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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

- - -

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

IN RE: TOYOTA MOTOR
CORPORATION UNINTENDED
ACCELERATION MARKETING,
SALES PRACTICES, AND
PRODUCTS LIABILITY
LITIGATION.

MDL-10-2151-JVS (FMOx)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

June 14, 2013

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1 SANTA ANA, CALIFORNIA; FRIDAY, JUNE 14, 2013; 9:00 A.M.

2 THE CLERK: Calling MDL 10-2151-JVS, In Re:
3 Toyota Motor Corporation Unintended Acceleration Marketing,
4 Sales Practices, and Products Liability Litigation.

5 Counsel, appearances please.

6 MR. BERMAN: Good morning, Your Honor. Steve
7 Berman on behalf of class plaintiffs.

8 MR. ROBINSON: Good morning, Your Honor. Mark
9 Robinson for the plaintiffs.

10 MR. PETRI: Good morning, Your Honor. Frank Petri
11 on behalf of plaintiff class.

12 MR. SELTZER: Good morning, Your Honor. Mark
13 Seltzer of the plaintiff class.

14 MR. SLAVIK: Good morning, Your Honor. Don Slavik
15 on behalf of the plaintiffs.

16 MR. BAILEY: Good morning, Your Honor. Ben Bailey
17 on behalf of the plaintiffs.

18 MS. KELLY: Good morning, Your Honor. Monica
19 Kelly on behalf of the plaintiffs.

20 MR. AITKEN: Good morning, Your Honor. Wiley
21 Aitken on behalf of the plaintiffs.

22 MR. MARKOVITS: Good morning, Your Honor. Bill
23 Markovits on behalf of the JCCP plaintiffs.

24 MS. CABRASER: Good morning, Your Honor.
25 Elizabeth Cabraser for plaintiffs re.

1 MR. HOOPER: Good morning, Your Honor. John
2 Hooper for Toyota.

3 MR. COONEY: Good morning, Your Honor. Gordon
4 Cooney for Toyota.

5 MR. GALVIN: Good morning, Your Honor. Vince
6 Galvin for Toyota.

7 MR. NOLAN: Good morning, Your Honor. Tom Nolan
8 on behalf of Toyota.

9 MS. GILFORD: Good morning, Your Honor. Lisa
10 Gilford on behalf of Toyota.

11 THE COURT: Good morning.

12 I will ask the objectors to make their appearances
13 when they are called to the podium. As the first order of
14 business, we received yesterday an application from objector
15 Estate of Jerome Bernstein for relief to appear at the
16 hearing. The application will be filed. I have reviewed it
17 and considered the additional material. However, I am going
18 to deny the request to appear today and make an appearance.
19 The application is tardy, and I believe that the particulars
20 covered in the objector's position are well addressed by
21 others in their papers and by the objectors who will be
22 speaking today.

23 So let's proceed. I would like to hear from
24 plaintiffs. Mr. Berman.

25 MR. BERMAN: Good morning, Your Honor.

1 I am here in support of the motion to approve the
2 settlement and the motion for attorneys' fees. Let me start
3 with the motion for approval of the settlement. I want to
4 put this case in context for Your Honor. I know you are
5 well familiar with it, but I think it bears as an
6 introductory matter to say that we feel on our side of the
7 table that this is a remarkable settlement. It is the
8 largest settlement in U.S. history in an automobile case
9 both in terms of the dollars involved and the number of
10 consumers that will receive a reasonable settlement. In our
11 view, it's an important settlement because we feel on our
12 side of the table that we are adding a safety feature to
13 three million vehicles. That has never been accomplished to
14 my knowledge before in an automobile settlement.

15 We accomplished the settlement in the face of many
16 obstacles. As Your Honor noted in the tentative, in the
17 middle of the case, NASA, an institution that almost all
18 Americans have a great amount of respect for, came out
19 and -- did not find a defect in the computer software.

20 A lot of people around the country thought this
21 case was over. When I talked to my colleagues around the
22 country and they asked me what I was working on, I said
23 Toyota. They said really? That's dead. But there were a
24 lot of people -- there's a core group that you saw in the
25 Fiat case from the amount of time we put in that did not

1 believe the case was dead, and we continued to plow on. We
2 plowed on in the face of not only of NASA but in the face of
3 probably the most well-funded and aggressive defense I have
4 ever seen. We collectively have litigated against big oil,
5 big tobacco, big pharma. These guys put more into this case
6 than anyone I have ever seen, so we knew that we faced a
7 risk at trial.

8 Now, I think I could have won the trial. There's
9 no doubt about it. And to the extent that you thought in
10 any way that we didn't believe in the case, we did believe
11 in the case, but I would not be doing my job for the class
12 if I didn't recognize that there was significant risk in the
13 case, and there was.

14 So despite that risk, again, when you look at the
15 settlement, we accomplished the following things. This is
16 an economic loss case. People have been hurt financially by
17 the UA defect. With respect to that, in the DV part of the
18 case -- I am going to go into this again throughout my brief
19 presentation -- people because of the claims rate are
20 actually going to get 100 percent of their damages. We
21 recovered collectively 42 percent, which you noted in your
22 opinion, but because not everyone is making a claim, the
23 actual payout to those people will be 100 percent of their
24 calculated loss on the matrix.

25 Again, we have added a safety feature, and we have

1 added parts protection, and we have set up a separate fund,
2 \$30 million, that is going to research these issues, five
3 prominent institutions. We all know that unintended
4 acceleration, whatever the cause, is a problem that is out
5 there, and we think it's a benefit to the class to have
6 these institutions researching how that might be prevented.
7 It may save lives.

8 I submit to the Court that the class thinks well
9 of the settlement. There were 22 million notices mailed.
10 We have 100 objections, so 99.9 percent of the class is in
11 favor. That's a very significant vote of approval.

12 THE COURT: But we do have a couple thousand
13 opt-outs.

14 MR. BERMAN: But that is also miniscule.

15 As I mentioned, everyone who made a claim whether
16 it's in the cash in lieu of BOS Fund or the DV Fund is going
17 to get 100 percent of what they could get in the settlement.
18 So the maximum payout for BOS was 125. Everyone is getting
19 125. Those who filed a claim form in the DV claim are
20 getting 100 percent.

21 To put that in perspective, I will give you some
22 numbers for what people will get, a check that will be
23 mailed. If you bought a 2009 Avalon and you sold it in
24 March 2010, you get a check for \$4,600. If you bought a
25 2007 Camry and you sold it in September 2009, you get

1 \$1,700. If you bought a 2008 Prius and you sold it in
2 April 2010, you get \$3,814. If you sold a Lexus in 2008 and
3 you sold it in May 2010, you get \$4,000. So there is real
4 money going out to these people, and I think they are going
5 to be glad to receive it.

6 So that takes us to the allocation. In our
7 opening brief, we told the Court from the very get-go that
8 we were watching how the claims came in because -- you know,
9 this is kind of a unique settlement. We weren't sure how it
10 would go. Every week we met with the claims administrator.
11 We discussed the claims rate with Toyota. We discussed the
12 claims rate with the special master, and we were on it. We
13 knew after a few months that we were going to have to
14 propose a change to the Court.

