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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: PORSCHE CARS NORTH)
AMERICA, INC., PLASTIC COOLANT) CASE NO.: 2-11-MD-2233
TUBES PRODUCTS LIABILITY) MARCH 10, 2014
LITIGATION)
_____)

TRANSCRIPT OF FAIRNESS HEARING PROCEEDINGS

BEFORE THE HONORABLE GREGORY L. FROST
MONDAY, MARCH 10, 2014; 9:00 A.M.
COLUMBUS, OHIO

APPEARANCES:

FOR THE PLAINTIFFS: SHENNAN KAVANAGH, ESQUIRE
GREGORY M. TRAVALIO, ESQUIRE
MARK D. LANDES, ESQUIRE
DANIEL A. SCHLANGER, ESQUIRE
ERIC J. BUESCHER, ESQUIRE
JOHN E. TANGREN, ESQUIRE
MARK H. TROUTMAN, ESQUIRE
WILLIAM H. HOESE, ESQUIRE
PATRICK DONOVAN, ESQUIRE

FOR THE DEFENDANT: WILLIAM F. KINIRY, JR., ESQUIRE
MATTHEW A. GOLDBERG, ESQUIRE
TERRANCE M. MILLER, ESQUIRE
JEFFREY GATES, ESQUIRE

INTERESTED PARTY: MARY ELLEN KALANGE, PRO SE

Proceedings recorded by mechanical stenography, transcript produced by computer.

DENISE N. ERRETT, OFFICIAL COURT REPORTER
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Monday Morning Session

March 10, 2014

9:00 a.m.

- - -

IN OPEN COURT:

THE COURT: Would you call the case, please?

COURTROOM DEPUTY CLERK: The Court calls Case Number 2:11-MD-2233, In Re: Porsche Cars, North America, Incorporated, Plastic Coolant Tubes Product Liability Litigation.

THE COURT: Thank you, Ms. Kepler, again.

Let the record reflect that today's date is Monday, March 10, 2014. We are meeting today for an approval of the class-action settlement agreement pursuant to Civil Rule 23(a).

I want to introduce for the record those who are here on behalf of the plaintiff and defendant.

Mark Landes -- Mark decided to show up on the last day here, apparently. Mark Landes, Greg Travalio, Mark Troutman, Shennan Kavanagh, John Tangren, Eric Buescher, I think, Bill Hoese, Dan Schlanger and Patrick Donovan on behalf of the plaintiffs.

Is that correct?

MR. TRAVALIO: Yes, Your Honor.

THE COURT: And could whoever is Eric Buescher -- I apologize.

1 MR. BUESCHER: Busher (phonetic), Your Honor.

2 THE COURT: I apologize. How is it?

3 MR. BUESCHER: Busher (phonetic).

4 THE COURT: Buescher. All right.

5 And Bill Hoese?

6 MR. HOESE: Hosee (phonetic), Your Honor.

7 THE COURT: Hoese.

8 All right. I didn't get either of them right.

9 On behalf of defendant, William Kiniry, Jr.; Matthew
10 Goldberg; Terry Miller; and Jeffrey Gates are present.

11 Is that correct?

12 MR. KINIRY: That's correct, Your Honor.

13 THE COURT: Thank you.

14 I've got my former law clerk, Vlad, in the back, who
15 apparently is just curious in this matter.

16 MR. BELO: Good morning, Judge.

17 THE COURT: Good morning, Vlad. How are you?

18 MR. BELO: All right.

19 THE COURT: As I said, this is a hearing, a fairness
20 hearing, pursuant to Civil Rule 23(e). This is set to
21 preliminarily approve the proposed settlement agreement, to
22 insure the members of the class were given notice of the
23 proposed settlement agreement, and then to hold this hearing to
24 determine whether the proposed settlement agreement is fair,
25 reasonable, and adequate.

1 I guess just for the purposes of the record we should
2 note that the parties and counsel -- counsel for the parties
3 and myself, as well as my two law clerks, had a telephone
4 conference last week just to iron out how it was that we would
5 proceed today. And I think we're all on the same page.

6 I do want to introduce Kate Balls, my law clerk, and
7 Shawn Judge, my law clerk, who are present. Kate has worked on
8 this case a lot, first as an MDL law clerk, and now she has
9 taken Vlad's place and is here and has been working on it since
10 she came back.

11 All right. I believe, Ms. Kavanagh, you will proceed
12 first in this matter?

13 MS. KAVANAGH: Yes, Your Honor.

14 THE COURT: If you want to proceed, you may at this
15 time.

16 MS. KAVANAGH: Thank you, Your Honor.

17 The settlement before the Court, Your Honor, will
18 fully resolve this multi-district litigation, and it meets all
19 of the requirements of final approval.

20 As Your Honor knows, this litigation was prolonged.
21 It lasted for two years. And it involves a series of complex
22 issues and is very risky and has uncertainties of laws and
23 fact. So, after the two years of litigation, the parties were
24 fully apprized of the strengths and weaknesses of their
25 respective claims and defenses.

1 The parties were then prepared to enter into informed
2 settlement negotiations. And they spent several months in
3 negotiations, which included four full-day mediation sessions
4 before a mediator who is experienced in products liability
5 class actions and who is reputable; and that was Thomas Rutter
6 of ADR Options.

7 Settling the case now is very beneficial to the
8 class, Your Honor. It avoids prolonged litigation. It avoids
9 the risk the class members may receive nothing should they lose
10 the litigation. Over time, we may lose class members as
11 vehicles go off the road. It avoids increased costs.

12 The notice in this litigation was beneficial because
13 many class members may not have been aware that there is a
14 potential issue with their coolant pipes. So merely receiving
15 notice of the issue is beneficial to class members who may want
16 to do something about the coolant pipes.

17 And, in addition, this litigation ended up settling
18 on a national basis. So, it includes all of the potentially
19 affected vehicles and allows everybody who has replaced or
20 wishes to replace the coolant pipes an opportunity to receive
21 benefits.

22 The settlement has received overwhelming support,
23 Your Honor. The parties both support the settlement. The
24 mediator, who has provided a declaration in this case,
25 expressed his support for the settlement.

1 Notice was sent out, under the Class Action Fairness
2 Act, to 50 states' attorneys general; and not a single attorney
3 general took objection to the settlement.

4 And, most importantly, the class overwhelmingly
5 supports the settlement, Your Honor. Of approximately 42,000
6 class vehicles that may be entitled to relief here, there was
7 only four timely opt-outs, and I believe there may have just
8 been one other request for an opt-out that was untimely. There
9 was only 12 objections. And, in contrast, as of Friday, March
10 7th, there were 4,235 claims submitted. And the claims period
11 remains open through December 12th, 2014. So it's likely there
12 will continue to be claims coming in through that time. And,
13 in addition the claims have not significantly petered off since
14 notice went out.

15 We were reviewing a week-by-week submission of the
16 claims coming in. And, even as of last week, the claims that
17 were coming in were substantial, close to 100 per week, on
18 average.

19 THE COURT: Okay.

20 MS. KAVANAGH: In addition, as Your Honor knows, we
21 have requested to modify the settlement agreement based on the
22 ambiguity of the claims period. And, as part of that
23 modification, we have requested to send additional notice out
24 to class members to inform them of the deadline and their
25 ability to make claims. So, it's very likely that, upon

1 receiving a second notice, class members who may have
2 overlooked the first notice will be reminded of their
3 opportunity to receive benefits, and it's likely to generate
4 more claims in that regard.

5 The Court preliminarily approved the settlement on
6 August 26, 2013, at which time the Court approved the form of
7 notice agreed upon by the parties and the notice plan, as well
8 as the claims form. The Court found then that the notice and
9 the notice plan comport with due process requirements.

10 The administrator disseminated the notice according
11 to the Court's preliminary approval order and has provided a
12 detailed declaration on the record to explain all of the work
13 it did in disseminating notice. It sent notices out to 167,544
14 current and former owners and lessees in order to ensure that
15 it would capture everybody who at some point in time owned a
16 class vehicle and to find the ones who actually made the
17 replacement or currently own the vehicle so that they will be
18 making the replacement.

19 So, the people who are entitled to benefits is about
20 42,000, which represents the class vehicles.

21 THE COURT: Just to clarify the record, 42,000 plus
22 or minus are the potential owners of vehicles; but, because of
23 the chain-of-title issues, 167,544 packets were sent out?

24 MS. KAVANAGH: Correct. So, it may be that somebody
25 formerly owned a vehicle, sold it to someone else; that former

1 owner was not the one who replaced the pipes and is out of
2 pocket for the replacement.

3 THE COURT: And this also included those that were
4 not only purchased, but leased, also?

5 MS. KAVANAGH: Correct.

6 THE COURT: All right. Proceed.

7 MS. KAVANAGH: There was no formal objections to the
8 notice, Your Honor.

9 I will note that one of the objectors, Steele, said
10 in his objection that he takes issue with the language in the
11 notice that said you may be eligible to receive partial or
12 complete reimbursement for repairs, because he contends that
13 not everybody is entitled to receive full reimbursement; but,
14 as Your Honor can see, with the language, it's completely
15 accurate.

16 There are some people that may be entitled to full
17 reimbursement, and there are some people that may be entitled
18 to partial. And the notice was sufficient so that each class
19 member could look, based on his or her specific circumstances,
20 and ascertain the benefit to which they would be entitled.

21 The Court also preliminarily approved the settlement
22 class for settlement purposes. Nothing has changed since this
23 Court's order on certification for settlement purposes, and
24 nobody has objected to certification of the class for
25 settlement purposes here.

1 The settlement relief is meaningful and beneficial to
2 class members, Your Honor. It's directly tailored to the
3 claims raised in plaintiffs' complaint, which is that the
4 coolant pipes would prematurely degrade and fracture. It
5 accounts for the uncertainties and risks of litigation at the
6 same time.

