

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: NAVISTAR DIESEL ENGINE	)	Case No. 11 C 2496
PRODUCTS LIABILITY	)	MDL NO. 2223
LITIGATION	)	

**This Document Relates to: All Cases**

---

**DECLARATION OF MICHAEL A. CADDELL  
IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS'  
FEES, EXPENSES, AND SERVICE AWARDS**

---

I, Michael A. Caddell, declare as follows:

1. My name is Michael A. Caddell. I am over 21 years of age, of sound mind, capable of executing this Declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. I am Lead Counsel working on behalf of the Plaintiffs and the putative Class in the above-styled litigation, and I am an attorney and principal of the law firm of Caddell & Chapman.

**Caddell & Chapman**

3. Caddell & Chapman has an outstanding record representing primarily plaintiffs in complex litigation across the United States. I am a past co-recipient of the Public Interest Award from The Trial Lawyers for Public Justice Foundation and have been named "Impact Lawyer of the Year" by *Texas Lawyer* magazine. Caddell & Chapman's other named partner, Cynthia Chapman, who is also working on behalf of the Class in this matter, has been named by the

*National Law Journal* as one of the “Top 40 Lawyers under 40 in America” and one of the “Top 50 Women Litigators in America.” Both Cynthia Chapman and I have been named by *LawDragon* as two of the “500 Leading Plaintiffs’ Lawyers in America.”

4. Caddell & Chapman has worked hard to attain a strong reputation for integrity and excellence,<sup>1</sup> even while pursuing difficult and sometimes controversial cases. As Federal District Judge Royal Ferguson noted during a remand hearing in 2002, “Mr. Caddell, you and your office have a gold-plated reputation as good and thorough and thoughtful lawyers.”<sup>2</sup> As United States Bankruptcy Judge Alan H. W. Shiff in Connecticut noted in 2003 during a contested motion to appoint Michael Caddell as Special Counsel to the Britestarr Bankruptcy Estate, “I think he’s got a national reputation he’s competent . . . . Mr. Caddell appeared before the Court and my recollection is that he comported himself very well.”<sup>3</sup> As Steven Mackey from the Office of the United States Trustee, Region 2, for the District of Connecticut commented in the same hearing, “Mr. Caddell is more than competent, he is a pugnacious bulldog and where there is [sic] grounds to make a recovery he usually does.”<sup>4</sup> “Where the fire is the hottest people tend to get scorched once in a while, and Mr. Caddell takes cases where the fire is as hot as it gets.”<sup>5</sup>

5. Even while representing its clients zealously, however, Caddell & Chapman have maintained an excellent reputation as ethical lawyers. Ethics author and Professor Geoffrey

---

<sup>1</sup> Texas Monthly has named five of the Caddell & Chapman lawyers who worked on this matter either Texas Super Lawyers or Texas Rising Stars. Both Cynthia Chapman and I have been named Texas Super Lawyers in 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012.

<sup>2</sup> *Bellorin v. Bridgestone/Firestone, Inc.*, Cause No. P-01-CA-034, United States District Court, Western District of Texas, Pecos Division, Transcript of March 5, 2002 at 9, ll. 22–23. Instead of burdening the Court with copies of the transcripts and orders referenced in this personal statement, copies or excerpts of these documents will be provided upon request.

<sup>3</sup> *In re: Britestarr Homes, Inc.*, Cause No. 02-50811, United States Bankruptcy Court, District of Connecticut, Transcript of June 3, 2003 at 9, 14.

<sup>4</sup> *Id.* at 12–13.

<sup>5</sup> *Id.* at 12.

Hazard recently noted that, having “worked with lawyers” at “Caddell & Chapman . . . over the years in various matters,” Caddell & Chapman’s lawyers “have consistently demonstrated the most proper ethical standards, including those applicable in class suit litigation,” and their conduct “exemplifies . . . high ethical concern.”<sup>6</sup>

6. Caddell & Chapman attorney Cory S. Fein is also working on behalf of the Class in the above-styled litigation. Mr. Fein is a trial attorney with more than eighteen years of experience and he has been part of the Caddell & Chapman team in multiple national class actions. Mr. Fein is a 1991 graduate of the University of Texas Law School, with honors, and a 1988 graduate of the University of Texas with high honors. He is licensed to practice law in Texas and California, and he is admitted to practice in multiple federal district and appellate courts, as well as the United States Supreme Court. He has been named a “Texas Rising Star” by Texas Monthly magazine on multiple occasions.

7. Caddell & Chapman attorney Amy E. Tabor and former associate Dana B. Levy also have worked on behalf of the Class in this litigation. Ms. Tabor is a trial attorney with ten years of experience, including years of experience with complex class action litigation. Ms. Tabor is a 2003 graduate of the University of Texas School of Law with high honors, where she was a member of the Texas Law Review and the Order of the Coif. She earned her B.A. from Brown University, magna cum laude, in 1995. She is licensed to practice in Texas and in multiple federal courts. She was named a “Texas Rising Star” by Texas Monthly magazine in 2006–2009. Ms. Levy is a 2001 graduate of the University of San Diego School of Law, where she was a member of the San Diego Law Review, and she received her undergraduate degree from the University of Michigan in 1997. She is licensed to practice law in Texas and litigated

---

<sup>6</sup> Hazard Declaration, filed in *White v. Experian Information Solutions, Inc.*, Case No. 05-CV-1070 DOC; In the U.S. Dist. Ct., Central Div. California, ECF Dkt. No. 605-6, Jan. 4, 2010.

numerous class actions and complex matters during her 10-year tenure at Caddell & Chapman.

8. Caddell & Chapman attorney Craig C. Marchiando is also working on behalf of the Class in the above-styled litigation. Mr. Marchiando is a class-action litigator with more than seven years of experience and he has been part of the Caddell & Chapman team in multiple national class actions. Mr. Marchiando is a 2004 graduate of South Texas College of Law, with honors, and a 1991 graduate of Texas Tech University. He is licensed to practice law in Texas and California, and is honored as a Texas Monthly “Rising Star” in class actions and mass torts for 2013. He has been admitted to practice in several Federal courts on a *pro hac vice* basis. In addition, before joining Caddell & Chapman in 2005, Mr. Marchiando served a one-year clerkship at Texas' Fourteenth Court of Appeals in Houston. As the law clerk to Justice Eva Guzman, who now serves on the Supreme Court of Texas, Mr. Marchiando was responsible for the researching and drafting of preliminary appellate opinions for half of Justice Guzman's docket. This amounted to roughly 25 opinions for which Mr. Marchiando was personally responsible from inception through final judgment. He also presented research findings to three-justice panels of the court and made recommendations for case dispositions.

9. Caddell & Chapman attorney Aron L. Gregg also worked on behalf of the Class in this litigation. Ms. Gregg has more than 12 years experience in complex, high-stakes litigation. She is a 2000 graduate of the University of Texas School of Law with high honors. At the University of Texas, she was a member of the Order of the Coif and Clerk of Chancellors, an honor reserved for the student with the third-highest GPA after two years of study. She was also a member of the Texas Law Review and served as Articles Editor of the Law Review. Following law school, Ms. Gregg served as a briefing attorney to the Texas Supreme Court. She is licensed to practice law in Texas and the District of Columbia.

10. Kathy Kersh, John Dessalet, and Sylvia Zuniga Vargas are the three Caddell & Chapman paralegals who predominantly worked on this matter. Each is highly experienced in complex and class action litigation. Among other tasks, Ms. Kersh, who has logged more than 26 years as a paralegal, was largely responsible for organizing and managing more than 6,000,000 documents in this matter. Ms. Kersh also conducted thousands of document searches which yielded numerous critical documents used in the prosecution of this matter. Ms. Vargas, a paralegal with 28 years of experience, organized pleadings, exhibits, and evidence and coordinated with MDL counsel regarding case management. Mr. Dessalet, a paralegal with 20 years of experience, proved invaluable by reviewing and coding documents, preparing presentations, obtaining documents from clients, interviewing clients and potential class representatives, and investigating facts for the Master Complaint.

#### **Caddell & Chapman's Class Action Experience**

11. Caddell & Chapman's typical role in class action litigation is as either lead or co-lead counsel (or in another leadership position). For example, past cases in which Caddell & Chapman and I have served in such a role include the Polybutylene National Class Action Litigation in Tennessee, Texas, and California (*Cox v. Shell*)<sup>7</sup>, in which over \$1 billion was recovered for the class (I was Co-Lead Counsel and served throughout the settlement process as Chairman of the Board of the Consumer Plumbing Recovery Center, the entity responsible for administering the settlement, which completely replumbed over 320,000 homes across America at no cost to individual homeowners); *In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigations*<sup>8</sup> in Ohio, another \$1 billion recovery for a national class (I was Special Counsel to the Plaintiffs' Steering Committee and part of the six-lawyer team which negotiated the initial

---

<sup>7</sup> Civil No. 18,844, Obion County Chancery Court, Tennessee.

<sup>8</sup> Cause No. 1:01-CV-9000 (MDL Docket No. 1401), United States District Court, Northern District of Ohio, Eastern Division.

\$750 million class settlement with Sulzer); *Hotchkiss v. Little Caesar Enterprises*,<sup>9</sup> a national class action in Texas and Michigan which resulted in a settlement valued at \$350 million and the complete restructuring of the Little Caesar's franchise (I was Lead Counsel); and *In re Hyundai and Kia Horsepower Litigation*,<sup>10</sup> a national class action in California that made available to the class roughly \$125 million in cash and/or debit cards (I was Co-Lead Counsel).

12. In the last several years alone Cynthia Chapman and I were named as Class Counsel in *Elihu, et al. v. Toshiba*, a national class action settlement in California which provided extended warranties and other relief for over 860,000 purchasers of Toshiba laptop computers (Caddell & Chapman was characterized by Toshiba's expert, Harvard Professor William Rubenstein (frequent class-action commentator and sole author of *Newberg on Class Actions*), as "experienced" and "skilled class action attorneys," and I was acknowledged as a "nationally-known plaintiffs' attorney"<sup>11</sup>), Ms. Chapman was named as Co-Lead Counsel in a national class action settlement in California involving some 80,000 purchasers of Nissan's 350Z, and I was named Lead or Co-Lead Counsel in six national class action settlements: (1) *White/Hernandez v. Experian, Equifax, and Trans Union*, FCRA injunctive-relief settlement approved on August 19, 2008, by Federal District Judge David Carter (who characterized the settlement as a "home run," "superb," "an incredible accomplishment," and a "substantial benefit for the public," and referred to the "very talented plaintiffs' counsel that ethically and honestly" represented the class) in Orange County, California, which will benefit millions of consumers emerging from Chapter 7 bankruptcy; (2) *Williams v. LexisNexis Risk Management*, a \$22 million FCRA settlement approved June 25, 2008, by Federal District Judge Robert Payne in

---

<sup>9</sup> C.A. No. 99-CI-16042, District Court of Bexar County, Texas.

