EXHIBIT 5

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

DECLARATION OF GEOFFREY P. MILLER

I, GEOFFREY P. MILLER, declare:

1. I am over eighteen years of age, I am competent to make this declaration, and I have personal knowledge of the matters and facts recited herein.

Scope of Retention

2. I have been retained to review the facts and circumstances of this settlement with a view to analyzing (a) its value to class members; (b) the request for an award of attorneys' fees and expenses; and (c) the request for approval of service awards to representative plaintiffs.

Qualifications

3. A copy of my resume is attached as Exhibit A. I am the Stuyvesant P. Comfort Professor of Law at the New York University Law School. I am a *magna cum laude* graduate of Princeton University and a 1978 graduate of the Columbia Law, where I was Editor-in-Chief of the Law Review. I served as a law clerk to the Honorable Carl McGowan of the United States Court of Appeals for the District of Columbia Circuit and to the Honorable Byron R. White, Associate Justice of the United States Supreme Court. I was an attorney-adviser at the Office of Legal Counsel in the United States Department of Justice from 1980-1982. After practicing civil litigation with a Washington D.C. law firm, I joined the faculty of the University of Chicago Law School in 1983, where I served as Kirkland & Ellis Professor and Associate Dean. I moved to New York University in 1995.

4. I am a co-founder, former co-president, and board member of the Society for Empirical Legal Studies, an organization of researchers in the fields of law, economics, sociology, psychology, business, and political science whose work examines the statistical impact of legal rules.

5. I am of HeinOnline Law Journal Library's top-100 most cited authors all time.[1] A recent empirical study of scholarly influence lists me as one of America's top-50 most relevant law professors.[2] In 2011 I was inducted as a Fellow in the American Academy of Arts and Sciences.

6. I have written extensively on class action and shareholders derivative cases. In the course of that research I have examined many hundreds of class action and shareholders derivative settlements. My articles on class action law have been cited by state and federal courts across the United States.[3]

7. A particular area of focus has been the empirical analysis of counsel fees in

[1] See http://www.heinonline.org/HOL/MostCitedAuthors?collection=journals.

[2] John Yoo & James Cleith Phillips, The Cite Stuff: Inventing a Better Law Faculty Relevance Measure, UC Berkeley Public Law Research Paper No. 2140944 (September 3, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2140944.

[3] *In re Processed Egg Products Antitrust Litigation*, 2012 WL 2885924 (E.D.Pa. 2012); *Louisiana Municipal Police Employees' Retirement System v. Pyott*,--- A.3d ----, 2012 WL 2087205 (Del.Ch. 2012); *Forsythe v. ESC Fund Management Co*., 2012 WL 1655538 (Del.Ch. 2012); *Creative Montessori Learning Centers v. Ashford Gear LLC*, 662 F.3d 913, (7th Cir. 2011); *In re Sauer-Danfoss Inc. Shareholders Litigation*, 2011 WL 2519210 (Del.Ch. 2011); *Thorogood v. Sears, Roebuck and Co.*, 627 F.3d 289 (7th Cir. 2010); *Ehrheart v. Verizon Wireless*, 609 F.3d 590 (3rd Cir. 2010); *In re Revlon, Inc. Shareholders Litigation*, 990 A.2d 940 (Del.Ch. 2010); *Lubin v. Farmers Group, Inc*., 2009 WL 3682602 (Tex.App. 2009); *Westgate Ford Truck Sales, Inc. v. Ford Motor Co*., 2007 WL 2269471 (Ohio App. 2007); *Acosta v. Trans Union, LLC*, 243 F.R.D. 377 (C.D.Cal. 2007); *Amalgamated Bank v. Yost*, 2005 WL 226117 (E.D.Pa. 2005); *Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3rd Cir. 2003); *Fruchter v. Florida Progress Corp.*, 2002 WL 1558220, (Fl. App. 2002); *In re Microstrategy, Inc.*, 172 F.Supp.2d 778 (E.D.Va. 2001); *In re Cendant Corp. Litigation*, 264 F.3d 201 (3rd Cir. 2001); *Scardelletti v. Debarr*, 265 F.3d 195 (4th Cir. 2001); *In re Auction Houses Antitrust Litigation*, 197 F.R.D. 71 (S.D.N.Y. 2000); *Lealao v. Beneficial California, Inc*., 82 Cal.App.4th 19, 97 Cal.Rptr.2d 797 (2000); *AUSA Life Ins. Co. v. Ernst and Young*, 206 F.3d 202 (2nd Cir. 2000); *Davis v. Carl Cannon Chevrolet-Olds, Inc*., 182 F.3d 792 (11th Cir. 1999); *In re Baan Co. Securities Litigation*, 186 F.R.D. 214 D.D.C. 1999); *In re Quantum Health Resources, Inc.*, 962 F.Supp. 1254 (C.D. Cal. 1999); *Strong v. BellSouth Telecommunications, Inc.*, 173 F.R.D. 167 (W.D.La. 1997); *Howard v. Globe Life Ins. Co*., 973 F.Supp. 1412 (N.D.Fla. 1996); *Kamilewicz v. Bank of Boston Corp*., 100 F.3d 1348 (7th Cir. 1996); *In re Asbestos Litigation*, 90 F.3d 963 (5th Cir. 1996); *General Motors Corp. v. Bloyed*, 916 S.W.2d 949 (Tex. 1996); *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill.2d 235, 659 N.E.2d 909, 213 Ill.Dec. 563 (1995); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation*, 56 F.3d 295 (1st Cir. 1995); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3rd Cir. 1995); *BTZ, Inc. v. Great Northern Nekoosa Corp*., 47 F.3d 463 (1st. Cir. 1995); *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304 (3rd Cir. 1993); *In re Oracle Securities Litigation*, 829 F.Supp. 1176 (N.D. Ca. 1993); *Gottlieb v. Wiles*, 150 F.R.D. 174 (D.Colo. 1993); *Durr v. Intercounty Title Co. of Illinois*, 826 F.Supp. 259 (N.D.Ill. 1993); *qad. inc. v. ALN Associates, Inc*., 807 F.Supp. 465 (N.D.Ill. 1992); *Wesley v. General Motors Acceptance Corp*., 1992 WL 57948 (N.D.Ill. 1992); *In re Verifone Securities Litigation*, 784 F.Supp. 1471 (N.D.Cal. 1992); *Davis v. Coopers & Lybrand*, 1991 WL 154460 (N.D.Ill. 1991).

representative cases. My statistical studies on class action and shareholders derivative cases (co-authored with Professor Theodore Eisenberg of Cornell University) are a leading authority on that topic.[4] Among other topics, my research in this area focuses on staffing and billing practices