7 As you know, Porsche, had the litigation proceeded,
8 would have fought every single plaintiff's claim until the end
9 in every aspect of that claim. And, given the uncertainties of
10 law and fact in the case, tailoring the settlement as partial
11 reimbursements is appropriate here.

12 The settlement relief provides the following, Your
13 Honor: For class members who purchased or leased new or
14 approved certified pre-owned vehicles, they would be reimbursed
15 according to the chart set forth in the settlement. And the
16 chart is calibrated based on mileage. The higher the mileage
17 of the vehicle, the lower the percentage of the reimbursement
18 will be.

19 For purchasers of used vehicles without an approved
20 certified pre-owned warranty, they're entitled to 25 percent of
21 the invoice price paid up to a maximum of \$450 for past
22 replacement and a maximum of \$375 towards a future replacement.
23 And those class members are capped at 120,000 miles.

24 It's worth noting, Your Honor, that the 120,000 mile
25 is -- there is no limit on the mileage for those who purchased

1 new vehicles. And that's a particularly substantial benefit as
2 well.

3 In addition to the reimbursement costs, class members
4 are entitled to, upon showing that they suffered any collateral
5 damage to their vehicles because of the coolant pipe, to
6 receive up to \$500 for collateral damage.

7 There were 12 pro se objections to the settlement,
8 Your Honor. And certainly that number weighs heavily in favor
9 of final approval. The Court should overrule all of the
10 objections. None of them is sufficient to deprive class
11 members of the benefits that they wish to receive here.

12 The categories of objections and the respective
13 objectors that fall within the categories are as follows, Your
14 Honor: Some objectors objected that they're not receiving full
15 compensation under the settlement, and that would be the
16 Johnsons and Kalange.

17 And I'm going to apologize up front, because there is
18 going to be some names I will surely mispronounce here.

19 THE COURT: I understand.

20 MS. KAVANAGH: K-a-l-a-n-g-e.

21 Probably the largest number of objections, Your
22 Honor, was based on the calibration for reimbursement
23 differentiating between new and used vehicles. Those objectors
24 include O'Quinn, Giammalvo, Levert, Roy, DeCoste, Lucas,
25 Steele, and Short.

1 Others objected to the calibration of the mileage for
2 the reimbursement relief. And those two were Fox and Steele.

3 One objected to the requirement that class members
4 get their repairs done at an authorized Porsche dealership.
5 And that's Nagler.

6 Before I address these objections, Your Honor, I do
7 want to point out that nobody objected to the release here,
8 which does not release personal injury claims and which is
9 appropriately limited to the claims in plaintiffs' complaint.
10 And nobody offered a formal objection to the attorneys' fees
11 costs or named plaintiffs' service payments.

12 One objector objected to what he believed was a
13 limitation on his ability to recover attorneys' fees if his
14 objection prevailed. However, he didn't say that he had an
15 attorney representing him; and, as far as I understand, none of
16 the objectors has an attorney representing them. So, that
17 objection is not relevant here.

18 Turning to the compensation issues, Your Honor, with
19 respect to the objection that the settlement doesn't provide
20 full compensation, those objections just don't recognize that
21 this is a settlement of disputed claims and that, when you
22 enter into a settlement, you have to compromise in order to
23 reach a resolution that is fair, reasonable, and adequate; and
24 not providing for full compensation to class members which they
25 may have only been entitled to had plaintiffs won at trial is

1 not a requirement for fairness for a class-action settlement.

2 The calibration that some of the objectors complained
3 about relating to the new versus used vehicles is also not an
4 objection -- should be overruled. Calibrating class members'
5 benefits based on the strengths and weaknesses of their
6 respective claims is entirely appropriate here. They don't
7 consider that, factually, the longer that you drive your
8 vehicle, the more likely it is that there are going to be
9 issues that have arisen that could have contributed to the
10 degradation of the coolant pipes. And, legally, when Porsche
11 is not the direct seller of the vehicle to a class member, that
12 renders the legal claims against Porsche much more uncertain.
13 It's uncertain what could have transpired between Porsche's
14 release of the goods and all of the subsequent holders of those
15 goods.

16 In addition, Your Honor, I would like to point out
17 that there have been a few recent vehicle class-action
18 settlements very similar to the one before Your Honor that have
19 received final approval for settlements very similar to the one
20 here where they calibrated relief both on new versus used and
21 also on mileage. And one was before the District of New Jersey
22 in 2010. That's Careccio, et al., versus BMW. And the Court
23 held there that, quote, unquote, the settlement is fair and
24 reasonable even though not every member of the class received
25 full compensation. That was a 2010 case.

1 More recently, in the Northern District of California
2 in 2012, Milligan, et al., versus Toyota Motor, the Court
3 recognized that the settlement involved some line drawing and
4 full compensation is not a prerequisite for a fair settlement.

5 In Re: Nissan Radiator Transmission Cooler
6 Litigation, that's from the Southern District of New York in
7 2013. This was where some of the class members had to
8 contribute money, themselves, in the form of copayments,
9 towards the costs of repair. And the Court recognized that
10 having to submit copayments reflects a reasonable compromise
11 between the risks of further litigation and benefit of
12 providing immediate relief to class members who would not
13 otherwise have received anything absent winning the litigation.
14 That court also found that tiered relief is not a basis for
15 rejecting a settlement.

16 And the last one that I just want to talk about
17 briefly, Your Honor, is Henderson, et al., versus Volvo, and
18 that's a District of New Jersey case in 2013 as well. That
19 court found that the court's role is to determine whether the
20 proposed relief is fair, reasonable, and adequate, not whether
21 some other relief would be more lucrative to the class. A
22 settlement is, after all, not full relief, but an acceptable
23 compromise.

24 So, like these cases, Your Honor, the one before your
25 court falls right within the range of reasonableness and

1 provides a significant benefit to class members.

2 Unless Your Honor has any other questions, we would
3 ask Your Honor today -- and, as you know, Mr. Travaglio will be
4 presenting the plaintiffs' application for fees, costs and any
5 plaintiffs' service payments; but we request that the Court
6 overrule the objections, enter the parties' proposed form of
7 final approval order. And, as a housekeeping matter, as well,
8 I believe the stipulation to modify the settlement to clarify
9 the claims deadline is still before Your Honor.

10 THE COURT: Ms. Kavanagh, let me congratulate you,
11 because you hit all the points that I wanted to make sure you
12 hit. So, thank you. You're welcome back any time.

13 MS. KAVANAGH: No problem, Your Honor. Thank you.

14 THE COURT: Thank you.

15 Mr. Kiniry, do you wish to respond on the settlement
16 agreement?

17 MR. KINIRY: Your Honor, I hope my comments will
18 garner the same statement from the Court.

19 THE COURT: I'm sure they will.

20 MR. KINIRY: I have no comment.

21 THE COURT: You're welcome back all the time.

22 Thank you, Mr. Kiniry.

23 Well, I think that moves us on -- well, yeah. That
24 moves us on to Mr. Travaglio to speak on behalf of plaintiffs'
25 counsel and plaintiffs' class with regard to attorneys' fees

1 and costs.

2 Mr. Travaglio?

3 MR. TRAVAGLIO: Well, Your Honor, I brought some
4 reading material along.

5 THE COURT: Wait a minute. We have --
6 Yes, ma'am?

7 MS. KALANGE: Mary Ann Kalange, from Boise, Idaho.

8 I filed an objection pro se, though I am licensed in
9 the State of Wisconsin and the State of Idaho, and I'm licensed
10 in the Seventh Circuit Court of Appeals and Ninth Circuit Court
11 of Appeals. However, a few years ago, I clerked for a federal
12 judge as a career law clerk.

13 THE COURT: You poor thing, you.

14 MS. KALANGE: Pardon me?

15 THE COURT: You poor thing you.

16 MS. KALANGE: Yeah. I lived through it. I was with
17 him for seven years, and then I went to the Ninth Circuit Court
18 of Appeals and had the honor of working with Judge Thomas
19 Nelson in the Ninth Circuit. Then I had two sons and realized
20 I couldn't do it all. So, I've been home, raising children.
21 But I did file an objection in this case.

22 THE COURT: Ma'am, would you identify yourself --
23 first of all, why don't you come on up.

24 MS. KALANGE: Okay.

25 THE COURT: I apologize. I did not notice you back

1 there. So, I --

2 MS. KALANGE: I tried to blend in.

3 THE COURT: Your name is, again?

4 MS. KALANGE: Mary Ellen. And the last name is
5 Kalange, K-a-l-a-n-g-e.

6 THE COURT: K-a-l-a-n --

7 MS. KALANGE: -- g-e.

8 THE COURT: Kalange.

9 MS. KALANGE: I'm quite nervous, because I've never
10 been on this side of the bench.

11 THE COURT: You're kidding me!

12 MS. KALANGE: No.

13 THE COURT: Don't be nervous at all.

14 MS. KALANGE: Okay. I'll try not to be.

15 THE COURT: We did receive your pro se objection.

16 And I apologize for not including you before. I'm glad you
17 showed up from Boise, Idaho.

18 MS. KALANGE: I did.

19 THE COURT: Why don't you voice what your objection
20 is for the purposes of the record.

21 MS. KALANGE: Okay. I've prepared some comments.
22 May I follow those?

23 THE COURT: Of course.

24 MS. KALANGE: Do I have unlimited time? The Federal
25 Judicial Center says that if an objector shows up, which is

1 highly unlikely, you should sort of give them the floor.