<sup>10</sup> Case No. 02CC00287, Superior Court of Orange County, California.

<sup>11</sup> Rubenstein Declaration, Dec. 4, 2009, *Elihu v. Toshiba Am. Info. Sys., Inc.*, Case No. BC328556; in the Superior Ct of Calif., Los Angeles County-Central District.

Richmond, Virginia; (3) *Hardy v. Hartford*, a settlement providing injunctive and monetary relief to a nationwide class of Hartford insureds with respect to the payment of General Contractor's overhead and profit on property damage claims, approved by Judge Bury of the Federal District Court of Arizona on June 18, 2008; (4) *In re Trans Union Corp. Privacy Litigation*, Case 1:00-cv-04729, MDL Docket No. 1350, N.D. Illinois, one of the largest class actions in history including more than 190 million class members, where the settlement was approved by Judge Robert Gettleman on September 17, 2008, and prominent class action expert Professor Geoffrey Miller stated "[h]aving worked closely with [Caddell & Chapman], I can also attest that they are among the finest class action attorneys I have been privileged to know during my two decades of experience in this field of law. They not only possess excellent analytical and rhetorical skills, but—more importantly—displayed remarkable qualities of judgment, imagination and persistence;" (5) *Williams Ambulance et al. v. Ford Motor Co.*, a settlement that obtained final approval from Federal District Judge Marcia Crone on July 2, 2009 in the Eastern District of Texas, in which the owners of some 20,000 defective ambulances—utilizing the same diesel engine at issue in the present case—were eligible to obtain substantial compensation from Ford in the form of extended warranties, reimbursements for repairs, and enhanced service; and (6) *White/Hernandez v. Experian, et al.*, a \$45 million FCRA monetary-relief settlement encompassing some 12 million class members approved on July 15, 2011, by Federal District Judge David Carter in Orange County, California. My partner Cynthia Chapman has also recently served on the Plaintiffs' Steering Committee and as a Co-Chair Liaison of the Law Committee in *In re: Medtronic, Inc., Implantable Defibrillators Products Liability Litigation*, an MDL proceeding (Case No. MDL-1726) in the United States District Court for the District of Minnesota, in which a settlement of over \$100 million was approved.

13. Caddell & Chapman's current docket includes some 25 national and state class actions around the United States. In most cases, Caddell & Chapman is either Lead or Co-Lead Counsel. For example, Caddell & Chapman is Co-Lead counsel in a class action in which Caddell & Chapman recently negotiated a tentative national class settlement providing injunctive and monetary relief under the Fair Credit Reporting Act ("FCRA"). Caddell & Chapman is also Lead Counsel in a case against two major beverage manufacturers which resulted in a settlement for a nationwide class of consumers. The settlement obtained final approval on August 31, 2012, in Los Angeles Superior Court. Caddell & Chapman is Co-Lead Counsel for a class of bank account holders in a case involving improper overdraft charges, and on August 10, 2012, Caddell & Chapman prevailed in its efforts to certify a class in that case. Caddell & Chapman is also Co-Lead counsel for plaintiffs asserting FCRA claims in another matter in which Caddell & Chapman recently negotiated a settlement on behalf of two national classes. Finally, Caddell & Chapman is Lead Counsel for a nationwide class of persons insured by a major insurance company in which a tentative settlement has been achieved.

14. I also served recently as Lead Counsel in *In re Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation*, an MDL proceeding (Case No. MDL-1718) pending in the Eastern District of Michigan, where my firm, primarily Cory Fein, took the lead role in facilitating a double-tracked, multi-party mediation that resulted in more than 100 settlements of cases involving vehicle fires. I am also lead or co-lead counsel in numerous other national or state class actions against, among others, State Farm, Nissan, Honda, Acxiom, Corelogic, Toshiba, and Volvo. Cynthia Chapman and other members of Caddell & Chapman are serving in leadership positions in these and various other state and/or national class actions around the United States.

15. While Caddell & Chapman’s primary focus in the area of class actions has been as lead counsel for a putative or certified class, it has on occasion represented objectors with respect to proposed settlements that appeared abusive or defective. Since 2001, Caddell & Chapman has represented objectors in nine matters with respect to proposed settlements. In several cases, Caddell & Chapman was lead or co-lead counsel for most or all of the objectors’ counsel. In *Clark v. Equifax Information Services, Inc.*,<sup>12</sup> the district court refused to approve a proposed settlement after a two-day contested hearing in which I presented an expert and cross-examined several witnesses, including experts, advanced by the settlement proponents. Ultimately, after the settlement was modified with Caddell & Chapman’s participation and assistance, the court approved the modified settlement and noted that “the involvement of Objectors’ Counsel [which were led by Caddell & Chapman] aided in improving the final settlement terms,” “the value to the class has . . . clearly been improved through the modifications to the Stipulation[s] of Settlement,” and “Objectors’ Counsel [for whom I served as Lead Counsel] . . . contributed to the final successful settlements.”<sup>13</sup>

16. Similarly, in *In re Hyundai and Kia Horsepower Litigation*, Caddell & Chapman, joined by many firms across the country, successfully objected to a proposed coupon settlement and convinced a state district court in Texas to *withdraw* preliminary approval for that settlement.<sup>14</sup> Ultimately, Caddell & Chapman, as Co-Lead Counsel, obtained a vastly improved settlement which was submitted to and approved by the Superior Court in Orange County, California, Judge Stephen J. Sundvold, presiding. In approving the settlement, Judge Sundvold

---

<sup>12</sup> *Franklin E. Clark, et al. v. Equifax Information Services, Inc.*, No.8:00-1218-22, United States District Court for the District of South Carolina, Anderson Division. There were two other related cases as well, Case Nos. 8:00-1217-22 and 8:00-1219-22.

<sup>13</sup> *Id.*, Order of April 20, 2004, at 33 nn.34–35; 34.

<sup>14</sup> *Hermie Bundick, et al. v. Hyundai Motor Am.*, Cause No. B-168,410, 60th Judicial District of Jefferson County, Beaumont, Texas.

commented that it was “a tremendous accomplishment,” “you’ve done a terrific job,” and the settlement “is as fair and reasonable as could have been arrived at.”<sup>15</sup> In four of the other cases in which Caddell & Chapman has represented objectors, settlement modifications were ultimately approved by the trial court and either affirmed on appeal or became final without appeal. In several of those as well, the court or opposing counsel specifically noted the contributions of the objectors led or represented by Caddell & Chapman.<sup>16</sup>

17. In addition to my leadership roles in various class actions, I have also written about class action issues and have been invited to speak at class action and other CLE seminars. For example, just since 2009 I have co-authored (with Craig Marchiando): “Issues Particular to Consumer Finance Class-Action Settlements,” in *The Review of Banking & Financial Services*, Vol. 25, No. 9, September 2009; “Effective Approaches to Class Action Settlements,” in the 14th Annual Consumer Financial Services Litigation Institute PLI Course Handbook Series Number B-1728, March 2009; and “Recent Developments in Class Action Certification and Settlement,” in the 15th Annual Consumer Financial Services Litigation Institute PLI Course Handbook Series Number B-1789, February 2010. I also served as a panelist on class action issues at both the 14th and 15th Annual Consumer Financial Services Institutes sponsored by the Practicing Law Institute in New York and Chicago in 2009 and 2010.

---

<sup>15</sup> *In re Hyundai and Kia Horsepower Litigation*, Case No. 02CC00287, Superior Court of Orange County, California, Transcript of June 16, 2004 at 33-34, 43. The court’s comments were premised on a claims rate of 15% to 20%, and the final claims rate was 19.2%.

<sup>16</sup> *See, e.g., In re Wireless Tel. Federal Cost Recovery Fees Litig.*, Case No. MDL 1559, Master Case No. 4:03-md-01559, United States District Court for the Western District of Missouri, Western Division, Order dated July 8, 2004 at 4 (objectors represented by Michael Caddell and Ken Nelson “contributed significantly more to the settlement [than another group of objectors] and several of the suggestions [they] made were incorporated into the final settlement.”); *Terri Shields, on Behalf of Herself and All Others Similarly Situated v. Bridgestone/Firestone, Inc.*, Cause No. B-170,462, 172nd Judicial District Court of Jefferson County, Texas, Plaintiff’s Unopposed Motion for Entry of Order Supplementing Record, dated March 31, 2005, at 2 (“Plaintiff recognizes that the resolution of the objections to the original settlement is due to the efforts of many counsel for objectors, including, but not limited to, Mitchell A. Toups, Mike Caddell . . . Many objector counsel, including the aforementioned, worked constructively with class counsel and counsel for Defendants to achieve the above-stated results.”) Caddell & Chapman’s fees in *Shields* were all donated to charity.

**Caddell & Chapman's Trial and Complex Litigation Experience**

18. Caddell & Chapman's trial experience, which includes more than 50 jury trials and hundreds of evidentiary hearings, is germane to the appointment of Class Counsel in this matter. It is important for the Defendants to know that Plaintiffs' Counsel has extensive trial experience and can competently try a case. Indeed, Caddell & Chapman has tried numerous complex cases (and evidentiary hearings) against the Nation's top defense firms to a successful conclusion. In March 2006, Cynthia Chapman and I completed a complex, hotly contested five-week trial against ExxonMobil in which the jury awarded Caddell & Chapman's client \$33.6 million<sup>17</sup>—ultimately, rather than pursuing an appeal, Exxon Mobil settled the matter. Notably, ExxonMobil's trial counsel at the time of trial was President-Elect of the American College of Trial Lawyers.

