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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: FORD MOTOR CO. Case No. 1:12-md-2316
SPARK PLUG AND 3-VALVE ENGINE (MDL Docket No. 2316)
PRODUCTS LIABILITY LITIGATION Youngstown, Ohio
Monday, January 25, 2016
1:38 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

FAIRNESS HEARING

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P R O C E E D I N G S

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LAW CLERK: The matter before the court is Case Number 1:12-md-2316, In re: Ford Motor Company Spark Plug and 3-Valve Engine Products Liability Litigation.

THE COURT: Good afternoon, everyone. You may all retake your seats. Thank you for standing.

ALL: Good afternoon.

THE COURT: Counsel for plaintiffs, will you introduce yourselves for the record?

MR. SHAH: Good afternoon, Your Honor. James Shah on behalf of plaintiffs.

THE COURT: Welcome, Mr. Shah.

MR. SHAH: Thank you.

MR. GOLDENBERG: Good afternoon, Your Honor. Jeff Goldenberg also on behalf of the plaintiffs in the settlement class.

THE COURT: Welcome, Mr. Goldenberg.

On behalf of Ford, will you please introduce yourselves for the record?

MS. WRIGHT: Elizabeth Wright on behalf of Ford Motor Company. Thank you.

THE COURT: Welcome back, Ms. Wright.

MS. LENART: Krista Lenart on behalf of Ford Motor Company, Your Honor.

1 THE COURT: Welcome to you both.

2 And I hope you don't mind me asking but it is
3 pretty obvious that apart from counsel, there are two other
4 people in the room.

13:39:01 5 Would you care to introduce yourselves for the
6 record?

7 MR. HARRIS: I am Melvin Harris, the claimant.

8 THE COURT: Welcome, Mr. Harris. And with you,
9 sir?

13:39:12 10 MS. HELM: My name is Reba Helm.

11 THE COURT: You are both welcome here.

12 This hearing has been scheduled to allow the court
13 to determine whether the settlement agreement reached in
14 this, I would say hotly litigated matter, but it's not quite
15 been that. While it's been one of importance that's gained
16 the attention of the court and both sides, it's certainly
17 been one that's been deserving of that. So I will skip that
18 descriptor, and just explain that my role here today
19 primarily is to be as fully informed as possible, so that
13:39:49 20 ultimately, I can decide whether or not the settlement

21 agreement is one that's fair, reasonable, adequate and in
22 the best interests of the members of the settlement class.

23 Counsel, I applaud you. You've given me probably
24 everything I could have asked for timely, and in great
13:40:10 25 detail. Despite that, I do have questions. And I'm sure

1 that Messrs. Goldenberg and Shah have things that you'd like
2 to establish on the record. And then, at the appropriate
3 time, I will certainly hear from Ms. Wright and Ms. Lenart,
4 to the extent they have responses to questions that I might
13:40:26 5 pose, or would just like to make sure that Ford's position
6 is correctly and fully memorialized on the record we'll
7 jointly create here today.

8 Mr. Shah or Mr. Goldenberg, would one of you care
9 to start by summarizing the status of the settlement that
13:40:43 10 was preliminarily approved by the court in June of last
11 year?

12 MR. SHAH: Thank you, Your Honor.

13 As Your Honor noted, we are here today on a motion
14 for final approval of the settlement that this court
13:41:01 15 preliminarily approved on June 18th of 2015.

16 Pursuant to that preliminary approval, notice was
17 disseminated by Renkim to the nearly 4 million class
18 members. The response to that notice that was sent by
19 direct mail has been overwhelmingly favorable.

13:41:22 20 THE COURT: Sir, can you tell me the date of the
21 notice? I've tried to figure it out. According to my
22 order, it had to have been by mid-December of last year. It
23 was probably before October 16th.

24 MR. SHAH: I believe it was October 23rd?

13:41:36 25 MS. LENART: I believe -- Your Honor, I believe

1 that all of the notices went out by October 18th, somewhere
2 around in there. And I think we were presuming they had all
3 gone out by October 23rd at the latest.

4 THE COURT: I would have believed in advance of
13:41:48 5 October 16th, because at least one of your filings told me
6 the toll-free phone line was active on the 16th. That led
7 me to believe it was activated after notice. But it may be
8 it was activated a couple of days before notice was issued?

9 MR. SHAH: I think that's correct, Your Honor. In
13:42:05 10 terms of the parties conferring, it was our intention, and I
11 think it actually worked out that way, to make sure that
12 everything was up and running, from the settlement website
13 standpoint and the toll-free number, as soon as the notices
14 were to go out, so that there would be no downtime in
13:42:22 15 between the receipt of notices by the members of the class
16 and their ability to utilize the toll-free number and the
17 settlement website.

18 THE COURT: Thank you both for your answers.

19 MR. SHAH: And as I was stating, Your Honor, so
13:42:34 20 the reaction of the class has been overwhelmingly favorable.
21 In fact, there have been only ten objections that were
22 received, and 431 class members elected to opt out or
23 exclude themselves from the settlement.

24 So in addition to the reaction of the class, an
13:42:51 25 analysis of all the other factors that one looks at in terms

1 of determining whether a settlement is fair, adequate and
2 reasonable, all favor approval of this resolution.

3 By way of brief background regarding the history
4 of the matter --

13:43:07 5 THE COURT: Can I ask you just to fill in one
6 other gap? I know that this was told to me at least as
7 recently as the 21st of this month, that no Attorney General
8 has objected. And we know there are several states,
9 multiple states involved. And I'd just like to make sure.
13:43:22 10 I can assure you that we've checked my docket. That's still
11 the case. But no phone calls, notices to you?

12 MR. SHAH: That's correct. In fact, I can
13 represent that no state AG has asked any substantive
14 question or expressed any concern about the settlement. And
13:43:39 15 I was going to speak about this later in connection with
16 notice, but since we're on the subject, Your Honor, I know
17 that from my experience over the past five years, many of
18 the AG offices have designated a specific person or persons
19 to review the CAFA notices as they come in.

13:43:57 20 And whereas early on, after CAFA notice was
21 required, it was rare to get an AG to have interest or
22 involvement in a case. Over the past five years or so, it's
23 not uncommon at all for class counsel and defense counsel,
24 in settlements of this nature, to have a request from one or
13:44:18 25 more state AGs to have a conference call, where there can be

1 a discussion about the litigation, the reasons for a
2 settlement, any potential concerns that an AG may have about
3 a settlement.

4 And that happens anymore more often than not;
13:44:34 5 particularly in settlements of this scope, if there's any
6 concern by AG. And there was never any such request made by
7 any of the state AGs with respect to this settlement.

8 THE COURT: Thank you, Mr. Shah.

9 MR. SHAH: This action was initially filed on
13:44:50 10 behalf of three Ohio plaintiffs in March of 2010.

11 Subsequently, additional cases were filed around the
12 country, which resulted in a proceeding between the --
13 before the JPML. And in February of 2012, that panel
14 consolidated and transferred the spark plug actions to this
13:45:12 15 court.

16 A month later, a master consolidated complaint was
17 filed, asserting claims on behalf of plaintiffs' class
18 representatives from 24 states.

19 The case then went through a substantial discovery
13:45:27 20 period. And that discovery included hundreds of thousands
21 of documents being produced and reviewed; the deposition of
22 more than 50 class representative plaintiffs around the
23 country; multiple depositions of Ford representatives;
24 significant expert discovery and depositions; millions of
13:45:46 25 lines of databases being produced, not only from Ford, but

1 also from Ford-authorized dealers by way of third-party
2 discovery; significant third-party discovery with respect to
3 Honeywell, the manufacturer of the engines; and, of course,
4 class counsel's communication with thousands of class
13:46:06 5 members, keeping them apprised of the status of the
6 litigation, as well as their input regarding their
7 experiences.