[4] *See Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 877 (7th Cir. 2012); *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011); *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739, 760 (11th Cir. 2004) (Judges Tjoflat and Birch, dissenting from denial of en banc review); *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (2013); *In re Amaranth Natural Gas Commodities Litig.*, No. 07-6377, 2012 U.S. Dist. LEXIS 82599, at *7 n.12 (S.D.N.Y. June 11, 2012); *Board of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09-686, 2012 U.S. Dist. LEXIS 79418, at *5 n.12 (S.D.N.Y. June 7, 2012); *Lane v. Page*, No. 06-1071, 2012 U.S. Dist. LEXIS 74273, at *161 (D.N.M. May 22, 2012); *Silverman v. Motorola, Inc.*, No. 07-4507, 2012 U.S. Dist. LEXIS 63477, at *15 (N.D. Ill. May 7, 2012); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 U.S. Dist. LEXIS 37326, at *94, *116 (S.D. Tex. Mar. 20, 2012) ("The tables included in the [Eisenberg and Miller] study are good indicators of what the market would pay for class counsel's services because the tables show what attorneys have been paid in similar cases, and thus what class counsel could have expected when they decided to invest their resources in this case."); *Walsh v. Popular, Inc.*, No. 09-1552, 2012 U.S. Dist. LEXIS 32991, at *24 (D.P.R. Mar. 12, 2012); *Am. Int'l Group, Inc. v. Ace Ina Holdings, Inc.*, No. 07-2898, 2012 U.S. Dist. LEXIS 25265, at *59 (N.D. Ill. Feb. 28, 2012); *Ebbert v. Nassau County*, 05-5445, 2011 U.S. Dist. LEXIS 150080, at *41 (E.D.N.Y. Dec. 22, 2011); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1336 n.4 (S.D. Fla. 2011); *Latorraca v. Centennial Techs., Inc.*, No. 97-10304, 2011 U.S. Dist. LEXIS 135435, at *11 (D. Mass. Nov. 22, 2011); *In re Ky. Grilled Chicken Coupon Mktg. & Sales Litig.*, 2011 WL 5599129 (N.D. Ill. Nov. 16, 2011); *Pavlik v. FDIC*, No. 10-816, 2011 U.S. Dist. LEXIS 126016, at *11 (N.D. Ill. Nov. 1, 2011); *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 461 (D.P.R. 2011); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011); *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 652 (E.D. La. 2010); *Velez v. Novartis Pharms Corp.*, 04-09194, 2010 U.S. Dist. LEXIS 125945, at *60-61 (S.D.N.Y. Nov. 30, 2010); *Braud v. Transport Serv. Co. of Illinois*, No. 05-1898, 2010 U.S. Dist. LEXIS 93433, at *27-30 (E.D. La. Aug. 17, 2010); *In re Lawnmower Engine Horsepower Mktg. & Sales Prac. Litig.*, 733 F. Supp. 2d 997, 1013 (E.D. Wis. 2010); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010); *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 541 (N.Y. Sup. Ct. 2010); *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010); *In re Marsh Erisa Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010); *Strawn v. Farmers Ins. Co.*, 226 P.3d 86, 99 (Or. Ct. App. 2010); *Hall v. Children's Place Retail Stores, Inc.*, 669 F. Supp. 2d 399, 403 n.35 (S.D.N.Y. 2009); *In re Trans Union Corp. Privacy Litig.*, No. 00-4729, 2009 U.S. Dist. LEXIS 116934, at *22-25, *39 (N.D. Ill. Dec. 9, 2009); *Loudermilk Serv., Inc. v. Marathon Petroleum Co. LLC*, 623 F. Supp. 2d 713, 724 (S.D. W.Va. 2009) ("Because the Eisenberg and Miller study was a far more comprehensive analysis of similar cases than this Court could hope to achieve in a reasonable time, the Court accepts their results as a benchmark on which to judge a reasonable fee in this case."); *Rodriguez v. West Publ'g Co.*, 563 F.3d 948, 958 (9th Cir. 2009); *In re OCA, Inc. Sec. and Deriv. Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at *63-66 (E.D. La. Mar. 2, 2009); *In re Enron Corp. Secs., Deriv. & ERISA Litig.*, 586 F. Supp. 2d 732, 800 (S.D. Tex. 2008); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 755 n.2 (S.D. Ohio 2007); *In re Tyco Int'l., Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 269 (D.N.H. 2007); *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 388 (C.D. Cal. 2007); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853, 862-64, 866, 870 (E.D. La. 2007) ("[T]he Court will look to Eisenberg and Miller's data sets to determine an average percentage for cases of similar magnitude"); *Silberblatt v. Morgan Stanley*, 524 F. Supp. 2d 425, 435 n.6 (S.D.N.Y. 2007); *Fireside Bank v. Superior Court*, 155 P.3d 268, 281 n.7 (Cal. 2007); *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 38, 42 (D.N.H. 2006); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1209, 1211 (S.D. Fla. 2006); *In re Educ. Testing Serv. Praxis Principles of Learning and Teaching Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 629-32 (E.D. La. 2006); *Hicks v. Morgan Stanley*, No. 01-10071, 2005 U.S. Dist. LEXIS 24890, at *25 (S.D.N.Y. Oct. 24, 2005); *In re Lupron Mktg. and Sales Prac. Litig.*, 01-10861, 2005 U.S. Dist. LEXIS 17456, at *18 (D. Mass. Aug. 17, 2005); *In re HPL Techs., Inc. Sec. Litig.*, 366 F.Supp.2d 912, 914 (N.D. Cal. 2005); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 80-81 (D. Mass. 2005); *In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 286 (D. Mass. 2004).

in representative litigation.[5]

8. Based upon my education, experience and peer-reviewed writings, I believe I am qualified to opine on the comparability and reasonableness of Class Counsel's hours, billing rates, and overall fee request.

9. I am being compensated for my services in this matter on an hourly basis at my usual billing rate.

Materials Reviewed

10. In developing my opinions in this matter I have discussed this case with Class Counsel and have reviewed the materials listed in Appendix B of this Declaration.

Summary of Opinion

11. My opinions are as follows:

(a) The relief provided in the settlement now before the Court offers real and substantial value for the class, especially when judged against the risk of this litigation.

(b) Class Counsel's request for an award of attorneys' fees and expenses is within the range of reason when judged against results in similar cases.

(c) The request for service awards totaling $150,000 in the aggregate is within the range of reason when judged against awards in similar cases.

The Litigation

12. The amended complaint alleges that the 6.0-liter PowerStroke diesel engine installed in 2003-2007 trucks and vans manufactured by Defendant Ford Motor Company ("Ford" or "Defendant") was defectively designed and that the design defects resulted in frequent engine breakdowns and repairs. The complaint alleges that Ford was aware of the product defect but

[5] For a recent opinion relying on my research into staffing and billing practices in representative litigation, *see Stratton v. XTO Energy Inc.*, No. 02-10-00483-CV, 2012 Tex. App. LEXIS 1089, at *3-4, *14-15 (Tex. App. Feb. 9, 2012).

concealed these defects from consumers even after a high rate of warranty claims made it obvious that the problems were significant. The complaint further alleges that the service provided by Ford under its new vehicle limited warranty did not repair the problem, resulting in recurring product failures both with and beyond the warranty period.