19. In August 2008 we recovered \$9 million in consent judgments after trial commenced in federal district court in McAllen, Texas, which judgments were paid in full plus interest at 8.25% following a contested evidentiary bankruptcy hearing in Jackson, Mississippi, in January 2010 (the total recovery was \$10,084,000).<sup>18</sup> In July 2009, I served as lead counsel for the Park Memorial Homeowners' Association against Lexington Insurance Company, seeking compensation for a 105-unit condominium project that had been declared uninhabitable by the City of Houston due to structural concerns. The case settled for a confidential amount—but only after we had successfully argued and prevailed over some 15 motions for summary judgment, *Daubert* motions, and motions in limine, and only one day before jury selection was to

---

<sup>17</sup> *Tetco v. ExxonMobil Corp.*, Cause No. 2003-CI-04424, 73rd Judicial District of Bexar County, Texas.

<sup>18</sup> *Ezequiel Reyna et al v. Michael J. Miller, et al.*; Case No. M-05-006; In the United States District Court for the Southern District of Texas, McAllen Division.

commence.<sup>19</sup>

20. In 2011 Caddell & Chapman settled claims against the soils engineer for a \$100 million, 31-story condominium tower on South Padre Island that earned the unenviable world record for the tallest reinforced-concrete structure ever imploded when, shortly after the building was “topped-out,” it began differentially settling into the sand, causing columns to blow out, severe structural cracking, and enormous floor deflection.<sup>20</sup> Again, the settlement occurred after Cynthia Chapman’s successful appellate briefing at the Texas Supreme Court and jury selection at trial.<sup>21</sup>

21. In 2012, Caddell & Chapman led a group of four firms pursuing False Claims Act claims in a *qui tam* case against DaVita, the nation’s second-largest dialysis-treatment provider. During the course of the case, Caddell & Chapman took more than 40 depositions, reviewed hundreds of thousands of pages of documents, and briefed dozens of motions—from discovery to four dispositive motions—and was victorious every time. The case settled for \$55 million paid to the United States and a confidential amount for attorneys’ fees (which was disclosed to and approved by the U.S. Department of Justice (*see infra*)).

### **Caddell & Chapman’s Past Recoveries**

22. Since 1996, Caddell & Chapman has obtained more than 70 recoveries valued at \$1 million or more, and more than 25 recoveries that exceeded \$10 million. The value of the Firm’s total recoveries in that time total more than \$3.0 billion. To further illustrate the depth and breadth of Caddell & Chapman’s experience and versatility, the following is a list of some of

---

<sup>19</sup> *Park Memorial Condominium Ass’n, Inc. v. Lexington Ins. Co.*; Cause No. 2007-38187, 133rd Judicial District Court of Harris County, Texas.

<sup>20</sup> *Ocean Tower, L.P., et al. v. Raba-Kistner Consultants, Inc. et al.*; Cause No.2008-06-3619-E; 357th District Court of Cameron County, Texas.

<sup>21</sup> While the terms of various settlements are confidential, public records reflect there has been a complete release of \$75 million in lenders’ liens on the property, and Caddell & Chapman’s client retains ownership of the property after the demolished tower has been removed.

the cases in which Caddell & Chapman served as lead counsel and the recoveries made in each of these cases (some of which are identified by case type<sup>22</sup> and others of which are identified by case style): (1) C.A. No. 05-0227, *United States ex rel. Woodard v. Fresenius Medical Care*, \$55 million settlement (plus confidential recovery of attorneys fees)—*qui tam*—non-intervened case (one of the largest recoveries in history in a non-intervened *qui tam* case); (2) C.A. No. 2000-CI-17169; *Maria Dolores Rodriguez-Olvera v. Salant Corporation, et al.*, \$30 million settlement during trial—negligence—forum non conveniens—choice of law—federal jurisdiction—bankruptcy—bus accident in Mexico—14 deaths—Maquiladora workers; (3) C.A. No. 2003-CI-04424; *Tetco, et al. v. ExxonMobil, et al.*, \$33.6 million jury verdict—breach of contract, fraud; (4) C.A. No. —95-245; *Anthony R. Alvarez, et al. v. Little Caesar Enterprises, Inc., et al.*, \$14.9 million jury verdict—breach of contract, tortious interference—restaurant franchisee versus national franchisor; (5) No. 95-27280; *Douglas E. Moore and Toyota Town, Inc. v. Gulf States Toyota, Inc., Toyota Motor Sales, U.S.A., Inc., Jerry Pyle, & John Bishop*, \$7.5 million verdict—fraud, breach of contract/franchise agreement—automobile dealership; (6) \$23.4 million—product liability—*forum non conveniens*; (7) No. 93-062030; *Thomas E. Meadors, et al. v. Gen. Motors, et al.*, \$7 million—product liability—motor vehicle—death, personal injury; (8) *Sierra Club v. Crown Central Petroleum*, \$2.5 million—first private citizen suit in Texas under Clean Air Act; settlement achieved after successful appeal to Fifth Circuit Court of Appeals; (9) *PB/Class*, \$1.091 billion—national class action—products liability—DTPA—polybutylene pipe and fittings; (10) *Dow Chemical Co., et al v. Miller Pipeline Services*, successfully defended Miller Pipeline Services Co. at jury trial against a \$7 million suit filed by Dow Chemical Co. and Dow Pipeline Co. that alleged price-fixing, patent misuse and

---

<sup>22</sup> Due to confidentiality provisions in the settlement agreements.

attempted monopolization; (11) \$14.0 million—breach of fiduciary duty and legal malpractice—major New York law firm; (12) \$15.7 million—industrial accident—injured workers; (13) \$78.4 million subordination of secured debt plus \$3.8 million in payments—special counsel to bankruptcy trustee—fraud, lender liability, equitable subordination—conspiracy—international bank; (14) \$18.2 million debt/claims withdrawn and released plus \$500,000 payment—special counsel to bankruptcy trustee—breach of contract, bailment, theft—oil terminalling facility; (15) \$20 million subordination of secured debt plus payments totaling \$1.0 million—special counsel to bankruptcy trustee—fraud, lender liability, breach of fiduciary duty, director’s liability, D&O coverage—foreign bank, director, D&O insurer; (16) \$1.7 million—national class action—price fixing conspiracy—metal building insulation industry; (17) \$22.5 million subordination of secured debt plus \$8.0 million payment—breach of fiduciary duty, director’s liability—oil company; (18) \$107.5 million subordination of secured debt plus \$2.5 million payment—fraud, lender liability—conspiracy—foreign banks; (19) \$2.0 million—product liability—helicopter crash—Mexico; (20) \$8.0 million elimination of priority debt plus 40% of Texas corporation—national class action—securities fraud, breach of fiduciary duty; (21) \$2.6 million—trade secrets—commercial defamation; (22) \$5 million—toxic tort—sulphur dioxide, asbestos; (23) \$13.1 million—products liability—DTPA—1500 homes—polybutylene pipe and fittings; (24) \$6.25 million—product liability—motor vehicle—single death; (25) \$2.85 million—breach of contract—account mismanagement—national banks; (26) \$4.3 million—commercial litigation—intellectual property—fraud, trade secrets, misappropriation; (27) \$12.1 million—national class action—consumer fraud; (28) \$22.5 million—insurance bad faith—CGL policy; (29) \$7 million—insurance bad faith—crime bond; (30) \$12 million—insurance bad faith—CGL policies—(underlying case: toxic exposure); (31) \$5 million—insurance bad faith—

CGL policies—(underlying case: toxic exposure); (32) \$10.0 million—breach of fiduciary duty, director’s liability, family trusts; (33) \$5.1 million—trucking accident; (34) \$2.125 million—toxic exposure—2,4-d, dioxins; (35) \$5.05 million (including \$1.05 million in post-judgment interest) after \$4.0 million jury verdict upheld on appeal—closed head injury; (36) \$3.5 million—trucking accident; (37) \$6 million—toxic exposure—chlordane; (38) \$2.5 million—national class action—consumer fraud; (39) \$4.15 million—product liability—vehicle fire; (40) \$1.5 million—Trident submarine base—government contracts claim; (41) \$4 million settlement one day after \$6.25 million jury verdict—commercial litigation—deceptive trade practices; and (42) \$3.25 million claim successfully defended at trial—take-nothing judgment entered—\$600,000 judgment awarded firm’s client on counterclaim—commercial litigation—lender liability.

#### **Pro Bono Litigation**

23. Cynthia Chapman and I are also proud of our *pro bono* litigation efforts, including class litigation. For example, on a *pro bono* basis, Caddell & Chapman represented, as Lead Counsel for a coalition of public interest groups, Hurricanes Katrina and Rita victims in a national class action lawsuit against the Federal Emergency Management Agency (FEMA). The lawsuit, in federal district court in Houston, alleged that FEMA’s mishandling of its housing assistance programs violated federal laws and regulations. In a contested evidentiary hearing involving several witnesses, other lawyers from Caddell & Chapman and I persuaded the court to issue a preliminary injunction against FEMA compelling the agency to provide assistance with hurricane victims’ utilities as well as base rent. In what lawyers from the Public Interest Law Project of Oakland, California, termed “a significant victory for evacuees,” the district court found a “clear entitlement” that FEMA was required to provide assistance with utilities under

applicable statutes and regulations, and FEMA's failure to comply with these mandates endangered the victims' ability to remain in livable housing. While the district court's injunction was subsequently overturned by the Fifth Circuit Court of Appeals, FEMA made several concessions to the Hurricane victims in the interim, essentially conceding the relief sought by the lawsuit, as noted by Houston's then-Mayor, Bill White, who stated that Caddell & Chapman "was of tremendous help to the Katrina evacuees in battling with FEMA."<sup>23</sup>

24. For further information concerning our firm's experience and expertise, the Court is referred to our website ([www.caddellchapman.com](http://www.caddellchapman.com)).

25. As described above, my firm and I have the experience and ability required to zealously and competently pursue this litigation on a classwide basis. The other members of the Plaintiffs' Steering Committee are also experienced in class action litigation, as shown by (1) the resumes submitted in support of Plaintiffs' Joint Application for Appointment of Lead Counsel, Liaison Counsel, and Steering Committee (*see* Doc. No. 7 and exhibits thereto); and (2) the declarations submitted in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards as Exhibits 2 & 4-22. Caddell & Chapman and the other members of the Steering Committee, together with other Plaintiffs' counsel (collectively, "MDL Counsel"), have cooperatively, thoroughly, and efficiently investigated and litigated this case.

