

**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

DECLARATION OF MARK LANDES TO SUPPORT MOTION FOR APPEAL BOND

Mark Landes declares and states the following under penalty of perjury and in compliance with 28 U.S.C. § 1746:

- 1) I am a member of the bars of the Supreme Court of Ohio, Southern and North Districts of Ohio, the United States Sixth Circuit Court of Appeal, and the United States Supreme Court. I currently serve as a managing partner for the law firm of Isaac, Wiles, Burkholder & Teetor, LLC, headquartered in Columbus, Ohio. I was initially licensed to practice law in Ohio in 1982. I have been counsel in three other Circuit Courts of Appeal besides the Sixth, and have been counsel in over 100 cases in the Sixth Circuit. I am a Life Member of the Sixth Circuit Conference.
- 2) I will serve as one of the Lead Counsel for Plaintiffs on Ms. Kalange's appeal of this Court's approval of the parties' settlement. Along with co-lead counsel, as appointed by this Court under Fed. R. Civ. P. 23(g), Plaintiffs have performed and/or will need to perform the following tasks associated with Ms. Kalange's appeal:
 - a. review and analyze the record before this Court and on appeal;

- c. work to expedite the appeals process for the benefit of Settlement Class Members;
 - d. conduct administrative tasks such as appearances, compiling the transcript and related information for the record;
 - e. meet and confer with Ms. Kalange regarding the Sixth Circuit's mediation program;
 - f. draft, collaborate, review, and file a merits brief in response to any issues raised by Ms. Kalange on appeal;
 - g. review Ms. Kalange's opening and reply briefs to be filed in conjunction with her appeal;
 - h. consider whether to request oral argument, as well as the time necessary to prepare, travel, and participate in oral argument before the Sixth Circuit (if granted);
 - i. review the Sixth Circuit's decision and consider any other appellate issues coming out of that opinion; and,
 - j. communicate with Plaintiffs and respond to Settlement Class Member inquiries regarding their Settlement benefits and the delay associated with the appeal.
- 3) Based upon my experience and knowledge regarding the billing rates used by my firm and Plaintiffs' counsel in this case, it is my opinion that the rates applied by Plaintiffs' counsel are reasonable for the manner of work done. In fact, this Court has already approved a fee award based upon those rates. Through applying a conservative hourly rate of \$500/hour for Plaintiffs' counsel,¹ and based on my experience litigating appeals

¹ The blended hourly rate of the ten primary attorneys who represented Plaintiffs in this case is \$583.50. *See* Declarations of Mark Troutman, Shennan Kavanagh, Niall McCarthy, Adam Levitt, William Hoese, and Daniel Schlanger in support of Plaintiffs' fee applications.

before the Sixth Circuit, it is my opinion that the following is a reasonable estimate for the attorneys' fees that will be expended by Plaintiffs' counsel in dealing with Ms. Kalange's appeal:

- a. \$45,000 for writing appellants' opening appeal brief, using an hourly rate of \$500 for Plaintiffs' counsel, the Sixth Circuit's 30-page limit, and a conservative 3-hour-per-page time guideline based on Plaintiffs' counsels' experience and the guidance provided by the jurisprudence of courts who have considered the number of hours that is reasonable for brief writing;²
- b. using the same logic as in subsection 3(a), \$22,500 for writing this 15-page appeal bond motion and brief;
- c. for preparation for and oral argument on the appeal, at an estimate of 10 hours at \$500 per hour totaling \$5,000;
- d. two hours of travel time to and from oral argument at half the hourly rate, or \$250 per hour, totaling \$1000;
- e. ten hours of administrative time associated with filing notices of appearance, obtaining the Fairness Hearing Transcript, and finalizing and filing briefs at \$250 per hour for a total of \$2,500.

Docket Nos. 152.2, 152.3, 152.4, 152.5, 152.7, and 152.8, respectively (setting forth rates ranging from \$375 to \$850).

² See, e.g., *United States ex rel. Berglund v. Boeing Co.*, No. 03:02-cv-193-AC, 2012 U.S. Dist. LEXIS 73552 (D. Or. May 24, 2012) (approving 4.5 hours per page); *Gaines v. Douglas Cty. Sch. Dist.*, 3:04-cv-00541-LRH-RAM, 2009 U.S. Dist. LEXIS 82112 (D. Nev. Aug. 24, 2009) (approving 4.5 hours per page); *Taucher v. Rainer*, 292 F. Supp. 2d 111 (D. D.C. 2003) (3.3 hours per page); *Maldonado v. Houstoun*, 256 F.3d 181 (3d Cir. 2001) (approving 120 hours to prepare a 41 page brief)

- 4) Based upon the calculations and authority above, it is my opinion that \$76,000 is a reasonable estimate of attorneys' fees that will be expended by Plaintiffs' counsel.
- 5) It is my opinion that the costs associated with travel, mediation, briefing, oral argument, and file administration will be approximately \$5,000 for Plaintiffs.
- 6) Plaintiffs' counsel have already incurred \$237.25 for the transcript of the Final Fairness Hearing before this Court.
- 7) I estimate that Plaintiffs will incur another \$1,000 of costs associated with preparing and filing their appellate brief before the Sixth Circuit. Such costs include those associated with printing and reproducing briefs, appendices, records, and the costs associated with electronic research.
- 8) As a result, it is my opinion that Plaintiffs' will incur attorneys' fees and costs in the amount of \$82,237.25 in dealing with Ms. Kalange's appeal.
- 9) For the reasons provided in the parties' Joint Motion for Appeal Bond to Secure Costs Incurred During Pendency of Appeal, I believe that the Court is justified in issuing an appeal bond in this amount, plus the attorneys' fees and costs provided by Defendants in the Declaration of William Kiniry, Jr.

I declare under penalty of perjury in compliance with 28 U.S.C. § 1746 that the foregoing is true and accurate, and that this Declaration was executed in Columbus, Ohio, on May 30, 2014.



Mark Landes