13. Beginning early in 2010, Caddell & Chapman and Weller, Green, Toups & Terrell, L.L.P. filed the first class action complaint, the Custom Underground matter, which complained of these alleged defects. Subsequent to the filing of the Custom Underground matter, numerous other class action complaints were filed that alleged the same defects. In April 2011 the Judicial Panel on Multidistrict Litigation transferred a number of related cases to this Court; others have been transferred since. After the filing of a consolidated master class action complaint in July 2011, the parties commenced a discovery process which eventually resulted in the disclosure of more than six million pages of documents, discovery from third parties, depositions of more than a dozen current and former Ford personnel, depositions of named plaintiffs, inspections and testing of vehicles, and depositions of Ford's expert witnesses.

14. Ford filed numerous motions for summary judgment in the spring of 2012. Ford also filed motions to compel arbitration to which plaintiffs responded. While these motions were pending the parties engaged in settlement negotiations, at times assisted by the Honorable Richard Neville, a professional mediator and former Illinois state court judge. In August 2012 the parties achieved an agreement in principle, which they reduced to a final settlement agreement in November 2012.

The Settlement

15. Subject to certain exclusions, the settlement class includes all U.S. parties who own or lease, or who formerly owned or leased, a model year 2003-2007 non-ambulance Ford

vehicle, sold or leased in the United States and equipped with a 6.0 Liter Powerstroke diesel engine, that received certain specified repairs covered by Ford's new vehicle limited warranty.[6]

16. The settlement agreement provides for a number of different forms of relief for class members. Members who incurred the cost of repeat repairs on components that occurred after the expiration of the original warranty but before a cutoff period are entitled to partial reimbursement for out-of-pocket expenses. Reimbursable expenses vary depending on the nature of the repair: repairs to both the exhaust gas recirculation cooler and oil cooler are reimbursable up to $825; repairs to turbochargers are reimbursable up to $750; one-time repairs for fuel injectors are reimbursable up to $375, repairs to the exhaust gas recirculation valve alone are reimbursable up to $200. As an alternative to these extended warranty benefits, class members may elect to receive reimbursement for deductibles paid in connection with multiple repairs under the new vehicle limited warranty, in the amount of $50 per repair up to a limit of $200. There is no cap on aggregate payments.

17. The settlement provides that class members will initially submit their claims to Ford, together with documentation evidencing that they qualify for one or more of the settlement benefits. Ford commits to satisfy all valid claims. If Ford concludes that a claim is not valid, it is required to respond with reasons for rejecting the claim and to allow the class member to supplement or correct the submission. In the event that Ford and the class member cannot agree on a disposition, the claim will be submitted to an independent dispute resolution specialist, Kurtzman Carson, which will make a final, binding determination of all disputed claims.

18. As an additional benefit of the settlement, Ford agrees to pay all the costs of notice and settlement administration. Ford also agrees to pay up to $150,000 in service awards to be

[6] Ambulances were excluded because they were the subject of a previous class action settlement.

divided among the representative plaintiffs.

19. Ford also agrees to pay Class Counsel's attorneys' fees and expenses and commits that it will not oppose an application for attorneys' fees of up to $12.8 million and expenses of up to $1.25 million.

Opinion

20. I am aware that approval of a class action settlement is a matter reserved for the Court and that an expert's role is necessarily limited. I believe, however, that my knowledge of class action litigation equips me to provide a perspective that may be of assistance in the Court's deliberations. The following opinion addresses three issues: (a) the risk of the litigation; (b) the value of this settlement; and (c) the request for attorneys' fees and expenses compared with awards in similar cases.

Risk of the Litigation

21. I begin with a discussion of the risk of this litigation, which relates to both the value of the settlement relief on the merits as well as the amount of an appropriate attorneys' fee and expense award. This case was unusually risky, for a number of reasons.

22. Prevailing on the merits would have been challenging:

(a) Class Counsel may have needed to establish that the problems with Ford's 6.0 Liter Powerstroke engine were due to a design defect. Although Class Counsel had access to a substantial volume of consumer complaints regarding the 2003-2007 model years, these complaints did not focus on any single, readily defined issue nor did they identify the root cause of the problem. Engines during these model years were breaking down due to failures in a variety of different parts and systems, including fuel injectors, exhaust gas recirculation valves and oil coolers, among others. Class Counsel needed to show that these apparently disparate

issues were not simply the sort of random problems that occur with any engine but rather were the product of a single design defect or series of design defects. Such proof would inevitably be challenging and expensive, requiring the retention of engineers and other experts and the examination and testing of numerous vehicles, with no guarantee that these experts and engineers would be able to prove that common design defects were the root cause of the vehicle malfunctions experienced by class members. Moreover, in performing this task, Class Counsel was confronted by a committed adversary that had an overwhelming advantage in technical expertise, access to information, and physical and monetary resources.

(b) Merely identifying the root cause of the problem was not enough to establish Defendant's liability. Class Counsel may also have needed to show that the Defendant's treatment of the design defect evidenced a sufficient degree of fault. This burden could presumably be met if Class Counsel could establish that Ford was aware of the defect, recognized its causes, and affirmatively attempted to conceal the problem from customers. But sophisticated corporations rarely generate or retain written records establishing the existence of deceptive conduct. Proving Ford's knowledge of the defect or malfeasance in concealing the problem from customers would be a demanding task.

(c) Class Counsel also confronted the legal issue of the warranty. Ford provided a new vehicle limited warranty that covered problems with the engine. Ford was likely to argue that the consumer's acceptance of the warranty constituted a waiver of design defect claims, and that Ford had fully and faithfully performed its obligations under the warranty. To overcome these defenses, Class Counsel needed to establish that the repairs that Ford provided under the warranty were inadequate to correct the problems. Such proof was, if anything, even more challenging than the problem of establishing a design defect in the first place, because warranty

repairs could be performed in different ways to different parts or systems, and because in many cases repairs under the warranty had the appearance of resolving problems.

23. In addition to these daunting challenges on the merits, Class Counsel faced a risk of being unable to obtain class certification:

(a) To establish that the common issues predominated over issues affecting only individual class members, Class Counsel needed to address the apparent variability of consumer harms. Some owners or lessees of vehicles manufactured during the affected model years experienced no difficulties with their engines; others experienced one-time problems which were resolved by warranty repairs; others received multiple warranty repairs; still others received warranty repairs only to find problems recurring after the expiration of the warranty period. Ford could have argued that these and other differences among putative class members precluded certification of the action.