#### **The Work Performed in This Litigation**

26. Before this case was filed, Caddell & Chapman and Weller, Green, Toups & Terrell, L.L.P. represented a nationwide class of ambulance owners in a case filed in Texas regarding the same 6.0L Diesel engine that is at issue in this litigation (the "Ambulance Case"). In the Ambulance Case, we represented multiple companies and governmental entities

---

<sup>23</sup> October 22, 2009 email from Mayor Bill White to Michael A. Caddell and Houston City Attorney Arturo Michel.

throughout the country that owned and operated ambulance fleets. We worked closely with our clients' in-house mechanics to analyze the issues these engines were experiencing and the various engine components that were malfunctioning. We retrieved and reviewed pleadings from litigation between Ford and Navistar regarding these engines and deposed two key Ford engineers with knowledge of the engine defects. Through the Ambulance Case, we began to develop the factual theories that formed the basis of this action.

27. Caddell & Chapman and Weller, Green, Toups & Terrell, L.L.P., then represented the plaintiffs in the *Custom Underground, Inc. v. Ford Motor Company* action, which we filed in this Court on January 8, 2010. Following a March 30, 2011 hearing in San Diego at which Caddell and Chapman argued that *Custom Underground* and numerous other related matters should be headquartered in this Court, on April 13, 2011, the Judicial Panel on Multidistrict Litigation created these MDL proceedings, and this Court appointed Caddell & Chapman as Lead MDL Counsel on May 19, 2011. (*See* Doc. No. 14). Since that time, Caddell & Chapman has worked together with other MDL Counsel to represent the Class.

28. Given the number of firms involved in this litigation, in order to avoid duplicative or unnecessary work, it was incumbent on Lead Counsel to organize a Steering Committee along with various committees that would ultimately be responsible for performing specific tasks, including research, motion practice, document review, written discovery, depositions, class member interviews, vehicle inspections, expert retention and oversight, and settlement negotiations. Accordingly, on May 3, 2011, I scheduled a meeting in Houston to which I invited counsel for all plaintiffs in the then-referred MDL cases, as well as all counsel we could identify for plaintiffs in cases believed to be tag-along cases. Ultimately, eighteen lawyers from across the country—representing every filed case involving the subject matter as of that date—attended

the meeting. At the meeting, Cynthia Chapman, Cory Fein, and I made a substantive presentation regarding the history of the *Custom Underground* litigation, proposed a leadership structure, and briefed all counsel regarding upcoming scheduling issues. Counsel at the coordination meeting and their associated counsel from around the country unanimously agreed on a leadership structure whereby I would serve as Lead Counsel and supervise a 14-person Plaintiffs' Steering Committee ("PSC") that would assist in overseeing the litigation.

29. Additionally, consistent with the Manual for Complex Litigation recommendations, we formed internal committees (Law, Discovery, Experts, Trial, Settlement, etc.), and attorneys who were not designated as steering committee members were given the opportunity to serve on a committee and have input into the litigation through the committee. MANUAL FOR COMPLEX LITIGATION (FOURTH) § 10.22 (stating that counsel appointed to leadership positions assume "an obligation to act fairly, efficiently, and economically" and that "committees of counsel . . . should try to avoid unnecessary duplication of effort.") The Steering Committee chairs each endeavored to reach a balance between giving the attorneys involved in this litigation ample opportunity to have input while at the same time avoiding unnecessary duplication of effort and other inefficiencies.

30. To further avoid duplicative or unnecessary work and to establish protocols for tracking and submitting time and expenses (both common/shared expenses and held expenses), on June 10, 2011, I sent a letter to all Plaintiffs' counsel in which I made clear that "explicit authorization by Lead Counsel" is required before any work can be performed for the common benefit of the putative class (as opposed to work on behalf of individual clients). (*See Ex. A* ("To avoid unnecessary expenditures of time and funds, and to avoid duplicative or inefficient work, plaintiffs' counsel must obtain authorization from Lead Counsel before expending any

time or expenses in this litigation.”).) I also made clear that certain time would not be compensated, including time spent on clerical activities or for seeking new clients. (*Id.* at 1.) With these protocols in place, all common benefit work performed in this litigation was to be done at the express request of Lead Counsel in conjunction with the committee chairs.

31. MDL Counsel have taken or defended nearly 40 depositions, including 13 depositions of current and former Ford employees involved with the 6.0L engine and two depositions of experts Ford relied upon in its summary judgment motions. The deposition schedule for both Plaintiffs’ and Ford’s witnesses was varied and national in scope, and all required meticulous preparation and document review. MDL Counsel prepared for and took the depositions of the following current or former Ford employees in this case:

<b>DATE</b>	<b>DEPONENT</b>	<b>LOCATION</b>
1/20/11	Mike Berardi	Dearborn, MI
1/21/11	Rick Renwick	Dearborn, MI
2/16/11	John Koszewnik	Dearborn, MI
2/17/11	Mont Wright	Dearborn, MI
2/24/11	Jeffrey Eekhoff	Dearborn, MI
3/23/11	Colin Horbal	Videoconference
11/9/11	Dave Enerson	Dearborn, MI
11/10/11	Scott Eeley	Dearborn, MI
12/8/11	Enio Gomes	Dearborn, MI
12/9/11	Mike Frommann	Dearborn, MI
12/16/11	Mark Freeland	Dearborn, MI
2/7/12	Frank Ligon	St. Augustine, FL
2/29/12	Brien Fulton	Dearborn, MI

32. In addition, MDL Counsel prepared for and took the depositions of the following expert witnesses for Ford:

<b>DATE</b>	<b>DEPONENT</b>	<b>LOCATION</b>
3/8/12	Paul Taylor, Ph.D	Menlo Park, CA
3/16/12	Mark Hoffman	Dearborn, MI

33. MDL Counsel also prepared for (including meeting with each Class Representative in advance) and defended the following depositions of Class Representatives:

<b>DATE</b>	<b>NAME</b>	<b>LOCATION</b>
11/16/10	Sue Dewar (Custom Underground)	Peoria, IL
11/16/10	Jamie Marvin (Custom Underground)	Peoria, IL
12/15/10	Jorge Tijerina <sup>24</sup>	Houston, TX
12/16/10	Heather Gray	Houston, TX
12/16/10	Scott Gray	Houston, TX
12/17/10	John Barrett	Houston, TX
12/6/11	Georjean Vogt	Tucson, AZ
12/16/11	Fred Corigliano (Frank Brown Towing)	Cheektowaga, NY
12/19/11	John Prebish	Longmont, CO
12/20/11	James Hutton	Philadelphia, PA
1/6/12	Steve Santilli	Hartford, CT
1/9/12	Anthony Mawyer	Hickory, NC
1/10/12	Gena Boggero	Charlotte, NC
1/11/12	Karl Strong	San Francisco, CA
1/12/12	Carl Atwell	Martinsville, IN

<sup>24</sup> Mr. Tijerina is no longer a Class Representative.

<b>DATE</b>	<b>NAME</b>	<b>LOCATION</b>
1/12/12	Cecil Fulton	San Francisco, CA
1/17/12	Robert Dinonno	Los Angeles, CA
1/27/12	Phillip Marcum	Jackson, OH
2/9/12	Charles Clark	Ann Arbor, MI
2/24/12	Ben Partain (husband of Gena Boggero)	Greenwood, SC

34. This case has also involved extensive document discovery. Plaintiffs produced nearly 10,000 pages of documents in response to Ford's discovery requests, as summarized by the table below. MDL Counsel reviewed these documents and prepared them for production.

<b>BEGINNING BATES</b>	<b>ENDING BATES</b>	<b>DATE PRODUCED</b>
CU 000001	CU 000354	6/24/2010
CU 000355	CU 001484	7/27/2010
CU 001485	CU 001499	7/27/2010
CU 001500	CU 001504	7/27/2010
CU 001505	CU 001571	7/27/2010
CU 001572		NUMBER NOT USED
CU 001573		7/27/2010
CU 001574	CU 001595	7/27/2010
CU 001596	CU 001661	12/8/2010
CU 001662	CU 001663	12/8/2010
CU 001664	CU 002110	12/8/2010
CU 002111	CU 002169	12/8/2010
CU 002170	CU 005818	12/8/2010
HG 000001	HG 000005	11/24/2010
HG 000006	HG 000010	11/24/2010
HG 000011	HG 000022	11/24/2010

<b>BEGINNING BATES</b>	<b>ENDING BATES</b>	<b>DATE PRODUCED</b>
HG 000023	HG 000051	11/24/2010
HG 000052	HG 000071	11/24/2010
HG 000072	HG 000119	11/24/2010
HG 000120	HG 000279	11/24/2010
HG 000280	HG 000281	11/24/2010
HG 000282	HG 000283	11/24/2010
HG 000284	HG 000286	11/24/2010
HG 000287	HG 000288	11/24/2010
HG 000289	HG 000303	11/24/2010
HG 000304	HG 000318	11/24/2010
HG 000319	HG 000357	11/24/2010
HG 000358	HG 000376	11/24/2010
JB 000001	JB 000004	6/24/2010
JB 000005	JB 000006	7/27/2010
JB 000007		12/13/2010
JT 000001	JT 000023	6/24/2010
JT 000024	JT 000029	7/27/2010
JT 000030	JT 000036	12/8/2010
PL 00001	PL 000044	10/13/2010
PL 000045	PL 000051	4/8/2011
PL 000052	PL 000058	4/8/2011
PL 000059	PL 000062	4/8/2011
PL 000060	PL 000066	4/8/2011
PL 000067		4/12/2011
PL 000068	PL 000076	4/12/2011
PL 000077	PL 000088	4/12/2011
PL 000089		4/12/2011
PL 000090		4/12/2011

<b>BEGINNING BATES</b>	<b>ENDING BATES</b>	<b>DATE PRODUCED</b>
CA 000001	CA 000012	11/1/2011
GB 000001	GB 000051	11/1/2011
CC 000001	CC 00006	11/1/2011
CU 005819	CU 005820	11/1/2011
RD 000001	RD 000168	11/1/2011
FBT 000001	FBT 000044	11/1/2011
CF 000001	CF 000092	11/1/2011
HG 000377	HG 000378	11/1/2011
JH 000001	JH 000019	11/1/2011
PM 000001	PM 000037	11/1/2011
AM 000001	AM 000014	11/1/2011
JP 000001	JP 000388	11/1/2011
SS 000001	SS 000081	11/1/2011
KS 000001	KS 000010	11/1/2011
GV 000001	GV 000054	11/1/2011
GB 000052		11/7/2011
JB 0000008		11/7/2011
JB 0000009		11/7/2011
JH 000020	JH 000234	12/19/2011
FBT 000045	FBT 000047	12/27/2011
FBT 000048		12/27/2011
GB 000053	GB 000064	1/5/2012
GV 000055	GV 000320	1/26/2012
AM 000015	AM 000230	1/17/2012
CA 000013	CA 000016	1/17/2012
GB 000065	GB 000198	1/27/2012
GB 000199	GB 000349	2/7/2012
GB 000350	GB 000936	2/17/2012