2 THE COURT: I am giving you the floor.

3 MS. KALANGE: Right, I know, but could I go until two
4 o'clock?

5 THE COURT: Two o'clock? No.

6 MS. KALANGE: I'm joking. Okay. No.

7 THE COURT: I didn't know how to take that, ma'am.

8 MS. KALANGE: I'm joking.

9 THE COURT: I'll give you as much time as you
10 deserve.

11 MS. KALANGE: Okay. Thank you. That's a good
12 answer.

13 I just came from Philadelphia. I went from Boise to
14 Philadelphia, Philadelphia to Columbus.

15 THE COURT: You don't know geography, then.

16 MS. KALANGE: I know. I have a very good friend
17 there. And, when I saw this hearing was set today, I
18 coordinated the trip to Philli.

19 THE COURT: Okay. Good.

20 MS. KALANGE: Anyway, I made it to the Independence
21 Hall and Liberty Bell. And no one was there, because everyone
22 was at the flower show in Philadelphia, which was impressive in
23 itself. But etched in the wall of Independence Hall was a
24 quote from James Madison, and that quote said: "If men were
25 angels, there would be no need for government." And that quote

1 stopped me in my tracks.

2 I went back, and I looked at it again. And I
3 thought: Wow! That really hits me, because I tend to be a
4 conservative person and like to believe there's not a lot of
5 need for regulation, a lot of need for government intervention,
6 especially at the federal level; that hopefully the states can
7 control things. However, this case, Your Honor, illustrates
8 exactly why there is a need for regulations and why there is a
9 need for corporations to give credence and follow those
10 regulations.

11 In this case, Your Honor, the thing that struck me
12 most about the settlement agreement that was put together by
13 counsel was that Porsche AG, the manufacturer who, as far as I
14 can tell, is still a party to this case, has never been
15 dismissed from this case, is still in.

16 So, Counsel is welcome to comment at this point if
17 they'd like to in that -- and it might save me a lot of time.

18 My reading of it, procedurally, would be the case
19 would go forward with the class members against Porsche AG
20 because it's not binding on Porsche AG.

21 THE COURT: I'm not quite sure I understand where
22 you're going, but let me set the stage here a little bit.

23 You are a Porsche owner?

24 MS. KALANGE: Yes.

25 THE COURT: Okay. Let's get the facts down.

1 MS. KALANGE: Right.

2 THE COURT: You own what year, make, and model?

3 MS. KALANGE: A 2005 Cayenne Turbo purchased new for
4 approximately \$110,000.

5 THE COURT: Okay. Purchased new when?

6 MS. KALANGE: On September 1st, 2005, in Beaverton,
7 Oregon.

8 THE COURT: Okay. And you have been the sole owner
9 of that vehicle?

10 MS. KALANGE: Yes, sir.

11 THE COURT: Okay. And have you had any cooling tubes
12 issues up 'til now?

13 MS. KALANGE: One week prior to the 131-page decision
14 you entered in this case, --

15 THE COURT: Right.

16 MS. KALANGE: -- my husband and son were traveling
17 from Boise to Salt Lake City for the annual Porsche parade.

18 THE COURT: Okay.

19 MS. KALANGE: And on the way -- they were pulling a
20 trailer carrying a 911SC that had been restored. And, on the
21 way, 249 miles outside of Boise, the lights came on. Classic
22 situation. And, within minutes, the -- they pulled to the
23 side, and it was done.

24 We paid \$600 to have the Porsche, and the trailer
25 with the Porsche, towed to Salt Lake. And my husband and son,

1 Matthew, went to the Porsche parade and won first place and had
2 their picture taken with one of the Porsches that was there;
3 Ferdinand, I think. Anyway, I have that here with me.

4 THE COURT: You mean one of the family members?

5 MS. KALANGE: Yes, uh-huh.

6 THE COURT: Okay.

7 MS. KALANGE: And my husband -- I said, Did you talk
8 to him about that?

9 And he said, No, because -- actually, we didn't
10 understand what had happened. And we hoped to resolve it with
11 Porsche because we have a long relationship with Porsche.

12 And, as it turned out, it was very disheartening for
13 us to learn that there was a class action pending. And if we
14 had only known, we would have had the update kit installed.

15 THE COURT: Okay.

16 MS. KALANGE: But the key thing, Your Honor, is that
17 our car had just come from the dealer, the authorized service
18 dealer. It had been in service for 16 days. We picked it up
19 on the Friday before, and nothing was said.

20 They knew we were going to tow a trailer, the thing.
21 There were record temperatures in Boise. We had towed the
22 trailer to two other events, one in Portland and one in
23 Colorado, and never had any trouble. So, we had no reason to
24 think --

25 THE COURT: You mean with the same vehicle?

1 MS. KALANGE: Yes. Same trailer. Same everything.

2 THE COURT: All right.

3 MS. KALANGE: And we had no reason to think there
4 would be a problem.

5 So, to learn that -- our car had just been in the
6 authorized service dealer, and they didn't mention anything
7 about it, and then learn there was a class action, it was a
8 very well known problem, devastated us.

9 THE COURT: Let me refocus you a little bit.

10 MS. KALANGE: Uh-huh.

11 THE COURT: The vehicle and the trailer were towed to
12 Salt Lake?

13 MS. KALANGE: Correct -- no. No, not -- the vehicle
14 was towing a trailer with a 911. It's like a show car.

15 THE COURT: Yeah. I'm familiar.

16 MS. KALANGE: Okay.

17 THE COURT: Okay. But, because of the breakdown, you
18 had to have it towed, the vehicle --

19 MS. KALANGE: Right.

20 THE COURT: -- and the trailer --

21 MS. KALANGE: Yep.

22 THE COURT: -- that was pulling another vehicle?

23 MS. KALANGE: That's correct.

24 THE COURT: You had to have it towed to Salt Lake?

25 MS. KALANGE: Uh-huh.

1 THE COURT: And there, at Salt Lake, through an
2 authorized dealer of some sort, or mechanic, it was repaired?

3 MS. KALANGE: No.

4 THE COURT: It was not repaired?

5 MS. KALANGE: No. That mechanic told us that the
6 engine was fried --

7 THE COURT: Oh, oh, oh.

8 MS. KALANGE: -- because of all the conditions.

9 THE COURT: All right. I didn't catch that.

10 So, what you're saying is, you believe -- well, the
11 vehicle broke down and was inoperable as a result of whatever
12 caused the breakdown?

13 MS. KALANGE: Uh-huh.

14 THE COURT: Now, are you claiming that it was the
15 cooling tubes that caused the breakdown? That's where I'm
16 getting to.

17 MS. KALANGE: Oh, I'm sorry. Yeah.

18 THE COURT: Yeah. I mean, you kind of glossed over a
19 few important points.

20 MS. KALANGE: I know. That's my main problem, --

21 THE COURT: That's all right.

22 MS. KALANGE: -- one of them.

23 But, yes, it's -- in fact, I have the invoice where,
24 the diagnosis at Strong Porsche in Salt Lake, it says: "Due to
25 fractured coolant tubes."

1 And that mechanic and service adviser explained to us
2 that this class action was pending and that we might want to
3 join it.

4 And we said: Oh, no, we wouldn't want to sue
5 Porsche. We love Porsche.

6 So, we went back to Boise and tried to work out a
7 deal with our dealer, who we learned -- who kept repeating:
8 But you didn't buy it here. You bought it in Oregon.

9 And it was crazy, because we said: Well, we've
10 bought seven cars from you, and we tried to buy it from you,
11 but it was a \$20,000 differential on the trade-in of our BMW,
12 which had towed the trailer before, and this Cayenne.

13 THE COURT: Okay.

14 MS. KALANGE: So --

15 THE COURT: I got it. Now I understand what you're
16 saying.

17 MS. KALANGE: Uh-huh.

18 THE COURT: All right. So, then you filed this
19 objection?

20 MS. KALANGE: Right, on behalf of myself and other
21 Porsche owners that either haven't experienced catastrophic
22 engine failure yet but very likely will, because, in our case,
23 our coolant light had never come on before; and it was
24 instantaneous.

25 And Porsche will dispute that, because, actually, in

1 September of 2013, I tried to resolve it directly with Porsche.
2 First I made the mistake of thinking, if I put together a
3 thorough enough law-clerk-like care package, the attorneys for
4 Lyle Pearson would see the light and would help resolve this
5 matter based on the negligent service provided by the dealer.
6 But then I learned that this was forwarded -- not all of it,
7 but a large part of it was forwarded to PCNA in Atlanta. And I
8 spoke with a gentleman there. And I have his name here
9 somewhere. But he told me, Well, we told the dealers not to
10 say anything to our customers unless they said the blue coolant
11 light came on.

12 And, when I heard that, I thought, everything happens
13 for a reason; and, for some reason, this happened to us. And I
14 happen to have a background in law, and I'm going to go make my
15 case to the court.

16 And, so, here I am, --

17 THE COURT: Good.

18 MS. KALANGE: -- much to the chagrin of these fine
19 attorneys, who I know have worked hard to resolve this. And I
20 admire the purpose and the intent behind class actions; but,
21 Your Honor, you stand in a very unique position here, because
22 you can put the teeth back in it.

23 You know. They, Counsel for Plaintiffs, did a great
24 job summarizing everything.

25 THE COURT: They did.

1 MS. KALANGE: And I don't take that away from her.
2 And the CAFA notice did comply. I went to the AG's office, and
3 I checked it out. I have a copy of it. I also have the one
4 from Eisen, the other case that settled. I don't take that
5 away from Counsel. I didn't argue with the amount of attorney
6 fees awarded. And I didn't argue with the \$5,000 per named
7 plaintiff.

8 THE COURT: Right.

9 MS. KALANGE: I think that's relatively fair.

10 What I do take issue with, Your Honor, is the claim
11 that substantial benefit has been conferred upon the class.

12 And when you look at the original prayer for relief
13 in this case, that's not what was prayed for, not even close.
14 When you consider these vehicles cost from 45,000 to 110,000
15 new, it's de minimis in terms if you look at the chart.