15 So what I would like to now discuss is the change
16 that we are proposing, and I have an illustrative exhibit to
17 kind of make it easy to understand.

18 If I can hand up a copy to Your Honor.

19 THE COURT: Please.

20 MR. BERMAN: I have actually handed you two
21 things. One is a flow chart, and one is the current
22 agreement that we plan to submit to the Court informally a
23 few weeks from now once we see how the numbers are coming
24 in, so let me walk through how this would work.

25 Pursuant to the Settlement Agreement people who

1 made timely claims will get paid their money as soon as the
2 claims period has passed, which is July 29. They will get
3 100 percent of what they are entitled to.

4 So what do we do with the leftover?

5 THE COURT: Let me stop you for a second on the
6 100 percent. In your opening brief, you indicated that, for
7 example, the payout to the -- the depreciated value to the
8 plaintiffs would be 42 percent.

9 MR. BERMAN: That's correct.

10 THE COURT: With the excess funds, you have been
11 able to eliminate the discounts based on whether the
12 plaintiff comes from a manifestation or non-manifestation
13 state, but I don't see how you are getting up to
14 100 percent.

15 MR. BERMAN: The matrix gives them 100 percent of
16 their damages. If everyone had claimed in, we would have
17 had to reduce it down to 42 percent.

18 THE COURT: So the 42 percent is based on the
19 going in assumption that there would be a greater number of
20 claimants?

21 MR. BERMAN: 100 percent.

22 THE COURT: Okay. So at present you don't predict
23 any prorata reduction?

24 MR. BERMAN: That's correct.

25 THE COURT: Okay.

1 MR. BERMAN: So everyone gets this 100 percent.
2 And then we take out the cost of notice, which you said that
3 was okay. We have eliminated sending dollar for dollar to
4 the Education Fund. We thought that was improper. We
5 listened to your order, and we are going to eliminate that,
6 and that's reflected in the amendment.

7 THE COURT: At least without giving further
8 consideration to making additional distributions to class
9 members. A set of circumstances might have arisen where a
10 true cy pres payment would have been appropriate, but I
11 understand the parties have now made the decision to simply
12 eliminate the cy pres component.

13 MR. BERMAN: That's correct, so we will give as
14 money to the class as we can.

15 THE COURT: Right.

16 MR. BERMAN: So they way it works now is that
17 there we will have two buckets of residual funds, one for
18 the DV class, one for the BOS class. We are then going to
19 mail checks once we have combed through all the data, which
20 we are still working through, to every single person in
21 either fund so we completely pay out the money left over.

22 Those checks will be good for 90 days. We know
23 that some people won't cash those checks. That's just the
24 way it is. So we are going to then take that pool of
25 uncashed checks and reissue checks to those folks and give

1 them 90 more days. During that 90-day period, at the 60-day
2 mark, we are going to send out a reminder notice. We are
3 going through what we think are rather extraordinary
4 attempts to get people money. There are going to get three
5 different shots at it, and we are going to give them a
6 reminder notice. There will be in this plan as we see it no
7 money left over. It will all go out to class members.

8 THE COURT: So you are anticipating no
9 distributions to non-claimants then?

10 MR. BERMAN: The residual funds are being mailed
11 to non-claimants.

12 THE COURT: Okay.

13 MR. BERMAN: Let me just do it again.

14 THE COURT: No. I think I have got it.

15 MR. BERMAN: Okay. So that's our plan.

16 THE COURT: Do you have an estimate as to how many
17 dollars per non-claimant would go out?

18 MR. BERMAN: We don't yet.

19 THE COURT: Even a ballpark?

20 MR. BERMAN: I don't want to do that. It's so
21 complicated. There are millions of records we are trying to
22 dedupe to get that number. In light of the fact that all of
23 the money will be paid out, we would ask the Court sometime
24 at the end of July when we report back to you on what those
25 numbers will look like to approve the settlement then and

1 not wait to see how it plays out a year or more from now
2 because it's going to take a full year or more to go through
3 these 90-day successive check payouts before we get to the
4 last bottom line of this achievement.

5 I have nothing further at this point to say on the
6 settlement. I am going to want to respond to the objections
7 unless you have any question on the settlement.

8 THE COURT: No.

9 MR. BERMAN: On the attorneys' fees, I have
10 nothing to say unless you have questions.

11 THE COURT: No.

12 MR. BERMAN: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. SELTZER: Your Honor, if I may speak briefly.

15 THE COURT: Mr. Seltzer.

16 MR. SELTZER: First of all, I fully join in
17 Mr. Berman's remarks. I think he has well stated the
18 benefits of the settlement and the background of the
19 litigation.

20 I wanted to speak very briefly in support of the
21 settlement. As the Court knows and it's etched in the
22 record in this case, this was an exceptionally hard fought
23 litigation, and it was complex both legally and factually.
24 There were numerous issues that had to be confronted and
25 decided by the Court, and there are numerous questions yet

1 to be resolved on appeal if the case isn't resolved by
2 settlement.

3 At all times the foremost objective of class
4 counsel was to achieve the best possible result for the
5 class. That was always at the forefront of our minds and
6 our efforts. I can say that based on my experience of 40
7 years of litigating these kinds of very complicated class
8 action cases without hesitation that I strongly believe that
9 this is an excellent result for the class. We are very,
10 very proud of what we have accomplished here, and I hope
11 that the changes Mr. Berman articulated that we are
12 proposing to the Plan of Allocation resolve the questions
13 that the Court raised in the tentative.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Mr. Cooney.

17 MR. COONEY: Thank you, Your Honor. Gordon Cooney
18 and John Hooper on behalf of Toyota.

19 Your Honor, this settlement represents two years
20 of intensive negotiations and hard work before the
21 settlement special master. It also follows intensive
22 pretrial discovery and pretrial proceedings before this
23 Court. This settlement was reached after there had been
24 significant information exchanged by both sides and both
25 sides were in a position to evaluate the case.

1 Your Honor, Toyota has very strong defenses to the
2 claims here. At trial, Toyota would have offered evidence
3 that its vehicles and the Toyota electronic throttle control
4 system are safe, that they are properly designed, and they
5 have many robust fail-safe measures. Mr. Berman mentioned
6 in part, Your Honor, the NASA and NHTSA report. That's in
7 the record. It was an unprecedented lengthy study of these
8 issues, and that study supported Toyota's position in this
9 case.

10 Toyota also believes that if it had tried this
11 case it would have prevailed, but it also recognized that it
12 had years of proceedings ahead of it between proceedings in
13 this court on the merits, on class certification, and likely
14 proceedings in the Court of Appeals. So Toyota concluded
15 that the right thing to do was to put this matter behind it
16 and fashion a settlement through negotiation with the
17 plaintiff that provided real value to Toyota's customers who
18 were the class members in this case. The settlement does
19 just that.