<b>BEGINNING BATES</b>	<b>ENDING BATES</b>	<b>DATE PRODUCED</b>
RD 000127	RD 000222	1/27/2012
CC 000017	CC000032	4/18/2012
CU 005821	CU 005847	4/18/2012
CU 005848	CU 005851	4/18/2012
CU 005852	CU 005888	4/18/2012
GB 000937	GB 00941	4/18/2012
JP 000389	JP 000421	4/18/2012
PM 000038	PM 000041	4/18/2012
RD 000223	RD 000228	4/18/2012
SS 000082	SS 000139	4/18/2012

35. MDL Counsel also undertook reviewing millions of documents produced by Ford. In total, Ford produced more than 6 million pages of documents, and that production continued into 2012. MDL Counsel reviewed the vast majority of these documents, either physically or electronically, in crafting the Master Amended Complaint, preparing subsequent discovery requests, preparing for depositions (both taking and defending), in responding to Ford's motions to compel arbitration as to two Class Representatives, and in preparing draft responses to Ford's 14 summary judgment motions as to other Class Representatives. To assist MDL Counsel in analyzing and assimilating this more than 6 million pages of documents, MDL Counsel formed an IT Committee that interviewed various document-services providers and ultimately selected Crivella West in Pittsburgh, at a cost of hundreds of thousands of dollars. Crivella uploaded the millions of pages of documents onto its proprietary case research system and processed and organized the documents to make them easier to search, categorize, and organize and to assist in locating key documents relevant to important issues in the case. Ford's production, which includes documents originally produced in the Ambulance Case, consisted of:

<b>BEGINNING BATES</b>	<b>ENDING BATES</b>	<b>DATE PRODUCED</b>
AMB776X0000000001	AMB776X0006104273	8/30/10
AMB776000001	AMB7760005206	8/30/10
AMB7760004345A	AMB7760005211A	8/30/10
NHTSA documents, Maintenance videos, Owners guides, specific VIN records, etc.	Hard drive containing documents without Bates numbers—total size is 84.9 GB	9/3/10
Warranty Policy Manuals	No Bates numbers, total size is 13.1 MB	11/4/10
EFC Customer Loyalty documents	No Bates numbers, total size is 11.3 MB	11/4/10
CU00004	CU0038	11/4/10
CU 000038	CU001031	11/4/10
CSC 00675	Technical Service Bulletins totaling 146 MB	11/4/10
CU1 0001	CU1 4212	11/5/10
CU001032	CU001277	12/15/10
CUC1 0001	CUC1 4085	2/28/11
CSC 10004478	Vehicle Guides totaling 49.5 MB	2/28/11
CU 1278	Gray truck documents totaling 10.9 MB	2/28/11
CUC1 4086	CUC1 7818	3/2/11
CU200001	CU201756	3/18/11
CU1 04213	CU1 04269	2/17/11
CU2 000001	CU2 002078	9/9/11
CU2 002286	CU2 002503	1/3/12
3761 04192	3761 27324	1/6/12
3761 27325	3761 42015	1/11/12
3761 56788	3761 70536	1/19/12
3761 70537	3761 96916	1/24/12
3761 96917	3761 146021	2/3/12
3761 146022	3761 161842	2/9/12
3761 161843	3761 234098	2/10/12

<b>BEGINNING BATES</b>	<b>ENDING BATES</b>	<b>DATE PRODUCED</b>
3761 234099	3761 234654	2/11/12
CU2 003371	CU2 003388	2/15/12
3761 234655	3761 234989	4/10/12

36. MDL Counsel also subpoenaed documents from Navistar, the manufacturer of the 6.0L Engine. Navistar's production included:

<b>BEGINNING BATES</b>	<b>ENDING BATES</b>	<b>DATE PRODUCED</b>
NAV-CU 000001	NAV-CU 0079096	12/16/10

37. MDL Counsel reviewed this production and also evaluated many of the pleadings from that case.

38. MDL Counsel also examined both deposition testimony and documentary evidence from the *Navistar* litigation, including the deposition transcripts and exhibits from the following witnesses:

<b>DEPONENT</b>	<b>DATE TAKEN</b>
Robert Fascetti	8/12/08
James Glass	7/22/08
Mina Shams	8/23/08
Richard Wooten	7/8/08

39. The Parties served multiple sets of interrogatories over the course of litigation. Ford served the following Interrogatories, to which Plaintiffs responded:

<b>DATE SERVED</b>	<b>NUMBER</b>	<b>DATE ANSWERED</b>	<b>PLAINTIFFS SERVED</b>
6/24/10	17 (to 5 plaintiffs)	7/27/10	Custom Underground, Barrett, Tijerina
		10/13/10	Custom Underground, Barrett, Tijerina Supplement
		11/24/10	Scott and Heather Gray

<b>DATE SERVED</b>	<b>NUMBER</b>	<b>DATE ANSWERED</b>	<b>PLAINTIFFS SERVED</b>
		12/8/10	Scott and Heather Gray Supplement
		12/8/10	Custom Underground, Barrett, Tijerina Second Supplement
		4/12/11	Scott and Heather Gray Second Supplement
9/19/11	20	11/7/11	All Plaintiffs

40. Ford also served Requests for Admission on Plaintiff Tijerina, which MDL Counsel answered on July 15, 2010, and Ford served the following sets of Requests for Production:

<b>DATE SERVED</b>	<b>NUMBER</b>	<b>DATE ANSWERED</b>	<b>PLAINTIFFS</b>
6/24/10	18 (3 plaintiffs)	7/27/10	Custom Underground, Barrett, Tijerina
	18 (3 plaintiffs)	10/13/10	Custom Underground, Barrett, Tijerina (Supplemental Responses)
	18 (1 plaintiff)	11/24/10	Heather Gray and Scott Gray Responses
	18 (4 plaintiffs)	12/8/10	Custom Underground, Barrett, Tijerina (Second Supplemental responses), Heather and Scott Gray (Supplemental responses)
	18 (3 plaintiffs)	12/13/10	Custom Underground, Barrett, Tijerina (Third Supplemental Responses)
7/28/10	1 (Request for Production of Vehicles)	See inspection schedule, <i>infra</i>	All Plaintiffs in Custom Underground and MDL produced their vehicles for inspection
9/19/11	32 (all plaintiffs)	11/7/11	All Plaintiffs
12/23/11	1 (1 plaintiff)	1/26/12	Plaintiff Georjean Vogt only

41. MDL Counsel prepared and served the following Interrogatories on Ford:

<b>DATE SERVED</b>	<b>NUMBER</b>	<b>DATE ANSWERED</b>
8/18/10	8	9/17/10
1/13/12	26	2/15/12
		2/28/12 (Amended Answers)

42. Plaintiffs also served the following Requests for production on Ford, which Ford answered:

<b>DATE SERVED</b>	<b>NUMBER</b>	<b>DATE ANSWERED</b>
6/30/10	42	7/30/10
10/14/11	130	12/1/11

43. Both *Custom Underground* and this MDL required counsel to prepare for and attend hearings in the Northern District of Illinois, both in person and telephonically. In the *Custom Underground* case, the hearing schedule was:

<b>DATE</b>	<b>REASON</b>	<b>ATTENDANCE</b>
2/4/10	Motion to Strike	In Person
6/2/10	Rule 16(b) status hearing	In Person
9/2/10	Status hearing	Telephonic
2/7/11	Status hearing	Telephonic
2/22/11	Status report, depositions, and discovery matters	In Person
4/13/11	Status hearing	Telephonic
6/28/2012	Status hearing	Telephonic
7/31/2012	Status hearing	Telephonic
8/28/2012	Status hearing	Telephonic
10/16/2012	Status hearing	Telephonic

After the creation of the MDL, the hearing schedule was:

<b>DATE</b>	<b>REASON</b>	<b>ATTENDANCE</b>
5/19/11	Status hearing regarding MDL status and consolidated complaint, joint motion for appointment of lead counsel, liaison counsel, and plaintiffs' steering committee members	In Person
9/20/11	Motion Hearing	In Person
11/22/11	Status Hearing	In Person
2/28/12	Status Hearing	In Person

<b>DATE</b>	<b>REASON</b>	<b>ATTENDANCE</b>
5/17/12	Status Hearing	Telephonic
6/28/12	Status Hearing	Telephonic
7/31/12	Status Hearing	Telephonic
8/28/12	Status Hearing	Telephonic
10/16/12	Status Hearing	Telephonic
11/3/12	Preliminary Approval Hearing	In Person

44. MDL Counsel also retained expert witnesses as consultants and worked extensively with these experts to develop factual support for their liability and damage claims. The consultants included: an ASE-certified Master Technician in automobiles and heavy trucks, with more than 20 years experience, including several years in which he specialized in diagnosing malfunctions specifically in the 6.0-liter diesel engine; a retired Vice President of Engineering for a major diesel engine manufacturer, with a Master of Science in Mechanical Engineering from MIT, who has worked as a consultant and/or expert witness for numerous large automotive companies; a Master Technician certified by the ASE (National Institute for Automotive Service Excellence) and Ford Motor Company, with thirty years experience working as technician in a Ford dealership; a Senior Mechanical Engineer with a Bachelor of Science in Engineering Mechanics (Theoretical and Applied Mechanics) with significant experience in various ASE committees including the Vehicle Powertrain Committee and the Diesel Electronic Controls Subcommittee; and a CPA certified in financial forensics with an MBA from Wharton and extensive experience testifying in courts regarding valuation of damages.

45. In addition, Plaintiffs have produced about 40 vehicles for inspection by Ford. Ford conducted inspections of nearly all Named Plaintiffs' vehicles, and MDL Counsel prepared for and attended every inspection after the formation of the MDL.

