UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: PORSCHE CARS NORTH AMERICA, INC., PLASTIC COOLANT TUBES PRODUCTS LIABILITY LITIGATION This Document relates to ALL ACTIONS	Case No. 2:11-md-2233 Judge Gregory L. Frost Magistrate Judge Preston-Deavers

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

Plaintiffs Scott Florez, Ghassan Daher, David Graas, Sean Krider, Nicholas Spagnoletti, Dane McIntosh, Joseph Dudley, Bob Conrad, Sy Duc Tran, Sven Wust, Kevin Starkey, Gregory Cadman, Ecliff Jackman, Deana Crawford, Jamie Hoffecker, Richard Gorospe, Lance Bredefeld, Randall Stuewe, Daniel Delgado, and Anthony Gardner ("Plaintiffs") respectfully move the Court for an order, (1) conditionally certifying a class for settlement purposes; (2) granting preliminary approval of the proposed class action Settlement Agreement ("Settlement Agreement"); (3) approving the proposed form of Notice and directing notice to the Settlement Class; (4) establishing deadlines for filing claims, submitting requests for exclusion, and filing objections to the proposed Settlement Agreement; and (5) scheduling a fairness hearing to finally approve the proposed Settlement Agreement following the fairness hearing.

A [Proposed] Preliminary Approval Order is attached to the Settlement Agreement as Exhibit A and is also submitted to the Court separately.

In support of Plaintiffs' Motion, Plaintiffs rely on the following Memorandum in Support, as well as the separately submitted Declarations of Thomas B. Rutter, Shennan

Kavanagh, Mark Troutman, Niall McCarthy, and Adam Levitt, all supporting exhibits, the Settlement Agreement, and any other documents, pleadings, orders transcripts and other papers on file in this matter, and any further evidence and arguments as may be presented at the hearing of this matter.

The parties have consulted as required under Local Rule 7-3 as to the relief sought in Plaintiffs' Motion for Preliminary Approval of Settlement. Counsel for the Defendants informed Plaintiffs that Defendants do not oppose Plaintiffs' Motion.

/s/ Shennan Kavanagh
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiffs Scott Florez, Ghassan Daher, David Graas, Sean Krider, Nicholas Spagnoletti, Dane McIntosh, Joseph Dudley, Bob Conrad, Sy Duc Tran, Sven Wust, Kevin Starkey, Gregory Cadman, Ecliff Jackman, Deana Crawford, Jamie Hoffecker, Richard Gorospe, Lance Bredefeld, Randall Stuewe, Daniel Delgado, and Anthony Gardner ("Plaintiffs"), on behalf of themselves and the other members of the proposed Settlement Class, respectfully move the Court for preliminary approval of the parties' Settlement Agreement. Defendants do not oppose Plaintiffs' motion. If approved, the Settlement Agreement would fully and finally resolve this multidistrict litigation, comprising eight consolidated proposed class action lawsuits, challenging Porsche's use of allegedly defective plastic coolant pipes in approximately 42,000 of its Cayenne model sport utility vehicles.

The parties reached the Settlement Agreement after nearly two years of hard-fought litigation followed by months of extensive negotiations, including three full-day mediation sessions with a highly experienced mediator, Thomas Rutter of ADR Options. The Settlement Agreement provides meaningful relief for Settlement Class Members, including reimbursement of a significant portion of the actual cost of repairing plastic coolant pipes (up to $1,800) and payment of a significant portion of the cost of replacing plastic coolant pipes if they have not yet failed (up to $1,500). This relief is directly tailored to the claims raised in Plaintiffs' complaint and is significant in light of the inherent risks of ongoing litigation. In particular, settlement is in the best interest of Settlement Class Members because, if approved, they may be entitled to benefits now. The parties therefore believe that the Settlement Agreement is fair, reasonable, and adequate. Accordingly, the Court should grant preliminary approval so that Settlement Class Members can receive notice of their rights.

II. PROCEDURAL HISTORY

A. The Multidistrict Proceeding

This multidistrict litigation proceeding comprises eight proposed class action lawsuits filed in federal district courts in Ohio, California, Florida, Georgia, New Jersey, New York, and Texas, against Defendants Porsche Cars North America, Inc. ("PCNA") and Dr. Ing h.c. F. Porsche AG ("Porsche AG" or "PAG") (collectively referred to as "Defendants" or "Porsche") challenging Porsche's use of allegedly defective plastic coolant tubes in its 2003 to 2006 Cayenne model sport utility vehicles. The first of these constituent actions was filed on January 5, 2011, with the others being filed shortly thereafter. On May 23, 2011, the Judicial Panel on Multidistrict Litigation ("JPML") issued a Transfer Order pursuant to 28 U.S.C. § 1407, finding that transfer was appropriate due to the common facts in each action and transferring these actions to this Court for coordinated or consolidated pretrial proceedings. [Docket No. 1]. The Court captioned the case as *In re: Porsche Cars North America, Inc. Plastic Coolant Tubes Products Liability Litigation*, 2:11-md-02233 ("MDL 2233") [Docket No. 19].