20 Your Honor, notice of this settlement was
21 expensive. Over 22 million postcard notices were mailed. A
22 publication notice resulted in 95 percent of the class
23 receiving notice 3.6 times according to the settlement class
24 notice administrator, and there were nearly 19 million hits
25 to the settlement website. So this was a settlement that

1 the class knew about, understood, and where there was a high
2 level of interest and information.

3 Following this exceptional notice, the record
4 shows that class members overwhelming support the
5 settlement. In the few months since notice began, over
6 500,000 potential claimants to the two cash funds had been
7 made, and that figure as Mr. Berman noted stands in sharp
8 contrast to the fewer than 100 objectors and the 16 to 17
9 objections where the objectors wish to be heard today. As
10 Your Honor noted, in contrast to the number of claims and
11 the size of the potential class, the number of opt-outs is
12 quite minimal. The reaction of the class in this heavily
13 supports settlement in this case.

14 I would like to turn it over to Mr. Hooper who
15 will talk just for a minute about the redistribution issue,
16 but, Your Honor, Toyota strongly believes that the
17 settlement warrants final judicial approval, and we would
18 ask Your Honor to approve the settlement.

19 Thank you.

20 THE COURT: Thank you.

21 Mr. Hooper.

22 MR. HOOPER: Your Honor, I always tell clients at
23 fairness hearings that when the defendants get up and
24 support -- suggest why it was such a great deal for the
25 class it is sometimes disingenuous. This deal in a lot of

1 ways -- why the company clearly entered into the resolution
2 hard fought the company embraced this resolution. The fact
3 that parts of this resolution were going to customers of
4 Toyota, were going to support customers of Toyota, it has
5 embraced that.

6 I just want to make one point. I have never had a
7 client agree to do this before, but I have always told
8 clients if you agree to the consideration before all the
9 appellate rights are over it sends a good message about your
10 view of the resolution. A large part of the settlement is
11 the Customer Support Program and the BOS Reflash Program.

12 The company decided -- we negotiated, but the
13 company decided that it would start those programs after
14 Your Honor if you do gavel down on the resolution
15 immediately. We could go on appeal. We have a lot of
16 objectors here today. It could take another year. It could
17 take a year and a half. It's important to Toyota that these
18 benefits go to its customers. In fact, if this goes on
19 appeal and it's reversed, Toyota will be out a substantial
20 amount of money, but it has embraced the resolution of the
21 settlement. I think it should get credit for that.

22 We're not going to talk about all the other
23 consideration points, but it's been important to Toyota
24 throughout that we focus on how this affects and impacts our
25 customers. The plaintiffs' lawyers know that because we

1 have partnered on how the claims process has gone. We
2 partnered because it helped the settlement and frankly
3 because we are getting calls from our customers.

4 So this has been a different type of settlement
5 for me. I would point out that probably the key to this is
6 very early on we focused on the allocation issues, the
7 residual distribution issues. The reason we did that was
8 for lots of reasons, but Baby Products came out in the Third
9 Circuit. We were aware of it. Your Honor was aware of it.
10 So literally for about three or four months, we had been
11 tracking how this was going to affect the case.

12 I have never had a case where 500,000 claim forms
13 have been filed, but, in fact, at the end of this, we are
14 going to have more than 500,000 claims that are filed, but
15 it is not going use up the fund. It is pretty extraordinary
16 that 500,000 people are motivated to do anything these days.
17 I think it's an exceptional point as to the notice and
18 frankly the ease of the settlement. No one can come in here
19 I think and argue to Your Honor that the reason we don't
20 have a large number of people participating is this was not
21 an easy process.

22 Right now we are dealing with the reallocation
23 issues, and I would like to make a couple of points. You
24 asked a question regarding the timing, whether or not we
25 could have numbers for you. If I could just clear that up

1 so -- Your Honor, what happened was we gave out
2 extraordinary notice. In one of the funds, we gave out more
3 notice than we know there are class members to make sure we
4 were careful. We gave out 22 million notices.

5 In order to get to a number, we have to de-dupe
6 our notice list and figure out who deserves the money. That
7 requires the Polk people to give us additional data. So as
8 much as we wanted to try to get to Your Honor today a fully
9 comprehensive list, we chose not to guess. We also wanted
10 to hear Your Honor's opinion, and we do think in a lot of
11 ways this redistribution plan significantly speaks to Your
12 Honor's issues.

13 I do want say, Your Honor, for the most part, we
14 were focused on those issues. This redistribution plan, the
15 one that was in the plaintiffs' brief and the one that has
16 been designed and we discussed today really does three
17 things. What it does is it maximizes the relief to those
18 people who made a claim. So when you were talking about the
19 42 percent before, now only is that raised to 100, but those
20 people who would only get 30 percent and 70 percent, they
21 are all now getting 100 percent if the settlement goes in as
22 we think it will and the excess.

23 So if you look at the Baby Products case and you
24 are looking at what the Court considers there, you consider
25 whether or not individuals are getting 100 percent. In

1 fact, in this settlement, the nearly 500,000 people will get
2 100 percent of their damages. That's extraordinary. Yes,
3 we have money left over, so what are we doing with it? That
4 is the second important thing. We literally have a plan put
5 together which exceeds the expectation I think of any court
6 in the country and exceeds the expectation in Baby Products.
7 We have a plan that will give 100 percent of the money to
8 class members.

9 The plan is we have to get the money to those
10 class members who did not file a claim form. Yes, it will
11 be a smaller number than those people who did file a claim
12 form. Logic would suggest that those people who felt they
13 had a claim made a claim that were part of the 500,000
14 people. So we are reallocating or distributing funds later
15 that maximizes under the plan we are giving you that all
16 that cash goes to class members. We are very focused on
17 that issue, and we think it's important that we represent
18 that to you because this wasn't minutes after we saw your
19 tentative that we started talking. We have been talking for
20 weeks and months.

21 Finally, the third thing we did -- and Steve said
22 this, but it's extraordinary in my experience. We send the
23 first check out. Those people who don't -- people get
24 checks for stuff they don't cash all the time. We identify
25 everybody who didn't cash a check. We don't send them a

1 notice. We send them a second check so they don't have to
2 write in for anything. In the middle of that process, we
3 send them a notice saying, hey, you haven't cashed your
4 check.

5 Frankly, I think that if Your Honor considers the
6 plan, ultimately I don't know how much more friendly we can
7 be to our customers, to the class members, to try to get the
8 proceeds to the class members. I think we have followed the
9 Baby Products case. I think we have come up with a plan
10 that we would ask you to consider.

11 Finally, we didn't want to guess and give you
12 numbers. We have been working with the special master to
13 put this plan together. We continue to work with him and
14 with the Court to report at a later date when we have those
15 numbers. It will be weeks, not months, but we are working
16 very hard to get that done.

17 Unless you have any other questions, I have no
18 other comments.

19 THE COURT: Any class member following this
20 hearing will come away realizing substantial benefits have
21 been gained, and it might create new interest in class
22 members who have not sent in claims thus far. In that vein,
23 is there any logic in extending the notice period for making
24 a claim?