(b) Ford could have argued that there was, in fact, no single root cause of the reported problems; the failures of different engine parts or systems could have been random events or could have stemmed from multiple causes having nothing in common with one another. Class Counsel needed to engage in extensive technical analysis – including consultations with engineers and other experts – to ascertain that the problems stemmed from a single root cause and that class action treatment would offer an efficient means for determining rights to relief.

(c) The performance of an engine, moreover, is not only a function of the manufacturing process; it is also affected by the driving patterns, maintenance behavior, and modifications by the vehicle's owners or lessees. I understand that there was significant evidence that many class members failed to follow the specialized maintenance requirements that apply to vehicles with diesel (as opposed to gasoline) engines, and that many class members modified their engines

(referred to as "chipping") in a manner to try to obtain more power from their engines at the cost of putting excessive strain on the engines. As it demonstrated in its 14 motions for summary judgment, Ford could argue that every owner or lessee treated their vehicle differently, and therefore that there were no issues common to all putative class members, much less common issues that predominated over issues affecting only individual plaintiffs.

24. I do not consider these arguments to be persuasive; they are certainly not objections to the certification of this action as a settlement class. Nevertheless, in my experience arguments of this nature are frequently made by defense counsel in consumer class actions, and sometimes they are successful in the litigation class context.

25. In sum, this case posed unusual risks at the outset. Had I been consulted as to whether to bring this case, I would have advised against doing so because the risks involved were so great. I would have advised counsel to devote their time and resources to other matters which offered a higher probability of success.

Settlement Benefits

26. I have reviewed the Declaration of Professor William B. Rubenstein in support of the settlement. Professor Rubenstein there opines that the settlement is fair, adequate and reasonable to the class when analyzed under the Seventh Circuit's "net expected value" test. I rely on Professor Rubenstein's analysis, but add some additional thoughts regarding the settlement benefits.

27. It is my opinion that the settlement provides real and substantial value to class members. I base this opinion on both procedural and substantive considerations.

28. The procedural context indicates that Class Counsel fought hard to achieve the maximum possible value for the class:

(a) This case was far from the problematic "drive-by" settlement in which counsel files a class action one day only to settle it a few weeks or months later, before discovery and the process of adversarial testing have clarified the value of the class claims. In developing their case, counsel consulted technical experts and conducted an independent investigation into the cause of the reported problems. Class Counsel conducted or defended nearly 40 depositions and reviewed millions of pages of documents produced by Ford in discovery. The parties hammered out the settlement only after Class Counsel had thoroughly tested the engineering and scientific theories of the case and had evaluated the legal and factual strength of class members' claims.

(b) The settlement now before the Court is the result of vigorous and adversarial negotiation. My review of the procedural history and the process of settlement bargaining indicates that Class Counsel were diligent and resourceful in exploring every avenue for obtaining the best possible recovery for the class.

(c) A well-known problem of class action litigation is the risk that counsel will work out a deal with a defendant which trades off a lower recovery for the class against a generous attorneys' fee. That risk was not present here. I know Counsel to be highly ethical attorneys who would never engage in such an improper transaction. Beyond this, Counsel wisely deferred any discussion of fees until after they had reached and memorialized an agreement on all material terms of the settlement and negotiated the settlement with the involvement of a respected and experienced mediator, Judge Richard Neville. By postponing fee negotiations until an agreement on the merits was achieved, the parties prevented any possibility of a tradeoff between merits and fees. This "best practice" of settlement negotiations provides further assurance that the agreement ultimately reached was the product of adversarial bargaining in which Class Counsel were motivated to achieve the best possible result for the class.

29. Substantive elements of the settlement agreement also provide evidence that it provides real and substantial value to class members:

(a) The consideration made available to class members under this settlement represents a substantial percentage of their maximum damages – approximately half of class members' total out-of-pocket expenses for repairs to covered components during the extended warranty period.

(b) The settlement consideration takes the form of cash payments. This is not a "coupon" settlement which purports to give consumers the right to purchase products at a discounted price. Class members are not required to acquire more of a defective product and need not continue dealing with a party which allegedly infringed on their rights. This settlement cannot be portrayed as a marketing gimmick to increase the Defendant's sales.

(c) Nor is this a case where the benefits of the settlement are only marginally related to the harm complained of in the litigation. The settlement consideration is based on costs which class members incurred in repairing parts and systems which were allegedly affected by the underlying product defect and which Ford failed to properly repair during the warranty resulting in a repeat failure. Accordingly, the benefits of the settlement are distributed to class members in reasonable proportion to the harm they experienced from the Defendant's allegedly wrongful conduct.

(d) This is not a case where class members receive on average only a few dollars in settlement consideration. Rather, recoveries can run into the hundreds or even thousands of dollars. Among the named plaintiffs, the average projected reimbursement amount is $547.

(e) The total class benefit is also substantial. While the full value of this settlement cannot be precisely calculated, it is noteworthy that the class includes approximately 650,000 eligible vehicles. If one assumes that the average settlement benefit is $200 per vehicle, the total benefit made available to class members under the settlement would be approximately $130

million.

(f) In addition to providing extensive merits relief, this settlement requires the Defendant to pay attorneys' fees and expenses as well as the costs of notice and settlement administration – items that could otherwise be payable by the class.

30. Any evaluation of the value conferred by a class action settlement must take account of the probability that the case will succeed if litigated to a judgment. The complaint and other materials I have reviewed presents a plausible theory which, if accepted by a trier of fact, might entitle class members to a judgment in their favor. On the other hand, as noted above, there were many obstacles in the path of a victory at trial, including both procedural problems and difficulties in establishing the Defendant's liability. The benefits achieved by this settlement appear impressive when evaluated in light of the risk that, had the case proceeded further, the class would have wound up with no recovery at all.

31. It is also notable that Ford, together with other domestic automobile manufacturers, has recently passed through one of the most difficult periods in their corporate history. Although unlike General Motors and Chrysler Ford did not undergo bankruptcy or accept government support, it nevertheless faced significant financial challenges during the period in which this case was litigated – challenges which may have limited Ford's ability to pay a larger judgment at trial.

32. The reaction of the class provides additional comfort for the conclusion that the class obtains real and substantial value from this settlement. The number of objections is miniscule in relation to the size of the class; and the number of class members objecting to the proposed awards of fees, expenses, or class representative service awards is smaller still. It is obvious that the class as a whole does not consider this settlement to be unfair or unreasonable.

Fees and Expenses

33. I now turn to an analysis of Class Counsel's request for fees and expenses. Two preliminary observations are in order.

34. It is noteworthy that this settlement requires the Defendant to pay Class Counsel's attorneys' fees and expenses *separate and apart* from the amounts paid out on the merits. Accordingly, whatever Ford pays out in fees and expenses will have no effect on the class recovery.