On July 26, 2011, the Court entered an order allowing Plaintiffs to file a Consolidated Amended Complaint ("CAC") to govern the actions transferred to MDL 2233. [Docket No. 19]. The Court appointed the law firms of Cotchett, Pitre & McCarthy, LLP, Isaac, Brant, Ledman and Teetor, LLP,[1] Roddy Klein & Ryan,[2] and Wolf Haldenstein Adler Freeman & Hertz, LLC[3]

[1] On June 1, 2013, Isaac, Brant, Ledman and Teetor, LLP merged with Wiles Boyle Burkholder & Bringardner Co., and is now operating under the name Isaac, Wiles, Burkholder & Teetor, LLC. At the time that the Plaintiffs signed the Settlement Agreement, it provided for any written notice (such as objections) required under the Settlement to be sent to Isaac, Brant, Ledman & Teetor LLP at 250 East Broad Street, Suite 800, Columbus, Ohio 43215. Settlement, ¶79. Based upon Isaac Brant's recent merger, notice should be provided to the same attorneys as listed in the Settlement, but addressed to their new firm name and address Isaac, Wiles, Burkholder & Teetor, LLC, Two Miranova Place, Suite 700, Columbus, Ohio 43215. The [Proposed] Preliminary Approval Order submitted herewith reflects this change.

as interim lead co-counsel in the case and also appointed an executive committee consisting of the law firms of Kohn Swift & Graf, P.C., Schlanger & Schlanger, LLP, and Bailey Perrin Baily to serve with lead co-counsel. The Court denied without prejudice all motions pending in the underlying district courts before transfer.

B. The Parties' Claims and Defenses

On August 25, 2011, Plaintiffs filed their CAC. [Docket No. 35]. In their CAC, Plaintiffs allege that Defendants manufactured Porsche Cayenne vehicles with defective plastic coolant pipes, which have or will prematurely degrade and/or fracture. Plaintiffs claim that this defect can cause damage to components of the vehicles' engines. Plaintiffs further allege that Defendants knew of this defect and failed to disclose it to consumers. Based on this alleged conduct, Plaintiffs brought claims for a nationwide class for violations of the Magnuson-Moss Federal Warranty Act, 15 U.S.C. §2301, *et seq*., statewide claims for violations of various common laws including implied warranties, negligence, and unjust enrichment, as well as for violations of states' consumer protection statutes.

On January 6, 2012, PCNA filed a motion to dismiss the CAC under Fed. R. Civ. P. 12(b)(6), and Porsche AG moved to dismiss the action for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2). [Docket Nos. 64 and 63, respectively]. Defendants deny the material factual allegations and legal claims asserted in Plaintiffs' CAC and raised numerous defenses, including, that none of the plaintiffs' vehicles' coolant pipes experienced a problem until after the warranty period for the vehicles expired.

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[2] As of January 1, 2012, counsel for Plaintiffs at Roddy Klein & Ryan are now with Klein Kavanagh Costello, LLP. [Docket No. 65]. Klein Kavanagh Costello, LLP is the successor firm to Roddy Klein & Ryan, which no longer exists.

[3] Effective January 25, 2013, counsel for Plaintiffs, Adam Levitt, resigned his partnership in Wolf Haldenstein Adler Freeman & Herz LLC and became a partner of Grant & Eisenhofer P.A. [Docket No. 121].

Plaintiffs filed their opposition to PCNA's 12(b)(6) motion on March 5, 2012. [Docket No. 77]. On April 6, 2012, PCNA filed its reply to Plaintiffs' opposition. [Docket No. 91]. On July 19, 2012, the Court entered an order granting in part and denying in part PCNA's motion to dismiss. Opinion and Order dated July 19, 2012. [Docket No. 102]. PCNA answered the remaining allegations in the CAC on August 2, 2012. [Docket No. 105]. The Court stayed briefing on Porsche AG's 12(b)(2) motion until jurisdictional discovery was completed.