8 Ultimately, as the case proceeded towards summary
9 judgment, the parties and the court reached an agreement on
13:46:22 10 a bellwether framework, wherein six states were selected as
11 bellwethers on summary judgment. Those motions were fully
12 briefed. And ultimately, on July 30th of 2014, this court
13 issued a summary judgment decision granting in part and
14 denying in part Ford's motion for summary judgment.

13:46:45 15 At that stage, as the parties began to prepare for
16 the class certification process, they agreed to go to
17 private mediation, and engaged the services of one of the
18 most well-respected mediators in the country, Professor Eric
19 Green out of Boston. In-person mediation sessions were held
13:47:09 20 with Professor Green on November 4th, 2014, and December
21 4th, 2014. Although the parties made progress towards a
22 resolution, they did not reach a resolution.

23 There were continuing discussions for months
24 thereafter, which resulted in the parties having a third
13:47:27 25 in-person mediation session with Lewis Goldfarb, who is a

1 northern Jersey attorney with extensive experience
2 litigating automotive matters, both on the plaintiff's side,
3 and he was in-house counsel for Chrysler for a number of
4 years and understands these issues very well. That occurred
13:47:46 5 in March of 2015 in New York City.

6 The parties still did not reach a final
7 resolution. And it took additional negotiations, with the
8 assistance of Mr. Goldfarb, following that March mediation
9 to finally reach the settlement that was preliminarily
13:48:03 10 approved by this court last year, and then submitted -- or
11 presented to the class for consideration.

12 The court is certainly aware of the general
13 parameters of the relief offered, but just briefly for the
14 record, the settlement provides for reimbursement for spark
13:48:26 15 plug expenses and replacements in excess of \$300 per eight
16 spark plugs, or \$37.50 per individual spark plug.

17 There is no cap or ceiling as to Ford's
18 obligations under the settlement. And expenses incurred
19 between 300 and \$500 are reimbursed at 20 percent. Expenses
13:48:50 20 between 500 and \$1,000 are reimbursed at 50 percent. And in
21 excess of \$1,000, at 75 percent.

22 In addition, although the recommended maintenance
23 by Ford for replacing spark plugs for the class vehicles was
24 between 90- and 100,000 miles, a claimant can seek
13:49:11 25 reimbursement for any replacement out to 120,000 miles. And

1 if they can demonstrate that they were told by a Ford
2 dealership not to have the spark plugs replaced, then they
3 can actually get reimbursed for replacements occurring after
4 120,000 miles.

13:49:30 5 In addition, class members who would still like to
6 have the replacement done can have the benefit of the
7 protections afforded by the settlement framework, so long as
8 they submit a claim by February 27th of 2017.

9 Lastly, Your Honor, the settlement, for those who
13:49:53 10 are unable to prove up their claims by invoices or other
11 documentation, permits the submission of a declaration to
12 that effect, which permits recovery up to \$50.

13 Ford also agreed to pay all the notice costs and
14 administration costs, as well as the attorneys' fees and
13:50:11 15 expense amount of 5.25 million, and the service awards
16 ranging from 2,000 to 7,500 for the representative
17 plaintiffs. All of those payments are being paid separately
18 by Ford and do not in any way or respect diminish the
19 benefits available to the members of the class via the
13:50:33 20 settlement.

21 I have already touched on notice. But again, the
22 direct notice went out to approximately 4 million people.
23 CAFA notice was provided. And as Your Honor has already
24 noted, there was an operating website with all of the key
13:50:49 25 documentation, and through which class members can submit

1 claims. Also, a toll-free number for any questions that
2 might be asked.

3 And both Mr. Goldenberg's firm and my firm have
4 dedicated, throughout this claims process, an attorney to
13:51:06 5 answer any questions that class members may have. And I
6 myself and Mr. Goldenberg, I know, have spoken to numerous
7 class members, assisting them in submitting their claims and
8 answering any questions that they have about the settlement,
9 personally as our names appear quite readily if someone is
13:51:28 10 looking for them.

11 The next component, and I think I can keep this
12 relatively short, Your Honor, is just the propriety of
13 certifying a settlement class. And those factors were
14 already considered by the court in connection with
13:51:43 15 preliminarily approving the settlement.

16 And the papers speak to why the Rule 23 elements
17 are satisfied for purpose of a settlement class. I think
18 it's notable that there was no objection as to the propriety
19 of the settlement class, nor could there have been a valid
13:52:01 20 one, given the realities of those factors.

21 So that takes me to why the settlement warrants
22 final approval. And I'm just going to, if I may, go through
23 the factors and have a discussion about those.

24 The first factor is the likelihood of success
13:52:23 25 versus the form of relief that's made available under the

1 settlement. So if the case had not resolved following the
2 mediation efforts, the next step was, as Your Honor is
3 aware, plaintiffs would have had to attempt to certify 24
4 separate state classes, applying 24 separate state laws. So
13:52:46 5 plaintiffs were obviously prepared to go down that path.
6 Certification in this day and age is by no means certain.
7 And so there was risk associated with proceeding with
8 certification.

9 The plaintiffs also would have had to establish
13:53:05 10 the existence of a defect and Ford's knowledge. They also
11 would have had to establish that Ford had a duty to disclose
12 the defect, which implicated issues regarding the fact that
13 there were no allegations of this being a safety defect.
14 And also relates to issues regarding the parties' different
13:53:28 15 views as to when this defect manifested with respect to the
16 durational aspects of the warranty.

17 Also, plaintiffs would have had to establish that
18 this defect was covered under the various versions of Ford's
19 warranties during the class period, had to establish
13:53:49 20 classwide damages. And then, of course, there would have
21 been a trial and the inevitable appeal.

22 Plaintiffs, I think as the record over six years
23 reflects, believe strongly in the case, and continue to
24 believe strongly in the case, but are well versed in
13:54:12 25 understanding the risks of litigation, both from a

1 certification perspective, and then ultimately, from a trial
2 perspective.

3 And in light of the considerable benefits offered
4 by -- cash benefits offered by the settlement, believed and
13:54:29 5 strongly believe that this element -- this factor warrants
6 approval of the settlement.

7 The second factor, Your Honor, is the complexity,
8 expense and duration of the litigation. Certainly, had the
9 case not settled, as I just went through, there would have
13:54:49 10 been a lot of additional steps in the litigation. It would
11 have continued for a number of years. And, again, that
12 doesn't even factor in the inevitable appeal had we been
13 successful.

14 And again, just to touch on the complexity.
13:55:05 15 Dealing with as many named plaintiffs as we had in this
16 case, all the different state laws, and I think that from a
17 fact-specific standpoint, the nature of the defect that was
18 alleged here, again, it touched on issues that are -- that
19 often appear in these types of cases with respect to
13:55:30 20 manifestation and duty to disclose, but there certainly were
21 some unique fact circumstances specific to the defect at
22 issue here that, again, made those very complicated legal
23 issues, I think as evidenced by Your Honor's extensive
24 opinion on summary judgment. There was a lot of different
13:55:49 25 steps of analysis that were required to go through, both on

1 the consumer statutory side, as well as on the warranty side
2 here.

3 THE COURT: I would agree with that. And I would
4 also add, if you don't mind, I think while few, by any
13:56:03 5 statistical analysis, the ten objections, when you read
6 through them, you can see how very different some of the
7 circumstances could have been when viewed through different
8 lenses.

9 MR. SHAH: Yeah.

13:56:15 10 THE COURT: I mean, I don't think -- perhaps save
11 one that I hope you'll speak to me about was simply one that
12 was just outside of the boundaries of the settlement
13 agreement that was preliminarily approved.

14 MR. SHAH: Right. I think that's right, Your
13:56:30 15 Honor. And I'll speak to this as I speak to the objections.

16 But it is -- one of the challenges in negotiating
17 a settlement that could impact 4 million class members is,
18 inevitably, whether you have 25 class members or 4 million,
19 you know, it is not uncommon that there's going to be a few
13:56:54 20 outliers.

