UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 2:12-md-011 Hon. Sean F. Cox
IN RE: WIRE HARNESS SYSTEMS	Case No. 2:12-cv-00103
IN RE: INSTRUMENT PANEL CLUSTERS	Case No. 2:12-cv-00203
IN RE: FUEL SENDERS	Case No. 2:12-cv-00303
IN RE: HEATER CONTROL PANELS	Case No. 2:12-cv-00403
IN RE: BEARINGS	Case No. 2:12-cv-00503
IN RE: OCCUPANT SAFETY SYSTEMS	Case No. 2:12-cv-00603
IN RE: ALTERNATORS	Case No. 2:13-cv-00703
IN RE: ANTI-VIBRATIONAL RUBBER PARTS	Case No. 2:13-cv-00803
IN RE: WINDSHIELD WIPER SYSTEMS	Case No. 2:13-cv-00903
IN RE: RADIATORS	Case No. 2:13-cv-01003
IN RE: STARTERS	Case No. 2:13-cv-01103
IN RE: AUTOMOTIVE LAMPS	Case No. 2:13-cv-01203
IN RE: SWITCHES	Case No. 2:13-cv-01303
IN RE: IGNITION COILS	Case No. 2:13-cv-01403
IN RE: MOTOR GENERATORS	Case No. 2:13-cv-01503
IN RE: STEERING ANGLE SENSORS	Case No. 2:13-cv-01603
IN RE: HID BALLASTS	Case No. 2:13-cv-01703
IN RE: INVERTERS	Case No. 2:13-cv-01803
IN RE: ELECTRONIC POWERED STEERING ASSEMBLIES	Case No. 2:13-cv-01903
IN RE: AIR FLOW METERS	Case No. 2:13-cv-02003
IN RE: FAN MOTORS	Case No. 2:13-cv-02103
IN RE: FUEL INJECTION SYSTEMS	Case No. 2:13-cv-02203
IN RE: POWER WINDOW MOTORS	Case No. 2:13-cv-02303
IN RE: AUTOMATIC TRANSMISSION FLUID WARMERS	Case No. 2:13-cv-02403
IN RE: VALVE TIMING CONTROL DEVICES	Case No. 2:13-cv-02503
IN RE: ELECTRONIC THROTTLE BODIES	Case No. 2:13-cv-02603
IN RE: AIR CONDITIONING SYSTEMS	Case No. 2:13-cv-02703

IN RE: WINDSHIELD WASHER SYSTEMS	Case No. 2:13-cv-02803
IN RE: CONSTANT VELOCITY JOINT BOOT PRODUCTS	Case No. 2:14-cv-02903
IN RE: SPARK PLUGS	Case No. 2:15-cv-03003
IN RE: AUTOMOTIVE HOSES	Case No. 2:15-cv-03203
IN RE: SHOCK ABSORBERS	Case No. 2:15-cv-03303
IN RE: BODY SEALING PRODUCTS	Case No. 2:16-cv-03403
IN RE: INTERIOR TRIM PRODUCTS	Case No. 2:16-cv-03503
IN RE: AUTOMOTIVE BRAKE HOSES	Case No. 2:16-cv-03603
IN RE: EXHAUST SYSTEMS	Case No. 2:16-cv-03703
IN RE: CERAMIC SUBSTRATES	Case No. 2:16-cv-03803
IN RE: POWER WINDOW SWITCHES	Case No. 2:16-cv-03903
IN RE: AUTOMOTIVE STEEL TUBES	Case No. 2:16-cv-04003
IN RE: ACCESS MECHANISMS	Case No. 2:16-cv-04103
IN RE: SIDE DOOR LATCHES	Case No. 2:17-cv-04303
IN RE: ELECTRONIC BRAKING SYSTEMS	Case No. 2:21-cv-04403
IN RE: HYDRAULIC BRAKING SYSTEMS	Case No. 2:21-cv-04503
THIS DOCUMENT RELATES TO: End-Payor Actions	

SETTLEMENT CLASS COUNSEL'S OMNIBUS REPLY TO OBJECTIONS TO THEIR MOTION FOR AN AWARD OF ATTORNEYS' FEES IN CONNECTION WITH THE ROUNDS 1–5 SETTLEMENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. INTRODUCTION

Settlement Class Counsel[1] respectfully request that the Court overrule the handful of objections to their Motion. The Motion covers, *inter alia*, work performed before October 1, 2019 for which Settlement Class Counsel has never been fully paid, as well as work performed in the last five years. Contrary to objectors' framing, the partial nature of the Court's prior fee awards is clear. *See, e.g.*, Langham Decl., Ex. 1 at 57:8–13; Rounds 1–4 Fee Orders (all referencing the "partial" or "interim" nature of the fee awards).[2] One objector agrees that Settlement Class Counsel are entitled to additional fees from earlier Rounds.[3] Another objector notes that if the Court awarded the outstanding, previously requested fee percentages from Rounds 1 and 2 on which the Court deferred judgment, Settlement Class Counsel would

[1] All capitalized terms are defined in the Glossary of Terms.

[2] Initial Round 1 Fee Order (granting "***partial*** award of attorneys' fees" of 10% of the Round 1 settlements) (emphasis added)); Supplemental Round 1 Fee Order (granting "***partial*** award of attorneys' fees" and granting an additional 10% of the Round 1 settlements (emphasis added)); Round 2 Fee Order ¶¶ 19, 21 (granting an "***interim*** award of attorneys' fees in the amount of 20% of the net settlement funds remaining after the foregoing past litigation expenses have been deducted"); Round 3 Fee Order ¶¶ 11, 17, 18 (granting 25% fee award and twice referring to this award as "***interim***"); *see also* Round 4 Fee Order ¶¶ 8, 10, 17 (twice referring to the Round 4 fees as "***interim***" and stating, in reference to prior fee awards, "the Court has previously made ***interim fee awards*** equal to 20% of the principal amount of the Round 1 Settlements; 20% of the Round 2 Settlements, net of litigation expenses; and 25% of the Round 3 Settlements, net of litigation expenses." (emphasis added)).

[3] Crowell Obj. at 16 (asserting that Class Counsel receiving "[a]n additional $33.75 million" in fees would be "appropriate and justified").

"get[] roughly halfway to their requested fee."[4] Overland West Obj. at 20.

The results obtained by Settlement Class since their last fee application are exceptional. For instance, Settlement Class Counsel: (1) secured and obtained final approval of the Round 5 Settlements with Defendants, none of which involved a product that was prosecuted by the DOJ; (2) vigilantly fended off repeated efforts by third-party claim filers to usurp the settlement proceeds, which preserved ***hundreds of millions of dollars*** in recovery for the benefit of the Settlement Classes; and (3) oversaw one of the most, if not the most, complex class action settlement administration processes, which will soon culminate in the distribution of the lion's share of the $1.224 billion settlement proceeds to Settlement Class Members.[5] Settlement Class Counsel anticipate the *pro rata* distribution will commence in September—and will not take any of the requested fees until this distribution occurs.

The Court has long recognized that these record-breaking settlements are "extraordinary" in light of the "difficulty of the case," Langham Decl., Ex. 2 at 72:7–73:7, and that Settlement Class Counsel "are certainly deserving of a reasonable fee," *id.* at 77:15–78:20. The fees requested are appropriate. They are in line with what Settlement Class Counsel have represented they would seek. They are

[4] While Settlement Class Counsel believe the full fee request is reasonable, objectors fail to explain why the Court should not at the very least award the additional 10% of the Round 1 Settlements and 7.5% of the Round 2 Settlements, consistent with prior notice and on which the Court deferred judgment.

[5] These efforts are detailed in the Langham Decl. ¶¶ 9–42.

consistent with the range this Court awarded the direct purchaser and automobile dealer plaintiffs' class counsel to be paid on their own multi-hundred-million-dollar settlements. And they are consistent with fee awards within the Sixth Circuit.

Only a handful of the 182,287 Settlement Class Members who submitted a valid claim objected to Settlement Class Counsel's fee request. Of the six objections received, only three were substantive,[6] each of which was filed by a serial objector to settlements and fee applications[7] or by third-party claims filers. Settlement Class Counsel, not these objectors, were solely responsible for obtaining and preserving this historic recovery for the Settlement Classes' benefit. Furthermore, these third-party claims filers are most directly responsible for necessitating the bulk of the work performed by Settlement Class Counsel post-settlement. Settlement Class Counsel respectfully submits that the Court should grant the fee application.

[6] The three other objections received from individuals Lynette Armstrong, Michael Garbinski, and Britney Garbinski were non-meritorious on their face. LaCount Decl. Exs. B–D; LaCount Decl. ¶¶ 5–8.

[7] Overland West and Booton's counsel, the Hamilton Lincoln Law Institute's Center for Class Action Fairness ("CCAF"), is a serial objector. *See*, *e.g.*, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *42 (N.D. Ga. Mar. 17, 2020) ("Theodore Frank, a lawyer and director of the Hamilton Lincoln Law Institute, is in the business of objecting to class action settlements and has previously and unsuccessfully made some of the same or similar objections that he has made here." (internal citations omitted)), *aff'd in part, rev'd in part on other grounds and remanded*, 999 F.3d 1247 (11th Cir. 2021).

II. ARGUMENT

It is telling that the three substantive objections were filed by one professional objector and two third-party claims filers representing FMCs—large entities whose attacks necessitated much of the work performed by Settlement Class Counsel post-settlement, which resulted in the preservation of ***hundreds of millions of dollars*** in settlement funds for the benefit of Settlement Class Members.

A. Nothing Precludes the Court from Awarding Fees from Earlier Settlement Rounds.

The earlier fee awards were not final and were instead "interim" in nature. Judge Battani did not rule that Settlement Class Counsel's fees for the Rounds 1–4 Settlements were capped at 22%. Settlement Class Counsel also did not mislead Settlement Class Members through statements inconsistent with the current fee application. Awarding additional fees is consistent with Rule 23 and due process.

i. Prior Fee Awards Were "Interim" and/or "Partial."

Objectors' argument that Settlement Class Counsel's fee application "contravenes the Court's prior final fee orders" is contrary to the express language of the fee orders themselves.[8] Objectors ignore that the Round 3 and 4 Fee Orders

[8] Objectors acknowledge the fee awards for Rounds 1 and 2 were partial. Overland West Obj. at 1 (the "first two rounds' fee orders were partial" and that "those orders said [that] explicitly"); *id.* at 6 (acknowledging the Court deferred ruling on requested fees for Rounds 1 and 2 and took the request "under advisement").

expressly recite their "interim" nature not once but ***twice***.[9] Adoption of objectors' argument would contravene those orders. Objectors argue the Court's use of the word "interim" does not imply a lack of finality. Overland West Obj. at 5. But that defies the definition of "interim," meaning "temporary and intended to be used or accepted ***until something permanent exists***." Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/interim (June 8, 2025). Indeed, the Court's reference to the Round 4 fee award as "interim" would be rendered superfluous if the Court intended that Settlement Class Counsel could not recover additional fees.

The Court should reject objectors' attempt to paint the hearing colloquy between Settlement Class Counsel and the Court as suggesting Settlement Class Counsel's request for fees amounting to 25% of the Round 3 Settlement Fund was a pledge not to seek additional fees in connection with that Settlement Fund. First, it is well settled that "[i]f there are both separate findings and an opinion [written or made orally], the findings control over the opinion to the extent of any inconsistency between the two." 9C Charles Alan Wright & Arthur R. Miller, *Federal Practice*

[9] Round 3 Fee Order ¶ 11 (concluding "that the factors are met and justify an ***interim*** fee award to EPP Counsel" (emphasis added)) & ¶ 18 ("This ***interim*** fee award is reasonable in light of the complexity of this litigation, . . . " (emphasis added)); Round 4 Fee Order ¶ 10 (concluding that the "factors are met and justify an ***interim*** fee award to Co-Lead Counsel" (emphasis added)) & ¶ 17 ("This ***interim*** fee award is reasonable in light of the complexity of this litigation . . . " (emphasis added)).

and Procedure § 2580 (3d ed.). Indeed, courts do not "go beyond the text of a court order unless its meaning is unclear. . . . Relying on the hearing transcript rather than the text of the resulting court order to decide what the order meant can raise serious problems." *Grede v. FCStone, LLC*, 746 F.3d 244, 257 (7th Cir. 2014); *accord Rawson v. Calmar Steamship Corp.*, 304 F.2d 202, 206 (9th Cir. 1962) ("The Trial Judge is not to be lashed to the mast on his off-hand remarks in announcing decision prior to the presumably more carefully considered deliberate Findings of Fact."). As in *Grede*, relying on the hearing transcript here would cause "serious problems"—especially when the Court later made clear and "more carefully considered deliberate Findings of Fact" in the later fee order. *See Grede*, 746 F.3d at 257; *Rawson*, 304 F.2d at 206; Round 3 Fee Order at 5–7.

Second, the colloquy does not say what objectors imply: it shows ***only*** that Settlement Class Counsel explained to the Court ***why*** it was asking for 25% in the Round 3 Fee Motion instead of the 20% in fees the Court awarded provisionally in the first two rounds.[10] The colloquy in no way suggests that the 25% sought by Settlement Class Counsel in the initial Round 3 Fee Motion was all that would ever be sought in fees relating to Round 3. *See* Overland West Obj. at 7.

[10] For this reason, objectors' judicial estoppel argument also fails. That doctrine applies only where a party takes a position directly contrary to one it previously prevailed upon. *White v. Wyndham Vaca. Ownership, Inc.*, 617 F.3d 472, 476 (6th Cir. 2010). Settlement Class Counsel never asserted its 25% fee request was final.

The Court's use of the word "interim" to mean "temporary" and "non-final" is also logical and consistent with the interlocutory nature of the orders. When the Rounds 3 and 4 "interim" fee awards were issued in 2018 and 2020, respectively, it was still unknown how much more work would be required to finalize, administer, and pay the Settlement Class Members.[11] That work has been significant, requiring Settlement Class Counsel to risk a significant investment of millions of dollars in time without any guarantee of payment—all to protect the Settlement Class Members as their fiduciaries. *See* Langham Decl. ¶¶ 9–42 (explaining work to fend off efforts by FRS and GEICO on behalf of insurance companies asserting subrogation claims and third-party filers CAC and Crowell on behalf of FMCs to inappropriately claim hundreds of millions in settlement proceeds).[12]

Just as they are deserving of compensation for securing these groundbreaking

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[11] Settlement Class Counsel estimate that they may incur an additional $5 million dollars in future lodestar to close out these cases. Langham Decl. ¶ 8.

[12] If GEICO and the insurance companies FRS represented were permitted to recover for subrogation claims involving total loss vehicles throughout the class period, they would have siphoned off an estimated $185 million in settlement proceeds, an amount which would have increased exponentially if other insurance companies submitted similar claims. Langham Decl. ¶ 42; LaCount Decl. ¶ 25. This would have reduced each Settlement Class Member's recovery by an average of 20%. *Id.* Settlement Class Counsel further estimates as many as 9.4 million vehicles may have been affected. *Id.* This estimation is based on Settlement Class Counsel's preliminary calculations, which employed assumptions that Settlement Class Counsel believe are reasonable. *Id.* And CAC has conceded that allowing FMCs to recover at the expense of their end-payor customers would have affected "millions of purchased vehicles." Motion to Enforce at 18.

settlements, Settlement Class Counsel are entitled to compensation commensurate with the results they obtained in preserving the settlement funds for the benefit of the Settlement Classes. *See In re Coordinated Pretrial Proc. in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 608 (9th Cir. 1997) (noting common fund award "depends on whether the attorneys' specific services benefitted the fund—whether they tended to create, increase, ***protect or preserve*** the fund." (emphasis added) (quoting *Class Plaintiffs v. Jaffe & Schlesinger, P.A.*, 19 F.3d 1306, 1308 (9th Cir.1994))); *accord Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257 (1975) (noting the "historic power of equity to permit the trustee of a fund or property, or a party ***preserving*** or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees . . .") (emphasis added)); *see also O'Hara v. Oakland Cnty.*, 136 F.2d 152, 154–55 (6th Cir. 1943) ("[A] court of equity . . . has required the payment out of the fund (before distribution) of the reasonable costs and expenses, including the reasonable counsel fees of the complainant whose diligence created or ***preserved*** the fund for distribution." (emphasis added) (quoting source omitted)).

The court's decision in *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 553 F. Supp. 2d 442 (E.D. Pa. 2008), supports Settlement Class Counsel's application for additional fees here. In *Diet Drugs*, the court issued multiple fee awards to class counsel from a multibillion-dollar common

fund, which it characterized as "interim." *Id.* at 456–57; *see also* 582 F.3d 524, 534 (3d Cir. 2009) (affirming award of fees). Five years after its first award of $77 million in fees, and six years after the settlement was finally approved, 553 F. Supp. 2d at 451, 457, the court awarded class counsel in excess of $350 million in additional fees. *Id.* at 499; 583 F.3d at 536–37. The court determined that the additional fee award was justified based on class counsel's efforts in "successfully preserv[ing]" the settlement against claims from "numerous attorneys, some with nefarious intentions." 553 F. Supp. 2d at 476. In reciting the substantial work class counsel performed in "preserv[ing]" settlement class counsels' recovery**,** the court aptly observed: "[t]he risk of non-payment [for class counsel] did not end with the approval of the Settlement Agreement." *Id.* at 479.

ii. Settlement Class Counsel's Fees for the Rounds 1–4 Settlements Were Not Capped at 22%.

Objectors argue that Judge Battani already ruled that 22% of all settlements "is the maximum that Class Counsel should receive."[13] Not so. Objectors cannot point to a single sentence in any of the prior ***five*** fee orders that limits Settlement Class Counsel's fee recovery or prevents them from seeking additional fees based on subsequent work and accomplishments—no such restriction exists.

Objectors ground their argument entirely on a statement by Judge Battani

[13] CAC Obj. at vi & 1; *see also* Overland West Obj. at 8; Crowell Obj. at 4.

during an August 1, 2018 hearing.[14] But the statement was never referenced or memorialized in any Court order. *See* 9C *Federal Practice and Procedure* § 2580; *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC*, 758 F.3d 777, 781 (6th Cir. 2014) (dicta within an order/opinion does not trigger law-of-the-case doctrine).

Judge Battani's statement is also taken out of context. She specifically addressed Settlement Class Counsel's request for an ***interim*** award[15]—a fact made explicit by her use of the word "interim" in the Round 3 Fee Order ¶¶ 11 & 18. Nothing suggests the "interim" award was ever intended to serve as a permanent ceiling on fees; nor would imposing such a limit make sense when significantly more work needed to be (and ultimately was) performed. Indeed, courts routinely award additional fees in connection with post-settlement work.[16]

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[14] During that hearing, Judge Battani noted that "what's fair is probably somewhere between the 20 and 25 percent, and I think you struck it when you said 22 and I did that, and I think that that's probably a fair resolution in a case with over a billion dollar recovery" and further noted that she wanted Settlement Class Counsel to "stick with [22 point-something] for your round four." Ex. 4 at 36:2–15.

[15] *See generally* Round 3 Fee Motion.

[16] *See, e.g.*, *Lessard v. City of Allen Park*, No. 00-74306, 2005 WL 3671354, at *4 (E.D. Mich. Nov. 28, 2005) (awarding 33% more in additional fees). *In re Bank of Am. Corp. Sec. Litig.*, 775 F.3d 1060, 1068 (8th Cir. 2015) ("In general, post-settlement monitoring is a compensable activity for which counsel is entitled to a reasonable fee."); *In re Bank of Am. Corp. Sec. Litig.*, No. 4:99-MD-1264-CEJ, 2015 WL 3440350, at *2 (E.D. Mo. May 28, 2015) (awarding additional fees post-settlement approval); *Maywalt v. Parker & Parsley Petro. Co.*, 963 F. Supp. 310, 313 (S.D.N.Y. 1997) ("Here, Class Counsel's supplemental fees and expenses . . . would bring the total attorneys' fees and expenses to $2,841,779.98, or approximately 33.4% of the original Settlement Fund. This percentage falls within

iii. Nothing in Prior Notices or in Settlement Class Counsel's Statements to the Court and the Class Precludes the Present Application.

Objectors next suggest that Settlement Class Counsel "reneged" on some perceived representation to only seek fees amounting to an "average of 22% of all net settlement funds" such that they should be prevented from seeking additional fees now. *See* CAC Obj. at 33; Overland West Obj. at 14–17.

Although Settlement Class Counsel did follow the Court's suggestion that they keep their interim fee request for Round 4 at 22%, they did so with the clear understanding that, consistent with the case law set forth above, they could seek additional fees in connection with post-settlement work.[17] Indeed, in their Round 4 fee motion, Settlement Class Counsel explicitly "reserve[d] the right to seek additional fees," particularly with respect to "work performed in connection with the settlement claims administration process." *Id.* at n.10. Settlement Class Counsel's declaration in connection with that motion emphasized that "EPP Class Counsel also notes that they reserve the right to seek additional fees and costs at the conclusion of

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the normal range of fee awards in similar complex cases."); *In re Enron Corp. Sec., Deriv. & ERISA Litig.*, 586 F. Supp. 2d 732, 824 (S.D. Tex. 2008) ("Surely litigating appeals of the settlements, developing a plan of allocation to compensate absent class members for their *pro rata* share of losses caused by the unlawful actions of all defendants, justifying Lead Counsel's continuing efforts against the others, and addressing claims administration concerns, all on behalf of the class, fit this standard") (citing *Mautner v. Hirsch,* 32 F.3d 37, 39 (2d Cir.1994)).

[17] *See generally* Round 4 Fee Motion.

this litigation."[18] Settlement Class Counsel's intent to seek additional fees in connection with post-settlement work was clear from their Court filings.

Settlement Class Counsel's statements during the Round 4 fairness hearing likewise do not support Objectors' arguments. Overland West Obj. at 14–15. Instead, the statements objectors cherry-pick from the Rounds 4 fairness hearing show only that Settlement Class Counsel followed Judge Battani's instruction to seek in the current Round 4 ***application*** an ***interim*** amount that would average to 22.05%. *See, e.g.*, Ex. 3 at 10:7–11:20. At no point did Settlement Class Counsel represent that that the interim applications then being discussed constituted the ***entire*** amount of fees for each respective round. Quite the opposite. As discussed above, Settlement Class Counsel expressly reserved their right to seek additional fees. *Supra* at 11.

Objectors next cast aspersions at statements from Settlement Class Counsel's Round 1 Supplemental Memorandum in Support of Fees. Overland West Obj. at 15–16. But those statements refer to "next fee applications" and ***were not commitments*** closing the door on fees for each round. Round 1 Supplemental Memorandum in Support of Fees at 7. Objectors also ignore that the Court did not follow Settlement Class Counsel's proposal and awarded them substantially less than the 30% of the common fund in Round 1, and 27.5% of the common fund in Round 2, that

[18] Round 4 Joint Fee Decl. ¶ 29.

Settlement Class Counsel requested. *See supra* at n.8.

The class notices also do not limit Settlement Class Counsel from seeking additional fees in connection with their post-settlement work. CAC Obj. at 33–34. The class notices simply provided notice of ***the upcoming applications***. For example, the notices in Rounds 2 and 3 provide information only about the fee applications to be heard at "the upcoming final fairness hearing." Round 2 Amended Notice & Round 3 Notice. Objectors ignore this prefatory clause that cabins the notice to the then-pending application. CAC Obj. at 33; Overland West Obj. at 18. These notices were not "promises . . . to the Court and the class" (CAC Obj. at 34) committing to ***overall*** fee caps. They did not preclude the possibility of Settlement Class Counsel to later seek additional fees.

Objectors do not (and cannot) claim that they lacked notice of Settlement Class Counsel's intent to seek 30% of the aggregate settlement amounts in attorneys' fees. The Round 5 Notice published on August 8, 2022 and available on the class settlement website makes clear that "[i]n the future, Settlement Class Counsel will ask the Court to award attorneys' fees and reimbursement of costs and expenses across all Settlements in the litigation. Any future fees, combined with previous fee awards, will not exceed 30 percent of the Settlement Amount across all cases in the litigation plus interest." Round 5 Notice § 22. Still later, on the eve of filing the fee request, the Settlement Administrator sent email notices of the fee request to

Settlement Class Members reiterating this. LaCount Decl. ¶¶ 3–5. Taken together, these facts make clear that Settlement Class Counsel in no way waived or forfeited their right to seek supplemental fees at a later date.[19]

iv. The Fee Application Does Not Raise Due Process Concerns.

Despite receiving notice of Settlement Class Counsel's intent to seek fees up to 30% of the aggregate settlement amounts, objectors contend that "[g]ranting the Fee Motion as requested would violate due process and Rule 23's notice and adequacy requirements." Overland West Obj. at 22. That argument is flawed.

On the facts, the argument fails because objectors received notice of this request and have had an opportunity to object. On the law, objectors' argument is infirm because Settlement Class Members do not have an entitlement under Rule 23, due process, or any other doctrine, to know the amount of attorneys' fees Settlement Class Counsel intend to seek prior to final approval of the settlements.

Objectors misread Rule 23 and conflate provisions that separately address attorneys' fees on the one hand, and notice of the settlements, on the other. *See* Overland West Obj. at 19. Courts both inside and outside of this Circuit have flatly rejected this premise. *See In Re Flint Water Cases*, 63 F.4th 486, 502 (6th Cir. 2023)

[19] The waiver cases cited by Overland West are inapposite. As acknowledged, waiver is a "severe" remedy that only arises where there was an "intentional relinquishment or abandonment of a known right." *See* Overland West Obj. at 17 (quoting *United States v. Montgomery*, 998 F.3d 693, 697 (6th Cir. 2020)). Settlement Class Counsel never intentionally relinquished a right to additional fees.

("[A] petition for attorney's fees in equity is an independent proceeding supplemental to the [underlying settlement (quoting *Bunidich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988))); *see also Friske v. Bonnier Corp.*, No. 2:16-cv-12799-DML-EAS, 2019 WL 13199576, at *4 (E.D. Mich. Sept. 26, 2019) (distinguishing objections to attorneys' fees from objections to the settlement and rejecting idea that due process was violated where "objectors otherwise have had the opportunity to address the merits of a fee request").

In re Volkswagen "Clean Diesel" Marketing, Sales Practices, & Products Liability Litigation is directly on point. There, class counsel's fee application was filed after final approval of the settlement. Like here, objectors argued that their due process rights were offended because they were not provided with sufficient notice of the terms of the fee application until after the opt-out deadline had passed. 895 F.3d 597, 614–15 (9th Cir. 2018). The court rejected that argument, reasoning that "Rule 23(h) does not require that class counsel's fee motion be filed before the deadline for class members to object to, or opt out of, the substantive settlement. Rather, the rule demands that class members be able to object to the [fee] motion . . ." *Id.* at 615 (emphasis in original). This Court here held the same, noting previously that a Rule 23 "award of attorneys' fees is a matter separate and apart from determining whether a proposed settlement is fair, adequate, and reasonable." Round 2 Final Approval Order at 22.

In re Packaged Seafood Antitrust Litigation is also instructive. There, a class of end-payor plaintiffs settled with a defendant for $16.2 million in settlement benefits. No. 3:15-md-2670, 2024 WL 4941471, at *1 (S.D. Cal. Nov. 22, 2024); *In re Packaged Seafood Antitrust Litig.*, No. 3:15-md-2670 (S.D. Cal. Oct. 25, 2024), Dkt. 3315 (motion for attorneys' fees). In the notice, class counsel expressly stated that they would not be seeking fees on a settlement with defendant, COSI.[20] More than two years following final approval of the settlement and long after the opt-out deadline had passed, class counsel filed a motion for attorneys' fees amounting to one third of the settlement amount (net of expenses) of various settlements, including the COSI settlement. *Id.*, Dkt. 3315. The court granted class counsel's fee request in full. 2024 WL 4941471, at *1. *See also Diet Drugs*, 553 F. Supp. 2d at 499 (awarding awarded class counsel in excess of $350 million in additional fees five years after its first "interim" award); *In re Deepwater Horizon,* No.10-md-2179 (E.D. La.) (fee petition was filed subsequent to the opt out deadline); *and see* Herman Decl. ¶ 37–40.

B. The Fee Requested Is Reasonable.

[20] *COSI Settlement Long-Form Notice*, Tuna End Purchaser Case (2022), https://www.tunaendpurchasersettlement.com/admin/api/connectedapps.cms.extensions/asset?id=9bfce0d6-484e-45a9-b836-c945e54536c3 ("Plaintiffs' Counsel have agreed that no attorney fees will be paid out of the COSI Settlement.")

Attacks on the reasonableness of the fee request should also be rejected. *See, e.g.*, Crowell Obj. at 10–15; CAC Obj. at 18–20. The Motion, which is incorporated herein, demonstrates that the requested fee: (1) is squarely within the range of fee awards that Courts in the Sixth Circuit have found to be reasonable, Fee Mot. at 24; (2) is comparable to attorneys' fees typically negotiated with private clients, *id.* at 25;(3) is commensurate with the significant work Settlement Class Counsel performed on behalf of the class, *id.* at 8–20; (4) is confirmed as reasonable by an appropriate lodestar cross-check that results in a multiplier well below awards made in numerous other class action cases, including mega-fund cases, *id.* at 36–41; and (5) is consistent with awards ***by this Court in this matter*** to other plaintiffs groups who realized "mega-fund" settlements, *id.* at 43–47. This is discussed at length in the Herman Decl. ¶¶ 22–35; *see also Burnett et al. v. Nat'l Ass'n of Realtors et al.*, No. 4:19-cv-00332-SRB, Dkts. 1487 & 1622, *and Gibson et al. v. Nat'l Ass'n of Realtors*, No. 4:23-cv-00788-SRB, Dkt. 530 (in successive orders, awarding 1/3 of a settlement fund worth more than a billion dollars).

i. The Court Has Already Rejected the Notion that Fees Should Be Reduced Based on the Large Size of the Settlements.

In spurning the "'mega-fund' adjustment to fee awards based solely on the size of a settlement," this Court emphasized that it would instead focus on "the stage of the litigation . . . and the labor and expense that were required to be incurred in order to achieve the settlement." Round 2 Fee Order ¶ 8. Similarly, the Sixth Circuit

has not endorsed (and federal courts routinely reject) a reduced-percentage approach. The reasons are clear: the mega-fund reduction introduces perverse incentives that "may encourage class counsel to pursue quick settlements at sub-optimal levels" rather than work to obtain the maximum recovery for the class. Fee Mot. at 27 & n.78 (quoting *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1280 (11th Cir. 2021)). In arguing for a reduction in fees under the "mega-fund" doctrine, objectors compare this litigation to instances in which class counsel secured settlements across a single case. But unlike those litigations, Settlement Class Counsel here secured settlements across 43 ***separate*** coordinated cases, all of which (with the exception of one) settled for less than $100 million. Herman Decl. ¶ 22.

ii. The Appropriate Lodestar Cross-Check Confirms the Reasonableness of the Fee Request.