<b>PLAINTIFF</b>	<b>DATE FORD INSPECTED</b>	<b>NUMBER OF TRUCKS</b>	<b>LOCATION OF INSPECTION</b>
Custom Underground	10/5/10	19	Bloomington, IL
Custom Underground	11/23/11	1	Bloomington, IL
John Barrett	12/9/10	1	Gulfport, MS
Jorge Tijerina	12/8/10	1	Stafford, TX
Heather Gray	12/10/10	1	Fort Pierce, FL
Karl Strong	5/11	1	Santa Rosa, CA
Carl Atwell	11/22/11	1	Martinsville, IN
Gena Boggero	12/13/11	1	Greenwood, SC
Frank Brown Towing	11/30/11	1	Getzville, NY
Cecil Fulton	12/7/11	1	Tracy, CA
Steve Santilli	11/28/11	1	Hartford, CT
Charles Clark	11/29/11	1	Brooklyn, MI
Robert Dinonno	12/8/11	3	N. Hollywood, CA
John Prebish	11/21/11	1	Loveland, CO
Phillip Marcum	12/13/11	1	Jackson, OH
James Hutton	11/29/11	1	Flemington, NJ
Anthony Mawyer	12/5/11	1	Conover, NC
Georjean Vogt	12/5/11	1	Tucson, AZ

46. Plaintiffs' experts also examined Class vehicles. Those examinations included the removal, replacement, shipping (in such a way as to preserve the chain of custody), and testing (requiring creation of a testing apparatus) of nine of the engines' oil coolers. In addition, Plaintiffs' experts also cut open several oil coolers to confirm Plaintiffs' suspicions that the oil cooler becomes irreparably clogged through normal use and wear of the engine. The flow tests and destructive testing was done in Phoenix, Arizona, in the presence of Plaintiffs' and Ford's experts. The schedule of those inspections is as follows, all of which were attended by MDL Counsel:

PLAINTIFF	DATE OF INSPECTION	LOCATION OF INSPECTION	DATE OIL COOLER TESTED AND/OR CUT
Carl Atwell	2/7/12	Lizton, IN	
John Barrett	2/17/12	Bay St. Louis, MS	
Gena Boggero	2/27/12	Laurens, SC	4/24/12—Not Cut
Charles Clark	2/14/12	Addison, MI	4/24/12—Cut
Frank Brown Towing	2/22/12	Chaffee, NY	
Custom Underground 144	2/8/12	Peru, IL	4/24/12—Cut
Custom Underground 146	2/8/12	Peru, IL	4/24/12—Not Cut
Custom Underground 151	2/8/12	Peru, IL	4/24/12—Not Cut
Robert Dinonno	2/22/12	Simi Valley, CA	4/24/12—Cut
Robert Dinonno	2/22/12	Simi Valley, CA	
Robert Dinonno	2/22/12	Simi Valley, CA	
Cecil Fulton	2/24/12	Turlock, CA	
James Hutton	2/23/12	South Plainfield, NJ	
Phillip Marcum	2/6/12	Parkersburg, WV	4/24/12—Not Cut
Anthony Mawyer	2/13/12	Albermarle, NC	
John Prebish	2/27/12	Loveland, CO	4/24/12—Not Cut
Steve Santilli	2/21/12	Windsor, CT	4/24/12—Not Cut
Georjean Vogt	2/28/12	Mesa, AZ	

47. MDL Counsel have also done large amounts of work to brief and argue various motions in this case. In the lead case, brought by Caddell & Chapman and Weller, Green, Toups & Terrell, L.L.P. on behalf of Plaintiff Custom Underground, Inc., *et al.*, Plaintiffs briefed several motions, including a motion to dismiss and a motion for class certification. The briefing included the following pleadings (with Plaintiffs' filings in **bold**):

<b>DKT NO.</b>	<b>DATE FILED</b>	<b>TITLE</b>
<b>1</b>	<b>1/8/2010</b>	<b>Class Action Complaint</b>
18	2/1/10	Motion by Defendant Ford Motor Co. to Strike or Dismiss Plaintiffs' Class Action Allegations
21	2/1/10	Motion by Defendant Ford Motor Co. to Dismiss, or in the Alternative, for More Definite Statement
<b>29</b>	<b>3/16/10</b>	<b>Response by John Barrett, Custom Underground, Inc. to #18, Motion by Defendant Ford Motor Co. to Strike or Dismiss Plaintiffs' Class Action Allegations</b>
<b>30</b>	<b>3/16/10</b>	<b>Response by John Barrett, Custom Underground, Inc. to #21 Motion by Defendant Ford Motor Co. to Dismiss, or in the Alternative, for More Definite Statement</b>
<b>35</b>	<b>5/18/10</b>	<b>First Amended Complaint (filed in response to #21 and #34).</b>
<b>36</b>	<b>5/21/10</b>	<b>Second Amended Complaint (filed in response to #21 and #34, corrected to reflect correct filer.</b>
<b>39</b>	<b>6/3/10</b>	<b>Second Amended Complaint (filed in response to #21 and #34, corrected to include added Plaintiff in style of case)</b>
<b>45</b>	<b>10/27/10</b>	<b>Plaintiffs' Motion to Continue Scheduling Order Deadlines</b>
<b>46</b>	<b>10/27/10</b>	<b>Memorandum in Support of Motion to Continue Scheduling Order Deadlines (#45)</b>
<b>48</b>	<b>10/29/10</b>	<b>Third Amended Complaint</b>
49	11/1/10	Response by Ford Motor Co. in Opposition to Motion to Continue Scheduling Order Deadlines (#45)
61	2/18/11	Status Report (jointly prepared but filed by Ford's counsel)
<b>67</b>	<b>3/28/11</b>	<b>Plaintiffs' Motion for Extension of Time to File Briefing Regarding Class Certification</b>
<b>69</b>	<b>3/31/11</b>	<b>Plaintiffs' Motion for Leave to File Excess Pages (exceed the page limitations of L.R. 7.1)</b>
<b>73</b>	<b>4/8/11</b>	<b>Sealed Document (sealed motion for class certification, memo in support, and sealed exhibits to motion for class certification)</b>
<b>74</b>	<b>4/8/11</b>	<b>Plaintiffs' Motion for Class Certification with exhibits (redacted motion and public exhibits)</b>
79	4/19/11	Motion by Ford Motor Co. for Summary Judgment as to Plaintiff Jorge Tijerina's Claim for Breach of Implied Warranty of Merchantability
83	4/19/11	Motion by Ford Motor Co. for Summary Judgment Directed to Claims of Plaintiff John Barrett
87	4/19/11	Motion by Ford Motor Co. for Summary Judgment Directed to Custom Underground Vehicles No. 142, 146, 150, 158, and 163.

48. Each significant filing in the *Custom Underground* case required extensive

preparation by Caddell & Chapman. The Original, First Amended, Second Amended, and Third Amended Complaints, for example, contain numerous citations to Ford's judicial admissions from filings in the *Navistar* litigation, all of which could only be culled by first obtaining, then thoroughly reviewing and analyzing those documents. Similarly, Caddell & Chapman thoroughly researched and briefed oppositions to Ford's motion to dismiss Plaintiffs' claims as well as to strike Plaintiffs' nationwide class claims.

49. Plaintiffs' Motion for Class Certification in the *Custom Underground* case was also a significant undertaking. That document addressed the broad nature of the Class claims by setting out the detailed experiences of the Named Plaintiffs and by explaining Ford's extensive knowledge of the defects present in the engine. The motion was supported by expert testimony from Ken Neal and David Merrion, declarations from the Named Plaintiffs setting out the problems they experienced with the 6.0L engine, and citations to large amounts of evidence obtained from Ford. Plaintiffs supported that motion with 51 exhibits.

50. Briefing and motion practice continued once this MDL was formed on an even larger scale. The briefing here included the following documents (again with Plaintiffs' filings in **bold**):

<b>DKT NO.</b>	<b>DATE FILED</b>	<b>TITLE</b>
<b>7</b>	<b>5/9/11</b>	<b>Plaintiffs' Joint Application for Appointment of Lead Counsel</b>
<b>58</b>	<b>7/29/11</b>	<b>Plaintiffs' Master Consolidated Class Action Complaint (Redacted)</b>
<b>60</b>	<b>7/29/11</b>	<b>Plaintiffs' Master Consolidated Class Action Complaint (sealed)</b>
<b>80</b>	<b>9/7/11</b>	<b>Plaintiffs' Motion for Order re: Preservation of Evidence</b>
<b>81</b>	<b>9/7/11</b>	<b>Declaration of Cory S. Fein Regarding Motion for Order re: Preservation of Evidence (#80)</b>
84	9/13/11	Joint Status Report (jointly prepared but filed by Ford's counsel)

<b>DKT NO.</b>	<b>DATE FILED</b>	<b>TITLE</b>
<b>86</b>	<b>9/15/11</b>	<b>Plaintiffs' Response to Ford's Motion for Entry of Preservation Order (#82)</b>
88	9/16/11	Ford's Answer to Amended Complaint and Affirmative Defenses
<b>92</b>	<b>9/29/11</b>	<b>Motion to Deem Allegations Admitted, filed by Plaintiffs</b>
95	10/7/11	Motion by Defendant Ford Motor Co. to Seal Answer to Master Class Action Complaint
97	10/7/11	Motion by Defendant Ford Motor Co. to Seal First Amended Answer to Master Class Action Complaint
99	10/7/11	Sealed Document – Defendant Ford Motor Co.'s First Amended Answer to Master Class Action Complaint
<b>105</b>	<b>10/18/11</b>	<b>Response (filed by Plaintiffs) to Motion by Defendant Ford Motor Co. to Seal First Amended Answer to Master Class Action Complaint</b>
108	10/19/11	Motion by Defendant Ford Motor Co. to Withdraw Motion to Seal #95 and #97
<b>111</b>	<b>10/21/11</b>	<b>Motion (filed by Plaintiffs) to Quash Subpoena to Neal Technologies, Inc.</b>
<b>116</b>	<b>10/26/11</b>	<b>Status Report regarding Preservation Order</b>
120	11/4/01	Memorandum by Ford Motor Co. in Opposition to Motion To Quash
<b>125</b>	<b>11/14/01</b>	<b>Reply (filed by Plaintiffs) to Memorandum in Opposition to Motion</b>
<b>130</b>	<b>11/22/11</b>	<b>Joint Status Report #3</b>
<b>135</b>	<b>12/22/11</b>	<b>Plaintiffs' Motion to Compel Production of Documents from Defendant</b>
144	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Charles Clark)
148	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Steven Santilli)
152	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (John Prebish)
156	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Anthony Mawyer)
160	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Frank Brown Towing)
164	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Carl Atwell)
168	2/23/21	Motion by Defendant Ford Motor Co. for Summary Judgment (Phillip Marcum)
172	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (John Barrett)