C. The Parties' Hard-Fought Jurisdictional Discovery Disputes

At the outset of the case, the Court stayed discovery except for jurisdictional discovery related to whether the Court may exercise personal jurisdiction over Porsche AG. [Docket No. 19]. Numerous discovery disputes arose over whether the Court had personal jurisdiction over Porsche AG. Plaintiffs served multiple Requests for Production of Documents relating to jurisdictional issues to Porsche AG and PCNA. Porsche AG likewise served Requests for Production of Documents relating to jurisdictional issues on 20 named Plaintiffs, to which Plaintiffs provided a singular response. On April 5, 2012, PCNA and Porsche AG moved for a protective order to limit the temporal scope of Plaintiffs' jurisdictional discovery requests. [Docket No. 90]. The parties engaged in extensive discovery conferences in efforts to resolve their disputes and the Court held several status conferences to provide the parties with direction regarding these issues. *See* Opinion and Order on Plaintiffs' Motion to Compel, (discussing the status conferences held by the Court and the parties' exchange of letters regarding their discovery conferences) [Docket No. 114]. Ultimately, Plaintiffs filed a motion to compel certain discovery relating to jurisdiction on August 10, 2012. [Docket No. 106] (filed under seal). The Court granted in part and denied in part Plaintiffs' motion on September 25, 2012. [Docket No. 114]. On October 9, 2012, the Court held an in-court status conference and lifted the stay on merits discovery relating to PCNA. [Docket No. 116].

D. The Parties' Settlement Negotiations

On a parallel track, the parties agreed to a mediation to determine whether they could resolve the case and obviate the need for further litigation. The parties agreed to mediate before Thomas Rutter, in Philadelphia, Pennsylvania, on November 29 and 30, 2012. After two full days of mediation with Mr. Rutter, the parties reached agreement on the key terms of a settlement, which were memorialized in a term sheet. Over the following months, the parties drafted and negotiated a detailed Settlement Agreement. On February 27, 2013, the parties again met with Mr. Rutter for a full-day mediation and negotiated several outstanding terms of the Settlement Agreement. In the weeks following the February 27th mediation, the parties agreed on the final Settlement Agreement now before the Court for preliminary approval. [Docket No. 134]. On July 22, 2013, the parties engaged in a fourth mediation session with Mr. Rutter in Philadelphia to resolve the issues of payment of attorneys' fees, costs and expenses and named Plaintiffs' service payments. They were ultimately able to resolve these issues in the mediation process.

III. KEY SETTLEMENT TERMS AND PROVISIONS FOR CLASS NOTICE

A. The Settlement Class

The Settlement Agreement covers all model year 2003 to 2006 Porsche Cayenne vehicles with V8 engines (all types), manufactured between January 28, 2002 and December 5, 2006 ("Class Vehicles"). Settlement Agreement, ¶4. According to PCNA, 41,968 Class Vehicles were sold in the United States. Settlement Agreement, ¶23. The "Settlement Class" for which the parties seek class certification for settlement purposes only (Section, VI *infra*), is comprised of all persons in the United States who currently own or lease, or who previously owned or leased, a Class Vehicle. Settlement Agreement, ¶21.

B. Settlement Benefits

The Settlement Agreement provides for benefits to Settlement Class Members who purchased or leased a Class Vehicle new or purchased an Approved Certified Pre-Owned Vehicle [4] according to the below chart, which delineates benefit amounts based on the mileage of the vehicle at the time of repair and whether the Settlement Class Member has already replaced or in the future will be replacing the coolant pipes. Settlement Agreement, ¶47(a).

Mileage at Time of Repair/Replacement	% of Actual Invoice Up to Cap	Cap Past Repairs Reimbursement	Cap Future Repairs Payment
0-60,000	100%	$1,800	$1,500
60,001-70,000	80%	$1,440	$1,200
70,001-80,000	60%	$1,080	$900
80,001-90,000	50%	$900	$750
90,001-120,000	30%	$540	$450
>120,000	5%	$100	$100

For those who purchased or leased a used Class Vehicle, and without purchasing an ACPO warranty, the Settlement Agreement provides for reimbursement of 25% of the invoice price paid, up to a maximum of $450 for past coolant pipe replacement, and up to a maximum of $375 towards future replacement (as long as the vehicle has less than 120,000 miles at the time of replacement). Settlement Agreement, ¶47(b).

In addition, the Settlement Agreement provides for reimbursement of up to a maximum of $500 for collateral damage relating to problems with the coolant pipes. Settlement Agreement, ¶47(c).

In the event that a Settlement Class Member fails to cash the reimbursement check or the check is returned as undeliverable after reasonable attempts to find the most updated mailing

[4] An "Approved Certified Pre-Owned Vehicle" (or "ACPO Vehicle"), means pre-owned Class Vehicles that were inspected by authorized Porsche dealerships and were purchased through the Porsche Approved Certified Pre-Owned Program.

address for a Settlement Class Member, the funds will be directed upon court approval to a *cy pres* recipient to be determined upon future agreement of the parties. Settlement, ¶52(c).

C. Class Notice, Right to Request Exclusion and to Object, and Settlement Administration

Porsche and Experian, a leading company that maintains vehicle ownership databases, will provide the settlement administrator with the last known addresses of potential Settlement Class Members.[5] Settlement Agreement, ¶41(a). The settlement administrator will update those addresses using the United States Postal Service's national change of address database. *Id*. Within 30 days of receiving the final mailing list of Settlement Class Members from Experian, the settlement administrator will send the settlement Notice (attached to the Settlement as Exhibit B) and Claims Form (attached to the Settlement as Exhibit A) to all Settlement Class Members by First Class U.S. Mail. Settlement, ¶41(b).