Objectors argue that the fee request is unreasonable because, when the work performed only since Settlement Class Counsel's last fee motion is viewed in isolation, the lodestar cross check is much higher than the reasonable 2.2 multiplier calculated based on all of the work done on the case as a whole. This Court has consistently held that "the time included in connection with [earlier settlement rounds'] fee requests should be included in the lodestar/multiplier cross-check" because "it would be impractical to compartmentalize and isolate the work that EPP Class Counsel did in any particular case at any particular time because all of their

work assisted in achieving all of the settlements and has provided and will continue to provide a significant benefit to all EPP classes." Round 4 Fee Order ¶ 15 n.5 (citing *In re Se. Milk Antitrust Litig.*, No. 08-md-1000, 2013 WL 2155387, at *7–8 (E.D. Tenn. May 17, 2013) (rejecting objection based on proposition that the calculation of class counsel's lodestar should be limited to work performed after the period covered by a prior fee award)); *see also* Herman Decl. ¶¶ 48–57. That reasoning applies with particular force to this fee request since the later-performed settlement administration work and the work performed by Settlement Class Counsel preserving hundreds of millions of dollars in settlement recovery against attacks from third-party claims filers benefited all Settlement Class Members in all rounds.

It is undisputed that the multiplier of 2.2—when work across the entire case is considered, as it should be—is well within, "if not substantially below, the range of reasonable multipliers awarded in similar contingent fee cases." Round 4 Fee Order ¶ 17. The Court should reject the argument that the lodestar should be limited to work performed subsequent to the last fee petition as contrary to its prior fee orders and Sixth Circuit precedent.[21] *Shane Group v. Blue Cross Blue Shield of*

[21] CAC levels some additional objections regarding the lodestar crosscheck. It suggests that Settlement Class Counsel "have not presented the Court with sufficient documentation to properly perform the required lodestar crosscheck." CAC Obj. at 20. But Settlement Class Counsel provided the ***exact same*** documentation with this fee application as it did for each of the prior four fee applications. Langham Decl. ¶ 7. CAC's additional criticisms regarding Settlement Class Counsel's submissions are baseless.

Michigan—relied on by Overland West, Overland West. Obj. at 19—is inapposite since that case addressed a lodestar approach to compensating counsel, not the percentage-of-the-fund approach applied here, 825 F.3d 299, 310 (6th Cir. 2016).

iii. Settlement Class Counsel's Work Justifies the Requested Fee

Crowell suggest that Settlement Class Counsel's fees should be reduced because its recent work was "far more administrative and less complex" than its earlier work. Crowell Obj. at 5; CAC Obj. at 28. But this grossly understates the work performed by Settlement Class Counsel. *See generally* Langham Decl.; Mot. at 14–18. By way of example, Settlement Class Counsel's vigilant efforts prevented third-party filers such as CAC, Crowell, and FRS from diluting Settlement Class Members' recovery by hundreds of millions of dollars. *Id*; *see also* Pinkerton Decl. ISO Mot. to Strike ¶¶ 14–26 (describing delay and dilution); Pinkerton Decl. ISO Opposition to FRS Mot. to Intervene ¶¶ 23–30; Langham Decl. ¶ 9–42; LaCount Decl. ¶ 25.

C. The Fee Motion Is Timely.

Any contention that the fee motion is "premature" should also be rejected. *See, e.g.*, Crowell Obj. at 3; CAC Obj. at 24. Courts routinely award attorneys' fees to class counsel ***before*** distribution of the settlement funds.[22] Settlement Class

[22] *See*, *e.g.*, ADP Fee Order (awarding attorneys' fees to ADP class counsel for Phase 1 settlements); ADP Allocation Order (approving ADP distribution plan for the same

Counsel intend to wait until the initial *pro rata* distributions before taking any portion of the requested fee, if granted. Langham Decl. ¶ 6.[23] Given this commitment, concerns about "disincentivizing Class Counsel from fairly and efficiently" completing settlement administration are addressed. Crowell Obj. at 3.[24]

D. Settlement Class Counsel Expended Extraordinary Efforts Protecting the Settlement Class from CAC's Self-Serving Attacks.

In this complex litigation, numerous third-party claims filers have asserted claims on behalf of purported class members. Langham Decl. ¶ 3. None have been more disruptive nor posed a greater threat to the recovery of Settlement Class Members than CAC. *Id*. ¶¶ 9–28; LaCount Decl. ¶ 48. For instance, in June 2021, CAC filed a motion misleadingly styled as a "Motion to Enforce Settlement Agreements." *See* CAC Mot. to Enforce. CAC asserted that FMCs, entities in the

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settlements); DPP Fee Order (awarding attorneys' fees to DPP class counsel in connection with Chiyoda, Fujikura, Leoni, Sumitomo and Yazaki settlements); DPP Allocation Order (approving DPP distribution plan for the same settlements, among others); *see also* LaCount Decl. ¶ 50; Herman Decl. ¶ 36.

[23] Settlement Class Counsel only filed this Motion when it did because Judge Cox, who is retiring from the bench, asked that Settlement Class Counsel place before him all matters ripe for consideration given his familiarity with the proceedings. *See* Fee Mot. at 8.

[24] Notably, despite asserting that Settlement Class Counsel should not be entitled to any additional fees on the one-hand, CAC also contends that Settlement Class Counsel's fees should be deferred so that they have a "financial incentive to perform the additional work necessary to see that the funds recovered for the class are actually properly distributed to the class." CAC Obj. at 24. CAC's admission is critical. It clearly does not, because it cannot, dispute that Settlement Class Counsel has a right to compensation for their post-settlement work.

middle of the distribution chain who are not end-payor class members that purchased vehicles for the purpose of leasing them out to end-payor customers, are Settlement Class Members. Langham Decl. ¶ 12. CAC went so far as to claim that the end-user customers of FMCs may not be entitled to any recovery. *Id*. Permitting FMCs to recover for their purchase of vehicles to the exclusion of their end-user customers who leased the same vehicles would have denied recovery to actual class members, which by CAC's own admission purchased "millions" of vehicles. CAC Obj. at 18; Langham Decl. ¶ 17. In its motion, CAC argued in the alternative that the Court should award both FMCs and their customers recovery ***for the same vehicle***, a result that would have permitted multiple claims for the same vehicles, reducing Settlement Class Members' recovery. CAC Mot. to Enforce at 16–17; LaCount Decl. ¶ 49.

After indicating their intent to oppose CAC's motion, Settlement Class Counsel arduously negotiated a stipulation with CAC and certain of its clients that maximized Settlement Class Members' recovery. *See generally* CAC Stip. Among other things, the stipulation, which the Court approved, provided that: (1) No more than one claim relating to a particular vehicle would be recognized for payment (CAC Stip., § I, ¶ 2); (2) to the extent the FMC claimant was the only entity that had an otherwise valid claim, the FMC claimant would be permitted to recover provided it remitted payment (subject to the oversight of Settlement Class Counsel)

to its customer (*id.* ¶¶ 4–5, 7); and (3) in those instances where an FMC recovered and remitted payment to its customer, the fee imposed on the FMC customer by the FMC and CAC would be capped (*id*. ¶¶ 10, 15). These provisions directly protected Settlement Class Members and prevented the ***dilution*** of their claims. Langham Decl. ¶¶ 22, 25. They also provided a mechanism for providing FMC customers, the rightful Settlement Class Members, with recovery they would not otherwise have obtained. *Id.* ¶ 18.

Far from "opposing class members' efforts to receive [] settlement funds" (CAC Obj. at 28), Settlement Class Counsel devoted enormous effort to preventing CAC from siphoning off tens of millions of dollars in settlement funds to entities who were not Settlement Class Members. Langham Decl. ¶ 18. The stipulation also avoided the protracted delay and significant costs (which would have further eroded Settlement Class Members' recovery). *Id*.[25] In addition to the FMC issue, CAC took myriad positions detrimental to the Settlement Classes, which but for Settlement Class Counsel's dedicated service to the Settlement Classes, would have significantly reduced their recovery. *Id.* ¶¶ 18–26.[26]

[25] Settlement Class Counsel secured a substantially similar stipulation with Crowell's client, Enterprise Fleet Management. *See* Crowell Stip. Like the CAC Stip., the Crowell Stip. preserved at least tens of millions of dollars in recovery to Settlement Class Members and avoided lengthy delay. Langham Decl. ¶¶ 12, 15–16.

[26] CAC also mischaracterizes Settlement Class Counsel's decision to expand eligibility to include place of purchase. CAC Obj. at 28.

E. Settlement Class Counsel's Efforts in Stewarding This Settlement Administration Process Warrant A Substantial Additional Award.

CAC launches a litany of attacks against the settlement administration process[27] and suggests that Settlement Class Counsel are not entitled to fees for their substantial work due to the purported delay in paying Settlement Class Members. CAC Obj. at 29–31. CAC does not and cannot dispute, however, that the lion's share of Settlement Class Members have already been paid in full. Langham Decl. ¶ 4. Moreover, CAC's recitation of the settlement administration process is riddled with inaccuracies. LaCount Decl. ¶ 43; Langham Decl. ¶ 26–27. This has been an extraordinarily complicated settlement administration. Fee Mot. at 35; CAC Obj. at 30. Analysis of CAC's claims submissions illustrates its complexity.[28]

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[27] CAC's additional objection that there is no legal or factual basis for awarding Settlement Class Counsel a *pro rata* share of interest on any fee award (CAC Obj. at 10) should be rejected. It is undisputed that the Court previously awarded Settlement Class Counsel a *pro rata* share of the interest on its fees (Round 4 Fee Order ¶ 16) and it is well settled that "district courts routinely award interest on attorneys' fees." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 645 (5th Cir. 2012); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 531 (E.D. Mich. 2003). Curiously, CAC posits that awarding Settlement Class Counsel interest on its fees would "leav[e] it to Class Counsel's discretion to decide how much to pay themselves." CAC Obj. at 10. Not so. Settlement Class Counsel's recovery of interest would be limited to their *pro rata* share of the interest accrued for each Settlement Fund based on the fee awarded.

[28] CAC submitted hundreds of thousands of claims for vehicles that were duplicative of those CAC submitted on behalf of its own clients and submitted in excess of 1.6 million claims for vehicles that were duplicative of those submitted by other claimants. Langham Decl. ¶ 23; LaCount Decl. ¶ 49. CAC and many other claimants also submitted claims for thousands of vehicles that were ineligible because the

CAC's argument that Settlement Class Counsel should not receive any additional fees for the extraordinary results they achieved because its clients did not receive immediate payment following the settlements should be flatly rejected. It would have been virtually impossible, certainly inefficient, and cost prohibitive to do so. LaCount Decl. ¶¶ 27 & 50; Langham Decl. ¶¶ 26; Herman Decl. ¶ 36. Indeed, CAC itself conceded that the Settlement Administrator could not "determine how much to pay any Claimant until" the question of whether FMCs were Settlement Class Members was resolved (CAC Mot. to Enforce at 18), which did not occur until the Court ordered and entered the CAC and Crowell stipulations, the latter of which was not entered until May 2023. *See* Crowell Stip. CAC submits an expert declaration, which purports to quantify the reduction in Settlement Class Members' recovery due to the "delay" in distribution. CAC Obj. at 31–32. Among many other problems, the declaration is highly misleading because it excludes substantial interest the settlement funds have earned. Langham Decl. ¶ 8.

III. CONCLUSION

The Objections to the fee request should be rejected.

Dated: June 16, 2025

Respectfully submitted,

/s/ Elizabeth T. Castillo
Adam J. Zapala
Elizabeth T. Castillo

vehicles were neither purchased in an eligible state nor was the claimant's principal place of business located in an eligible state. LaCount Decl. ¶ 45.

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APPENDIX A
GLOSSARY OF DEFINED TERMS

Abbreviation	Description
ADP Allocation Order	Order Regarding Auto Dealers' Plans of Allocation, No. 2:12-cv-00102 (Nov. 29, 2016), Dkt. 522
ADP Fee Order	Order Regarding Auto Dealers' Motion for An Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards, No. 2:12-cv-00102 (Dec. 7, 2015), Dkt. 401
Aug. 10, 2017 DPP Fee Order	Order, No. 12-cv-00101 (Aug. 10, 2017), Dkt. 495
CAC Mot. to Enforce	Element Fleet Corporation, Wheels, Inc., Donlen LLC, And Automotive Rentals, Inc.'s Motion To Enforce Settlement Agreements, 2:12-md-02311-SFC-RSW, Dkt. 2149
CAC Obj.	The Hertz Corporation, Avis Budget Group, Inc. And Element Fleet Management Corp.'s Objection To Settlement Class Counsel's Motion For An Award Of Attorneys' Fees In Connection With The Rounds 1-5 Settlements
CAC Stipulation CAC Stip.	Stipulation and Order Regarding End-Payor Plaintiff Settlements, Case No. 2:12-md-02311, ECF No. 2244
Combined Round 1 Notice	Combined Notice filed January 13, 2016, https://www.autopartsclass.com/docs/Combined%20Notice%20(filed%201%2013%2016).pdf
Crowell Obj.	218 Large Claim Objectors' Opposition To Settlement Class Counsel's Motion For An Award Of Attorneys' Fees In Connection With The Rounds 1–5 Settlements, 2:13-cv-02603-SFC, Dkt. 129
DPP Allocation Order	Order Approving Proposed Plan for Distribution of Settlement Funds, No. 12-cv-00101 (Aug. 25, 2017), Dkt. 502
DPP Fee Order	Order, No. 12-cv-00101 (Aug. 10, 2017), Dkt. 495.
Crowell Stipulation or Crowell Stip.	Stipulation and Order Regarding End-Payor Plaintiff Settlements, 2:12-md-02311-SFC-RSW, Dkt. 2182
Fitzpatrick Declaration	Declaration of Brian T. Fitzpatrick, 2:12-cv-00203-SFC-RSW, Dkt. 311, Ex. B
FMC	Fleet Management Companies
FRS	Financial Recovery Services, LLC

Herman Decl.	Declaration of Steve Herman in Support of Settlement Class Counsel's Motion
Initial Round 1 Fee Order	Order Granting in Part End-Payor Plaintiffs' Motion For an Award of Attorneys' Fees, Reimbursement of Expenses, and Establishment of a Fund for Future Litigation Expenses, 2:13-cv-00703-MOB-MKM, Dkt. 103
Initial Round 1 Notice	Initial Notice, https://www.autopartsclass.com/docs/Initial%20Notice.pdf
LaCount Decl.	Declaration of Michelle LaCount in Support of Settlement Class Counsel's Motion
Langham Decl.	Declaration of Chanler Langham in Support of Settlement Class Counsel's Motion
Motion for Distributions of $100 Minimum	End-Payor Plaintiffs' Motion for Distributions of $100 Minimum to Authorized Claimants, Case No. 2:12-cv-00103, Dkt. 656
Motion for *Pro Rata* Distributions	End-Payor Plaintiffs' Motion for Pro Rata Distributions to Authorized Claimants, Case No. 2:12-cv-00103, Dkt. 664
Motion or Fee Mot.	Settlement Class Counsel's Motion for an Award of Attorneys' Fees in Connection with the Rounds 1–5 Settlements, 2:13-cv-011030SFC-RSW, Dkt. 249
Overland West Obj.	Overland West, Inc. And Booton, Inc's Objection To Class Counsel's Motion For An Award Of Attorneys' Fees In Connection With The Round 1–5 Settlements, 2:13-cv-02603-SFC, Dkt. 131
Pinkerton Decl. ISO Mot. to Strike	Declaration of Brian A. Pinkerton In Support of End-Payor Plaintiffs' Motion to Strike Financial Recovery Services, LLC's Motion for Reconsideration of the Court's April 28 Opinion and Order, 2:12-md-02311-SFC-RSW, Dkt. 2138-1
Pinkerton Decl. ISO Opposition to FRS Mot. to Intervene	Declaration of Brian A. Pinkerton In Support of End-Payor Plaintiffs' Opposition to Financial Recovery Strategies, LLC's Untimely Motion to Intervene, 2:12-md-02311-SFC-RSW, Dkt. 2097
Round 1 Supplemental Memorandum In Support of Fees	End-Payor Plaintiffs' Supplemental Memorandum in Support of End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Costs and Expenses, 2:12-cv-00103-MOB-MKM, Dkt. 491

Round 2 Amended Notice	Round 2 Amended September 2016 Notice, https://www.autopartsclass.com/docs/Amended%20September%202016%20Notice.pdf; *see also*, 2:13-cv-00703-MOB-MKM, Dkt. 60-2
Round 2 Fee Order	Order Granting End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, 2:12-cv-00103-MOB-MKM, Dkt. 578
Round 2 Final Approval Order	Order Granting Final Approval To The Round 2 Settlements, 2:12-cv-00403, Dkt. 239
Round 3 Fee Motion	End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Certain Expenses in Connection with the Round Three Settlements, 2:15-cv-03003-MOB-MKM, Dkt. No. 91
Round 3 Fee Order	Order Regarding End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, 2:12-cv-00103-MOB-MKM, Dkt. 626
Round 3 Notice	March 2018 Notice https://www.autopartsclass.com/docs/Round_3/Notice_Documents/March%202018%20Notice.pdf
Round 4 Fee Declaration	Joint Declaration of Hollis Salzman, Marc M. Seltzer, and Adam J. Zapala in Support of End-Payor Plaintiffs' Motion for an Award of Attorneys' Fees and Payment of Incentive Awards to Class Representatives in Connection with the Round Four Settlements, 2:14-cv-02903-MOB-MKM, Dkt. No. 97-1
Round 4 Fee Motion	End-Payor Plaintiffs' Motion for An Award of Attorneys' Fees and Payment of Incentive Awards to Clas Representatives in Connection with the Round Four Settlements, 2:12-cv-00403-MOB-MKM, Dkt. No. 297
Round 4 Fee Order	Order Regarding End-Payor Plaintiffs' Motion for An Award of Attorneys' Fees and Payment of Incentive Awards to Class Representatives in Connection with the Round 4 Settlements, 2:12-cv-00403-SFC-RSW, Dkt. No. 320
Round 5 Notice	Detailed Round 5 Notice, https://www.autopartsclass.com/docs/Round_5/Long%20Form%20Notice.pdf; *see also*, 2:16-cv-03703-SFC-RSW, Dkt. 202

Supplemental Round 1 Fee Order	Supplemental Order Granting End-Payor Plaintiffs Additional Attorneys' Fees, 2:12-cv-00103-MOB-MKM, Dkt. 545
Dec. 7, 2015 ADP Fee Order	Order Regarding Auto Dealers' Motion for An Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards, No. 2:12-cv-00102 (Dec. 7, 2015), Dkt. 401

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2025 I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Elizabeth T. Castillo
Elizabeth T. Castillo

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	No. 12-md-02311 Hon. Sean F. Cox
In Re: Wire Harness Systems	Case No. 2:12-cv-00103
In Re: Instrument Panel Clusters	Case No. 2:12-cv-00203
In Re: Fuel Senders	Case No. 2:12-cv-00303
In Re: Heater Control Panels	Case No. 2:12-cv-00403
In Re: Automotive Bearings	Case No. 2:12-cv-00503
In Re: Occupant Safety Systems	Case No. 2:12-cv-00603
In Re: Alternators	Case No. 2:13-cv-00703
In Re: Anti-Vibrational Rubber Parts	Case No. 2:13-cv-00803
In Re: Windshield Wiper Systems	Case No. 2:13-cv-00903
In Re: Radiators	Case No. 2:13-cv-01003
In Re: Starters	Case No. 2:13-cv-01103
In Re: Automotive Lamps	Case No. 2:13-cv-01203
In Re: Switches	Case No. 2:13-cv-01303
In Re: Ignition Coils	Case No. 2:13-cv-01403
In Re: Motor Generator	Case No. 2:13-cv-01503
In Re: Steering Angle Sensors	Case No. 2:13-cv-01603
In Re: HID Ballasts	Case No. 2:13-cv-01703
In Re: Inverters	Case No. 2:13-cv-01803
In Re: Electric Powered Steering Assemblies	Case No. 2:13-cv-01903
In Re: Air Flow Meters	Case No. 2:13-cv-02003
In Re: Fan Motors	Case No. 2:13-cv-02103
In Re: Fuel Injection Systems	Case No. 2:13-cv-02203
In Re: Power Window Motors	Case No. 2:13-cv-02303
In Re: Automatic Transmission Fluid Warmers	Case No. 2:13-cv-02403
In Re: Valve Timing Control Devices	Case No. 2:13-cv-02503
In Re: Electronic Throttle Bodies	Case No. 2:13-cv-02603
In Re: Air Conditioning Systems	Case No. 2:13-cv-02703
In Re: Windshield Washer Systems	Case No. 2:13-cv-02803
In Re: Automotive Constant Velocity Joint Boot Products	Case No. 2:14-cv-02903

In Re: Spark Plugs	Case No. 2:15-cv-03003
In Re: Automotive Hoses	Case No. 2:15-cv-03203
In Re: Shock Absorbers	Case No. 2:15-cv-03303
In Re: Body Sealing Products	Case No. 2:16-cv-03403
In Re: Interior Trim Products	Case No. 2:16-cv-03503
In Re: Automotive Brake Hoses	Case No. 2:16-cv-03603
In Re: Exhaust Systems	Case No. 2:16-cv-03703
In Re: Ceramic Substrates	Case No. 2:16-cv-03803
In Re: Power Window Switches	Case No. 2:16-cv-03903
In Re: Automotive Steel Tubes	Case No. 2:16-cv-04003
In Re: Access Mechanisms	Case No. 2:16-cv-04103
In Re: Side Door Latches	Case No. 2:16-cv-04303
THIS DOCUMENT RELATES TO: End-Payor Actions	

DECLARATION OF CHANLER LANGHAM IN SUPPORT OF SETTLEMENT CLASS COUNSEL'S OMNIBUS REPLY TO OBJECTIONS TO THEIR MOTION FOR AN AWARD OF ATTORNEYS' FEES IN CONNECTION WITH THE ROUNDS 1-5 SETTLEMENTS

I, Chanler Langham, hereby declare the following in accordance with the provisions of 28 U.S.C. § 1746:

1. I am a partner at the law firm of Susman Godfrey L.L.P. I submit this declaration in support of Settlement Class Counsel's Omnibus Reply to Objections to their Motion for an Award of Attorneys' Fees in Connection with the Rounds 1–5 Settlements.

2. The following facts are based on my personal knowledge and knowledge acquired in my role as one of the Settlement Class Counsel in this litigation. If called upon as a witness, I could and would testify competently to them.

3. In this litigation, numerous third-party claims filers, including Class Action Capital ("CAC"), Crowell & Moring LLP ("Crowell"), Class Action Refund, Refund Recovery Group, Class Action Recovery, Financial Recovery Services ("FRS"), and others. have asserted claims on behalf of purported Settlement Class Members.

Fee Award Timing

4. Settlement Class Counsel and the Settlement Administrator previously distributed $100 minimum payments to all eligible Settlement Class Members. Based on the $100 minimum payments, the vast majority of Settlement Class Members have been paid in full.

5. Settlement Class Counsel and the Settlement Administrator anticipate distributing *pro rata* payments to eligible Settlement Class Members who have not objected in September of this year.

6. Settlement Class Counsel intend to wait until the initial *pro rata* distributions before taking any portion of the requested fee, if granted.

7. For each fee request in Rounds 1–4, Settlement Class Counsel provided documentation sufficient to support a lodestar crosscheck. Settlement Class Counsel

have provided the same supporting documentation with this fee application as it has with the four prior fee applications.

8. Settlement Class Counsel estimate that they may incur an additional $5 million in future lodestar to close out these cases.

Class Action Capital

9. CAC is not a Settlement Class Member and CAC played no role in securing the historic $1.224 billion in settlements obtained by Settlement Class Counsel.

10. Between 2016 and 2019, CAC and its Fleet Management Company ("FMC") clients sent a series of "Notices" to their FMC customers (*i.e.*, end-users). The letters offered incorrect legal opinions that FMCs and not their customers were entitled to recover for vehicles that were purchased by FMCs and subsequently leased to their customers. The letters suggested that CAC had authority to submit claims for FMC customers' purchases and/or leases of vehicles absent the customers' express written authorization. The letters contained no reference to the official Auto Parts Settlement Website (www.autopartsclass.com). With the exception of a letter written on behalf of one of their FMC clients, the letters contained no disclosure that FMC customers could submit claims with the assistance of Settlement Class Counsel or the Settlement Administrator without any additional

cost. CAC provided no notice to Settlement Class Counsel at the time it disseminated the so-called notices with its FMC clients.

11. In 2020, Settlement Class Counsel exchanged correspondence with CAC concerning the misleading notices it sent out to FMC customers and CAC's false claim that the FMCs and not their customers had a right to recover from the Settlement Funds as End-Payor Plaintiffs. Settlement Class Counsel explained to CAC that FMCs are not End-Payor Plaintiff Settlement Class Members because: (1) as lessors, they are not "end-payors" of the vehicle; (2) they purchased vehicles for "resale;" and (3) FMC leases are structured for "resale." Settlement Class Counsel further explained that treating FMCs as Settlement Class Members would create double recovery problems, and that the "notices" to FMC customers were unauthorized, misleading, and incorrect. To the extent that CAC represented both FMCs and FMC customers, Settlement Class Counsel also noted that CAC's position created a potential conflict of interest between the FMCs and the FMC customers because they claimed the same vehicles.

12. In September 2021, CAC filed a motion with the Court, which it styled a "Motion to Enforce Settlement Agreements."[1] In its motion, CAC asserted that FMCs, entities in the middle of the distribution chain that (with few exceptions) purchased vehicles for the purpose of leasing them out to end customers, were

[1] *See* Case No. 2:12-md-02311-SFC-RSW, ECF No. 2149

members of the Settlement Classes.[2] CAC asserted that the end-user customers of FMCs may not be entitled to any recovery.[3] CAC argued in the alternative that the Court should award both FMCs and their customers recovery for the same vehicle.[4]

13. In January 2022, after indicating their intent to vigorously oppose CAC's motion, Settlement Class Counsel negotiated a stipulation and order with CAC and certain of its clients that maximized Settlement Class Members' recovery.[5] Among other things, the CAC Stipulation provided that: (1) No more than one claim relating to a particular vehicle would be recognized for payment; (2) where both an FMC and its customer submitted a claim for the same vehicle, the FMC customer's claim would have priority; (3) to the extent the FMC claimant was the only entity that submitted an otherwise valid claim, the FMC claimant would be permitted to recover provided it remitted payment (subject to the oversight of Settlement Class Counsel) to its customer; and (4) in those instances where an FMC was permitted to recover and remit payment to its customer, the collective fee imposed on the FMC customer by the FMC and CAC would be capped.[6]

14. In March 2022, third-party claims filer Crowell filed a motion with the Court on behalf of Enterprise Fleet Management Company ("EFM") to strike the

[2] *Id.* at 1.
[3] *Id.* at 17.
[4] *Id.* at 16-17.
[5] *See* Case No. 2:12-md-02311-SFC-RSW, ECF No. 2182.
[6] *Id.*

CAC stipulation and recognize EFM as a Settlement Class Member.[7] Crowell made many of the same arguments that CAC had made.

15. In April 2022, Settlement Class Counsel filed an opposition to Crowell's motion.[8] Settlement Class Counsel explained that the End-Payor Actions always contemplated a settlement class definition limited to end-payors, and that FMCs (including EFM) operate in a manner that excludes them from the Settlement Classes.[9] Settlement Class Counsel further explained that treating EFM as a Settlement Class Member would create double recovery problems, and that the CAC Stipulation supported Settlement Class Counsel's position and the Plan of Allocation because the CAC Stipulation gave the FMC customer preference over the FMC that leased the vehicle to the end-payor customer.[10]

16. In May 2023, Settlement Class Counsel negotiated and executed a stipulation and order with Crowell on behalf of EFM.[11] Among other things, the Crowell Stipulation provided: (1) No more than one claim relating to a particular vehicle would be recognized for payment; (2) where both an FMC and its customer submitted a claim for the same vehicle, the FMC customer's claim would have priority; (3) to the extent the FMC was the only entity that submitted an otherwise

[7] *See* Case No. 2:12-md-02311-SFC-RSW, ECF No. 2192.
[8] *See* Case No. 2:12-md-02311-SFC-RSW, ECF No. 2205.
[9] *Id.* at 3-8, 12-16.
[10] *Id.* at 16-18, 20-21.
[11] *See* Case 2:12-md-02311-SFC-RSW, ECF No. 2244

valid claim, the FMC would be permitted to recover provided it remitted payment (subject to the oversight of Settlement Class Counsel) to its customer; and (4) in those instances where an FMC was permitted to recover and remit payment to its current customer, the collective fee imposed on the customer by EFM and Crowell would be capped.[12]

17. Had Settlement Class Counsel permitted FMCs to recover for their purchase of vehicles to the exclusion of their end-user FMC customers who leased the same vehicles, it would have foreclosed the recovery of a substantial subset of Settlement Class Members, involving millions of vehicles.

18. Settlement Class Counsel expended substantial time securing the FMC stipulations to prevent CAC, Crowell, and others from siphoning off tens of millions of dollars in settlement funds to entities in the middle of the chain of distribution that are not members of the Settlement Classes. In addition, the CAC and Crowell stipulations both provided a mechanism for providing FMC customers, the rightful Settlement Class Members, with recovery they would not otherwise have obtained. The FMC Stipulations also avoided the protracted delay and significant costs that would have resulted from continued motion practice and likely appeals.

19. In addition to the above-described FMC issue, CAC took myriad positions detrimental to the Settlement Classes, which but for Settlement Class

[12] *Id.*

Counsel's actions, would have significantly reduced Settlement Class Members' recovery. For instance, CAC sought to submit claims for tens of thousands of vehicles that had no connection to an eligible state because the claimed vehicle was neither purchased from an eligible state, nor was the claimant's principal place of business located in an eligible state.

20. CAC's attempt to recover for tens of thousands of vehicles with no connection to an eligible state was surprising because Settlement Class Counsel had previously exchanged correspondence and conferred with CAC on several phone calls concerning statements in the Rounds 1–4 Plans of Allocation that "[o]nly those Settlement Class Members who purchased or leased a new Vehicle or purchased a replacement part while residing or, as to businesses, where the principal place of business was located in [*Illinois Brick* repealer or "damages" states] will be entitled to share in the Net Settlement Funds."[13]

21. As a compromise, and to avoid delay and protracted litigation, Settlement Class Counsel amended the Plan of Allocation to include the place of purchase as a criteria in determining eligibility.[14] Therefore, Settlement Class Counsel were surprised to learn about CAC's attempt to recover for vehicles that were *not* purchased in an eligible state, were *not* purchased by an entity with its

[13] *See*, *e.g.*, *Wire Harness Systems*, 2:12-cv-00103, ECF Nos. 523-1, 537, 577, 628.
[14] *See*, *e.g.*, *Heater Control Panels*, 2:12-cv-00403, ECF No. 301-2.

principal place of business in an eligible state, and were *not* purchased by an entity that was incorporated in an eligible state.

22. Rather than expend the valuable resources and time of the Settlement Administrator, Settlement Class Counsel allowed CAC an opportunity to withdraw claims that omitted the tens of thousands of vehicles with no connection to an eligible state. Settlement Class Counsel extended this courtesy *before* any deficiency letters were sent. Were CAC's initial claims concerning tens of thousands of vehicles with no connection to an eligible state accepted, it would have resulted in dilution of Settlement Class Members' recovery.

23. CAC submitted hundreds of thousands of claims for vehicles that were duplicative of those CAC submitted on behalf of its own clients. CAC also submitted over 1.6 million claims for vehicles that were duplicative of those submitted by other claimants. Crowell likewise submitted hundreds of thousands of claims for vehicles that were duplicative of those submitted by other claimants.[15] Rather than expend the valuable resources and time of the Settlement Administrator, Settlement Class Counsel allowed CAC and Crowell an opportunity to withdraw claims that included the millions of internal duplicates that CAC submitted with its initial claims. Settlement Class Counsel extended the same courtesy to other third-party filers that,

[15] *See* Case No. 2:12-md-02311, ECF No. 2205-1 ¶ 7.

like Crowell and CAC, similarly filed scores of duplicate claims among their own clients.