25 MR. HOOPER: Your Honor, there are a group of

1 claims we know about that are going to come in. There are
2 going to be tens of thousands of additional claims that are
3 going to come in from the fleets, so we have been tracking
4 that.

5 I think that given how extraordinary the notice
6 was here -- I think that you know that the claims
7 administrator -- notice administrator indicated that we had
8 more than three-and-a-half times penetration with over
9 95 percent of the class forgetting that we had a substantial
10 press interest at that time that would make anything that
11 comes out of this hearing look fairly small.

12 Finally, we had a very extensive -- 23 million
13 notices mailed out. I think the cost of that program is so
14 expensive. To extend the period of time to try to get to
15 some additional class members would be very costly, and the
16 money wouldn't get to the class members. In my opinion,
17 Your Honor -- we have talked about that and really tried to
18 figure out how we could maximize that without spending
19 another \$15 million or \$20 million hoping that some people
20 are going to be motivated. We decided we will motivate
21 people by giving them checks. We have agreed to the point
22 with the plaintiffs. This was plaintiffs' suggestion. It's
23 an extraordinary way to do it, but that was a better way to
24 do it.

25 Finally, Your Honor, with half a million people

1 that are interested, we would like to move on. We would
2 like to get a resolution. An additional notice would
3 lengthen the process, and it will take us longer to get to
4 redistribution.

5 THE COURT: Well, I am not suggesting an
6 additional notice be given but an extension of the claims
7 period, but the fact that this hearing is occurring before
8 the close of the claims period is probably helpful in terms
9 of increasing interest on the part of those who have not put
10 a claim in thus far.

11 MR. HOOPER: Your Honor, you asked a question
12 earlier about will we know -- it's somewhat scientific to
13 the claims administrators. We think in a couple of weeks we
14 are going to have really hard concrete numbers of who is
15 going to come in. We have asked them the question of
16 extending the period, whether that would increase
17 substantially the number. Unless we did something like
18 another proactive notice program, it would be in our opinion
19 hard to motivate enough people to even pay for the timing
20 period that you would lose here.

21 I do recognize why Your Honor asked the question.
22 I think because of the time -- as you said, people have a
23 couple months after reading about this, and because we have
24 been very vigilant on the website -- with that number of
25 people on the website, people obviously are interested -- I

1 don't think we have missed a lot of people that are going to
2 be filing claim forms.

3 THE COURT: Thank you.

4 I assume the plaintiffs will put on the website a
5 report of this hearing and how it affects the people who
6 have made claims.

7 MR. BERMAN: We will, Your Honor, and if you
8 eventually approve the supplemental plan, we will put that
9 on the website as well. Of course if people hear about this
10 and then submit claims late, there's always -- you know, we
11 come to you for your discretion on that.

12 THE COURT: Okay, anything further from the
13 plaintiffs or Toyota?

14 MR. BERMAN: Hopefully the press will write about
15 it so people get more notice.

16 THE COURT: If there are no further comments from
17 the plaintiffs or Toyota, let's turn to the objectors. As I
18 indicated, we will hear the objectors in the order in which
19 their objections appear in the docket.

20 So the first objector is Darrel Carpenter,
21 objection at Docket 3508.

22 (No response.)

23 THE COURT: Let's turn to the next set of
24 objectors: Angela Boles, Wayne Harris, and Julie Rainwater,
25 objection at Docket 3594.

1 MR. BARNOW: Good morning, Your Honor. Ben Barnow
2 on behalf of those objectors and foreign plaintiffs.

3 THE COURT: Good morning.

4 Your Honor, we have read your tentative. I'm
5 going to try to be brief. Our objection raises three basic
6 points. The one has to do with the cy pres nature of the
7 Automobile Safety and Education Program.

8 THE COURT: But the true cy pres aspect of the
9 original settlement has been abandoned.

10 MR. BARNOW: That's correct. We have read your
11 tentative on that first part. We would ask the Court to
12 reconsider that. We still feel that 100 percent has not
13 been given to the class members, and the rest we would refer
14 to our papers.

15 With regard to the cy pres that allegedly was
16 there for the DV Fund and the cash in lieu of the BOS Fund,
17 we did oppose that. Our view was that all monies should go
18 to make the class members whole. We read Your Honor's
19 tentative as agreeing with that, and, of course, the
20 redistribution plan that will be presented in our view
21 comports with that.

22 THE COURT: But isn't that concern somewhat
23 diminished if the DV and the BOS in lieu plaintiffs in fact
24 receive 100 percent of their loss?

25 MR. BARNOW: Well, absolutely. That's what we

1 have encouraged. That's what our objection said. It used
2 the phrase "make them whole for their damages." So we view
3 that as being cured, and we await whatever comes about. We
4 think we contributed to that. Of course Your Honor's view
5 did, and we are glad to see the change made and work in
6 progress, which we think is going to be successful in that
7 regard. They have to satisfy the Court. I know they are
8 trying hard, and I know they will.

9 The third part has to do with floor mats. I think
10 it's fair to state that your tentative has not given a
11 ruling with regard to those, except -- it's silent. Let me
12 be brief. At the inception of this case, Toyota said over
13 and over, among other things, sticky pedals or floor mats.
14 At the end of the case when you read the press releases and
15 announcements in their papers, it's floor mats still. It's
16 floor mats throughout. Yet we see no compensation for the
17 floor mats.

18 A lot of this is in our papers, but I do have a
19 couple of brief points that I think emphasize the importance
20 of it. On page 54 of the plaintiffs' reply, there are a
21 couple of sentences. "The Boles, Harris, and Rainwater
22 objectors complain that the settlement fails to compensate
23 for floor mats, lost use of floor mats, and carpet cleaning
24 expenses." Then there is an interim sentence which isn't
25 relevant. "But we note that these that these claims are not

1 encompassed by plaintiffs' operative Complaint and therefore
2 have been dismissed." What I read that to say is those
3 complaints or claims have not been litigated.

4 We have a product that Toyota sent -- as the Court
5 knows and counsel knows, Toyota sent millions of letters to
6 people and said get them out of your cars now. We see no
7 letter that says put them back in. The responses to the
8 objections to me are particularly light. They don't really
9 explain how this was handled. Toyota's reply mentions a few
10 things, but they are not clear. Nobody says that these were
11 redressed in total. Nobody says that the promise of
12 compensation was fulfilled.

13 So what we have, Your Honor, is a product that was
14 defective, an admission that it was not litigated, no
15 compensation, and a release that throws it out. We don't
16 think it's right. So what do you do about it? Well, one,
17 we have seen some changes made upon scrutiny of people. We
18 think that attention ought to be given to compensate people
19 for those floor mats. Now, Toyota might say, well, they
20 have been already. Well, if they have, they could be a
21 little more clear. The other alternative is carve it out
22 from the release. We will litigate it. If they have these
23 defenses where there's preemption or that they paid, it will
24 be quick. But those are the two alternatives. What we
25 think is wrong, Your Honor, respectfully is to give these

1 people nothing and to give Toyota a release.