The settlement administrator will also make the Notice and Claims Form available on an Internet website, along with a list of Frequently Asked Questions ("FAQs") about the settlement. Settlement Agreement, ¶41(d). The settlement administrator will also maintain a toll-free number with a pre-recorded message about the settlement, and directing Settlement Class Members to the website and Plaintiffs' Counsel for further information. *Id*. Porsche will also provide its authorized dealers notice of the settlement and sufficient information to enable the dealers to effectively respond to Settlement Class Member requests for repair, reimbursement, or other support. Settlement Agreement, ¶42.

[5] The parties propose the Garden City Group, Inc. ("GCG") to administer the Settlement. Information about GCG is available on its website at http://www.gcginc.com/.

Requests for exclusion from the settlement must be in writing, must be sent to a P.O. Box to be established by the settlement administrator, and must be postmarked by a date to be set by the Court, at least 60 days after initial mailing of the Class Notice. Settlement Agreement, ¶43.

Any Settlement Class Member who wishes to object to the settlement must send a written objection to the settlement administrator by First Class U.S. Mail, postage paid, to the United States Post Office Box established and maintained by the Settlement Administrator for the purposes of the settlement. All objections must also be filed with the Court and served on Plaintiffs' Counsel and on counsel for PCNA at the addresses specified in the Settlement Agreement. Settlement Agreement, ¶56.

Any objection must be postmarked on or before the deadline specified in the Notice, which shall be 60 days after mailing of the Notice. Only Settlement Class Members may object to the settlement. A Settlement Class Member who submits a request for exclusion shall not be entitled to object to the settlement, and if both an exclusion and objection are submitted, the objection shall be deemed to be invalid. The settlement administrator shall be responsible for forwarding all objections to counsel for PCNA and Plaintiffs' Counsel. Plaintiffs' Counsel or PCNA shall serve and file any responses to any objections no later than 14 days before the hearing on the Final Approval Order and Judgment ("Fairness Hearing").

PCNA shall pay all costs reasonably incurred by the settlement administrator to provide the services specified in the Settlement Agreement. Neither Plaintiffs' Counsel nor Settlement Class Members shall be responsible for any costs of the Settlement Administrator. Settlement Agreement, ¶45.

1. Claims Procedure

All claims for settlement payments must be postmarked within one year of the Effective Date of the Settlement Agreement or the mailing of the Notice, whichever is later. Settlement Agreement, ¶51.

For coolant pipe replacement already completed prior to the mailing of the Notice, Settlement Class Members must send a completed Claims Form to the settlement administrator and documents evidencing the repair and ownership. If such documents are unavailable, the Settlement Class Member must submit a legally sufficient affidavit attesting to the required information in order to make a claim related to that replacement. Settlement Agreement, ¶52.

For Settlement Class Members who desire to replace their coolant pipes or file a claim for collateral damage, no later than the deadline provided for in this notice, the Settlement Class Member must contact PCNA through the toll-free telephone number. If the Class Vehicle is not already at an authorized Porsche dealership, PCNA will direct the customer to deliver the vehicle to an authorized dealership for inspection and review by PCNA and/or the Porsche authorized dealership. At the time the vehicle is delivered to an authorized Porsche dealership or as soon thereafter as possible, the Settlement Class Member shall submit a Claims Form to PCNA or, at PCNA's direction, the authorized Porsche dealership. Within 30 days of delivery of the Claims Form, PCNA will determine if the Settlement Class Member is entitled to have PCNA pay for all or a portion of the cost of the Coolant Pipe Repair and repair of Collateral Damage (if any), and will advise the Settlement Class Member, Plaintiffs' Counsel, and the settlement administrator of that determination. If PCNA will be paying for all or a portion of a claim, it shall advise the Porsche authorized dealership of the portion to be paid by PCNA pursuant to the terms of this Settlement Agreement. The Settlement Class Member shall be responsible to the authorized Porsche dealership for payment of the remaining share, if any. Settlement Agreement, ¶53.

If any Claim is denied, the Settlement Agreement provides for a dispute resolution mechanism, with the settlement administrator serving as the ultimate arbiter of such disputes. Settlement Agreement, ¶55.