24. Settlement Class Counsel extended this courtesy *before* any deficiency letters were sent. Were the Settlement Administrator forced to consider and evaluate the millions of duplicate claims that CAC and Crowell submitted, it would have required considerable time and resources from the Settlement Administrator and further added to the expense of an already complex settlement administration process.

25. CAC also sought to submit claims for millions of replacement parts without sufficient documentation. Had the Settlement Administrator accepted these claims, 5.1 million replacement part claims that contained little or no supporting documentation would have been paid, which would have resulted in further dilution of Settlement Class Members' recovery.

26. This was an extraordinarily complicated settlement administration process that involved claims based on millions of vehicles and thousands of replacement parts across 43 separate cases. It also required, among other things, that the Settlement Administrator to confirm that eligible claimants: (1) purchased or leased "new vehicles"; (2) purchased or leased their claimed vehicles in an eligible state (or for businesses had their principal place of business in an eligible state); and (3) did not purchase for resale. Moreover, the Settlement Administrator was required

to analyze duplicate claims covering more than 3.4 million vehicles, excluding the millions of duplicate vehicle claims that third-party claim filers such as CAC and Crowell withdrew. And, as CAC itself conceded, the Settlement Administrator could not "determine how much to pay any Claimant until" the question of whether FMCs were Settlement Class Members was resolved (CAC Mot. to Enforce at 18). This question was not resolved until after the Court ordered and entered both the CAC and Crowell stipulations, the latter of which was not entered until May 2023. For these reasons, it would have been virtually impossible, certainly inefficient, and cost prohibitive to make distributions to the Settlement Classes immediately or soon after final approval of each settlement round.

27. The settlement administration process in the Direct Purchaser and Auto Dealer actions do not serve as accurate comparators. Those actions necessarily had less risk of overlapping and duplicate claims because in those cases, the Settlement Administrator could validate claims information directly from the Defendants' and/or claimants' business records, which directly related to the purchase of a vehicle or replacement part. By contrast, the End-Payor Plaintiff actions involved individuals, and businesses that potentially included multiple levels of the distribution chain (including, *inter alia*, rental car companies and FMCs that purchased, then immediately leased vehicles to End-Payor customers). Thus, the End-Payor Plaintiff settlement administration process necessarily required a

substantially more robust administration process to eliminate duplicates, extinguish fraud, and ensure that those attempting to recover from the settlements did not purchase the claimed vehicles for purposes of resale. CAC does not account for this complexity.

28. CAC submitted an expert declaration, which purports to quantify the reduction in Settlement Class Members' recovery due to the "delay" in distribution. Among other problems, the declaration is highly misleading because it excludes the significant interest earned on the Settlement Funds. Settlement Class Counsel have prudently invested the Settlement Funds, which have earned significant interest for the benefit of Settlement Class Members.

Subrogation Claims

29. In addition to addressing duplicative and non-meritorious claims filed by CAC, Crowell, and other third-party claims filers, Settlement Class Counsel fended off a significant effort from GEICO and seven other insurance companies[16] represented by third-party claims filer FRS to partake in the class recovery based on so-called "subrogation claims" for total loss vehicle claims paid by the insurance companies during the class period.

[16] Those companies are: (1) AIG; (2) Utica Mutual Insurance Company; (3) Mapfre USA Corporation; (4) Mercury Insurance Services; (5) Selective Insurance; (6) W.R. Berkeley Corporation; and (7) Liberty Mutual Holdings.

30. In 2016, GEICO filed a separate antitrust case on its own account against fourteen of the defendants named in the class action cases asserting so-called subrogation claims.[17] Settlement Class Counsel participated in multiple meet and confers with counsel for Defendants and counsel for GEICO concerning the subrogation claims GEICO asserted in the opt-out action, potential objections GEICO sought to assert against the End-Payor Plaintiff settlements, and potential claims GEICO sought to submit in the End-Payor Plaintiff actions. On August 14, 2018, GEICO filed a motion to intervene in this litigation following a motion filed by Defendants to deny GEICO's exclusion request as invalid and ineffective.[18] On August 27, 2018, Settlement Class Counsel filed an opposition to GEICO's motion to intervene and explained that the motion was untimely, intervention would not help GEICO achieve its stated purpose of filing an untimely objection, intervention would delay final approval of the settlements, and denying GEICO's intervention request would not impair its interests.[19]

31. On August 30, 2018, the Court ruled that GEICO lacked antitrust standing to sue for payments it made to its insureds for vehicles declared by it to be a total loss as a result of an automobile accident. Specifically, the Court reasoned that "[t]otal Loss Payments are not made in connection with the purchase of auto

[17] *See* Case No. 2:16-cv-13189-MOB-MKM, ECF No. 1.
[18] *See* Case No. 2:12-cv-00403-MOB-MKM, ECF No. 267.
[19] *See* Case No. 2:15-cv-03303-MOB-MKM, ECF No. 99.

parts" and "the injury allegedly inflicted on GEICO does not occur in the auto part markets in which Defendants allegedly conspired." *GEICO Corp. v. Autoliv Inc.*, 345 F. Supp. 3d 799, 829 (E.D. Mich. 2018).

32. GEICO thereafter abandoned reliance on any subrogation theory of recovery and only sought recovery for overcharges it allegedly paid on vehicles it purchased in its own right. On October 18, 2018, this Court denied GEICO's motion to intervene based on a stipulation stated on the record at a hearing held on September 26, 2018, that GEICO would only submit claims for its own fleet vehicles and would not submit any subrogation claims.[20]

33. This stipulation and order greatly limited claims made on behalf of GEICO, eliminated the submission of so-called subrogation claims, and benefitted Settlement Class Members that submitted proper and appropriate claims for the purchase or lease of qualifying vehicles not for resale.

34. Throughout 2018 and 2019, Settlement Class Counsel exchanged correspondence with FRS concerning subrogation claims FRS sought to file on behalf of its insurance company clients, and Settlement Class Counsel repeatedly explained that FRS lacked standing to assert untimely subrogation claims in the End-Payor Plaintiff actions. Undeterred, on December 13, 2018, FRS submitted a letter to this Court seeking a determination that the automobile insurers FRS purported to

[20] *See* Case No. 2:12-cv-00103, ECF Nos. 625.

represent ("Auto Insurers") were entitled to share in the End-Payor Plaintiff Settlements as subrogees of class member insureds to whom Auto Insurers made indemnity payments for vehicles that were damaged in automobile accidents and deemed a total loss.[21]

35. On January 16, 2020, Settlement Class Counsel filed an opposition explaining that auto insurers were not class members and had no antitrust standing in their capacity as insurers, auto insurance policies do not provide coverage for the antitrust injuries alleged in these actions, subrogation rights do not extend to overcharges caused by antitrust violations, and property damage losses caused by automobile accidents are completely unrelated to overcharges caused by antitrust violations.[22]

36. Then, on June 18, 2020, FRS filed a motion to intervene and submitted a declaration from Jeffrey Leibell stating that the insurers "as subrogees, have many thousands of claims relating to vehicles covered by the End-Payor Settlements because Insurers made indemnity payments to End-Payor class members for eligible vehicles deemed total losses during class periods spanning 23 years. Collecting and submitting data about such a large volume of vehicles would be extremely complex, burdensome, and expensive for FRS and the Insurers."[23]

[21] Case No. 2:12-md-02311, ECF No. 2060-3.
[22] Case No. 2:12-md-02311-MOB-MKM, ECF No. 2034.
[23] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2060-2 ¶ 4.

37. On July 2, 2020, Settlement Class Counsel filed an opposition to the motion to intervene and explained that the Court should deny FRS's untimely and futile request for intervention because it has no protectable interest, denial would not impede a substantial interest, and the motion to intervene is untimely.[24]

38. On November 17, 2020, this Court denied FRS's motion to intervene.[25] FRS then appealed on December 16, 2020.[26] It was only during the pendency of the appeal (opening brief filed on April 21, 2021) that FRS stated for the first time that it was now "collecting and submitting detailed data regarding the Total Loss Vehicles as part of the claims administration process" and that it will "promptly inform the Court of developments in the district court that may affect the justiciability of this appeal."[27]

39. On February 17, 2021, during the pendency of the appeal, FRS also filed an "Emergency Motion to Compel Acceptance and Processing of Vehicle Data" with this Court.[28] Settlement Class Counsel responded to the emergency motion, and later filed a more fulsome response when the emergency posture was denied.[29] This Court found it had no authority to grant a motion (from non-party

[24] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2066.
[25] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2101.
[26] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2105.
[27] *End-Payor Plaintiffs v. Financial Recovery Services*, Case No. 20-2260, Dkt. 19 at 16 n.3.
[28] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2114.
[29] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2115, 2120.

FRS) to compel the Settlement Administrator to accept the vehicle data during the appeal FRS filed and declined to construe it as a motion for reconsideration as untimely and substantively defective.[30] On May 7, 2021, FRS also sought reconsideration of this Court's order denying its request to compel acceptance.[31]

40. On May 15, 2021, Settlement Class Counsel filed a motion to strike FRS's motion for reconsideration and submitted a declaration from the Settlement Administrator noting that FRS had only submitted vehicle information relating to vehicles purchased or leased by the insurance companies for their own account and that the Settlement Administrator planned to process those vehicle claims.[32] As for the subrogation claims, the Settlement Administrator explained: "To date, nearly a year after the expiration of the claims-filing deadline, FRS has not submitted any information on behalf of any insurance company in support of any subrogation claim. Thus, any proof of claim information submitted now would be nearly a year late and properly treated as untimely. This Court has already held that 'claims processing has been ongoing, and completion would be delayed if the Court were to allow potentially thousands of [subrogation] claims to be submitted after the deadline.'"[33]

[30] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2134.
[31] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2137.
[32] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2138-1 at ¶ 10.
[33] *Id.* at ¶ 14.

41. On May 19, 2021, this Court granted the motion to strike and denied the motion for reconsideration.[34] Following multiple rounds of miscellaneous briefing in this Court and the Court of Appeals (including a mandamus petition FRS filed on June 7, 2021), declarations from Settlement Class Counsel and the Settlement Administrator, and oral argument before the Court of Appeals, the Sixth Circuit issued an order affirming this Court's order denying FRS's motion to intervene on May 12, 2022.[35]

42. If the insurance subrogation claims that Settlement Class Counsel went to great efforts to defeat had been allowed, the Settlement Administrator estimates that Settlement Class Members' recovery would likely have been diluted by as much as $185 million, which would have reduced each Settlement Class Member's recovery by an average of 20%. Specifically, if GEICO and the insurance companies FRS represented were permitted to recover for subrogation claims involving total loss vehicles, Settlement Class Counsel estimate as many as 9.4 million vehicles may have been affected. This estimation is based on Settlement Class Counsel's preliminary calculations, which employed assumptions that Settlement Class Counsel believe are reasonable. If other insurance companies were permitted to file subrogation claims, which would have been a real possibility had GEICO and FRS's

[34] Case No. 2:12-md-02311-SFC-RSW, ECF No. 2140.
[35] *End-Payor Plaintiffs v. Financial Recovery Services*, Case No. 20-2260, ECF No. 36-1 (6th Cir. May 12, 2022).

clients' claims been allowed, Settlement Class Counsel's estimated figures would increase exponentially.

Exhibits

43. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of the Round 2 Fairness Hearing held on April 19, 2017.

44. Attached hereto as **Exhibit 2** is a true and correct copy of the transcript of the Round 1 Fairness Hearing held on May 11, 2016.

45. Attached hereto as **Exhibit 3** is a true and correct copy of the transcript of the Round 4 Fairness Hearing held on September 17, 2020.

46. Attached hereto as **Exhibit 4** is a true and correct copy of the transcript of the Round 3 Fairness hearing held on August 1, 2018.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 16th day of June 2025, in Houston, Texas.

/s/ Chanler Langham
Chanler Langham

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-2311 Hon. Marianne O. Battani
IN RE: Wire Harness	No. 12-00103
IN RE: Instrument Panel Clusters	No. 12-00203
IN RE: Fuel Senders	No. 12-00303
IN RE: Heater Control Panels	No. 12-00403
IN RE: Bearings	No. 12-00503
IN RE: Alternators	No. 13-00703
IN RE: Anti-Vibrational Rubber Parts	No. 13-00803
IN RE: Windshield Wiper Systems	No. 13-00903
IN RE: Radiators	No. 13-01003
IN RE: Starters	No. 13-01103
IN RE: Ignition Coils	No. 13-01403
IN RE: Motor Generator	No. 13-01503
IN RE: HID Ballasts	No. 13-01703
IN RE: Inverters	No. 13-01803
IN RE: Electronic Powered Steering Assemblies	No. 13-01903
IN RE: Fan Motors	No. 13-02103
IN RE: Fuel Injection Systems	No. 13-02203
IN RE: Power Window Motors	No. 13-02303
IN RE: Automatic Transmission Fluid Warmers	No. 13-02403
IN RE: Valve Timing Control Devices	No. 13-02503
IN RE: Electronic Throttle Bodies	No. 13-02603
IN RE: Air Conditioning Systems	No. 13-02703
IN RE: Windshield Washer Systems	No. 13-02803
IN RE: Spark Plugs	No. 15-03003
IN RE: Automotive Hoses	No. 15-03203
IN RE: Ceramic Substrates	No. 16-03803
IN RE: Power Window Switches	No. 16-03903
THIS RELATES TO: End Payor Actions	

MOTION TO STRIKE OBJECTIONS AND
FINAL APPROVAL OF ROUND 2 SETTLEMENTS

MR. TUBACH: It was filed in court but I will hand a copy to the clerk.

THE COURT: All right. Okay. In terms of the settlement in this case, I'm not going to repeat everything that counsel said so I won't go through all of this, we have done this before in the preliminary approval, but clearly we are dealing with significant groups here, I think 12 defendant groups and 41 classes, settlement in the amount of $379.4 million in this second round.

There -- the notice the Court finds was appropriate. I think it reached -- I think it was something like 80 or 80.1 percent of the people who would be involved. This is facetious but I do reject the sexist to be adequate to reach as many people as possible.

The objections that were filed here had to do -- I want to address this now with, first of all, the amount of the settlement as to how do we know what the amount of the settlement is or should be because there is not a damages study. And I think, Mr. Seltzer, you set out very well how we know, and nobody knows exactly I don't think, but there are many benefits to doing it this way and to considering all of the information that you have gathered from others from the plea regarding the volume of commerce, et cetera, from third parties, from the ACPERA consideration regarding the treble damages, et cetera. I think every point you've made

is really smack on as to the best that could be done to make a determination, and I would say that all of those factors combined with the experience of counsel, which I have said before, I think counsel are well experienced and well able to come to these types of negotiations and determinations that are done at arm's-length distance.

It is ridiculous to say that you can't settle early. I think there have been a number of cases not here but in the automotive industry and in the gas mileage, the seat belt, all the other parts, that have been settled very early on, and the Court finds that there is a great benefit to the class to have these things resolved at an early time, that you get the benefit of the cooperation discovery with the claims still proceeding against the non-settling defendants, so I find that the amount of the settlement is fair, reasonable and adequate.

Going to the other objections about the sealing of documents, I think that that is an objection that perhaps Mr. Bandas made out of ignorance having not been here to see what we have done to make every effort to abide by the requirements of the Sixth Circuit as set forth in Shane. And I noted specifically he didn't talk about what documents. Now, of course, they are sealed so maybe he doesn't know what documents but the Court is aware of the documents that have been sealed and we know that many of them have been unsealed

if we feel that it was not -- did not abide by the current case law, and that most of these things would have -- the things that were sealed, they've actually been mostly portions of documents and they would have nothing particularly to do with the amount of the settlement.

The incentive to name plaintiffs is a moot issue here as said.

Subclasses, this Court wouldn't even go there, we have enough classes without going into subclasses.

Mr. Cochran's due process objection that the Court didn't consolidate all the cases. We, of course, considered consolidation of a group of these cases some time ago and the Court made a determination, and I would incorporate herein what I ruled then, that it was not appropriate to consolidate these cases. It is unfortunate it is more expensive to appeal but that issue has already been resolved by the Sixth Circuit.

The objection by Marla Lindermann is one I think which is already really handled with Mr. Cochran's -- it's the same as his objection.

In terms of Ms. Singer, her objection the Court already commented on, I don't find any discrimination as to women in our notice.

Then we go on to the plan of allocation, and none of -- the plan was not referenced by any of the objectors,

and I know of no other problem with it. The Court finds that the plan of allocation designed to give a pro rata share to each plaintiff or member of the class is appropriate. The Court went through all of the parameters of that in the preliminary hearing and the folks who were doing it are experienced in this, and I find that this appears at this point to be a very -- what can I say, a very good and productive method of determining these claims.

The Court notes that in terms of the issues of the class that, as I've have said already, it is fair, reasonable and adequate. We know, as has been said many times before, that the Court has to look at the likelihood of success, and the complexity, and the judgment of the experienced counsel, et cetera, and I adopt what I have said before in detail about all of this, I think it applies here, and that this is most definitely a fair and reasonable settlement.

I would also note, I think, Mr. Seltzer, you did mention this, but, you know, out of all of these people that you notify you really only have a handful, not even, of objectors, and I think that's a significant point. We don't -- you know, the Court sometimes in some cases even gets a letter saying we object. We've gotten nothing above which have been formally filed here in court and that, as I said, is just a handful.

I don't think we talked about this specifically but

you will be appointed class counsel in this matter.

And in terms of the attorney fees there was a separate motion for the attorney fees which Mr. Seltzer argued. I certainly -- I have no problem with the reimbursement for the expenses which I have asked counsel to submit to me on a regular basis. I don't have a problem with awarding those, and I do so award them.

The remainder of the money, the percentage of the fees for the attorney fees, I'm going to do what I have done before, even though I think there were very good arguments raised here, but give 20 percent of the amount after the costs have been taken out to be awarded now, the rest to be applied for later when we get all of these cases resolved.

Is there anything I am missing? I feel it has been kind of a long --

MR. SELTZER: I don't think so, Your Honor. I think that covers it.

THE COURT: Okay. Plaintiff, any other comments?

(No response.)

THE COURT: Defendants?

(No response.)

THE COURT: No. Okay. Would you -- I don't know what papers we have but I want to make sure we have the latest documents. I think we do but you might just check with Molly to make sure we do so we can get these entered.

MR. SELTZER: Yes, Your Honor. We will check on that with the final judgments for each of the settlements and also the order regarding fees and expenses we will submit that, as well as one on the plan of allocation and the settlements.

THE COURT: Okay. Thank you. Thank you very much.

MR. SELTZER: Thank you, Your Honor.

THE LAW CLERK: All rise.

(Proceedings concluded at 3:34 p.m.)

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

– – –

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION

Master File No. 12-02311

Hon. Marianne O. Battani

FAIRNESS HEARING

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, May 11, 2016

APPEARANCES:

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THE COURT: Okay. Thank you.

MR. COCHRAN: Thank you.

MR. SELTZER: I object and I ask that his remarks be stricken, Your Honor.

THE COURT: No, it is on the record.

MR. KESSLER: Your Honor, just as a point of information, most of the cases here never went through the MDL process, including a number of the settlements here, so they are clearly non-MDL cases here. The only one that went through the MDL process I believe was the original wire harness and a couple of other cases.

THE COURT: You are right. I'm sorry, I forgot that, but that's true. Actually the majority of these cases are non-MDL cases, they were filed directly here.

MR. KESSLER: Just for your information, Your Honor.

THE COURT: Thank you. All right. In terms of the settlement here, this is -- it is an interesting case. There are -- in this particular group of settlements there are I think it is like 25 settlement classes that are involved in this with 9 defendants and their affiliates.

MR. SELTZER: I think it is 19, Your Honor.

THE COURT: It might be more?

MR. SELTZER: No, 19 I believe.

THE COURT: Pardon me?

MR. SELTZER: I think there are 19 settlement classes if I have the number right.

THE COURT: There are a large number involved here, and the settlement amount is significant, and it involves two different parts as I recall. The settlement, the amount of money, the cash itself, which is 2 -- approximately $225 million, and it includes cooperation which has been extremely significant in this case. There is not a way to put a money figure on that cooperation but the Court is well aware of the benefits and how the cooperation has result -- has, in fact, helped to result in these and other settlements. There is also the discovery that has been cooperatively given along with the transactional data.

The other non-cash is the injunctive relief and I think there was an objection by somebody, was it talked about today, about the two-year period for the injunctive relief, and the Court finds that -- the Court will grant the injunctive relief, and I find that's a valuable thing. The two years is almost -- to me is almost meaningless because this is an illegal activity so you can't really give permission to somebody after two years to continue illegal activity, so I don't find that objection with any merit.

The releases here are extremely specific and to each -- regarding each part and each claim, and there was a discussion about releasing future claims, and if it is read

very closely there is nothing here about any future claims about these particular defendants, and the defendants remain in the case with the other co-defendants for the future litigation.

All right. There has been discussion here about the fact that the DOJ has done a lot of work and we know that the DOJ gave to -- I mean, they get the information from the defendants and ultimately they gave it to the plaintiffs but that was only -- that's the starting point. You know, the DOJ was like the notice giver, hey, there is wire harnesses that are involved in antitrust and every part just started from the DOJ, and these plaintiffs would not have had any opportunity from the best I could tell to show that there was any antitrust actions going on or these allocations amongst these defendants without this investigation by the district court, but once they got that it expanded greatly into other parts, other defendants, defendants who were not even named in the -- by the DOJ, very much a broader thing.

And I think also importantly enough in regards to the work that they had to do is that these partial settlements here they had to look at the volume of commerce, they had to look at many different factors including involving experts to determine what the damages might be so that they could come up with an educated -- I don't want to say an educated guess, an educated figure that would be a

reasonable settlement, and I believe that they had to put in much time and much effort well beyond the work of the DOJ to proceed. And I'm thankful for the work of the DOJ or this case would go on for another 20 years. I think it cut out a lot of time in the case. They dealt with the Japanese, they dealt with the European Union, it is just so far reaching.

Okay. In terms of the difficulty of the case, certainly it has been referred to as extraordinary. I mean, I guess I don't -- I would accept that, it seems to be extraordinary, I haven't done another antitrust MDL so this is my norm, but I have to say from the work that has gone on this, from the issues that have been presented, from the numbers of classes and the class management, that I agree the attorneys have to be managers in order to organize this to proceed and if you don't have it organized it is never going to come to a final conclusion. And the fact that we have these settlements shows me that there is, in fact, great skill of counsel, great organization. And counsel indicated they were proud of their work and I think you should be proud of your work, it is a resolution that this Court finds to be fair, reasonable, adequate.

I did a preliminary finding of it and I want to simply incorporate all of that into this decision that courts consider a number of factors in determining whether a settlement is fair, reasonable and adequate, and I did that

in the preliminary hearing and I will briefly cite them today. Certainly the likelihood of success on the merits. This is an end payor case, I think this is the difficult -- maybe the most difficult class, the end payors because, you know, they don't just get damages unless there's some state -- and how many states do we have involved here? I have lost count.

MR. SELTZER: Your Honor, it is 30 states and the District of Columbia.

THE COURT: 30 states and the District of Columbia and all of those states' laws had to be looked at. And I think also in terms of the settlement you have to consider in the likelihood of success this damage issue of the passthrough, I think that's very critical particularly with the end payors and being able to prove that, so that along with the complexity and the expense and the duration of this case makes this a fair and reasonable settlement.

The Court has listened to the opinions of class counsel on this, class reps, and today to the objectors, which I think they raise some points that the Court has, in fact, considered, and I think that that, you know, you have to look at the balance of all of these things and I think that overall I agree with plaintiffs' counsel that they think this is a fair settlement. They are experienced, I don't think we have addressed that today, but obviously they are

experienced in this type of litigation, I think it was done at arm's length after much discovery. I think that with that -- with all of those factors, without going into anymore detail, makes this a fair, reasonable settlement -- fair, reasonable and adequate is the other word.

Okay. The Court -- oh, I did not address the side pray issues of the objectors and I would like to address that. There is no need for -- I mean, there may be no need at all for side pray here but certainly naming the side pray, I mean, in any of the cases I have been involved with at this stage is just not necessary. Hopefully we won't have side pray but there is always going to be somebody who doesn't cash a check, what that amount turns out to be we don't know but it is just about guaranteed that there will be some of those but I don't think that in any way makes the notice deficient.

I also find that the notice -- of course, notice has to be given and was adequate in this case. In fact, I mean, they use a national company to send out these notices, lots of magazines. I keep thinking did they say Sports Illustrated, I can't help but think of the -- never mind. When I read that I went really. But the Wall Street Journal and others, New York Times I think was mentioned in one, there certainly appears to be an extraordinary number of ways. It wasn't used -- they didn't use the local press and

I think that was a good point that counsel made, but this is a national case and so I could see that it is an effort to reach the most people in the nation and I think that that's been satisfied.

In terms of the ascertainability of the class, the Court finds that the class is able to be defined, and I think the notice was good in terms of giving you a telephone number and, you know, another site to go to see the different class settlements, and I think it is definite enough for any court to determine whether or not a person is a member. I think it is ludicrous to think that a person would know specifically that I have a car with a part made by Denso. I mean, maybe I shouldn't use Denso because they are so big, I think they are in lots of cars, but, I mean, who knows who manufactured a part in their car, I think that's ridiculous, but you know you bought a new car.

The Court does want to address the issue about the used car and the demo car. I mean, demo cars the Court will rule are used cars. I mean, they are. 12,000 miles is probably more than most miles people put on their lease cars. Isn't that kind of the average yearly amount for a lease, I think? So I feel fairly confident in ruling that that car is, in fact, a demo and a used car.

So my ruling is that the objections are noted for the record but I think that by far they do not bar this

settlement. I think they all have -- are mitigated for all of the reasons that have been mentioned both by the Court and by counsel in its argument.

Okay. The Court, of course, in defining a class, and I'm going to briefly, we did this again in the fairness hearing. There's certainly numerosity, there is no issue here about the numbers of people involved. There is commonality in this antitrust action, the issue is the same for each. There is typicality, the class representatives are -- the claims are typical of the claims of the class. And the adequacy of representation, the Court has already addressed that, I find that the attorneys are well able to represent the classes and that the individual named plaintiffs are able to represent the classes.

All right. Common questions clearly predominate over any question. I see here really no mini trials at all. I think it is very common questions.

The Court does need to appoint settlement counsel in this case and the firm Cotchett, Pitre & McCarthy, L.L.P., Robins Kaplan, L.L.P, Susman Godfrey, L.L.P. have represented the end payors throughout this litigation and I'm going to appoint them as the class counsel in this case.

The last issue I believe to be determined is the attorney fees and costs and the reserve for future litigation. The Court has looked at the costs, they are

considerable, but I have no way of saying no, you spent too much money or this or you didn't spend enough -- I don't know, there is -- just in reality there is no way for this Court to delete any items or to question any items, so I am going to, based on the representations in the affidavits that have been submitted regarding the costs, and what the individual firms have incurred, the Court is going to grant the costs. The costs are to come out of the total sum of money before there is any discussion of attorney fees.

The Court will also grant the future litigation -- I'm sorry, I forgot to write that amount down, I think it was $12 million, is that right, $11 million?

MR. SELTZER: I believe it is $11,250,000, Your Honor.

THE COURT: The Court will grant that, which if that's not spent of course will then become part of the total award which goes to the claimants.

The Court then will consider the attorney fee, and there are many factors that the Court considers in an attorney fee, and I think here -- let me just find that. The Court has to make a determination of whether these attorney fees are reasonable and not excessive, and there are any number of factors which the Court has looked at before and they go to the complexity of the case, the experience of the attorneys, the amount of time spent in discovery, et cetera,

et cetera, and the Court finds that these attorneys are certainly deserving of a reasonable fee. The difficulty that I'm having isn't necessarily with this settlement, it is what is going to happen in the future. And I have this morning asked that counsel submit briefs so I'm going to wait on the attorney fee -- I'm going to give a partial attorney fee right now but as to the whole attorney fees the Court is going to wait until after I receive your briefs.

At this point the Court is going to award a partial attorney fee of ten percent, whatever that is, and this is not meant to be the minimum at all in this case but I want to have the briefing before I make a final determination of the total attorney fee, but I will ask you to put in the order that there is this partial payment of ten percent and you can make that ten percent of the whole settlement, of the $225 million, which may be paid forthwith. Okay. And the Court will then, considering this a partial -- I believe a partial, I don't know, it could be a final, but I think partial, and I will consider your briefs and then make a determination as to what the actual attorney fee should be.

Are there other questions?

MS. LINDERMAN: Your Honor, I just have a quick question. You said you were granting all the costs, just like with the 173,000 hours that goes through the entire case, I would assume some of those costs are to part of the

case that hasn't settled, but are you going to grant all of the costs?

THE COURT: I'm going to grant the costs that have been asked for to date because they were by affidavit determined to be the cost associated with this resolution, these parts.

MS. LINDERMAN: Okay.

MR. SIMMONS: Your Honor, Peter Simmons from Fried Frank on behalf of the T. Rad defendants.

Under our settlement, and I believe all the defendants' settlements, our settlements are not in any way contingent on the plaintiffs' counsel fee award --

THE COURT: No.

MR. SIMMONS: So I would request that the Court go ahead and enter the 54-B partial final judgment as to all of these defendants now and the plaintiffs do have forms that I'm assuming they will submit to your chambers.

THE COURT: Thank you, Counsel.

MR. SELTZER: Your Honor, we join in that request and I believe forms of judgment have been submitted to the Court for each of the settling defendants.

THE COURT: Absolutely. Orders have already been submitted to the Court and I will definitely do that.

MR. SIMMONS: Thank you, Your Honor.

THE COURT: I want to address the Loadstar just

briefly. I did calculate your hours. I do a number of things. I look at attorneys working an average 1,500 hours a year, dividing that by the number of hours you worked, how many attorneys worked full time, I looked at all of that, and I know what your Loadstar is, which is a negative number, which is good that it is negative, I mean, certainly if you were to be paid by the hour it would be a larger fee -- well, certainly larger than this partial but it would be larger than what you asked for, and the Court is well aware of that, but I do think -- I do think that's an interesting cross check but I do not intend in this case so when you do your briefs don't bother with the hourly rate, you know, because I'm not doing that. That is not -- that's not a way to do it because then I would have to study very -- much more closely your hours and what you are doing, and I don't intend to second guess what you are doing, I will accept your hours and do the Loadstar based on the hours that you submit. Okay. Anything else?

MR. SELTZER: I don't think so, Your Honor.

THE COURT: All right. Thank you very much. Then we'll see you in September but then remember --

MR. WILLIAMS: Some of us sooner than that.

THE COURT: Some of you very soon, yes, but then remember we are going to go on two months. Thank you.

MR. SELTZER: Thank you, Your Honor.

EXHIBIT 3

STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION_____./ Case No. 12-2311

END-PAYOR PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROVISIONAL SETTLEMENTS
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEY FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND PAYMENT OF INCENTIVE FEES
(VIA ZOOM VIDEO)
BEFORE HON. SEAN F. COX
United States District Judge
829 U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Thursday, September 17, 2020)

APPEARANCES:

HOLLIS SALZMAN, ESQUIRE
Appearing on behalf of End-Payor Plaintiffs.

