

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: PORSCHE CARS NORTH
AMERICA, INC. PLASTIC COOLANT
TUBES PRODUCTS LIABILITY
LITIGATION**

Civil Action No.: 2:11-MD-2233

**Judge Gregory L. Frost
Magistrate Judge E. A. Preston Deavers**

This document relates to:

ALL ACTIONS

**JOINT MOTION TO MODIFY THE PROPOSED SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

The Representative Class Plaintiffs and Defendant Porsche Cars North America, Inc., jointly by and through their undersigned counsel, hereby move the Court to modify the proposed Settlement Agreement and Release of Claims filed with the Court on July 26, 2013, as described herein. A supporting memorandum describing the proposed modifications and the reasons therefor is attached.

/s/ Terrance M. Miller

Terrance M. Miller

Bryan R. Faller

Porter Wright, Morris & Arthur LLP

41 South High Street

Columbus, OH 43215-6194

Dated: March 7, 2014

Counsel for Porsche Cars North America, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: PORSCHE CARS NORTH
AMERICA, INC. PLASTIC COOLANT
TUBES PRODUCTS LIABILITY
LITIGATION**

Civil Action No.: 2:11-MD-2233

**Judge Gregory L. Frost
Magistrate Judge E. A. Preston Deavers**

This document relates to:

ALL ACTIONS

**MEMORANDUM IN SUPPORT OF THE PARTIES' JOINT MOTION TO MODIFY
THE PROPOSED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

On May 6, 2013, Defendant Porsche Cars North America, Inc. ("PCNA") and the Representative Class Plaintiffs (individually and as representatives of the proposed Settlement Class),¹ entered into a proposed Settlement Agreement and Release of Claims ("Settlement Agreement") (Doc. 134), which was filed with the Court on July 26, 2013. Notice of the settlement was mailed to Class members on December 12, 2013. *See* Declaration of Jennifer M. Keough (Doc. 162) ¶ 5. The Notice states that "[a]ll claims for a benefit under this Settlement must be made no later than December 12, 2014." *See* Class Notice (Doc. 146), at 1-2. In other words, the Notice tied the claims-submission period exclusively to the mailing, which was the only date certain then available. The proposed Settlement Agreement, however, was inadvertently drafted to provide that the final date for filing claims is "within one year of the Effective Date of Settlement or mailing of the Notice, whichever is later." *See* Settlement

¹ Capitalized terms in this memorandum have the meaning set forth in the proposed Settlement Agreement.

Agreement (Doc. 134) ¶¶ 48, 51. This language created an ambiguity within the Settlement Agreement itself, which, like the Notice, provides for a one-year claims submission period.

The Parties agree that they never intended to tie the deadline for submitting Claims Forms to anything other than the mailing of the Notice, and that their intent has always been to create a one-year claims period commencing when the Notice was mailed. The Notice therefore accurately represents the Parties' intent.

The proposed Settlement Agreement permits the Parties to amend the Agreement upon "the express written consent of Class Counsel and PCNA." *See* Settlement Agreement (Doc. 134) ¶ 70. In order to avoid any ambiguity between the approved Notice and the proposed Settlement Agreement, the Parties agree that Paragraphs 48 and 51 of the proposed Settlement Agreement should be removed and replaced with the following provisions:

48. In order to receive the benefits set forth in ¶ 47, Settlement Class members must submit a Claims Form, in accordance with ¶¶ 51-55 (below), within one year of mailing of the Notice. This applies both to those Settlement Class members who seek reimbursement for past expenses, as well as those who will seek full or partial payment for future repairs.
51. All claims must be submitted (i.e., transmitted or postmarked) within one year of mailing of the Notice. This applies both to those Settlement Class members who seek reimbursement for past expenses, as well as those who will seek full or partial payment for future repairs. Class members who fail to submit valid claims within the one-year time period cannot obtain reimbursement or payment for repairs, and will be bound by the provisions and releases of this Settlement Agreement and the Final Approval Order and Judgment.

All capitalized terms in these paragraphs will have the meaning identified in the proposed Settlement Agreement. The sole effect of these changes is to tie the deadline for submitting a Claims Form to the mailing of the Notice rather than the Effective Date of Settlement. Since this change conforms the proposed Settlement Agreement to the Notice that Class Members have

already received, no additional notice to the class is necessary. However, the Parties have agreed to send to the class on or about April 10, 2014 a reminder notice that all claims must be submitted on or before December 12, 2014.

