UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: NAVISTAR DIESEL ENGINE	)	**CASE No. 11-CV-2496**
PRODUCTS LIABILITY	)	**MDL No. 2223**
LITIGATION	)	

This Document Relates to: All Cases

OBJECTOR ROBERT G. BURRESS COMBINED REPLY TO PLAINTIFFS' AND FORD'S RESPONSE TO OBJECTIONS TO CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

Page(s)

I. The Class Definition in the Original Complaint Is Drastically Contracted by The Proposed Settlement Agreement Repair/Ambulance Exemption Clause Which Extinguishes the Rights of 350,000 Putative Class Members 1

A. The Original Class Definition was broader and included ambulances 1

B. The Background Relating to the Class Membership Revision 2

C. The Proposed Class Settlement Agreement Contained a Revised Definition That Added a "Repair Clause" and Deleted Ambulances from the Class 3

D. The Class Narrowing Resulting in a Violation of FRCP 23 (e) and Prejudices the Ousted Class Members 4

E. The Commencement of the Original Class Action Suspended the Applicable Statute of Limitations 6

F. The Class Notice Did Not Mention That the Class Definition Had Been Changed Nor the Impact of Doing So 6

G. Those Individuals Dismissed from the Lawsuit Are Unlikely to File Their Own Suit and Likely Do Not Know That They Have Been Dismissed 7

II. The Settlement Proposed in this Matter is Insignificant in Compared to a Recent Settlement with Ford Regarding its 6.0l Navistar Diesel Engine covering the Same Model Years Negotiated by the Same Lead Counsel 8

III. The Partial Reimbursement for Post Warranty Repairs Has No Relationship to The Actual Costs of Repair 9

IV. Persons Who Purchased Ford's Extended Warranty like this Objector Gain nothing from the partial repair reimbursement and is forced to release all claims he may have against any third parties. 10

V. The Small Number of Objectors Is Not Evidence Evidence Fairness of Settlement Is Flawed 11

VI. Range of Possible Results 12

VII. Administrative Considerations 13

VIII. Conclusion 14

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Acostat v. Trans Union LLC. 243 F.R.D 377 (C.D Cal. 2007) 11

Alphine Phar. Inc. V. Chas Pfizer & Co. 481 F2d 1045 3

Am. Pipe & Const. Co. v. Utah 414 U.S. 538, 554 **. 6**

Bryan v. Pittsburg Plate Glass Co. 494 F2d 799. (1974) 4, 5

City of Detroit v. Grinnell Corp. 495 F2d 488 3

Ditty Checkrite Ltd. 182 F.R.D 639, 645 (D.Utah 1998) 7

Ehrheart v. Verizon Wireless, 609 F.3d 590, 593 (3d Cir.2010) 11

Elais v. National Car Rental Systems Inc. 59 F.Rd. 276 (D. Minn 1973) 6

Enron Corp. 586 F. Supp. 2d 732 5

Gen. Motors Corp., 55 F.3d at 805 11

Greenfield v. Villager Industries, Inc., 483 F2d 824, 832 (3rd Cir 1973) 3

Gonzalez v. Kokot 314 F.3d 311, 316 11

Mace v. Van Ru credit Corp. 109 F.3d 338, 344 (7th Cir. 1994) 7

Mirfasihi v. Fleet Mortg. Corp. 356 F3d 781, 785 (7th Cir. 2004) 11

Muntz v. Ohio Screw Products, 61 F.R.D. 396, 398 (N.D.Ohio 1973 5

New Mexico Nat. Gas 607 F. Supp. 1491 (D. Colo 1984) 6

Pet Foods Product Liability Litigation 629 F3d 333, 349 (3rd Cir. 2010) 11

Reynolds v. Beneficial Nat. Bank 288 F3d 277 (7th Cir. 2002) 11

Ross v. Warner, 80 F.R.D. 88 (S.D.N.Y.1978) 4, 5, 6

Rothman v. Gould, 52 F.R.D. 494 (S.D.N.Y.1971) 5

Sagers v. Yellow Fright Systems Inc. 68 F.R.D 686 (N.D Ga 1975) 4

Simer v. Rios 661 F 2d 655 (Seventh circuit) 4

Wallican v. Waterloo 80 F.R.D. 492 (1978) 6

Williams Ambulance v. Ford Motor Co. 1:06-CV-776 8

Yaffe v. Detroit Steel Corp., 50 F.R.D. 481 (N.D.Ill.1970) 5

RULES

Fed. R. Civ. P. 23(e) 1, 4

Fed. R. Civ. P. 15(a) 4

SECONDARY SOURCES

C. Wright & A. Miller, Federal Practice & Procedure P 1797 (1972) 5

Developments in the Law Class Actions, 89 Harv.L.Rev. 1318, 1540-41 (1976) 5

John C. Coffee, Jr. Rescuing the Private Attorney General: Why the Model for the Lawyer as Bounty hunter is not working, 42 MD. L. Rev. 215, 218 (1983) 8

IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

This document relates to: All Cases

OBJECTOR ROBERT G. BURRESS COMBINED REPLY TO PLAINTIFFS' AND FORD'S RESPONSE TO OBJECTIONS TO CLASS ACTION SETTLEMENT

This objector contends the proposed settlement agreement is unfair, inadequate and unreasonable. Final approval should be denied for several substantial reasons.

I. The Class Definition in the Original Complaint Is Drastically Contracted by The Proposed Settlement Agreement Repair/Ambulance Exemption Clause Which Extinguishes the Rights of 350,000 Putative Class Members[1];

A. The Original Class Definition was broader and included ambulances

The original class action Complaint was filed on April 13, 2011. by lead counsel in Case No. 10-cv-000127 (later consolidated by MDL 2223) on behalf of Custom Underground Inc. and Jon Barrett as named plaintiffs against Ford Motor Co, which defined the "class" as follows ;[2]

> Pursuant to FED. R. CIV. P.23, Plaintiffs brings this action for itself and on behalf of a class ("the Class") defined as: All entities and natural persons in the United States (including the District of Columbia) who currently own or lease (or who in the past

[1] The figure of 350,000 vehicles is derived from Ford Motor Co. Memorandum in Response to Objections dkt # 217 pg 11 relating that those owners who never experienced a warranty repair to covered components are not part of the class.

[2]The first complaint filed in this matter 11 cv 02496 was on 5/20/11 Dkt. # 15 titled "First Amended Class Action Complaint MDL 2223 is essentially defined thc class consistent with the first paragraph above

owned or leased) vehicles with a Ford 6.0 liter diesel engine, referred to herein as the "class vehicles."

Excepted from the class Vehicles are all "Settled Ambulances," which are as defined as vehicles built on an ambulance prep package 47A chassis containing a model year 2003-2007 Ford F-Series or E-Series chassis equipped with a 6.0 liter diesel engine, which were the subject of a prior class action settlement in the Eastern District of Texas. [3]

Dkt #1 paragraphs 67 and 68 respectively.

Subsequently, the class as defined in the Master Class Action Complaint filed by lead counsel on 7/29/11 did not contain the "repair clause" nor did it exempt ambulances rather it mirrored the original class definition.

Furthermore, Ford's "First Amended Answer to the Master Class Action Complaint filed on 10/25/11 also utilized the original class definition. See Ford's Answer Dkt 114 pg 93, paragraph 308

B. The Background Relating to the Class Membership Revision

The current class definition, incorporated into the proposed settlement agreement, containing the warranty repair clause and the ambulance exemption, first appeared on record on 10/25/12 when Plaintiffs filed their Amended Complaint. Dkt. #233

Plaintiff's Motion to for Leave to File the Amended Complaint which was filed on 10/23/12[4] — failed to disclose the dramatic redefinition of the class which markedly reduced the class by approximately 350,000 members.

Moreover, the Motion for Leave did not disclose on the record, that the class definition

[3] The operative wording is underlined because it discloses that Original class included ambulances nationwide, but the new redefinition excludes ambulances all together

[4] Dkt # 231

would be redefined in any manner whatsoever, or that large percentage of class members would be dropped if the court should grant Plaintiffs Motion for Leave.

In fact Plaintiff's Motion simply alleged *that "the proposed amendment [to the complaint] is made in good faith, is not futile and will cause no delay or prejudice to any party."*

At the time the Motion for leave to amend was filed plaintiff's lead counsel <u>owed all class members a fiduciary duty once the initial class complaint was filed</u> . *Greenfield v. Villager Industries, Inc., 483 F2d 824, 832 (3rd Cir 1973)* Lead counsel was and is in position of public trust. Alphine Phar. Inc. V. Chas Pfizer & Co. 481 F2d 1045 : City of Detroit v. Grinnell Corp. 495 F2d 488.