21 And so any resolution that we try to reach, you
22 know, from the plaintiffs' perspective, tries to take into
23 account as much as it possibly can given the realities and
24 circumstances of litigation. And we try to capture that.

13:57:12 25 And it is -- the nice facet of a class option mechanism is

1 there is always the opt-out ability, if you are a class
2 member for whatever reason that just has a unique set of
3 circumstances.

4 And I'll speak to that further, but I appreciate
13:57:27 5 the court's point on that factor.

6 The third factor, Your Honor, is the stage of
7 proceedings and the discovery completed. And I won't
8 reiterate again all of the work that was done over the
9 approximately six years of litigation. But I think it
13:57:47 10 suffices to say that because of all the work that was done,
11 all the document review, all the depositions, all the expert
12 work that the parties, not just plaintiffs, but the parties
13 were well situated to be able to take a look at potential
14 resolution and assess the weaknesses of their case, the
13:58:10 15 strengths of their case, as well as on the other side; and
16 then take into account what was a fair resolution in light
17 of those risks, in light of the realities of continued
18 litigation.

19 And I think that this settlement is strong
13:58:27 20 evidence of that, that the parties both had to give and
21 recognize, you know, what their weaknesses were here. So I
22 think --

23 THE COURT: And again, if you don't mind me adding
24 in, and Ms. Wright may say more about this, although she
13:58:46 25 need not, at no point did Ford concede liability. So that

1 was probably one of your biggest hurdles.

2 MR. SHAH: Yes. As strongly as plaintiffs
3 believed in their case, Ford believed, perhaps more
4 strongly, in its position. So there is no question about
13:59:01 5 that.

6 The fourth factor, Your Honor, is the judgment of
7 experienced class counsel. And I would just like to say
8 this about the team that Mr. Goldenberg and I were fortunate
9 enough to assemble on the -- in particular on the Executive
13:59:16 10 Committee. This is a team of attorneys that collectively
11 has litigated on multiple occasions against every large and
12 small automotive manufacturer that does business in this
13 country, among all the other complex litigation that these
14 very talented attorneys participate in. And including a lot
13:59:37 15 of us on our team have previously litigated against Ford.

16 So we were I think very well suited, because of
17 that experience, to understand both factually and legally
18 what we were up against at every stage of the litigation,
19 including being able to analyze all of the evidence and all
13:59:58 20 the legal risks at the time that we finally went to
21 mediation many years into the litigation.

22 And I will also note that defense counsel, you
23 know, and this is just known in the industry, is a
24 formidable group of attorneys. They have incredible
14:00:17 25 experience defending these types of cases, and, quite

1 candidly, have had a great deal of success in defending
2 these cases around the country. So we are aware of that as
3 well.

4 But I think that in terms of the settlement, when
14:00:33 5 you are talking about judgment of experienced counsel, here
6 we had experienced counsel on both sides, being able to
7 frame the issues. And, you know, I think, obviously,
8 without getting into any settlement privilege, it is helpful
9 to know that the other side can tell you exactly what your
14:00:55 10 argument would be, and you could do the same for them,
11 because it does really help to be able to see it from the
12 other side and understand the arguments. And I think we had
13 the very real benefit of having that dynamic here.

14 The fifth factor is the nature of negotiations.
14:01:14 15 And, again, settlement discussions did not commence until
16 many years into litigation, two different highly respected
17 mediators, over many months. I think that speaks for
18 itself. To say that there was no collusion here would be an
19 understatement. These were hard fought, intense, lengthy
14:01:34 20 negotiations.

21 As to the public interest, which is the sixth
22 factor, it goes without saying that being able to resolve
23 the case at this stage will conserve judicial resources
24 going forward. There's a significant benefit from a public
14:01:51 25 interest standpoint to resolving complex and uncertain

1 claims and giving benefits to the class, immediate benefits
2 to the class.

3 I will also note that from an MDL perspective,
4 this was how the process is supposed to work. We were able
14:02:08 5 to streamline numerous cases from around the country, put
6 them before one court and Your Honor, and resolve the claims
7 in a bundled fashion. So I think that from a public
8 interest standpoint, this is evidence of that process
9 working as well.

14:02:26 10 And the last factor, Your Honor, is the reaction
11 of the class. And again, in having done these cases for at
12 least the past 15 years, to only have ten objections, where
13 we had direct mail notice to the number of class members
14 that we had here, is truly remarkable. And I think it is a
14:02:49 15 testament to the work that was done by counsel to achieve
16 the result that was achieved here.

17 You know, and we cite these cases in the brief,
18 but, you know, the Olden case, 79 objections out of a class
19 of 11,000, and that was deemed to be not sufficient to
14:03:07 20 disavow the settlement. Baily, 229 objections out of nearly
21 4,800 class members.

22 But I do want to address that, you know, really
23 the -- well, and we'll get to the Kron objection last. But
24 with respect to all the objections, really including Kron,
14:03:25 25 the objections really are based on the premise that they

1 just wish that the settlement had provided more. Right?
2 Which a settlement, by its very nature, is a compromise.
3 And in this case, I think it was a compromise that was -- I
4 know it was a compromise that was based on a very specific
14:03:40 5 understanding of the risks by both sides.

6 So the first kind of grouping of objections
7 pertains to the 120,000 mile cutoff. And this was a very
8 hard fought part of the settlement. Obviously, Ford's view
9 was that if they recommended it be -- if the company
14:04:06 10 recommended that it be done between 90- and 100,000, then
11 anyone who is not maintaining their vehicle, that's
12 problematic.

13 We were able to negotiate a deal that actually
14 adds 20 percent, at a minimum 20 percent beyond the mileage
14:04:23 15 for this recommended maintenance.

16 And, in addition, we were able to put in an
17 additional provision that if people were told to wait by a
18 Ford dealership, they could go beyond the 120,000 miles.
19 And we know that people who have contacted us are availing
14:04:42 20 themselves of that settlement provision.

21 The bottom line is, for example, if we had drawn
22 it at 150,000 miles, or in the case of Mr. Guthrie, at
23 191,000 miles, there is going to be, absent a lifetime
24 warranty on this -- under this settlement, there is always
14:05:08 25 going to be someone perhaps on the other side of that line.

1 And so this was very contested, hotly negotiated,
2 and at the end of the day, I think a very fair provision
3 given where we ended up.

4 And to the extent that someone isn't able to avail
14:05:31 5 themselves of that, again, they always have the opt-out
6 right if they want to preserve their claim.

7 The second category is kind of the flip side of
8 that, and that is, individuals who have not yet obtained
9 100,000 miles and they haven't done their spark plug --
14:05:55 10 performed a spark plug replacement.

11 So I believe that the two objectors on that front,
12 one has 86,000 and one has 74,000 miles. And they have,
13 under the settlement, until February 27th of next year to
14 submit a claim. And again, to explain the thought process
14:06:15 15 that went into this, is that companies want to have a
16 definitive end to a resolution as opposed to open-ended, and
17 we understand that from the plaintiffs' side.

18 The class vehicles here, Your Honor, as you know,
19 are 2004 to 2008. So at the time of February of next year,
14:06:37 20 the latest models that were sold will have been on the road
21 for nearly ten years. The earliest models, nearly 14 years.
22 So there is nothing that prevents someone who hasn't
23 achieved 100,000 miles from availing themselves of the
24 settlement, even if they're short of 100,000, so long as
14:06:58 25 they elect to do that and submit a claim before February of

1 next year.

2 So they certainly have the ability to avail
3 themselves of the benefits of the settlement and take
4 advantage of it.

14:07:09 5 And I will note, as Your Honor had Mr. Harris
6 stand up and introduce himself earlier, Mr. Harris is a
7 class member from Toledo who took the trip over today. And
8 Mr. Harris is an individual who has in the range of
9 70,000 miles --

14:07:27 10 MR. HARRIS: 70,000.

