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

IN RE: NAVISTAR DIESEL ENGINE	**)**	**Case No. 11 C 2496**
PRODUCTS LIABILITY LITIGATION	**)**	**MDL No. 2223**

ORDER GRANTING MOTION FOR
ATTORNEY'S FEES AND EXPENSES

The Court previously approved the parties' class-wide settlement of the claims in this matter. The plaintiffs asserted claims of breach of warranty and for violation of various state consumer protection and deceptive trade practices laws, all or nearly all of which provide for an award of attorney's fees to a prevailing plaintiff.

Plaintiffs' counsel have moved for an award of attorney's fees and expenses and have supported the motion with numerous affidavits and a memorandum. Counsel seek attorney's fees of $12,800,000 and costs and expenses of $1,250,000. Defendant Ford Motor Company, which will be paying the entirety of any fee and expense award, does not oppose the motion. The Court grants the motion based on Ford's non-opposition and for the reasons described below.

As plaintiffs note in their memorandum seeking approval of the fee award, the goal in awarding a reasonable attorney's fee is to give the lawyer what he would have gotten in an arm's length transaction had that been feasible. *Cook v. Niedert*, 142 F.3d 1004, 1012 (7th Cir. 1998). A court has discretion to use either of two approaches in determining an appropriate fee award: the "lodestar" method, which involves multiplying a reasonable hourly rate by the number of hours reasonably expended, or the percentage-of-common-fund method. *See Harman v. Lyphomed, Inc.*, 945 F.2d 969,

975 (7th Cir. 1991). The lodestar method may be more appropriate in a case like this one in which it is difficult to determine the precise value of the settlement (in this case, because there is no cap on Ford's total liability). *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005).

As indicated above, the lodestar is calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended. A reasonable hourly rate is one that is derived from the market rate for the services rendered. *See Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 640 (7th Cir. 2012). Plaintiffs' counsel have adequately supported their proposed hourly rates by their own affidavits and affidavits submitted by others who have knowledge of the prevailing market rates. *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). Once the fee applicant satisfies this burden, the burden shifts to any opposing party to show a good reason why a lower rate is appropriate. None has been offered in this case. The Court approves counsels' proposed hourly rates.[1]

Plaintiffs have also sufficiently justified the attorney time for which they seek approval. Again, no evidence or argument to the contrary has been offered. Having reviewed plaintiffs' submission, the Court cannot say that the time claimed was documented inadequately or that any of it was duplicative or unnecessary. *See generally People Who Care v. Rockford Bd. of Ed., Sch. Dist. No. 205*, 90 F.3d 1307, 1314 (7th Cir. 1990).

[1] The proposed hourly rates are arguably on the generous side. Plaintiffs justify them, in part, by reference to large-firm hourly rates. It is not self-evident that the market rate paid by large corporations is comparable to the market for lawsuits like the present cases. For present purposes, however, it is significant that neither Ford nor any objector challenged the proposed hourly rates, and that the fees were negotiated only after settlement for the class had been reached. The Court expresses no view on what hourly rates it would have approved had the matter been contested.

A court has the authority to adjust the lodestar 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 (internal quotation marks omitted). Plaintiffs seek a risk multiplier of 1.25. "A multiplier is, within the court's discretion, appropriate when counsel assume a risk of non-payment in taking a suit." *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991). That was certainly the case here. Plaintiffs' counsel faced a significant risk of no recovery at the outset of this case, and they also faced a very significant risk that class certification would not be granted, which would have brought the case to an end for all but the named plaintiffs. The Court finds that the relatively modest risk multiplier that plaintiffs have proposed is sufficiently justified given the risk that counsel undertook in pursuing this highly complex case. *See generally Skelton v. General Motors Corp.*, 860 F.2d 250, 256-68 (7th Cir. 1988) (reversing fee decision due to denial of risk multiplier).

Robert Burress, the sole objector to the proposed settlement who complied with the Court's requirements for making objections, has offered a relatively spare, three-paragraph objection to the proposed fee award. *See* Obj. to Proposed Settlement (dkt. no. 259) at 12. Specifically, Burress argues that the settlement consideration is grossly inadequate to class members and that in light of the lack of a significant benefit to the class, the fee award is too high. *Id.* He also takes issue with plaintiffs' argument that the fee award does not impact the amounts paid to class members. *Id.*

The Court deals with the last point first. The record, including the affidavits of plaintiffs' counsel and the mediator, retired Judge Richard Neville, establishes without contradiction that negotiation of attorney's fees was deferred until after the financial

terms of settlement for class members were resolved. *See* Caddell Affid. ¶¶ 54-55; Neville Affid. ¶ 8. It is reasonable to infer from this that the fee award did not impact the amounts paid to class members.

As for Burress's other arguments, the Court has dealt at length with the reasonableness of the settlement terms in its decision approving the settlement, and it has overruled Burress's objections to the settlement. There is no need to repeat that discussion here, but the Court will nonetheless summarize it. The settlement resolved the claims of over 1,000,000 class members. As explained in the Court's order approving the settlement, the sums payable amount to at least forty-two percent of the full value of the claims of the class. *See* Corrected Approval Order (dkt. no. 330) ¶¶ 4-5. The case was highly complex, particularly given the large number of claimants. Counsel's work involved reviewing millions of pages of documents, taking nearly forty depositions, working with experts, and briefing a number of issues before the Court, including settlement approval. The mediation process was likewise quite complex. As the Court has indicated, plaintiffs' counsel faced significant risks in prosecuting the case. The case was an expensive one for them to prosecute – they laid out over $1,000,000 in expenses and spent over 20,000 hours of their time working on it – and it was a significantly risky venture. As the Court described in approving the settlement, the case

> faced many difficult hurdles to success. At the time of settlement, motions by Ford seeking summary judgment or orders to compel arbitration were pending against each of the proposed class representatives. Those motions collectively challenged the legal and factual basis of the class representatives' individual claims and, therefore, the claims they sought to assert on behalf of unnamed class members. Without ruling on these motions, there is no question that Ford made serious arguments that may well have succeeded, ending the litigation unfavorably to plaintiffs. In

> addition, plaintiffs' bid to obtain certification of different multi-state class actions based on a variety of claims that arguably turned on a variety of individualized issues would have been aggressively opposed by Ford, which previously defeated class certification in a similar matter. *See Cox House Moving, Inc. v. Ford Motor Co*., No. 7:06-1218-HMH, 2006 WL 3230757 (D.S.C. Nov. 6, 2006). For these reasons, there is a reasonable possibility that plaintiffs would not have succeeded in obtaining class certification.

Corrected Approval Order ¶ 6.

Given these circumstances, the result that counsel obtained was highly favorable to the class. Plaintiffs' counsel have amply justified the proposed fee award. The Court rejects Burress's contrary arguments.

Conclusion

For the reasons stated above, the Court grants plaintiffs' motion for attorney's fees and expenses and awards plaintiffs attorney's fees in the amount of $12,800,000 and expenses in the amount of $1,202,276.65. Class counsel are to resolve among themselves any issues regarding allocation of fees and expenses pursuant to the procedure set forth in the Court's order of June 2, 2011 (dkt. no. 18), and plaintiffs' lead counsel Michael Caddell is directed to distribute the attorney's fees and expenses in accordance with the results of that procedure.

MATTHEW F. KENNELLY
United States District Judge

Date: August 11, 2013