Nonetheless, the Amended Complaint sought to be filed and ultimately filed, prejudiced 350,000 class members by eradicating their class claims. A fact not mentioned in the motion for leave to file the amended complaint.

Plaintiffs' Motion for leave was granted by the court and the Amended Master Complaint was filed by plaintiffs incorporating the constricted class definition. [See Dkt. # 231 motion to amend. Dkt # 232 minute order granting leave and Dkt. # 233 Amended compliant. filed with new class definition.]

C. The Proposed Class Settlement Agreement Contains a Revised Definition That Added a "Repair Clause" and Deleted all Ambulances from the Class

The proposed class settlement definition revised, modified and reduced class membership by *adding* to the class definition a constrictive "repair clause" and eliminating ambulances altogether to wit:

> ...."*that received one or more repairs covered by Ford;'s new vehicle Limited Warranty during the vehicle's first five years in service or 100,000 miles, whichever*

> *comes first, to a fuel injector, the exhaust gas recirculation (" EGR") valve: the EGR cooler; the oil cooler; or the turbocharger."* ["repair clause/ambulance exemption"]

The restrictive class definition excluded the second paragraph of the original class definition that included ambulances with the exception of those settled in the Williams in the eastern district of Texas, referred to as "settled ambulances"

Perhaps it should be mentioned, that Ford's class conception of the proposed settlement is clear, and coincides with this Objectors's understanding because in defense of releasing claims of class member who will receive no monetary payment Ford unequivocally stated:

> "**It [proposed settlement] does not limit the rights of the owners of the approximately 350,000 6.0 liter Powerstroke-equipped engines that never experienced a warranty repair to the oil cooler, DGR cooler, EGR valve, fuel injectors or turbocharger —those vehicles are not part of the settlement class. Dkt 3 271**

In its subsequent memorandum Ford reiterates the same conclusion:

> **"Persons whose vehicles experienced no warranty repairs to the five referenced components or who filed individual lawsuits before November 1, 2012 are excluded from the class." Dkt.#280 pg 10**

As Ford knows those, NOW EXCLUDED, were within the original class definition contained in the Original complaint and the Master Complaint as well as Ford's answer thereto. It is important to note that Rule 23 (e) notice requirements apply to those not necessarily bound by the settlement. Simer v. Rios 661 F 2d 655 (Seventh circuit)

D. The Class Narrowing Results in a Violation of FRCP 23 (e) and Prejudices the Ousted Class Members

Prior to a decision on the merits, leave to amend the complaint to redefine the class should be freely given <u>except when some prejudice results </u>to either the defendants <u>or to those persons dropped from the class</u>. Fed.R.Civ.P. 15(a) and 23(d). <u>Ross v. Warner, 80 F.R.D. 88</u>

(S.D.N.Y.1978)

FRCP 23 (e) is mandatory and applies to all class actions. Sagers v. Yellow Fright Systems Inc. 68 F.R.D 686 (N.D Ga 1975) mandatory and Bryan at 494 F2d 799

The court has a duty to independently review and approve class action settlement agreements for the protection of the absent class members and the public. In Enron Corp. 586 F. Supp. 2d 732; Bryan v. Pittsburg Plate Glass Co. 494 F2d 799. (1974)

In Ross v.Warner the plaintiff in a " as-yet-uncertified class action" moved to amend their complaint pursuant to Rule 15 proposing two substantial changes, the first adding a cause of action and the second drastically contracting the proposed class.

The dispute in Ross centered on the narrowing of the class, [Defendants] "all urge on the Court the view that the law demands notice of the change in class constituency to those current members of the class who would be dropped if the amendment were permitted. Invoking Rule 23(e) the defendants reason that exclusion from the class in these circumstances is tantamount to a "*dismissal"* as to the persons dropped, bringing that segment of the class within the protection of Rule 23(e). "

The Ross court agreed with defendants noting that " Rule 23 (e) provides that a "*class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." * * * The policies served by the Rule are those of "*reducing class allegations added solely to enhance the settlement of the representative"* and "*informing those persons who have refrained from pursuing their own relief in reliance on the representation of the class representative."* Muntz v. Ohio Screw Products, 61 F.R.D. 396, 398 (N.D.Ohio 1973);