2 Other than that, we will rest on our papers.

3 THE COURT: Very good. Thank you.

4 The next set of objectors: Allen Roger Snyder and
5 Linton Stone Weeks, objections at Docket 3596, 3597, and
6 3639. He is represented by Mark Chavez.

7 (No response.)

8 MR. BERMAN: I think he withdrew his request to
9 appear yesterday.

10 THE COURT: Okay. That hasn't gotten to the
11 Court.

12 David Gelber, objection at Docket 3605,
13 represented by Paul Kiesel and others.

14 MR. KIESEL: Thank you, Your Honor.

15 We are here on MDL 2172. Actually Mr. Paradis is
16 lead counsel on that action. I will have address the
17 comments to the Court.

18 THE COURT: Thank you.

19 MR. PARADIS: Good morning, Your Honor. Thank you
20 for the opportunity to address the Court. As you're aware,
21 Mr. Gelber's objection relates to the scope of the release
22 and, in particular, possible application of the language of
23 the release to the claims asserted in the hybrid brakes
24 litigation that we have been litigating before Judge Carney.
25 We have been working pretty hard to try to resolve that

1 issue. We think we have done that subject to Judge Carney's
2 approval and subject to Your Honor's approval. We have not
3 been able to obtain that yet, but, again, we have got an
4 agreement, but it is subject to both of your approval.

5 THE COURT: I have reviewed the stipulation in
6 front of Judge Carney. Does it make a difference that there
7 is no class certified in that case at this point?

8 MR. PARADIS: I don't believe so, Your Honor.

9 THE COURT: Okay. Anything further?

10 MR. PARADIS: Nothing further.

11 THE COURT: It seems to me that is a solution that
12 preserves the claims of the parties in 2172. In my view,
13 it's an effective carveout, and Toyota acknowledges the
14 integration agreement here and waives the benefit of it.

15 MR. PARADIS: We believe that's correct. Thank
16 you, Your Honor.

17 THE COURT: Thank you.

18 James Daniel, Docket 3606, Joseph Dunn.

19 MR. DUNN: Thank you, Your Honor. Joe Dunn on
20 behalf of Jim Daniel, Docket No. 3606.

21 Your Honor, my client lives outside Dilley, Texas.
22 He actually owns three Prius vehicles. He's probably the
23 only person in Texas that owns more than one.

24 THE COURT: I think Texas is a good place to own a
25 Prius.

1 MR. DUNN: Probably so. We filed our objection on
2 the sole issue of the release and the language in the
3 release. The Court I think addressed it. I saw the Court's
4 language yesterday. Over last night and through this
5 morning I was able to work out something with Mr. Hooper and
6 Toyota, an agreement to our satisfaction that allayed any
7 concerns I had. We have that agreement in place, and we are
8 withdrawing our objection. I don't know if it's okay with
9 the Court if I do that on the record.

10 THE COURT: That's fine.

11 MR. DUNN: Then that's all I need. Thank you.

12 THE COURT: Thank you very much.

13 Cathy Whitaker, Docket No. 3608.

14 Ms. Cabraser, I understand your position is not
15 truly an objection, but you did want to be heard.

16 MS. CABRASER: Thank you, Your Honor.

17 No, it's not an objection. It's a comment that
18 Ms. Whitaker filed pursuant to the Notice of Provision. She
19 is one of the personal injury plaintiffs in the MDL. Her
20 only concern, which I believe is fully addressed by the
21 Court's tentative at pages 30 and 31, was that nothing in
22 the settlement or release or order of the Court would affect
23 or impede or bar in any way the personal injury/wrongful
24 death property damage claims of those who have suffered
25 sudden unintended acceleration incidents.

1 These are folks who did not opt out of the class
2 because they didn't feel that they needed to and have not
3 objected to the settlement. In fact, as Ms. Whitaker states
4 in her letter, she supports the approval of the settlement.
5 The commends the settlement. I would second her on that.
6 It's an extraordinary settlement. Her only concern was that
7 the release either intentionally or inadvertently not affect
8 those people that need to go forward with their own death
9 and injury claims and the theories that they are asserting.

10 Thank you.

11 THE COURT: I am satisfied that the carveout and
12 the release adequately protects the wrongful death/personal
13 injury plaintiffs and to the extent of their property damage
14 claims as well.

15 MS. CABRASER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 Green Taxi at Docket 3609, Michael Luppi.

18 (No response.)

19 THE COURT: Gamze Cakarcan-Sbabo at Docket 3615.

20 (No response.)

21 THE COURT: Isaiah Nelson at Docket 3620.

22 (No response.)

23 THE COURT: Candice Collins, Eileen Roberts, and
24 J.V. Patel at Docket 3623.

25 MR. WEINSTEIN: Good morning, Your Honor. Jeff

1 Weinstein on behalf of those objectors.

2 Considering your civil minutes, general Docket
3 3644, in light of your tentative, my clients choose to just
4 stand on the objection, but they appreciate the
5 consideration the Court gave. Thank you for allowing me to
6 be heard. I just didn't want to be one of those folks that
7 you called the item and nobody came up.

8 THE COURT: Thank you very much.

9 Amelia Ranieri, Housan Huang, Docket 3628,
10 represented by George W. Cochran.

11 Mr. Cochran filed a notice yesterday indicating
12 that he was withdrawing his request to appear.

13 Gary and Rebecca Guerriero, Docket 3622,
14 represented by Steve Miller, et al.

15 (No response.)

16 THE COURT: Brenda Howell and Clarence Morrison,
17 Docket 3633, represented by Matthew Kurilich.

18 MR. KURILICH: Good morning, Your Honor.

19 I will take advantage of your statement that says
20 we will not be diminished in any way by submitting it, and
21 we will do that.

22 Thank you very much.

23 THE COURT: Very good. Thank you, sir.

24 Charmain Alicer Abrazado at Docket 3671
25 represented by Joseph Angelo.

1 (No response.)

2 THE COURT: Lin T. Ly and Margaret Strohlein at
3 Docket 3680 represented by Joseph Palmer.

4 (No response.)

5 THE COURT: John P. Evans at Docket 3685.

6 (No response.)

7 THE COURT: Diane Krock, pro se, appearing by
8 telephone.

9 Ms. Krock, are you on the line?

10 MS. KROCK: Yes. Thank you, Your Honor.

11 I was very concerned that the car, the 2007 Camry
12 Toyota, that had the SUA that nearly killed me -- I did not
13 own the car. It belonged to my daughter. I didn't want to
14 be pushed out of the personal injury part of this. You know
15 what I am saying?

16 THE COURT: Yes.

17 MS. KROCK: I had serious injuries and was in the
18 hospital for two weeks, in a trauma hospital. I almost
19 died. I just wanted to be sure that this would not affect
20 the settlement of the -- the economic loss does not affect
21 my personal injury loss case

22 THE COURT: Well, I think as you have heard this
23 morning when I have addressed others those claims are carved
24 out and are not affected by this settlement.

25 MS. KROCK: Okay. That was basically what I was

1 concerned about.