11 MR. SHAH: -- on his vehicle. He drives it part
12 of the time. And so we've talked to Mr. Harris. He is
13 observing the proceedings today. And as we said, we will
14 meet after, and assuming that the settlement is able to go
14:07:40 15 forward, work with him to figure out the best time for him
16 to have that done for him and assist him in submitting a
17 claim when he has the work done.

18 THE COURT: Good. I appreciate that. And
19 certainly driving from Toledo to Youngstown is going to help
14:07:52 20 with the mileage situation.

21 MR. HARRIS: I didn't drive it.

22 THE COURT: So close.

23 MR. SHAH: So again, so those people aren't
24 precluded from the benefits of the settlement, by any
14:08:09 25 stretch.

1 The next category is the do-it-yourself category.
2 And this was an objection lodged by Mr. Westfield, and I
3 guess then essentially copied by Mr. Kron. But with respect
4 to Mr. Westfield, he's simply wrong with respect to the
14:08:30 5 do-it-yourselfers. If there are expenses that exceed the
6 \$300 threshold, by definition of out-of-pocket expenses,
7 which is in the notice, those expenses, for example, paid to
8 a parts supplier, are part of the settlement.

9 I think it's notable, and we point this out in the
14:08:53 10 papers, that Mr. Westfield was unable to demonstrate that he
11 had even reached the \$300 threshold for spark plug costs and
12 the like.

13 But I will also note that both -- for the record,
14 I have received and spoken -- phone calls from and spoken
14:09:11 15 with class members, as has Mr. Goldenberg, who were
16 do-it-yourselfers, and fully understood that they could
17 submit for their expenses, they were simply inquiring as to
18 whether or not they were also able to recover for the time
19 they spent in their garage or in their driveway performing
14:09:31 20 the work, and we, of course told them that the settlement
21 didn't provide for that.

22 So the fact that the one class member may have
23 been confused about that, of course, we never want anyone to
24 be confused about anything, but we know from our own
14:09:46 25 experiences that this is a one-off situation by a class

1 member who hasn't been able to even demonstrate that he
2 would otherwise qualify for the \$300 threshold.

3 The next category is what I would call the full or
4 complete relief or reimbursement category. And that is
14:10:05 5 people that either think that all amounts above 300 should
6 be reimbursed, or that all amounts all together should be
7 reimbursed.

8 So I guess taking them in reverse order,
9 obviously, this was a maintenance item on each of the class
14:10:22 10 vehicles that was something that was recommended be done.
11 It was something that people had to do in the normal course
12 of maintaining their vehicle. So there was necessarily
13 going to be a cost associated with spark plug replacements.
14 The mere fact that people had to go out of pocket doesn't
14:10:37 15 mean they were damaged.

16 As the court knows, there was extensive briefing
17 and expert work wherein plaintiffs' own expert ultimately
18 opined that \$300, roughly \$300 would be what a reasonable
19 consumer would expect to pay for the class vehicles for a
14:10:56 20 spark plug replacement.

21 So the notion of full reimbursement for all costs
22 doesn't take into account in any way what the actual measure
23 of potential damages would be, even had plaintiffs been
24 successful through trial and on appeal.

14:11:12 25 And then with respect to simply wanting I guess

1 what I would call a higher reimbursement schedule above
2 \$300, that just falls into the category of, just wish that
3 there was more relief under the settlement. And this was a
4 negotiated compromise, again, with experienced counsel,
14:11:32 5 taking into account the risks of litigation.

6 The final objection is by Mr. Kron. And I go on
7 to start out first, before I get into the substance of
8 Mr. Kron's objection, by just addressing two separate
9 standing issues.

14:11:53 10 So the first standing issue with Mr. Kron is in
11 his objection, Your Honor, he cites that he is a class
12 member because he purportedly owns two vehicles, and he
13 includes the VIN of each of those vehicles. We have
14 included in our supplemental filings a declaration by a Ford
14:12:13 15 engineer, Mr. James Engle, who indicates and points out that
16 neither VIN referenced by Mr. Kron is a vehicle that would
17 be a class vehicle, and therefore, Mr. Kron is not a class
18 member as it relates to those two vehicles that he
19 references.

14:12:32 20 In addition, Mr. Kron has attached to his
21 objection a class notice that was sent to Kron Interiors as
22 a currently suspended California corporation. Even assuming
23 that Mr. Kron was the sole owner of this defunct company, he
24 doesn't certainly assert that, nor does he attempt to prove
14:13:00 25 or establish in any way what his affiliation, if any, is

1 with Kron Interiors. It is well settled law, and we
2 reference it in our paper, that he can't individually
3 exercise the corporate rights. So --

4 THE COURT: Let me ask a question about that. And
14:13:18 5 I hope it's one that perhaps even you're prepared for.
6 Because there are at least -- there are not class -- well,
7 there are class members. In fact, there are class
8 representatives who are among those suggested receive
9 service awards, and at least two of them appear to be
14:13:36 10 entities. And the settlement agreement allows payment to
11 entities. At least one is easily recognizable I think as a
12 named plaintiff, Buckeye Management Group.

13 MR. SHAH: That's correct.

14 THE COURT: East Poultry Texas Supply.

14:13:50 15 MR. SHAH: That's correct as well. Ohio and Texas
16 plaintiffs respectively, yes.

17 THE COURT: So understanding that they're carved
18 out, and you did a nice job of reminding the court of that
19 in the ECF 108, which is plaintiffs' motion for attorneys'
14:14:07 20 fees, expense reimbursement and class representative service
21 awards, Footnote 28.

22 But if you hinge your argument, at least one of
23 many, and I will tell you that losing one of many reasons
24 for disagreeing with the objection by Mr. Kron certainly
14:14:27 25 wouldn't be fatal to plaintiffs. But how is it the

1 distinction between the corporation and the individual
2 differ from Mr. Kron than it is for those two named parties?

3 MR. SHAH: Sure, Your Honor. In the case of
4 Poultry, and in the case of --

14:14:45 5 THE COURT: Buckeye?

6 MR. SHAH: -- Buckeye, they were named plaintiffs
7 in their corporate capacity. So the corporations themselves
8 were suing as class representatives.

9 Here, Mr. Kron did not bring the objection on
14:15:02 10 behalf of -- again, assuming he's even affiliated with, he
11 did not bring the objection on behalf of Kron Interiors, he
12 brought it on behalf of himself.

13 So it's not our position that he may -- he may be
14 able to establish, if he so elected, he may have been able
14:15:23 15 to establish that he could object on behalf of -- or that
16 Kron Interiors could object as a class member. But he did
17 not do that here. He simply objected in his personal
18 capacity. Other than attaching the document, he didn't even
19 reference Kron Interiors.

14:15:40 20 THE COURT: What I suggest, and I appreciate the
21 suggestions made in the proposed final order that's docketed
22 at ECF 118-1, and I make this suggestion, because I think
23 you've shown an ability to be reasonable and flexible where
24 the settlement agreement allows it. You've already told the
14:15:58 25 court that you are going to speak with Mr. Harris. I know,

1 and you've already written, that if Ms. Phillips submits
2 what is necessary, then you'd consider that.

3 MR. SHAH: Yes.

4 THE COURT: Perhaps when Mr. Kron reads this, he'd
14:16:11 5 say -- and he wouldn't have to read it in my order, he could
6 read it in the pleading I alluded to earlier -- "Oh, I just
7 submitted it under the wrong name."

8 So I just think that one reason is superfluous,
9 not necessary, because it's the kind of reason, being as
14:16:27 10 reasonable as you have been up to now, you might forgive and
11 allow him to fix, if he otherwise fit the definition of
12 class member. My strong suggestion is that one frailty
13 cured is not going to change circumstances by much.