See Rothman v. Gould, 52 F.R.D. 494 (S.D.N.Y.1971); Yaffe v. Detroit Steel Corp., 50 F.R.D. 481 (N.D.Ill.1970); 7A C. Wright & A. Miller, Federal Practice & Procedure P 1797 (1972); Developments in the Law Class Actions, 89 Harv.L.Rev. 1318, 1540-41 (1976) ("*Class Actions"*). Ross at 90

Moreover because the record in case does not reflect the court was advised that the class was shrunk it did not specifically find that absent class members could not have detrimentally relied upon the class action rather than file their own suit or pursue their own remedies. (Only if the court specifically found that absent class members could not have detrimentally relied was Rule 23 (e) notice dispenses with.) See e.g Elais v. National Car Rental Systems Inc. 59 F.Rd. 276 (D. Minn 1973) Wallican v. Waterloo 80 F.R.D. 492 (1978) In fact in defendant's latest memorandum Dkt # 280 it admits that this case was well publicized.

One primary purpose of FRCP 23 (e) is the protection class members whose rights may not have been given adequate consideration during settlement negotiations. In re; New Mexico Nat. Gas 607 F. Supp. 1491 (D. Colo 1984

The segment of the original class in this case, being those who did not incur a repair to specific components and all ambulances were obviously not considered at all.

E. The Commencement of the Original Class Action Suspended the Applicable Statute of Limitations

The commencement of a class action suspends the applicable statue of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action or the members were not dropped. Am. Pipe & Const. Co. v. Utah 414 U.S. 538, 554**.** So the putative class members that have been dismissed will no longer have the applicable statute of limitations tolled and will probably are not aware of that vital fact.

F. The Class Notice Did Not Mention That the Class Definition Had Been Changed Nor the Impact of Doing So.

Although the definition of the class was changed dramatically, the class notice did not indicate that persons who either: (1) did not have a repair during the original warranty period or (2) their engine was placed in an ambulance were no longer part of the class, if in fact they received any notice at all. Rather the class notice seemed to suggest that relief was afforded only to those class members because certain contingencies or criteria were met or not met. This is a distinction with great difference.

G. Those Individuals Dismissed from the Lawsuit Are Unlikely to File Their Own Suit and Likely Do Not Know That They Have Been Dismissed

The 350,000 or so individuals who were dismissed from the suit by the redefinition of the class in the amended complaint are unlikely to sue because at the level of rational economic calculation the potential costs associated with the individual lawsuit greatly exceed the potential reward. Ditty Checkrite Ltd. 182 F.R.D 639, 645 (D.Utah 1998) citing with favor Mace v. Van Ru credit Corp. 109 F.3d 338, 344 (7th Cir. 1997.)

The modified class definition, along with the proposed settlement, is limited to class members that required specific repairs during the Original Warranty period although class members and this Objector's primary grievance is: the defective design of the Navistar 6.0 liter Powerstroke diesel engine which considerably diminished the vehicles market value as well as its functionality and utility. This harsh belated circumscription to the class definition in the proposed settlement— by adding the repair clause/ambulance deletion— eradicates the rights of hundreds of thousands putative class members.

The dismissed members had a right to Rule 23 (e) protection and the settlement should

be disapproved on that basis alone. In addition the wholesale extinction of these individual claims renders the settlement unfair and unreasonable. And the Court in this matter had a right to be expressly advised that the class definition was changed at the time the Motion for leave was presented.

II. The Settlement Proposed in this Matter is Insignificant in Compared to a Recent Settlement with Ford Regarding its 6.0l Navistar Diesel Engine covering the Same Model Years Negotiated by the Same Lead Counsel.

In the matter of *Williams Ambulance v. Ford Motor Co. 1:06-CV-776* the consideration provided to the class far exceeds the proposed settlement here, underscoring the inequity of the objected to proposed settlement.

Williams Ambulance was identical with two exceptions: (a) the same engines were placed in ambulances and (b) plaintiffs lead counsel requested and was awarded a maximum of $3.6 million attorneys fees, *which included* expenses with an additional $35,000 in service awards to named plaintiffs, whereas the present challenged proposed settlement in this Northern District of Illinois case including the same lead counsel requests approval of attorney fees in the outrageous amount of $12.5 million plus an *additional* $ 1.25 million in expenses and $150,000 to the named plaintiffs, which Ford is obviously rushing and willing to pay to extinguish all claims for little compensation to the redefined class.