2 THE COURT: Okay. Was there anything else you
3 would like to say?

4 MS. KROCK: I did not own a Toyota. I was driving
5 my daughter's car that had the accident. We had taken it
6 into the Toyota dealership on four occasions that there was
7 something seriously wrong with the car. There was telling
8 us Toyota is a safe car. There's nothing wrong. They
9 didn't bother to help us. The Toyota -- the sales people
10 and the managers did not drive Toyota's cars.

11 When the accident happened, you know, and then we
12 found out that they were concealing it -- the insurance
13 company that was friends with the people at Toyota was
14 demanding the car because I told them that -- told everybody
15 that the car just locked, and I couldn't stop it. It
16 wouldn't stop. I wanted to go into another lane. There was
17 traffic in the other lane. There were people in that lane,
18 and there was a truck up ahead of me. I had no where to
19 escape.

20 The car smashed in. The engine came through the
21 car. I was in the front seat. It almost severed my leg. I
22 almost lost my eye. I was almost decapitated. It was just
23 a horrific terrifying experience that I still just get sick
24 to my stomach.

25 THE COURT: Well, Ms. Krock, those are all things

1 that you will be able to present in your own lawsuit, and
2 you are not going to be restricted or impeded in any way by
3 the settlement here today.

4 Is there anything else you would like to say about
5 the settlement?

6 MS. KROCK: Well, my daughter owning that car --
7 you know, it really doesn't pertain to me. The economic
8 settlement doesn't pertain to me personally because I didn't
9 own the car.

10 THE COURT: Okay. Well, thank you very much. I
11 think we have got your position. I am glad you could be
12 with us today.

13 Let me reconsider my denial of the request for the
14 Estate of Jerome Bernstein to appear. If Mr. Vandenberg
15 didn't go home, I would be happy to hear him at this time.

16 Mr. Vandenberg.

17 MR. BERNSTEIN: Good morning, Your Honor. It's
18 actually Mr. Bernstein.

19 THE COURT: Well, are you represented by a lawyer?

20 MR. BERNSTEIN: Your Honor, I am an attorney. I
21 am also acting on behalf of my father's estate. I am one of
22 the co-executors of my father's estate.

23 THE COURT: Okay.

24 MR. BERNSTEIN: Your Honor, thank you for the
25 opportunity to allow me to speak. I will try and be very

1 brief, but I think the facts are particularly relevant in
2 this case. In January 2010, my father leased a new 2010
3 Toyota Corolla for a three-year term. He put down \$3,000
4 for the lease and traded in a vehicle having a value of
5 \$800. The parties agreed in the lease agreement that the
6 vehicle would depreciate by almost \$4,200 during the term of
7 the lease.

8 In March 2010, less than two months after the
9 lease was executed, the vehicle was involved in an
10 unintended acceleration incident, and it was totaled. In
11 that two-month period, Your Honor, the vehicle had
12 depreciated by approximately \$1,200, which is approximately
13 25 percent of the total depreciation that would have
14 occurred over the term of the three-year lease. He also
15 lost \$1,400 or thereabouts in out-of-pocket transaction
16 costs. In total, the economic losses due to this ill-fated
17 transaction were in the nature of about \$2,600.

18 Your Honor, the only issue which we wish to speak
19 to today is the correct measure of damages for class members
20 such as my father who leased a vehicle which was totaled due
21 to the occurrence of an unintended acceleration event. The
22 damages matrix is predicated on a voluntary resale model and
23 does not recognize damages arising from the loss of
24 claimants' vehicles. It merely quantifies the excess
25 depreciation attributable to negative publicity.

1 The settling parties make no attempt to compensate
2 class members such as my father's estate for the ordinary
3 depreciation losses or unamortized transaction costs. At
4 present, no compensation is offered to lessees such as my
5 father, owners and residual value insurers, for economic
6 losses incurred as a result of actual unintended
7 acceleration events.

8 Let me point out these damages far exceed the
9 excess depreciation that's covered by the damages matrix.
10 To be clear, Your Honor, we have no objection to the damages
11 matrix as far as it goes. We believe it is inequitable,
12 however, to compensate certain class members for excess
13 depreciation losses due to adverse publicity while failing
14 to address far greater economic losses incurred by class
15 members such as my father's estate.

16 The inequity of this situation is compounded by
17 the fact that under the proposed new Allocation Plan
18 substantial additional cash benefits will be paid to class
19 members in manifestation states and those who did not even
20 bother to file claims. While we applaud the effort to
21 further enhance the recoveries for all class members, any
22 additional payments from the Diminished Value Fund or the
23 BOS Fund should be paid in our view first to those class
24 members who experienced unintended acceleration events and
25 realized economic damages.

1 In conclusion, Your Honor, the settling parties
2 propose to include lessees whose leases were terminated due
3 to unintended acceleration events, owners who were forced to
4 return their vehicles due to unintended acceleration events
5 that were not cured, and residual value insurers who
6 contractually bore the risk of early lease terminations. If
7 those class members are to be included, then they should
8 receive some additional compensation in our view. The
9 obvious solution, Your Honor, is to allow class members who
10 experienced unintended acceleration events to recover for
11 ordinary depreciation losses and, if possible, unamortized
12 transaction costs.

13 I will point out that the proposed settlement
14 already requires certain former owners to establish that
15 they complained of an unintended acceleration event. In our
16 view, ordinary depreciation can be easily calculated using a
17 simple objective formula based on book values or other
18 appropriate indices. Unamortized transaction costs can be
19 determined from the relevant lease or sales agreement.

20 In summary, our objection in this case anticipated
21 that there would be a low incidence of claims and that there
22 would be additional monies available from the Diminished
23 Value Fund and the BOS Fund. We believe this provides an
24 opportunity to more equitably compensate class members who
25 experienced unintended acceleration events and incurred

1 economic losses as a result thereof.

2 THE COURT: Sir, I guess I would make two
3 observations. One, it's inevitable in a one size fits all,
4 if you will, settlement of a class action that some people
5 will be peculiarly situated such that they won't be
6 compensated as well as others. I think that's part of the
7 overall process.

8 Number two, I think in the economic analysis you
9 are presenting you were able to make when you reviewed the
10 matrix, if anything, the payout for diminished value has
11 become more favorable, and that suggests to me if you think
12 you are covered by the class, you have discerned an
13 unfavorable result for the estate and thus could have opted
14 out.

15 MR. BERNSTEIN: Well, the class will not receive
16 any additional benefit.

17 THE COURT: Could you have not opted out if you
18 think this settlement is unfavorable to the estate?

19 MR. BERNSTEIN: Certainly we could have, yes.

20 THE COURT: You came to the conclusion that the
21 settlement was less favorable to the estate. It wouldn't
22 compensate the estate for all of the damages you believe the
23 estate sustained, correct?

24 MR. BERNSTEIN: That's correct. We certainly did
25 have the option to opt out, but we believed that for all

1 the reasons these types of cases are certified on a class
2 basis that it would have been very difficult to pursue such
3 a case on an individual basis.

