., Shamis & Gentile, Bailey Glasser, Irby Law, Lord Law, and Lober & Dobson are

also consistent with rates recently approved by this Court for complex and class litigation, and rates that have been specifically approved for the individual timekeepers, based on each timekeeper's role, status, and years of experience.

32. Based on my review of time entries and calculations from each law firm, my firm's total lodestar is $712,500.00. The total lodestar for CPB is $974,376.80. Bailey Glasser's is $1,137,052.00. The total lodestar for Normand PLLC is $361,531.50. The total lodestar for Edelsberg Law, P.A., is $307,470.00. The total lodestar for Shamis & Gentile is $240,230.00. The total lodestar for Irby Law is $343,165.00. The total lodestar for Lober & Dobson is $463,615.00. The total lodestar for Lord Law is $71,280.00 As such, the total lodestar for Class Counsel is $4,611,220.30. This lodestar figure represents a total of nearly 6,000 hours worked by Class Counsel's firms.

33. Based on this number standing alone, a fee request of $14,333,333.33 would therefore include a multiplier of 3.11.

34. However, based on Class Counsel's experience in similar class actions settlements, I estimate that at least an additional 200 hours will be required in preparing the motion for final approval and declarations in support of that motion,[5] preparing for and conducting the final fairness hearing, monitoring and assisting the

[5] Because we had to being finalizing the numbers and various lodestar amounts, we did not include any time spent on preparing the Motion for Final Approval and exhibits in the lodestar amounts submitted as part of the Fee Petition.

settlement administration process, and otherwise completing this litigation and bringing this case to final judgment.

35. Furthermore, this only includes time devoted specifically to the *Brown/Bost* case. 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. Some of that time related to overlapping issues and was helpful in this Action as well. As just one example, several other circuits have adopted the Eleventh Circuit standards for analyzing Rule 23(f) petitions, meaning that the work done here in preparing the Answer to the 23(f) Petition was helpful in those subsequent cases. Another example is that NADA became a hot-button issue in this litigation, but was not in *Volino*. And it remained a critical issue in subsequent litigation—so, work done in this case related to NADA has been critical to subsequent cases. Although Class Counsel is not including that time here, we thought it worth noting for the Court that the aforementioned amounts are conservative compared to the amount of hours expended across all the cases that were beneficial and relevant to this case.

36. 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 $159,980.59, as shown in the following chart:[6]

Litigation Fund Expenses

Category	Expense
Experts and Consultants	$114,742.23
Depositions	$1,681.30
Mediation Services	$42,700.00
Total	$159,123.53

Each firm accrued additional costs that were not paid for out of the litigation fund, including travel, depositions expenses, filing fees, legal research, printing/shipping, etc. I have reviewed each firm's non-litigation fund costs, and they amount to $144,151.71.[7] As such, the total litigation expenses incurred by Class Counsel in this Action are $303,275.24.

37. Along with the rest of Class Counsel, I believe these costs are eminently reasonable and necessary for the litigation in this matter. They are less than the estimated costs of $380,000.00 that Class Counsel, in an abundance of caution as a conservative estimate, included in the Notice provided to Settlement Class Members

[6] These costs do not include the expert witness fees of Professor Brian Fitzpatrick, who is serving as Class Counsel's fee expert. Because those costs are for Professor Fitzpatrick's opinions solely devoted to attorneys' fees, costs, and Service Awards, Class Counsel is not seeking to assess such costs against the Class Members—instead, Class Counsel will entirely bear those costs.

[7] This is the sum of, per firm, Jacobson Phillips ($7,488.86), CBP ($9,677.21), Normand ($15,644.40), Edelsberg ($8,277.31), Shamis & Gentile ($7,262.08), Bailey Glasser ($70,559.25), Irby Law ($12,103.18), Lober & Dobson ($10,123.42), and Lord Law ($3,016.00).

that Class Counsel may seek in litigation expenses. Said another way, we are seeking less in expenses than Settlement Class Members were informed we would potentially be seeking, and thus Class Members recoveries will be slightly higher than estimated on a pro rata basis, since less costs would be deducted than was estimated.

38. Plaintiff Bost and Plaintiff Brown both expended a significant amount of time assisting in this litigation. Both sat for lengthy depositions, both reviewed critical documents, engaged in phone calls with Class Counsel to prepare for deposition, stay abreast of the litigation, and so forth. Both gathered documents responsive to discovery requests. And both were integral to the mediation process and insisted on terms favorable to Class Members. As such, it is my opinion, and that of Class Counsel more generally, that a $10,000.00 service award to both is eminently reasonable.

39. Finally, as representative of Class Counsel, it is our opinion that the Settlement is fair, reasonable, and in the best interest of the Class.

I declare under penalty of perjury, pursuant 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Dated: March 31, 2025

/s/ Jake Phillips
Jacob Phillips
Class Counsel