

EXHIBIT 2

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

In re: NAVISTAR DIESEL ENGINE)
PRODUCTS LIABILITY)
LITIGATION)

Case No. 11 C 2496
MDL NO. 2223

This Document Relates to: All Cases

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

TABLE OF CONTENTS

I. Introduction.....1

II. Factual Background2

 A. Plaintiffs’ Allegations2

 B. The Litigation.....3

 C. The Settlement4

III. Standard of Review.....7

IV. Argument and Authorities.....7

 A. The requested fee award is reasonable according to lodestar principles.7

 1. Counsel’s hourly rates are reasonable.....8

 2. The submitted hours are reasonable.....9

 3. The requested multiplier is reasonable in light of the risk counsel
 faced in undertaking this litigation.22

 4. The requested multiplier is reasonable in light of the complexity
 of the litigation and the success obtained.23

 B. A cross-check against the value of the Settlement confirms the requested
 fee’s reasonableness.....24

 C. The requested costs and expenses are reasonable.....28

 D. The requested service awards are reasonable.28

V. Conclusion30

TABLE OF AUTHORITIES

CASES

AT&T Mobility Wireless Data Servs. Sales Tax Litig.,
792 F. Supp. 2d 1028 (N.D. Ill. 2011) 28, 30

Cook v. Niedert,
142 F.3d 1004 (7th Cir. 1998) 7, 24, 28, 30

Cox House Moving, Inc. v. Ford Motor Company,
No. 7:06-cv-1218-HMH (D.S.C.) 21

Davitt v. Info. Res.,
No. 94-cv-2431, 1995 WL 234630,
(N.D. Ill. Apr. 17, 1995) 22

Dutchak v. Cent. States,
932 F.2d 591 (9th Cir. 1991) 22

Florin v. NationsBank of Georgia,
34 F.3d 560 (7th Cir. 1994) 22

Gastineau v. Wright,
592 F.3d 747 (7th Cir. 2010) 8, 23

Grays Harbor Adventist Christian School v. Carrier Corp.,
No. 05-cv-05437, 2008 WL 1901988
(W.D. Wash. April 24, 2008)..... 8

Harman v. Lyphomed, Inc.,
945 F.2d 969 (7th Cir.1991) 8

Harper v. City of Chicago Heights,
223 F.3d 593 (7th Cir. 2000) 10

Hensley v. Eckerhart,
461 U.S. 424 (1995)..... 24

In re Cenco Inc. Sec. Litig.,
519 F. Supp. 322 (N.D. Ill 1981) 22

In re Continental Ill. Sec. Litig.,
962 F.2d 566 (7th Cir. 1992) 1, 7, 8, 23

<i>In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.</i> , 280 F.R.D. 364 (N.D. Ill. 2011).....	27, 30
<i>In re Rite Aid</i> , 396 F.3d 294 (7th Cir. 2005)	7, 28
<i>In re Synthroid Mktg. Litig.</i> , 264 F.3d 712 (7th Cir. 2001)	1, 22
<i>In re Trans Union Corp. Privacy Litig.</i> , 629 F.3d 741 (7th Cir. 2011)	22, 23
<i>Pickett v. Sheridan Health Care Ctr.</i> , 664 F.3d 632 (7th Cir. 2011)	7, 8, 9
<i>Schulte v. Fifth Third Bank</i> , 805 F. Supp. 2d 560 (N.D. Ill. 2011)	22, 27
<i>Spicer v. Chicago Bd. Options Exchange, Inc.</i> , 844 F. Supp. 1226 (N.D. Ill. 1993)	9
<i>Synfuel Techs. Inc. v. DHL Express</i> , 463 F.3d 646 (7th Cir. 2006)	26
<i>Taubenfeld v. Aon Corp.</i> , 415 F.3d 597 (7th Cir. 2005)	27
<i>Williams v. v. Rohm & Haas Pension Plan</i> , 658 F.3d 629 (7th Cir. 2011)	27

Plaintiffs¹ file this Motion for Attorneys' Fees, Expenses, and Service Awards in connection with their Settlement with Ford Motor Co., Inc. ("Ford"), which was preliminarily approved by this Court on November 14, 2012.² Because MDL Counsel has undertaken significant risk, performed enormous amounts of work, and achieved an excellent result for the Class, Plaintiffs respectfully request that the Court award the attorneys' fees, expenses, and service awards that Ford has agreed to pay under the Settlement.

I. INTRODUCTION

This Settlement will resolve the claims of over one million Class Members, entitling them to cash recoveries averaging approximately fifty cents on the dollar for expensive engine repairs. To achieve it, MDL Counsel spent over 20,000 hours reviewing millions of documents, taking nearly 40 depositions, working with experts to develop detailed facts, and briefing numerous complex issues.

The \$12.8 million attorneys' fee Ford has agreed to pay—after an extremely hard-fought, lengthy, and contentious mediation process supervised by Judge Richard Neville—represents only a 1.25 multiplier on the time reasonably spent by MDL Counsel, which is modest in light of the risk undertaken, the complexity of the case, and the outstanding result achieved. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718–19 (7th Cir. 2001) (holding that a risk multiplier is appropriate to compensate counsel for the risk of non-payment); *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992) (holding that the need for a risk multiplier adjustment is “particularly acute in class action suits”). The Court should therefore award Plaintiffs the attorneys' fees agreed to in the Settlement.

¹ Plaintiffs are Custom Underground, Inc., John Barrett, Scott and Heather Gray, Frank Brown Towing, Inc., Cecil and Tressie Fulton, Karl Strong, Dinonno Enterprises, Inc., d/b/a Cutting Edge Concrete Cutting, Charles Clark, Georgean Vogt, John Prebish, Steve Santilli, Anthony Mawyer, Gena Boggero, Carl Atwell, Phillip Marcum, and James Hutton.

² According to the schedule established in the Court's Preliminary Approval Order, (Dkt. 242), Plaintiffs will file their Motion for Final Approval of the Settlement on May 15, 2013.

In addition, the Court should grant the requested \$1.25 million in expenses, which Ford has also agreed to pay, and award the Class Representatives service awards in recognition of the work they have performed on behalf of the Class, in the agreed total amount of \$150,000.