4 THE COURT: Thank you very much.

5 MR. BERNSTEIN: Thank you, Your Honor. I
6 appreciate you allowing me an opportunity to speak.

7 THE COURT: Let me give the parties an opportunity
8 to respond to the objectors.

9 Mr. Berman.

10 MR. BERMAN: First, with respect to Mr. Barnow's
11 objection, to the extent he implies that his clients got
12 nothing from the settlement because there was no
13 compensation for the floor mats, Ms. Boles will receive
14 brake override and Consumer Safety Protection. Mr. Harris
15 will receive a payment from the DV Fund, and Ms. Rainwater
16 will receive brake override and the Customer Parts Program.

17 There is one part of Mr. Barnow's submission that
18 I want to absolutely take that on. You allowed him to file
19 a brief, and that's fine. In his brief, he says, quote,
20 "Thus far, objectors' efforts to approve the settlement have
21 been a success for the class members resulting in
22 approximately \$340 million in additional cash benefits."
23 Mr. Barnow is taking credit for the plan of allocation.
24 Mr. Barnow had nothing to do with our distribution. The
25 special master knows we have been working on this long

1 before Mr. Barnow appeared in this courtroom.

2 Now, with respect to the floor mats, let me make
3 two points. I think Toyota is going to address whether the
4 floor mats were -- how the company handled it, but in terms
5 of this litigation, you will recall when the case started
6 there were floor mat complaints. There were sticky pedal
7 complaints. There were electronic throttle control
8 complaints. Alston & Bird wanted it all done, and you made
9 us elect at some point in litigation what claims after I
10 think a year into it that we were going to bring. You said
11 that there would be a 30-day period that any lawyer who
12 didn't agree with the scope of the Complaint could come
13 forward.

14 Mr. Barnow is familiar with the ECF system. He
15 had notice of that. In fact, he attached to his brief -- he
16 asked me why aren't you doing anything about loss of monies
17 because people had to have their carpet cleaned? I
18 responded you can't have request in a class Complaint. How
19 are you going to model carpet cleaning costs? If he thought
20 that he had a claim for a class on behalf of these floor
21 mats, his time to bring it has expired, and, therefore, we
22 think his objection about the floor mats should be
23 overruled.

24 With respect to Mr. Bernstein, let me make a
25 couple of comments. Number one, with respect to the vehicle

1 being totaled, property damage claims are excluded, so that
2 claim is a viable claim if he wants to opt out of the class.

3 He said a number of times that money should be
4 paid to class members for ordinary depreciation. The case
5 is about loss caused by unintended acceleration.

6 He said that out-of-pocket damages were not --
7 again, there is no way we could have modeled out-of-pocket
8 damages on a classwide basis. Those would have to be
9 pursued on an individual basis.

10 And he suggests that we ought to take some of the
11 money and pay it out to people who had unintended
12 accelerations and have all these special costs that they
13 bring to the Court's attention or to a claim fund. If we do
14 that -- I am not unsympathetic that there are people out
15 there as you said have peculiar situations and have expenses
16 that we just can't capture, but we can't at this point I
17 submit open that up because we would have to re-notice
18 everyone. There are lots of people maybe out there who have
19 situations like this. We would have to reopen this whole
20 thing, and I don't think we should do that.

21 Unless you have any question, Your Honor, that's
22 all I have.

23 THE COURT: Thank you.

24 Mr. Cooney.

25 MR. COONEY: Thank you, Your Honor.

1 Your Honor, with respect to the Boles, et al,
2 objection, I just want to make a couple of brief points.
3 First, there was reference made to the \$30 million Safety
4 Research and Education Fund. As Your Honor's tentative
5 quite properly points out, that is not a cy pres. That was
6 independently negotiated as initial consideration. It was
7 negotiated after the parties had reached agreement with
8 regard to the size of the \$250 million cash funds. It's not
9 a cy pres. In any event, it is closely tied as Your Honor's
10 tentative pointed out to the issues in the case.

11 Secondly, I think it's important to point out that
12 the 100 percent uplift that is available to claimants that
13 is as a result of both the original agreement and Amendment
14 No. 1 to the original agreement. That 100 percent uplifting
15 was done well before any objections were filed.

16 What we have been dealing with in the amended plan
17 that we have been discussing is how do we deal with the
18 residuals after the timely claimants are uplifted to 100
19 percent and there is some money left? So that 100 percent
20 issue is not the result of anything that's been done other
21 than by the parties to the case.

22 With regard to floor mats, Your Honor, I would
23 cite to Your Honor the Ninth Circuit decision's in Lane
24 versus Facebook which, among other things, stand for the
25 proposition that a class action settlement does not need to

1 address every possible theory of damages in the case and
2 that the test is whether the settlement as a whole is fair,
3 reasonable, and adequate. And this settlement clearly meets
4 that test.

5 Secondly, with respect to the floor mat issues,
6 there is really no ground for the objector to complain about
7 floor mat issues because Toyota addressed the floor mat
8 issues through the NHTSA recalls. Your Honor, those recalls
9 dealt with a number of different things on the subject of
10 floor mat entrapment, and depending on your vehicle, it
11 would provide for the reconfiguration of the shape of the
12 accelerator pedal. It would deal with the shape of the
13 floor plan under the accelerator pedal. And with respect to
14 the vehicles that got the all-weather floor mat, it provided
15 for free replacement floor mats at no charge to the owner.
16 With regard to those who had Toyota-supplied carpet floor
17 mats, those were not part of the recall, and the owners were
18 free to continue to use the carpeted floor mats.

19 Finally, on the issue of cleaning, although we
20 don't think a settlement under the Facebook test would have
21 to deal with cleaning, the fact is that Toyota offered the
22 owners that when they brought their cars in to have the
23 recall remedy provided that if the carpets in the front were
24 dirty Toyota or Lexus would clean those carpets. That's in
25 the notices to the owners, and in those instances where it

1 might not have been in the notice to the owners, it was in
2 Toyota or Lexus's instruction to the dealers to do that.

3 Your Honor, in terms of the recall notices, they
4 were distributed to -- there were over 20 million notices
5 that went out to owners on the floor mat entrapment. Those
6 notice letters were reviewed and approved by NHTSA.

7 Your Honor, in terms of participation -- Your
8 Honor can take judicial notice of this because the
9 information is on the NHTSA website -- with respect to the
10 floor mat entrapment vehicles, more than 78-and-a-half
11 percent of all vehicles covered by those recalls received
12 the remedy. So, Your Honor, I think the issues with regard
13 to floor mats -- Toyota puts in place an incredibly
14 comprehensive program to deal with floor mat entrapment
15 issues, including free mats, including cleaning, including
16 the issues that are complained of here.

17 Even if Toyota hadn't done that, we would submit
18 to Your Honor that the settlement is fair, reasonable, and
19 adequate, but in any event, Your Honor, Toyota has more than
20 adequately dealt with its customers by providing a
21 comprehensive remedy through the recall.