ADAM ZAPALA, ESQUIRE
Appearing on behalf of End-Payor Plaintiffs.

POWELL MILLER, ESQUIRE
Appearing on behalf of End-Payor Plaintiffs.

MARC SELTZER, ESQUIRE
Appearing on behalf of End-Payor Plaintiffs.

HOWARD B. IWREY, ESQUIRE
Appearing on behalf of Defendants KYB & Toyo Denso.

STEVEN CHERRY, ESQUIRE
Appearing on behalf of Defendant Furosa.

FRED K. HERRMANN, ESQUIRE
Appearing on behalf of Defendant Panasonic.

reasonable, and adequate, certifying the class for the purpose of a settlement.

The Court will also confirm the appointment of the class counsel, settlement class counsel, again approved the revised plan of allocation. The Court has considered and found out that the class represented by class counsel has adequately represented the class.

The proposal was negotiated at arm's length, really provided the classes adequate -- taking into account the costs, risks, delay, trial, and appeal. And therefore, the Court will grant the motion.

Anything else on this particular motion?

MR. MILLER: No, Your Honor.

MR. IWREY: Nothing from the defendants, Your Honor. Thank you.

THE COURT: I'm sorry, Mr. Iwrey. I didn't hear you.

MR. IWREY: I have nothing further, Your Honor, as well. Thank you.

THE COURT: Great. And that's, it appears, plaintiffs' motion for award of attorney fees, reimbursement of litigation expenses, and payment of incentive fees.

Mr. Miller, you may proceed when you're ready.

MR. MILLER: I'm ready, Your Honor. Thank you very much.

In our briefing, we lay out in detail and we support our briefing with a declaration of all co-lead counsel that our request for attorneys fees, reimbursement of expenses, and payment of incentive field works to the class representatives are well within the standard permitted by the Sixth Circuit and case law in this district.

Like the settlements themselves, there are no objections to the motion for attorneys' fees or for the incentive payments to class representatives.

In a nutshell, and just trying to get to the very heart of this, we are requesting that the Court adopt our proposed percentage of the fund approach which Your Honor is well familiar with, which Judge Battani -- pertaining.

THE COURT: Yes. Go ahead. I'm sorry.

MR. MILLER: I'm sorry. I didn't mean to cut you off, Your Honor.

The percentage of the benefit has been well accepted since the Sixth Circuit decision in *Rawlings v. Prudential.* I've seen it used in the overwhelming majority of cases I've handled the last 28 years in the Eastern District of Michigan.

In fact, I can't think of one Eastern District of Michigan judge who has rejected the percentage of benefit method because it's an outstanding way to align the interests between the attorneys and the class, and to avoid madness of

going through thousands and thousands of pages of timesheets, which Judge Battani, early on, she had no interest in doing.

The amount that we applied for represents 22.05 percent of the total settlement fund amount of all the settlements collectively, together. And it's precisely what Judge Battani instructed us to ask for at the fairness hearing on August 1, 2018, wherein she stated on the record, "So I'm going to grant the 25 percent," which was for the third round, Your Honor, which would equal roughly 22 -- it's 22. something, "and I want you to stick with that for your round four. I'm telling you now that would be a fair resolution for an adequate and a well-deserved attorney fee."

Now, of course you are not bound by Judge Battani, but we felt that it was appropriate, and our duty and responsibility to follow the instructions of the presiding judge at the time we filed our motion for attorneys' fees. And we believe that the amount that we are seeking, and Judge Battani instructed us to ask for, is well within the precedent in the Sixth Circuit and the Eastern District of Michigan.

And it's easy to see that simply by looking at the lodestar multiple cross-checks. Based upon that cross-check, the fees we seek are 1.74 multiple as of the time we filed the motion, but we've continued to work for nearly a year, so the multiple now is down to 1.62, among -- we cited many

authorities in our briefing that a multiple of three is well accepted. And there are also many cases that have awarded multiples higher than three; four, five, even six.

In my practice I don't think I have ever asked a court to award more than three, but in this case we're asking for well less than two. So based upon overwhelming precedent in the Eastern District of Michigan, the multiple that we seek is eminently fair and reasonable.

We also seek incentive fee awards for the class representatives, and there are 59 of them. So the aggregate incentive fee award would be $565,000. And we have divided that based upon the work performed by the class reps. The class representatives, who not only cooperated with us, engaged in discovery, provided us documents and information and assisted us in responding to discovery requests, but also went through an entire deposition. We ask for 10,000 for each of them.

For the others, who did similar work but were not deposed, we ask for $5,000. And that is also very consistent with what other courts have awarded for incentive fees for plaintiffs in the Eastern District of Michigan. I rely on my 28 years' experience there. I also rely on the more recent opinion of Chief Judge Hood in the *Shane* case. And these requested amounts are 100 percent on line -- or in line, excuse me, with what Chief Judge Hood permitted in *Shane*.

I'm here to answer any questions, but respectfully submit that our request is fair and reasonable and it's extraordinary that there are no objections. Very rare.

THE COURT: Thank you, Mr. Miller. Mr. Seltzer, Ms. Salzman, or Mr. Zapala, anything?

MR. SELTZER: Nothing, Your Honor, unless Your Honor has questions for us.

THE COURT: I don't.

Mr. Hermann, Mr. Iwrey, anything?

MR. IWREY: No, Your Honor. Nothing, thank you.

MR. HERMANN: No, Your Honor. Thank you.

THE COURT: Okay. The Sixth Circuit has stated that awards of attorney fees must be reasonable under the circumstances.

The Court will find that the attorney fees are reasonable, and the Court will grant that the request to use percentage of the fund approach.

The Court has considered value of the benefit rendered. Society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others, whether the services were undertaken on a contingent fee basis, the complexity of the litigation. Obviously this is very, very, complex. The professional skill and standing of counsel involved on both sides. The professional skill and standing of counsel involved on both sides is very, very,

EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION
_____/

Case No. 12-02311
Hon. Marianne O. Battani

THIS DOCUMENT RELATES TO:
END-PAYOR ACTIONS
_____/

FAIRNESS HEARING

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, August 1, 2018

To obtain a copy of this official transcript, contact:
Robert L. Smith, Official Court Reporter
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MR. RUBIN: Right, because the issue with the final judgment, Your Honor, if you recall from the last rounds, it has a paragraph in it that says identify the specific entities or persons who opted out and states that they timely and validly opted out and thus are not covered by the settlement. That can't be -- we don't believe that can be entered -- that language can be used until we address the issue of GEICO, but we are going to confer with class counsel over that and see if there's a way to do that interim or not.

THE COURT: Okay. And then you are going to let us know or file something if there needs to be a hearing --

MR. SELTZER: Yes.

THE COURT: -- let's say in September. It's August so --

MR. RUBIN: Yes, Your Honor. We will file something on or before August 13th.

THE COURT: Okay.

MR. SELTZER: And then we would advise the Court of whether we need a hearing if there is a dispute that needs to be resolved, and then we would ask that that takes place as soon as is convenient to the calendar of the Court.

THE COURT: All right.

MR. RUBIN: Okay. Thank you.

THE COURT: Sounds like an agreement, and we will see what happens --

MR. SELTZER: Right.

THE COURT: -- after you negotiate. Okay.

MR. SELTZER: Your Honor, just for the record, we think there's a way to resolve this question with the final judgments without necessarily having a final resolution of the GEICO opt out, but that's going to be part of our discussion.

THE COURT: Right, later. Okay. So the attorney fee issue.

MR. SELTZER: On the attorneys' fee application, as the Court knows, we've applied for attorneys' fees equal to 25 percent of the round three settlements, net of the expenses. And as we previously said we would do, we have applied in each round for progressively lower percentages; the round two percentage was 27 and a half percent as Your Honor may recall, and then the round one was a bit higher than that.

Let me just begin by saying that to achieve these really historic results, class counsel have had to devote an enormous amount of time and effort and money to these cases. Through March of this year more than 341,000 hours of time have been devoted by class counsel firms to this litigation. And unlike our opponents who are among the --

THE COURT: For what period of time?

MR. SELTZER: This is from the beginning of the

case through March of 2018, and the beginning of the case is the date that we were appointed as interim class counsel; the time before that is not included in that total.

And I was going to say that unlike our opponents, and our opponents are really among the finest antitrust lawyers in the land, our compensation is dependent entirely upon our obtaining recoveries for the class. We took the risk of litigation, and if we were unsuccessful, we wouldn't get paid. So we were on a contingency basis in this litigation.

And with respect to the percentage we are asking for, our papers lay out in detail why we believe our fee request is in line with other class action precedence, and it's also supported by a market test in terms of what private litigants pay their lawyers. For the class action context, we cited, for example, the Alapata vs. Exxon Corporation case, and that was a case in which a court awarded 31.5 percent of a $1.06 billion class settlement fund, and noted there were many other cases awarding -- and listing those cases, awarding fees between 25 percent and 35 percent of the funds.

In the LCDs class action case, which was also an indirect purchaser class action, the court there awarded 28.6 percent of the $1.08 billion settlement fund, which is comparable to where we are at with the brand new settlements

that are not part of round three, but we are going to increase that amount based on agreements we have reached in principle with other defendants that are not yet public. And that 28.6 percent is higher than the 25 percent that, of course, we are asking for now. The market also supports our application.

I might tell Your Honor again, speaking just for myself and my firm, we are hired a lot to represent private plaintiffs in nonclass action cases on a contingency basis. We are also hired to represent companies on an hourly basis or on a fixed fee basis or any number of different ways. Our standard customary percentage arrangement with a client, and it's all subject to negotiation so in a sense there is no standard, but the starting point we start from is if we are paying the expenses, then the contingency percentages are 40, 45 percent and 50 percent depending upon the point in time when the case is resolved, and many very, very sophisticated companies have agreed to those terms of our representation.

In other cases private plaintiffs have also agreed to similar kinds of percentages that we are requesting here. For example, there was a case involving the National Credit Union Administration that was brought on behalf of failed federal credit unions against various banks involving the mortgage-backed security fiasco that was involved in the great recession we just went through. There the NCUA, which

is a governmental entity, agreed to a 25 percent fee with its lawyers, and they were paid a little more than a billion dollars in fees for recovery of about 4.3 billion on behalf of the NCUA.

So the private market is one that is looked to as a guidepost by courts in determining whether a fee request is fair or reasonable, and examples like the ones I gave can be multiplied and they appear in our papers.

So we think that the percent is a fair, reasonable percentage based upon those benchmarks. And, of course, this litigation has been exceptionally complicated. This may be the most complicated set of class actions -- antitrust class actions ever prosecuted.

Now, there's another metric that the courts look to in looking at the fairness or reasonableness of the fee request, and that's the lodestar multiplier cross-check. It is not required, but courts often engage in it to test the reasonableness of the percentage amount. Here the total lodestar that has been incurred by the class counsel is $140,283,627, again, as of March of this year. The multiplier that would be applied if we were granted a 25 percent request against all of the awards that the Court has previously made, the two interim awards of 20 percent from the round one and round two settlements, together with the 25 percent we're asking for out of the round three

settlements, would yield a multiplier of 1.63 times class counsels' time. That is on the lower side of many cases.

For example, the LCDs case, which I cited, where the court awarded 28.6 percent of the settlement funds, the multiplier there for lead counsel and liaison counsel range between 3.24 and 4.24 times their time.

THE COURT: What numbers did you use to get this multiplier because I divided and I didn't come up with this 1.63?

MR. SELTZER: Well, we added up all of the awards the Court has previously made, plus the 25 percent we are asking for from this round three of settlements, to come up with the total amount of the fees, which would be the one part of the ratio as against -- as against the --

THE COURT: You used all of the settlements?

MR. SELTZER: -- the lodestar, the lodestar, using all of the -- all the time, and again that's consistent with what other courts have done and what this Court said was appropriate for the round two, which is -- this was like one common effort, you know, the work that we did with respect to one part of the case assisted in another part, and it is really impossible to bifurcate the work, you know --

THE COURT: I agree, but I question why 25 percent for round three versus 20 for round one and round two?

MR. SELTZER: Well, the reason why we asked for

that is, first of all, that's what we said we were going to do when we originally --

THE COURT: Pardon me?

MR. SELTZER: That's what we said we were going to do when we responded to Your Honor's request for briefing on this issue a couple years ago.

THE COURT: Right.

MR. SELTZER: But the 20 percent awards, the Court expressly made those interim. In other words, the Court reserved judgment on whether --

THE COURT: Correct.

MR. SELTZER: -- to award more money out of those settlements at the end of the cases. So we are asking for the 25 percent out of this round because we are getting close to the end of the case, we are not there yet, but that was the reason for doing that at this time.

I mean, we could do the -- if the Court were inclined, the Court could follow what was done previously and award 20 percent on an interim basis, but we think the 25 percent is fully justified on the facts of the cases as they now sit.

And as I was going to say with the LCDs case on multipliers there, there they were at the end of the case pretty much, the overall multipliers for all of lawyers -- all the plaintiffs' counsel was between 2.4 and 2.6, much

higher than the 1.63 that we are asking for here.

So, again, if you look at the multipliers that have been used as crosschecks in other cases, we think the 25 percent is an eminently reasonable amount from these settlements, and then, of course, we will have the round four settlements, and there will be a further application with respect to them. So that's the basis of the application.

And we also have a request for reimbursements of expenses of about $500,000, and we are also using the litigation fund/cost fund the Court established in the first round to pay expenses mainly of experts, document-hosting charges, and all of that. That's all laid out in the declaration of Mr. Zapala, whose firm acts as the treasurer, so to speak, of the litigation fund in this case. And that is not part of any application at this point; we are just using those funds for those purposes, but those are basically third-party expenses from experts and other third-party vendors we deal with for the common effort in the litigation.

So that's our application, Your Honor. I'm happy to answer any questions that you may have about it.

THE COURT: Well, I will always have difficulty with the attorney fees, not to underestimate them and not to overestimate particularly with the end payors because I see -- I'm anticipating a large number of claimants at the end, so we want the pot to be as large as can be.

But in listening to you now and in applying the factors and looking at round one and round two at 20 percent, I think the average -- and I recalculated this, and I think you had it in your papers, it was like -- it would come to like 22 percent.

MR. SELTZER: Yes, Your Honor. If this application were granted, then if you combine all of the prior awards and use that as a percentage of the settlements achieved to date, including round three, it would be about 22 percent.

THE COURT: Okay. And the Court knows that it has to consider a number of factors, though there is no set way of doing this. Certainly lodestar you start with lodestar, and we did that here as you indicated, and I think I calculated out there must have been a blended average of about $410 an hour, which I think is fair given the work involved in this particular case. And certainly there's a great benefit to the end payors for the work that's done in this case because they wouldn't have individually filed, they probably don't know, and most people maybe still don't know that they were harmed by this antitrust. And that your services were taken on a contingency fee basis with great costs here, and while I am at costs, I will award the costs that have been submitted which the Court has reviewed, it's a little over 500,000 --

MR. SELTZER: I think it is about $508,000,

something like that.

THE COURT: The Court will award that exact amount. And I think the most important factor here is the professional skill of the attorneys. And I also have gone through different cases and reread what we did before on attorney fees. And I think that a determination -- I don't think there is anything magic about 25 percent, I don't think there's anything magic about 30 percent, I know where all of that started from. And certainly when we get to figures of over a billion dollars, we know that there's a substantial attorney fee that's going to be involved there regardless of the percentage.

So considering all of these factors, and I would say the primary factor here to me is the skill of counsel, but I do offset that by what is a reasonable -- a fair and reasonable fee. I mean, we can go up and it just becomes not reasonable, the numbers are just too high. But the Court looked also at the multiplier and I look at that lodestar, and I -- to be perfectly blunt, I don't find that as helpful. Yes, it gives some kind of a measure, but when you are in a case like this with 341,000 hours, we know that there's time in there that actually has not been spent, not because of dishonesty of lawyers, I'm not speaking of that at all, but you round up, maybe you round down sometimes, I don't know, but it's -- we know that there's -- it's just hard to keep

accurate time.

So I think the percentage method really is the only method, and I give little weight to the lodestar though the Court has gone over it and calculated it. I did it a little differently than you did considering just the settlement, but I think that -- I think what's fair is probably somewhere between the 20 and 25 percent, and I think you struck it when you said 22 and I did that, and I think that that's probably a fair resolution in a case with over a billion dollar recovery.

So I'm going to grant the 25 percent, which would equal roughly 22 -- it's 22 point-something, and I want you to stick with that for your round four. I'm telling you that now. I think that that would be a fair resolution for an adequate and well deserved attorney fee.

MR. SELTZER: Very well, Your Honor.

THE COURT: Thank you. Okay. Anything else?

MR. RUBIN: Nothing else, Your Honor.

THE COURT: All right. Please present the orders. Does anybody else have anything to --

(No response.)

THE COURT: All right. Thank you for coming into my new quarters for today. Next month it will be somewhere different, so make sure you check where you are going.

MR. SELTZER: Very well, Your Honor. We will

submit proposed form of order on the settlements and the plan of allocution and the attorneys' fee award.

THE COURT: Thank you.

MR. SELTZER: Thank you, Your Honor.

MR. RUBIN: Thank you very much, Your Honor.

THE LAW CLERK: All rise. Court is in recess.

(Proceedings concluded at 11:01 a.m.)

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 2:12-md-02311 Hon. Sean F. Cox
IN RE: WIRE HARNESS SSTEMS	Case No. 2:12-cv-00103
IN RE: INSTRUMENT PANEL CLUSTERS	Case No. 2:12-cv-00203
IN RE: FUEL SENDERS	Case No. 2:12-cv-00303
IN RE: HEATER CONTROL PANELS	Case No. 2:12-cv-00403
IN RE: BEARINGS	Case No. 2:12-cv-00503
IN RE: OCCUPANT SAFETY SYSTEMS	Case No. 2:12-cv-00603
IN RE: ALTERNATORS	Case No. 2:13-cv-00703
IN RE: ANTI-VIBRATIONAL RUBBER PARTS	Case No. 2:13-cv-00803
IN RE: WINDSHIELD WIPER SYSTEMS	Case No. 2:13-cv-00903
IN RE: RADIATORS	Case No. 2:13-cv-01003
IN RE: STARTERS	Case No. 2:13-cv-01103
IN RE: AUTOMOTIVE LAMPS	Case No. 2:13-cv-01203
IN RE: SWITCHES	Case No. 2:13-cv-01303
IN RE: IGNITION COILS	Case No. 2:13-cv-01403
IN RE: MOTOR GENERATORS	Case No. 2:13-cv-01503
IN RE: STEERING ANGLE SENSORS	Case No. 2:13-cv-01603
IN RE: HID BALLASTS	Case No. 2:13-cv-01703
IN RE: INVERTERS	Case No. 2:13-cv-01803
IN RE: ELECTRONIC POWERED STEERING ASSEMBLIES	Case No. 2:13-cv-01903
IN RE: AIR FLOW METERS	Case No. 2:13-cv-02003
IN RE: FAN MOTORS	Case No. 2:13-cv-02103
IN RE: FUEL INJECTION SYSTEMS	Case No. 2:13-cv-02203
IN RE: POWER WINDOW MOTORS	Case No. 2:13-cv-02303
IN RE: AUTOMATIC TRANSMISSION FLUID WARMERS	Case No. 2:13-cv-02403
IN RE: VALVE TIMING CONTROL DEVICES	Case No. 2:13-cv-02503
IN RE: ELECTRONIC THROTTLE BODIES	Case No. 2:13-cv-02603
IN RE: AIR CONDITIONING SYSTEMS	Case No. 2:13-cv-02703

IN RE: WINDSHIELD WASHER SYSTEMS	Case No. 2:13-cv-02803
IN RE: CONSTANT VELOCITY JOINT BOOT PRODUCTS	Case No. 2:14-cv-02903
IN RE: SPARK PLUGS	Case No. 2:15-cv-03003
IN RE: AUTOMOTIVE HOSES	Case No. 2:15-cv-03203
IN RE: SHOCK ABSORBERS	Case No. 2:15-cv-03303
IN RE: BODY SEALING PRODUCTS	Case No. 2:16-cv-03403
IN RE: INTERIOR TRIM PRODUCTS	Case No. 2:16-cv-03503
IN RE: AUTOMOTIVE BRAKE HOSES	Case No. 2:16-cv-03603
IN RE: EXHAUST SYSTEMS	Case No. 2:16-cv-03703
IN RE: CERAMIC SUBSTRATES	Case No. 2:16-cv-03803
IN RE: POWER WINDOW SWITCHES	Case No. 2:16-cv-03903
IN RE: AUTOMOTIVE STEEL TUBES	Case No. 2:16-cv-04003
IN RE: ACCESS MECHANISMS	Case No. 2:16-cv-04103
IN RE: SIDE DOOR LATCHES	Case No. 2:17-cv-04303
IN RE: ELECTRONIC BRAKING SYSTEMS	Case No. 2:21-cv-04403
IN RE: HYDRAULIC BRAKING SYSTEMS	Case No. 2:21-cv-04503
THIS DOCUMENT RELATES TO: End-Payor Actions	

DECLARATION OF STEPHEN J. HERMAN, ESQ.

I, Stephen J. Herman, respectfully declare, under penalty of perjury, that the following are true and correct to the best of my knowledge, information, recollection, and belief:

1. I am licensed to practice law in the States of Louisiana and Arizona, the United States District Courts for the Middle, Eastern, and Western Districts of Louisiana, the Second, Fifth, Ninth and Eleventh Circuit Courts of Appeal, and the U.S. Supreme Court.

2. Among other things, I:

- teach the Complex Litigation: Advanced Civil Procedure course at Tulane Law School;
- teach an Advanced Torts Seminar on Class Actions at Loyola Law School;
- am a member of the American Law Institute (ALI) and a fellow of the International Academy of Trial Lawyers (IATL);
- served as one of two court-appointed Liaison Counsel for Plaintiffs, Lead Class Counsel for Plaintiffs, and Chairs of the Fee Committee, in the BP Oil Spill Litigation, *In re Deepwater Horizon*, MDL No. 2179;
- served as one of several court-appointed Settlement Class Counsel for the Taishan Class Settlement in the *Chinese Drywall Litigation*, MDL No. 2047;
- serve on the LSBA Rules of Professional Conduct Committee;
- have authored and co-authored several law review articles regarding the responsibilities of class counsel and the determination of common benefit fees;[1]
- was named one of the Top Attorney Fee Experts in Class Actions by the National Association of Legal Fee Analysis (NALFA) in 2018;
- serve as the current Chair of the Class Action, Mass Tort and Complex Litigation Section of the Louisiana State Bar Association;

[1] *See* "Percentage Fee Awards in Common Fund Cases," co-authored with Russ M. Herman, Tulane Law Review, Vol. 74, Nos. 5-6, p.2033 (June 2000); "Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent," Loyola Law Review, Vol. 64, p.1 (Spring 2018); "Layers of Lawyers: Parsing the Complexities of Claimant Representation in Mass Tort MDLs," co-authored with Lynn A. Baker, Lewis & Clark Law Review, Vol.24, Issue No.2, p.469 (Spring 2020).

- am a Past President of the Louisiana Association for Justice (formerly the Louisiana Trial Lawyers Association), the National Civil Justice Institute (formerly the Pound Civil Justice Institute), and the Civil Justice Foundation, as well as the Immediate Past President of the New Orleans Bar Association, and a long-standing member of the Board of Governors of the American Association for Justice (formerly the Association of Trial Lawyers of America);

- previously served as a Lawyer Chair for one of the Louisiana Attorney Disciplinary Board Hearing Committees;

- was appointed to serve on the Louisiana Supreme Court Committee on Rules of Professional Conduct for Class Actions, Mass Torts and Complex Litigation; and

- am frequently asked to write, speak, and provide expert opinion and advice regarding class actions, complex litigation, legal ethics and professionalism, and attorneys' fees.

A full resume is attached hereto and incorporated as ADDENDUM A.

3. I was retained by Settlement Class Counsel in the above-captioned litigation to provide the Court with information and opinions based upon my personal experience, knowledge, and expertise, regarding their request for an award of reasonable class counsel fees.

4. In submitting this declaration, I am mindful and respectful of the Court's role as the expert on the law in this case. It is not my intent to simply suggest legal opinions or conclusions. It is my hope, rather, that the Court might benefit from viewing the relevant legal principles and precedent through the lens of someone engaged in active practice within the legal community, with factual knowledge about the legal market, and personal experience in the litigation and management of class

action, multi-district, and other complex cases. It is in this spirit that I offer the information and observations that follow herein, in the hope that it might be helpful to the Court in reaching a fair and just determination.

5. I am being compensated at a rate of $750/hr.

6. The materials considered and relied upon are cited throughout the Declaration and/or listed in ADDENDUM B.

Summary of Opinions

7. Based on my personal experience, Sixth Circuit case law, and class action attorney fee awards generally, a class counsel award of 30% is amply supported in this litigation.

8. A so-called "mega-fund" adjustment – which does not appear to be required under Sixth Circuit precedent – has been the subject of much criticism, has been somewhat misinterpreted from an empirical standpoint, and is inconsistent with the way that plaintiff lawyers are frequently retained to handle contingency fee cases.

9. A lodestar "cross-check" – which does not appear to be required under Sixth Circuit precedent – is not, in my experience, particularly helpful in determining what is reasonable and appropriate as a percentage-of-benefit.

10. To the extent the Court elects to perform a lodestar "cross-check," such review should be applied in a "broad," "rough," "abbreviated," "streamlined" and

"imprecise" way, premised largely on the Court's own familiarity with the case.

11. To the extent the Court elects to perform a lodestar "cross-check," the Court should consider all of the common benefit hours that contributed directly and/or indirectly to the gross recoveries, (rather than trying to segregate groups of hours according to particular settlements or rounds of settlement).

12. I have been involved in class action settlements where the court established an opt-out date and approved the proposed settlement under Rule 23(e) before a fee petition was formally submitted and approved under Rule 23(h).

13. It is also common, at the same time, for the court to approve and disburse class counsel fees before the settlement administration process commences and settlement funds are distributed to the members of the class.

A Percentage Fee of 30% Is Amply Supported

14. Based on my knowledge and personal experience, the "market" for contingent fee legal representation generally runs from twenty-five to forty percent (25%-40%) of the client's recovery. When I started practicing law in 1994, a one-third (33⅓%) contingent fee was overwhelmingly agreed to by lawyers and clients in personal injury, employment, property damage, and other civil cases. Over the years, the percentage has generally increased, and now often reaches 40% (or sometimes even higher), particularly in products liability, medical malpractice, and

environmental injury cases.[2]

15. In an individual antitrust case, I would expect an attorney to charge (and a client to be willing to pay) a contingent fee in this range of 25%-40%, (perhaps with a credit against any additional fees that might be awarded from the defendant under a statutory fee-shifting provision).

16. In the class action setting, and particularly where, as here, Settlement Class Counsel's efforts result in the establishment of a settlement fund, courts frequently approve fee awards in the 30% range – especially in a situation such as this one, where Settlement Class Counsel and their co-counsel authorized to perform work on the case are essentially the only attorneys who have contributed time or resources for the benefit of the overwhelming majority of individual members of the 43 classes at issue in this litigation.

17. There are many examples. But, just taking a few within the Sixth Circuit:

- *In re Henry Ford Health System Data Security Litigation,* No. 23-11736, 2024 WL 4602704 at *1 (E.D. Mich. Oct. 29, 2024) (awarding class counsel **33⅓%** of the settlement fund).

[2] *See also, e.g., In re E. Palestine Train Derailment,* No.23-0242, 2024 WL 4370003 at *13 (N.D. Ohio Sept. 27, 2024) (approving the 27% class counsel fee request, while observing that: "Empirical studies have established that contingent fees range from **30% to 40%** of the recovery in most types of plaintiff representations"), *reconsideration denied,* 2024 WL 5266527 (N.D. Ohio Nov. 15, 2024).

- *Matthew N. Fulton, DDS v. Enclarity*, No. 16-13777, 2024 WL 4361947 at *3 (E.D. Mich. Sept. 30, 2024) (awarding class counsel **33⅓%** of the settlement fund).

- *Stewart v. Baptist Memorial Health Care Corp.*, No. 21-02377, 2024 WL 4360602 at *8 (W.D. Tenn. Sept. 30, 2024) (approving an award of **33⅓%** of settlement fund) (citing *In re Se. Milk Antitrust Lit.*, No. 07-208, 2012 WL 12875983 at *2 (E.D. Tenn. July 11, 2012) (collecting cases and noting that a **33⅓** percentage attorney's fee "is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Gokare v. Fed. Express Corp.*, No.11-2131, 2013 WL 12094887 at *4 (W.D. Tenn. Nov. 22, 2013) (collecting cases in which courts in this Circuit have approved attorney's fee awards in common fund cases ranging from **30% to 33⅓%** of the total fund)).

- *Chambers v. Continental Secret Service Bureau*, No. 22-468, 2024 WL 4363161 (N.D. Ohio Sept. 30, 2024) (awarding **one-third** of the settlement fund, while noting that "courts in this circuit have designated fees ranging from 20 to 50 percent of the common fund as reasonable") (citing *In re Broadwing ERISA Lit.*, 252 F.R.D. 369, 380-381 (S.D. Ohio 2006) ("Attorneys fees awards typically range from 20 to 50 percent of the common fund") (collecting cases); *Does 1-2 v. Déjà Vu Servs.*, 925 F.3d 886, 898 (6th Cir. 2019) ("it is not abnormal for negotiated attorneys' fee awards to comprise 20% to 30% of the total award")).

- *Dover v. Yanfeng US Automotive Interior Systems*, No. 20-11643, 2023 WL 2309762 at *5 (E.D. Mich. March 1, 2023) (awarding **33⅓%** of the settlement fund in fees, in addition to reimbursement of expenses) (citing *Simpson v. Citizens Bank*, No. 12-10267, 2014 WL 12738263 at *6 (E.D. Mich. Jan. 31, 2014) ("Class Counsel's request for **33⅓%** of the common fund created by their efforts is well within the benchmark range and in line what is often awarded in this Circuit")).

- *Strano v. Kiplinger Washington Editors, Inc.*, 649 F.Supp.3d 546, 558 (E.D. Mich. Jan. 6, 2023) (approving settlement as adequate under Rule 23(e)(2)(C)(3) where the proposed attorney's fees will not exceed **35%** of the settlement fund) (citing *Garner Props. & Mgmt. v. City of Inkster*, No. 17-13960, 2020 WL 4726938 at *10 (E.D. Mich. Aug. 14, 2020) (finding that **33⅓%** attorney's fees were reasonable)).

- *Daoust v. Maru Restaurant*, No. 17-13879, 2019 WL 2866490 at **4-5 (E.D. Mich. July 3, 2019) (awarding class counsel **one-third** of the settlement fund) (citing *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459 at *1 (E.D. Tenn. June 30, 2014) ("The Court finds that the requested counsel fee of **one third** is fair and reasonable and fully justified. The Court finds it is within the range of fees ordinarily awarded"); *Dillworth v. Case Farms Processing*, 2010 WL 776933 at *8 (N.D. Ohio March 8, 2010) ("The amount of the contingency, **one-third** of the total award, is also reasonable and has been approved in similar FLSA collective actions")).