II. FACTUAL BACKGROUND

A. Plaintiffs' Allegations

This case concerns the allegedly defective design and manufacture of Ford's 6.0-liter PowerStroke diesel engine (the "6.0L Diesel"). (Dkt. 233 ¶¶ 319-363.) Ford installed the 6.0L Diesel in numerous Ford model year 2003–2007 trucks and vans. (*Id.* ¶ 22.) Plaintiffs allege that the 6.0L Diesel was defectively designed and that the defect caused the engines to break down and require repeated repairs. (*Id.* ¶¶ 22–48.) Plaintiffs allege that the root cause of the 6.0L Diesel's problems was a defective oil cooler and exhaust gas recirculation ("EGR") cooler design, which caused these engine components to fail prematurely, causing in turn other engine problems, including problems with the fuel injectors, the EGR valve, and the turbocharger. (*Id.* ¶¶ 79–81.)

Ford offered a 3-year/36,000 mile bumper-to-bumper warranty and a 5-year/100,000 mile engine warranty (the "New Vehicle Limited Warranty") on vehicles equipped with the 6.0L Diesel engine, which included a deductible for each engine-related repair visit within the 5-year/100,000 mile warranty period after the bumper-to-bumper warranty expired. (*Id.* ¶ 53.) Plaintiffs allege that Ford was aware of defects in the 6.0L Diesel before it began selling vehicles equipped with the defective engine, but that Ford concealed these defects from consumers and continued to conceal the engine's problems even as unprecedentedly high rates of warranty repair made clear how serious the problems were. (*Id.* ¶¶ 49–51.) Plaintiffs further allege that the warranty service Ford provided was inadequate and did not properly repair the engines,

causing the same problems to recur both within the warranty period and after the New Vehicle Limited Warranty had expired. (*Id.* ¶¶ 39–43; 52–78.)

Plaintiffs bring claims on behalf of a class of all persons in the United States who purchased or leased a non-ambulance Ford vehicle sold or leased in the United States and equipped with a 6.0L Diesel engine that received one or more New Vehicle Limited Warranty repairs to a fuel injector, the EGR valve, the EGR cooler, the oil cooler, or the turbo charger (the “Class”). Plaintiffs bring claims for breach of express warranty, breach of implied warranty of merchantability, warranty unconscionability, and violation of various consumer fraud and/or unfair competition statutes. (*Id.* ¶¶ 319–363.)

B. The Litigation

This case originated from the *Custom Underground, Inc. v. Ford Motor Co.* action, which was filed in this Court on January 8, 2010. (Declaration of Michael A. Caddell (“Caddell Decl.”), attached as Ex. 1, ¶ 27.) Following more than 16 months of litigation, including briefing on Ford’s Motion to Dismiss and Plaintiffs’ Motion for Class Certification in the *Custom Underground* case, the Judicial Panel on Multidistrict Litigation (the “MDL Panel”) created this MDL proceeding. (Dkt. 1.)

Since the creation of the MDL, the MDL Panel has transferred 39 tag-along actions, involving numerous firms representing the Plaintiffs in the various actions (together, “MDL Counsel”). (*See* Dkts. 227–28). This Court appointed Caddell & Chapman as Lead MDL Counsel on May 19, 2011. (Dkt. 14; Caddell Decl. ¶ 27.) On July 29, 2011, Plaintiffs filed their consolidated Master Class Action Complaint. (Dkt. 60.) Ford declined to file a Motion to Dismiss and instead filed an Answer. (Dkt. 88.) Plaintiffs filed a Motion to Deem Allegations Admitted, arguing that Ford’s Answer failed to adequately admit or deny Plaintiffs’ allegations. (Dkt. 92.) Rather than respond to Plaintiffs’ Motion, Ford conceded and agreed to file an

Amended Answer (Dkt. 100), admitting many of the detailed factual allegations in the Master Class Action Complaint, resulting in the withdrawal of Plaintiffs' Motion. (Dkt. 103.) Discovery, which had begun in the *Custom Underground* case, continued, including serving and answering hundreds of discovery requests, Ford's production of over six million pages of documents, discovery from various third parties, the depositions of thirteen current and former Ford personnel, depositions of the named Plaintiffs, inspections of dozens of vehicles, temperature differential testing on various named Plaintiffs' vehicles, flow and destructive testing on various named Plaintiffs' vehicles' oil coolers, and the depositions of two independent experts retained by Ford. (Caddell Decl. ¶¶ 31–35.) In October 2011, Ford issued a subpoena to Neal Technologies, Inc., the employer of one of Plaintiffs' experts. Plaintiffs and Neal Technologies moved to quash the subpoena. (Dkts. 111, 129.) After full briefing and a hearing, the Court granted the motions to quash. (Dkt. 132.)

In late February and early March, 2012, Ford filed fourteen motions for summary judgment, seeking judgment as a matter of law on nearly all of the named Plaintiffs' claims. (Dkts. 144-203.) Following an agreed stay of Plaintiffs' response deadline to allow settlement discussions to proceed, Plaintiffs' responses to these summary judgment motions were to be filed on September 14, 2012. (Dkt. 225.) On August 28, 2012, the Court stayed all deadlines pending the parties' anticipated motion for settlement approval. (Dkt. 226.)