D. Attorneys' Fees, Costs, and Service Payments

The Settlement Agreement provides only that within ten days of its the Effective Date, PCNA will pay to the Representative Class Plaintiffs and Settlement Class Counsel the amount of the service payments, attorneys' fees, costs, and expenses as finally awarded by the Court. Settlement Agreement, ¶60. After the terms of the Settlement Agreement had been agreed upon, the parties engaged in another mediation session with Mr. Rutter and ultimately resolved issues regarding the maximum amount of attorneys' fees, reimbursement of costs and expenses, and service awards PCNA will pay, if awarded by the Court. Specifically, the parties agreed that PCNA, subject to Court approval, will pay no more than $4.5 million in attorneys' fees and $250,000 to reimburse costs and expenses and to pay service awards to the Representative Class Plaintiffs. Plaintiffs therefore will request an award of attorneys' fees, reimbursement of costs and expenses, and payment of service awards, (in a proposed amount of $5,000 per Representative Class Plaintiff), consistent with the parties' agreement. Plaintiffs propose to file papers in support of attorneys' fees, costs and expenses and service payments no later than 3 weeks before the deadline for Settlement Class Members to file objections.

The proposed Notice explains to Settlement Class Members that Settlement Class Counsel is seeking the Court's approval of payment of attorneys' fees, costs and expenses incurred, and service awards, as set forth above, and directs Settlement Class Members to the settlement administrator's website for a copy of Plaintiffs' attorneys' fees papers, when they become available. The Notice also explains that PCNA will separately pay attorneys' fees and costs, as well as all costs reasonably incurred by the settlement administrator to provide the

services specified in the Settlement Agreement. These payments will not reduce the settlement payment benefits to which Settlement Class Members are entitled.

E. Release

In exchange for Settlement Benefits, Settlement Class Members will release Defendants from claims that, "…were asserted or could have been asserted in the Action, which relate to and arise from an alleged defect in the Coolant Pipes of the Class Vehicles, excluding any claims for personal injury." Settlement Agreement, ¶17.

IV. LEGAL STANDARD

"[T]he law generally favors and encourages the settlement of class actions." *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981). Rule 23(e) requires three steps for the approval of a proposed class action settlement:

1. Preliminary approval of the proposed settlement;

2. Issuance of notice of the proposed settlement to class members; and

3. A fairness hearing, after which the court must determine whether the proposed settlement is fair, reasonable and adequate.

Fed. R. Civ. P. 23(e); *Williams v. Vukovich*, 720 F.2d 909, 920-21 (6th Cir. 1983); *Bronson v. Bd. of Educ.*, 604 F. Supp. 68, 71 (S.D. Ohio 1984).

At preliminary approval, the Court's duty is to conduct a threshold examination of the overall fairness and adequacy of the settlement in light of the likely outcome and the cost of continued litigation. *See Ohio Public Interest Campaign v. Fisher Foods, Inc.*, 546 F. Supp. 1, 7 (N.D. Ohio 1982). Several factors guide the preliminary inquiry as to whether a settlement is fair, reasonable and adequate, including: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class

representatives; and (6) the public interest. *UAW v. Gen. Motors Corp*., 497 F. 3d 615, 631 (6th Cir. 2007). In considering these factors, the task of the court "is not to decide whether one side is right.... The question rather is whether the parties are using settlement to resolve a legitimate legal and factual disagreement." *UAW v. Gen'l Motors Corp.*, at 632.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE PROPOSED SETTLEMENT

A. There Is No Risk Of Fraud Or Collusion Because The Settlement Agreement Was Negotiated At Arms' Length By Reputable Lawyers And Facilitated By A Highly Experienced Mediator

The parties only agreed to explore settlement after nearly two years of hard-fought litigation. Section II, *supra*. The Settlement Agreement was negotiated at arm's length by experienced counsel on both sides of the table, who are fully versed in class litigation, particularly with respect to consumer class action litigation. Declaration of Thomas B. Rutter in Support of Plaintiffs' Motion for Approval of Settlement Agreement ("Rutter Decl."), ¶8; Declaration of Shennan Kavanagh in Support of Plaintiffs' Motion for Preliminary Approval, ("Kavanagh Decl."), ¶¶2-7; Declaration of Mark Troutman in Support of Plaintiffs' Motion for Preliminary Approval ("Troutman Decl."), ¶¶3-8; Declaration of Niall McCarthy in Support of Plaintiffs' Motion for Preliminary Approval ("McCarthy Decl."), ¶¶4-8; Declaration of Adam Levitt in Support of Plaintiffs' Motion for Preliminary Approval ("Levitt Decl."), ¶¶2-8. Settlement negotiations were lengthy and overseen by a mediator. Rutter Decl., ¶¶2-4; Kavanagh Decl., ¶¶10-13; Troutman Decl., ¶¶10-11, 14; McCarthy Decl., ¶¶12-15; Levitt Decl., ¶¶11-13; Section II (D), *supra*. These factors demonstrate that the Settlement Agreement was not the product of fraud or collusion. *Moulton v. United States Steel Corp.*, 581 F. 3d 344, 351 (6th Cir. 2009) (finding objectors' claim that agreement was a product of collusion meritless where the

case involved lengthy and complex litigation and the agreement was a product of months of supervised negotiations, including two mediation sessions).