- *In re Prandin Direct Purchaser Antitrust Litig.*, No. 10-12141, 2015 WL 1396473 at *5 (E.D. Mich. Jan. 20, 2015) (awarding class counsel **33⅓%** of the common fund).

18. Indeed, in this *Auto Parts* case, the Court awarded class counsel for the Auto Dealers and Direct Purchaser Plaintiffs approximately 30% of their respective

settlement funds.[3, 4]

[3] Re: Auto Dealers, *see, e.g.*, ORDER REGARDING AUTO DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS, No.2:12-cv-00102, ECF No. 401 (E.D.Mich. Dec. 7, 2015) (31.38% fee award); ORDER REGARDING AUTO DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND A SET ASIDE FOR FUTURE LITIGATION EXPENSES, No.2:12-cv-00102, ECF No. 523 (E.D.Mich. Nov. 29, 2016) (20% fee award); ORDER REGARDING AUTO DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND A SET ASIDE FOR FUTURE LITIGATION EXPENSES FROM ROUND THREE SETTLEMENTS, No.2:12-c-v-00102, ECF No. 568 (E.D.Mich. Nov. 5,2018) (28.93% fee award); ORDER REGARDING AUTO DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FROM ROUND FOUR SETTLEMENTS, No.2:13-cv- 01902, ECF No.240 (E.D.Mich. Dec. 29, 2019) (30.18% fee award); ORDER REGARDING AUTO DEALERS' MOTION TO AWARD FEES PLACED IN RESERVE IN 2016 FOR ROUND TWO SETTLEMENTS, No.2:13-cv-01902, ECF No. 249 (E.D.Mich. Aug. 7, 2020) (additional 10% fee award); ORDER REGARDING AUTO DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FROM ROUND FIVE SETTLEMENTS, No.2:21-cv-04402, ECF No.13 (E.D.Mich. Jan. 24, 2024) (fee award of $284,400.00 on gross settlement of $948,000.00, bringing total up to near 30% of the gross settlements).

[4] Re: Direct Purchaser Plaintiffs, *see, e.g.*, ORDER GRANTING INTERIM LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES, No.2:12-cv- 00601, ECF No.128 (E.D.Mich. July 15, 2015) (25% fee award); ORDER, No.2:12-cv-00101, ECF No.495 (E.D.Mich. Aug. 10, 2017) (30% fee award); Order, No.2:17-cv-04201, ECF No.21 (E.D.Mich. Mar. 12, 2018) (30% fee award); ORDER, No.2:12- cv-00601, ECF No.169 (E.D.Mich. Oct. 18, 2018) (30% fee award); ORDER, No.2:13-cv-02701, ECF No.124 (E.D.Mich. Oct. 18, 2018) (30% fee award); ORDER, No.2:12-cv-00401, ECF No.220 (E.D.Mich. Nov. 21, 2018) (30% fee award); ORDER, No.2:12-cv-00101, ECF No.573 (E.D.Mich. Nov. 21, 2018) (30% fee award); ORDER, No.2:12-cv-00201, ECF No.224 (E.D.Mich. Nov. 21, 2018) (30% fee award); ORDER, No.2:13-cv-00701, ECF No.97 (E.D.Mich. Oct. 11, 2019) (30% fee award); ORDER, No.2:13-cv- 01001, ECF No.62 (E.D.Mich. Oct. 15, 2019) (30% fee award); ORDER, No.2:15-cv-1827, ECF No.41 (E.D.Mich. Oct. 15, 2019) (30% fee award); ORDER, No.2:13-cv-01101, ECF No.128 (E.D.Mich. Oct. 15, 2019) (30% fee award); ORDER, No.2:13-cv-00901, ECF No.123 (E.D.Mich. Nov. 20, 2019) (30% fee award); ORDER, No.2:13-cv-02301, ECF No.86 (E.D.Mich. Nov. 21, 2019) (30%

19. This is also supported by surveys of class action fee awards that have been reported in cases from around the country. For example:

- "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around **one-third** of the recovery." 4 NEWBERG ON CLASS ACTIONS (4th ed. 2002) §14:6.
- Stuart J. Logan, et al., *Attorney Fee Awards in Common Fund Class Actions*, 24 CLASS ACTION REP. 167, 167 (2003) (reporting that the median award of attorney fees was **31.6%** based on a survey of 1,200 class action settlements).
- *In re Checking Account Overdraft Lit.*, 830 F.Supp.2d 1330, 1366 n.38 (S.D. Fla. Nov. 22, 2011) ("National Economic Research Associates, an economic consulting firm that has conducted a survey of fee awards in class actions, found that 'regardless of the case size, fees average approximately **32 percent** of the settlement.'" (citing Denise N. Martin, et al., *Recent Trends IV: What Explains Filings and Settlements in*

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fee award); ORDER, No.2:13-cv-02801, ECF No.116 (E.D.Mich. Nov. 21, 2019) (30% fee award); ORDER, No.2:13-cv-02701, ECF No.179 (E.D.Mich. Nov. 22, 2019) (30% fee award); ORDER, No.2:16-cv-03601, ECF No.29 (E.D.Mich. July 16, 2020) (30% fee award); ORDER, No.2:13-cv-02501, ECF No.24 (E.D.Mich. July 16, 2020) (30% fee award); ORDER, No.2:13-cv-01401, ECF No.118 (E.D.Mich. July 16, 2020) (30% fee award); ORDER, No.2:16-cv-03801, ECF No.19 (E.D.Mich. July 16, 2020) (30% fee award); ORDER, No.2:13-cv-02701, ECF No.198 (E.D.Mich. Nov. 10, 2020) (30% fee award); ORDER, No.2:13-cv-01101, ECF No.156 (E.D.Mich. Nov. 13, 2020) (30% fee award); ORDER, No.2:16-cv-03701, ECF No.97 (E.D.Mich. Dec. 8, 2020) (30% fee award); ORDER, No.2:15-cv-03201, ECF No.11 (E.D.Mich. Feb. 12, 2021) (30% fee award); ORDER, No.2:12-cv-00501, ECF No.515 (E.D.Mich. June 10, 2021) (33.33% fee award); ORDER, No.2:13-cv-01301, ECF No.14 (E.D.Mich. June 10, 2021) (30% fee award); ORDER, No.2:12-cv-00501, ECF No.522 (E.D.Mich. Nov. 18, 2021) (33.33% fee award); ORDER, No.2:13-cv-02201, ECF No.188 (E.D.Mich. Mar. 24, 2022) (30% fee award); ORDER, No.2:15-cv-03101, ECF No.105 (E.D.Mich. Sept. 22, 2022) (33% fee award); ORDER, No.2:15-cv-03001, ECF No.103 (E.D.Mich. Sept. 23, 2022) (33% fee award); ORDER, No.2:15-cv-03301, ECF No.88 (E.D.Mich. June 15, 2023) (33.33% fee award).

Shareholder Class Actions? (NERA Nov. 1996) at 12–13)).[5]

- *Pinto v. Princess Cruise Lines*, 513 F.Supp.2d 1334, 1341 (S.D. Fla. 2007) (also citing the NERA Recent Trends IV survey, and reporting that: "Another study released in 1996 focused on class actions in four federal district courts: the Southern District of Florida, the Northern District of California, the Eastern District of Pennsylvania, and the Northern District of Illinois. The Federal Judicial Center Study reported findings very similar to the NERA study: 'Median rates ranged from 27% to 30%. Most fee awards in the study were between 20% and 40% of the gross monetary settlement.'" (citing Thomas E. Willging, et al., Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules (Federal Judicial Center 1996) at 69)).[6]

20. In *Allapattah Services v. Exxon,* the Southern District of Florida printed a table of so-called "mega-fund" cases in which the percentage-of-benefit fee awarded ranged from 25% to 35.5%:[7]

[5] *See also, e.g., In re Linerboard Antitrust Lit.*, MDL No. 1261, 2004 WL 1221350 at *14 (E.D. Pa. June 2, 2004) ("recent empirical data analyzing fee awards in securities cases indicates that regardless of size, fees average **32 percent** of the settlement") (citing the NERA *Recent Trends IV* study)).

[6] While, as noted by the Hertz-Avis Objectors, there are some empirical studies which skew slightly lower, (*e.g.*, Fitzpatrick, *An Empirical Study of Class Action Settlements and Fee Awards,* 7 J. Empirical Legal Studies 811, 834 (2010) (most mean and median awards falling between 25 and 30 percent)), several of the surveys focus on, or at least recognize the influence of, so-called "mega-fund" reductions, which are addressed more fully *infra.*

[7] *See Allapattah Servs. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1210-1211 (S.D. Fla. 2006).

Case	**Year**	**Cash Recovery**	**Fee Award (%)**
In re Brand Name Drugs	2000	$696 Million	25.4%
In re Vitamins	2001	$365 Million	34.6%
In re Busporine	2003	$220 Million	33%
In re Linerboard	2004	$202 Million	30%
In re Lease Oil	1999	$190 Million	35.1%
In re Relafen	2004	$175 Million	33%
In re Sumitomo	1999	$132 Million	28.3%
Kurzweil	1999	$123 Million	30%
In re Cardizem	2002	$110 Million	30%
In re Managed Care Lit.	2003-2004	$310 Million	35.5%
In re Sunbeam Sec. Lit.	2001	$110 Million	25%

21. The *Ramey* Factors further support the fee request, as applied to the facts and circumstances of this particular case. The Court has previously noted the exceptionally large and unprecedented complexity of the litigation,[8] involving 43

[8] *See Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974) ("This circuit over the years has pointed out the considerations that enter into the fixing of reasonable fees by the court. They include: ... (5) the complexity of the litigation").

separately filed class actions, against scores of foreign and domestic auto parts suppliers, on behalf of the owners of thousands of affected vehicle makes and models, with respect to multiple different types of parts, over a twenty year period, under the laws of 30 different states.[9] I am personally familiar with several of the Class Counsel firms – as well as the Defense Counsel firms – who are known and respected as skilled and effective antitrust and class action practitioners within the legal community.[10] And they have obtained, on behalf of the class, what I understand to be the largest indirect purchaser settlements in U.S. history.[11]

There Should Be No "Mega-Fund" Reduction

22. Initially, I think it's important to note that, unlike other so-called "mega-fund" cases, the End-Payor *Auto Parts* Litigation comprises 43 separate cases – in which only one of those cases did the aggregate settlements exceed $100 million.

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[9] *See generally* CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES IN CONNECTION WITH THE ROUNDS 1-5 SETTLEMENTS, *In re Automotive Parts Antitrust Lit.*, No.12-md-02311, ECF No. 249 (E.D. Mich. filed May 9, 2025) at pp.33-35 (quoting TRANSCRIPT (Sept. 17, 2020) at 13:15 ("this is very, very, complex")).

[10] *See Ramey*, 508 F.2d at 1196 ("(6) the professional skill and standing of counsel involved on both sides"). *See also, generally*, CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, *In re Automotive Parts Antitrust Lit.*, No.12-md-02311, ECF No. 249 (E.D. Mich. filed May 9, 2025) at p.33 fn.98 (quoting TRANSCRIPT (Sept. 17, 2020) at 14:5 (the "professional skill and standing of counsel involved on both sides is very, very, very high")).

[11] *See Ramey*, 508 F.2d at 1196 ("(1) the value of the benefit rendered").

23. Nevertheless, courts and academics have sometimes observed that, as settlement fund values increase, percentage fee awards tend to decline. At the same time, however, the question of whether a lower percentage award is desirable, or arguably even required, in the case of a large class settlement has been the subject of some debate.

24. It does not appear that the Sixth Circuit has directly spoken on the issue. Arguably, the second *Ramey* Factor – *i.e.* society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others – would militate against the adoption of such an approach.[12]

25. Judge Battani, in this very litigation, previously rejected a "mega-fund" reduction.[13]

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[12] "Courts in the Sixth Circuit" Judge Battani observed, "weigh society's stake in rewarding attorneys who obtain favorable outcomes for a class in order to maintain an incentive to others, and counsel's success in complex antitrust litigation counsels in favor of a generous fee." *Automotive Parts Antitrust Lit.*, No.12-md-2311, 2017 WL 3525415 at *3 (E.D. Mich. July 10, 2017); *see also, e.g., Gascho v. Global Fitness Holdings*, 822 F.3d 269, 287 (6th Cir. 2016) ("Consumer class actions … have value to society more broadly, both as deterrents to unlawful behavior … and as private law enforcement regimes that free public sector resources. If we are to encourage these positive societal effects, class counsel must be adequately compensated").

[13] *In re Automotive Parts Antitrust Lit.*, No.12-md-2311, 2017 WL 3525415 at *2 (E.D. Mich. July 10, 2017) ("contrary to the arguments made by certain objectors, there is no requirement that the Court necessarily apply a declining fee percentage based on the absolute dollar amount of any of the settlements at issue. The Court notes that other federal courts have also rejected the so-called 'mega fund' adjustment to fee awards based solely on the size of a settlement. Instead, consideration must be given to, among other things, the stage of the litigation when

26. Other courts and commentators have similarly pushed back on this approach. In *T-Mobile,* for example, the Eighth Circuit Court of Appeals recently rejected a categorical approach.[14] The Seventh Circuit, which employs its own unique "*ex ante* market" approach to class fee awards, has also rejected the "mega-fund" reduction approach.[15] One of the early and frequently cited "mega-fund" surveys appears in an Appendix to *Vizcaino v. Microsoft,* in which the Ninth Circuit largely rejects the objectors' argument that fees in such cases should be reduced, and affirms the 28% fee award requested.[16] "By not rewarding Class Counsel for the

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a settlement has been achieved and the labor and expense that were required to be incurred in order to achieve the settlement"). *See also, e.g., In re Flint Water Cases,* 583 F.Supp.3d 911, 934-946 (E.D.Mich. Feb. 4, 2022) (approving, in connection with $626.25 million settlement, total attorneys' fees of **31.33%** on the recoveries of most plaintiffs with respect to most claims).

[14] *In re T-Mobile Customer Data Security Breach Lit.*, 11 F.4th 849, 859-860 (8th Cir. 2024).

[15] *See In re Synthroid Mktg. Lit.* ("*Synthroid I*"), 264 F.3d 712, 718 (7th Cir. 2001); *see also, e.g., In re FedEx Ground Employment Practices Lit.*, 251 F.Supp.3d 1225, 1237-1244 (N.D. Ind. 2017) (awarding **30%** under the Seventh Circuit's "*ex ante* market" approach, while rejecting the argument that fees from related classes should be aggregated and tapered, and noting that the Seventh Circuit "has rejected the concept behind the 'megafund' theory").

[16] *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-1050 (9th Cir. 2002) (approving a $97 million settlement; under lodestar "cross-check", the 28% fees awarded constituted a 3.65 multiplier, which the court approved). While the so-called "mega-fund" cases included in the *Vizcaino* survey ranged from 3% - 40%, with a "bare majority" clustered in the 20–30% range, (*see* 290 F.3d at 1050 n.4), there are several "mega-fund" recoveries in which a fee of at least 30% was approved. *See* APPENDIX, 290 F.3d at 1052 (citing, among other cases, *In re Merry–Go–Round Enterprise, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000) (**40%**); *In Re Informix Corp. Sec. Litig.*, No. 97–1289, 21 Class Action Reports 261 (N.D. Cal.

additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little."[17]

27. While the Hertz-Avis Objection invokes some of Professor Fitzpatrick's empirical findings, it is notable that Professor Fitzpatrick has been a strong critic of the so-called "mega-fund" reduction approach, arguing that, "in small-stakes class actions, which may make up a majority of all class actions,[18] deterrence-insurance theory suggests that courts should not lower fee percentages no matter how large the aggregate class recovery may be."[19]

Nov. 23, 1999) (**30%**); *In Re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (**36%**); *Kurzweil v. Philip Morris Co.*, 1999 WL 1076105 (S.D.N.Y. 1999) (**30%**); *In Re Commercial Explosives Antitrust Litig.*, MDL No. 1093, 20 Class Action Reports 532 (1997) (D. Utah Dec. 29, 1998) (**30%**); *In Re Nat'l Health Laboratories Sec. Litig.*, No. 92–1949 19 Class Action Reports 64–65 (S.D. Cal. Aug. 15, 1995) (**30%**); *In Re Melridge, Inc., Sec. Litig.*, No. 87–1426, 19 Class Action Reports 65–66 (D. Or. March 19, 1992, Nov. 1, 1993, and April 15, 1996) (**37.1%**)).

[17] *See, e.g., In re Neurontin Marketing and Sales Practices Lit.*, 58 F. Supp. 3d 167, 171 (D. Mass. 2014) (awarding **28%** of a $350 million fund, while quoting *Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006), and citing *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (setting fee award at **30%** of $410 million fund); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05–340 (D. Del. Apr. 23, 2009) (awarding **33⅓%** of $250 million fund); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467 (S.D.N.Y. 2009) (awarding **33⅓%** of $510 million fund)).

[18] And, indeed, tens of thousands of class members participating in these settlements were and are "small stakes" claimants.

[19] Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U.PA.L.REV. 2043, 2066 (June 2010).

28. Indeed, in the very Declaration (from an entirely separate case) that Hertz and Avis submit in support of their objection, Professor Fitzpatrick argues as follows:

> .... **in my opinion, it is a mistake to award lower fee percentages for no other reason than the fact that class counsel has recovered more for the class because it creates terrible incentives for class counsel.** In particular, it can actually make class counsel better off by resolving a case for less rather than more. *See, e.g.*, *In re Synthroid I*, 264 F.3d 712, 718 (7th Cir. 2001) (Easterbrook, J.) ("This means that counsel for the consumer class could have received $22 million in fees had they settled for $74 million but were limited to $8.2 million in fees because they obtained an extra $14 million for their clients.... Why there should be such a notch is a mystery. Markets would not tolerate that effect"). **Consider the following example: if courts award class action attorneys 33⅓% of settlements when they are under $100 million but only 20% of settlements when they are over $100 million, then rational class action attorneys will prefer to settle cases for $90 million (*i.e.*, a $30 million fee award) than for $125 million (*i.e.*, a $25 million fee award).** As Judge Easterbrook noted above, no rational client would ever agree to such an arrangement. **This is why studies even of sophisticated corporate clients do not report any such practice among them when they hire lawyers on contingency, even in the biggest cases like patent litigation.** *See, e.g.*, David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 ALA.L.REV. 335, 360 (2012); Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions,* 89 FORDHAM L.REV. 1151, 1159-1163 (2021). In my opinion, courts should not force a fee arrangement on class members that they would never choose for themselves. *See* William B. Rubenstein, NEWBERG ON CLASS ACTIONS §13.40 (5th ed. 2020) ("The law requires the judge to act as a fiduciary" for class members).
>
> Some courts attuned to the dysfunctional incentives of awarding lower percentages for bigger recoveries (typically those in the Seventh Circuit) have ***tapered*** fee percentages downward on a ***marginal*** basis as the recovery becomes larger (*e.g.*, award 25% of the first $100 million, but 20% thereafter). *See, e.g., In re Synthroid*

I, 264 F.3d at 721. Although tapering will not pay lawyers bigger fees for recovering less like applying the lower percentage over the entire recovery can, it still undermines the lawyer's incentives. The lower the percentage the lawyer receives, the more inclined the lawyer is to try to settle a case early for less than the client would prefer. *See id.* ("Declining marginal percentages ... create declining marginal returns to legal work... This feature exacerbates the agency costs inherent in any percentage-of-recovery system"). This is especially true if counsel can redirect their efforts to other cases where the tapering will not yet apply. For example, if counsel believed that the court would award them only 20% once they hit $100 million but 25% before then, then counsel might redirect their time once they received a $100 million settlement offer to smaller cases where they can still return 25% on their time. This effect is quite plausible because the later dollars are usually the hardest ones to wring from defendants. Defendants are often happy to settle cheaply; it is difficult to get big bucks from them. *See* Jill E. Fisch, *Lawyers on the Auction Block: Evaluating the Selection of Class Counsel by Auction,* 102 COLUM.L.REV. 650, 678 (2002) ("The last dollars of recovery are generally the most costly to produce"). **It is a recipe for inadequate settlements to give lawyers lesser returns when effort is most needed. Indeed, for this reason many scholars prefer escalating marginal percentages.** *See* John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions,* 86 COLUM.L.REV. 669, 697 (1986) ("The most logical answer to this problem of premature settlement would be to base fees on a graduated, increasing percentage of the recovery formula – one that operates, much like the Internal Revenue Code, to award the plaintiff's attorney a marginally greater percentage of each defined increment of the recovery"). *Fisch, supra*, at 678. Yet, **published studies do not report sophisticated clients following this practice; they either use flat percentages or taper percentages upward based on procedural maturity instead of recovery amount.** *See* Fitzpatrick, *Fiduciary Judge's Guide, supra,* at 1160-1162. I believe this is because it is too difficult to identify the correct monetary inflection points at the outset of litigation. *See id.* at 1166. In my opinion, it is at least as hard for judges to set monetary inflection points as it is for clients. Thus, **in my opinion, like real clients, judges should either use flat percentages or**

> **percentages that taper upward based on procedural maturity.** *See id.* at 1169-1170. By contrast, it is the worst of both worlds to taper downward and to do so based on monetary inflection points.[20,21]

29. In *Hale v. State Farm,*[22] Professor Silver submitted a declaration challenging "the belief that judges reflexively adhere to the so-called

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[20] DECLARATION OF BRIAN T. FITZPATRICK, submitted in *In re: Blue Cross Blue Shield Antitrust Litigation,* MDL No. 2046 (N.D. Ala. signed Jan. 30, 2025) (submitted by the Hertz-Avis Objectors as Objectors' Exhibit B, ECF No. 258-2, filed June 6, 2025), at pp.19-22, ¶¶24-25 (cites and quotes cleaned up) (emphasis added). In that litigation, the Subscriber Track had reached a settlement of $2.65 billion with Blue Cross, against which a fee of 23.47% (plus reimbursement of litigation expenses) was awarded; a proposed settlement of $2.8 billion in the Provider Track has been preliminarily approved, under which class counsel would receive 25% of the settlement fund, (plus reimbursement of litigation expenses). *See Blue Cross Blue Shield Antitrust Litigation,* 85 F.4th 1070, 1086 (11th Cir. 2023), *and,* No.13-20000, 2024 WL 4982979 at *22 (N.D. Ala. Dec. 4, 2024).

[21] Assuming, *arguendo,* that the Court might be inclined to taper attorneys' fees slightly downward on the "mega-fund" portion of the recovery in this case, I would suggest that such adjustment only be applied to that portion of the settlement funds in excess of $1 billion. We have seen, over the past two decades, many settlements, (including this one), exceed the original $100 million "mega" mark by orders of magnitude greater. The *Deepwater Horizon* class recoveries, for example, exceeded $14 billion. In *Vioxx,* the settlement fund was $4.85 billion. The *Chinese Drywall Litigation* settlements were valued at $1.368 billion. The *Equifax Data Breach* class settlement was worth between $1.4 and $3.5 billion. The *3M Earplug Litigation* settlement was $6.01 billion. The *VW "Clean Diesel" Litigation* settlement was $10 billion. Monsanto has apparently paid at least $9 billion to settle *Roundup* claims. The *AAAF Litigation* settlements have so far exceeded $12.7 billion. And the *Opioids* settlements to date exceed $44 billion. Given the number and magnitude of these and other multi-billion-dollar recoveries, to the extent there is going to be a "mega-fund" demarcation, $1 billion seems to be a more appropriate benchmark than $100 million, which recoveries frankly now seem somewhat commonplace.

[22] *See Hale v. State Farm Mutual Automobile Insurance Company,* No. 12-0660, 2018 WL 6606079 at *11 (S.D. Ill. Dec. 16. 2018) (awarding **33⅓%** of the $250 million settlement fund).

'increase/decrease' rule – the rule that fee percentages must decline as recoveries rise."[23] His declaration sets forth a table of awards in so-called "mega-fund" cases, including three cases with recoveries similar to the class recoveries here:

Case	**Recovery (in Billions)**	**Fee Award**
In re TFT-LCD (Flat Panel) Antitrust Litig., 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013)	$1.08	28.60%
Allapattah Services, Inc. v. Exxon Corp., 454 F.Supp.2d 1185 (S.D. Fla. 2006)	$1.06	31.33%
In re: Urethane Antitrust Litig., No.04-1616, 2016 WL 4060156, at *4 (D. Kan. July 29, 2016)	$0.974	33.33%

30. More recently, in the *Real Estate Commission Antitrust Litigation,* class counsel, as in this case, reached a series of successive settlements with different defendants, which have so far totaled over $1 billion,[24] and the court (generally

[23] *See* DECLARATION OF PROFESSOR CHARLES SILVER, submitted in *Hale v. State Farm,* Case No. 3:12-cv-00660, Rec. Doc. 954-1 (S.D. Ill. signed Oct. 15, 2018, filed Oct. 16, 2018) at p.39.

[24] *See, e.g., Burnett v. National Association of Realtors,* No.19-00332, 2024 WL 2842222 at *5 (W.D. Mo. May 9, 2024) [ORDER, at ¶21] (over $900 million in total settlements at that time). By November of 2024, Class Counsel had, altogether, "obtained over $1 billion in proposed and approved settlements as well as significant practice change relief." ORDER, *Gibson v. National Association of Realtors,* No.23-00788, Rec. Doc. 530 (W.D. Mo. Nov. 4, 2024) at p.10, ¶22; ORDER, *Burnett v. National Association of Realtors,* No.19-00332, Rec. Doc. 1622 (W.D. Mo. Nov. 27, 2024) at p.10, ¶ 21.

declining to conduct a lodestar "cross-check") has consistently awarded **one-third** of the settlement funds.[25]

31. In my view, the issue has been complicated somewhat by the fact that courts and academics, in reviewing prior awards, have not always given sufficient regard to the important distinction between "true class actions" on the one hand, and aggregations of individual cases that are settled together, (whether as formally certified settlement class actions or as other "global" or aggregate type settlements), on the other.

32. While not always spelled out in class counsel or other common benefit fee decisions, fee awards tend to be much lower in cases in which most of the class members are also represented by individually-retained counsel, as the court is undoubtedly interested in attempting to fairly and equitably resolve potential

[25] *See Burnett v. National Association of Realtors,* No.19-00332, 2024 WL 2842222 at **14-17 (W.D. Mo. May 9, 2024) [ORDER, at ¶¶67-80, and particularly at ¶75]; ORDER, *Gibson v. National Association of Realtors*, No.23-00788, Rec. Doc. 530 (W.D. Mo. Nov. 4, 2024) at pp.50-57, ¶¶94-108, and particularly ¶102; ORDER, *Burnett v. National Association of Realtors,* No.19-00332, Rec. Doc. 1622 (W.D. Mo. Nov. 27, 2024) at pp.79-86, ¶¶171-185, and particularly ¶179 (noting that, in the Eighth Circuit, courts have frequently awarded attorneys' fees ranging up to **36%** in class actions generally, and that "prosecution of antitrust claims should result in a **one-third-of-the-fund** fee award") (*citing In re Peanut Farmers Antitrust Litigation,* No.19-00463, 2021 WL 9494033 at *6 (E.D. Va. Aug. 10, 2021) ("An award of **one-third** is also common in antitrust class actions"); *In re Urethane Antitrust Litigation,* No.04-1616, 2016 WL 4060156 at *5 (D. Kan. July 29, 2016) (awarding **one-third** of $835 million antitrust settlement, while noting that "a one-third fee is customary")).

conflicts between class and individually-retained counsel.[26] In a consumer class action such as this one, on the other hand, the only fee to be paid by the overwhelming majority of plaintiffs is the class counsel fee, which often reaches or approaches the customary 33-40% that plaintiffs would ordinarily agree to pay out of their recovery in the typical contractual contingent fee situation.

33. In the *BP Oil Spill Litigation*, for example, the economic and property damages claims were settled largely in a series of class actions. The total recovery in these classes exceeded $14 billion – a "mega-fund" by any standard. The reported percentage of class counsel fees awarded in that case would be in the single digits.[27] But that would ignore the fact that the class members were also paying 25% fees to their individually retained counsel. So the total attorneys' fees – if one were making an apples-to-apples comparison to the total that the class action attorneys would be earning in a "true class action" such as this one – were really equivalent to 29.3% of

[26] These considerations are reflected, for example, in the Flint water cases. *See generally In re Flint Water Cases*, 583 F.Supp.3d 911 (E.D. Mich. Feb. 4, 2022); *see also, e.g., In re Flint Water Cases*, 63 F.4th 486, 505 (6th Cir. 2023) ("The Fee Order caps attorneys' fees at 31.33% (including a combination of fees owed to independently retained counsel, common benefit fees owed to Plaintiffs' Counsel, and the global Common Benefit Assessment)").

[27] *See* ORDER AND REASONS, *Deepwater Horizon*, E.D. La. No.10-md-2179, Rec. Doc. 21849 (Jan. 31, 2016), *and* ORDER AND REASONS, *Deepwater Horizon*, E.D. La. No.10-md-2179, Rec. Doc. 22252 (Feb. 15, 2017), at p.47.

the class recovery in the case of the BP Class Settlements and 34.6% in the case of the Class Settlement with Halliburton and Transocean.[28]

34. Similarly, in *Vioxx*, the 6.5% that was awarded to Common Benefit Attorneys represented only 20% of the total thirty-two percent (32%) in attorneys' fees that were paid by the settling plaintiffs and earned by the attorneys collectively.[29]

35. Finally, in my thirty years of experience with percentage contingency fee contracts, I agree with the observations of Professor Fitzpatrick and Professor Schwartz that such contingency fee agreements are seldom graduated by percentage based on the dollar amount of gross recovery. Indeed, as a matter of legal ethics and professionalism, I have personally counselled against the use of "stepped" contracts. And, in my own personal experience, I can only recall a single set of fee agreements where the fee percentages were tapered as the gross recovery to the client increased.[30] Much more common, in my experience, are contingency fee contracts

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[28] The class fees in BP were paid by the Defendants, over and above the gross class settlements that were paid out to the members of the class, (and against which a capped 25% contractual contingency fee owed to individually retained counsel was applied).

[29] *See In re Vioxx*, 760 F.Supp.2d 640, 653-655 (E.D. La. 2010).

[30] In at least one of these two related cases: **(i)** we were replacing a previously hired law firm, and were asked to agree to the fee structure that had already been established; **(ii)** the retainer with prior counsel was a "blended" contract, in which some of their fees were paid on a guaranteed hourly basis; **(iii)** the client, to the best of my recollection, covered some of the expenses; and **(iv)** the fee percentages changed, not only based on the level of gross client recovery, but also based on the

in which the fee percentage is stepped or graduated based on the stage of the litigation at which the recovery is achieved, (*e.g.* 25% if settled prior to suit being filed, 33⅓% if settled after suit is filed but before the case is set for trial, 36% if settled after the case is set for trial but prior to trial, 42% if by judgment or settlement after the commencement of trial, and 45% on or after appeal).[31,32] Based on my discussions with prospective clients who have expressed reservations over a straight percentage, they seem primarily concerned about a perceived "windfall" to the

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stage of the litigation. (*see Deepwater Horizon,* MDL No. 2179, 2017 WL 2226077 (E.D. La. May 22, 2017)) I may have also entered into a contract where the contingent percentage might have changed based on the client's gross recovery, but, if so, that was a unique situation where I was being paid on a "blended" hourly/contingent basis, in a case where my client was both a plaintiff and a defendant, and two other law firms were also representing the same client at a substantial hourly rate.