16 Now, we fall under -- we only have 54,000 miles. So,
17 we fall under the highest level of recovery. And I'm here to
18 say that, if I felt Porsche AG and PCNA had operated in a
19 reasonable way once they knew of this problem and the
20 implications of it, this would probably be fair; but that's not
21 what happened.

22 In fact, going on NHTSA's website -- and I really
23 hope I'm proved wrong on this -- I couldn't even find Porsche
24 AG registered as a foreign manufacturer. They're registered
25 with respect to the importation of other Porsches, other

1 models, other model years, but not Porsche Cayenne. They have
2 PCNA listed.

3 PCNA is not a manufacturer, Your Honor. It's a
4 distributor.

5 THE COURT: Therein lies one of the big legal issues
6 in this case, ma'am, -- I've got to tell you that right now --
7 one that has been argued strenuously by defendants in this
8 matter, with regard to even jurisdictional issues over
9 Porsche -- I'm sorry -- Porsche -- I call it Porsche Germany.

10 MS. KALANGE: Yeah.

11 THE COURT: You can -- you probably can -- you,
12 better than anyone, can probably understand the legal
13 infighting that's been going on with regard to several of those
14 issues.

15 MS. KALANGE: Uh-huh.

16 THE COURT: And they have been -- they have been at
17 the cutting edge of some of the issues that, actually, I've
18 been watching with regard to Supreme Court decisions and so
19 forth.

20 MS. KALANGE: Me, too.

21 THE COURT: Yeah, I bet you have. Yeah.

22 MS. KALANGE: Goodyear and -- there is another one.

23 THE COURT: You've got it. You've got it.

24 MS. KALANGE: But what I would --

25 THE COURT: It's not a well defined area, is what I'm

1 trying to say.

2 MS. KALANGE: I understand that, Your Honor. But
3 I'll tell you why it's more clear cut than it looks, --

4 THE COURT: Okay.

5 MS. KALANGE: -- because I've lost a lot of sleep
6 over this.

7 THE COURT: Okay.

8 MS. KALANGE: In this case -- I realize
9 jurisdictional issues are tricky sometimes. And part of the
10 reason I'm here is because Porsche AG has fought jurisdiction
11 so hard -- I understand that -- as an advocate, as advocates
12 for Porsche AG.

13 Are there lawyers for Porsche AG here?

14 THE COURT: Yes.

15 MS. KALANGE: Okay. That's -- they're doing their
16 job.

17 THE COURT: Sure.

18 MS. KALANGE: But here is the deal: The NHTSA
19 unequivocally requires all foreign manufacturers that import
20 more than 5,000 cars per year to register as a foreign
21 manufacturer. Period. It's clear. They haven't.

22 THE COURT: Okay. Let's assume they have not. Let's
23 just assume that for a moment.

24 MS. KALANGE: Uh-huh.

25 THE COURT: Where does that get you?

1 MS. KALANGE: Well, where it gets me is that,
2 technically, they've been importing illegally. They've -- PCNA
3 has been sort of their front man and --

4 THE COURT: Which, I guess what you're telling me is,
5 puts them in a bad light, but doesn't help you with damages; is
6 that what --

7 MS. KALANGE: Well, I guess I'm here because, under
8 the Federal Judicial Center -- I don't know --

9 THE COURT: The class action that's --

10 MS. KALANGE: No, the primer that's for courts to
11 look at.

12 THE COURT: Right. Right. Very familiar with it.

13 MS. KALANGE: It's very well done.

14 THE COURT: It's helpful. Yeah.

15 MS. KALANGE: It's stellar. But one of the things it
16 says is that objectors should bring things to the Court's
17 attention that it might not otherwise know.

18 THE COURT: I see. Okay.

19 MS. KALANGE: And this is something I think is
20 significant, because the CAFA notice, the fact that no AGs'
21 offices or that the Attorney General for the United States
22 hasn't objected should not let you think, let you assume, that
23 that means they think this is a good settlement.

24 The AG I spoke with said they get five or six notices
25 a week; they simply do not have the resources to look into

1 them. And, to be honest, people that can buy Porsches are not
2 a sympathetic class.

3 THE COURT: Well --

4 MS. KALANGE: It's true. It's true. I mean, if it
5 was a mini van, it might be a different deal. But the average
6 income of a Porsche buyer is 700,000 a year.

7 I don't meet that, trust me. Otherwise, maybe I
8 would just, you know, eat it and move on. But this was a
9 vehicle that we intended to have, you know, forever. And, so,
10 we made the investment in it.

11 THE COURT: Could I ask you one other thing --

12 MS. KALANGE: Uh-huh.

13 THE COURT: -- just to finish up on what we were
14 talking about earlier?

15 MS. KALANGE: Yes.

16 THE COURT: The vehicle was found to be inoperable.
17 And what is the end result? What's the end result, now, of
18 that vehicle? Was it sold? Was it sold for -- what's going
19 on? Just explain that to me.

20 MS. KALANGE: I would love to, Your Honor. Thank you
21 for giving me the opportunity to do that.

22 The vehicle was towed back to Boise. Our dealer, in
23 Boise, because we're small -- there's about a million people in
24 the entire state --

25 THE COURT: Sure.

1 MS. KALANGE: We only have one authorized Porsche
2 dealer. That dealer, also, is the only authorized dealer for
3 Mercedes, Jaguar, Volvo, Accura, Range Rover, and -- I think
4 that's it. Yeah, that's it. And then Porsche.

5 Anyway, that dealer -- so, they, you know, pretty
6 much have the run of things in the luxury automotive industry
7 in our area.

8 We met with the owner of the dealership, and he knows
9 that we purchased seven cars. He actually is the son-in-law of
10 the former owner, who had died just like two weeks before our
11 car went in. Figures. But, anyway, he initially told us: I
12 don't know what you're talking about. I don't know anything
13 about coolant issues, and your husband drove the car too fast
14 and in the heat, and it's your problem.

15 That was the first response.

16 Then, after I looked into it and realized, oh, no,
17 you had to have known about it, and tracked down their former
18 service adviser, who then worked at Audi -- small town; he is
19 now in Montana, but I talked to him.

20 He said, Oh, yeah, we knew about it. He said, We
21 changed a lot of those, but, he said, we didn't change them
22 until the customer said they were losing coolant.

23 And I am like: But, Scott, how could that be,
24 because, many times, you don't have time to even -- like, in
25 our circumstance, it was the perfect storm: on a highway, you

1 know, pulling a trailer, which is what the Cayenne was marketed
2 to be able to do; and we had no idea about this hidden defect;
3 and yet our \$110,000 investment is done. So, the car has been
4 sitting at Lyle Pearson since July 19th, 2012.

5 Lyle Pearson is the dealer.

6 THE COURT: Okay.

7 MS. KALANGE: They've sent us bills for storage.

8 Ironically, their attorney, well, lives on my street.

9 I called him, because he owned a Cayenne, and I said: Hey,
10 Brad, did you know that your Cayenne has bad coolant pipes?

11 He also has a Carrera.

12 He said: No, I didn't.

13 I said: Well, Google it.

14 Within a week, he was driving -- his wife was driving
15 a Mercedes SUV.

16 So, I tried, Your Honor. I tried to -- I didn't know
17 he was their lawyer. He told me -- he's like: I happen to
18 represent Lyle Pearson.

19 I'm like, Ah, small town. But -- and I sent him this
20 package as well. And then I tried to work with Porsche Cars of
21 North America. And it fell on deaf ears.

22 And part of the reason I'm here is not only for
23 myself, Your Honor, but for those poor souls that are going to
24 submit claims and that are going to be told: Oh, no, you don't
25 qualify, because you abused your Porsche, or whatever, when

1 it's clear that it was the defect, the coolant pipe defect,
2 that causes their engine loss. And it's only going to get
3 worse, because now we're ten years out from 2003, 11 years.
4 And, in our case, we had no notice that there was a problem, no
5 lights, nothing. It was just like one light, the other light,
6 and then the engine shut down.

7 So, I really think that the safety issue is going to
8 escalate. It's already a safety issue. You acknowledged that
9 in your motion to dismiss order from July of 2012. That was
10 part of why I was willing to fly here, because that was an
11 excellent decision.

12 I'm assuming the law clerk in the back wrote it for
13 you, helped you write it.

14 THE COURT: We didn't let him touch this case. Oh,
15 no.

16 MS. KALANGE: Okay. Well -- oh, there you go.
17 Excellent work! Yeah.

18 But I noted that you recognized enough was pled for
19 unconscionability. And I absolutely agree. And it truly
20 disheartens me to admit it because I hold Porsche in such high
21 regard.

22 They do make great vehicles. I believe that their
23 engineers were saddled with the task of designing a car that
24 would beat BMW's X5, the Volvo, the Mercedes and Range Rover.
25 And, in doing it, they took some weight off by putting the

1 plastic pipes so it would go faster, be more efficient, be the
2 sports car SUV that stood out. And that ultimately has made
3 Porsche the most profitable car manufacturer in the world, in
4 the world, Judge; and yet they don't register with the National
5 Highway Traffic and Safety Administration, which is amazing to
6 me; and they continue to import Cayennes and sell like crazy in
7 the United States.

8 But guess what else?

9 I looked at, internationally, what, you know, safety
10 provisions are out there. There are special -- which is back
11 in my bag back there -- the EVS. It's the -- I can't think of
12 what the acronym is for, but it is a European vehicle safety
13 organization. They have meetings every year, with the NHTSA
14 orchestrating aspects of it, and then different safety
15 organizations from the Federal Republic of Germany, from
16 different European governments. It's so impressive.

17 If you look up EVS and ISO, which is the
18 International Safety Organization, both of those are dedicated
19 to safety. And, ironically, one of the big meetings in 2009
20 was held in Stuttgart, Germany.