14 MR. SHAH: Understood. And as I understand Your
14:16:43 15 Honor's statement, in terms of potentially striking that,
16 that language from the proposed final approval order, I
17 think that we can confer about that in short order after the
18 conclusion of today's proceeding, or at a break.

19 I will also note, just for the record, that we did
14:17:04 20 serve Mr. Kron our papers that were filed last week, as well
21 as the Columbus attorney that was listed as an attorney of
22 record. So Mr. Kron and his attorney of record are aware of
23 the argument that we make, or certainly at least have been
24 served with the argument that we have made on the lack of
14:17:28 25 standing.

1 But I certainly understand where Your Honor is
2 coming from on that and will talk with my colleagues about
3 that.

4 So in any event, we believe that there's a lack of
14:17:39 5 standing for that reason.

6 We also believe that there's a lack of standing
7 for a second reason. And this second reason pertains to
8 Mr. Kron's failure to abide by this court's preliminary
9 approval order; and specifically, what information needs to
14:17:58 10 be provided to the parties and to the settlement
11 administrator and to the court to have a valid objection.

12 And as we know in the papers, and I'm not going to
13 speak at length about it today, you know, Mr. Kron, by all
14 appearances, is a professional objector. He's objected, to
14:18:20 15 our knowledge, to at least three class settlements in the
16 past two years, sometimes through his son in his son's
17 individual capacity, sometimes through his son's law firm.
18 His son has objected to other settlements. To our
19 knowledge, no court has ever accepted his objections.

14:18:37 20 And I only point out that by way of background,
21 because his history of objections explains, but frankly,
22 does not excuse Mr. Kron's failure to comply with the
23 court's requirement that he state the number of objections
24 he's made to class action settlements in the past five
14:18:54 25 years.

1 He certainly was aware of that requirement,
2 because he said -- specifically, he specifically addressed
3 it in his objection, and so he simply just disregarded that
4 requirement. We think that's an independent reason as to
14:19:10 5 why Mr. Kron doesn't have standing.

6 Having said all that, I will now, as we do in our
7 papers, point out that even if the court were to consider
8 the objections, they're baseless and certainly don't provide
9 a reason to not grant final approval to the settlement, Your
14:19:28 10 Honor.

11 The first objection that he makes is he complains
12 about the allocation of the settlement benefits, and he says
13 that they're not fair. And he basically alleges that
14 there's preferential treatment. Well, there is no
14:19:43 15 preferential treatment here. The case he cites, Vassalle,
16 V-a-s-s-a-l-l-e, in that case, the plaintiffs got certain
17 debt exonerated under the settlement, which benefit wasn't
18 made available to other class members. And there's nothing
19 of that nature here. The same settlement benefits apply to
14:20:05 20 all the class members.

21 And I also point out, it's notable in Vassalle
22 that there was no question about the propriety of the
23 service or incentive award being paid separately in the
24 settlement. Vassalle was looking simply at the different
14:20:21 25 types of benefits being made available under the substantive

1 terms of the settlement itself. So there's no legal basis
2 for that argument, certainly under the circumstances of the
3 settlement here.

4 He next complains about the unreasonableness of a
14:20:34 5 \$300 threshold. And I discussed that just a few minutes
6 ago, and will leave my analysis at that.

7 He next argues, again, without really explaining
8 any legal basis as to why, that no class representative paid
9 less than \$300, and that somehow makes the settlement
14:20:57 10 infirm. No class member paid less than \$300 for a spark
11 plug replacement.

12 In connection with summary judgment, however, on
13 the damages issue, Ford's briefing in this case, and we
14 point specifically to the record and our papers reflect that
14:21:11 15 at least four class members -- class plaintiffs are paid
16 less than \$280 to replace their spark plugs.

17 He next argues, Mr. Kron does, that somehow
18 Mr. Perko is inadequate because he didn't own a class
19 vehicle. Again, without saying how that would make him
14:21:29 20 inadequate, it's neither here nor there, because Mr. Perko
21 did, in fact, own a class vehicle and is a class member.

22 Mr. Kron's next point is simply just evidence is a
23 complete misunderstanding of the settlement. He says that
24 the settlement didn't provide recovery for people who had
14:21:49 25 replacements less than 100,000 miles. Not only could you

1 recover if you had a replacement less than 100,000, if you
2 previously went out of pocket, as, for example, in the case
3 of Mr. Harris, those people going forward up through
4 February 27th of next year, less than 100,000 miles, also
14:22:08 5 can avail themselves of the benefits of the class.

6 He next indicates that he wants the settlement to
7 permit reimbursement regardless of the mileage. So,
8 basically, a warranty in perpetuity. And that was not
9 something that was going to be achievable at any stage of
14:22:33 10 the litigation; and just, again, fails to take into
11 consideration any of the real world legal and factual
12 realities of litigation.

13 He then picked up on Mr. Westfield's objection, so
14 decided to basically cut and paste that argument, and I've
14:22:51 15 already addressed that.

16 And lastly, he has some boilerplate language about
17 attorneys' fees, and doesn't actually quibble with the
18 amount, just says that, you know, those should be withheld
19 until his proposed improvements can be implemented.

14:23:09 20 At the end of the day, these objections really
21 speak to simply there being more relief available in the
22 settlement.

23 And I do want to just quickly go back to
24 Ms. Phillips' objection. Unfortunately, as the court is
14:23:27 25 aware, her circumstances are very unique. Her husband

1 passed away. He was the one who had visited the authorized
2 dealer and potentially had the communications about the
3 replacement. We have conferred with Ford. Class counsel,
4 in the coming days, is going to reach out to Ms. Phillips
14:23:49 5 and let her know that Ford has agreed to consider her claim
6 from a goodwill perspective, and we are going to encourage
7 her to submit a claim with that understanding.

8 THE COURT: Thank you.

9 MR. SHAH: So in sum, these few objections really
14:24:03 10 just speak to the notion of, they just wish the settlement
11 provided more relief. Plaintiffs' counsel always wishes
12 that a settlement provides more relief. But it has to be
13 viewed in context, the context of all the other factors that
14 I just spoke about that courts analyze in terms of
14:24:21 15 determining whether a settlement is adequate.

16 And when one looks at those factors, looks at the
17 reality of the litigation, the history of the litigation,
18 the parties involved, the risks involved, the individuals
19 who were involved in working with the parties to resolve the
14:24:38 20 matter, it is our belief, and we respectfully submit that
21 this is an excellent settlement. It is just that, though, a
22 settlement, a negotiated compromise. The 62,000-plus class
23 members have already sought relief by submitting claims
24 from, sought the benefits of that. That claims period runs
14:25:01 25 for a number of additional months as well.

1 All in all, this is an excellent settlement. It
2 was a product of a lot of really hard work, by a team of
3 attorneys that believed, and continue to believe, strongly
4 in this issue. And we just don't believe that the
14:25:22 5 objections -- the few objections provide any basis to not
6 grant final approval.

7 If I may just make two more quick points and then
8 I'll be done, absent any questions that Your Honor might
9 have.

14:25:37 10 THE COURT: Two more quick points regarding the
11 settlement itself or shifting into fees and costs?

12 MR. SHAH: Sure. I was just going to make -- just
13 talk about the service awards and fees and costs.

14 THE COURT: Good, I'd like you to. Can I forecast
14:25:52 15 a question that I hope you're probably already prepared to
16 answer for me?

17 MR. SHAH: Okay.

18 THE COURT: Again regarding service awards, and I
19 appreciate the footnote explaining the categorization of
14:26:05 20 plaintiffs named in the master consolidated complaint.

21 MR. SHAH: Right.

22 THE COURT: I'm still left wondering why it is
23 that Dennis White is categorized to receive the highest
24 amount, \$7,500. If there's a spouse and they both were
14:26:21 25 deposed, maybe that's the answer. And if so, I will accept

1 it.