35. As noted above in connection with my discussion of the settlement benefits, the parties observed the "best practice" of deferring negotiations over fees and expenses until after they had achieved an agreement on the material terms of the merits settlement. This practice supports the reasonableness of the fee request:

(a) The practice eliminated any possibility of a tradeoff of a lower merits settlement for a higher fee. No such tradeoff was possible because the agreement on the merits preceded the discussion of fees and expenses.

(b) Equally importantly, the separation of fees and merits introduced the protections of the adversary system into the setting of the fee. Given that the merits relief had already been determined, Ford had every reason to—and apparently did—bargain aggressively in order to minimize the cost of its agreement to pay Class Counsel's fees and expenses. The fact that the party whose money was on the line agreed to Class Counsel's request for fees and expenses is powerful evidence as to the reasonableness of the amounts requested.

Methodology

36. Turning now to the question of the appropriate fee, an initial question is the proper methodology to use in evaluating the reasonableness of Class Counsel's fee request. Courts in

this Circuit and around the country usually employ either of two methodologies to calculate a reasonable fee in representative litigation.

37. The percentage-of-recovery method calculates the fee as a reasonable fraction of the amount recovered in the action. The percentage-of-recovery method is commonly used when the value of the recovery can be estimated with reasonable confidence.

38. The alternative lodestar method calculates the fee based on an evaluation of Class Counsel's reasonable hours and reasonable hourly rate; this amount (the "lodestar") is then adjusted by a "multiplier" which accounts for other factors, most importantly the risk incurred by counsel in bringing the case. The lodestar approach is commonly used when the value of the recovery cannot be estimated with sufficient confidence; it is also employed as a "cross-check" on the reasonableness of the fee calculated under the percentage method.

39. As noted above, the relief obtained by Class Counsel's efforts has significant value. It is difficult, however, to estimate that value with precision both because the amount of benefits that each class member may claim is not yet known and also because not all class members will submit claims. In light of these uncertainties, it is more instructive to calculate the fee based on the lodestar analysis and to use the percentage-of-recovery as a cross-check on the reasonableness of the fee calculated under the lodestar method.

Lodestar Analysis

40. The lodestar analysis requires an assessment of (a) Class Counsel's reasonable hours; (b) Class Counsel's reasonable hourly rate; and (c) the reasonable multiplier to apply under the facts and circumstances of the case.

Hours

41. I am informed that as of March 31, 2013, Class Counsel and their professional

support staff expended a total of 20,254.93 hours in conducting this litigation. It is my opinion that the hours incurred in the prosecution of this matter were reasonable in light of the magnitude and difficulty of the issues involved. I base that opinion on the following considerations.

42. The time demands of this litigation were substantial:

(a) Class Counsel obtained and analyzed more than six million pages of documents produced in the discovery process. Class Counsel also supervised the disclosure of nearly ten thousand pages of documents in response to Ford's discovery requests.

(b) Class Counsel took or defended approximately 40 depositions, including 13 depositions of current or former Ford employees as well as depositions of experts relied on by Ford in support of its motions for summary judgment.

(c) Class Counsel researched and drafted the master amended complaint, which was detailed and lengthy, and other pleadings, appeared at hearings, and briefed motions to dismiss, a motion to strike class action allegations, a motion for class certification, motions to compel arbitration, and fourteen motions for summary judgment.

(d) Class Counsel attended numerous inspections of vehicles owned or leased by representative plaintiffs.

43. Prior to their appointment as lead counsel in this action, Caddell & Chapman and Weller Green Toups & Terrell, L.L.P. had represented plaintiffs in another nationwide class action involving the same 6.0-liter PowerStroke diesel engine which is at issue in the present case (the plaintiffs in that case were companies and governmental entities that owned and operated ambulance fleets; they are excluded from the present settlement). By virtue of that representation, Caddell & Chapman and Weller, Green, Toups & Terrell, L.L.P. developed a base of substantive knowledge about the issues which they brought to bear in the present case.

Thus these attorneys were able to provide effective representation to the class without having to "reinvent the wheel." In consequence, they expended substantially fewer hours on this matter than would otherwise have been the case.

44. This Court and lead counsel engaged in commendable efforts to keep time and expenses under control. On June 2, 2011, this Court entered its Order Regarding Management of Timekeeping, Attorneys' Fees, and Costs Reimbursement Issues, which established a general framework for managing the litigation on the plaintiffs' side. Lead counsel implemented this Court's Order on June 10, 2011 by establishing obligations for attorneys who wished to be reimbursed as part of the MDL proceeding:

(a) In order to "avoid unnecessary expenditures of time or funds," lead counsel instructed all firms on the plaintiffs' team to obtain permission before expending time or expenses in the matter. No one was allowed to engage in time-intensive activities without express approval. Time spent reading or reviewing documents as to which the attorney had no specific assignment was expressly declared to be non-compensable.

(b) To further conserve on expenses, lead counsel required that compensable airline travel be booked at coach fare, encouraged all attorneys to conserve on hotel and other expenses, and prohibited billing for overhead costs.

(c) Lead counsel instructed all plaintiffs' firms to maintain detailed, contemporaneous time and expense records, with time billed in tenth-of-an-hour increments. Based on my discussions with Class Counsel, I am persuaded that each of the firms involved in this case understood that they were expected to be prompt and accurate in filling out their time records.

(d) Lead counsel instituted a system of oversight and control to back up these requirements. All firms working on the Plaintiffs' side were required to submit summary time

and expense reports on a monthly basis. Lead counsel regularly reviewed these reports to determine whether the guidelines were being followed and whether hours and expenses were kept within proper bounds.

45. To further control fees and expenses, lead counsel organized a Plaintiffs' Steering Committee as well as various subsidiary committees charged with organizing and coordinating specific tasks, including motion practice, document review, written discovery, depositions, interviews with class members, vehicle inspections, expert retention and oversight, and settlement negotiations.

46. Class Counsel engaged in sensible cost-reduction strategies in connection with the task of reviewing Ford's document production. Counsel's IT Committee retained Crivella West, a firm specializing in managing and analyzing digital records produced in litigation. Crivella West uploaded the millions of pages of documents onto its proprietary case research system and processed and organized the documents in such a way as to streamline and expedite the document review process.

47. Given the amount of work posed by this litigation, counsel's aggregate total of 20,254.93 hours is reasonable.

Hourly Rates

48. I now turn to an evaluation of the appropriate hourly rates. These are determined, under the lodestar analysis, by comparing counsel's rates with those of attorneys in the market who possess similar background, experience and qualifications.