C. The Settlement

The parties negotiated the Settlement commencing with several in-person meetings of counsel in Houston, Washington, D.C., and Chicago, and culminating in multiple in-person mediation sessions with Judge Richard Neville. (Caddell Decl. ¶ 54.) The first session with Judge Neville took place in Chicago on May 8–9, 2012. (*Id.*) At this initial two-day mediation with Judge Neville, the parties discussed and reached agreement on only the terms of the Class

recovery, deferring the question of attorneys' fees, expenses, and service awards to a second mediation session on June 19, 2012 in Chicago with Judge Neville—this mediation session proved to be hard-fought, contentious and unsuccessful. (*Id.* ¶ 55.) After a second unsuccessful, contentious fee mediation session on July 23 in Chicago (with Judge Neville) and multiple follow-up discussions facilitated by Judge Neville, the parties finally reached an agreement on attorneys' fees and expenses to be paid by Ford. 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. (*Id.*)

The Settlement provides Class Members roughly 50% reimbursement of their out-of-pocket costs for repeat repairs to certain components that occurred after the expiration of the original warranty, but before six years or 135,000 miles of vehicle service, whichever comes first (the "Extended Warranty Period"). (Dkt. 236-1 at II.B-E; *see* Declaration of Paul Taylor ("Taylor Decl."), attached as Ex. 3, ¶ 12; Caddell Decl. ¶ 58.) Out-of-pocket expenses include amounts paid for parts and labor to repair the vehicles, including, for Class Members who repaired their vehicles themselves, compensation for the reasonable value of the time spent. (Dkt. 236-1 at I.N.) These expenses are covered for all Class Members who had a repair to the component within the warranty period and then required another repair to the same component during the Extended Warranty Period. (*Id.* at II.B-E.) In the case of oil cooler and EGR cooler repairs, the Settlement covers Class Members' out-of-pocket expenses for Extended Warranty Period repairs to either or both of these components if the Class Member had a warranty repair to either the oil cooler or the EGR cooler. (*Id.* at II.B.)

For oil coolers and EGR coolers, the Settlement provides for reimbursement: (1) up to \$475 for a repair to the EGR cooler; (2) up to \$525 for a repair to the oil cooler; and (3) up to

\$825 for a repair to both the EGR cooler and the oil cooler. (*Id.*) For fuel injector repairs, the Settlement provides for reimbursement up to \$375 for a repair to a single injector and increases the reimbursement limit by \$125 for each additional injector repaired. (*Id.* at II.C.) For repairs to the EGR valve, the Settlement provides for reimbursement up to \$200 for each Extended Warranty Period repair. (*Id.* at II.D.) For turbochargers, the Settlement provides for reimbursement up to \$750 for each Extended Warranty Period repair. (*Id.* at II.E.) These amounts represent approximately 50% of the average out-of-pocket costs that the Class Representatives and absent Class Members incurred for the covered repairs. (*See* Taylor Decl. ¶ 12; Caddell Decl. ¶ 58.)

The Class consists of approximately 1.1 million members,³ the current and former owners and lessees of 656,076 vehicles that had qualifying warranty repairs to a component covered by the Settlement. (Taylor Decl. ¶ 6.) The chart below shows the number of vehicles that underwent a warranty repair to each covered component. To the extent the owners of these vehicles incurred out-of-pocket expenses for additional repairs to the same component during the extended warranty period,⁴ they would be eligible for extended-warranty repair reimbursements under the Settlement.

Component	EGR and/or Oil Cooler	Fuel Injector	EGR Valve	Turbo Charger	Any Component
Number of Eligible Vehicles (that had repair to the listed component during the 5 yr / 100k warranty period)	243,825	312,860	412,401	307,602	656,076

As an alternative to the offered reimbursement for Extended Warranty Period repairs, if a Class Member had multiple engine-related repairs to a vehicle under the New Vehicle Limited

³ (Caddell Decl. ¶ 64.)

⁴ (*Id.*) Note that some vehicles had warranty repairs to more than one covered component.

Warranty, the Settlement offers a partial reimbursement of \$50 for the second and each subsequent warranty deductible the Class Member paid for the same Class vehicle, up to a limit of \$200. (*Id.* at II.F.) Ford will pay all valid claims submitted, and the Settlement contains no cap on the amount of claims Ford will pay.

Following the Settlement, MDL Counsel prepared and submitted their Motion for Preliminary Approval, which this Court granted on November 14, 2012. (Dkt. 242.) Ford has mailed over 1.1 million notices, in the form approved by the Court, to Class Members. (Caddell Decl. ¶ 64.) In connection with the Settlement, Ford agreed not to oppose Plaintiffs' application for attorneys fees' up to \$12,800,000, costs and expenses up to \$1,250,000, and service awards to be allocated among the named plaintiffs up to a total of \$150,000. (Dkt. 236-1 at II.I-J.)⁵ Plaintiffs now submit their application for these fees, expenses, and service awards.

III. STANDARD OF REVIEW

District courts have broad discretion in awarding reasonable attorneys' fees. *See Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 639 (7th Cir. 2011). The Seventh Circuit recognizes that the district court's "superior understanding of the litigation" requires a "highly deferential" review of fee awards. *Id.* (holding that the standard of review for fee awards "is a 'highly deferential abuse of discretion standard'").

IV. ARGUMENT AND AUTHORITIES

A. The requested fee award is reasonable according to lodestar principles.

"The object in awarding a reasonable attorney's fee . . . is to give the lawyer what he would have gotten . . . in an arm's length transaction, had one been feasible." *Cook v. Niedert*, 142 F.3d 1004, 1012 (7th Cir. 1998) (citing *In re Continental Ill. Sec. Litig.*, 962 F.2d at 572

⁵ Because the fee mediation resolved all disputed issues regarding attorneys' fees, the parties have not prepared any joint statement regarding fees. *See* L.R. 54.3 (requiring a joint statement regarding fees to be filed only when matters "remain in dispute").

(ellipses in original). Courts awarding fees in class-action settlements in the Seventh Circuit have discretion to use either the lodestar or the percentage of common fund approach. *See Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir.1991) (holding that district court acted within its discretion in choosing lodestar approach for awarding fees). While the percentage method may be preferred for its ease of application in cases involving a capped common fund, the lodestar approach is the most straightforward here, because the settlement structure places no cap on Ford's total liability. *In re Rite Aid*, 396 F.3d 294, 300 (7th Cir. 2005) (holding that “[t]he lodestar method is more typically applied . . . in cases where the nature of the recovery does not allow the determination of the settlement’s value required for application of the percentage-of-recovery method”); *see also Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-cv-05437, 2008 WL 1901988 (W.D. Wash. April 24, 2008) (holding that where “[s]ettlement relief will be paid on a claims made basis with no cap to the relief available, consideration of attorneys’ fees lends itself more readily to the lodestar method”).