21 Porsche is not oblivious to its role, or its
22 dominance, in the American market. I don't know how they've
23 gotten away without registering, but I bring it up because, as
24 you know, Judge, our federal government is practicing austerity
25 measures. It's struggling. And I called every number on the

1 NHTSA website, and I got an answering machine from a different
2 person in every number, and I didn't bother them because I was
3 just trying to pin down what happened to one of the complaints
4 about the Porsche Cayennes that was filed back in 2005. It was
5 just a consumer complaint, but I couldn't find it.

6 But what I did find, Judge, is that the NHTSA
7 relies -- this is key, Judge -- relies on self reporting by
8 manufacturers and distributors. Either one can report. One
9 report fulfills the obligation of the other, but they're
10 supposed to report within five days of any report of a problem,
11 including problems with engine cooling systems. That's
12 specifically on their list.

13 For whatever reason, Porsche Cars of North America
14 didn't report it. I'm pretty sure I know why Porsche AG didn't
15 report it: because they didn't think they were on the radar.
16 And, yet, all of these issues have, you know, just continued to
17 grow. And now we're at a point where some people can get a
18 hundred bucks or they can go to the dealer, the same dealer
19 that they may have been taking their Porsche to for ten years
20 who never told them that there was this latent defect, who
21 never mentioned it even though they might have taken it on
22 summer vacations or whatever.

23 I am here, Judge, to ask -- I know you can't -- it's
24 not your role to design the settlement. I get that, but you
25 get to influence, Judge. You get to influence what these

1 lawyers do. And I can also appreciate, having read some of
2 your orders about discovery, that you want this case to go
3 away. I don't blame you.

4 THE COURT: I want every case to go away.

5 MS. KALANGE: I know you do. I remember that whole
6 reporting thing and how many closures and -- so, I get it.
7 But, Judge, please don't approve this settlement.

8 I'm not objecting to the attorneys' fees. I'm not
9 objecting to the payments.

10 THE COURT: I understand. I understand.

11 MS. KALANGE: I just really believe that Porsche
12 AG -- and I know they're out there even -- they haven't been
13 dismissed. And if you want to, you know, not deal with them, I
14 really believe Porsche Cars North America had the obligation,
15 the duty, to notify the NHTSA as a distributor. And they
16 didn't.

17 THE COURT: Let me ask one last question here.

18 MS. KALANGE: Yeah.

19 THE COURT: I'm trying to pronounce your name.
20 Kalange?

21 MS. KALANGE: Kalange.

22 THE COURT: Okay. Ms. Kalange, what is it you would
23 want me to do?

24 MS. KALANGE: That's a really good question, Judge.

25 THE COURT: That's why we are here.

1 MS. KALANGE: Yeah. I grappled with that.

2 For one thing, I thought, besides Porsche AG not
3 being part of it, which was really strange, because Paragraph
4 17 and 18 --

5 THE COURT: I'm going to have to focus you real
6 quick. What is it you want me to do?

7 MS. KALANGE: Create a subclass of people like myself
8 that sustained catastrophic engine failure, perhaps, under the
9 circumstances like we had where our car was just in for service
10 and yet the dealer, operating under the auspices of Porsche
11 Cars North America and at the direction of Porsche AG, did not
12 tell us anything, and pursue relief that way. That would be
13 one option. So, there would be a subclass, and that would go
14 on separate from this other action. And then I believe
15 punitive damages can be proven.

16 The reason I feel that is, the conduct in this case
17 is egregious. It is unconscionable. And Porsche AG, as the
18 most profitable manufacturer in the world, needs to be
19 punished. There needs to be something.

20 You know, it was in the '70s that the exploding Pinto
21 gas tank case came out. I can't think of what that's called.
22 But it astounds me that we're even here today. I can't believe
23 it. And I really believe a lot of Americans would flip out if
24 they realized this happened, that a company that is so
25 profitable can put a car on the road and know about these

1 defects and not report it to the NHTSA.

2 And, Your Honor, the NHTSA, bless them, because they
3 have more work than they can handle as it is; but, Your Honor,
4 they only are as successful at keeping people safe as
5 manufacturers and distributors are willing to let them know
6 about problems.

7 THE COURT: Self reporting.

8 MS. KALANGE: Yeah. That's what they rely on. And
9 they have to, because they don't have the resources to do it
10 any other way.

11 THE COURT: I understand.

12 MS. KALANGE: So, Your Honor, I'm just asking you to
13 hold them accountable.

14 If corporations were angels or if they were just -- I
15 don't expect them to be infallible, Your Honor. I don't think
16 that's the standard.

17 The guy that I spoke to from Porsche said: Well,
18 everything fails eventually. You know. Your alternator would
19 fail. Would you want your repairman to tell you "Have a new
20 alternator because that might fail"?

21 And I said, There's not a class action about
22 alternators.

23 THE COURT: I understand.

24 MS. KALANGE: So, thank you, Your Honor.

25 THE COURT: Thank you, Ms. Kalange.

1 I'm going to give counsel for the plaintiff and
2 counsel for the defendant an opportunity to respond, but I had
3 way too much coffee this morning, so I've got to take about a
4 two-minute break.

5 MS. KALANGE: Your Honor, before you do that, could I
6 point out two other things I forgot?

7 THE COURT: Quickly.

8 MS. KALANGE: Actually, I need to go, too. Can I do
9 it when I come back?

10 THE COURT: No, no. Tell me now.

11 MS. KALANGE: That's a good move.

12 Number one, there is a specific tool at the disposal
13 of all Porsche service technicians for checking coolant leaks.
14 It's a little tool in their repertoire of tools that Porsche
15 provides for them, #1.

16 THE COURT: Right.

17 MS. KALANGE: And, #2, there's a checklist that
18 Porsche has for repairing Cayennes specifically. And it's
19 supposed to be done at the end of any service of any type on a
20 Cayenne. And it includes all those systems and checking
21 coolant leaks and so forth.

22 So, I would contend that it's also incumbent on them
23 to advise customers of Porsche that there's a preventative
24 maintenance issue that should be addressed.

25 THE COURT: Thank you.

1 MS. KALANGE: Thank you.

2 THE COURT: Let's take just a short break, seven
3 minutes, seven or eight minutes.

4 Thank you.

5 (Whereupon, a recess was taken at 9:53 a.m., and the
6 proceedings reconvened at 10:05 a.m.)

7 IN OPEN COURT:

8 THE COURT: Thank you.

9 Counsel for the plaintiff, Ms. Kavanagh, do you wish
10 to respond to the objector's arguments?

11 MS. KAVANAGH: Yes, briefly, Your Honor, if I may.

12 THE COURT: Of course.

13 MS. KAVANAGH: First of all, Your Honor, you know --
14 and this is on behalf of the whole plaintiffs' team -- we're
15 very sympathetic to the experience that Ms. Kalange had. It
16 certainly did not sound like something somebody would want to
17 experience, and it's very unfortunate. However, what she has
18 described here highlights exactly why this settlement is fair
19 and reasonable, because it addresses -- it's a compromise of
20 highly disputed claims.

21 So, what Mrs. Kalange has described here becomes very
22 individualized. She explains that, on her trip, there were
23 record temperatures; that the Porsche dealership that she took
24 the car into claimed that she may have been driving too fast.

25 These are exactly the type of factual defenses that

1 Porsche has raised in the litigation as being the cause of the
2 premature fracture and degrading of the coolant pipe. And,
3 certainly, for class certification purposes, it would have made
4 class certification more uncertain to have to look into all of
5 these individualized issues that Porsche had raised and
6 certainly would have continued to raise throughout the
7 litigation.

8 In addition, the motion to dismiss decision that Your
9 Honor authored was a very detailed decision, and certain of
10 plaintiffs' claims survived; but, for Ms. Kalange, a motion to
11 dismiss decision is simply that the plaintiffs had adequately
12 pled their claims. It doesn't -- it's not an opinion on the
13 actual merits of their claims or whether they would be in a
14 position to prove their claims.

15 The Court should also consider, and it's plaintiffs'
16 request, that Ms. Kalange's objection be overruled, that there
17 is over 42,000 class members, and counting, who are entrusted
18 and receiving their benefits in this case. And, absent the
19 settlement, should the objection not be overruled, these
20 42,000, which is likely to rise, will be deprived of the
21 benefits that they want in the case.

22 And for Ms. Kalange in particular, as she pointed
23 out, she is at the highest reimbursement level that's possible
24 here. So, there's many people that are satisfied with
25 receiving less and, in some cases, substantially less than

1 Mrs. Kalange; and they would like to be paid.

2 With respect to receiving notice from Porsche about
3 this potential issue, that's exactly why the class-action
4 settlement here is beneficial to class members. As Mr. Kiniry
5 will point out, Porsche doesn't believe it did anything wrong
6 here. It believes it has many defenses, and it believes it
7 would have succeeded had the case gone to trial. Settling the
8 case now gave the opportunity to send notice out to all
9 potential class members so they could do something and could
10 have the opportunity to benefit where, absent the settlement,
11 that would not have happened for many years if at all. So,
12 many people might have just replaced their pipes having no idea
13 that they had potential legal claims and could benefit from the
14 settlement.

15 The settlement adequately protects class members'
16 rights, Your Honor, because it also provides an opportunity to
17 opt out. Okay? So, in the instance where somebody feels that
18 their injury had exceeded what might be available under the
19 settlement, they have the opportunity to opt out and proceed
20 with their own case at their own cost and expense and risk.

21 With respect to the safety issue that Mrs. Kalange
22 raises, the private litigants don't have the authority to go to
23 the National Highway Traffic Safety Administration and request
24 a recall. And there is an exclusion to the release for any
25 personal injury claims, as well, that further protects class

1 members; but, again, this is an instance where Porsche does not
2 believe that the product was defective and they were outside
3 the written warranty period. So, the settlement of these
4 claims was appropriate under these uncertain circumstances.