22 Your Honor, with respect to Mr. Bernstein's
23 objection, I guess I would just make four quick points.
24 First, again under Lane versus Facebook, the settlement
25 doesn't have to deal with every possible theory of damage or

1 injury. The test is whether the settlement as a whole is
2 fair, reasonable, and adequate.

3 Secondly, I would note that if one looks at
4 Section 2(e) of the Settlement Agreement that deals with
5 cash payment for alleged diminished value, there is a
6 provision in 2(e) that those who, quote, owned a subject
7 vehicle that was declared a total loss by an insurer during
8 the period from September 1, 2009, to December 31, 2010,
9 inclusive is eligible to participate in the fund.

10 Now, if somebody sold the vehicle outside that
11 time period, the data that was relied upon by Dr. Manuel,
12 the plaintiffs' expert, did not support a dip in value.
13 It's not just the folks who sold during the dip period that
14 would be eligible for recovery, but those who owned a
15 subject that was declared a total loss uninsured during that
16 period is able to make a claim.

17 Then the final two points, Your Honor, to the
18 extent it's a personal injury or property damage claim,
19 those claims are carved out by the release. As Your Honor
20 finally noted, Mr. Bernstein was free to opt out of the
21 settlement if he so chose.

22 Thank you.

23 THE COURT: Thank you.

24 Mr. Hooper.

25 MR. HOOPER: Your Honor, I drew the short straw.

1 Just about every person I was going to speak to didn't show
2 today. I have nothing to say except to ask Your Honor if
3 you have any questions we would be happy to answer them.

4 We did have one cleanup matter, a joint issue
5 between the parties. I don't know if this is the right time
6 to address it or if we ought to come back.

7 THE COURT: Well, I think we have concluded with
8 respect to the responses to the objectors. I think the
9 question is where do we go from here, timing, et cetera?

10 MR. HOOPER: Your Honor, we met with the special
11 master this morning, and we identified our next steps. As I
12 mentioned earlier, we are getting Polk data. It will be
13 weeks, not months they said. We would like to target two to
14 three weeks that we think we are going to have that data to
15 analyze it. Your Honor, we are not in control of that data.
16 We would like to go back to the special master when we get a
17 firm date from Polk and when we can get the claims
18 administrator to give us the number that we need.

19 We would like to tell you, Your Honor, exactly
20 what the projection is of the amount of money that will be
21 left based on their expert opinion, what would happen with
22 that money in the two funds, how it would be divided, and
23 what the checks would look like. We would like to continue
24 to report to the special master and advise when we will be
25 able to give that information to the Court. As we said, we

1 tried to get it for today, but I think it will be at least a
2 couple of weeks, Your Honor.

3 THE COURT: The last day for the claims period is
4 what, July 26?

5 MR. HOOPER: The 29th, Your Honor.

6 The joint request that we have -- now that we have
7 an opportunity to do a more fulsome breakdown of all the
8 efforts we have made, we would jointly ask you to consider
9 rather than deny the motion as you said in your tentative,
10 that you would consider leaving the motion open and giving
11 us an opportunity to further the record, Your Honor.

12 THE COURT: I think's that's appropriate.

13 MR. HOOPER: We really appreciate that.

14 There was one more housekeeping matter we had. I
15 will ask Mr. Cooney to address it.

16 THE COURT: Please.

17 MR. COONEY: Thank you, Your Honor.

18 The parties are in agreement with this. Your
19 Honor, as part of the original settlement agreement and
20 submission to Your Honor in connection with preliminary
21 approval, we attached a proposed final order and proposed
22 final judgment for the Court's consideration as part of this
23 process. We have now updated that form with some of the
24 information that was missing because we didn't have it at
25 the time, but, also, as Mr. Hooper noted, with respect to

1 the CSP, the Customer Service Program, that program if Your
2 Honor approves the settlement need not await the exhaustion
3 of any appeal period or the resolution of any appeals.

4 Toyota concluded that the right thing to do was to
5 try to provide that benefit, as well as the BOS benefit, to
6 its customers without going through the appeal process. In
7 order to make sure that Toyota is able to communicate with
8 its dealers and that the dealers are in a position to work
9 with customers that may have the desire or the need to
10 receive the CSP benefits, we would appreciate, Your Honor, a
11 ten-day period from when Your Honor -- if Your Honor does
12 grant final approval, from the entry of final approval
13 before customers can start coming into Toyota dealers so
14 that Toyota and the dealers can be ready for that.

15 So we amended with the agreement of class counsel
16 the proposed order to provide for that ten-day period. You
17 will see it paragraph 11 of the proposed order that I would
18 request that I can pass up to the Court.

19 THE COURT: Please.

20 MR. COONEY: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Well, it would appear that we can't pick a
23 specific date for a further hearing, but I would hope by mid
24 August we could have a further concluding hearing.

25 MR. HOOPER: At the risk of oversimplifying, I

1 believe we could have this -- the parties have talked about
2 a July hearing if we can get the information.

3 THE COURT: Well, we need the final numbers.

4 MR. HOOPER: We will have those within the next
5 two to three weeks.

6 THE COURT: But July 29 --

7 MR. HOOPER: We had talked about -- we thought we
8 would be ready before July 15. Perhaps that would give the
9 Court an opportunity to see those numbers even before the
10 29th in anticipation -- it's my understanding this is very
11 scientific on the claims administrator side at least
12 predicting on what the numbers are going to be at the end of
13 the process. So while it won't be a certainty, actually
14 even by the 29th, they will be -- claims and claim forms are
15 going to have to be reviewed. We would like to get that
16 information to you sooner just for your consideration.

17 THE COURT: Do you have a suggestion for a hearing
18 date?

19 MR. HOOPER: Your Honor, we have talked about the
20 15th.

21 THE COURT: I could do it at the end of the week
22 but not the 15th, 16th, or 17th. How far in advance any
23 additional filings?

24 MR. HOOPER: Try to do that one week prior to the
25 hearing.

1 THE COURT: The 12th. I will allow the parties
2 until July 12th for any further submission, and July 17 for
3 any objector position not to exceed eight pages.

4 MR. HOOPER: Your Honor, I don't know if the 19th
5 is a day on your docket.

6 THE COURT: Well, let me take a look at my
7 calendar.

8 (Pause in proceedings.)

9 THE COURT: If you want to go into the next week,
10 that's fine.

11 MR. HOOPER: Your Honor, if we can keep the 19th.

12 THE COURT: That's fine.

13 THE COURT: Okay 9:00 a.m. on the 19th.

14 MR. HOOPER: Thank you, Your Honor.

15 THE COURT: Any further submission by July 12.
16 Any objector position by the 17th not to exceed eight pages.

17 Okay, anything further for today?

18 MR. BERMAN: Nothing from the plaintiffs, Your
19 Honor.

20 MR. COONEY: No, Your Honor.

21 THE COURT: Very good. Thank you. I know a lot
22 of hard work has gone in on both sides to bring us to this
23 day. It has been a large effort on the part of everyone.

24 (Whereupon, the proceedings were concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: June 21, 2013

Sharon A. Seffens 6/21/13

SHARON A. SEFFENS, U.S. COURT REPORTER