

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

In re FORD MOTOR COMPANY SPEED  
CONTROL DEACTIVATION SWITCH  
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO. 1718  
JUDGE: Bernard A. Friedman  
MAGISTRATE JUDGE: Steven Whalen

ALL CASES

**LEAD AND LIAISON COUNSEL'S MOTION FOR  
FINAL DISTRIBUTION FROM COMMON BENEFIT FUND**

Lead and Liaison Counsel file their Motion for Final Distribution from the Common Benefit Fund, and request a distribution of fees and expenses for the reasons set forth in the accompanying brief.

Respectfully submitted:

/s/ Michael A. Caddell  
Michael A. Caddell  
Caddell & Chapman  
1331 Lamar, Suite 1070  
Houston TX 77010-3027  
Tel 713.751.0400  
Fax 713.751.0906  
**Plaintiffs' Lead Counsel**

/s/ Barry J. Goodman  
Barry J. Goodman  
Goodman Acker, PC  
17000 West Ten Mile Road  
Southfield, Michigan 48075  
Tel. 248 483 5000  
Fax 248 483 3131  
**Plaintiffs' Liaison Counsel**

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

In re FORD MOTOR COMPANY SPEED  
CONTROL DEACTIVATION SWITCH  
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO. 1718  
JUDGE: Bernard A. Friedman  
MAGISTRATE JUDGE: Steven Whalen

ALL CASES

**BRIEF IN SUPPORT OF MOTION FOR  
FINAL DISTRIBUTION FROM THE COMMON BENEFIT FUND**

Pursuant to the Court Clerk's report that \$47,956.60, plus \$3.00 in interest, remains in the Common Benefit Fund and request for a motion and proposed Order for final disbursement, Lead and Liaison Counsel file this request.

The Court has approved time and expenses from Lead and Liaison Counsel's prior applications which remains unpaid, and Lead and Liaison Counsel's have time and expenses incurred since their prior applications. These amounts total \$117,380.60. Accordingly, the full amount remaining in the Common Benefit Fund should be distributed to Lead and Liaison Counsel.

The initial Case Management Order entered on June 15, 2006 designated Michael A. Caddell and Joseph W. Phebus as Plaintiffs' Co-Lead Counsel. (Dkt. 18 at 4.) Co-lead counsel were given duties including daily responsibility for the conduct of the litigation; carrying out the orders of the Court; preparing discovery, pleadings, briefs and motions; supervising discovery; conducting all court proceedings and negotiations with Defendants; and coordinating with Plaintiffs' counsel in other court proceedings. (*Id.* at 5.) The CMO also appointed Barry Goodman as Plaintiffs' Liaison Counsel.

*(Id.)*

On December 17, 2008, the Court entered an Order (Docket No. 238) establishing a Common Benefit Fund and ordering assessments in the amount of 2% to be deducted from certain settlement funds. The purpose of this assessment was to create a fund out of which fees and expenses can be paid to Plaintiffs' Lead and Liaison Counsel and others who do legal work that benefits all Plaintiffs. On January 21, 2009, the Court entered an Order (Docket No. 268) instructing Plaintiffs and Ford to make the required deposits to the Court Clerk. On March 18, 2009, Plaintiffs moved for an initial distribution from the common benefit fund, seeking reimbursement of their expenses incurred and compensation for their time spent facilitating the December 2008 mediation sessions. (Dkt. 291.) On April 27, 2009, the Court granted the motion, awarding Co-Lead Counsel, Caddell & Chapman, and Liaison Counsel, Goodman Acker fees and expenses totaling \$75,259.77 for their mediation-related efforts and expenses which conveyed a common benefit on the Plaintiffs in the MDL. (Dkt. 305).

On October 26, 2010, John Reis replaced Joseph Phebus as Co-Lead Counsel. (Dkt. No. 520). On December 10, 2010, John Reis was permitted to withdraw, leaving Michael Caddell as sole lead counsel. (Dkt. No. 538).

On November 3, 2010, Caddell & Chapman moved for an additional payment of \$110,179.91 for fees and expenses attributable to work performed after the first application in March 2009. (Dkt. 522). On January 3, 2011, the Court granted the motion, and ordered payment of the balance of the fund (\$54,563.97, plus interest) be

paid to Caddell & Chapman. Caddell & Chapman received a check dated January 5, 2011 in the amount of \$54,631.09, leaving \$55,448.82 in approved time and expenses that remain unpaid due to the limited amount in the fund at that time.

On February 7, 2011, Liaison Counsel Goodman Acker moved for a distribution in the amount of \$24,272.50 from the common fund. (Dkt. 551). The Court entered an Order granting that motion, (Dkt. 556) then amended the Order because the amount was greater than the amount in the fund, and ordered that the entire remaining balance of the fund, \$9,800.80, be paid to Goodman Acker, then amended it again to include interest. (Dkt. 565, 569). Goodman Acker received this payment, leaving \$14,471.70 for time and expenses unpaid. Accordingly, Lead and Liaison Counsel have more than \$69,900 in approved time and expenses unpaid from their prior applications.

In the time since their last requests for a distribution from the common benefit fund, Plaintiffs' Lead Counsel (Michael Caddell, Cory Fein and other counsel and paralegals from Mr. Caddell's firm) and Liaison Counsel (Barry Goodman and Larry Maitland from Mr. Goodman's firm) have continued working for the common benefit of the Plaintiffs in this MDL.