1. Counsel’s hourly rates are reasonable.

Courts calculate the lodestar by multiplying “a reasonable hourly rate by the number of hours reasonably expended.” *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). Following the Seventh Circuit’s market-based approach to attorneys’ fees, the rates paid in the competitive market are the touchstone of reasonableness. *See Pickett*, 664 F.3d at 640 (“We have defined a reasonable hourly rate as one that is ‘derived from the market rate for the services rendered.’”); *In re Continental Sec. Litig.*, 962 F.2d at 568–69 (holding that district judge erred in computing lodestar based on cost of staff time, rather than market rate for services). Plaintiffs here request that the Court award fees based on MDL Counsel’s hourly rates, which reflect the market value of their skill and experience. (*See* Ex. B to Caddell Decl.; *see also* Exs. 2, 4–22.) In addition, Plaintiffs’ counsel’s declarations and declarations from third parties with knowledge

of prevailing market rates for legal services submitted in support of this motion show that the specific rates charged by each firm are “in line with those prevailing in the community.” *Pickett*, 664 F.3d at 640; (*See* Ex. 2; Exs. 4–22.)

These hourly rates are reasonable for top-level attorneys (and their staff) who have a nationwide practice. In a 2012 study examining billing rates at more than 4,000 law firms, TyMetrix Inc. and Corporate Executive Board Co. found that partners in the top 25% of billers charged an average hourly rate of \$873, up 4.9% from 2010. Jennifer Smith, *Biggest Lawyers Grab Fee Bounty*, Wall Street Journal, April 15, 2011;⁶ *see Spicer v. Chicago Bd. Options Exchange, Inc.*, 844 F. Supp. 1226, 1248 (N.D. Ill. 1993) (finding class counsel’s rates reasonable in light of corresponding rates charged by defense lawyers). For complex class-action litigation similar to this case, the market rate for Plaintiffs’ counsel’s defense-firm counterparts can exceed \$1,000/hour. *See id.* (finding that at Skadden, Arps, Slate, Meagher & Flom LLP, the top disclosed partner billing rate was \$1,095, and the lowest disclosed partner rate was \$790.00; *see also* Vanessa O’Connell, *Big Law’s \$1,000-Plus an Hour Club*, Wall Street Journal, Feb. 23, 2011⁷ (finding that more than 120 lawyers for whom information was available had hourly rates exceeding \$1,000). The Court should therefore approve the requested rates.

2. The submitted hours are reasonable.

With this motion, Plaintiffs’ counsel submit evidence of the hours reasonably expended in this litigation. (Ex. B to Caddell Decl.) MDL Counsel have undertaken enormous efforts both to complete the massive amount of work required by this complex, document-intensive nationwide class action and to manage that work efficiently. In order to avoid duplicative or unnecessary work, Lead Counsel organized a Plaintiffs’ Steering Committee (“PSC”) and

⁶ <http://online.wsj.com/article/SBI0000142405270230481840577346033823556086.html>

⁷ (Ex. B to Declaration of Richard J. Arsenault, attached as Ex. 4.)

various committees responsible for specific tasks, including motion practice, document review, written discovery, depositions, Class Member interviews, vehicle inspections, expert retention and oversight, and settlement negotiations. (Caddell Decl. ¶ 28.) Following the recommendations of the Manual for Complex Litigation, Plaintiffs' counsel used these committees to ensure that each firm contributed to the litigation efficiently in its assigned role. (*Id.* ¶ 29.) Explicit authorization from Lead Counsel, working in conjunction with the committee chairs, was required before Plaintiffs' counsel performed any work for the common benefit of the Class. (*Id.* ¶ 30.)

Lead Counsel also established a protocol for the recording and reporting of the time MDL Counsel worked on this case. (Caddell Decl. ¶ 65.) This protocol requires MDL Counsel to maintain contemporaneous and detailed time records, which include a detailed description of all expenses incurred and work performed, and to submit these records to Lead Counsel in support of summary reports on a monthly basis along with a certificate from a partner attesting to the accuracy of the submission. (*Id.* ¶¶ 65–66; Ex. A to Caddell Decl.); *see Harper v. City of Chicago Heights*, 223 F.3d 593, 605 (7th Cir. 2000) (noting that, while “there is no *per se* rule requiring the submission of contemporaneous time records,” such records help ensure accuracy). Summaries of the time and expenses reported by each firm are submitted herewith, along with a description of the tasks that Lead Counsel assigned to each firm. (Exs. B–C to Caddell Decl.)⁸

These detailed work assignment and reporting procedures made it possible to manage this extraordinarily complex litigation. Discovery in this case has been extensive. 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 depositions of experts Ford relied upon in its

⁸ Because of the large volume, Plaintiffs have not submitted the detailed time and expense entries in their entirety. In the event the Court believes review of these records would be useful, Plaintiffs can provide the complete records or any portion of them upon request.

summary judgment motions. (Caddell Decl. ¶¶ 31–32.) The deposition schedule for both Plaintiffs’ and Ford’s witnesses was varied and national in scope, and all required meticulous preparation and document review. (*Id.* ¶ 31.) MDL Counsel prepared for and took the depositions of the following current or former Ford employees in this case:⁹

DATE	DEPONENT	LOCATION
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

In addition, MDL Counsel prepared for and took the depositions of the following expert witnesses for Ford:¹⁰

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

MDL Counsel also prepared for (including meeting with each Class Representative in advance) and defended the following depositions of Class Representatives:¹¹

DATE	NAME	LOCATION
11/16/10	Sue Dewar (Custom Underground)	Peoria, IL

⁹ (Caddell Decl. ¶ 31.)

¹⁰ (*Id.* ¶ 32.)

¹¹ (*Id.* ¶ 33.)