[31] *See also, e.g.*, David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation,* 64 ALA.L.REV. 335, 360 (2012) ("The graduated rates typically set milestones such as 'through close of fact discovery,' 'through trial,' and 'through appeal,' and tied rates to recovery dates. As the case continued, the lawyer's percentage increased. Of the agreements reviewed for this Article that used graduated rates, the average percentage upon filing was 28% and the average through appeal was 40.2%").

[32] I am personally familiar with these types of contracts through my involvement and participation in various trial lawyer and bar associations, as well as situations where we are associated as co-counsel with a law firm that has already entered into one of these contracts with the client. I don't recall more than a handful (if indeed any) situations where I personally recommended or agreed to this type of arrangement.

lawyers where the case settles early, before a significant amount of time or expense is expended.[33]

The Timing of Settlement Approval, Fee Approval, and Claims Administration

36. It is common, in many class actions, for the court to approve and disburse attorneys' fees at the time of final approval, even while it may take additional time for class members to submit and/or for a special master or other claims administrator to evaluate and verify claims, to allocate settlement funds, and to disburse payments to members of the class.

37. At the same time, I have also been involved in class actions where an opt-out date is established, and a proposed settlement is considered and approved by

[33] *See also, e.g.*, Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 FORDHAM L.REV. 1151, 1159-1160 (2021) ("**The data on the contingent-fee arrangements clients choose in the marketplace strongly suggests that clients prefer to monitor against premature settlement** than to monitor the lawyer's lodestar. The most famous studies come from Herbert Kritzer, who surveyed lawyers who work on contingency in Wisconsin. Ninety-five percent of clients chose the percentage method. Most of the time, the agreements employed fixed percentages (most often one-third but occasionally one-fourth), but sometimes the agreements employed percentages that escalated as the litigation matured. None of the percentages escalated or deescalated with the size of the recovery except percentages that escalated for clients who already had a settlement offer when they hired the lawyer.... Although there is not much systematic data on the fee agreements sophisticated clients use in these areas, the data that exists all points to the same conclusion: sophisticated clients are just like unsophisticated ones. That is, they use the percentage method, either with fixed percentages or escalating percentages as litigation matures") (emphasis added).

the court as fair and adequate, ***before*** any fee petition is submitted by class counsel and considered or approved by the court.

38. In the *BP Oil Spill Litigation,* for example:

April 18, 2012	Class Settlement Agreements with BP[34]
October 1, 2012	BP Economic Class Settlement Opt-Out Date [35]
December 21, 2012	Approval of BP Economic Class Settlement[36]
July 21, 2016	Fee Petition submitted by Class Counsel[37]
August 25, 2016	Deadline for Objections to Fee Petition [38]
October 26, 2016	Approval of Aggregate Fee Petition[39]
October 24, 2017	Allocation and Disbursement of Class Counsel Fees [40]

[34] *See* ORDER, *In re Deepwater Horizon,* No.10-md-2179, Rec. Doc. 6279 (E.D. La. April 18, 2012) ("The BP Parties and the Plaintiffs Steering Committee, through Interim Class Counsel, have filed documents seeking approval of proposed settlements for the putative Economic/Property Damages Class and the putative Medical Benefits Class. (Rec. Docs. 6266, 6269, 6276 (Economic/Property); Rec. Docs. 6267, 6272, 6273 (Medical Benefits))").

[35] *See* PRELIMINARY APPROVAL ORDER, *In re Deepwater Horizon,* No.10-md-2179, Rec. Doc. 6418 (E.D. La. May 2, 2012) at p.40, ¶39.

[36] *Deepwater Horizon,* 910 F.Supp.2d 891 (E.D. La. 2012).

[37] *See* PETITION FOR REIMBURSEMENT OF EXPENSES AND COLLECTIVE COMMON BENEFIT FEE AWARD, *In re Deepwater Horizon,* No.10-md-2179, Rec. Doc. 21098 (E.D. La. July 21, 2016).

[38] PRE-TRIAL ORDER NO. 59, *In re Deepwater Horizon,* No.10-md-2179, Rec. Doc. 14863 (E.D. La. July 15, 2015), at p.10, ¶20.

[39] *See* ORDER & REASONS, *In re Deepwater Horizon,* No.10-md-2179, Rec. Doc. 21849 (E.D. La. Oct. 25, 2016).

[40] ORDER, *In re Deepwater Horizon,* No.10-md-2179, Rec. Doc. 23574 (E.D. La. Oct. 24, 2017).

December 10, 2020	Completion/Closure of Claims Process / Distribution[41]

39. It is also notable that, in *Vioxx*, the Court originally ordered a common benefit assessment of 3% (2% for fees and 1% for costs) with respect to some cases, 6% with respect to another group of federal court cases, and 4% with respect to a third group of state court cases. However, after a global settlement was reached, the court ultimately increased the PSC fees to 6.5% of all gross recoveries.[42]

40. These types of increases have been made in several other MDLs, including, for example, the *Fresenius Granuflo/Naturalyte* MDL[43] and the previous *Tylenol* MDL from 2013.[44]

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[41] *See* ORDER TO SHOW CAUSE [re: Closure of Cort-Supervised Settlement Program], *In re Deepwater Horizon,* No.10-md-2179, Rec. Doc. 26811 (E.D. La. Dec. 10, 2020).

[42] *In re Vioxx*, 760 F.Supp.2d 640, 643-644 and 658 (E.D. La. 2010). [As noted *supra*, the total fees paid by the overwhelming number of plaintiffs participating in the *Vioxx* Settlement was **32%**, when compensation paid to individually-retained counsel is also included. *Vioxx*, 760 F.Supp.2d at 653-655.]

[43] In *Granuflo,* the hold-back assessment for common benefit fees was increased from 9% to 11%. *See* CASE MANAGEMENT ORDER NO.14, *In re: Fresenius*, No.13-md-2428, Rec. Doc. 865 (D.Mass. Jan. 12, 2015), MOTION TO MODIFY CMO 14, *In re: Fresenius*, No.13-md-2428, Rec. Doc. 1765 (D.Mass. Aug. 8, 2016), and REVISED CASE MANAGEMENT ORDER NO. 14 (Modified as to Par. 38 and 47 Only), *In re: Fresenius*, No.13-md-2428, Rec. Doc. 1769 (Sept. 9, 2016).

[44] In *Tylenol*, the court initially established a common benefit hold-back assessment of 10% (8% for fees and 2% for costs), but this was increased to 19% after a global settlement was reached in 2017. *See* CASE MANAGEMENT ORDER NO.12, *In re: Tylenol*, No.13-md-02436, Rec. Doc. 54 (E.D.Pa. Aug. 26, 2013), MOTION AND MEMORANDUM TO MODIFY PRE-TRIAL ORDER NO.12, *In re: Tylenol*, No.13-md-02436, Rec. Doc. 434 (E.D.Pa. Feb. 10. 2017), ORDER, *In re: Tylenol*,

Some Observations Regarding the Lodestar "Cross-Check"

41. Although a few courts have seemed to infer a "lodestar"-type "cross-check" from the fourth *Ramey* Factor, it appears that the Sixth Circuit affords, and defers to, the District Court's discretion.[45] The advantages of the percentage-of-benefit method over the "lodestar" method in common fund cases have been widely articulated, both within the Sixth Circuit and elsewhere. Judge Battani, for example, previously observed that the percentage-of-the-fund method of awarding attorneys' fees "is preferred in this District because it conserves judicial resources and aligns the interests of class counsel and the class members."[46] Judge Berg, in 2019,

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No.13-md-02436, Rec. Doc. 435 (E.D.Pa. Feb. 21, 2017), and CASE MANAGEMENT ORDER NO.22, *In re: Tylenol,* No.13-md-02436, Rec. Doc. 440 (E.D.Pa. Feb. 22, 2017).

[45] *See, e.g., Dover v. Yanfeng US Automotive Interior Systems,* No. 20-11643, 2023 WL 2309762 at *5 (E.D. Mich. March 1, 2023) (citing *Moulton v. U.S. Steel Corp.,* 581 F.3d 344, 352 (6th Cir. 2009)) ("The Court has discretion to select the method of calculating fees in a case"); *Automotive Parts Antitrust Lit.,* No.12-md-2311, 2017 WL 3525415 at *1 (E.D. Mich. July 10, 2017) ("The Court has the discretion to select the appropriate method for calculating attorneys' fees 'in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them'") (quoting *Rawlings v. Prudential-Bache Properties,* 9 F.3d 513, 516 (6th Cir. 1993)); *see also, e.g., In re Cardinal Health Sec. Lit.,* 528 F. Supp. 2d 752, 760-761 (S.D. Ohio 2007) ("Neither the Sixth Circuit nor the PSLRA has established a controlling rule for calculating attorneys' fees in PSLRA cases. Instead, it is within the discretion of this Court 'to determine the appropriate method for calculating attorneys' fees….'") (quoting *Bowling v. Pfizer,* 102 F.3d 777, 779 (6th Cir. 1996)).

[46] *In re Automotive Parts Antitrust Lit.,* No.12-md-2311, 2017 WL 3525415 at *2 (E.D. Mich. July 10, 2017).

similarly noted that the percentage-of-recovery method was consistent with the trend in the Sixth Circuit. Citing *Rawlings v. Prudential-Bache*, he noted that: "The percentage of the fund method has a number of advantages: it is easy to calculate; it establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."[47]

42. Other courts within the Sixth Circuit have emphasized that: "When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." And further recognized that: "The percentage method is easy to calculate, it establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery, and it encourages early settlement."[48]

43. Professors Gilles and Friedman have also advocated against the use of a "cross-check" because it can have the effect of "capping" the class action's important (and in their view chief beneficial) deterrent effect.[49]

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[47] *Daoust v. Maru Restaurant*, No.17-13879, 2019 WL 2866490 at *5 (E.D. Mich. July 3, 2019) (citing *Rawlings v. Prudential-Bache Properties*, 9 F.3d 513, 516 (6th Cir. 1993)).

[48] *Chambers v. Continental Secret Service Bureau*, No.22-468, 2024 WL 4363161 at *8 (N.D. Ohio Sept. 30, 2024) (citing and quoting from *Rawlings v. Prudential-Bache Properties*, 9 F.3d 513, 516 (6th Cir. 1993)).

[49] *See* Myriam Gilles and Gary B. Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U.PA.L.REV. 103, 139-146 (Nov. 2006).

44. In my own personal experience, the lodestar "cross-check" is not particularly helpful, given the wide variations in the ways that both base rates and multipliers are often determined and applied. The percentage-of-benefit method is more straightforward, while avoiding a time-consuming and detailed review and evaluation of voluminous time records by the court.[50]

45. The cross-check analysis is also skewed by the fact that the approved rates and multipliers in these cross-check decisions are anchored, effectively, to the percentage-of-benefit fee that is requested. The court, in this regard, is not generally being asked to determine "***the***" reasonable rate or multiplier, or a reasonable ***range*** of rates and multipliers, or the ***highest*** reasonable rate or multiplier; the question for the court is simply whether percentage-of-benefit fee request is reasonable in light of the hours expended, the work performed, the risks assumed, and other relevant factors. In the *BP Oil Spill Litigation,* for example, BP agreed to pay a sum certain in common benefit fees well before it was known how many hours would ultimately be expended or the eventual size of the recovery / benefit / fund. Indeed, Judge

[50] *See, e.g.*, Herman, *Percentage-of-Benefit Fee Awards in Common Fund Cases,* 74 TUL.L.REV. 2033, 2038-2041 (June 2000); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268-1270 (D.C. Cir. 1993); THIRD CIRCUIT TASK FORCE, *Court Awarded Attorney Fees: Report of the Third Circuit Task Force,* 108 F.R.D. 237 (1985).

Barbier himself comments that "the fees sought here are not only reasonable, they are arguably below what class counsel could have reasonably requested."[51]

46. As noted by Professor Fitzpatrick, "the pure percentage method better aligns the interest of class counsel and the class than either the lodestar method or the percentage method with a lodestar crosscheck."[52]

47. To the extent, however, that a court might elect to apply a cross-check to the requested percentage, the lodestar-type methodology is generally applied in a "broad," "rough," "abbreviated," "streamlined" and "imprecise" way.[53] "The hours

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[51] *In re Deepwater Horizon,* MDL No. 2179, Rec. Doc. 21849 [2016 U.S.Dist.LEXIS 147378] (E.D. La. Oct. 25, 2016) at p.39.

[52] DECLARATION OF BRIAN T. FITZPATRICK, submitted in *In re Capital Once TCPA Litigation,* MDL No. 2416, Case No. 1:12-cv-10064, Rec. Doc. 270 (N.D. Ill. Nov. 18, 2014) p.13, ¶ 16; *see also,* pp.7-8, ¶11 ("As the Seventh Circuit explained with regard to the megafund practice, 'private parties would never contract for such an arrangement'"). *See also, e.g.*, Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?,* 158 U. PA. L. REV. 2043, 2065 (June 2010) ("Gilles and Friedman explain that using the lodestar cross-check effectively caps the amount of compensation class counsel can receive from a judgment, blunting the incentives for class counsel to achieve the largest possible award for the class. This, too, threatens the deterrence function of class actions insofar as attorneys no longer have the incentive to fight for judgments that force defendants to fully internalize the costs of the injuries they caused the class").

[53] *See generally* FOOTNOTE 50 *supra,* and, *e.g., Lumber Liquidators I,* 952 F.3d 471, 482 n.7 (4th Cir. 2020) (a so-called "lodestar cross-check" is the comparison of a calculation of attorney's fees using the percentage-of-recovery method to a "rough" or "imprecise" lodestar calculation); *In re Deepwater Horizon,* MDL No. 2179, Rec. Doc. 21849 [2016 U.S.Dist.LEXIS 147378] (E.D.La. Oct. 25, 2016) at p.30 ("the Court will perform an abbreviated lodestar analysis as a broad cross-check on the on the reasonableness of the fee arrived at by the percentage method") and at p.39 ("the loadstar cross-check is a streamlined process, avoiding the detailed analysis that goes into a traditional lodestar examination"); *In re Vioxx,*

documented by counsel need not be exhaustively scrutinized by the district court" the Second Circuit has noted. Rather, "the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case."[54]

48. When, as here, there are successive sets of class settlements with multiple defendants, it is sometimes suggested, either for lodestar "cross-check" and/or fee-allocation purposes, that the court should consider only those hours which are alleged to be specifically related to that particular defendant or settlement. In my experience, and for good reason, this approach has generally been rejected.

49. First and foremost, the purpose of the lodestar "cross-check" is not to attempt to compensate the attorneys for specific *hours*. The percentage-of-benefit approach, by definition, seeks to compensate the attorneys based on the ***benefit*** to the class. If the same hours also produced additional benefits to those same or other class members through additional judgments or settlements, additional compensation based on such *benefits* is (absent exceptional circumstances) directed.

50. Secondly, the arguments for disregarding certain hours generally imply a false syllogism, under which particular efforts or expenditures are undertaken only

760 F.Supp.2d 640, 652 (E.D. La. 2010) ("The lodestar analysis is not undertaken to calculate a specific fee, but only to provide a broad cross check on the reasonableness of the fee arrived at by the percentage method").

[54] *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (affirming an award in securities class action based on the lodestar method, as opposed to the percentage-of-benefit approach).

with respect to *either* this claim or defendant *or* that claim or defendant, whereas, in actuality, most of the efforts and expenditures undertaken in this type of litigation tend to directly and/or indirectly benefit ***all*** claims against *all* defendants.

51. Third, the law supports the notion that that the Court should evaluate and compensate hours that were reasonably necessary at the time they were expended, irrespective of whether, in hindsight, they can be directly traced to a particular benefit or result.[55]

52. Finally, as a matter of policy, the Lead Class Counsel and/or other common benefit attorneys are generally appointed by the court and/or otherwise asked to prosecute, protect, advance, defend, and/or otherwise pursue all actions, theories, and claims that have been reasonably stated by any of the suing plaintiffs – as well as tasks which are administrative in nature, for the benefit of all parties and/or for the court. If courts only reward common benefit time that is traced, in retrospect, to direct and concretely perceived benefits, when the next MDL or consolidated class

[55] *See, e.g.*, *In re Woerner*, 783 F.3d 266, 274 (5th Cir. 2015) (en banc) (reversing reduction of debtor attorney's fees under the Bankruptcy Code, which "explicitly contemplates compensation for attorneys whose services were reasonable when rendered but which ultimately may fail to produce an actual, material benefit. 'Litigation is a gamble, and a failed gamble can often produce a large net loss even if it was a good gamble when it was made.' *In re Taxman Clothing Co.*, 49 F.3d 310, 313 (7th Cir. 1995). The statute permits a court to compensate an attorney not only for activities that were 'necessary,' but also for good gambles—that is, services that were objectively reasonable at the time they were made—even when those gambles do not produce an 'identifiable, tangible, and material benefit.' What matters is that, prospectively, the choice to pursue a course of action was reasonable").

action comes along, the court-appointed attorneys and/or other volunteers will not be incentivized to undertake the more difficult or risky projects that are necessary to the collective interests of all plaintiffs, and/or in the furtherance of judicial economy.

53. Hence, in the *BP Oil Spill Litigation*, for example, the court did not, for lodestar "cross-check" purposes, make any distinction between hours arguably relating to the class settlements first reached with BP in 2012 and the class settlements reached later with Halliburton in September of 2014 and with Transocean in May of 2015.[56]

54. Similarly, in the *AFFF Litigation*, the court did not, for lodestar "cross-check" purposes, distinguish between hours arguably relating to the settlements with DuPont in June of 2023 and 3M in July of 2023 and the later settlements reached with Tyco in April 2024 and BASF in May 2024.[57]

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[56] *See generally* HERMAN-ROY DECLARATION, *In re Deepwater Horizon*, No.10-md-2179, Rec. Doc. 21098-1 (E.D.La. signed July 14, 2016, filed July 21, 2016) at pp.33-36 ¶¶117-124; *In re Deepwater Horizon*, No.10-2179, 2016 WL 6215974 at *19 (E.D.La. Oct. 25, 2016) (approving aggregate fee award re BP Settlements); ORDER AND REASONS, *In re Deepwater Horizon*, No.10-md-2179, Rec. Doc. 22252 (E.D.La. Feb. 15, 2017) (approving Halliburton and Transocean Class Settlements and Fees) at p.47; FEE AND COST COMMITTEE RECOMMENDATION, *In re Deepwater Horizon*, No.10-md-2179, Rec. Doc. 22628 (E.D.La. April 11, 2017) at p.8.

[57] *See* ORDER AND OPINION, *In re AFFF*, No.18-2873, Rec. Doc. 6408 (D.S.C. Nov. 22, 2024) (approving class counsel fees in connection with the Tyco and BASF class settlements) at p.10 ("The lodestar for the total cumulative work performed by Class Counsel, which includes the additional 50,182.7 hours worked by Class Counsel since the preliminary approval of the 3M and DuPont Settlements, ranges between $348,972,660.00 and $397,106,820.00. These figures are based on and a

55. The issue was explicitly and comprehensively addressed by Judge Greer in the *Southeastern Milk Antitrust Litigation*:

> It is true that the prior award of fees from the earlier settlement comes close to compensating counsel for their substantial investment of time and advanced expenses in the case, considering only their lodestar. Such an approach, however, is flawed from both a legal and policy perspective.
>
> Other courts have considered similar requests for an award of attorney's fees based on successive settlements with different defendants. In *Lobatz v. U.S. West Celluar of California, Inc.*, 222 F.3d 1142 (9th Cir. 2000), the Ninth Circuit considered and rejected a very similar claim. There, the objector argued that fees for a second settlement two years after the first should be awarded by reference to counsel's time spent on the case after the first settlement and not for the time spent on the entire litigation. The Ninth Circuit correctly disagreed and affirmed the district court's award of fees by considering all of the litigation effort, and cross-checking the fees requested with a lodestar multiplier, while subtracting the fees counsel had been paid from the first settlement. *Id.* at 1149–1150. *See also In re Insurance Brokerage Antitrust Litig.*, 282 F.R.D. 92 (D.N.J. March 30, 2012) (calculating attorney's fees from second settlement based on total lodestar for entire litigation). The same legal principles apply to Mr. Keiger's suggestion that 10-12 percent of the current settlement is a reasonable attorney's fee.
>
> The approach taken by Mr. Mareth and Mr. Keiger is likewise flawed from a policy perspective. First, if an award of fees for a successive settlement were limited and calculated only on the basis of time and expenses incurred since the preceding settlement, counsel would have little or no incentive to vigorously or efficiently pursue litigation or settlement of claims with non-settling defendants, or to seek non-monetary relief, even though the remaining defendants might be equally as

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blended hourly rate of $725-$825. This yields a multiplier range between 2.56 to 2.92 when considering the combined 8% aggregate from the DuPont, 3M, Tyco, and BASF actions").

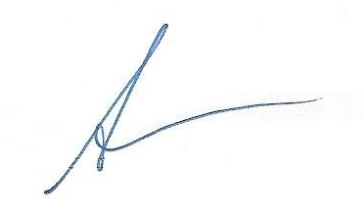
> culpable or have greater culpability. Secondly, such an approach would effectively eliminate consideration of the risk taken by counsel who take on these kind of cases where liability is hotly contested and the chances of recovery uncertain.[58]

56. Were the court to only consider attorney hours leading directly to the particular settlement or round of settlements in question, moreover, such an approach might similarly act as a disincentive for appointed class counsel to assist absent class members, the court, and/or others, in connection with post-approval settlement implementation and administration.

57. In my opinion, therefore, the Court should include all hours expended by Settlement Class Counsel since the commencement of the litigation in any lodestar "cross-check" analysis that might be performed.

I declare, under penalty of perjury, that the above and foregoing is true and correct to the best of my knowledge, information, and belief.

This 16th day of June, 2025.



Stephen J. Herman, Esq.

[58] *Southeastern Milk Antitrust Litigation,* No.08-1000, 2013 WL 2155387 at **6-7 (E.D. Tenn. May 17, 2013).

Addendum A

STEPHEN J. HERMAN

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New Orleans, Louisiana 70170
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Cell: (504) 232-5154
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PERSONAL

Born, in New Orleans, Louisiana, on November 22, 1968.
Married, in 1994, to the Honorable Karen Kirshbom Herman, Louisiana Fourth Circuit Court of Appeal; (divorced 2024).
Children: Alexandra Rae Herman, 26, and Harris Andrew Herman, 22.

EDUCATION

Isidore Newman School — **New Orleans, LA**
Board of Regents Scholar, 1987.
National Merit Letter of Commendation, 1986.

Dartmouth College — **Hanover, NH**
Bachelor of Arts, 1991.
GPA, Overall: 3.3; Major (English): 3.6.
Third Honor Group, 1989-1990.
Citation of Excellence in the Study of Milton, 1990.
Citation of Excellence in the Study of Shakespeare, 1990.
Winner of the Elenor Frost Playwriting Competition, 1991.

Tulane University School of Law — **New Orleans, LA**
Juris Doctor, *Magna Cum Laude,* 1994.
GPA: 3.52; Class Rank: Top Ten Percent.
Order of the Coif.

EMPLOYMENT

Fishman Haygood, LLP — **New Orleans, LA**
Special Counsel, 2024 -

Herman, Herman & Katz, LLC — **New Orleans, LA**
Associate, 1995-2001.
Partner, 2002-2023.

Herman Mathis Casey Kitchens & Gerel, LLP — **Atlanta, GA**
Associate, 1999-2001.
Partner, 2002-2023.

Justice Harry T. Lemmon, Louisiana Supreme Court — **New Orleans, LA**
Judicial Clerk, 1994-1995.

Democratic Senatorial Campaign Committee — **Washington, DC**
Paid Intern, 1989.

ACADEMIC POSITIONS

Tulane University Law School — **New Orleans, LA**
Adjunct Professor of Law, Advanced Civil Procedure: Complex Litigation, 2009 -

Loyola University School of Law — **New Orleans, LA**
Adjunct Professor, Advanced Torts Seminar on Class Actions, 2005 -

PROFESSIONAL APPOINTMENTS

American Law Institute, Member, 2023 -

Louisiana Attorney Disciplinary Board
Hearing Committee Member, 4th and 5th Circuits, 2008-2010.
Lawyer Chairman, Hearing Committee 56, 2010 -2013.

Addendum A

PROFESSIONAL APPOINTMENTS (cont.)

Southeast Louisiana Legal Services, Board of Directors, 2009-2011.

Louisiana State Law Institute, Code of Civil Procedure Committee, Sub-Committee on Multi-District Litigation, 2009.

Louisiana Attorney Fee Review Board, 2014-2015.

Louisiana Supreme Court Committee on Rules of Professional Conduct for Class Actions, Mass Torts and Complex Litigation, 2015-

LSBA Rules of Professional Conduct Committee, 2016 -

LSBA Receivership Panel, 2019 -

ADMISSIONS TO PRACTICE

State of Louisiana, Supreme Court and all inferior courts, 1994.

State of Arizona, 2023.

United States District Courts, Eastern, Western, and Middle Districts of Louisiana, 1995.

U.S. Fifth Circuit Court of Appeals, 1995.

U.S. Ninth Circuit Court of Appeals, 2004.

U.S. Second Circuit Court of Appeals, 2009.

U.S. Eleventh Circuit Court of Appeals, 2020.

U.S. Supreme Court, 2007.

BAR AND TRIAL LAWYER ASSOCIATIONS

International Academy of Trial Lawyers.
Fellow, 2015 -

American Bar Association, 1994 -
Patron Fellow, American Bar Foundation.
Member, Labor and Employment Section, 2004-2017.
Member, Tort Trial and Insurance Practice Section, 2014 -
Member, Litigation Section, 2015 -

American Association for Justice, (formerly ATLA), 1995 -
Executive Committee, 2011-2012.
Board of Governors, 2014 -
Distinguished Service Awards, 2021, 2023.
Harry Philo Award, 2018.
State Delegate, Louisiana, 2007-2013.
Chair, AAJ State Delegates, 2011-2012.
National College of Advocacy (NCA) Board of Trustees, 2011-2017, 2019-2024.
AAJ Endowment Board, 2010 -
Secretary, 2022.
Wiedemann-Wysocki Award, 2001, 2011.
Heavy Lifting Award, 2012.
Above and Beyond Award, 2019.
Amicus Curiae Committee, 2008 -
Chair, 2019 -
Chair, AI Task Force, 2023 -
Legal Affairs Committee, 2016 -
"Fellow" - National College of Advocacy.
Co-Chair, Gulf Oil Spill Litigation Group, 2010-2018.
Co-Chair, Chinese Drywall Litigation Group, 2009-2011.
Co-Chair, Dialysis Products Litigation Group, 2012.
ATLA Press Advisory Board, 1999-2002, 2007-2010.
AAJ PAC Eagle / M-Club.
Leaders' Forum Member.
Keyperson Committee, 1996 -
Constitutional Litigation Committee, 1997 -
Preemption Task Force, 2008 -
Rule 23 Working Group, 2014 -

BAR AND TRIAL LAWYER ASSOCIATIONS (cont.)

30(b)(6) Working Group, 2017 -
MDL Working Group, 2018 -
Member, Commercial Law Section, 1996 -
Member, Insurance Law Section, 1996 -
Member, Admiralty Section, 2010 -
Member, Product Liability Section, 2014 -
Member, Jury Bias Litigation Group, 2015 -
Member, Class Action Litigation Group / Section, 2009 -
Member, Tobacco Litigation Group, 1996 -
Member, Health Care Finance Litigation Group, 1998 -
Member, Electronic Discovery Litigation Group, 2004 -

Louisiana State Bar Association, 1994 -
Rules of Professional Conduct Committee, 2016 -
Chair, Class Action, Mass Tort and Complex Litigation Section, 2022 -
Fellow, Louisiana Bar Foundation.
Receivership Panel, 2019 -
Cuba Task Force, 2016-2017.

Louisiana Association for Justice, (formerly LTLA), 1995 -
President, 2014-2015.
Stalwart Award, 2017.
Executive Committee, 2011-2017.
Amicus Curiae Committee, 1999 -
Chair, 2017 -
Chair, Maritime Section, 2012-2013.
Chair, Law Office Technology Section, 2006-2007.
Board of Governors, 2004-2017.
Council of Directors, 2006-2017.
AAJ State Delegate, 2007-2013.
President's Advisory Board, 1996-1997, 1999-2000.
Constitutional Litigation Committee, 1996 -
Key Contacts Committee, 1997 -
Speakers Bureau, 1999 -

National Civil Justice Institute (formerly Pound Civil Justice Institute).
President, 2020-2021.
Board of Trustees, 2015-2022.

New Orleans Bar Association.
President, 2023-2024.
Board of Trustees, 2018-2025.
Inn of Court, 2019 -

Civil Justice Foundation.
President, 2003-2004.
Board of Trustees, 1999-2012.
President's Award, 2001.

Public Justice, (formerly TLPJ).
Executive Committee, 2015-2016, 2017-2018.
Board of Trustees, 2010-2022.
Emeritus Board, 2022 -
Membership Committee Co-Chair, 2008-2009.
Louisiana State Network Coordinator, 2000-2012.

Litigation Counsel of America.
Senior Fellow, 2016 -
Fellow, 2007-2016.

Federal Bar Association, New Orleans Chapter.
Board of Trustees, 2018-2023.
Fellow, Federal Bar Association Foundation.

Bar Association of the Fifth Federal Circuit.

Association of Professional Responsibility Lawyers.

BAR AND TRIAL LAWYER ASSOCIATIONS (cont.)

Attorney Information Exchange Group (AIEG) (2013-2023)

Academy of New Orleans Trial Lawyers.

National Association of Legal Fee Analysis (NALFA) (member 2018-2020)
Nation's Top Attorney Fee Experts: Assessing Fees in Class Actions, 2018.

Out-of-State Member of the **Mississippi Trial Lawyers Association**, **Consumer Attorneys of California**, the **Illinois Trial Lawyers Association**, the **Arkansas Trial Lawyers Association**, the **Arizona Association for Justice**, and the **Wyoming Trial Lawyers Association.**

Injury Board.

PUBLICATIONS

America and the Law: Challenges for the 21st Century, Austin & Winfield, 1998, (revised edition, Gravier House Press, 1999).

"Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent" Loyola Law Review, Vol. 64, p.1 (Spring 2018).*

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"HMO Litigation" Tort Litigation: Preparation and Tactics - 2000 and Beyond (West 2003).

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"Percentage Fee Awards in Common Fund Cases" Tulane Law Review Vol. 74, Nos. 5-6, p.2033 (June 2000).

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Contributing Author, "Lead Counsel Duties" Standards and Best Practices for Large and Mass Tort MDLs (Bolch Judicial Institute, Duke Law School) (September 2018).

Editorial Board, Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 (Duke Law School Center for Judicial Studies) (August 2018).

Contributing Author, "Procedures and Standards for Objections and Settlement of Objections Under Rule 23(e)(5)" Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 (Duke Law School Center for Judicial Studies) (August 2018).

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SPEECHES AND PAPERS

"Removal by Preemption Under the *Avco* Exception...." Litigation at Sunrise, 1996 ATLA Annual Convention, Boston, Massachusetts, July 23, 1996.

"Spoliation of Evidence and Related Topics" Yours to Choose Seminar, LTLA, New Orleans, Louisiana, December 28, 1996.