Among other things, Lead Counsel has:

(1) coordinated with defense counsel, the mediator, and Plaintiffs' counsel regarding facilitating the mediation sessions on January 25 - 27, 2011, and December 13 - 15, 2011, and paying \$9,975.50 in fees to the mediator for same; (2) communicated with and assisted plaintiffs' counsel regarding briefing on legal issues applicable to their

cases including summary judgment motions, a Louisiana supplemental complaint, (3) updated, maintained and assisted Plaintiffs' counsel with the document depository; (4) worked with Ford and the Court on the termination of the MDL and stipulations regarding the record to transfer in cases being remanded for trial; (5) prepared for and participated in conference calls with defense counsel and the Court regarding various issues; (6) worked with plaintiffs' counsel on getting their cases remanded; (7) updated counsel for plaintiffs newly transferred into MDL; (8) worked with John Reis on substituting in as co-lead counsel, then withdrawing as lead counsel; (9) worked with Plaintiffs' counsel regarding experts to assist them in their remanded cases, the status of claims asserted in the MDL, and the possibility of amending pleadings to add new claims; and (10) reviewed all case filings, responding when necessary.

Liaison counsel has been involved in multiple mediation sessions since the initial distribution and was the main coordinator of three separate mediations, involving multiple cases, in May 2010, January 2011, and December 2011. Among other things Liaison Counsel has:

(1) worked with plaintiffs' counsel who were sanctioned for failure to participate in various mediation sessions; (2) communicated with Plaintiffs' counsel regarding their being ordered to mediations, the state of the MDL, scheduling concerns, and overview of the mediation process; (3) coordinating with the Defendant and the mediator to facilitate the July 2009, May 2010, September 2010, January 2011, and December 2011 mediation sessions and assisted plaintiffs' counsel in preparing for the same; (4)

provided information to and assisted *pro se* plaintiffs and fielded questions from multiple Plaintiffs' counsel; (5) forwarded various requested MDL material to multiple Plaintiffs' counsel; (6) dealt with Ford's counsel's regarding the state of various cases; (7) negotiated with Ford's counsel regarding multiple cases; (8) conference with various Plaintiffs' counsel regarding coverage of multiple mediations; (9) negotiated mediation terms with Ford's counsel and mediator; (10) delivered information to and from Plaintiffs' counsel, Ford's counsel, and mediator concerning mediations, summaries, Court-ordered information; (11) relayed Ford's counsel's concerns to multiple Plaintiffs' counsel; (12) provided coverage for multiple mediations; (13) reviewed all motions and orders filed in the case; (14) participated in conference calls with the Court regarding multiple issues; and (15) coordinated getting agreement of plaintiffs' attorneys to the court's protective order, and then assisted them in obtaining access to the document depository.

In choosing which time entries and expenses to submit for reimbursement from the Common Benefit Fund, Lead and Liaison Counsel were careful not to include any time entries related to class action matters, the one incident case in which counsel directly represents clients, efforts related to the common benefit fund, timekeeping efforts, or administrative matters.

As Plaintiffs explained in their motion that resulted in the creation of the Common Benefit Fund, while no single Plaintiff will benefit from every activity of Co-Lead Counsel and Liaison Counsel, all Plaintiffs will benefit nonetheless from the work being done on

behalf of the Plaintiffs as a whole. The fact that Co-Lead Counsel and Liaison Counsel stand ready to protect each Plaintiff's interest, attend every pretrial conference, respond to every request from the Court, brief every issue, obtain discovery from Defendants, participate in frequent telephonic and email exchanges with Defendant's counsel, and facilitate the briefing, mediation and remand processes provides a benefit to every Plaintiff in the MDL. Courts recognize that plaintiffs in consolidated cases must bear a fair proportion of the fees and expenses of Lead Counsel in consolidated proceedings.

The amounts sought by Plaintiffs' Lead Counsel, Caddell & Chapman from October 1, 2010 to the present total \$33,921.33, consisting of \$23,510.00 in fees and \$10,411.33 in expenses (\$9,975.50 of which represents fees to the mediator).

As noted above, Caddell & Chapman also seeks the \$55,448.82 in approved time and expenses from their November 2010 application, for a total request of \$89,470.15.

The amounts sought by Plaintiffs' Liaison Counsel, Goodman Acker, PC from the time of their prior application to the present total \$13,438.75 in fees.

As noted above, Goodman Acker, PC also seeks the \$14,471.70 in approved time and expenses from their prior application, for a total request of \$27,910.45.

Because the total amount of unpaid fees and expenses due to Lead Counsel and Liaison Counsel is \$117,380.60, far in excess of the \$47,959.60 remaining in the Common Benefit Fund, the entire amount should be awarded to Lead Counsel and Liaison Counsel and the Fund should be closed. Lead Counsel and Liaison Counsel

have agreed between themselves to divide the remaining funds \$35,301.24 to Lead Counsel, and \$12,658.36 to Liaison Counsel.

WHEREFORE, Plaintiffs' request that the Court enter the attached Order awarding fees and expenses to Plaintiffs' Lead and Liaison Counsel.

Respectfully submitted:

/s/ Michael A. Caddell  
Michael A. Caddell  
Caddell & Chapman  
1331 Lamar, Suite 1070  
Houston TX 77010-3027  
Tel 713.751.0400  
Fax 713.751.0906  
**Plaintiffs' Lead Counsel**

/s/ Barry J. Goodman  
Barry J. Goodman  
Goodman Acker, PC  
17000 West Ten Mile Road  
Southfield, Michigan 48075  
Tel. 248 483 5000  
Fax 248 483 3131  
**Plaintiffs' Liaison Counsel**

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 13, 2012, the foregoing document was electronically filed with the Clerk of the Court using the ECF system and served electronically on all counsel of record.

/s/ Cory S. Fein  
Cory S. Fein