DATE	NAME	LOCATION
11/16/10	Jamie Marvin (Custom Underground)	Peoria, IL
12/15/10	Jorge Tijerina ¹²	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
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

This case has also involved extensive document discovery. Plaintiffs produced nearly 10,000 pages of documents in 25 separate productions in response to Ford's discovery requests. (Caddell Decl. ¶ 34.) MDL Counsel reviewed these documents and prepared them for production. (*Id.*)

MDL Counsel also did large amounts of work reviewing documents produced by Ford. (*Id.* ¶ 35.) In total, Ford produced more than six million pages of documents, and that production continued into 2012. (*Id.*) MDL Counsel reviewed the vast majority of these documents, either physically or electronically, in crafting the Master Consolidated Complaint, in preparing subsequent discovery requests, in preparing for depositions (both taking and defending), in

¹² Mr. Tijerina is no longer a Class Representative.

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. (*Id.* ¶ 52.) To assist MDL Counsel in analyzing and assimilating this more than 6 million pages of documents, MDL Counsel formed an IT committee to interview various document-services providers and ultimately selected Crivella West in Pittsburgh, at a cost of hundreds of thousands of dollars. (*Id.* ¶ 35.) 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. (*Id.*) MDL Counsel also subpoenaed documents from Navistar, the manufacturer of the 6.0L Engine, and examined both deposition testimony and documentary evidence from in the *Navistar* litigation. (*Id.* ¶¶ 36–38.) MDL Counsel reviewed that production and also evaluated many of the pleadings from that case. (*Id.* ¶ 37.)

MDL Counsel also prepared responses to a set of interrogatories served on five of the Plaintiffs, a set of requests for admission served on one Plaintiff, and a second set of interrogatories served on all Plaintiffs. (*Id.* ¶¶ 39–40.) In addition, MDL Counsel prepared and served two sets of interrogatories and two sets of requests for production on Ford. (*Id.* ¶ 41.)

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:¹³

DATE	REASON	ATTENDANCE
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

¹³ (*Id.* ¶ 43.)

DATE	REASON	ATTENDANCE
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:¹⁴

DATE	REASON	ATTENDANCE
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
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

MDL Counsel also retained expert witnesses as consultants and worked extensively with these experts to develop factual support for their liability and damage claims. These experts included: an ASE-certified Master Technician in automobiles and heavy trucks, a retired Vice President of Engineering for a major diesel engine manufacturer, a Master Technician certified by the ASE (National Institute for Automotive Service Excellence) and Ford Motor Company, a Senior Mechanical Engineer with a Bachelor of Science in Engineering Mechanics (Theoretical and Applied Mechanics), and a CPA certified in financial forensics with an MBA from Wharton. (*Id.* ¶ 44.)

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

¹⁴ (*Id.*)

and attended every inspection after the formation of the MDL. (*Id.* ¶ 45.)

PLAINTIFF	DATE FORD INSPECTED	NUMBER OF TRUCKS	LOCATION OF INSPECTION
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

Plaintiffs' experts also examined numerous Class vehicles. (*Id.* ¶ 46.) 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. (*Id.*) 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. (*Id.*) The schedule of those inspections is as follows, all of which were attended by MDL Counsel:¹⁵

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	

¹⁵ (*Id.* ¶ 46.)

PLAINTIFF	DATE OF INSPECTION	LOCATION OF INSPECTION	DATE OIL COOLER TESTED AND/OR CUT
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	

MDL Counsel have also undertaken large amounts of work to brief and argue various motions in this case. (*Id.* ¶¶ 47–50.) 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. (*Id.* ¶¶ 47–49.) The briefing included the following pleadings (with Plaintiffs’ filings in **bold**):¹⁶

DKT NO.	DATE FILED	TITLE
1	1/8/10	Class Action Complaint
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

¹⁶ (*Id.* ¶ 47.)

DKT NO.	DATE FILED	TITLE
29	3/16/10	Response by John Barrett, Custom Underground, Inc. to #18, Motion by Defendant Ford Motor Co. to Strike or Dismiss Plaintiffs' Class Action Allegations
30	3/16/10	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
35	5/18/10	First Amended Complaint (filed in response to #21 and #34).
36	5/21/10	Second Amended Complaint (filed in response to #21 and #34, corrected to reflect correct filer.
39	6/3/10	Second Amended Complaint (filed in response to #21 and #34, corrected to include added Plaintiff in style of case)
45	10/27/10	Plaintiffs' Motion to Continue Scheduling Order Deadlines
46	10/27/10	Memorandum in Support of Motion to Continue Scheduling Order Deadlines (#45)
48	10/29/10	Third Amended Complaint
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)
67	3/28/11	Plaintiffs' Motion for Extension of Time to File Briefing Regarding Class Certification
69	3/31/11	Plaintiffs' Motion for Leave to File Excess Pages (exceed the page limitations of L.R. 7.1)
73	4/8/11	Sealed Document (sealed motion for class certification, memo in support, and sealed exhibits to motion for class certification)
74	4/8/11	Plaintiffs' Motion for Class Certification with exhibits (redacted motion and public exhibits)
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.

Particularly significant among these filings were the Original, First Amended, Second Amended, and Third Amended Complaints and Ford's Motions to Dismiss Plaintiffs' claims and Strike Plaintiffs' Class Action Allegations, as well as Plaintiffs' Motion for Class Certification,

all of which required extensive research, investigation, and preparation. (Caddell Decl. ¶¶ 48–49.)

Once the MDL was formed, briefing and motion practice continued on an even larger scale. Again, Plaintiffs' filings are identified in **bold**.¹⁷

DKT NO.	DATE FILED	TITLE
7	5/9/11	Plaintiffs' Joint Application for Appointment of Lead Counsel
58	7/29/11	Plaintiffs' Master Consolidated Class Action Complaint (Redacted)
60	7/29/11	Plaintiffs' Master Consolidated Class Action Complaint (sealed)
80	9/7/11	Plaintiffs' Motion for Order re: Preservation of Evidence
81	9/7/11	Declaration of Cory S. Fein Regarding Motion for Order re: Preservation of Evidence (#80)
84	9/13/11	Joint Status Report (jointly prepared but filed by Ford's counsel)
86	9/15/11	Plaintiffs' Response to Ford's Motion for Entry of Preservation Order (#82)
88	9/16/11	Ford's Answer to Amended Complaint and Affirmative Defenses
92	9/29/11	Motion to Deem Allegations Admitted, filed by Plaintiffs
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
105	10/18/11	Response (filed by Plaintiffs) to Motion by Defendant Ford Motor Co. to Seal First Amended Answer to Master Class Action Complaint
108	10/19/11	Motion by Defendant Ford Motor Co. to Withdraw Motion to Seal #95 and #97
111	10/21/11	Motion (filed by Plaintiffs) to Quash Subpoena to Neal Technologies, Inc.
116	10/26/11	Status Report regarding Preservation Order
120	11/4/01	Memorandum by Ford Motor Co. in Opposition to Motion To Quash
125	11/14/01	Reply (filed by Plaintiffs) to Memorandum in Opposition to Motion

¹⁷ (Caddell Decl. ¶ 50.)