"The Use and Abuse of Privilege in Discovery" Litigation at Sunrise, 1998 ATLA Annual Convention, Washington D.C., July 1998, and Yours to Choose Seminar, LTLA, Baton Rouge, Louisiana, December 30, 1998.

"Force-Placed Insurance: Banks' Failure to Disclose" Last Chance Seminar, LTLA, New Orleans, Louisiana, December 18, 1998.

"HMO Litigation" Winter Ski Seminar, LTLA, Aspen, Colorado, March 6, 2000, and Last Chance Seminar, Winning With the Masters, LTLA, New Orleans, Louisiana, Dec. 14, 2000.

"Class Action Litigation Against HMOs" 2001 ATLA Annual Convention, Montreal, Canada, July 17, 2001.

"Managing Complex Litigation for the Louisiana Paralegal" Institute for Paralegal Education, New Orleans, Louisiana, July 9, 1999.

"Subrogation and Loss Recovery in Louisiana" National Business Institute, New Orleans, Louisiana, March 24, 2000.

"Can We 'Import' Better Law in Personal Injury Cases?" LTLA Spring CLE Retreat, Orlando, Florida, March 31, 2002.

"Case Evaluation and Other Pre-Filing Considerations" Tobacco Litigation Group, ATLA Annual Convention, Atlanta, Georgia, July 21, 2002.

"Proving Fraud in Tobacco Cases" ATLA Annual Convention, Atlanta, Georgia, July 21, 2002.

"Preparing and Taking Depositions for Use at Trial" STLA, New Orleans, Louisiana, February 28, 2003, and LTLA *A La Carte* Seminar, New Orleans, Louisiana, December 30, 2004.

"Trial and Post-Trial Motions: The Plaintiff's Perspective" National Business Institute, New Orleans, Louisiana, June 20, 2003.

"A Practical Framework for Class Action Litigation" ABA National Institute on Class Actions, San Francisco, California, Oct. 24, 2003, and Washington, D.C., Nov. 7, 2003.

"Identifying Spoliation of Evidence Issues and Related Issues Surrounding the Preservation and Discovery of Electronic Data" National Business Institute, New Orleans, LA, March 30, 2004, and Lafayette, LA, December 2, 2004.

"Civil Discovery Sanctions" Dealing with Destruction: Preservation and Spoliation of Electronic Data and Other Evidence in Louisiana, National Business Institute, New Orleans, LA, March 30, 2004, and Lafayette, LA, December 2, 2004.

"Plaintiff's Personal Injury from Start to Finish" National Business Institute, New Orleans, Louisiana, November 30, 2004, and New Orleans, Louisiana, June 30, 2006.

"Litigating the Class Action Suit in Louisiana" National Business Institute, New Orleans, Louisiana, January 7, 2005.

"Proposed Changes to the Federal Rules" Electronic Discovery Teleseminar, May 10, 2005, and, ATLA Annual Convention, Toronto, Canada, July 25, 2005.

"Recent Decisions Affecting E-Discovery" E-Discovery: Get Ready to Apply the New FRCP Changes, National Business Institute, New Orleans, Louisiana, December 20, 2006.

"E-Discovery Procedures and Compliance with the New Rules" E-Discovery: Get Ready to Apply the New FRCP Changes, National Business Institute, New Orleans, Louisiana, December 20, 2006.

"Conducting Forensic Analysis" E-Discovery: Get Ready to Apply the New FRCP Changes, National Business Institute, New Orleans, Louisiana, December 20, 2006.

"E-Discovery Under the New Rules" LTLA *A La Carte* Seminar, New Orleans, Louisiana, December 29, 2006.

"The E-Discovery Amendments to the Federal Rules: Panel Discussion - E-Discovery Practical Considerations" Federal Bar Association, New Orleans Chapter, February 2, 2007.

SPEECHES AND PAPERS (cont.)

"The E-Discovery Amendments to the Federal Rules: Panel Discussion - E-Discovery Ethics" Federal Bar Association, New Orleans Chapter, February 2, 2007.

"Class Action Reforms Post CAFA: Leverage the Reforms and Emerging Trends" Strafford Publications, CLE Teleconference, March 20, 2007.

"Electronic Evidence Symposium: New Rules, E-Discovery, Spoliation & Sanctions" New Orleans Bar Association, 2007 Bench Bar Conference, Point Clear, Alabama, March 30, 2007.

"Personal Injury Cases: Calculating and Proving Damages" National Business Institute, New Orleans, LA, October 16, 2007.

"Vioxx Litigation: History, Overview and Navigating Through the Settlement Process" AAJ Weekend With the Stars, New York, NY, December 8, 2007.

"E-Discovery: Applying the New FRCP Changes" National Business Institute, New Orleans, LA, Dec. 13, 2007.

"Rethinking Depositions: Discovery vs. Trial" LAJ CLE A La Carte, Baton Rouge, LA, December 27, 2007.

"E-Discovery: A Changing Landscape - Practical & Legal Perspectives" SeminarWeb, January 16, 2008.

"Approaches to Defense Expert Depositions - Technique & Style" AAJ Mid-Winter Convention, Puerto Rico, January 26, 2008.

"E-Discovery Workshop" National Disability Rights Network Annual Conference, New Orleans, LA, June 4, 2008.

"San Diego Fire Cases" Litigation at Sunrise, AAJ Annual Convention, Philadelphia, PA, July 16, 2008.

"E-Discovery: The Paralegal's Role and Ethical Considerations" AAJ Annual Convention, Philadelphia, PA, July 16, 2008.

"Preparation of Expert Testimony" National Business Institute, New Orleans, LA, October 30, 2008.

"Avoiding Common Ethical Pitfalls" Building Your Civil Trial Skills, National Business Institute, New Orleans, LA, Dec. 18, 2008.

"Documentary Evidence" Personal Injury Trials: Getting the Most out of Your Evidence, National Business Institute, New Orleans, LA, April 29, 2009.

"Electronic Evidence" Personal Injury Trials: Getting the Most out of Your Evidence, National Business Institute, New Orleans, LA, April 29, 2009.

"Ethics and Professionalism" AAJ Jazz Fest Seminar, New Orleans, LA, May 3, 2009.

"12 Lessons in Litigation" Web 2.0 and The Trial Bar, InjuryBoard.com, St. Petersburg, FL, June 5, 2009.

Moderator, Chinese Drywall Litigation Seminar, AAJ, New Orleans, Louisiana, August 11, 2009.

"Re-Thinking Experts" LAJ Post-Legislative Retreat, Carmel, CA, June 30, 2009, LAJ Last Chance Seminar, New Orleans, LA, December 10, 2009, and, LAJ CLE a la Carte, Baton Rouge, LA, December 30, 2009.

"Re-Thinking Experts" SeminarWeb! Live, December 17, 2009.

"Avoiding Common Ethical Pitfalls" Building Your Civil Trial Skills, National Business Institute, New Orleans, LA, Dec. 18, 2009.

"Evaluating Class Actions: How Do You Know When You Have One?" LAJ CLE a la Carte, New Orleans, LA, December 30, 2009.

"Predatory Lending and Sub-Prime Class Actions" AAJ Mid-Winter Convention, Maui, Hawaii, January 30, 2010.

"Coast Guard / MMS Hearings" Gulf Coast Oil Spill Symposium, LSBA, New Orleans, LA, May 25, 2010.

Moderator, Gulf Coast Oil Spill Litigation Teleseminar, AAJ, June 2, 2010.

"Chinese Drywall Litigation" LSBA Summer School for Lawyers, Sandestin, Florida, June 7, 2010.

"12 Lessons in Litigation" LAJ Post-Legislative Retreat, Carmel, CA, June 29, 2010, (invited) (submitted paper) (could not attend).

Moderator, Chinese Drywall Litigation Program, AAJ, Vancouver, British Columbia, July 14, 2010.

Status of BP Claims Facility and Escrow Fund, Gulf Coast Oil Spill Litigation Group Program. Vancouver, British Columbia, July 16. 2010.

Update on MDL Issues and Litigation in the Eastern District of Louisiana, Gulf Coast Oil Spill, Vancouver, British Columbia, July 16, 2010.

"Oil Pollution Act of 1990: An Overview" Gulf Coast Oil Spill Litigation Group Program. Vancouver, British Columbia, July 16. 2010.

Oil Spill Litigation Panel Discussion: Liability, Punitive Damages, Environmental Issues, etc., HB Litigation Conference, Miami, Florida, November 4, 2010.

"Class Actions and Mass Torts" Avoyelles Parish Bar Association, Marksville, Louisiana, November 5, 2010.

"Ethical Issues in Litigation" SeminarWeb! Live, November 8, 2010.

"Ethics and Professionalism" Last Chance Seminar, Louisiana Association for Justice, New Orleans, Louisiana, December 9, 2010.

SPEECHES AND PAPERS (cont.)

"Ethics and Professionalism" CLE a la Carte, Louisiana Association for Justice, New Orleans and Baton Rouge, Louisiana, December 30, 2010.

"Ethics and Professionalism in Litigation" AAJ Annual Convention, San Francisco, California, July 2013.

"The BP Oil / *Deepwater Horizon* Oil Spill Litigation: An Overview" Louisiana State Bar Association 20th Annual Admiralty Symposium, New Orleans, Louisiana - September 20, 2013.

Faculty, Essentials of Civil Litigation AAJ Trial Advocacy College, Tulane Law School, New Orleans, Louisiana, October 7-10, 2013.

"Multi-District Litigation" National Association of Women Judges, New Orleans, Louisiana, October 11, 2013.

"Ethical Questions Raised by the BP Oil Spill Litigation" 22nd Annual Admiralty and Maritime Law Conference, South Texas College of Law, Houston, Texas, October 18, 2013.

"BP / Deepwater Horizon Oil Spill Litigation" Louisiana Judicial Conference, Evidence and Procedure Seminar, New Orleans, Louisiana, February 20, 2014.

"Ethical and Professional Issues in MDLs" LSBA Annual MDL Conference, New Orleans, Louisiana, March 14, 2014.

"'Legalnomics': Lessons from the Field of Behavioral Economics About Perception and Decision-Making for Trial Lawyers" LAJ a la Carte, New Orleans and Baton Rouge, Louisiana, December 29-30, 2014, and Mississippi Association for Justice Annual Convention, June 12, 2015.

"When the Levee Breaks – Resolving Complex Claims: Lesson of the Deepwater Horizon, Katrina, and More" ABA Section of Litigation, Annual Conference, New Orleans, Louisiana, April 15, 2015.

"E-Discovery: It's Not Just for Big Civil Suits in Federal Court Anymore" NOBA Bench-Bar Conference, Point Clear, April 17, 2015.

"Ethical and Professional Questions in Mass Tort Cases" LSBA Summer School for Lawyers, Sandestin, Florida, June 10, 2015.

"Telling Our Story: The Trial Lawyer's Journey" LAJ Post-Legislative Retreat, Carmel, California, June 22, 2015, and AAJ Weekend with the Stars, New York, New York, December 12, 2015.

Faculty Moderator, Pound Civil Justice Institute 2015 Forum for State Appellate Court Judges, "Contracting Transparency: Public Courts, Privatizing Processes, and Democratic Practices" and "Judicial Transparency in the 21st Century", Montreal, Canada, July 11, 2015.

"Sidestepping Some of the *Daubert* Landmines" AAJ Annual Convention, Montreal, Canada, July 14, 2015.

"Unsettling Issues with Mass Tort Settlements" ABA Annual Convention, Chicago, Illinois, July 31, 2015.

Stephen J. Herman and James Bilsborrow, "Much Ado About Nothing: The So-Called 'No-Injury Class'" August 18, 2015.

"Class Actions, Mass Torts and Potential Changes to Rule 23" NOBA Bench-Bar Conference, Point Clear, March 10, 2016.

"Attacks on the Judiciary" LSBA Summer School for Lawyers and Judges, Sandestin, Florida, June 6, 2016.

"Procedure & Tactics in Complex Appellate Proceedings: A Case Study" Texas State Bar, Advanced Civil Appellate Practice, Austin, Texas, September 8, 2016.

"Ethics – Important Recent Developments that Impact Litigators on Both Sides of the 'V'" LSBA 23rd Annual Admiralty Symposium, New Orleans, Louisiana , September 16, 2013.

Duke Law Center for Judicial Studies MDL Conference, Panel 1: Extent of Co-Lead Counsel's and PSC's Fiduciary Responsibility to All Plaintiffs, Washington, DC, October 27, 2016.

"Federal State Coordination: Peacefully Co-existing in Parallel Universes" LSBA 16th Annual Class Action / Complex Litigation Symposium, New Orleans, Louisiana, November 11, 2016.

Moderator, "Pros/Cons of State MDLs: Complex Litigation Rules of Professional Responsibility" LSBA 16th Annual Class Action / Complex Litigation Symposium, New Orleans, Louisiana, November 11, 2016.

"Managing Complex Litigation" NOBA Masters of the Courtroom, New Orleans, Louisiana, December 15, 2016.

"Fool Me Once, Shame on You (and Other Thoughts on Professionalism)" NOBA Procrastinators' Program, New Orleans, Louisiana, December 28, 2016.

"A Conversation on Intergenerational Professionalism" NOBA Bench-Bar Conference, Point Clear, Alabama, April 2, 2017.

"Litigating the Disaster Case" ABA Business Section, New Orleans, Louisiana, April 6, 2017.

"Defense Perspective" AAJ Future of Class Actions Conference, Nashville, Tennessee, May 11, 2017.

"Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent" AAJ Mass Torts Best Practices Seminar, Boston, MA, July 21, 2017.

"Handling Complex Litigation" EDLA First Biennial Bench and Bar Conference, September 28, 2017.

SPEECHES AND PAPERS (cont.)

"Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent" LSBA 17th Annual Class Action/Complex Litigation Symposium, New Orleans, LA, November 10, 2017.

Faculty, AAJ Advanced Deposition College, New Orleans, LA, January 2018.

"Social Media as Evidence" LAJ / La. Judicial College Evidence & Procedure Seminar, New Orleans, Louisiana, March 16, 2018.

Duke Law Center for Judicial Studies MDL Conference, Panel 3: Standards in Determining Optimum Number of PSC Members and Amounts of Common Benefit Fund, Atlanta, Georgia, April 26, 2018.

"Emerging Issues in Civil Litigation" George Mason University Law & Economics Center 12th Annual Judicial Symposium on Civil Justice Issues, Arlington, Virginia, May 21, 2018.

Panel: Update on La. Supreme Court Committee on Ethical Rules in Complex Litigation and Multi-District Litigation, LSBA Summer School for Lawyers, Sandestin, Florida, June 5, 2018.

"Ethics of Class Action Settlements" AAJ Annual Convention, Denver, Colorado, July 8, 2018.

"Punitive Damages After *Batterton, Tabingo,* and *McBride*: What's Next?" LAJ High Stakes on High Seas, New Orleans, Louisiana, August 17, 2018, and LSBA 25th Annual Admiralty Symposium, New Orleans, Louisiana, September 14, 2018.

Program Coordinator / Moderator, LSBA Personal Injury Seminar, September 7, 2018.

Faculty, AAJ Mass Tort Deposition College, New Orleans, Louisiana, October 24-26, 2018.

"The 'Take No Prisoners' Deposition" AAJ Mass Tort Deposition College, New Orleans, Louisiana, October 24, 2018.

"So, You Settled the Case: Now What?" AAJ Class Action Seminar, New York, NY, December 6, 2018.

"Ethics" NOBA Procrastinators' Program, New Orleans, LA, December 19, 2018.

"Four Hot Spots to Avoid Legal Malpractice" AAJ Mid-Winter Convention, Miami, FL, February 5, 2019.

"Current Landscape of Punitive Damages under Maritime Law" ABA Admiralty and Maritime Law Conference, New Orleans, LA, March 23, 2019.

"Bet the Company Litigation: Are We Really Going to Trial?" LSBA Annual Convention, Sandestin, FL, June 3, 2019, and, New Orleans, LA, December 12, 2019.

"Why Knowing Admiralty Law is Important to Your Practice" Melvin Belli Seminar, San Diego, CA, July 26, 2019.

"Ethical Issues in Class Action Litigation" AAJ Annual Convention, San Diego, CA, July 28, 2019.

"Ethical Issues Facing Litigators" LSBA, Lafayette, LA, Sept. 5, 2019, and New Orleans, LA, Sept. 20, 2019.

"Layers of Lawyers in MDLs: Parsing the Complexities of Claimant Representation in Mass Tort MDLs" Lewis & Clark Symposium on Class Actions, Mass Torts, and MDLs: The Next 50 Years" Portland, Oregon, Nov. 1, 2019.

"Fee Disputes: Intersection of Ethical Rules and Contract Law" Avoyelles Parish Bar CLE, Marksville, LA, November 8, 2019.

"Thoughts on Professionalism" New Orleans Bar Association, Nov. 26, 2019.

"Ethics: Survey of Recent Cases and Advisory Opinions" New Orleans Bar Association, November 26, 2019, and, Louisiana State Bar Association, New Orleans, LA, Dec. 11, 2019.

Program Coordinator / Moderator, LSBA Personal Injury Seminar, December 4, 2019.

"Next Big Thing(s) – What Are the New Class Actions to Watch For?" AAJ Class Action Seminar, New York, NY, December 5, 2019.

"E-Discovery from the Plaintiff's View" New Orleans Bar Association, December 12, 2019.

"A Trial Lawyer's Journey" Winning With the Masters, LAJ, New Orleans, LA, December 12, 2019, and, Western Trial Lawyers Association, Jackson Hole, WY, March 6, 2020 (invited) *

"Legal Ethics in Maritime Cases" Admiralty Law Institute, Tulane University Law School, New Orleans, LA, March 13, 2020.

"Financing Litigation: Views from the Bench and Bar" NOBA Bench-Bar Conference, Point Clear, AL, March 22, 2020 (invited) *

"Bet the Company Litigation: Are We Really Going to Trial?" LSBA Annual Convention, Sandestin, FL, June 8, 2020 (invited) *

"Masters of Disaster: What 9/11, Hurricane Katrina, and Northern California Fires Taught Us That Can Help You with Your Case During and After the COVID Crisis" San Francisco Trial Lawyers Association, SeminarWeb, June 22, 2020.

"Ethical Issues Facing Litigators" Louisiana State Bar Association, New Orleans, LA, June 19, 2020 (invited) *

"Difficult Depositions: Ethical Issues and Strategies" AAJ Annual Convention, Washington, DC, July 14, 2020.

"Whether to Pursue an MDL, and, if so, Issues Affecting What Court to Recommend to the JPML" Baylor Law School Complex Litigation Program, August 4, 2020.

SPEECHES AND PAPERS (cont.)

"Plaintiff Perspective on Common Benefit Orders" Baylor Law School Complex Litigation Program, August 13, 2020.

"How to Get the Most out of Lay Witnesses" FBA Federal Practice Series, New Orleans, LA, August 20, 2020.

"Implications for Civil Litigation and the Courts in a Post-Pandemic World" COVID and the Courts Symposium, sponsored by the Civil Justice Research Initiative at Berkeley Law School and RAND, September 24, 2020.

"Case Management" Mass Tort MDL Certification Program, Bolch Judicial Institute, Duke University, Nov. 9, 2020.

"Ethics: Update of Recent Decisions" New Orleans Bar Association, Nov. 17, 2020.

"Thoughts on Professionalism" New Orleans Bar Association, Nov. 17, 2020.

"Evaluation, Preparation, Research and Background Checks on Plaintiff and Defense Experts" New Lawyers Bootcamp, AAJ, April 12, 2021.

"Difficult Depositions: Ethical Issues and Strategies" Arkansas Trial Lawyers Association, Little Rock, AR, April 31, 2021.

"Bet the Company Litigation: Are We Really Going to Trial?" LSBA Annual Convention, Sandestin, FL, June 6, 2021.

"What Will Be the New Normal?" AAJ Annual Convention, Las Vegas, NV, July 14, 2021.

"Where Are We With Punitive Damages?" LSBA Annual Admiralty Symposium, Sept. 17, 2021.

"Attorneys' Fees in Class Actions" Strafford Publications, October 14, 2021.

"Getting Older: How Perspective in Practicing Law Changes" InjuryBoard Summit, Dove Mountain, AZ, Nov. 5, 2021.

"*Daubert* Update" AAJ Mid-Winter Convention, Desert Springs, CA, Feb. 14, 2022.

FBA Civil Rights Program, Mock Appellate Argument in *Students for Fair Admissions v. Harvard College* case, February 22, 2022.

"Ethics Update" New Orleans Bar Association, Nov. 30, 2021.

"Professionalism: What Not to Do" New Orleans Bar Association, Nov. 30, 2021.

"Let's Try This Case!" So You Want to Be a Personal Injury Lawyer, LSBA, Dec. 14, 2021.

"Reflections on Getting Older: Changes in the Profession" New Orleans Bar Association, Dec. 23, 2021.

"The Trial Lawyer's Journey: Reflections on Changes in the Profession" Academy of New Orleans Trial Lawyers, Jan. 19, 2022.

"Should the Shipowners Act of 1851 be Repealed, Modified or Untouched?" Shipowners Limitation of Liability Symposium, Loyola Maritime Law Journal, New Orleans, LA, Feb. 18, 2022.

"Confidentiality Orders and Secrecy Agreements" Virtual Coffee Hour, Mass. Academy of Trial Lawyers, March 18, 2022.

"Litigation Management" Harris Martin MDL Conference: The Current Mass Tort Landscape – Infant Formula, Philips CPAP, Hernia Mesh, and More, New Olreans, LA, March 30, 2022.

"Witness Preparation" AAJ New Lawyers Boot Camp, Vail, CO, May 27, 2022.

"The Show Must Go On: Learning From Your Mistakes" AAJ New Lawyers Boot Camp, Vail, CO, May 28, 2022.

"Ethics Update" Mississippi Association of Justice Annual Convention, New Orleans, LA, June 23, 2022.

"Seller Liability" AAJ Annual Convention, Product Liability Section CLE, Seattle, WA, July 18, 2022.

"The Road Ahead: Recent Law on Trucking Cases - Updates from the Court" LAJ Fall Conference, Sept. 23, 2022.

"Finding the Right Balance Between Your Own Clients and the Greater Demands of the Profession" InjuryBoard Summit, Cliff House, Maine, October 24, 2022.

"Legal Ethics: Top Mistakes in Everyday Practice" FBA Webinar, November 9, 2022.

"Getting Older: Changes in the Profession" New Orleans Bar Association, December 9, 2022.

"Difficult Depositions: Ethics and Strategies" LAJ Last Chance, New Orleans, LA, December 10, 2022.

"Vetting and Preparing Your Expert to Survive *Daubert*" NOBA Masters of the Courtroom, New Orleans, LA, Dec. 15, 2022.

"A Trial Lawyer's Journey - Thoughts on the Profession" Tennessee Trial Lawyers Association, Jan. 14, 2023.

Howard Twiggs Memorial Lecture on Legal Professionalism, Phoenix, Arizona, Feb. 6, 2023.

Ethics Panel, "View on Financing Litigation", NOBA Bench-Bar Conference, Point Clear, AL, March 26, 2023.

Faculty, AAJ Deposition College, Washington, DC, April 13-15, 2023.

"Fee Issues in Class Actions" George Washington Law Conference on Resolving Mass Torts in Different Forums, Washington, DC, April 27, 2023.

SPEECHES AND PAPERS (cont.)

"What We Are Talking About When We Are Talking About 'Class Actions': Two Recent Examples: The Hard Rock Collapse and the Dean Nursing Home Cases" LSBA Summer School for Lawyers and Judges, Sandestin, FL, June 6, 2023.

"Settlement Considerations and Issues: Fee Charges, Experts Tied Up, and Failure to Produce Trial Package" AAJ Mass Torts Seminar, Philadelphia, Pennsylvania, July 14, 2023.

"Working Together: By Force and/or By Choice - The Challenges, Advantages and Disadvantages of Working with Other Firms" InjuryBoard Summit, Big Sky, Montana, October 14, 2023.

"Legal Ethics and Professionalism: A Survey of Recent Developments and Decisions" New Orleans Bar Association, November 9, 2023, and Last Chance CLE, Louisiana Association for Justice, New Orleans, Louisiana, December 7, 2023.

"Ethical Issues in Class Actions" American Association for Justice Webinar, December 5, 2023.

"Class Counsel Fee Awards: Navigating Increased Judicial Scrutiny" Strafford Webinars, January 11, 2024.

"Ethics for Using ChatGPT/AI in Your Practice" AAJ Mid-Winter Convention, Austin, Texas, February 12, 2024.

"*Deepwater Horizon* / BP Oil Spill Litigation" Joint Presentation of Tulane Law School and Tulane Business School, April 4, 2024.

"Judicial Independence: Lessons from the BP Oil Spill Litigation" ABOTA Southeast Chapter Conference, New Orleans, Louisiana, April 29, 2024, and Tennessee Trial Lawyers Association, New Orleans, Louisiana, January 18, 2025.

"Ethical Rules for Using Generative AI in Your Practice" Louisiana Association for Justice / SeminarWeb, May 14, 2024, Wyoming Trial Lawyers Association, Cody, Wyoming, June 14, 2024, and AAJ Annual Convention, Nashville, Tennessee, July 21, 2024.

"Artificial Intelligence, Judges, and Legal Ethics" NCJI Annual Forum for State Appellate Court Judges, Nashville, Tennessee, July 20, 2024.

"Ethical Issues in Class Actions" Class Action Section, AAJ Annual Convention, Nashville, Tennessee, July 21, 2024.

"Emerging Issues in Legal Ethics" LSBA / Gilsbar, New Orleans, Louisiana, September 13, 2024, and June 13, 2025 (invited).

Deposition Workshop (including "Deposition Basics", "Ethical Issues" and "Difficult Depositions: Prep and Strategies"), New Orleans Bar Association, November 6, 2024.

"Thoughts on Professionalism" New Orleans Bar Association, November 12, 2024.

"Marketing, Mentoring and Managing Information: What the ABA Has to Say about ListServs, Google Reviews, and Related Topics" LAJ Last Chance CLE, New Orleans, Louisiana, December 12, 2024.

"Latest on Products MDLs, and What's Next in This Area of the Law" NOBA Procrastinators Program, New Orleans, Louisiana, December 19, 2024.

"Litigation Financing and Its Ethical Implications" LSU Law Review Symposium on Class Actions, MDLs and Complex Litigation, Baton Rouge, Louisiana, February 7, 2025.

"Expert Witnesses in Complex Litigation and the 2023 Amendments to Rule 702" LSU Law Review Symposium on Class Actions, MDLs and Complex Litigation, Baton Rouge, Louisiana, February 7, 2025.

"Why Knowing Admiralty Law May Be Important to Your Practice" Western Trial Lawyers Association Ski Seminar, Jackson Hole, WY, February 27, 2025.

"Marketing, Mentoring and Managing Information: What the Rules Have to Say about ListServs, Google Reviews, and Related Topics" Mississippi Association for Justice Annual Convention, New Orleans, Louisiana, June 12, 2025 (invited).

"Ethical Compliance for Attorneys: Safeguarding Your Law License" myLawCLE Webinar, May 28, 2025, and "Maintaining Ethical Standards: Essential Strategies for Protecting Your License" LawPracticeCLE Webinar, July 10, 2025 (invited).

"How Should Liability be Distributed in the AI Value Chain?" IAPP AI Governance Conference, Boston, Massachusetts, September 18, 2025 (invited).

* Postponed or Cancelled Due to the Covid-19 Coronavirus Crisis.

REPORTED CASES

Alliance for Affordable Energy vs. New Orleans City Council,, No. 96-0700 (La. 7/2/96), 677 So.2d 424.

O'Reilly and Griffith vs. Brodie, et al and PMIC, 975 S.W.2d 57 (Tex. App. 4th Dist. - San Antonio 1998), *review denied,* (Aug. 25, 1998); and, 42 *ATLA Law Reporter* 264 (Sept. 1999).

Marchesani v. Pellerin-Milnor, 248 F.3d 423 (5th Cir. 2001), *and,* 269 F.3d 481 (5th Cir. 2001); and, *ATLA Law Reporter,* Vol. 46, p.240 (Sept. 2003), and *Louisiana Advocates* Vol.XVIII, No.4 (April 2003) p.14.

REPORTED CASES (cont.)

Scott v. American Tobacco, No. 01-2498 (La. 9/25/01), 795 So.2d 1176, *and,* No. 02-2449 (La. 11/15/02), 830 So.2d 294, *and,* No. 2004-2095 (La. App. 4th Cir. 2/7/07), 949 So.2d 1266, *writ denied,* 973 So.2d 740 (La. 2008), *cert. denied,* 128 S.Ct. 2908 (2008), *and, later proceeding,* No. 2009-0461 (La. App. 4th Cir. 4/23/2010), 36 So.3d 1046, *writ denied,* 44 So.3d 686 (La. 2010), *cert. denied,* 131 S.Ct. 3057 (2011).

Schultz v. Texaco Inc., 127 F.Supp.2d 443 (S.D.N.Y. 2001), *and,* 308 F.Supp.2d 289 (S.D.N.Y. 2004), *and,* 2009 WL 455163 (S.D.N.Y. Feb. 24, 2009).

Oubre / Orrill v. Louisiana Citizens Fair Plan, No. 09-0566 (La. App. 4th Cir. 12/09/09), 26 So.3d 994, *and,* No. 2009-0888 (La. App. 4th Cir. 4/21/2010), 38 So.3d 457, *writ denied,* 45 So.3d 1035 (La. 2010); *and,* No. 2011-0097 (La. 12/16/2011), 79 So.3d 987.

In re Oil Spill by the Oil Rig Deepwater Horizon, 808 F.Supp.2d 943 (E.D.La. 2011) ("B1 Order"); *and,* 910 F.Supp.2d 891 (E.D.La. 2012), *aff'd,* 739 F.3d 790 (5th Cir. 2014) ("*Deepwater Horizon II*"), *cert. denied,* 135 S.Ct. 754 (2014); 744 F.3d 370 (5th Cir. 2014) ("*Deepwater Horizon III*"); 785 F.3d 986 (5th Cir. 2015) ("*Rule 79 Decision*"); 785 F.3d 1003 (5th Cir. 2015) ("*Non-Profits Decision*"); 793 F.3d 479 (5th Cir. 2015) ("*Data Access Appeal*"); 858 F.3d 298 (5th Cir. 2017) ("*495 Appeal*"); *and,* 295 F.R.D. 112 (E.D.La. 2013) (approval of Medical Benefits Settlement); *and,* 21 F.Supp.3d 657 (E.D.La. 2014) ("Phase One Trial Findings and Conclusions").

In re Harrier Trust, No. 2018-1467 (La. 2/18/2019), 263 So.3d 884.

Frego v. Settlement Class Counsel, 16 F.4th 1181 (5th Cir. 2021).

Martin v. LCMC Health Holdings, Inc., No.23-411, 2023 WL 4540547 (E.D.La. July 5, 2023), *stay denied,* 2023 WL 5173791 (E.D.La. Aug. 11, 2023), *affirmed,* 101 F.4th 410 (5th Cir. 2024).

Dumas v. Angus Chemical, No. 97-2356 (La. 11/14/97), 702 So.2d 1386.

Sommers v. State Farm, No. 99-2586 (La. App. 4th Cir. 5/3/00), 764 So.2d 87.

Andrews v. TransUnion Corp., No. 2004-2158 (La. App. 4th Cir. 8/17/2005), 917 So.2d 463, *writ denied,* 926 So.2d 495 (La. 4/17/06), and MDL No. 1350; *Louisiana Advocates,* Vol.XXIV, No.5 (May 2009), p.14.