5 Thank you.

6 THE COURT: Thank you, Ms. Kavanagh.

7 Mr. Kiniry, do you wish to respond?

8 MR. KINIRY: Thank you, Your Honor.

9 THE COURT: Sure.

10 MR. KINIRY: Earlier, Your Honor, when you asked me
11 to comment following Ms. Kavanagh's presentation, one of the
12 things I had on my note pad that was not mentioned but I
13 decided not to mention it in the interest of the Court's time
14 was the simple fact that every class vehicle involved in this
15 settlement is beyond the warranty, four-year or 50,000-mile
16 warranty, every single one.

17 Every penny in this settlement can, I believe, be
18 considered found money. Our belief is that there is no
19 obligation on the part of the company beyond that warranty; and
20 every one of these cars, including the car of Ms. Kalange, and
21 her car in particular, is well beyond the warranty. I believe
22 she said she had a 2005 Cayenne Turbo. Maybe she said 2006.
23 I'm not sure.

24 I will say this: that we did receive her notice --
25 her objection, and none of that information is in her

1 objection. So, we're hearing -- both sides, I think, are
2 hearing all of that information today for the first time.

3 With respect to the safety issue, Ms. Kalange did not
4 state a safety issue. In fact, no one has stated a safety
5 issue. The closest we got to it was this Court deciding that
6 plaintiffs' complaint maybe had enough to get past 9(b) muster
7 on that point. But, out of 42,000 cars out on the highway with
8 the model years at issue, being 2003 through 2006, there hasn't
9 been a safety issue yet.

10 So, the business about I love the company but I think
11 I should get punitive damages because of some unconscionable
12 behavior, because what? Because we honored all of our
13 warranties? Because the car has performed well past that?
14 Because there hasn't been a safety issue?

15 And my dealer didn't tell me what was going on --
16 every dealer -- and I think it's in the pleadings, so it's in
17 the record -- every dealer for Porsche Cars is an independent
18 business, Your Honor. None of them are owned or operated by
19 Porsche Cars North America, Porsche AG. They're independent
20 businesses.

21 Ms. Kavanagh made a very good point. This is a
22 putative class action. This case is being resolved as a class
23 action. What we heard today was a story which screams for
24 individual inquiry, which would, obviously, be very detrimental
25 to the business of being able to resolve this matter as a class

1 action and, therefore, is antithetical to the class.

2 I believe that the objector told us that she is a
3 lawyer. We did not see anywhere in her filing with this Court
4 the points that she made today, nor did we see a request to opt
5 out, which certainly was her entitlement to do had she done it
6 timely.

7 The objector, today, complains that Porsche AG is not
8 covered in this settlement. And, of course, that's not
9 correct. Paragraph 18 of the settlement agreement covers that.

10 And, as far as this business about who is the
11 importer of the car, the cars are imported to the United States
12 by Porsche Cars North America, registered with NHTSA.

13 THE COURT: Thank you, Mr. Kiniry.

14 MR. KINIRY: Thank you, Your Honor.

15 THE COURT: Well, in light of the objection, the
16 Court will take the settlement agreement, proposed settlement
17 agreement, under advisement; and the parties will be notified
18 accordingly.

19 All right. Let's go on with, then, the attorneys'
20 fees and cost matter.

21 Mr. Travaglio, you may speak to that if you wish.

22 MR. TRAVALIO: Thank you, Your Honor.

23 And consistent with the Court's advice in the
24 telephone conference, I will try to be brief, despite my
25 professorial --

1 THE COURT: Your proclivity?

2 MR. TRAVALIO: -- proclivities to the contrary.

3 Your Honor, plaintiffs have submitted an unopposed
4 fee petition in the amount of \$4,500,000, costs of \$131,299,
5 and service payments of \$5,000 each to our named plaintiffs.
6 Plaintiffs believe each of these requests is fully justified.

7 Let me first talk about the fee request. And,
8 initially, Your Honor, I want to highlight two related facts
9 that I would ask Your Honor to keep in mind in evaluating the
10 fee request.

11 First, Your Honor, this is not a case in which the
12 Court should be concerned that plaintiffs' counsel somehow
13 traded the class's interests off for a fee.

14 As you know, I believe, the fee agreement between
15 plaintiff and defendant in this case was reached only after
16 relief to the class was fully and finally determined. There
17 was no discussion -- there's no negotiation of fees before the
18 settlement was concluded.

19 Plaintiffs and the defendant were fully prepared to
20 litigate fees. In fact, Your Honor, we had fully prepared a
21 contested fee petition that we were getting ready to file with
22 the Court when Mr. Kiniry and the plaintiffs decided to give
23 mediation one last chance to resolve the fee issue. So, the
24 class relief was not influenced by the requested fees. And,
25 given the course of events, it couldn't have been influenced by

1 the request for fees.

2 Second, Your Honor, this is not a case where the
3 defendants simply agreed to create a single pot of money; the
4 defendants are asking for a piece of it; and the defendant or
5 -- excuse me -- the plaintiffs are asking for a piece of it;
6 and the defendants are indifferent as to where the money goes.
7 Again, the defendants have agreed to pay the fees separate and
8 independent of the relief that you heard Ms. Kavanagh talk
9 about to the class. I ask Your Honor to keep those two things
10 in mind, overarching, as we discuss the request for fees.

11 As Your Honor is aware, courts have broad discretion
12 in determining attorney fee awards. You have the discretion to
13 determine the most appropriate methodology in deciding whether
14 or not a fee request is fair and reasonable. And courts, as
15 you know, have adopted two general approaches: the lodestar
16 and the common fund approach.

17 Moreover, as Judge Beckwith, of this district,
18 recognized in *Bower vs. MetLife*, quote: "Negotiated and agreed
19 upon attorneys' fees as part of a class-action settlement are
20 encouraged as an ideal toward which the parties should strive."

21 And, as I just mentioned, this was an agreed attorney
22 fee petition, agreed in the sense that Mr. Kiniry is not
23 opposing it; and it was only arrived at after strenuous
24 negotiation and a day-long mediation. Having said all of that,
25 the touchstone, of course, is that the requested fee be

1 reasonable. And, as explained in our motion, we believe the
2 lodestar approach is preferable in this case; but the fee, we
3 think, is clearly reasonable under the lodestar approach, under
4 a common-fund approach, or under a cross-check, vice versa.

5 We've already filed with the Court our declarations
6 and our detailed summaries supporting the requested fees. With
7 the additional time since the filing of the petition,
8 plaintiffs' attorneys have now spent over 8,000 hours on this
9 case and 132,000, roughly, in costs, which at all times, Your
10 Honor, was at risk. In this case, until we reached the
11 settlement, even today, because Your Honor still has to approve
12 the settlement, plaintiffs' investment of time and plaintiffs'
13 investment of money has always been at risk in this case.

14 Your Honor's fully aware of the complexity of the
15 case involving difficult jurisdictional issues, involving novel
16 theories, involving undecided questions of law, some of which
17 Your Honor decided. Just the 12(b)(6) motion and the response
18 and the reply occupied over 400 pages of briefing, involved
19 intensive research and analysis. And, consistent with Your
20 Honor's order, plaintiffs' counsel periodically reviewed the
21 hours and the time put in by plaintiffs' counsel to ensure that
22 the case was being efficiently prosecuted, to ensure that it
23 was streamlined in the way in which we approached all of the
24 aspects of the case. And we've done that all along, Your
25 Honor.

1 With respect to the rates that are on plaintiffs'
2 lodestar request, although the hourly rates differ to some
3 degree, as I'm sure Your Honor is aware, it's plainly
4 appropriate in multi-district litigation to review counsels'
5 hourly rates in relation to the venues where their case
6 originated.

7 As you know, Your Honor, this is an MDL case, and it
8 consolidated cases from a variety of jurisdictions where my
9 co-counsel had originally filed their cases. They had no
10 control over whether the case got MDL'd, and they had no
11 control over where it got MDL'd. It got MDL'd in Ohio. I'm
12 glad about that, but the fact is that, in evaluating the
13 reasonableness of the fees, reasonableness of the rates, it
14 makes sense to consider the fact that these cases were filed in
15 California or filed in New York; not all of them were filed in
16 Ohio; but that's where they ended up. And, so, it's
17 appropriate to view the rates from the jurisdictions, from the
18 venues in which they originated.

19 And, in fact, Judge Dlott, in *Lowther vs. AK Steel*, a
20 recent case, held, and I quote: "The reasonable hourly rate is
21 determined by reference to the prevailing market rates in the
22 relevant community. In ascertaining the proper community,
23 district courts may look to national markets, an area of
24 specialization, or any other market they believe is appropriate
25 to fairly compensate attorneys in individual cases."

1 In MDL cases, as I explained, Your Honor, I think the
2 appropriate market to fairly compensate the attorneys is the
3 market in which they filed the original cases.

4 In the Lonardo case, which we cited in our petition,
5 the Court approved rates up to \$825, per hour, for out-of-state
6 attorneys based -- and I'll quote -- on this Court's knowledge
7 of attorneys' fees in complex civil litigation and
8 multi-district litigation.

9 Plaintiffs have requested in this case, Your Honor, a
10 modest multiplier of 1.29. Actually, the multiplier is now
11 1.21 and may even be lower given the work the various counsel
12 have done between January 16th and February 28th, including the
13 preparation of the motion for final approval and the
14 preparation for this hearing.

15 Your Honor, I've got an exhibit that I mentioned on
16 Thursday in the conference that we would be giving to the Court
17 which outlined the hours between January 16th and February
18 28th. And, as I said, it actually results in a multiplier of
19 1.29. Our -- excuse me, 1.21.

20 THE COURT: Let me be sure that the record is
21 correct, or at least is understandable with regard to this
22 multiplier.