DKT NO.	DATE FILED	TITLE
130	11/22/11	Joint Status Report #3
135	12/22/11	Plaintiffs' Motion to Compel Production of Documents from Defendant
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)
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)
199	2/24/12	Joint Status Report #4
201	3/2/12	Motion by Defendant Ford Motor Co. for Summary Judgment (Gena Boggero)
206	3/23/12	Response by Plaintiffs James Hutton, Heather Gray, and Scott Gray to Ford's Motion to Compel Arbitration
207	4/5/12	Joint Motion for Extension of Certain Litigation Deadlines
211	4/6/12	Ford's Reply in Support of Motion to Compel, Motion to Stay (#196)
213	5/7/12	Motion (filed by Plaintiffs) for Request for Judicial Notice
221	5/15/12	Joint Status Report #5
231	10/23/12	Motion for leave to file Amended Master Complaint
234	11/1/12	Motion for Preliminary Approval

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. (Caddell Decl. ¶ 51.) In addition, MDL Counsel moved for and obtained a Preservation Order to ensure that Ford did not destroy any evidence pertinent to the case. (*Id.*)

Significant effort from a coordinated briefing team was also required to prepare responses to the 14 summary judgment motions that Ford filed challenging several aspects of the claims of 14 Class Representatives. (*Id.* ¶ 52.) 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. (*Id.*) 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. (*Id.*) While ultimately never filed because the Settlement was reached approximately two weeks before the responses were due, the substance of these responses was discussed during the course of mediation to persuade Ford to settle this matter on favorable terms. (*Id.*)

The parties engaged in preliminary settlement discussions in Houston, Chicago, and Washington D.C., on February 9, February 28, and April 9, 2012, respectively. (*Id.* ¶ 54.) Subsequent to these meetings, the parties participated in multiple, extensive, arm's-length mediation sessions with Judge Neville, including multiple, subsequent mediation sessions dedicated to the separate issue of attorneys' fees. (Caddell Decl. ¶ 55.)

MDL Counsel's work has continued after the Settlement: MDL Counsel has responded to thousands of calls in response to these notices, providing Class Members with information regarding the Settlement and answering their questions about submitting claims. (Caddell Decl. ¶ 64.) The lodestar figures submitted in support of this Motion include work performed by counsel on these post-settlement tasks up to and including at least March 31, 2013. (*Id.*) MDL Counsel anticipates that significant additional work and costs will be required to prepare briefing in support of final approval and present the final approval motion to the Court, responding to objections, handling Class Member inquiries, and responding to any appeals. (Caddell Decl. ¶ 74.)

In addition to their work in this Case, MDL Counsel had to undertake work in other actions to protect the interests of the Class. (Caddell Decl. ¶ 53.) 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. (*Id.*) 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 in order to protect Class Members' claims from becoming time-barred in the event class certification was denied. (*Id.* ¶¶ 51, 53.)

For all of this work, based on the contemporaneous time records retained and summarized by Lead Counsel, MDL Counsel's cumulative lodestar for work performed at least up to March 31, 2013 is \$10,220,147.50. (Caddell Decl. ¶ 74; Ex. B to Caddell Decl.)

3. The requested multiplier is reasonable in light of the risk counsel faced in undertaking this litigation.

The requested modest multiplier of 1.25 is amply justified by the risk of non-recovery that counsel faced at the outset of this litigation. Where, as here, counsel has pursued a case bearing a substantial risk of non-recovery, the Seventh Circuit's market-based approach to attorneys' fees dictates that a risk multiplier should be applied. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718–19 (7th Cir. 2001) (remanding attorneys' fee award to district court for consideration of appropriate risk multiplier); *Florin v. NationsBank of Georgia*, 34 F.3d 560, 565 (7th Cir. 1994) (holding that "a risk multiplier is not merely available in a common fund case but mandated, if the court finds that counsel "had no sure source of compensation for their services"). In determining the appropriate multiplier, the Court must consider counsel's risk of non-recovery at the outset of the litigation. *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011) (finding that special master correctly examined what would have been a reasonable fee negotiated "at the outset" of litigation); *see also Florin v. Nations Bank of Georgia*, 34 F.3d 560, 565 (7th Cir. 1994) (remanding attorneys' fee award for abuse of discretion where district court failed to apply risk multiplier).

Courts in the Seventh Circuit regularly approve risk multipliers in the range of two times the lodestar and have approved multipliers as high as four. *See, e.g., In re Cenco Inc. Sec. Litig.*, 519 F. Supp. 322, 327 (N.D. Ill 1981) (approving multipliers of four for lead counsel and two for non-lead counsel); *see also Dutchak v. Cent. States*, 932 F.2d 591, 596 (9th Cir. 1991) (affirming multiplier of two times the lodestar); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (approving fee award representing a multiplier of less than 2.5, which the court found "not an unreasonable risk multiplier"); *Davitt v. Info. Res.*, No. 94-cv-2431, 1995 WL 234630, at

*2 (N.D. Ill. Apr. 17, 1995) (awarding fees of 22.5% of the settlement fund, which equated to a risk multiplier of two).