Attorneys' fees and class representative service payments were not discussed until after agreement on relief to the class was reached. Rutter Decl., ¶5; Kavanagh Decl., ¶13; Troutman Decl., ¶¶13-14; McCarthy Decl., ¶15; Levitt Decl., ¶¶11,13. Indeed, it was not until July 15 that the parties reached agreement on such fees, so it, therefore, cannot be argued that attorneys' fees and enhancement payments affected the proposed Settlement Class relief in any way, or that there was any collusion between the parties with respect to any aspect of this settlement.

B. The MDL Proceeding Involved Complex And Hard-Fought Litigation And Discovery

As detailed above, this multidistrict litigation involved complex issues and required a substantial amount of coordination by interim co-lead counsel to prosecute. Kavanagh Decl., ¶¶8-9; Troutman Decl., ¶9; McCarthy Decl., ¶¶9; Levitt Decl., ¶¶9-10. The parties litigated for nearly two years, and engaged in three full mediation sessions before reaching the terms of the Settlement Agreement, and a forth before reaching an agreement on attorneys' fees, costs and expenses and Class Representative service payments. *See* Rutter Decl., ¶2; Kavanagh Decl., ¶¶8, 10, 13; Troutman Decl., ¶¶10-14; McCarthy Decl., ¶¶9, 12-15; Levitt Decl., ¶¶9-13. The parties were in the midst of discovery battles at the time they agreed to explore settlement options. The case involved claims under seven different states' laws, and required technical expertise from experts relating to issues such as the composite material of the plastic coolant pipes and the interrelation of component parts of Class Vehicles' engines.

C. While Plaintiffs Believe They Would Likely Succeed On The Merits Of Their Claims, Success Is By No Means Assured

"The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from

which the benefits of the settlement must be measured." *Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.,* 636 F.3d 235, 244 (6th Cir.2011). Although Plaintiffs believe that they would have succeeded had the case gone to trial, they faced significant risk that they would not prevail. Defendants have aggressively defended the case. Ongoing litigation would involve expensive and prolonged discovery, much of which would require travel to Germany and translating documents from German to English. Moreover, experts would have to be hired on both sides to opine on the scientific complexities of the coolant pipe material and whether the pipes were, in fact, defective. Absent the settlement, this litigation would be protracted and involve a massive amount of resources on both sides.

Substantively, as detailed above, the Settlement Agreement provides material and valuable class wide relief. The Settlement Agreement provides significant monetary compensation, as set forth above, to Settlement Class Members who have already repaired the alleged defect. Moreover, the Settlement Agreement allows Settlement Class Members who have yet to suffer the alleged defect the opportunity to preventatively replace the coolant pipes, and defray a portion of the cost of so doing. The Settlement Agreement benefits are also significant because they reimburse a portion of Settlement Class Members' alleged collateral damages related to a problem with the coolant pipes. The Settlement Agreement is particularly valuable because it would provide Settlement Class Members with relief now, and avoid the risk of potentially receiving nothing. Moreover, the Settlement Agreement provides benefits to all owners and lessees of Class Vehicles–even certain owners whose vehicles' mileage exceeds 120,000.

D. All Of The Representative Class Plaintiffs And Settlement Class Counsel Believe That The Settlement Agreement Is Worthy Of Final Approval

Further supporting the fairness of the Settlement Agreement is the fact that it has the support of all of the Representative Class Plaintiffs as well as Settlement Class Counsel, counsel for Porsche and the mediator. All believe that the Settlement is fair and reasonable and worthy of final approval. Rutter Decl., ¶¶6-10; Kavanagh Decl., ¶14; Troutman Decl., ¶¶15-17; McCarthy Decl., ¶¶17-19; Levitt Decl., ¶14. Settlement Class Counsel consists of reputable and experienced class action attorneys who are familiar with the details of this case and have been involved in numerous settlement negotiations in a variety of consumer cases, including products liability cases. Rutter Decl., ¶8; Kavanagh Decl., ¶¶2-9; Troutman Decl., ¶¶2-9; McCarthy Decl., ¶¶4-9; 11; Levitt Decl., ¶¶2-10.

E. The Settlement Agreement Is Consistent With The Public Interest

The Settlement Agreement is in the public interest because it will require that notice be sent to all Settlement Class Members, some of which are still driving Class Vehicles without knowledge of the potential defect. Receiving notice and an opportunity to repair the plastic coolant pipes will result in more Class Vehicles being repaired and create less of a risk of vehicle breakdowns. The Settlement Agreement is also in the public interest because the actual damages incurred due to the cost of replacing the plastic coolant pipes are relatively small, individuals are unlikely to retain an attorney to recover them. Therefore, resolving this case on a classwide basis will provide benefits to many Settlement Class Members who may otherwise never file a lawsuit to recover them.