Is it cynical to suggest that the class is suffering from the bounty to be received by lead counsel and the named plaintiffs? See: *John c. Coffee, Jr. Rescuing the Private Attorney General: Why the Model for the Lawyer as Bounty hunter is not working, 42 MD. L. Rev. 215, 218 (1983)*

In *Williams Ambulance* the proposed settlement, which received final approval by the

U.S District Court Eastern District of Texas in Civil Action 1:06-CV-776 provided the following relief to present and past owners of same model year vehicles with the same 6.0-L diesel engines.

1. Warranty extension on Engine/Powertrain to 120,000 miles
2. Warranty extension for covered components to 150,000
3. Reimbursement for past repairs
4. Reimbursement for engine replacement
5. Reimbursement for Towing charges
6. Reimbursement for deductibles
7. Enhanced Maintenance package
   a. Instructional DVD
   b. Hour meter
   c. Computer adjustment
   d. Assistance from Ford when Ford dealerships have difficulty making repairs—Service hotline

A copy of Plaintiff unopposed motion for preliminary approval of class action settlement is attached hereto as *"Exhibit 1*."

The favorable settlement in Williams serves to expose the unfairness, inadequacy and unseasonableness of the bare bones proposal to class members in this case.

III. Partial Reimbursement for Post Warranty Repairs Has No Relationship to The Actual Costs of Repair

Beside the fact that the partial reimbursement for repairs window for "post warranty repairs" is quite limited at six years/ 135,000 miles. The repair reimbursement has no

relationship to the actual costs of repairs, however, the Notice to Class Members strongly implies— if only by its subtitle 5a.: "*Reimbursement for Post-Warranty Repairs to Certain Engine Components"* — that the reimbursement is for the cost of repair, not merely to defray the repair expense;[5]

This specific Objector/class member and others similarly situated cannot recover settlement benefits under sub-paragraph 5a. or 5b. although this Objector incurred numerous and costly repairs to his vehicle.

Plaintiffs lead counsel employs circular reasoning in defending the proposed settlement stating; "Of course Class members who did not suffer damages from qualifying post-warranty repairs and had no qualifying deductible payments will not receive reimbursement"

Well that is the problem with limiting relief to multiple deductibles paid and partial repairs reimbursement within a short durational window is that many class members don't qualify.

IV. Persons Who Purchased Ford's Extended Warranty like this Objector Gain Nothing from the Partial Repair Reimbursement and Are Forced to Release All Claims They May Have Against Any Third Parties.

This Objector and others who purchased at considerable cost Ford's extended warranty that covers the vehicle for seven years or 200,000 miles, which ever occurs first, covers repairs to the selective components[6] listed in the class members notice with no deductible. Extended warranty is attached as "Exhibit 2."

Nonetheless this Objector and others, who purchased the warranty after having

---

[5]Objector notes that the class notice "reimbursement limit" while other documents use the term "partial reimbursement." e.g Dkt #236 pg 14

[6]*Turbocharger, EGR cooler, Fuel injectors, oil cooler,*

numerous problems with the vehicle, will not receive repair benefits under the proposed settlement are nonetheless unfairly and without consideration required to release all parties and all claims known or unknown. Moreover this broad release "will run with the vehicle if the class member sells the class vehicle." Dkt # 236-1 pg 28 The settlement at the very least should 'reimburse' him for repairs not withstanding his purchase of the extended warranty

See cases critical of such releases without consideration: Mirfasihi v. Fleet Mortg. Corp. 356 F3d 781, 785 (7th Cir. 2004); [Would it be too cynical to speculate that what may be going on here is that class counsel wanted a settlement that would give them a generous fee and Ford wanted a settlement that would extinguish 1.4 million claims against it at no cost to itself ?] Manual for Complex Litigation 4th § 21.61, p. 310-311 (both critical of releasing claims of parties without consideration) and In accord: In re Pet Foods Product Liability Litigation 629 F3d 333, 349 (3rd Cir. 2010); [trial judges bear the important responsibility of protecting absent class members, "*which is executed by the court's assuring that the settlement represents adequate compensation for the release of the class claims."* *Gen. Motors Corp.,* 55 F.3d at 805; *see also Ehrheart v. Verizon Wireless,* 609 F.3d 590, 593 (3d Cir.2010) Gonzalez v. Kokot 314 F.3d 311, 316. [Indiana law requires that a release be supported by consideration to be valid.] Also see Reynolds v. Beneficial Nat. Bank 288 F3d 277 (7th Cir. 2002) and Acostat v. Trans Union LLC. 243 F.R.D 377 (C.D Cal. 2007) [settlement rejected in part because some class members would be ineligible for economic relief yet lose their claim.]