Any contingent fee class action bears some risk of non-recovery. *See In re Continental Ill. Sec. Litig.*, 962 F.2d at 569 (holding that the need for a risk multiplier adjustment is “particularly acute in class action suits”). Here, this risk was magnified because significant manageability issues raised a risk that class certification might not be granted or, if granted, might not be maintained through trial. In addition, Ford raised substantive defenses regarding its liability for repairs after the New Vehicle Limited Warranty had expired, as well as regarding whether individual plaintiffs’ engine problems had been caused by misuse or improper maintenance. (*See* Dkts. 144-202.) The requested modest multiplier is thus more than justified in light of the high risk counsel undertook in pursuing this case. *See In re Trans Union*, 629 F.3d at 746 (holding that “the higher the risk of failure the higher the contingent fee that a client would have to pay in an arm’s length negotiation with the lawyer in advance of the suit”).

4. The requested multiplier is reasonable in light of the complexity of the litigation and the success obtained.

The excellent result obtained for the class in this extraordinarily complex case also independently justifies the requested multiplier. Once the lodestar has been calculated, “the district court has the flexibility to ‘adjust that figure to reflect various factors including the complexity of the legal issues involved, the degree of success obtained, and the public interest advanced by the litigation.’” *Gastineau*, 592 F.3d at 748. This case included dozens of consolidated actions and 16 Class Representatives living in 13 different states bringing claims on behalf of a nationwide class of over a million members. It involved millions of documents, difficult technical issues, and hundreds of thousands of vehicles around the country. Furthermore, the alleged engine defect is complex, involving the interactions between multiple

engine components and several different kinds of engine malfunctions. (Caddell Decl. ¶ 59.) Distinguishing malfunctions caused by the defect from malfunctions caused by improper maintenance, extreme operating conditions, or other causes required extensive expert work, including vehicle inspections and destructive testing of the affected engine components. (*Id.* ¶¶ 46, 59.) This is not run-of-the-mill litigation.

Despite these complexities, and the significant risk that Plaintiffs might not prevail on liability and/or class certification, MDL Counsel were able to negotiate a settlement that will reimburse the Class Members for approximately half of their out-of-pocket expenses for repairs to covered components during the extended warranty period. (Caddell Decl. ¶ 58.) This extraordinary success could easily justify a multiplier of two or higher, and it plainly merits the modest 1.25 multiplier requested.¹⁸ *See Hensley v. Eckerhart*, 461 U.S. 424, 441 (1995) (holding that the “degree of success obtained” is the most important factor in determining the reasonableness of a fee award).

B. A cross-check against the value of the Settlement confirms the requested fee’s reasonableness.

While the fee awarded under lodestar principles need not necessarily “mimic[] that of the percentage approach,” it can be useful to examine the value of the Settlement as a cross-check on the reasonableness of the fee award. *Cook*, 142 F.3d at 1013. It should be noted at the outset that this is not a case involving a capped common fund, in which the percentage approach involves only simple arithmetic. *See Cook*, 142 F.3d at 1012 (noting that one advantage of the percentage method in capped common-fund cases is “the simplicity of its administration”). Instead, Ford will pay all valid claims submitted, and there is no cap on the Class’s recovery.

¹⁸ Conversely, the cumulative lodestar could be reduced by as much as 40% and still justify the negotiated fee with the application of less than a 2.1 multiplier. (Caddell Decl. ¶ 74-75.)

(Dkt. 236-1 II.B-G.) The projected reimbursements to the Class Representatives show that the settlement recoveries are substantial:

Class Engine	Reimbursement Amount
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. 151	\$750
Custom Underground Engine No. 152	\$100
Custom Underground Engine No. 154	\$100
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 Enterprises Engine No. 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
Total	\$18,051.65

Class Engine	Reimbursement Amount
Average	\$547.02

(Caddell Decl. ¶ 56.) These recoveries range from \$0 (for engines that incurred no repeat deductibles for warranty repairs and suffered no Extended Warranty Period repairs to covered components) to \$2,500 for an engine that suffered a number of reimbursable Extended Warranty Period repairs. (*Id.*) The average recovery is \$547.02 per engine in the class. (*Id.*) These are not token “coupon” recoveries, but substantial cash payments that will make a real difference to Class Members injured by Ford’s conduct. *See Synfuel Techs. Inc. v. DHL Express*, 463 F.3d 646, 654 (7th Cir. 2006) (explaining that coupons and in-kind compensation have less worth than cash payments of the same nominal value). While individual out-of-pocket expenses will vary, the settlement payments are estimated to cover on average 50% of the Class Members’ incurred expenses for the covered repairs. (Taylor Decl. ¶ 12; Caddell Decl. ¶ 58.) Especially considering the risks that a class might not be certified, that Ford might prevail on its liability defenses, or that a certified class might ultimately not prove manageable for trial purposes, fifty cents on the dollar (out of which the Class need not pay any attorneys’ fees or expenses, which Ford has agreed to pay separately) represents excellent value for the Class.

And the Class Representatives’ experience is indicative of the fact that a substantial proportion of the Class did incur reimbursable expenses during the Extended Warranty Period. The Class Representatives were not selected with a view to any particular settlement structure; to the contrary, two of the Class Representatives’ engines did not even qualify for membership in the Class because they did not have a warranty repair to a covered component, and seven Class engines did not suffer any reimbursable deductible or post-warranty repair expenses. (Caddell Decl. ¶ 56.) The fact that 26 out of the Class Representatives’ 33 engines in the Class nevertheless qualify for payments averaging \$547.02 shows that the value of this Settlement for

a class of over a million people will more than justify the modest 1.25 multiplier requested here. *See Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (observing that “the market rate for ERISA class action attorneys’ fees is a contingency fee between 25% and 33%”); *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (affirming award of attorneys’ fees of 33% of settlement fund); *In re Kentucky Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 280 F.R.D. 364, 380 (N.D. Ill. 2011) (“[U]sing the market percentage method in the courts of the Seventh Circuit, as one court has observed, results in awards of attorney's fees “equal to approximately one-third or more of the recovery”); *Schulte*, 805 F. Supp. 2d at 597 (approving attorneys’ fee award of 33.33% of settlement fund). Thus, a cross-check against the value of the Settlement, to the extent the uncapped settlement structure allows one to be performed, confirms that the requested fee is reasonable. *In re Rite Aid*, 396 F.3d at 305 (holding, in the lodestar cross-check context, that a cross-check “need entail neither mathematical precision nor bean-counting”).