49. As is normal and expected, senior attorneys with substantial experience and track records of success in class action litigation billed at the highest rates. Michael Caddell, of lead counsel Caddell & Chapman, billed 1584 hours at $750/hour. Most other attorneys billed at this rate or lower, with the exceptions of Jerrold S. Parker of Parker Waichman Alonso LLP, who

billed 14 hours at $1,000/hour; William Bernstein of Leif Crabraser Heiman & Bernstein, who billed .3 hours at $900/hour; Robert Nelson of Leif Crabraser Heiman & Bernstein, who billed .9 hours at $800/hour; Jonathan Cuneo of Cuneo Gilbert & LaDuca LLP, who billed .6 hours at $800/hour; and Charles Schaffer of Levin, Fishbein, Sedran & Berman, who billed 111 hours at $750/hour. With the exception of Mr. Caddell, who together with Cynthia Chapman was the attorney principally responsible for this litigation, all of these higher-billing attorneys expended limited amounts of time in the matter.

50. Billing rates for junior attorneys started at around $250/hour (one associate was billed at $150/hour) and ranged upward based on seniority. In general, junior attorneys expended more hours than the most senior attorneys, as was appropriate given that the time of senior attorneys with higher billing rates can be efficiently reserved for tasks with greater responsibility.

51. A variety of sources of information are available to evaluate the reasonableness of these rates. In federal bankruptcy litigation, rates for representation can sometimes be obtained from a review of public case filings. The following table, compiled from publicly available sources, illustrates typical billing rates of defense-side firms as reported in bankruptcy cases:

Table 1: Bankruptcy Fees

Case Name	Defense Firm	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
In re Houghton Mifflin Harcourt Publ'g Co., et al., Debtors, No. 12-12171 (REG)	Paul, Weiss, Rifkind, Wharton & Garrison LLP	(Bankr. S.D.N.Y.) (May 2012) (Dkt. No. 55)	$425 - $760	$895 - $1,120
In re Lightsquared Inc., Debtors, No. 12-12080 (SCC)	Milbank, Tweed, Hadley & McCloy LLP	(Bankr. S.D.N.Y.) (July 2012) (Dkt. No. 206)	$470 - $750	$950 - $1,140
In re Eastman Kodak Co., Debtors, No. 12-10202 (ALG)	Milbank, Tweed, Hadley & McCloy LLP	(Bankr. S.D.N.Y.) (June 2012) (Dkt. No. 1492)	$470 - $795	$825 - $1,140
In re 785 Partners LLC, Debtor, No. 11-13702 (SMB)	Proskauer Rose LLP	(Bankr. S.D.N.Y.) (May 2012) (Dkt. No. 189)	$295 - $700	$779 - $1,050
In re Dynegy Holdings, LLC, et al., *Debtors*, No. 11-38111 (CGM)	Sidley Austin LLP	(Bank. S.D.N.Y.) (Apr. 2012) (Dkt. No. 578)	$340 - $950	$625 - $1,050
In re Ambac Fin. Group, Inc., Debtor, No. 10-15973 (SCC)	Wachtell, Lipton, Rosen & Katz	(Bankr. S.D.N.Y.) (Nov. 2011) (Dkt. No. 701)	$500 - $600	$975
In re Great Atlantic & Pacific Tea Co., Inc., et al., Debtors, No. 10-24549 (RDD)	Kirkland & Ellis LLP	(Bankr. S.D.N.Y.) (May 2011) (Dkt. No. 1566)	$340 - $995	$580 - $995
In re CIT Group Inc. and CIT Group Funding Co. of Delaware LLC, Debtors, No. 09-16565 (ALG)	Sullivan & Cromwell, LLP	(Bankr. S.D.N.Y.) (Jan. 2010) (Dkt. No. 229)	$305 - $950	$850 - $965

52. The results of these cases are confirmed by survey data. According to a December 2009 report in *American Lawyer*,[7] the rates for senior bankruptcy lawyers had already topped $1,000 per hour four years ago, with median partner rates ranging between $810 and $980/hour:

[7] Amy Kolz, Bankruptcy Rates Top $1,000 Mark In 2008-09, The Am. Law Daily (Dec. 12, 2009), *available at* http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202436371636 (last visited Nov. 28, 2012).

Table 2: Bankruptcy Fee Survey Data

FIRM	MEDIAN PARTNER RATE*	PARTNERS FILING
Simpson Thacher	$980	30
Cleary Gottlieb	$960	47
Shearman & Sterling	$950	17
Davis Polk	$948	14
Skadden	$945	38
Paul Weiss	$925	24
Cadwalader	$900	29
Milbank	$900	55
Gotshal	$843	142
Gibson Dunn	$840	29
Latham & Watkins	$830	57
White & Case	$825	21
Paul Hastings	$810	46

53. On the plaintiffs' side, comparable billing rates can be gleaned from a review of reported settlements. These data are shown in the following table:

Table 3: Plaintiffs' Attorney Billing Rates

Case Name	Plaintiff Firm	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
In re Bear Stearns Companies, Inc. Securities, Derivative and ERISA Litig., No. 08-cv-2793 (RWS)	Labaton Sucharow LLP	(S.D.N.Y.) (Aug. 2012) (Dkt. No. 302-5)	$275 - $700	$725 - $975
In re Wachovia Equity Securities Litigation, No. 08 Civ. 6171 (RJS)	Kirby McInerney LLP	(S.D.N.Y.) (Apr. 2012) (Dkt. No. 106-5)	$280 - $625	$600 - $800
In re Lehman Brothers Securities and Erisa Litigation, No. 1:08-cv-05523 (LAK)(GWG)	Bernstein Litowitz & Grossman LLP	(S.D.N.Y) (Mar. 2012) (Dkt. No. 343-12)	$310 - $675	$650 - $975
In re Lehman Brothers Securities and Erisa Litigation, No. 1:08-cv-05523 (LAK)(GWG)	Labaton Sucharow	(S.D.N.Y) (Mar. 2012) (Dkt. No. 343-17)	$275 - $650	$750 - $975
Rubin v. MF Global, Ltd., et al., No. 08 Civ. 2233 (VM)	Cohen Milstein Sellers & Toll PLLC	(S.D.N.Y.) (Nov. 2011) (Dkt. No. 198)	$230 - $615	$700 - $795
In re Wachovia Preferred Sec. and Bond/Notes Litigation, No. 09 Civ. 6351 (RJS)	Bernstein Litowitz Berger & Grossman LLP	(S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-7)	$340 - $675	$650 - $975
In re Wachovia Preferred Sec. and Bond/Notes Litigation, No. 09 Civ. 6351 (RJS)	Robbins Geller Rudman & Dowd LLP	(S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-9)	$265 - $640	$565 - $775
Cornwell et al. v. Credit Suisse Group et al., No. 08 Civ. 03758 (VM)	Robbins Geller Rudman & Dowd LLP	(S.D.N.Y.) (July 2011) (Dkt. No. 117)	$360 - $670	$565 - $795
Lapin v. Goldman Sachs & Co., No. 04 Civ. 2236 (RJS)	Kirby McInerney LLP	(S.D.N.Y.) (Nov. 2010) (Dkt No. 129)	$275 - $600	$600 - $900
In re MBIA, Inc., Sec. Litigation, No. 08 Civ. 0264 (KMK)	Bernstein Litowitz Berger & Grossman LLP	(S.D.N.Y.) (Dec. 2011) (Dkt. No. 92)	$375 - $675	$700 - $975
In re Refco, Inc. Securities Litigation, No. 05 Civ. 08626 (JSR)	Grant & Eisenhofer P.A.	(S.D.N.Y.) (Sept. 2010) (Dkt. No. 738-5)	$250 - $620	$650 - $845