V. The Relatively Small Number of Objectors Is Not Evidence the Proposed Settlement Is Fair

First, although Ford's memorandum claims that the vast majority of letters of communication to counsel express support for the proposed settlement but Ford fails to exhibit

any one of the ‘ letters’ it opines as supportive.

Defendant does extract an excerpt from one letter it deems to exemplify support where it is claimed that one putative class member wrote: “if I never see a dollar of reimbursement out of this, I’ll take comfort in knowing someone will.” This excerpt is hardly supportive of Ford or the proposed agreement. It sounds more like a resignation that the writer accepts his fate that he will receive no benefit but is so disenchanted with Ford that he is taking comfort that some ‘poor sole’ will benefit, somehow in some manner.

Secondly, Ford’s contention that the small percentage of Objectors is evidence that the class favors the settlement constitutes an illusory correlation. Most probably the class members believe it is useless to contest the settlement. In other word it is a matter of apathy not an endorsement of the proposed settlement. The belief this is a done deal is underscored by Ford’s contention that all but one of the objections should be disqualified on purely technical grounds which serves to confirm the apathetic belief that it is a waste of time to object.

Finally as illustrated by at least one of the objections filed with the court unfortunately many persons do not have the literary capacity to read the class notice much less construct a written argument for or against the proposed settlement, nor do they have the funds to retain an attorney to do so.[7]

Further it is realistic to presume that many others are simply intimidated by the legal process especially by complex litigation. This may even explain, in part, the reason many commentators sent letters to the parties but not the court.

---

[7]42 million American adults can’t read at all: 50 million are unable to read at a higher level that is expected of a fourth or fifth grader; the number of adults that are classified as functionally illiterate increases by about 2.25 million each year and 20% of high school graduates can be classified as being functionally illiterate at the time they graduate

VI. Range of Possible Results

Ford claims that significant hurdles exist and render it unlikely that plaintiffs would recover anything at all. Ford's analysis is basically flawed, because it myopically focuses on symptoms rather the root cause. Numerous repeated repairs are symptomatic of an engine that possesses a significant design defect that is inherent in every 6.0 l engine reducing its market value, increasing its repair rate as well as the vehicle's performance.

Therefore Ford's worst nightmare is a jury filing into the courtroom finding that the engine design across the board to be defective and ruling that each and every engine should be replaced with a non-defective engine or the cash equivalent. Ford has recognized this possibility because it repurchased approximately 86 million dollars of vehicles with the 6.0 l engine and as a matter of fact in the Williams paid in full to replace this engine, chassis and remount charges. See Exhibit "3" [letter dated November 26, 2007]

VII. Administrative Considerations

A. Claim Procedures are Unreasonably burdensome

Bearing in mind that this case involves repairs that cover a ten year period it is quite likely that class members will not possess the required documentation to process their claim. According to the terms of the proposed settlement Ford, may unilaterally reject any claim that does not include the required information even though Ford may well possess the information.

Furthermore, pursuant to the proposed agreement Ford reserves the right to request further information all of which predictably will further reduce that number of claims paid.

This Objector is informed and believes that Ford tracks all service/maintenance to its vehicles performed at its dealerships, even post warranty repairs, for a host of reasons such as

quality control, recalls, safety issues, among others, consequently it is unreasonable that the proposed settlement imposes such onerous duties upon class members to submit their claims. See Dkt # 236-1 pg. 13-14.

Ford's most recent memorandum even claims that if the Ford dealers failed to make proper repairs the claim maybe denied. This is patently unfair to the consumer /class member.

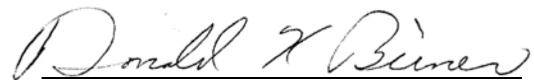
Once Ford establishes eligibility for benefits, which it could do in many cases, a check in the appropriate amount should be remitted to the class member(s) and any undelivered checks should be used to increase benefits to the entire class.

VIII. Conclusion

For the foregoing reasons the Court should enter an Order denying Final approval of the proposed settlement agreement.

Date; May 16, 2013

Respectfully submitted,



Donald K. Birner, Attorney for
Objector, Robert G. Burress

Donald K. Birner
Attorney at Law
337 Court St.
Pekin, IL 61554
309-347-7058
d.birner@comcast.net
Registration # 0213152