23 MR. TRAVALIO: Yes, Your Honor.

24 THE COURT: In order to keep everyone under the
25 cap -- that is, the \$4.5 million cap -- it was necessary to

1 lower the multiplier because of additional hours that have been
2 incurred since the initial filing, correct?

3 MR. TRAVALIO: That's exactly right, Your Honor.
4 This has absolutely no impact on increasing or decreasing the
5 \$4,500,000.

6 THE COURT: Right.

7 MR. TRAVALIO: It's simply, as Your Honor is aware,
8 the case law in this district takes a look to see if any
9 multiplier is reasonable. And we just wanted to make sure that
10 Your Honor is aware of sort of where the multiplier now stands.

11 THE COURT: Right.

12 MR. TRAVALIO: So, I do have --

13 Mr. Kiniry, I'll give you guys a couple of these.

14 MR. KINIRY: Thank you, Greg.

15 MR. TRAVALIO: This brings us up to February 28th.

16 Give this to Judge Frost, please.

17 THE COURT: Thank you.

18 MR. TRAVALIO: Now, Your Honor, to slightly
19 complicate the matter, but I don't want to dwell on this, we
20 received, this morning, an additional affidavit from Wolf
21 Haldenstein from a Mr. Krasner. We had already received an
22 affidavit, which is included as the first affidavit in the
23 exhibit, from Mr. Krasner. And then we received the second
24 one.

25 What the difference between these two affidavits is

1 is that the second affidavit uses the figure of \$810, per hour,
2 as Mr. Levitt's time.

3 Excuse me. Let me -- \$850 an hour. I'm sorry.

4 If you look at the first affidavit, the first
5 affidavit uses Mr. Levitt's 850. That's the one we received
6 today. The one we received earlier has Mr. Levitt at \$710 an
7 hour.

8 THE COURT: I see. Okay.

9 MR. TRAVALIO: What the second affidavit does is
10 raise Mr. Levitt's hourly rate to the hourly rate that
11 Mr. Levitt is now receiving as opposed to the hourly rate that
12 he received at the time that he was at Wolf Haldenstein.

13 THE COURT: All right. And is no longer there now?

14 MR. TRAVALIO: And is no longer there now. That's
15 correct, Your Honor.

16 I again emphasize -- and I know it's a little bit
17 confusing with these various affidavits. I again emphasize,
18 Your Honor, none of this has anything to do with changing our
19 requested fee. It only impacts the total amount of the
20 lodestar and the eventual multiplier. So, whether or not the
21 Court wants to use the original affidavit with Mr. Levitt's
22 time at \$710 an hour or the second affidavit, which we just
23 received this morning, at \$850 an hour, it does not impact the
24 amount that plaintiff is requesting. It simply influences, and
25 only then to a modest degree, the multiplier that plaintiffs

1 are requesting.

2 And I'm sorry for that sort of digression, Your
3 Honor.

4 THE COURT: No. I understand completely.

5 MR. TRAVALIO: The multiplier that we're requesting
6 is well within those that have been approved by courts in the
7 Sixth Circuit in the past four years, and far below some that
8 have been allowed. And most of these cases, Your Honor, we've
9 cited in our petition. And I'm certainly not going to go
10 through them all again.

11 I would just say that the recent case, Sixth Circuit
12 case, of Van Horn vs. Nationwide Property & Casualty, the Sixth
13 Circuit affirmed the award of a lodestar multiplier virtually
14 identical to the one requested here, the 1.21, even though the
15 case involved, and I quote, a relatively insignificant claim
16 and involved no novel issues. I, frankly, don't think that's
17 the case in this case.

18 As the Court knows, in determining the appropriate
19 multiplier, this Court has, in fact, applied the Ramey factors.
20 We've analyzed each of those factors in our petition. I'm not
21 going to repeat that analysis; but I will say, this Court
22 stated and, I think, logic and reason demand that the most
23 important factor is the result that we've obtained for the
24 class given this case.

25 Your Honor is aware of the settlement. This isn't a

1 coupon settlement. It is not a settlement that provides some
2 nominal cash amount. It's not a settlement that requires
3 navigating imposing procedural hoops in order to achieve some
4 marginal amount of money or some marginal recovery.

5 Given the difficulties faced by plaintiffs' counsel
6 in this case, this is an excellent settlement. It gives real
7 money, significant amounts of real money, to real people. And,
8 at this point, well over 4,000 claims have already been filed.
9 And, as Your Honor knows, there is still a lot of time left in
10 which to file claims, and claims keep coming in on a regular
11 basis.

12 As I mentioned earlier, Your Honor, all of
13 plaintiffs' hours and expenses were incurred entirely at
14 counsels' risk. As Your Honor has recognized in the Kritzer
15 case, some courts consider the risk of non-recovery as the most
16 important factor in a fee determination. Plaintiffs'
17 counsel -- and Mr. Kiniry and I have disagreed on this from day
18 one. Plaintiffs' counsel has always believed that its case was
19 sound in law and fact; but, at the same time, we were cognizant
20 of the many hurdles and avenues of attack that Mr. Kiniry had,
21 some of which were successful in the 12(b)(6) motion and others
22 of which I'm sure he was just itching to assert against the
23 plaintiffs.

24 This was a difficult case. And, viewed in this
25 light, I think the result that we achieved was an exceptional

1 result. And the fact is, I think, Your Honor, viewed in this
2 light, plaintiffs' lodestar and multiplier, unopposed by
3 defendants, is imminently reasonable.

4 And even though -- we talked about a cross-check a
5 little earlier, Your Honor. Even though a cross-check is not
6 mandatory, when cross-checked using a common-fund analysis --

7 THE COURT: I've already done that.

8 MR. TRAVALIO: Okay. And then Your Honor understands
9 that it's a very reasonable percentage using a cross-check in
10 this case, and I won't belabor it.

11 THE COURT: Did you wish to speak to the cost issue
12 at all?

13 MR. TRAVALIO: Yes, Your Honor.

14 THE COURT: Okay. I just wanted to make sure.

15 MR. TRAVALIO: Just briefly.

16 The next thing I want to -- two things I want to
17 mention, finally, with respect to the fee. And then we'll talk
18 about, very briefly, about the service payments and talk about
19 the cost issue.

20 THE COURT: Okay.

21 MR. TRAVALIO: I think it is important -- and I
22 quoted from Judge Dlott earlier -- that plaintiffs' request is
23 not opposed by the defendant. This has to be considered in
24 evaluating the reasonability of the request.

25 I think it's safe to say, although Mr. Kiniry can

1 contest this if he likes, that Mr. Kiniry's unlikely to be
2 unduly sympathetic to plaintiffs' fee request.

3 Bill, is that a fair statement?

4 THE COURT: That's probably --

5 MR. KINIRY: (Nodding affirmatively.)

6 THE COURT: Probably a statement that he won't have a
7 lot of problems with.

8 MR. KINIRY: I'm making real progress in my anger
9 management courses. I'll say nothing.

10 THE COURT: Well, there is that problem with eating
11 the Porsche, but --

12 MR. KINIRY: We'll address that later.

13 THE COURT: Okay.

14 MR. TRAVALIO: Your Honor, this fee agreement was
15 arrived at only after a period of what I would call intense
16 negotiation and a difficult and contentious mediation.

17 And again, as I mentioned the Lowther case, the Court
18 said in the Lowther case that the length between -- or excuse
19 me -- a fee agreement that had been negotiated at arms' length
20 between sophisticated counsel weighed strongly in terms of
21 approving a requested fee application.

22 Finally, Your Honor, it's, I think, testament to the
23 reasonability of the plaintiffs' request that, of the tens of
24 thousands of class members, the plaintiffs' fee request didn't
25 garner a single objection. And as Judge Dlott observed, the

1 lack of objections is strong evidence of the acceptability of a
2 fee request.

3 I think, as my colleague, Ms. Kavanagh, has already
4 pointed out, the total number of objections is tiny; and, of
5 that tiny number, none have complained about the attorneys' fee
6 request.

7 And, finally, Your Honor, I would just -- even though
8 we haven't attempted to evaluate it, haven't attempted to
9 summarize it, there has been a lot of work done, even after
10 February 28th, getting ready for this hearing. And that time
11 which would add to the lodestar, and even decrease the
12 multiplier further, is not accounted for anywhere, just to
13 mention it. It's not going to have a significant impact on it,
14 but I do want to emphasize it as further evidence of the
15 reasonableness of the multiplier that we're asking for.

16 THE COURT: Mr. Travaglio, do you intend to file
17 something to update us on that period of time?

18 MR. TRAVALIO: If the Court so desires.

19 THE COURT: No. It's up to you. They're your fees.
20 It's going to either increase the amount of fees and decrease
21 the multiplier or --

22 MR. TRAVALIO: Your Honor, I can consult with my
23 co-counsel, but my own feeling is that those additional hours
24 are not going to have a sufficient effect. If a multiplier of
25 1.29 --

1 THE COURT: 1.21.

2 MR. TRAVALIO: -- or 1.21 is okay, a multiplier of
3 1.17, you know, four hundredths of -- five hundredths is not
4 going to make that much difference.

5 THE COURT: I agree.

6 MR. TRAVALIO: I just simply want to draw the Court's
7 attention to the fact that there has been a significant amount
8 of work that's occurred between February 28th and March 10th,
9 the date of this hearing.

10 THE COURT: Okay.

11 MR. TRAVALIO: Well, Your Honor, I do want to talk --
12 and I will be very brief -- about the service payments to the
13 plaintiffs' named counsel.