This modification will not prejudice the Settlement Class because they have received the Notice of the claims deadline, and a one-year period for submitting claims provides ample opportunity for Settlement Class members to obtain settlement benefits. Indeed, the reminder notice to which the Parties have agreed as a condition of this modification will serve as an extra benefit to Settlement Class members who may have overlooked the original Notice.

Accordingly, the Parties jointly request that the Court enter an order approving modification of the proposed Settlement Agreement in the manner described above.

Respectfully submitted,

Class Counsel for Representative Class Plaintiffs:

/s/ Eric J. Buescher
Niall P. McCarthy
Justin T. Berger
Eric J. Buescher
Cotchett, Pitre & McCarthy, LLP
840 Malcolm Road, Suite 200
Burlingame, California 94010

Dated: March 7, 2014

/s/ Gregory M. Travalio
Mark D. Landes
Gregory M. Travalio
Mark H. Troutman
Isaac, Wiles, Burkholder & Teetor, LLC
Two Miranova Place, Suite 700
Columbus, Ohio 43215

Dated: March 7, 2014

/s/ Shennan Kavanagh
Shennan Kavanagh
Gary E. Klein
Klein Kavanagh Costello, LLP
85 Merrimac Street, 4th Floor
Boston, Massachusetts 02114

Dated: March 7, 2014

/s/ Adam J. Levitt
Adam J. Levitt
John Tangren
Grant & Eisenhofer P.A.
30 North LaSalle Street, Suite 1200
Chicago, Illinois 60602

Dated: March 7, 2014

Counsel for PCNA:

/s/ William F. Kiniry, Jr.
William F. Kiniry, Jr.
DLA Piper LLP (US)
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103

Dated: March 7, 2014

/s/ Terrance M. Miller
Terrance M. Miller
Bryan R. Faller
Porter Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215-6194

Dated: March 7, 2014

CERTIFICATE OF SERVICE

I certify that, on March 7, 2014, I filed the foregoing Joint Motion to Modify the Proposed Settlement Agreement and Release of Claims via the Court's CM/ECF system, and therefore an electronic copy will be delivered to the following counsel of record:

Fletcher V. Trammell
Bailey Perrin Bailey
440 Louisiana Street, Suite 2100
Houston, TX 77002

Jeffrey M. James
Banker Lopez Gassler
Suite 1500
501 East Kennedy Boulevard
Tampa, FL 33602

William E. Hoese
Joseph Kohn
Craig W. Hillwig
Kohn Swift & Graf PC
One South Broad Street, Ste. 2100
Philadelphia, PA 19107

Justin T. Berger
Eric J. Buescher
Niall P. McCarthy
Cotchett, Pitre & McCarthy, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010

James M. Evangelista
David James Worley
Evangelista & Associates, LLC
Suite 700
One Glenlake Parkway
Atlanta, GA 30328

William Craft Hughes
Hughes Ellzey LLP
2700 Post Oak Boulevard, Suite 1120
Houston, TX 77056

Mark D. Landes
Gregory M. Travaglio
Mark H. Troutman
Isaac, Wiles, Burkholder & Teetor, LLC
Two Miranova Place, Suite 700
Columbus, OH 43215

Christopher J. McGinn
Law Office of Christopher J. McGinn
75 Raritan Ave.
Suite 220
New Brunswick, NJ 08904

Craig M. Patrick
Patrick Law Firm, P.C.
3333 Lee Parkway, Suite 600
Dallas, TX 75219

Shennan Kavanagh
Gary E. Klein
Klein Kavanagh Costello LLP
85 Merrimack St, Suite 414
Boston, MA 02114

Adam J. Levitt
John Tangren
Grant & Eisenhofer P.A.
30 North LaSalle Street, Suite 1200
Chicago, IL 60602

Steven Marchbanks
Premier Legal Center, A.P.C.
610 Newport Beach Center, Suite 1200
Newport Beach, CA 92660

Daniel A. Schlanger
Schlanger & Schlanger, LLP
1025 Westchester Avenue
Suite 108
White Plains, NY 10604

Lawrence C. Mann
Greg Wix
Bowman and Brooke LLP
50 West Big Beaver
Troy, MI 48084

/s/ Terrance M. Miller
Terrance M. Miller