<b>DKT NO.</b>	<b>DATE FILED</b>	<b>TITLE</b>
176	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Custom Underground)
180	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Robert Dinonno)
184	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Cecil and Tressie Fulton)
188	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Karl Strong)
192	2/23/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Georjean Vogt)
196	2/23/12	Motion by Defendant Ford Motor Co. to Compel Arbitration and Stay Proceedings (James Hutton , Heather Gray, Scott Gray)
<b>199</b>	<b>2/24/12</b>	<b>Joint Status Report #4</b>
201	3/2/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Gena Boggero)
<b>206</b>	<b>3/23/12</b>	<b>Response by Plaintiffs James Hutton, Heather Gray, and Scott Gray to Ford's Motion to Compel Arbitration</b>
<b>207</b>	<b>4/5/12</b>	<b>Joint Motion for Extension of Certain Litigation Deadlines</b>
211	4/6/12	Ford's Reply to Motion to Compel, Motion to Compel Arbitration (#196)
<b>213</b>	<b>5/7/12</b>	<b>Motion (filed by Plaintiffs) for Request for Judicial Notice</b>
<b>221</b>	<b>5/15/12</b>	<b>Joint Status Report #5</b>
<b>231</b>	<b>10/23/12</b>	<b>Motion for leave to file Amended Master Complaint</b>
<b>234</b>	<b>11/1/12</b>	<b>Motion for Preliminary Approval</b>

51. The MDL Master Complaint is more than twice the length of the complaint in the *Custom Underground* case and contains hundreds of citations to evidence produced by Ford in *Custom Underground*, as well as Ford's judicial admissions regarding the defects in the 6.0L Engine made in the *Navistar* litigation. In addition, to protect the Class from any potential limitations issues, a Tolling Committee was established to research the application of cross-jurisdictional tolling principles in every state and then to file complaints in every state that did not recognize cross-jurisdictional tolling. MDL Counsel also moved for and obtained a Preservation Order to ensure that Ford did not destroy any evidence pertinent to the case. MDL

Counsel also undertook extensive work to comply with the protective order in this case, which required separate filings of redacted and unredacted versions of numerous pleadings and exhibits.

52. In February 2012, Ford filed 14 summary judgment motions challenging several aspects of the claims of every Class Representative. In order to be prepared to meet the Court's deadlines, MDL Counsel was required to coordinate and prepare nearly complete responses to these motions before the Settlement Agreement was reached. This effort required briefing all legal issues, preparing separate responses to each motion's statement of uncontroverted facts and a lengthy common statement of undisputed facts, and working with experts to rebut Ford's 14 expert declarations. While ultimately never filed due to settlement in the matter, the substance of these responses was discussed during the course of mediation to persuade Ford to settle this matter on favorable terms.

53. In addition to their work in this Case, MDL Counsel undertook further work in other actions to protect the interests of the Class. MDL Counsel were compelled to intervene in a South Carolina class action against Ford also involving the 6.0L Engine, *Cox House Moving, Inc. v. Ford Motor Company*, No. 7:06-cv-1218-HMH (D.S.C.), in order to oppose Ford's Motion for Permanent Injunction Under All Writs Act. (*See Cox Dkt. No. 45.*) MDL Counsel were also forced to file multiple cases in various states throughout the country in order to protect Class members' claims from becoming time-barred in the event class certification was denied.

### **The Settlement**

54. In order to arrive at the proposed settlement, MDL Lead Counsel and Ford prepared detailed mediation briefs and participated in multiple, extensive, arm's-length mediation sessions, with Judge Richard Neville participating in several of the discussions as

mediator. The parties engaged in preliminary settlement discussions in Houston, Chicago, and Washington D.C., on February 9, February 28, and April 9, 2012, respectively. The first session with Judge Neville took place in Chicago on May 8–9, 2012. Both sides submitted lengthy briefs and exhibits supporting their respective positions. At this two-day mediation with Judge Neville, which was contentious and substantive and hard-fought, the parties discussed and resolved *only* the terms of the Class recovery, completely deferring the question of attorneys' fees to a separate and subsequent mediation.

55. On June 19, 2012, the parties reconvened with Judge Neville to mediate the issue of attorneys' fees and expenses. At the mediation, Plaintiffs provided Ford's counsel with additional detailed information, including the (1) names of all billing attorneys and staff, hours billed, hourly rates, and total fees for each billing individual, and (2) an expense summary detailing each law firm's shared and held expenses. The June 19 mediation proved to be contentious, hard-fought, and ultimately unsuccessful. Following this mediation, with Judge Neville's oversight and recommendation, the parties continued to negotiate. Ultimately, unable to resolve their differences, Judge Neville convened a second mediation on July 23, which again proved to be hard-fought, contentious, and unsuccessful. After multiple follow-up discussions with Judge Neville's oversight, the parties finally reached an agreement on what Ford should pay in attorneys' fees and expenses. With this agreement in place, the parties entered into a settlement in principle on August 24, 2012, and executed the final Settlement Agreement on November 1, 2012.

56. Especially in view of the size and complexity of this case, the settlement represents an excellent result for the Class. The thrust of the settlement is to compensate owners/lessees of engines that (1) required warranty repairs to certain components and

(2) required post-warranty repairs to the *same* components during the extended warranty period. Thus, engines which never required a warranty repair to the components in question are not encompassed by the class definition (and thus give no release nor surrender any rights). Engines that were repaired during warranty and did not suffer a subsequent failure of the repaired component during the extended warranty period do not entitle the owner/lessee to compensation (except for the possible recovery of warranty deductible payments)—but the extended warranty expands to *six years* and *135,000* miles. The following table summarizes the Settlement recovery that MDL Counsel projects for each engine owned by the Class Representatives:

<b>Class Engine</b>	<b>Reimbursement Amount</b>
Carl Atwell	\$525
John Barrett	\$200
Gena Boggero	\$1,219
Charles Clark	\$0
Custom Underground Engine No. 142	\$50
Custom Underground Engine No. 143	\$50
Custom Underground Engine No. 144	\$1,000
Custom Underground Engine No. 146	\$0
Custom Underground Engine No. 147	\$0
Custom Underground Engine No. 148	\$50
Custom Underground Engine No. 149	\$100
Custom Underground Engine No. 150	Not in Class
Custom Underground Engine No. 152	\$100
Custom Underground Engine No. 154	\$100

<b>Class Engine</b>	<b>Reimbursement Amount</b>
Custom Underground Engine No. 155	\$400
Custom Underground Engine No. 156	\$1,570.73
Custom Underground Engine No. 157	\$1,000
Custom Underground Engine No. 159	\$0
Custom Underground Engine No. 160	\$0
Custom Underground Engine No. 161	\$1,500
Custom Underground Engine No. 162	\$1,250
Dinonno Enterprises Engine No. 73870	\$50
Dinonno Enterprises Engine No. 25565	\$1,175
Dinonno #87390	\$1,900
Frank Brown Towing	\$1,250
Cecil & Tressie Fulton	\$50
Heather & Scott Gray	\$2,500
James Hutton	\$100
Phillip Marcum	\$361.92
Anthony Mawyer	\$0
John Prebish	\$50
Steve Santilli	Not in Class
Karl Strong	\$0
Georjean Vogt	\$750
<b>Total</b>	<b>\$18,051.65</b>
<b>Average (for Class Engines)</b>	<b>\$547.02</b>

57. While the entitlement of each Class Representative varies according to the warranty and post-warranty repairs performed on each representative's engine, and some Class Representatives will receive no compensation for their claims because their engines did not suffer warranty repairs to covered components or qualifying extended warranty repairs, it is notable that the average recovery for Class Representatives will be more than five hundred dollars per engine. Ten engines experienced repairs entitling the owner/Class Representative to recover \$1,000 or more. The settlement thus provides a substantial recovery to the Class and eliminates the need to litigate this matter further to achieve what would likely be the same or a similar result.

58. The amounts paid for each covered repair under the Settlement represent approximately 50% of the average cost of each reimbursable repair. Of course, actual costs will vary according to when the repair was performed, the geographic location where it was performed, and whether it was performed at a Ford dealer or by a third-party mechanic, among other factors. Class Counsel concluded that these standardized maximum reimbursement amounts by type of repair, as opposed to 50% of the actual costs incurred for each individual repair, would benefit Class members. Because Class members might often have more than one repair performed on a given service visit, and invoices do not always clearly differentiate the charges for each repair, particularly with regard to labor charges, the fixed reimbursement amounts will simplify the claims process for the Class. In some instances, Class Members will receive more than 50% of their actual out-of-pocket cost for the repairs in question. Our Class Representatives' actual repair costs are consistent with our expectation that the settlement recoveries will represent on average approximately half of the Class's out-of-pocket cost.

59. Litigation of this case to its final conclusion (up to and including trial and any

appeals) would be time-consuming and expensive. The alleged engine defect is complex, involving the interactions between multiple engine components and several different types of engine malfunctions. Extensive expert work, including additional destructive testing of the affected engine components, would be necessary to prepare the case for trial. Distinguishing malfunctions caused by the failure to properly repair the engine's inherent defects versus malfunctions caused by improper maintenance, extreme operating conditions, engine modifications, or other causes would also be difficult and expensive, with Ford contesting causation.

60. Were the parties to continue to litigate this case, there is of course the possibility that Plaintiffs would not be able to prove a vital element of their claims, for example, that Ford's repair or replacement of malfunctioning components was not an adequate repair. If that occurred, Plaintiffs and the Class would likely recover less than they will recover under the Settlement. There is also a risk that, if this case continued to be litigated, Plaintiffs might not succeed in certifying a class, or would only succeed in certifying a smaller class than the nationwide Class that will benefit from the Settlement.

61. The Settlement allows the Class to recover a sum certain now, rather than facing costly and time-consuming litigation that is unlikely to provide a recovery significantly better than the recovery in the proposed Settlement.

62. This Settlement falls within the bounds of fairness, reasonableness, and adequacy as the Seventh Circuit has set forth that standard, and I view it as an excellent result for the Class.

#### **Preliminary Approval and Subsequent Work Performed on Behalf of the Class**

63. Following consummation of the Settlement, Plaintiffs researched, prepared, and

filed a detailed motion seeking preliminary approval. On November 13, 2012, the Court held a hearing on preliminary approval which Caddell & Chapman handled on behalf of the Settlement Class. As with all other hearings following the first status conference (at which the Court appointed Lead Counsel and the PSC), very few lawyers for the Settlement Class attended the hearing to avoid unnecessary billing.

