

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: FORD MOTOR CO. SPARK PLUG)
AND 3-VALVE ENGINE PRODUCTS) CASE NO. 1:12-md-2316
LIABILITY LITIGATION) (MDL Docket No. 2316)
)
)
) JUDGE BENITA Y. PEARSON
)
) **ORDER**
) [Resolving ECF Nos. 6, 16, and 22]

I. An Initial Pretrial Conference was conducted on May 2, 2012.

II. The following parties were present:

A. Plaintiffs: [Excused]

B. Defendant: Mike O'Reilly

III. The following attorneys were present:

A. Plaintiffs' counsel: Jeffrey S. Goldenberg, James C. Shah, Mark Schlachet, Cory S. Fein, Raymond C. Zanne, Lewis S. Eidson, Fletcher V. Trammell, and Thomas E. Ahlering

B. Defendant's counsel: Elizabeth B. Wright, Krista L. Lenart, and Conor A. McLaughlin

IV. Lead Class Counsel Structure —

This action is before the Court upon Interim Co-Lead Class Counsel's Motion for Approval of Organizational Structure for Plaintiffs' Class Counsel ([ECF No. 6](#)) pursuant to [Fed. R. Civ. P. 23\(g\)\(3\)](#), filed on March 14, 2012. The Court has reviewed the memorandum in support ([ECF No. 6-1](#)), the declarations of Michael A. Caddell ([ECF No. 11-1](#)) and Mark Schlachet ([ECF No. 12-1](#)), and the declarations, with exhibits, of Jeffrey S. Goldenberg (ECF Nos. [7](#) and [7-1](#)), James C. Shah (ECF Nos. [8-1](#) and [8-2](#)), Steve W. Berman (ECF Nos. [9-1](#) and [9-2](#)), and Mitchell A. Toups (ECF Nos. [10-1](#) and [10-2](#)).

This action is also before the Court upon:

- a. Pezzi/Lanzi Plaintiffs' Motion for Inclusion in Plaintiffs' Class Counsel Executive Committee ([ECF No. 16](#)); and
- b. Fletcher Trammell's Application for Plaintiffs' Class Counsel Committee Membership ([ECF No. 22](#)).

The Court has reviewed the memorandum in support of Pezzi/Lanzi Plaintiffs' Motion and exhibits (ECF Nos. [16-1](#) and [16-2](#)) attached thereto, Attorney Trammell's Application, Interim Co-Lead Class Counsel's Consolidated Response ([ECF No. 24](#)), and Pezzi/Lanzi Plaintiffs' Reply Memorandum ([ECF No. 25](#)).

The Court has also considered the oral statements of counsel offered during the Initial Pretrial Conference.

For good cause shown, Interim Co-Lead Class Counsel's Motion for Approval of Organizational Structure for Plaintiffs' Class Counsel ([ECF No. 6](#)) is granted. Pezzi/Lanzi Plaintiffs' Motion for Inclusion in Plaintiffs' Class Counsel Executive Committee ([ECF No. 16](#)) and Fletcher Trammell's Application for Plaintiffs' Class Counsel Committee Membership ([ECF No. 22](#)) are denied.

Under [Fed. R. Civ. P. 23\(g\)\(1\)\(A\)](#), the Court must consider the following factors in appointing lead counsel: 1) the work that counsel has performed in identifying or investigating potential claims in the action; 2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; 3) counsel's knowledge of the applicable law; and 4) the resources that counsel will commit to representing the class. In appointing lead class counsel, a court should conduct an independent review to ensure that counsel appointed to

leading roles are qualified and responsible, that they will fairly and adequately represent all of the parties on their side, and that their charges will be reasonable. See [Manual for Complex Litigation § 10.22 \(4th Edition, 2004\)](#).

A. The Court finds that Goldenberg Schneider, LP A (“GS”) and Shepherd, Finkelman, Miller & Shah, LLP (“SFMS”) meet the standards set forth in [Fed. R. Civ. P. 23\(g\)\(1\) and \(4\)](#) to serve as Co-Lead Class Counsel. Pursuant to [Rule 23\(g\)\(3\)](#), the Court appoints Jeffrey S. Goldenberg of GS and James C. Shah of SFMS as Co-Lead Class Counsel.