Stumpf v. Garvey, et al. (In re Tycom Ltd. Sec. Litigation.), No. 03 Civ. 03540 (GEB)	Wolf Popper LLP	(D.N.J.) (Aug. 2010) (Dkt. No. 145)	$345 - $485	$620 - $750
In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litigation, No. 07-cv-09633 (LBS)(AJP)(DFE)	Kaplan Fox & Kilsheimer LLP	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-4)	$255 - $500	$550 - $775
In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litigation, No. 07-cv-09633(LBS)(AJP)(DFE)	Berger & Montague, P.C.	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-6)	$295 - $440	$460 - $725
In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litigation, No. 07-cv-09633(LBS)(AJP)(DFE)	Pomerantz Haudek Grossman & Gross LLP	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-7)	$385 - $550	$525 - $830
In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litigation, No. 07-cv-09633(LBS)(AJP)(DFE)	Murray, Frank Sailer LLP	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-8)	$350 - $550	$675 - $750
In re Telik, Inc. Securities Litigation, No. 07 Civ. 04819 (CM)	Bernstein Liebhard & Lifshitz, LLP	(S.D.N.Y.) (Aug. 2008) (Dkt. No. 72)	$350 - $550	$700 - $750

54. In light of these data, it is my opinion that the rates contained in Class Counsel's lodestar calculation are appropriate and reasonable.

Multiplier

55. I now turn to an evaluation of an appropriate multiplier. Class Counsel estimates their lodestar as of March 31, 2013 to be $10,220,147. The multiplier associated with the fee request of $12.8 million is 1.25 (this will undoubtedly decrease given the work that will be required to complete this matter). The question is whether this multiplier is appropriate under

the circumstances.

56. To begin with, it is obvious that a multiplier is required if counsel are to have adequate incentives to bring litigation of this sort. Otherwise the substantial risks associated with cases such as the present litigation would deter counsel from bringing lawsuits in the first place. Realistically, the question is not whether a multiplier should be awarded but rather what the multiplier should be.

57. A review of decided cases reveals that multipliers of 2 or greater are commonly awarded in representative litigation. The following table sets forth a list of cases where courts have awarded multipliers of 2 or greater:

Table 4: Sample of Cases with Multipliers Greater than Two

Case	Multiplier
Steinver v. Am. Broadcasting Co., Inc., 248 F. App'x 780, 783 (9th Cir. 2007)	**6.85**
Craft v. County of San Bernardino, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008)	**5.2**
Buccellato v. AT&T Operations, Inc., No. C10-00463-LHK, 2011 U.S. Dist. LEXIS 85699, at *3-5 (N.D. Cal. June 30, 2011)	**4.3**
Maley v. Del Global Techs. Corp., 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002)	**4.65**
In re Interpublic Secs., No. Civ. 6527 (DLC), 2004 U.S. Dist. LEXIS 21429, at *34 (S.D.N.Y. Oct. 26, 2004)	**3.96**
In re Bisys Sec. Litig., No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007)	**2.99**
In re Comverse Tech., Inc., Sec. Litig., 2010 WL 2653354, at *5 (E.D.N.Y. June	**2.8**

24 2010)	
Cornwell v. Credit Suisse Group., No. 08 Civ. 03758 (VM), slip op. at 4 (S.D.N.Y. July 18, 2011)	**4.7**
Wal-Mart Stores, Inc. v. Visa USA, Inc., 396 F.3d 96, 123 (2d Cir. 2005)	**3.5**
Weiss v. Mercedes-Benz of N. Am., Inc., 899 F. Supp. 1297 (D.N.J. May 11, 1995), *aff'd*, 1995 U.S. App. LEXIS (3d Cir. 1995)	**9.3**
Perera v. Chiron Corp., Civ. No. 95-20725-SW (N.D. Cal. 1999)	**9.14**
Cosgrove v. Sullivan, 759 F. Supp. 166 (S.D.N.Y. 1991)	**8.84**
In re Buspirone Antitrust Litig., No. 01-md-1413 (JGK) (S.D.N.Y. Apr. 17, 2003)	**8.46**
Newman v. Carabiner Int'l, Inc., 99-cv-2271 (S.D.N.Y. Oct 19, 2001)	**7.7**
In re 3COM Sec. Litig., No. C-97-21083 (N.D. Cal. Mar. 9, 2001)	**6.67**
In re Triangle Indus. Sec. Litig., [1991-1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,528 (Del Ch. 1991)	**6.6**
In re RJR Nabisco, Inc. Sec. Litig., [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,984 at 94,267 (S.D.N.Y. 1992)	**6.0**
Roberts v. Texaco, 979 F. Supp. 185 (S.D.N.Y. 1997)	**5.5**
Lemmer v. Golden Books, 98 Civ. 5748 (S.D.N.Y. Oct. 12, 1999)	**5.38**
Feerer v. Amoco Prod. Co., Civ. No. 95-0012 JC/WWD, 1998 U.S. Dist. LEXIS 22248 (D.N.M. May 28, 1998)	**4-5**
Willson v. New York Life. Ins. Co., No.	

94-127804, 1995 N.Y. Misc. LEXIS 652 (N.Y. Sup. Ct. Feb 1, 1996)	**4.6**
Rabin v. Concord Assets Group, Inc., No. 89 CIV 6130 (LBS), 1991 U.S. Dist. LEXIS 18273, [1991-92 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,471 (S.D.N.Y. 1991)	**4.4**
In re Rite-Aid Corp. Sec. Litig. ("Rite Aid II"), 269 F. Supp. 2d 603 (E.D. Pa. 2003)	**4.07**
In re NASDAQ Mkt.-Makers Antitrust Litig., 187 F.R.D. 465 (S.D.N.Y. 1998)	**3.97**
In re AremisSoft Corp. Sec. Litig., 210 F.R.D. 109 (D.N.J. 2002)	**4.3**
In re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d 319 (S.D.N.Y. 2005)	**4.0**
In re Enron Corp. Sec., Deriv., & ERISA Litig., 586 F. Supp. 2d 732 (S.D. Tex.. 2008)	**5.2**

58. The foregoing cases demonstrate that substantial multipliers are common in federal representative action settlements. They reflect a more general recognition in this and other Circuits that the range of reason includes multipliers greater than two. *See, e.g.*, *Dutchak v. Cent. States*, 932 F.2d 591, 596 (9th Cir. 1991) (multiplier of 2); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) ("multipliers of between 3 and 4.5 have become common"); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (approving multiplier of greater than 2); *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 U.S. Dist. LEXIS 57918, at *56 n.7 (S.D.N.Y. 2007) ("multipliers of nearly 5 have been deemed 'common' by courts in this District"); *In re Telik, Inc., Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("multiples of over 4 are routinely awarded by courts, including this Court"); *In re Cenco Inc. Sec. Litig.*, 519 F. Supp. 322, 327 (N.D. Ill. 1981)

(approving multipliers of up to 4).