In addition, the release of claims provided for in the Settlement Agreement is appropriately tailored to claims that, "…were asserted or could have been asserted in the Action, which relate to and arise from an alleged defect in the Coolant pipes of the Class Vehicles," and

expressly excludes any claims for personal injury. Settlement Agreement, ¶17. Therefore, there is no concern of an overly broad release that would harm the public interest. *See Moulton*, at 350-51.

VI. CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS IS WARRANTED

In order to grant certification of a settlement class, the requirements of Rule 23 must generally be satisfied. *See* Fed. R. Civ. P. 23. Rule 23(e) governs the issue of class certification, whether the proposed class is a litigated class or, as here, a settlement class. All criteria for certification of a class for litigation purposes, except manageability, apply to certification for settlement purposes. *Amchem Prods.*, 521 U.S. at 620.

Certification of the Settlement Class here is appropriate, as follows:

1. Numerosity. The proposed class meets the requirement of numerosity, in that it comprises nearly 42,000 members and joinder is impracticable. Settlement Agreement, ¶23; *Adams v. Anheuser-Busch Companies, Inc.*, No. 2:10-cv-826, 2012 WL 1058961, at *3-4 (S.D. Ohio Mar. 28, 2012) (numerosity is presumed when there are at least 40 class members) (citation omitted). Joinder is impracticable because the Representative Class Plaintiffs and the Settlement Class purchased or leased their vehicles from various sources disbursed throughout the country - in California, Colorado, Florida, Illinois, Michigan, New Jersey, New York, Ohio, Texas and Washington. Widespread geographic disbursement of plaintiffs over a substantial portion of the country satisfies the numerosity requirement. *Adams*, at *4.

2. Commonality. The second prerequisite to class certification is the existence of questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2). This case involves a set of straightforward facts and legal questions that are common to the Representative Class Plaintiffs and the Settlement Class. The Representative Class Plaintiffs and the Settlement Class

all purchased or leased Porsche Cayenne model year 2003-2006 vehicles originally equipped with the same component parts - plastic coolant tubes of identical plastic composite. They allege that these tubes are defective because they prematurely degrade from the hot coolant passing through them. The Representative Class Plaintiffs claim that Porsche knew about and failed to disclose this defect. The Representative Class Plaintiffs further claim that Porsche engaged in a single course of conduct giving rise to Plaintiffs' claims – namely, it made a business decision to install plastic coolant tubes in its Cayenne model vehicles and failed to disclose the defect to consumers despite its knowledge that the tubes prematurely degrade. Based thereon, the Representative Class Plaintiffs brought claims for breach of warranty, unfair and deceptive acts and practices under their respective states' consumer protection statutes, and other statutory and common law theories. *Young v. Nationwide Mut. Ins. Co.*, 693 F. 3rd 532, 542-43 (6th Cir. 2012) (finding that commonality and typicality requirements were satisfied where a single practice or course of conduct by defendant gives rise to the claims of plaintiffs and the class).

Common legal questions include, without limitation, (1) whether the plastic coolant tubes are defective, (2) whether Porsche's durational limitation on its form written warranties is unconscionable, (3) whether the plastic coolant tubes conformed with Porsche's warranty, (4) whether Porsche had an opportunity to cure the defect, (5) whether the defect poses a safety risk, (6) whether Porsche knew of the defect, had a duty to disclose and failed to disclose it, (7) whether the defect caused injury to consumers, (8) whether the injury was caused by Porsche's conduct, and (9) whether Porsche's conduct was unfair and deceptive. Plaintiffs' claims and factual experiences are typical of those of the class they seek to represent.

3. Typicality. The third prerequisite of the Rule 23(a) analysis – typicality – is also satisfied here. A plaintiff's claim is typical "if it arises from the same event or practice or course

of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Beattie v. CenturyTel, Inc.,* 511 F. 2d 554, 561 (6th Cir. 2007), *citing, In re Am. Med. Sys., Inc*., 75 F. 3d 1069, 1082 (6th Cir. 1996). "Commonality and typicality 'tend to merge' because both of them 'serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Young, at* 542-43, *citing Dukes*, 131 S.Ct. at 2551 n. 5.

Here, the Representative Class Plaintiffs are typical of the class they seek to represent. All are current or former owners or lessees of Class Vehicles, which were all manufactured with the same plastic coolant pipes at issue in the case.