64. Following preliminary approval, Caddell & Chapman coordinated with Ford's counsel regarding implementation of the notice program, which involved mailing over 1.1 million notices to potential class members. Caddell & Chapman appointed 7 law firms to handle class member inquiries and established a specific protocol for answering questions from class members submitted by mail, email, and telephone. The protocol sought to respond to class members as efficiently, promptly, and accurately as possible. In addition, Cory Fein surveyed the various types of questions coming in from class members and drafted a memo with accurate responses to the questions class members were asking. This memo was distributed to paralegals and junior attorneys at Caddell & Chapman and other firms on the steering committee for use in responding to class members. With this protocol in place, thousands of class member inquiries have been efficiently and responsibly handled in a clear and consistent manner.

#### **Plaintiffs' Counsel's Reported Lodestar and Expenses**

65. The protocol for tracking time expended for work on behalf of the putative class requires Plaintiffs' Counsel to maintain contemporaneous and detailed time records, which include a detailed description of all work performed and expenses incurred. (*See Ex. A.*) These records were then required to be submitted in support of summary reports on a monthly basis to Caddell & Chapman. (*Id.*) The summary reports reflect the name of the attorney or staff member who completed the work, the number of hours billed and rate, as well as current

lodestar, cumulative hours, and cumulative lodestar. (*Id.*) By order of this Court, the summary reports must also “be certified by a Partner at each firm attesting to the accuracy and correctness of the submissions.” (Dkt. 18.) In order to avoid overbilling for simple tasks that required little time to complete, all time was billed in increments of one-tenth of an hour. (*Id.*)

66. The protocol for tracking expenses requires Plaintiffs’ Counsel to submit summary reports itemizing contemporaneously maintained out-of-pocket, case-related expenses. (*Id.*) Counsel are required to document common shared expenses (filings, depositions, expert witness fees, PSC group meetings, etc.) and held expenses (meals, office administration, in-house postage and printing, computerized research, staff overtime, travel, etc.) on separate summary reports. Such summary reports must be accompanied with copies of receipts and logs and submitted on a monthly basis. (*Id.*)

67. Based on the lodestar summary reports, my staff created a spreadsheet summary reflecting the cumulative lodestar for all work performed as of March 31, 2013 (Ex. B, “Ford 6.0 Diesel Litigation—Cumulative Time and Lodestar Summary.”) This summary details each law firm’s total lodestar, as well as a summary description of the tasks assigned to and performed by each law firm. As of March 31, 2013, the cumulative lodestar for all firms that submitted time expended for the common benefit of the class totals \$10,220,147.50. (*Id.*)

68. Similarly, based on the expense summary reports, my staff created a spreadsheet summary reflecting the cumulative shared and held expenses through March 31, 2013 (Ex. C, “Ford 6.0 Diesel Litigation—Cumulative Expense Summary.”) This summary details each law firm’s total expenses along with 31 detailed expense descriptions. As of March 31, 2013, the cumulative shared and held expenses for all firms that submitted time for expenses incurred for the common benefit of the class totals \$1,173,192.23 (*id.*), plus \$80,000 in estimated past

(accrued but unpaid) and future expenses.

69. The following is a summary listing each lawyer and legal assistant for which Caddell & Chapman is seeking compensation for legal services in connection with the Settlement:

<b>Individual</b>	<b>Title</b>	<b>Years Experience</b>	<b>Hourly Rate</b>
Michael A. Caddell	Senior Partner	34	\$750
Cynthia B. Chapman	Senior Partner	21	\$650
Cory S. Fein	Senior Partner	18	\$625
Amy E. Tabor	Senior Associate	10	\$450
Craig C. Marchiando	Senior Associate	9	\$425
Dana B. Levy	Senior Associate	12	\$500
Clayton A. Morton	Junior Associate	7	\$370
Aron L. Gregg	Senior Associate	13	\$450
Mark H. Ritchie	Senior Associate	17	\$475
Kathy E. Kersh	Paralegal	26	\$250
Felicia D. Labbé	Paralegal	15	\$175
Patsy A. Ledezma	Paralegal	10	\$250
John C. Dessalet	Paralegal	20	\$250
Sylvia Z. Vargas	Paralegal	28	\$250
Laurie R. Gillespie	Admin/Paralegal	19	\$150

70. Caddell & Chapman's rates, which were used for purposes of calculating the lodestar here, are based on prevailing fees for national class-action work and have been approved by multiple courts across the country. Most recently, Caddell & Chapman's rates for attorneys and staff were approved in the following cases: *Weltonia Harris v. U.S. Physical Therapy, Inc.*, United States District Court, District of Nevada, Civil Action No. 2:10cv1508-JCM-VCF (Michael Caddell \$750; Cynthia Chapman \$650; Cory Fein \$625; Craig Marchiando \$425;

Kathy Kersh \$250); *Bradford L. Jackson v. Metscheck, Inc. and First Communities Management, Inc.*, United States District for the Northern District of Georgia, Atlanta Division, Civil Action No. 1:11-CV-2735 (Michael Caddell \$750; Cynthia Chapman \$650; Cory Fein \$625; Amy Tabor \$450; Craig Marchiando \$425; Kathy Kersh \$250); and *Mark Zeller v. E&J Gallo Winery and Constellation Brands, Inc.*, Superior Court of the State of California, for the County of Los Angeles (Central Civil West), Case No. BC432711 (Michael Caddell \$750; Cynthia Chapman \$650; Cory Fein \$625; Craig Marchiando \$425; Aron Gregg \$400; Kathy Kersh \$250; John Dessalet \$250.)<sup>25</sup>

71. In December 2012, after resolving a high profile and complicated *qui tam* action (*United States of America, ex. rel. Ivey Woodard v. DaVita Inc.*, United States District Court for the Eastern District of Texas, Civil Case No. 1:05-CV-00227-MAC-ZJH), the Department of Justice approved attorneys' fees that were based on Caddell & Chapman's then-current rates. In *DaVita*, the Department of Justice approved the entire requested fee, which was based on the following rates: Michael Caddell \$875; Cynthia Chapman \$675; Cory Fein \$650; Dana Levy \$500; Craig Marchiando \$425; Aron Greg \$400; Kathy Kersh \$250; Patsy Ledezma \$250; Sylvia Zuniga Vargas \$250.

72. Based upon my experience with other class action matters and given my firm's lead role in this litigation, I believe that the time expended by Caddell & Chapman in connection with this litigation, when compared to the result achieved for the Class, is reasonable in amount and was absolutely necessary to ensure the successful relief obtained on behalf of the Class. Caddell & Chapman and its co-counsel devoted their nationally recognized expertise, resources,

---

<sup>25</sup> Caddell & Chapman's current rates are higher than those used to calculate the lodestar here. For example, my current rate is \$875 and Cynthia Chapman's is \$675. However, given the number of firms involved in this matter and that our rates were lower in the earlier years of this litigation, we are using lower rates (\$750 and \$650 for me and Cynthia Chapman, respectively) that have been previously approved by multiple federal courts.

and personnel to this matter. They performed critical work in this matter, made the requisite judgment calls, maintained a professional relationship with opposing counsel, and consummated a valuable settlement notwithstanding myriad defenses raised by Ford.

73. Following two arm's length mediation sessions with Judge Richard Neville and numerous phone calls and other exchanges facilitated by Judge Neville, Ford agreed to pay Plaintiffs' counsel reasonable attorneys' fees, separate and apart from the consideration flowing to the class, of up to \$12.8 million. Ford also agreed to pay Plaintiffs' counsel \$1,250,000 in expenses. Accordingly, Plaintiffs' Counsel are requesting a fee award of \$12.8 million as attorneys' fees reasonably incurred in prosecuting the case and \$1,250,000 for expenses incurred.

74. Comparing Plaintiffs' Counsel's fee request of \$12.8 million to their *current* lodestar calculation (as of March 31, 2013) of \$10,220,147.50 demonstrates that Plaintiffs' requested fee award results in a modest multiplier of only 1.25. This multiplier will further decrease given the future necessary work required to complete this matter, including preparing briefing and declarations in support of final approval and attending the final approval hearing; responding to objections; handing class member inquiries; and responding to any appeals.

75. Even assuming that the Fee Committee (which will convene following final approval to determine how attorneys' fees should be allocated among counsel)<sup>26</sup> ultimately finds that certain work was unnecessary or not truly common benefit work and reduces certain lawyers' reported lodestars, such a reduction would still result in a reasonable multiplier on the total lodestar. For example, a 20% reduction in the current total lodestar would result in a

---

<sup>26</sup> As confirmed by this Court's order, "[a]fter the Court makes the final award for the total amount of attorneys' fees and costs, the Fee Committee shall accept submissions from all attorneys seeking payment of fees and costs for common benefits rendered in the case. The Fee Committee shall thereafter recommend an allocation of common-benefit fees and costs among those attorneys who submitted applications for such fees and costs. Should a Signatory object to the Fee Committee's proposed allocation, the Signatories agree that this objection will be submitted to binding arbitration for resolution." (Dkt. 18 at 2.)

multiplier of 1.56. For that matter, a 40% reduction in the current total lodestar would only result in a multiplier of less than 2.1. Realistically, a significant reduction in the total lodestar is not likely given that the billing protocols in this matter (submitting time on a monthly basis to lead counsel with a partner from each firm attesting to the accuracy and correctness of the submissions, billing in one-tenth of an hour increments, and performing work on an assignment basis only) typically guard against over-billing.

76. Plaintiffs' Counsel's current and projected future expenses of \$1,253,192.23 are more than the amount of expenses Ford agreed to pay (\$1,250,000). Plaintiffs' Counsel project that they will incur an additional \$80,000 in expenses given that (1) several experts will need to be paid in conjunction with securing final approval of the settlement; (2) travel is necessary for the upcoming final approval hearing; (3) class members will continue to call with inquiries and ultimately request assistance with claim forms; and (4) telephone charges will continue to accrue as Class Members' calls are returned. Counsel will provide the Court with an updated estimate of these additional expenses shortly before or at the final approval hearing. If the anticipated total at the time of the final approval hearing results in Plaintiffs' total expenses being less than \$1,250,000, Plaintiffs will revise their expense request accordingly.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

DATED: April 10, 2013 Houston, Texas.

/s/ Michael A. Caddell  
Michael A. Caddell