B. The Court further finds that Steve W. Berman of Hagens Berman Sobol Shapiro, LLP meets the standards set forth in [Fed. R. Civ. P. 23 \(g\) \(1\) and \(4\)](#) to serve as Chair of Plaintiffs’ Class Counsel Executive Committee. Pursuant to [Rule 23\(g\)\(3\)](#), the Court appoints Steve W. Berman as Chair of Plaintiffs’ Class Counsel Executive Committee.

C. The Court further finds that Mitchell A. Toups of Weller, Green, Toups and Terrell, LLP, Michael A. Caddell of Caddell & Chapman, P.C., and Mark Schlachet meet the standards set forth in [Fed. R. Civ. P. 23\(g\)\(1\) and \(4\)](#) to serve as Members of Plaintiffs’ Class Counsel Executive Committee. Pursuant to [Rule 23\(g\)\(3\)](#), the Court appoints Mitchell A. Toups, Michael A. Caddell and Mark Schlachet as Members of Plaintiffs’ Class Counsel Executive Committee.

D. Co-Lead Class Counsel, in consultation with the Chair of Plaintiffs’ Class Counsel Executive Committee and the Members of the Executive Committee, shall have the following responsibilities on behalf of all Plaintiffs in this action, any additional related actions that are consolidated with this action, and any “tag along” actions that are transferred to the Northern District of Ohio by the United States Judicial Panel on Multidistrict Litigation (collectively, “the Action”):

1. To determine and to present in motions, briefs, oral argument (subject to permission of the Court) or such other fashion as may be appropriate, either personally or by designee, to the Court and opposing party, the

position of all Plaintiffs as to all matters arising during all pretrial and trial proceedings in the Action;

2. To designate attorneys to appear and present oral argument (subject to permission of the Court) at status, pretrial and other conferences and hearings in the Action;
3. To conduct or coordinate discovery on behalf of Plaintiffs consistent with the Federal Rules of Civil Procedure, including the preparation of interrogatories, requests for production of documents, requests for admission and the examination of witnesses in depositions in the Action;
4. To designate an attorney to enter into stipulations with Defendant's Counsel in connection with the Action;
5. To direct, supervise and monitor the activities of Plaintiffs' counsel and to implement procedures to ensure that schedules are met and unnecessary expenditures of time and funds by counsel are avoided in the Action;
6. To conduct all pre-trial, trial and post-trial proceedings on behalf of all Plaintiffs in the Action, including appointing trial counsel;
7. To employ and consult with experts;
8. To call meetings of the Executive Committee and other attorneys involved in this litigation when appropriate;
9. To conduct settlement discussions in the Action with Defendant's Counsel on behalf of Plaintiffs and the proposed Classes and to enter into a settlement with Defendant, subject to Court approval;
10. To ensure that all Plaintiffs and all Plaintiffs' counsel are kept informed of the progress of the Action as necessary;
11. To be responsible for forwarding, as necessary, to all Plaintiffs' counsel all orders, discovery, filings and other documents served on Co-Lead Class Counsel in the Action;
12. To make all work assignments to Plaintiffs' counsel in the Action and to do so in such a manner as to promote the orderly and efficient

prosecution of the Action and to avoid unnecessary duplication and unproductive efforts;

13. To ensure that work assignments to all Plaintiffs' counsel in the Action are made in the best interests of Plaintiffs and the proposed Classes and are made on the basis of the qualifications and expertise of the persons assigned particular tasks or responsibilities, counsel's knowledge of the law, facts and issues, efficiency and cost-effectiveness;¹

14. To assess Plaintiffs' counsels' common litigation costs in the Action and to collect all assessments on a regular basis;

15. To collect time, lodestar and expense reports from all Plaintiffs' counsel in the Action, including paralegals and any other staff members whose time is expected to be included in any fee petition in the Action;

16. To coordinate and communicate with Defendant's Counsel in the Action, including the scheduling of depositions;

17. To coordinate and communicate with Plaintiffs' counsel in any other actions involving the Covered Vehicle defects at issue in this Action, if any, where those other actions are not formally related to this Action; and

18. To otherwise coordinate the work of all Plaintiffs' counsel in the Action and to perform such other duties as necessary or as authorized by further order of the Court.

E. Co-Lead Class Counsel shall serve as the principal point of contact for the Court with Plaintiffs' counsel in the Action and, in that role, shall have the following responsibilities:

1. Receive orders, notices and telephone calls from the Court on behalf of all Plaintiffs' counsel in the Action;

¹ Committees of counsel can sometimes lead to substantially increased costs. Therefore, Co-Lead Class Counsel should try to avoid unnecessary duplication of efforts and control fees and expenses. See [Manual for Complex Litigation § 10.221 \(4th Edition, 2004\)](#).