14 We've requested --

15 THE COURT: Plaintiffs' named counsel?

16 MR. TRAVALIO: Excuse me. Counsels' named
17 plaintiffs. Cases' named plaintiffs.

18 I'm sorry.

19 THE COURT: That's all right.

20 MR. TRAVALIO: You know, when you get older, words
21 get confused.

22 THE COURT: I've noticed that with you.

23 MR. TRAVALIO: You've noticed it in me, Your Honor,
24 or you've noticed it in yourself?

25 THE COURT: Yeah.

1 I knew you couldn't help yourself. You'd have to
2 come back.

3 Proceed. On the service payment, proceed.

4 MR. TRAVALIO: Yes, Your Honor. Thank you.

5 We're asking for service payments of \$5,000, each, to
6 the named plaintiffs.

7 District Courts in the Sixth Circuit have regularly
8 approved service payments to named plaintiffs. The amounts
9 requested are reasonable given the services rendered. The
10 named plaintiffs came forward with their cases. They've
11 reviewed and discussed the allegations in the complaint. They
12 compiled documents and provided other information necessary for
13 the initial disclosures. They assisted in responding to
14 requests for production and interrogatories related to
15 jurisdiction. They corresponded regularly with counsel on
16 developments in the case. And, in some cases, they preserved
17 and even mailed various engine parts to the plaintiffs' counsel
18 in the case. And, of course, they ultimately read, considered,
19 and approved the settlement in the case.

20 As I said, courts in the Sixth Circuit have
21 recognized that reasonable service payments are a necessary
22 incentive. The \$5,000 service payment requested in this case
23 is keeping with that permitted in other cases in the Sixth
24 Circuit.

25 The Lonardo case, which I mentioned, similar in some

1 ways in complexity and similar in terms of the plaintiffs'
2 contributions, the named plaintiffs' contributions, approved
3 precisely the equivalent \$5,000 service payment requested in
4 this case.

5 The payments to the named plaintiffs will not reduce
6 payments to the settlement class. No objections have been
7 filed, again, to the amount of service payments requested. And
8 again, finally, in assessing the reasonability of service
9 payments, courts generally and courts in this circuit have said
10 that it's important that they be evaluated in relation to the
11 quality of the settlement class to make sure that the service
12 payments to the named plaintiffs aren't unduly disproportionate
13 to the settlement given to the settlement class.

14 Well, as I said and as Ms. Kavanagh has explained in
15 detail, this is a great settlement. And the settlement
16 payments, or -- excuse me -- the service payments that we're
17 asking for are certainly not disproportionate.

18 And as to the costs, Your Honor, I don't have
19 anything to add to our motion. However, as we discussed in the
20 phone conference with Your Honor last Thursday, plaintiffs
21 request that the Court approve a supplemental request, or
22 approve the filing of a supplemental request, within the next
23 seven days. That will update all costs incurred subsequent to
24 January 15th, including the credit that Mr. Kiniry has agreed
25 to give the plaintiffs for the supplemental mailing to the

1 class.

2 THE COURT: Oh, yeah.

3 MR. TRAVALIO: We ask that you give us that seven
4 days to file that. As we represented -- as I represented to
5 the Court during that phone conference, the supplemental
6 request will not result in seeking any costs beyond the
7 \$250,000 that we've placed in the notice and that we have
8 agreed with Mr. Kiniry is the cap on plaintiffs' costs.

9 Your Honor, we ask that you approve plaintiffs'
10 unopposed application for fees, costs, and service payments.

11 And I'm available for any questions, Your Honor.

12 THE COURT: No. I have no questions, but I did want
13 to congratulate both counsel, both sides, in this regard. This
14 reminder notice, I think, is a great idea. I really do. I --
15 I'll have to admit, I don't think I've run across it before,
16 and it may be -- it may not be that unusual in cases, but it
17 was to me, and I thought that was a good idea. I was surprised
18 about the cost of a reminder, but I think it's a great idea in
19 this case.

20 MR. TRAVALIO: Your Honor, I -- I mean, in that
21 regard, if I could just say one thing.

22 I mean, as Your Honor knows, the relationship between
23 counsel at the onset of this case was difficult. And I
24 certainly want to convey my appreciation to Mr. Kiniry on that
25 particular issue and on other issues that arose subsequent to

1 some of that initial contention. And I appreciate his
2 cooperation on that issue, but I also appreciate -- and I think
3 I speak for all my co-counsel -- his cooperation and
4 professionalism in getting this case resolved.

5 THE COURT: Thank you. And I'm sure he appreciates
6 it. Thank you, Mr. Travaglio.

7 MR. TRAVAGLIO: Thank you, Your Honor.

8 THE COURT: Mr. Kiniry, do you wish to respond?

9 MR. KINIRY: Yes, Your Honor, I do. And I want to
10 thank Greg and all the members of the plaintiffs' bar for
11 allowing us to bury some of the hatchets and get down to
12 business.

13 THE COURT: After we got rid of the pearl of Detroit,
14 whatever his name was. What was that?

15 MR. KINIRY: I thought you put his portrait in the
16 courtroom here. I had to look a couple of times.

17 THE COURT: You did look at it -- it does look a bit
18 like him, doesn't it?

19 No. We chose not to. But, yeah, after we got rid of
20 him, things started to smooth out a little bit. But go ahead,
21 Mr. Kiniry.

22 MR. KINIRY: I want to make sure that the record is
23 clear. I think Greg covered this; but, with respect to the
24 additional cost on the reminder notice, the expense of which is
25 really driven by the U.S. Postal Service and the amount of

1 postage and the number of notices that we are sending out, but
2 the agreement is that class counsel is paying half of that cost
3 even if that half runs past the credit.

4 THE COURT: Yeah. My quick calculations last week
5 indicated that it might go above the cap of costs, but I wanted
6 to make it clear last week and I want to make it clear today on
7 the record that, if it exceeds the cap, they eat it.

8 MR. TRAVALIO: Your Honor, that's correct.

9 THE COURT: Yeah. Okay.

10 MR. KINIRY: That's the only point I wanted to
11 clarify on the record.

12 THE COURT: I don't blame you.

13 MR. KINIRY: Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Kiniry.

15 Well, gentlemen and ladies, first of all, with regard
16 to the order, I've signed that, and it will be filed
17 immediately after this hearing.

18 With regard to clarifying the dates issue that arose
19 just recently, that will be taken care of.

20 I do want to say one thing to Ms. Kalange.

21 And it's easy, Ms. Kalange, I'll have to tell you, to
22 come in here and make these allegations. And I agree with
23 plaintiffs' counsel that you have one of the worst scenarios, I
24 think, that's been presented to the Court, at least from what I
25 know. And I don't know as much as plaintiffs' counsel does.

1 But I just wanted to make sure you understand that this has
2 been hard fought. This hasn't even -- this has not been an
3 easy case at all. And I want to make sure that you understand,
4 leaving here, that Mr. Kiniry has not conceded one point in
5 this matter.

6 And if the Court were to proceed, we're talking about
7 years of litigation, involving hundreds of thousands of hours
8 of attorneys' fees, involving -- and I don't think we got to
9 that point -- involving depositions of German members of
10 Porsche AG. We were going to get there, and it was going to be
11 by video, I believe; and we were going to have the translators
12 and all that involved. But everybody woke up at one point in
13 time, I guess, and said, Well, maybe there is a way that we
14 could resolve this. But, short of resolution, as this matter
15 has evolved in my mind, we were in for another four or five
16 years of litigation in this case. It was obvious to me. It
17 was obvious. I have good counsel on both sides, and they
18 weren't willing to give one point.

19 And, so, I congratulate you for working out a
20 procedure to arrive at this settlement. I didn't even think
21 you could agree with regard to the procedure, let alone a
22 settlement.

23 That's not to say, Ms. Kalange, that your objection
24 will not be taken into consideration when I review the final
25 settlement agreement and decide what to do in this matter. I'm

1 trying not to telegraph what I'm going to do, because it would
2 be unfair to everyone for me to have made up my mind this
3 quickly anyway. I will take it all under advisement.

4 Mr. Travaglio, please file your supplemental costs
5 within seven days.

6 Mr. Kiniry, you know, if you anticipate, although --
7 no. You don't anticipate any objection to that supplement,
8 because we're still capped, I suppose?

9 MR. KINIRY: We are, Your Honor.

10 THE COURT: If, after you've had a chance to look it
11 over, you think that there is a need for you to file something,
12 call us immediately.

13 MR. KINIRY: Yes, sir.

14 THE COURT: Call us immediately so that we can hold
15 off on any more consideration of the case until we receive a
16 submission.

17 MR. KINIRY: Yes, sir.

18 THE COURT: All right.

19 Ladies and gentlemen, thank you very much for your --

20 MR. KINIRY: Your Honor, before you close the record,
21 the other point is that we do have to work out the language on
22 the reminder notice.

23 MR. TRAVALIO: Right.

24 MR. KINIRY: There is a little more work to be done
25 there. I don't know that -- if we can agree to that, do we

1 need to get that back in front of the Court for approval before
2 it goes out?

3 THE COURT: I would feel better if I had a chance to
4 review it. Okay? It would probably be a quick review; but,
5 yes, please get it before me.

6 MR. KINIRY: Well, if your order is, as we
7 anticipated, an April 10 date for that to go out, is there a
8 time when the Court would like to see that in advance?

9 THE COURT: If you can just get it to me two or three
10 days in advance, that's fine.

11 MR. KINIRY: Thank you, Your Honor.

12 THE COURT: That's fine. Thanks for reminding me on
13 that point.

14 All right. We are adjourned. Thank you.

15 (Whereupon, the proceedings were concluded at 9:47
16 a.m.)

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C E R T I F I C A T E

United States of America
Southern District of Ohio

I, Denise N. Errett, Official Court Reporter of the
United States District Court for the Southern District of Ohio,
do hereby certify that the foregoing 65 pages constitute a true
and complete transcription of my stenographic notes taken of
the proceedings held in the afore-captioned matter on the 10th
day of March, 2014.

In testimony whereof, I hereunto set my hand on the
2nd day of May, 2014.

/S/Denise N. Errett, FCRR
Denise N. Errett, FCRR
Official Court Reporter
Southern District of Ohio