2 MR. SHAH: That is the answer, Your Honor.

3 THE COURT: Is it?

4 MR. SHAH: He had a spouse that was deposed as
14:26:32 5 well, so that's it.

6 THE COURT: And is it typical that when that's --
7 so the spouse was deposed, but the spouse is not a named
8 plaintiff?

9 MR. SHAH: That's correct.

10 THE COURT: So that's a distinction?
14:26:41

11 MR. SHAH: Even though she had not signed a
12 retainer and agreed to participate in the litigation, that
13 was an additional factor that in terms of his service as a
14 class representative plaintiff, you know, was requested by
14:26:59 15 Ford, and he and his wife, his spouse, agreed to do it to
16 benefit the class and make sure there were no issues that
17 arose about his particular circumstance.

18 THE COURT: And then there were two others, both
19 of whom share the last name of Black, calling me to believe
14:27:15 20 they're spouses or related. You can tell me. That's Debra
21 and Larry Black. And I can't understand without help why it
22 is each of them, unless, of course, I take a moment to do
23 the math, they're both receiving \$3,750. And that's just
24 the split. So is there some reason you're giving separate
14:27:40 25 households, is it --

1 MR. SHAH: They were both named plaintiffs and
2 they were both deposed.

3 THE COURT: And --

4 MR. SHAH: So --

14:27:47 5 THE COURT: Interesting. Is there any more reason
6 why Mr. Black is getting -- pardon me, Dennis White is
7 getting \$7,500, when his spouse was deposed, but she's not a
8 named plaintiff?

9 MR. SHAH: No.

14:28:01 10 THE COURT: And that's the only one, I'm right,
11 isn't it?

12 MR. SHAH: That is the only reason, that's
13 correct.

14 THE COURT: Okay. What else would you like to say
14:28:08 15 about service awards?

16 MR. SHAH: I would just like to say that, you
17 know, from plaintiffs' counsel's perspective, we can't move
18 forward with litigation unless we have representative
19 plaintiffs who are willing to commit to what in this case
14:28:25 20 was approximately six years of litigation, where they are
21 called upon to assist us with the initial case
22 investigation, to provide us with all their documentation,
23 to be kept apprised of the developments in the case, both by
24 correspondence, phone calls with class counsel, meetings
14:28:45 25 with attorneys to assist them in preparing for a deposition,

1 sitting for their deposition, reviewing the transcript,
2 making sure that everything was reported accurately. And
3 then keeping to work -- working with class counsel all the
4 way through settlement, so that we have an understanding as
14:29:09 5 to what an appropriate framework would be, what they're
6 looking for.

7 It is no small commitment. Also, in this day and
8 age, where Google or a Yahoo search turns up, you know,
9 names, you are necessarily putting yourself out there into
14:29:28 10 the public eye when you serve in a plaintiffs' -- as a
11 plaintiffs' class representative.

12 So the awards requested are in line with and, in
13 fact, in many respects, less than awards in comparable
14 cases, as we set forth in -- we had a lot of really great
14:29:49 15 class representative plaintiffs who worked closely with
16 plaintiffs' counsel and were instrumental in helping to
17 achieve the result that was achieved.

18 So for the record, we just thank them for their
19 participation and assistance in the litigation, and request
14:30:03 20 that the court award those.

21 THE COURT: Can I ask one other question? And
22 this is about the Blacks. Were they deposed individually?

23 MR. SHAH: Were they deposed --

24 MS. WRIGHT: Yes.

14:30:17 25 THE COURT: They were?

1 MR. SHAH: Yes.

2 THE COURT: Then I wonder why, instead of sharing
3 \$7,500, they're each not awarded 5,000. It seems that
4 they're getting a discounted allocation simply because
14:30:30 5 they're related. But if it's also true they were deposed
6 individually -- and unless you tell me that the spouse of
7 White did as much work as, you know, Debra Black and/or
8 Larry Black, it just doesn't make sense to me, how it is
9 they share \$7,500 instead of \$5,000 each, if they were
14:30:54 10 deposed individually.

11 Does that make sense to you?

12 MR. SHAH: Jeff, you were closer on that than I
13 was.

14 MR. GOLDENBERG: Your Honor, if I may approach?

14:31:05 15 THE COURT: Certainly, please do.

16 MR. GOLDENBERG: I think the theory behind the
17 numbers for the class representatives with respect to the
18 incentive awards as to the married couples, is that it's not
19 just the deposition and attending a deposition, it's also
14:31:17 20 the time they spent reviewing the complaints and gathering
21 their documents, some of which would have been a shared
22 responsibility between the married couple.

23 And so instead of taking 5,000 and multiplying it
24 by two and getting 10,000, we came across a number somewhere
14:31:34 25 in between, because they were deposed, and they also did

1 these other duties and responsibilities, like getting the
2 documents together. But they did that together as one. And
3 so instead of 5,000 to 10,000, we kind of came in between.

4 The other part of this is the way that this -- if
14:31:53 5 my recollection is correct about the mediation, there was a
6 global number reached, which was around 235,000, and we then
7 came up and allocated those numbers as plaintiffs' counsel
8 in a way that we thought was fair between the different
9 class representatives.

14:32:12 10 THE COURT: Well, even if -- there are so few of
11 them, which makes sense. I mean, while it's not an
12 insignificant case, 24 states, 4 million plaintiffs, at
13 least in the class settlement, I mean, there are so few of
14 them, it's not as if it's that difficult to really nail down
14:32:32 15 exactly what each person did to deserve the award.

16 I mean, let's face it, these cases would never
17 survive adjudication if you didn't have people willing to do
18 all the things that Mr. Shah stated on the record that these
19 plaintiffs did. So I'm not challenging that. I'm just
14:32:50 20 asking you to reconsider -- do the Blacks know how this
21 works out? I don't know if they do. And perhaps they do
22 and they have no problem with it. That might help me to
23 know.

24 MR. GOLDENBERG: Yeah, we communicated with all
14:33:00 25 the class representatives, the named class representatives.

1 THE COURT: Not just what they receive, but what
2 they receive relative to others?

3 MR. GOLDENBERG: Yes. I mean, everybody knows --
4 everybody received the settlement agreement. Whether, I
14:33:13 5 think -- I don't know exactly what the conversation was with
6 each class representative. Some I did talk to and made them
7 aware of what they were receiving as a contribution award,
8 assuming the court approves it. They were all aware that
9 the contribution awards are something that is subject to
14:33:28 10 court approval and may or may not happen. Even today that's
11 the case. But we did go over the numbers with them. They
12 were all appreciative of the numbers.

13 Another thing that came into our calculations when
14 we set those numbers is looking at other awards in the Sixth
14:33:47 15 Circuit, and making sure we come within that range. To a
16 certain extent, for this type of case, you know, we thought
17 comfortably 7,500 was a number that didn't raise the bar or
18 go above that bar.

19 But, yeah, every -- each of the class
14:34:11 20 representatives was aware of their particular contribution
21 award, and we did discuss what that basis was for coming up
22 with those numbers with them. None of them objected to the
23 contribution awards that were assigned to them.

24 THE COURT: Thank you, sir. I don't know if
14:34:27 25 Mr. Shah had anything more to add on that point. Do you,

1 sir?

2 MR. SHAH: Nothing more on that point, Your Honor,
3 no.

4 THE COURT: Let me ask this last question about it
14:34:43 5 then: Does the settlement agreement establish a family cap
6 of \$7,500, or just the information provided regarding if
7 both husband and wife were deposed, then 7,500 is the
8 payout?

9 MR. SHAH: I believe the agreement just sets forth
14:35:02 10 for each plaintiff the amount that is attributable to them.