4. Adequacy. The Representative Class Plaintiffs will fairly and adequately protect the interests of the class for purposes of this settlement. "The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." *Gooch*, at 429. No conflict of interest exists here, as all of the Representative Class Plaintiffs have suffered similar injury to those of the class they seek to represent, and they have all come forward to participate in this case as class representatives, understanding their duties in taking on this role. Settlement Class Counsel has no interests that are antagonistic with those of the Settlement Class, and are more than sufficiently qualified to represent the interests of the Settlement Class based on each law firm's experience with complex litigation and consumer protection cases and their demonstrated commitment to the case. Kavanagh Decl., ¶¶12-13; Troutman Decl., ¶¶12-13; McCarthy Decl., ¶¶14-16; Levitt Decl., ¶¶12; *see also* Rutter Decl., ¶8. Indeed, the Court recognized Settlement Class Counsel's experience, qualifications, and ability to serve Plaintiffs and the proposed Settlement Class at the outset of the litigation when it

appointed Plaintiffs' co-lead counsel to lead this multidistrict litigation proceeding. [Docket No. 19] ("Said counsel possess the apparent experience, qualifications, and ability to serve most effectively as interim lead co-counsel in these proceedings…Counsel also meet the requirements of Federal Rule of Civil Procedure 23(g)"). This case therefore presents no adequacy issues.

5. Rule 23(b). Finally, once the four prerequisites of Rule 23(a) are met, "the potential class must also satisfy at least one provision of Rule 23(b)." *Rosario*, 963 F.2d at 1017; *see also General Tel Co. v. Falcon*, 457 U.S. 147, 161 (1982). Here, the class satisfies Rule 23(b)(3).

Rule 23(b)(3) states that a class may be certified when "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and […] a class action is superior to other available methods for the fair and efficient adjudication of the controversy." These requirements are satisfied here.

The questions of law and fact common to all class members are set forth above. Indeed, in the context of settlement, issues regarding manageability (such as the calculation of damages) are irrelevant. *Amchem Prods.*, 521 U.S. at 620 (where a district court is confronted with a settlement-only class certification, the court need not inquire whether the case, if tried, would present manageability problems because the point is that there will be no trial).

Additionally, a class action is clearly superior to other available methods for the fair and efficient adjudication of the controversy because joinder of all class members would be impracticable. Fed. R. Civ. P. 23(b)(3). Furthermore, because the damages suffered by individual members of the settlement class may be relatively small, the expenses and burden of individual litigation would make it impossible for all settlement class members to individually redress the harm done to them. Id.

In short, the Settlement Class is suitable for certification, and the Court should certify the Settlement Class pursuant to Rule 23(a) and (b)(3), for purposes of granting preliminary approval of the Settlement.

VII. CLASS NOTICE

Rule 23(e)(1)(B) states that, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." Rule 23(e) requires that notice of a proposed settlement inform class members of the following: (1) the nature of the pending litigation; (2) the general terms of the proposed settlement; (3) that complete information is available from the court files; and (4) that any class member may appear and be heard at the fairness hearing. *Newberg on Class Actions* § 8.32, at 262-68. The notice must also indicate an opportunity to opt out, that the judgment will bind all class members who do not opt out, and that any member who does not opt out may appear through counsel. Fed. R. Civ. P. 23(c)(2). When attorneys' fees and costs are requested, the notice must so inform class members. Fed. R. Civ. P. 23(h)(1).

Here, Plaintiffs request approval of the proposed Notice attached to the Settlement Agreement as Exhibit B. The Notice meets all of the requirements of Rule 23(e) and (h): it identifies the Plaintiffs and the Defendants, and describes the lawsuit and the settlement classes in a straightforward manner; succinctly describes the essential terms of the proposed settlement, and identifies all parties against whom claims are being released; provides class members with information on how to opt-out of the Settlement Class and provide all applicable deadlines for such action; informs settlement class members that if they do not exclude themselves from the Settlement Class, and the settlement is approved, they will be bound by the resulting judgment; and that Settlement Class Counsel are seeking an award of $4.5 million in attorneys' fees and $250,000 for reimbursement of costs and expenses and service awards. In addition, the Notice

instructs settlement class members to contact Settlement Class Counsel to obtain more detailed information and provides information regarding counsel's fee and expense application. In short, the Notice will provide the necessary information for Settlement Class Members to make an informed decision regarding the proposed Settlement Agreement.

As a general rule, due process requires individualized notice where the names and addresses of class members "may be ascertained through reasonable effort," *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 173, 177 (1974), and "is appropriate, for example, if class members are required to take action—such as filing claims—to participate in the judgment, or if the court orders a settlement opt-out opportunity under Rule 23(e)(3)." *See* Fed. R. Civ. P. 23(e)(1), 2003 Committee Note.

Here, the proposed Settlement Agreement provides for direct mail notice to the last known addresses of Settlement Class Members, and notice on the internet. The notice program here more than sufficiently satisfies all due process requirements. *See* Rutter Decl., ¶9.

VIII. CONCLUSION

Based on the foregoing, Plaintiffs, without opposition from Defendants, respectfully request that the Court preliminarily approve the proposed Settlement Agreement, including the Notice plan, and the forms of Claims Form and Notice attached to the Settlement Agreement as Exhibits A and B. A [Proposed] Preliminary Approval Order is attached to the Settlement Agreement as Exhibit C and also submitted separately.

Respectfully submitted,

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