C. The requested costs and expenses are reasonable.

As explained above with respect to time entries, MDL Counsel similarly recorded their expenses on a contemporaneous basis and reported their expenses monthly to Lead Counsel. (Caddell Decl. ¶ 66.) These include expenses for filings, depositions, expert witness fees, printing and copying, travel, meals, witness expenses, postage and shipping, computerized research, staff overtime, long-distance telephone charges, and other expenses reasonably incurred in litigating this action on behalf of the Class. (Ex. C to Caddell Decl.) 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.¹⁹ (Caddell Decl. ¶ 76.) The Court should therefore award Plaintiffs the requested expenses. *See AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1040 (N.D. Ill. 2011) (approving award of \$926,466.69 in reasonable costs and expenses).

D. The requested service awards are reasonable.

Service awards are appropriate to compensate Class Representatives for the time and effort they invested in obtaining relief for the Class. *See Cook v. Niedert*, 142 F.3d at 1016. Here, the Class Representatives have undertaken time-consuming obligations, at substantial personal inconvenience, on behalf of the Class. The Class Representatives spent time with MDL Counsel preparing information and documents to aid counsel's investigation, made their vehicles available for inspection (almost all on more than one occasion), assembled documents for production, and spent significant time preparing for deposition and being deposed. Nine of the vehicles belonging to Class Representatives were subjected to destructive testing. (*See* Dkt. 236-7 ¶¶ 5, 11 (Boggero); Dkt. 236-8 ¶¶ 5, 11 (Heather Gray); Dkt. 236-9 ¶¶ 5, 11 (Custom Underground); Dkt. 236-10 ¶¶ 5, 12 (Frank Brown Towing, Inc.); Dkt. 236-11 ¶¶ 5, 11 (Vogt); Dkt. 236-12 ¶¶ 5, 11 (Marcum); Dkt. 236-13 ¶¶ 5, 11 (Strong); Dkt. 236-14 ¶¶ 5, 11 (Prebish); Dkt. 236-15 ¶¶ 5, 11 (Barrett); Dkt. 236-16 ¶¶ 5, 11 (Fulton); Dkt. 236-17 ¶¶ 5, 11 (Mawyer); Dkt. 236-18 ¶¶ 5, 11 (Santilli); Dkt. 236-19 ¶¶ 5, 11 (Scott Gray); Dkt. 238-1 ¶¶ 5, 11 (Hutton); Dkt. 238-2 ¶¶ 5, 11 (Clark); Dkt. 239-1 ¶¶ 5, 11 (Atwell); Dkt. 239-2 ¶¶ 5, 11 (DiNonno).)

¹⁹ Plaintiffs will provide the Court with an updated estimate of these additional expenses shortly before or at the final approval hearing. If the anticipated total results in Plaintiffs' total expenses being less than \$1,250,000, Plaintiffs will revise their expense request accordingly. (Caddell Decl. ¶ 76.)

Plaintiff Custom Underground's contribution of time and effort was even greater than that of the other Class Members because Custom Underground had 17 Class vehicles, more than a dozen of which Custom Underground made available for inspection on multiple occasions, causing significant disruption to Custom Underground's business. (Dkt. 236-9 ¶ 12.) In addition, Custom Underground was the primary plaintiff in the first case filed in this Court, thus undertaking significant work from the very outset of this litigation. (*Id.* ¶ 11.) DiNonno Enterprises, Inc. also made a disproportionate contribution, as it also had multiple vehicles that it made available on multiple occasions. (Dkt. 239-2 ¶ 11.)

Ford has agreed not to oppose service awards for the Class Representatives not to exceed \$150,000 in total. Given the relative contributions of the various Class Representatives, Plaintiffs propose that the following would be an equitable distribution of this service award:

Plaintiff	Award
Geno Boggero	\$6,486.49
Heather & Scott Gray	\$6,486.49
Custom Underground	\$47,837.49
Frank Brown Towing	\$6,486.49
Georjean Vogt	\$6,486.49
Phillip Marcum	\$6,486.49
Karl Strong	\$6,486.49
John Prebish	\$6,486.49
John Barrett	\$6,486.49
Cecil & Tressie Fulton	\$6,486.49
Anthony Mawyer	\$6,486.49
Steve Santilli	\$6,486.49
James Hutton	\$6,486.49
Charles Clark	\$6,486.49
Carl Atwell	\$6,486.49
DiNonno Enterprises	\$11,351.35
Total	\$150,000

These awards are appropriate to compensate the Class Representatives for the effort they undertook on behalf of the Class, without which the recovery achieved here would not have been

possible. See *In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 280 F.R.D. 364, 383 (N.D. Ill. 2011) (approving service award to class representatives). The \$6,486.49 service awards requested for most representatives are relatively modest in light of the significant time each of these Class Representatives devoted to discovery in this case. See *AT&T Mobility*, 792 F. Supp. 2d at 1041 (approving service awards of \$5,000 each for class representatives who had not taken part in any formal discovery). And the larger awards to DiNonno and Custom Underground fairly compensate them for the significant amount of time they spent helping to developing the complex factual record that made this Settlement possible. See *Cook v. Niedert*, 142 F.3d at 1016 (affirming \$25,000 service award for class representative who spent significant amounts of time helping attorneys prepare case). The Court should therefore grant the requested service awards.

V. CONCLUSION

For the reasons stated above, the Court should grant Plaintiffs' Motion for Attorneys' Fees, Expenses and Service Awards.

Dated: April 10, 2013

Respectfully submitted,

By: /s/ Michael A. Caddell
Michael A. Caddell
Cynthia B. Chapman
Cory S. Fein
Caddell & Chapman
1331 Lamar, Suite 1070
Houston TX 77010-3027
Telephone: (713) 751-0400
Facsimile: (713) 751-0906

MDL LEAD COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that, on April 10, 2013, this document was filed electronically via the Court's ECF system and thereby served on all counsel of record.

/s/ Cynthia B. Chapman

Cynthia B. Chapman