Determining the Multiplier

59. Determination of an appropriate multiplier is a matter for the sound discretion of the Court. In exercising that discretion, however, it is clear that the most important consideration is the risk of the case: higher risk cases justify higher multipliers than lower-risk cases. As discussed above, this case presented daunting risks, both in terms of obtaining certification of a litigation class and in terms of establishing Defendant's liability for damages. Because this was a high-risk case, it is my opinion that a substantial lodestar multiplier would be justified.

60. In addition to the risk of the case, courts may consider other factors in its discretion when setting the multiplier, including the time and labor expended by counsel; the magnitude and complexity of the litigation; the quality of representation; the requested fee in relation to the settlement; and public policy considerations.

61. The time and labor incurred by counsel is a measure of the amount of resources counsel put at risk in the litigation. In the present case that risk was substantial. Counsel expended 20,254.93 hours of professional time on an entirely contingent basis. By devoting this time to the present case, Counsel necessarily had to refrain from other potentially lucrative activities. The very large amount of time placed at risk in this litigation, in my opinion, is a factor that supports a substantial multiplier.

62. This case was both large and complex. Many putative class action cases were filed and consolidated in this Court through the MDL process. Each of those cases had its own representative plaintiff, its own counsel, and its own unique facts. Lead counsel, with the assistance of this Court, performed admirably in "herding the cats" and keeping both litigation costs and strategic management under control; but the consolidation process can never eliminate the difficulties posed when many cases are brought together for common resolution. Beyond

this, the issues presented in this litigation were inherently complex: Counsel needed to work with engineers and product testers in order to identify the root cause of the engine failures; to sort through millions of pages of documents in order to tease out what the Defendant knew of the problem and when they knew it; to manage a class action involving different models of vehicles, different model years, and different product failure experiences; and to address the legal arguments and defenses put forward by a committed and capable adversary. These factors generally count in favor of a substantial lodestar multiplier.

63. The quality of representation in this case was high. Although I have not attempted to individually assess the work product of different plaintiffs' firms, I have reviewed pleadings and other documents prepared in this litigation and find it to be of excellent professional quality. I am familiar with the lead counsel, Caddell & Chapman, and consider the attorneys at that firm to be among the finest class action lawyers I have encountered in more than a quarter century of work in this area. Even though the quality of representation was impressive, I do not put too much weight on this factor in evaluating the lodestar multiplier because the skill level of attorneys is already captured in hourly billing rates. To the degree the factor is significant, however, I view it as a consideration that tends to support a substantial lodestar multiplier.

64. The factor of the requested fee in relation to the settlement is, in effect, a percentage cross-check on the lodestar fee. As noted above, in my opinion the value of this settlement cannot be determined with sufficient confidence to justify placing reliance on the percentage-of-the-recovery method for determining the fee. However, consideration of the settlement benefit in this case can serve as a guide to whether the fee calculated by the lodestar method is within normal limits. Given that the benefit made available to class members under this settlement is likely to exceed $120 million the $12.8 million fee request would represent only about 10% of

this amount. Even discounting the class recovery by the fact that not all class members will claim under the settlement, the factor of the fee in relation to the settlement tends to support a substantial lodestar multiplier.

65. As to public policy considerations, it is evident that this settlement makes benefits available to hundreds of thousands of people who experienced frustrating and expensive vehicle breakdowns. At the same time, litigation such as this encourages manufacturers to maintain product quality – a fact that is particularly important in cases where, as here, the exact nature of the problem cannot readily be determined by simple inspection. The litigation may also have beneficial effects for corporate governance: it likely forced Ford's management to assess the company's product quality processes and consumer warranty policies, with potential benefits for Ford's customers, its shareholders and the public at large.

Expenses

66. I have reviewed the document entitled Ex. B, "Ford 6.0 Diesel Litigation—Cumulative Time and Lodestar Summary" which outlines the basis for Class Counsel's request for an award of $1,250,000 in expenses, representing $1,173,192.23 in expenses already incurred plus an estimate of past (accrued) and future expenses. Ford has agreed to pay these expenses, which would otherwise be an obligation of the class.

67. Based on my review of this document, it is my opinion that this expense request is justified by the facts, for the following reasons:

(a) It appears that Class Counsel is able to document that the expenditures for which reimbursement will be requested have actually been incurred (or, for a small percentage of the request, can reasonably be expected to be incurred).

(b) Ford has agreed to pay these expenses in a context where it had every reason to

demand assurances that the amounts being requested were both reasonable and actually incurred.

(c) Eisenberg and Miller's study of class action settlements between 1993 and 2004 found that awards of expenses averaged 16% of the fee award.[8] Based on this data, the request for expense reimbursement equaling approximately 10% of the fee is clearly reasonable.

(d) The reasonableness of the expense request in the present case is further documented by the unique features of this case. This products liability action required counsel to retain the services of several experts and technicians and to engage in costly testing of numerous engines – expenses not incurred in ordinary class action litigation.

68. Accordingly, it is my opinion that the request for expenses is within ordinary bounds and appropriate when judged against awards in similar cases.

Service Awards

69. The settlement agreement contemplates that Defendant will pay representative plaintiff service awards totaling $150,000 in the aggregate. In my opinion these awards are reasonable. Service awards of $5,000-$10,000 per plaintiff are commonly approved in class action litigation.[9] In the present case, such awards are entirely appropriate given the demands that service as a representative plaintiff imposed: not only responding to discovery requests and submitting to depositions, but also providing attorneys for both sides with access to their vehicles for potentially destructive testing.

70. Class Counsel suggests that the total award be distributed among the representative plaintiffs in such a way that most receive approximately $6,500. These are clearly reasonable. One plaintiff, Custom Underground, would receive a substantially larger award – approximately

[8] Theodore Eisenberg and Geoffrey Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27, 70 (2004).

[9] Theodore Eisenberg and Geoffrey Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA Law Review 1303 (2006).

$48,000. This amount is justified by the fact that Custom Underground made a significant contribution by assisting in developing the factual claims as well as providing 18 vehicles to counsel for testing.

Conclusion

71. For the reasons set forth above, it is my opinion that (a) the settlement provides real and substantial value to class members; (b) the request for fees and expenses is within the range of reason when judged against awards in similar cases; and (c) the requested service awards are reasonable and appropriate when judged against awards in similar cases.

Dated this 14th day of May, 2013:

Geoffrey P. Miller