11 MR. GOLDENBERG: The settlement agreement, I
12 believe, just includes a number for all of contribution
13 awards of \$235,000, and then we, the plaintiffs' counsel,
14 were to propose a mechanism to the court allocating that
14:35:25 15 235,000 among the various class representatives from the 24
16 states.

17 THE COURT: All right. Thank you both.

18 Mr. Shah, you had you said two other points. I'm
19 hoping that part of what you have left to say is going to
14:35:41 20 regard what's been submitted, and I think is meant to be
21 Exhibit A to the settlement -- I mean, to the final order,
22 pardon me. And I am looking at the supplement filed by
23 Linda Webster at ECF 119, that gives some updated
24 information regarding exclusions.

14:36:05 25 And the question I'm left with generally is, what

1 updates do you have for all of the final numbers regarding
2 fees and costs? And if the 502 persons included in the
3 exclusions includes the one that filed or submitted it late,
4 at least according to the postmark date. It looks like it
14:36:34 5 was postmarked after the 22nd of 2015. And Ms. Webster says
6 there are 502 including that.

7 And I guess my question is, is that person
8 excluded, or is that person a class member?

9 MR. SHAH: The person is -- the person requested
14:36:50 10 exclusion. And even though it was untimely, the parties met
11 and conferred, and Ford has agreed to allow that person to
12 be considered excluded. So that person will not be subject
13 to the settlement.

14 MS. WRIGHT: Your Honor?

14:37:08 15 THE COURT: Yes.

16 MS. WRIGHT: It's 431 persons and 502 vehicles.

17 THE COURT: Yes. Oh, thank you.

18 MS. WRIGHT: Not 502 persons.

19 THE COURT: You're right, and that's what it says.

14:37:18 20 Thank you for the clarification.

21 I am looking now at the supplemental filing made
22 by -- it's not a supplemental filing, but rather styled as
23 an amended declaration by you, Mr. Goldenberg.

24 MR. GOLDENBERG: Yes.

14:37:31 25 THE COURT: In support of your motion for fees,

1 reimbursement and service awards. And the second part of my
2 question regarding updating the numbers. It said here, on
3 the 18th of January, seven days passed now, and, of course,
4 I imagine there have been some expense incurred just
14:37:52 5 indulging the court in this hearing. But you were at
6 \$417,000 for expenses, with a total investment in the case
7 now being at 8 million 1. Any updates to be provided today?

8 MR. GOLDENBERG: We don't have any further
9 updates. There's been some expenses incurred, Mr. Shah
14:38:15 10 flying in, and then I drove up, rental car, things like
11 that, that are hotel-related, but nothing that is really
12 worthy, you know, to resubmit to the court. At least from
13 our perspective, we are willing to submit on the data the
14 court has based on that supplemental declaration relative to
14:38:35 15 the expenses and the fee.

16 I would add one thing, Your Honor. You did ask
17 about the settlement agreement. I actually misspoke. The
18 settlement agreement does specifically lay out the
19 contribution awards for each of the named plaintiffs, and
14:38:47 20 that's at page 20 of the settlement agreement, which was
21 previously filed under Docket Number 95-1.

22 THE COURT: Sure. I have it right here, if you --
23 page 20, service award for named plaintiffs.

24 MR. GOLDENBERG: Right. The reason I was confused
14:39:06 25 is, prior to the settlement agreement, there was another

1 document called the memorandum of understanding, which was
2 signed by the parties soon after final agreement was
3 reached.

4 The MOU did not contain the breakdown for each
14:39:20 5 class representative, but rather, contained an overall
6 number for contribution awards. These numbers that appear
7 in the settlement agreement were derived by plaintiffs'
8 counsel, of course approved by Ford. But that's the process
9 that we went through.

14:39:39 10 THE COURT: Thank you, sir.

11 Let me ask, is there anything more that
12 plaintiffs' counsel would like to offer at this time? If
13 I've heard you fully, then I'd like to give defense counsel
14 an opportunity to say anything at all that the defense would
14:39:54 15 like on the record.

16 MR. SHAH: I think we're good.

17 MR. GOLDENBERG: I had one thing to add, Your
18 Honor.

19 THE COURT: Sure.

14:40:01 20 MR. GOLDENBERG: Just to clarify. This was your
21 first question, I think, as we began about class notice.
22 And the declaration of Linda Webster, the first one, at
23 paragraph 11, class notice was mailed on October 16, 2015,
24 and it was mailed to 3,946,315 class members. That's Docket
14:40:21 25 Number 107-7.

1 And then also, per that same declaration from
2 Ms. Webster, the website and the toll-free number were
3 operational on or before October 16th, 2015. And that's
4 paragraphs 12 and 13 of her declaration.

14:40:38 5 THE COURT: Thank you, sir.

6 MR. SHAH: Thank you, Your Honor.

7 THE COURT: Thank you both.

8 Ms. Wright, certainly.

9 MS. WRIGHT: Thank you, Your Honor. Just very
14:40:53 10 briefly, I think what you said at the outset was absolutely
11 accurate. This has been hotly contested from the very
12 beginning. And quite frankly, if we were not here today, it
13 would continue to be hotly contested, because Ford continues
14 to believe strongly there is no liability here.

14:41:07 15 I think that the record will show from the outset
16 that's the position we've taken through motions to dismiss,
17 then the motion for summary judgment. And as Your Honor
18 noted, that was only for six states. You wrote an opinion
19 that was more than 100 pages long. And you actually granted
14:41:22 20 some of Ford's claims in part, and denied some. And we
21 still had 18 more states to go, with varying laws in all of
22 those states.

23 And with respect to the claims where we did not
24 receive summary judgment, we obviously still had appeal
14:41:37 25 rights we could have pursued.

1 With respect to class certification, as Mr. Shah
2 pointed out, there would have been 24 states with different
3 laws. And I believe, quite frankly, Your Honor, your
4 summary judgment opinion would have made it very difficult
14:41:48 5 to have those classes certified, simply because, as you
6 note, some people had claims granted and some had denied,
7 state by state varied, and the degree of their ownership
8 varied. So I think that would have been very difficult.

9 And, quite frankly, the objectors, as you noted,
14:42:06 10 have differing positions for their objections, again showing
11 differences among the class members. And obviously, we
12 would have had appeal rights immediately had a class in part
13 or in whole been certified.

14 Had we gone to trial, which Ford was completely
14:42:20 15 prepared, ready and willing to do, had there been an adverse
16 ruling, we would have had appeal rights. So I think we
17 would still be here another four years from now, quite
18 frankly, between class certification, further summary
19 judgment, trials and appeals.

14:42:34 20 I would also say with respect to the settlement
21 agreement itself, it was three long mediations, many
22 negotiations in between, and every term that Mr. Shah
23 discussed with you, from the mileage, the threshold of \$300,
24 the percentages, the documentation, the service awards, the
14:42:52 25 attorneys' fees, every term was very hotly contested during

1 those negotiations.

2 For Ford, the time, the expense, the finality and
3 our customer satisfaction led us to this. But in no way was
4 there ever a suggestion that there was any liability.

14:43:07 5 I would like to point out on the record two
6 things. One, that the plaintiffs' counsel here have been
7 the utmost professionals, and it has been, while a hotly
8 contested litigation, a very pleasant litigation. They did
9 an excellent job for their clients. But in all respects,
14:43:24 10 they were very professional.

11 And then finally, with respect to people who have
12 had their spark plugs removed either in the past or in the
13 future, there is no suggestion and Ford does not believe
14 that many of those will ever even reach the \$300 threshold,
14:43:40 15 as those spark plugs can and most often are today removed
16 with no breakage and for less than \$300.

17 So we would agree with your plaintiffs, Your
18 Honor, and request that you approve the settlement as
19 submitted to you in June and again last week with the final
14:43:54 20 approval. Thank you.