2. Attend all in-person and telephonic hearings and conferences before the Court in the Action;
3. Coordinate the filing and service of all pleadings and other documents that are filed by Plaintiffs' counsel in the Action;
4. Sign any consolidated complaints, motions, briefs, discovery requests, objections and responses, and subpoenas or notices on behalf of all Plaintiffs in the Action; and
5. Ensure that all actions by Plaintiffs' counsel in the Action are in conformance with the applicable Local Civil Rules of the Court.

F. Defendant's Counsel may rely upon all agreements made with and representations made by Co-Lead Class Counsel in connection with the prosecution of the Action.

V. The Status of the Related Cases and Consolidation —

Further proceedings in the following individual cases are stayed:

<u>MDL Case Number</u>	<u>Original Case Number</u>	<u>Case Caption</u>
1:12-ds-35000	5:10-cv-00514	Perko, <i>et al.</i> v. Ford Motor Company
1:12-ds-35001	11-23086-CIV-ALTONAGA/Simonton	Pezzi v. Ford Motor Company
1:12-ds-35002	CV11-03870 AHM (MRWx)	Tom Stibbie, <i>et al.</i> v. Ford Motor Company
1:12-ds-35003	12-60037-CV-WILLIAMS	Wendi Lanzi v. Ford Motor Company
1:12-ds-35004	2:12-cv-00031-RWS	Terry Kimbrell v. Ford Motor Company

The Master Consolidated Amended Complaint ([ECF No. 43](#) in Case No. 1:12-ds-35000), filed on June 15, 2011 in Case No. 5:10-cv-00514, will be the operative Complaint.²

² A sixth case, *Buckeye Management Group LLC, et al. v. Ford Motor Company*, Case No. 1:11CV0845, was filed in this Court and was consolidated under the *Perko* caption. The Master Consolidated Amended Complaint includes the *Buckeye Management* Plaintiffs and their claims. Therefore, *Buckeye Management* was administratively closed ([ECF No. 61](#) in Case No. 1:12-ds-35000).

VI. This case is not referred to Alternative Dispute Resolution (ADR) at this time.

VII. After consultation with counsel, the Court determined that motions for summary judgment on the individual claims of some of the plaintiffs will be addressed before bellwether/exemplar class certification issues. Co-Lead Class Counsel and Defendant's Counsel shall confer with one another in order to prepare a proposed Joint Case Management Plan to be filed on or before May 21, 2012.

VIII. Discovery shall continue and include merits discovery as well as class certification discovery.

IX. Without leave of Court, no discovery or disclosure materials may be filed, except as necessary to support dispositive motions. If a party intends to rely on deposition testimony in support of its position on a motion, the Court prefers the filing of the entire deposition rather than excerpts, unless the party truly believes that excerpts are sufficient, and with the proviso that any other party who believes the excerpts offered are not sufficient is free to file the entire deposition. In any event, discovery and disclosure materials submitted in support of any party's position shall be filed at the same time as that party's memorandum setting forth its position.

X. The next Status Conference will be held May 23, 2012 at 3:00 p.m. The conference will be conducted *via* telephone unless circumstances require otherwise. Attorney Goldenberg is to setup the conference call. Parties attendance is welcome, but not mandatory.

XI. **Protective orders:** In the event the parties request a protective order, any proposed order will be rejected by the Court unless it provides that, where materials designated "confidential" are used in support of or in opposition to a motion, the party so using the material shall transmit a copy of the relevant material to the Court's chambers in an unsealed envelope clearly marked: "COPY – ORIGINAL FILED UNDER SEAL." It shall be the responsibility of the party using the confidential material, not the Clerk, to supply the copy to the Court's

chambers. Agreed protective orders which comply with the above will be approved, but with the understanding that, in the event this case should go to trial, no materials used in open court shall be entitled to the continuing designation of “confidential.”

If any party seeks to obtain judgment by either a motion to dismiss or a motion for summary judgment, only supporting confidential documentation, not the motions themselves, may be filed under seal.

XII. The Court will permit only the motion with its supporting memorandum, the memorandum in opposition, and a reply. No sur-replies will be permitted absent advance leave of Court.

IT IS SO ORDERED.

May 4, 2012
Date

s/ Benita Y. Pearson
Benita Y. Pearson
U.S. District Judge