

**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 WILLIAM F. KINIRY, JR. IN SUPPORT OF JOINT MOTION
FOR APPEAL BOND**

William F. Kiniry, Jr. 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 Commonwealth of Pennsylvania and the State of New York. I am also a member of the bars of the Supreme Court of the United States, the U.S. Court of Appeals for the Sixth Circuit, the U.S. Court of Appeals for the Third Circuit, the U.S. District Courts for the Eastern, Middle, and Western Districts of Pennsylvania, the U.S. District Court for the Southern District of New York, and the U.S. District Court for the Southern District of Ohio (*pro hac vice* in the above-captioned matter). I am a partner in the law firm of DLA Piper LLP (US) and resident in the firm's Philadelphia, Pennsylvania office. I was initially licensed to practice law in 1976.
- 2) I am lead defense counsel in connection with Ms. Kalange's appeal of this Court's order granting final approval of the parties' settlement. Along with co-counsel of record, Defendants 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;
 - b. review and analyze all aspects of this Court's approval of the settlement in conjunction with the appeal;
 - c. work to expedite the appeals process for the benefit of Porsche customers;
 - d. conduct administrative tasks such as entering appearances, compiling the transcript and related information for the record, and filing Corporate Disclosure forms as required;
 - e. meet and confer with Ms. Kalange regarding the Sixth Circuit's mediation program;
 - f. prepare for and participate in mediation conference (if scheduled);
 - g. draft, collaborate, review, and file a merits brief in response to any issues raised by Ms. Kalange on appeal;
 - h. review Ms. Kalange's opening and reply briefs to be filed in conjunction with her appeal;
 - i. consider whether to request oral argument, as well as the time necessary to prepare for, travel to, and participate in oral argument before the Sixth Circuit (if granted);
 - j. review the Sixth Circuit's decision and consider any other appellate issues arising out of that opinion; and,
 - k. communicate with Class Counsel and respond to Settlement Administrator inquiries regarding Settlement benefits and the delay associated with the appeal.
- 3) Based upon my experience and knowledge regarding the billing rates used by defense counsel in this case, it is my opinion that those rates are reasonable for the manner of

work done. Applying a conservative blended hourly rate of \$500 per hour for defense counsel,¹ and based on my experience litigating appeals before the Circuit Courts of Appeal, it is my opinion that the following is a reasonable estimate for the attorneys' fees that will be expended by defense counsel in connection with Ms. Kalange's appeal:

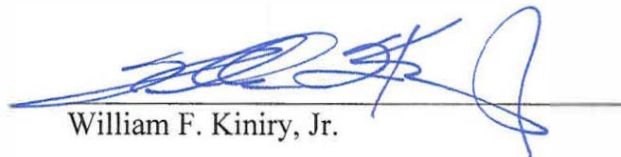
- a. \$45,000 for writing appellees' brief, using a \$500 hourly rate, the Sixth Circuit's 30-page limit, and a conservative 3-hour-per-page time guideline based on my experience and the guidance provided by the jurisprudence of courts who have considered the number of hours that is reasonable for brief writing;²
- b. using the same logic as in subsection 3(a), \$10,000 in connection with this 15-page appeal bond motion and brief;
- c. \$2,500 for oral argument, including preparation, at an estimate of 5 hours at \$500 per hour;
- d. eight hours of travel time to and from oral argument at \$500 per hour, totaling \$4,000;
- e. five hours of administrative time associated with filing notices of appearance, obtaining the Fairness Hearing Transcript, and finalizing and filing briefs at \$500 per hour for a total of \$2,500.

¹ I am informed that the blended rate for the ten primary attorneys who represented Plaintiffs in this case is approximately \$583.50. See Declarations of Mark Troutman, Shennan Kavanagh, Niall McCarthy, Adam Levitt, William Hoese, and Daniel Schlanger in support of Plaintiffs' fee applications. 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. Houston*, 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 \$64,000 is a reasonable estimate of attorneys' fees that will be expended by Defendants' counsel.
- 5) It is my opinion that Defendants' costs associated with travel, mediation, briefing, oral argument, and file administration will be approximately \$5,000.
- 6) Defense counsel has already incurred \$237.25 for obtaining the transcript of the Final Fairness Hearing before this Court.
- 7) I estimate that Defendants 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) I am informed that the Settlement Administrator's increased costs occasioned by the delay and additional administration associated with the appeal is estimated to be an additional \$25,000. As a result, it is my opinion that Defendants will incur attorneys' fees and costs in the amount of \$95,237.25 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 an appeal bond in this amount, plus the addition of attorneys' fees and costs described in the Declaration of Mark Landes, is warranted.

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 Philadelphia, Pennsylvania, on May 29, 2014.


William F. Kiniry, Jr.