21 THE COURT: Let me ask this, Ms. Wright. Right
22 now, what's Ford's best estimate as what your costs will be?

23 MS. WRIGHT: Your Honor, we have no idea. And
24 that is the absolute truth. We have 62,000 claim forms that
14:44:07 25 have been submitted. We don't know how many of those are

1 going to be valid. Obviously, the settlement hasn't been
2 approved yet. We don't know between now and August how many
3 people will have submitted for work already done, or between
4 now and next February.

14:44:20 5 So as much as we would like to have an idea of
6 what it's going to cost us, we truly do not know what it
7 will cost us.

8 THE COURT: Thank you.

9 MS. WRIGHT: Thank you.

14:44:30 10 THE COURT: Counselors, I'd like to point out just
11 some minor edits to what was submitted to me as a proposed
12 final order and judgments granting approval of class action
13 settlement.

14 I think this is just more stylistic than
14:44:50 15 substantive, or even grammatically correct. But on the
16 second page, just before the language "Now, therefore, it is
17 hereby ordered that," the language above it, which ends "set
18 forth in the Settlement Agreement," ends with a semicolon.
19 In my writing, I would make it a full stop, a period, not a
14:45:11 20 semicolon.

21 The footnote at the bottom of page 6, this is at
22 paragraph number 17, it indicates that there is no ECF
23 number for Mr. Chalup's objection, but I think we all know
24 that now there is because counsel filed it. He didn't file
14:45:40 25 it as he was required to, but counsel did file it. And for

1 ease of finding it in the future, the ECF Number is 107-5.

2 So I think that should be inserted, because it is
3 now available to us. And when you go there, what you'd see
4 is Exhibit C to Mr. Shah's declaration, which attaches the
14:46:01 5 Chalup objection, "Chalup" objection is probably the better
6 pronounciation.

7 The only suggested resolutions of objections as
8 detailed in this document pretty closely match what I would
9 have written had I penned it myself. Page 8, there is an
14:46:24 10 article missing. The second -- the first full paragraph,
11 the one that begins "Mr. Westfield's objection," and then if
12 you go down to -- six lines, after the period, begins a
13 sentence with "'Out-of-Pocket Expenses'" are defined," and I
14 would put in, "in 'the' Settlement Agreement." I think it
14:46:54 15 is pretty British of the scrivener not to have put in "the."
16 Perhaps a Downton Abbey influence.

17 Now, the one last one that's probably of more
18 significance is at page 10. And this is regarding Mr. Kron.
19 And I've listened to what you said, Mr. Shah, about -- or in
14:47:18 20 response to my question about his perhaps allegation that
21 he's representing a vehicle owned by a corporation.

22 So what I had the greatest problem with starts
23 with the sentence that begins "Furthermore, although
24 Mr. Kron's objection attached a copy of a notice that was
14:47:35 25 mailed to Kron Interiors, Mr. Kron has not provided any

1 evidence that he is authorized to object on behalf of Kron
2 Interiors." And then I think the law and the parenthetical
3 is fine. "Therefore, in the absence of any proof that the
4 Settlement has any impact upon Mr. Kron, or that he is bound
14:47:54 5 by its terms, the Court finds he has no standing."

6 Reading this again, after hearing your argument, I
7 like it better than I did when I read it alone. So I won't
8 urge the removal of that. But if I've caused you to
9 reconsider and think it should come out, please tell me.

14:48:10 10 Have I?

11 MR. SHAH: Your Honor, I think given what we
12 understand the state of the law to be from the corporate
13 entity versus the individual, I think from the plaintiffs'
14 perspective, we understand Your Honor's point, but I think
14:48:24 15 we're comfortable having it remain as is.

16 MS. WRIGHT: As are we, Your Honor.

17 THE COURT: And given your oral representation
18 today, I am happy to leave that in the suggested language.

19 Those were the only notes that I made in advance
14:48:51 20 to bring to your attention. And as you can remark, out of a
21 21-page document, that's pretty few. So I compliment you on
22 your drafting. It's not only been in accordance with what I
23 anticipated when I preliminarily approved the settlement,
24 which is presumptive. It's not a given, but it is
14:49:11 25 presumptive. It matched what I've heard here today, and

1 indeed, what, at least through the representations of
2 counsel, has occurred.

3 Counsel, have I heard you fully then?

4 MR. SHAH: Yes, Your Honor.

14:49:27 5 THE COURT: On behalf of plaintiffs?

6 MR. SHAH: Yes, Your Honor. Other than I would
7 just like to echo Ms. Wright's statements. This is -- as
8 Your Honor is very familiar, litigation can be a difficult
9 business. And it is a pleasure to work with very skilled
10 people on their side, but still be able to do so in a civil
11 and cordial way. And this is the way litigation should
12 work. I wish it did so more often.

13 And I appreciate the court's time and attention in
14 this matter as well.

14:49:57 15 THE COURT: Certainly. And I appreciate what
16 you've both said about opposing counsel. I don't hear it
17 nearly as often as I'd like to, so I am really pleased that
18 that's been your experience. And I hope it's mimicked not
19 only when you face one another as opponents, but in other
14:50:12 20 circumstances where your opposing counsel is different than
21 those represented in court here today.

22 Counsel, based upon all that's been said, and I
23 have given this great attention, not only today during this
24 hearing, but in advance of today. And as I stated, the
14:50:30 25 purpose of this hearing, at least primarily, was ultimately

1 to decide whether or not the settlement agreement is fair,
2 reasonable and adequate and in the best interest of the
3 class members.

4 I do so make that finding, and will articulate
14:50:46 5 that in writing using substantially that which has been
6 drafted as proposed by the parties, some of which I've
7 discussed with you here on the record.

8 And additionally, when it comes to the
9 compensation, not only for the attorneys and the
14:51:01 10 reimbursement of costs, but also an allocation made to the
11 class representatives, I find that what you've written by
12 way of explanation satisfies me.

13 And when I consider how far we've come, given this
14 litigation, and as Ms. Wright rightfully explained on the
14:51:19 15 record, what was likely to happen had this hotly contested
16 litigation not been resolved by the parties, I find that
17 this case has been efficiently and expeditiously, by many
18 measures, litigated. That counsel has been competent, and
19 also respectful, not only of the court, but of opposing
14:51:40 20 counsel.

21 Of the amounts listed, that they are reasonable,
22 that being both the fees and the hours spent adjudicating
23 this matter. And when I look at all of the numbers that
24 have been given to the court in support of the fees request,
14:51:59 25 I find that it is fair and reasonable, that the number of

1 hours expended are well explained, and also reasonable.
2 That the ask is far less than the lodestar amount. I won't
3 say an explicit number today, because I am going to give
4 counsel the time to get back to your offices and submit
14:52:19 5 what's the ultimate number based upon your work done in
6 court here today, including the expenses, some of which
7 Mr. Goldenberg just recited for the court.

8 But it is my intention, believing that there's not
9 going to be some great change that's not sufficiently
14:52:34 10 explained, if there is, but not expecting a great change,
11 that I'll be able to grant both motions that are pending on
12 the court's docket, and those motions are pending at ECF
13 Number 107, the final approval of settlement, and 108, the
14 approval of fees, costs and allocation of service awards.

14:52:59 15 With that, I believe that I can adjourn this
16 hearing.

17 And thank you, Mr. Harris, for appearing. As you
18 can see that while you're in good hands, it's still nice to
19 know that the system worked, meaning the notices did go out
14:53:13 20 as intended, they were received understood, and that you
21 found yourself to the easternmost courthouse in the Northern
22 District of Ohio. And I hope you've been satisfied by what
23 you've heard. And I know plaintiffs' counsel intends to
24 continue to speak with you.

14:53:28 25 This hearing is adjourned.

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ALL: Thank you, Your Honor.

LAW CLERK: All rise.

(Proceedings concluded at 2:53 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

/s/ Mary L. Uphold February 9, 2016
Mary L. Uphold, RDR, CRR Date