Alicea v. Activelaf, No.2016-1818 (La. 10/19/2016), 218 So.3d 1001 (and *Duhon v. Activelaf d/b/a SkyZone,* 2016 WL 6123820) (*amicus curiae*).

Maggio v. Parker, No.2017-1112 (La. 6/27/2018), 250 So.3d 874 (*amicus curiae*).

Martin v. Thomas, No.2021-1490 (La. 6/29/2022), 346 So.3d 238 (*amicus curiae*).

George v. Progressive Waste Solutions, No.2022-01068 (La. 12/9/22) (*amicus curiae*).

Wightman v. Ameritas Life Ins. Co., No.2022-00364 (La. 10/21/22), 351 So.3d 690 (*amicus curiae*).

Bulot v. Intracoastal Tubular, No. 00-2161 (La. 2/9/01), 778 So.2d 583 (*amicus curiae*).

Bratcher v. National Standard Life, 365 F.3d 408 (5th Cir. 2004), *cert. denied,* 125 S.Ct. 277 (2004).

Bauer v. Dean Morris, 2011 WL 3924963 (E.D.La. Sept. 7, 2011).

Schafer v. State Farm, 507 F.Supp.2d 587 (E.D.La. 2007), *and,* 2008 WL 131225 (E.D.La. Jan 10, 2008).

Moeckel v. Caremark Inc., 385 F.Supp.2d 668 (M.D. Tenn. 2005).

In re Managed Care Litigation, 150 F.Supp.2d 1330 (S.D.Fla. 2001).

Lakeland Anesthesia v. Aetna U.S. Healthcare, 2000 U.S. Dist LEXIS 8540 (E.D.La. June 15, 2000), *Andrews Managed Care Litigation Reporter,* Vol.I, Issue 13 (July 17, 2000) p.12.

Mays v. National Bank of Commerce, 1998 U.S. Dist. LEXIS 20698 (N.Dist. Miss. Nov. 20, 1998), *aff'd* No. 99-60167 (5th Cir. April 11, 2000).

Jones v. Hyatt, No. 94-2194 (La. App. 4th Cir. 9/25/96), 681 So.2d 381 (appeal counsel).

Delcambre v. Blood Systems, Inc., No. 2004-0561 (La. 1/19/05), 893 So.2d 23 (*amicus curiae*).

VERDICTS, DECISIONS, REPORTED SETTLEMENTS AND AWARDS

Scott v. American Tobacco, et al, Civil District Court for the Parish of Orleans, State of Louisiana, No. 96-8461, July 28, 2003, (Jury verdict in Phase I trial for class of Louisiana smokers finding tobacco industry liable for fraud, conspiracy, and intentional torts, and responsible for the establishment of a court-supervised medical monitoring and/or cessation program), and, May 21, 2004 (Jury verdict in Phase II in the amount of $591 Million for 10-year comprehensive court-supervised smoking cessation program), *aff'd, in part,* No. 2004-2095 (La. App. 4th Cir. 2/7/07) (upholding award of $279 Million fund to Class for 10-year cessation program), *on subsequent appeal,* No. 2009-0461 (La. App. 4th Cir. 4/23/2010), 36 So.3d 1046 (ordering Defendants to deposit $241 Million, plus interest, into

VERDICTS, DECISIONS, REPORTED SETTLEMENTS AND AWARDS (cont.)

the Registry of the Court), *writ denied,* 44 So.3d 686 (La. 2010), *cert. denied,* 131 S.Ct. 3057 (2011) (Member of Trial Team, Philip Morris Team, and co-Lead of Briefing Team).

In re Oil Spill by the Oil Rig *Deepwater Horizon*, 21 F.Supp.3d 657 (E.D.La. 2014) (Phase One Trial Findings & Conclusions that BP was guilty of gross negligence and reckless and willful misconduct) (Co-Liaison Counsel for Plaintiffs and member of the Trial Team).

In re Oil Spill by the Oil Rig *Deepwater Horizon,* 910 F.Supp.2d 891 (E.D.La. 2012), *aff'd,* 739 F.3d 790 (5th Cir. 2014), *rehearing en banc denied,* 756 F.3d 320 (5th Cir. 2014), *cert. denied,* 135 S.Ct. 734 (2014) (approving BP Economic & Property Damages Class Settlement), *and,* 295 F.R.D. 112 (E.D.La. 2013) (approving BP Medical Benefits Class Settlement) (Settlements in Excess of $12.9 Billion) (Co-Lead Class Counsel), *and,* No.10-2179, Rec. Doc. 22252 (E.D.La. Feb. 15, 2017), *aff'd,* 934 F.3d 434 (5th Cir. 2019) (approving Distribution Model for $1.25 Billion Halliburton/Transocean Class Settlements) (Co-Lead Class Counsel).

Hernandez v. Knauf, No.09-6050, 2010 WL 1710434, *In re Chinese-Manufactured Drywall Products Liability Litigation,* MDL No. 2047 (E.D.La. April 27, 2010) (awarding over $164,000 in remediation and other damages, plus interest, costs, and reasonable attorneys' fees, in first bellwether trial, holding that all drywall, insulation, entire electrical system, HVAC system and copper plumbing must be removed) (Co-Lead Trial Counsel).

In re Chinese-Manufactured Drywall Products Liability Litigation, 424 F.Supp.3d 456 (E.D.La. 2020) (approving class settlement of $248 Million against Chinese Manufacturers) (Settlement Class Counsel); (*see also,* Amorin v. Taishan, 861 Fed.Appx. 730 (11th Cir. 2021) (affirming common benefit fee award)); (*see also,* Frego v. Settlement Class Counsel, 16 F.4th 1181 (5th Cir. 2021) (dismissing appeal by individual classmembers)).

Marchesani v. Pellerin-Milnor, 248 F.3d 423 (5th Cir. 2001), *and,* 269 F.3d 481 (5th Cir. 2001), and, *Louisiana Advocates* Vol.XVIII, No.4 (April 2003) p.14, and *ATLA Law Reporter,* Vol. 46, p.240 (Sept. 2003) ($3.375 million settlement).

Turner v. Angelo Iafrate, et al, No. 596-274 (La. 24th JDC), *Louisiana Advocates,* Vol.XXI, No.10, p.15 (Oct. 2006), and, *AAJ Law Reporter,* Vol.L, No.6 (Aug. 2007) ($4.5 million settlement).

Niven v. Boston Old Colony, et al, 24th JDC, State of Louisiana, No.373-299, December 28, 1998, (judgment of $529,027.02 for plaintiff against La. DOTD - total damages $5,290,270.20), *rev'd,* No. 99-783 (La. App. 5th Cir. 1/25/2000).

Schultz v. Stoner, et al, 127 F.Supp.2d 443 (S.D.N.Y. 2001), *and,* 308 F.Supp.2d 289 (S.D.N.Y. 2004), *and,* 2009 WL 455163 (S.D.N.Y. Feb. 24, 2009) (summary judgment granted in favor of mis-classified employees' right to benefits under the Texaco pension plans).

Oubre v. Louisiana Citizens Fair Plan, No. 2011-0097 (La. 12/16/2011), 79 So.3d 987 (affirming class judgment of $92.8 Million).

Fairway v. McGowan Enterprises, Inc., No. 16-3782, Rec. Doc. 60 (E.D.La. March 20, 2018) (successfully resolving TCPA claims thru approved class settlement on behalf of Defendant, McGowan Enterprises).

In re: Vioxx Prod. Liab. Lit., MDL No. 1657 (E.D.La.), *Louisiana Advocates,* Vol.XXIII, No.1 (Jan. 2008) ($4.85 Billion Settlement Fund) (Co-Chair of Sales & Marketing Committee, Insurance Committee, Member of Drafting Team for PNC).

Andrews v. TransUnion Corp., No. 2004-2158 (La. App. 4th Cir. 8/17/2005), 917 So.2d 463, *writ denied,* 926 So.2d 495 (La. 4/17/06), and MDL No. 1350, *Louisiana Advocates,* Vol.XXIV, No.5 (May 2009), p.14 ($75 million settlement fund and significant additional in-kind relief).

DeGarmo v. Healthcare Recoveries, Inc., No. 5:94cv14 (N.D.W.Va. 2001), 45 *ATLA Law Reporter* 180 (June 2002), and *Louisiana Advocates,* Vol.XVI, No.9, p.10 (Sept. 2001) ($3 million settlement for class of policyholders for unlawful subrogation practices).

Galuzska v. Rosamond and GEICO, No.618-435 (La. 24th JDC), *Louisiana Advocates,* Vol.XXIII, No.6 (June 2008) ($925,000 settlement in auto case).

Marberry v. Sears, 15th JDC, State of Louisiana, No.96-3244, December 7, 1998, (judgment of $195,054.96 for plaintiff).

Kettles v. Hartford Life, 1998 U.S. Dist. LEXIS 12899 (E.D.La. Aug. 14, 1998) (summary judgment for plaintiff awarding over $80,000 in disability benefits).

Homespire v. Gold Star, 2024 WL 1541270 (M.D.La. April 9, 2024) and Rec. Doc. 190, No.21-306 (M.D.La. Sept. 26, 2024) (dismissing claims and then the entire case on summary judgment, on behalf of Defendant, Gold Star Financial).

EXPERT TESTIMONY, INDEPENDENT INVESTIGATION, AND SPECIAL MASTER SERVICES

Mitchell v. Freese, Civil Action No. 61C11:16-CV-00023, Circuit Court, Rankin County, Mississippi (report August 24, 2017) (testimony, arbitration proceeding, November 15, 2017) (ethical and professional duties to clients and co-counsel in mass tort cases).

U.S. ex. rel. Boogaerts v. Vascular Access Centers, No. 17-2786, United States District Court for the Eastern District of Louisiana (declaration submitted on November 2, 2018 in support of fee petition for prevailing relator in *qui tam* case).

Holmes v. Pigg, No. 2007-2803, Civil District Court, Parish of Orleans, State of Louisiana (deposition September 20, 2011) (legal malpractice liability arising out of an ERISA case).

EXPERT TESTIMONY, INDEPENDENT INVESTIGATION, AND SPECIAL MASTER SERVICES (cont.)

Bayou Corne Sinkhole Litigation: *LaBarre v. Occidental,* No.33796, 23rd Judicial District Court, State of Louisiana, (report July 7, 2020 in support of AIG's Reconventional Demand on Texas Brine's claim for reimbursement of costs and attorneys' fees, and report August 10, 2020 relating to Texas Brine's Third-Party claims for costs and fees against Zurich and AIG) (deposition June 29, 2021) (affidavit July 17, 2021) (tendered, accepted, and testified as expert in complex litigation and professional ethics, including the submission, review and approval of litigation expenses and fees, April 27, 2022); *Pontchartrain Natural Gas, et al v. Texas Brine,* No.34,265, 23rd Judicial District Court, State of Louisiana, (report May 10, 2023 relating to Texas Brine's third-party claims for costs and attorneys' fees against AIG) (deposition June 27, 2023); *LaBarre* (report April 12, 2024 in support of Zurich's Opposition to Texas Brine's Motion to Quantify Attorneys' Fees) (deposition April 17, 2024) (tendered, accepted, and testified as expert in complex litigation and professional ethics, including the submission, review and approval of litigation expenses and fees, April 24, 2024); *LaBarre* (report June 21, 2024, relating to Texas Brine's claims for costs and fees relating to Arbitration, Document Review, and post-2019 *LaBarre* and *Marchand* invoices).

Cressy v. Lewis, No. 2017-2704, Civil District Court, Parish of Orleans, State of Louisiana (report October 14, 2019) (alleged malpractice liability in product liability case).

Hampton v. Hampton, No. 775-881, 24th Judicial District Court, State of Louisiana (preliminary report of questions and impressions re fee request of adversary party).

Cantu v. Gray Ins. Co., No.745-245, 24th Judicial District Court, State of Louisiana (report submitted Jan. 15, 2021 in fee dispute between former counsel and subsequent counsel for plaintiff on intervention) (deposition Jan. 22, 2021).

PG&E Fire Victims Trust, Bankruptcy Case No. 19-30088 (declaration submitted on February 15, 2021 in support of reimbursement of attorneys' fees to Fire Victim Trust Claimants represented by Singleton Schreiber McKenzie & Scott, LLP).

Roundup Products Liability Litigation, MDL No. 2741 (N.D. Cal.) (declaration submitted in opposition to Proposed *Ramirez* Class Settlement) [Rec. Doc. 12682-6] (Feb. 25, 2021).

Curley v. Andrews, No.19-2102, Court of Common Pleas, Allegheny County, Pennsylvania (report submitted on May 24, 2021 in legal malpractice case).

Crosby v. Waits Emmett Popp & Teich, No. 2019-1609, Civil District Court for the Parish of Orleans, State of Louisiana (report submitted on June 11, 2021 in legal malpractice case) (deposition October 15, 2021) (affidavit Nov. 12, 2021) (testimony at hearing on exception, Nov. 7, 2022, and on Daubert motions, Sept. 22, 2023 (qualified by Court on standard of care)).

Gangi Shrimp Company vs. Michael A. Britt, et al, No.771-620, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana (report submitted on August 9, 2021 in legal and accounting malpractice case).

Anderson v. Bob Dean Jr., et al, No.820-839, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana (affidavit in support of objectors' opposition to proposed class settlement, Sept. 5, 2022).

Foreman v. Whitmore, et al, No.19-09407, Civil District Court for the Parish of Orleans, State of Louisiana (report submitted January 5, 2023 on behalf of defendants in legal malpractice claim arising out of underlying auto accident case).

Rogers v. Bivalacqua, et al, No.2019-686, Civil District Court for the Parish of Orleans, State of Louisiana (affidavit and report May 10, 2023 on behalf of plaintiff in legal malpractice case arising out of business transaction).

In re Reilly-Benton Bankruptcy, No.17-12870, United States Bankruptcy Court for the Eastern District of Louisiana (declaration May 10, 2023 on behalf of asbestos victim creditors regarding the sufficiency of notice of proposed insurance settlement).

In re Aqueous Film-Forming Foam ("PFAS"), MDL No. 2873, No.18-02873, Rec. Doc. 3795-10 (D.S.C. signed Oct. 13, 2023, filed Oct. 15, 2023) (declaration in support of class counsel / common benefit fees in connection with DuPont Class Settlement), and Rec. Doc. 4269-12 (D.S.C. signed Nov. 30, 2023, filed Dec. 18, 2023, in connection with 3M Settlement), and Rec. Doc. 5379-10 (D.S.C. signed July 17, 2024, filed July 22, 2024, in connection with Tyco and BASF Settlements).[1]

Special Master, retained by plaintiffs' counsel to review litigation expenses and to allocate settlement proceeds to 589 plaintiffs from $19.1 million aggregate settlement in *Addison v. Louisiana Regional Landfill Co.,* No.19-11133 (E.D.La.) (2024-2025).

Independent Counsel Investigation, for the Jefferson Parish Ethics & Compliance Commission, regarding the Jefferson Parish Inspector General (March 17, 2025).

In re Chevrolet Bolt EV Battery Litigation, No.20-13256, Rec. Doc. 180-2 (E.D.Mich. Dec. 20, 2024) and Rec. Doc. 188-1 (signed Feb. 13, 2025, filed Feb. 14, 2025) (declaration in support of class counsel fees).

[1] *See* ORDER AND OPINION, *In re AFFF,* No.18-2873, Rec. Doc. 4885 (D.S.C. April 23, 2024) (3M and DuPont) and Rec. Doc. 6408 (D.S.C. Nov. 22, 2024) (Tyco and BASF) (approving common benefit fees as requested).

OTHER ACTIVITIES, APPEARANCES, APPOINTMENTS, RECOGNITION, AND AWARDS

A/V Rated, Martindale-Hubbell.

Finalist, Trial Lawyer of the Year Award, TLPJ, 2005.

Leadership in the Law Recipient, *New Orleans CityBusiness,* 2010, 2017, 2018.
Admitted to the Hall of Fame, 2018.

Louisiana Appleseed, Board of Trustees, 2018-2023.

Appointed Plaintiffs' Co-Liaison Counsel / Co-Lead Class Counsel, *In re: Deepwater Horizon,*
MDL No. 2179, Civil Action No. 2:10-md-02179, USDC for the Eastern District of Louisiana.

Appointed to the Plaintiffs' Steering Committee, *In re: Express Scripts Pharmacy Benefits Management Litigation,*
MDL No. 1672, Civil Action No. 4:05-md-01672-SNL, USDC for the Eastern District of Missouri.

Appointed to the Plaintiffs' Executive Committee, *In re: Cox Set-Top Box Antitrust Litigation,*
MDL No. 2048, Civil Action No. 5:09-ml-02048-C, USDC for the Western District of Oklahoma.

Appointed to the Plaintiffs' Executive Committee, *In re: Budeprion XL Marketing and Sales Litigation,*
MDL No. 2107, Civil Action No. 09-md-2107, USDC for the Eastern District of Pennsylvania.

Appointed Settlement Class Counsel, *In re Chinese Drywall Litigation,* MDL No. 2047
(re Class Settlement with Taishan Defendants, 2019).

Appointed to the Provider Track Plaintiffs' Steering Committee, *In Re: Change Healthcare Customer Data Security Breach Litigation,*
MDL No. 3108, Civil Action No. 0:24-md-03108, USDC for the District of Minnesota.

Top 500 Lawyers in America, *Lawdragon,* 2013, 2018, 2020.
500 Leading Plaintiff Consumer Lawyers, 2021.

Best Lawyers in America, 2012 -
Recognized in areas of Appellate Practice, Mass Tort/Class Actions, Product Liability, and Personal Injury Litigation as of 2023.
"Lawyer of the Year" in the area of Product Liability Litigation, in New Orleans, by Best Lawyers, 2016.
"Lawyer of the Year" in the areas of Product Liability Litigation and Personal Injury Litigation, in New Orleans, by Best Lawyers, 2023.

"Superlawyer" in the area of Class Actions and Mass Torts, 2007 -

Top 100 Trial Lawyers, National Trial Lawyers Association, 2008 -

Million Dollar Advocates Forum.

Curator *Ad Hoc, Boomco LLC vs. Ambassador Inn Properties, et al,* CDC No. 98-21208, Parish of Orleans, State of Louisiana.

Receiver, *In re P. Michael Doherty Breeden, III,* No.2020-OB-00315, appointed by Chief Judge, CDC, Parish of Orleans.

Receiver, *In re LaRue Haigler, III,* No.2023-B-00446, appointed by Chief Judge, CDC, Parish of Orleans.

Chair, "Juries, Voir Dire, *Batson,* and Beyond: Achieving Fairness in Civil Jury Trials" Pound Institute for Civil Justice, July 17, 2021.

Chair, LSBA Complex Litigation Symposium, New Orleans, Louisiana, Nov. 8, 2024,
and Nov. 7, 2025 (invited).

Host Committee, Fifth Circuit Judicial Conference, New Orleans, Louisiana, April 19-22, 1998.

Moderator, "Dangerous Secrets: Confronting Confidentiality in Our Public Courts" sponsored by AAJ and the Pound Institute,
October 13, 2020.

Moderator, "Preparing and Trying a Case in a Covid and Tribal Environment", AAJ Annual Convention, Las Vegas, NV, July 14, 2021.

Moderator, "Winning With the Masters" Last Chance Seminar, LTLA, New Orleans, Louisiana, December 19, 1998.

Moderator, "Winning With the Masters" Last Chance Seminar, LTLA, New Orleans, Louisiana, December 14, 2000.

Welcome, ATLA Jazz Fest Seminar, New Orleans, Louisiana, May 1, 2003.

Guest Appearance, *It's the Law* "Challenges for the 21st Century" New Orleans Bar Association, March 15, 1999.

Guest Appearance, *Bev Smith Show* "Is Tobacco Litigation Good For America?" American Urban Radio Network, June 8, 2000;
The Morning Show "Are Tobacco Lawsuits Good For America?" KRLV Radio, June 9, 2000;
On the Air with Mike Bung "Tobacco Litigation and Challenges for the 21st Century" 1540 AM, June 15, 2000.

Guest Lecturer, "The Nuremberg Trials" Touro Synagogue Religious School, April 2003.

Judge, ATLA Student Trial Advocacy Competition, Finals, New Orleans, Louisiana, March 26, 1999.

Associate Member, Louisiana Injured Employees Union Education Fund, 1999-2003.

Board of Directors, Touro Synagogue Brotherhood, 1998-2000.

OTHER ACTIVITIES, APPEARANCES, APPOINTMENTS, RECOGNITION, AND AWARDS (cont.)

Top Individual Fundraiser, Susan G. Komen Race for the Cure, Oct. 25, 2014.

Advocacy Award, Breastoration, (Cancer Association of Greater New Orleans), 2019.

Member, Mystery Writers Association, 1999-2019.

Author of three self-published novels: The Gordian Knot (Gravier House Press 1998), The Sign of Four (Gravier House Press 1998), and A Day in the Life of Timothy Stone (Gravier House Press 1999), a fourth book, called Broken Lighthouse (Gravier House Press 2021), and a two-act play, Shots Across the Bow (Gravier House Press 2021), as well as non-traditional "history" called Parables of Joy (from *Leave It to Psmith!* by P.G. Wodehouse) (Gravier House Press 2022).

Maintains Website / Blawg regarding Legal, Literary and Other Issues, including updates of What's New in the Courts, including What's New in Products Liability, Class Actions, Legal Ethics and Professionalism, ERISA Litigation, and Electronic Discovery and Spoliation, at: www.gravierhouse.com.

Addendum B

Documents Reviewed and Considered

1. Docket for *In re Automotive Parts Antitrust Litigation,* Case No. 2:12-md-02311-SFC-RSW, pending in the USDC for the Eastern District of Michigan

2. Docket for *In re Automotive Parts Antitrust Litigation,* Case No. 2:13-cv-01103-SFC-RSW, pending in the USDC for the Eastern District of Michigan

3. Settlement Class Counsel's Motion for an Award of Attorneys' Fees in Connection with the Rounds 1-5 Settlements, No.13-1103, ECF No. 249 (E.D.Mich. filed May 9, 2025), including:
   - Appendix A: Detailed Description of How Settlement Class Counsel Calculated the Requested Fee Amount and its Allocation Across Each of the Settlement Rounds
   - Appendix B: End Payor Plaintiff Settlements
   - Appendix C: Multipliers Over 5.0 in Large Class Actions
   - Appendix D: Awards of 30% or More in Mega-Fund Class Actions
   - Joint Declaration by William V. Reiss, Marc M. Seltzer and Elizabeth T. Castillo
   - Declaration of Marc M. Seltzer
   - Declaration of Elzabeth T. Castillo
   - Declaration of William V. Reiss

4. Overland West Ex Ante Motion for Partial Extension of Time, No.13-1103, ECF No. 253 (E.D. Mich. filed May 20, 2025)

5. 218 Large Claim Objectors' Opposition, No.13-1103, ECF No. 257 (E.D. Mich. filed June 6, 2025), including:
   - Index of Exhibits, ECF No. 257-1
   - List of Claimants, ECF No. 257-2
   - *Waid v. Snyder* (*In re Flint Water Cases*), 63 F.4th 486 (6th Cir. 2023) [ECF No. 257-3]
   - *Lyngaas v. Curaden AG,* No.17-10910, 2020 U.S.Dist.LEXIS 161193 (E.D.Mich. Sept. 3, 2020) [ECF No. 257-4]
   - *Fournier v. PFS Invs.,* 997 F.Supp. 828 (E.D.Mich. Oct. 30, 1997) [ECF No. 257-5]

6. Hertz-Avis Objectors' Opposition, No.13-1103, ECF No. 258 (E.D. Mich. filed June 6, 2025), including:
   - Declaration of the Hertz Corporation [ECF No. 258-1]
   - Declaration of Avis-Budget Group, Inc. [ECF No. 258-1]
   - Declaration of Element Fleet Management Corp. [ECF No. 258-1]

- Declaration of Brian T. Fitzpatrick, submitted in *In re: Blue Cross Blue Shield Antitrust Litigation,* MDL No. 2046 (N.D.Ala. signed Jan. 30, 2025) [ECF No. 258-2], including:
  - Fitzpatrick, *An Empirical Study of Class Action Settlements and Fee Awards,* 7 J. Empirical Legal Studies 811, 834 (2010) [ECF No. 258-2]
- Vega Economics Analysis (dated June 5, 2025) [ECF No. 258-3]

7. Overland West and Booton's Objection, No.13-1103, ECF No. 260 (E.D.Mich. filed June 6, 2025), including:
   - Declaration of Jeff Lucas [ECF No. 260-1]
   - Declaration of Cliff Booton [ECF No. 260-2]
   - Declaration of M. Frank Bednarz [ECF No. 260-3]

8. *Automotive Parts Antitrust Litig.*, No.12-md-2311, 2017 WL 3525415 (E.D. Mich. July 10, 2017)

9. *Automotive Parts Antitrust Litig.*, 951 F.3d 377 (6th Cir. 2020)
10. *Auto. Parts Antitrust Litig.,* No.12-md-02311, 2017 WL 11441039 (E.D. Mich. Sept. 28, 2017)
11. *Auto. Parts Antitrust Litig.,* No.16-cv-04003, 2017 WL 10808851 (E.D. Mich. Nov. 2, 2017)
12. *Automotive Parts Antitrust Litig.*, No.12-md-2311, 2017 WL 3499291 (E.D. Mich. July 10, 2017)
13. *In re: Wire Harnesses,* No.17-1967, 2017 WL 5664917 (6th Cir. Sept. 15, 2017)
14. *Auto. Parts Antitrust Litig.,* 12-md-02311, 2013 WL 2456610 (E.D. Mich. June 6, 2013)
15. *Automotive Parts Antitrust Litig.*, 997 F.3d 677 (6th Cir. 2021)
16. *Automotive Parts Antitrust Litig.*, 33 F.3d 894 (6th Cir. 2022)

17. ORDER, *Gibson v. National Association of Realtors,* No.23-00788, Rec. Doc. 530 (W.D.Mo. Nov. 4, 2024)
18. ORDER, *Burnett v. National Association of Realtors,* No.19-00332, Rec. Doc. 1622 (W.D.Mo. Nov. 27, 2024)

19. Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions,* 89 FORDHAM L.REV. 1151 (2021)

20. David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation,* 64 ALA.L.REV. 335 (2012)

21. Class Settlement Notice for Round Five (available at: www.autopartsclass.com/docs/Round_5/Long%20Form%20Notice.pdf as of June 16, 2025)

22. Pleadings and Orders from *In re: Tylenol (Acetaminophen) Marketing, Sales Practices and Products Liability Litigation,* MDL No. 2436, Case No. 2:13-md-02436, pending in the Eastern District of Pennsylvania, including:
    - CASE MANAGEMENT ORDER NO.12, Rec. Doc. 54 (Aug. 26, 2013)
    - MOTION AND MEMORANDUM TO MODIFY PRE-TRIAL ORDER NO.12, Rec. Doc. 434 (Feb. 10. 2017)
    - ORDER, Rec. Doc. 435 (Feb. 21, 2017)
    - CASE MANAGEMENT ORDER NO.22, Rec. Doc. 440 (Feb. 22, 2017)

23. Pleadings and Orders from *In re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation,* MDL No. 2428, Case No. 1:13-md-2428, pending in the District of Massachusetts, including:
    - CASE MANAGEMENT ORDER NO. 14, Rec. Doc. 865 (Jan. 12, 2015)
    - MOTION TO MODIFY CMO 14, Rec. Doc. 1765 (Aug. 8, 2015)
    - REVISED CASE MANAGEMENT ORDER NO. 14 (Modified as to Par. 38 and 47 Only), Rec. Doc. 1769 (Sept. 9, 2016)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	No. 12-md-02311 Hon. Sean F. Cox
In Re: Wire Harness Systems	Case No. 2:12-cv-00103
In Re: Instrument Panel Clusters	Case No. 2:12-cv-00203
In Re: Fuel Senders	Case No. 2:12-cv-00303
In Re: Heater Control Panels	Case No. 2:12-cv-00403
In Re: Automotive Bearings	Case No. 2:12-cv-00503
In Re: Occupant Safety Systems	Case No. 2:12-cv-00603
In Re: Alternators	Case No. 2:13-cv-00703
In Re: Anti-Vibrational Rubber Parts	Case No. 2:13-cv-00803
In Re: Windshield Wiper Systems	Case No. 2:13-cv-00903
In Re: Radiators	Case No. 2:13-cv-01003
In Re: Starters	Case No. 2:13-cv-01103
In Re: Automotive Lamps	Case No. 2:13-cv-01203
In Re: Switches	Case No. 2:13-cv-01303
In Re: Ignition Coils	Case No. 2:13-cv-01403
In Re: Motor Generator	Case No. 2:13-cv-01503
In Re: Steering Angle Sensors	Case No. 2:13-cv-01603
In Re: HID Ballasts	Case No. 2:13-cv-01703
In Re: Inverters	Case No. 2:13-cv-01803
In Re: Electric Powered Steering Assemblies	Case No. 2:13-cv-01903
In Re: Air Flow Meters	Case No. 2:13-cv-02003
In Re: Fan Motors	Case No. 2:13-cv-02103
In Re: Fuel Injection Systems	Case No. 2:13-cv-02203
In Re: Power Window Motors	Case No. 2:13-cv-02303
In Re: Automatic Transmission Fluid Warmers	Case No. 2:13-cv-02403
In Re: Valve Timing Control Devices	Case No. 2:13-cv-02503
In Re: Electronic Throttle Bodies	Case No. 2:13-cv-02603
In Re: Air Conditioning Systems	Case No. 2:13-cv-02703
In Re: Windshield Washer Systems	Case No. 2:13-cv-02803
In Re: Automotive Constant Velocity Joint Boot Products	Case No. 2:14-cv-02903

In Re: Spark Plugs	Case No. 2:15-cv-03003
In Re: Automotive Hoses	Case No. 2:15-cv-03203
In Re: Shock Absorbers	Case No. 2:15-cv-03303
In Re: Body Sealing Products	Case No. 2:16-cv-03403
In Re: Interior Trim Products	Case No. 2:16-cv-03503
In Re: Automotive Brake Hoses	Case No. 2:16-cv-03603
In Re: Exhaust Systems	Case No. 2:16-cv-03703
In Re: Ceramic Substrates	Case No. 2:16-cv-03803
In Re: Power Window Switches	Case No. 2:16-cv-03903
In Re: Automotive Steel Tubes	Case No. 2:16-cv-04003
In Re: Access Mechanisms	Case No. 2:16-cv-04103
In Re: Side Door Latches	Case No. 2:16-cv-04303
THIS DOCUMENT RELATES TO: End-Payor Actions	

DECLARATION OF MICHELLE M. LA COUNT, ESQ. IN SUPPORT OF SETTLEMENT CLASS COUNSEL'S OMNIBUS REPLY TO OBJECTIONS TO THEIR MOTION FOR AN AWARD OF ATTORNEYS' FEES IN CONNECTION WITH THE ROUNDS 1-5 SETTLEMENTS

I, MICHELLE M. LA COUNT, ESQ., hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. I am an employee of Epiq Class Action & Claims Solutions, Inc. ("Epiq" or "Settlement Administrator"). I currently serve as one of the Project Directors for this matter on behalf of Epiq. I have more than 18 years of experience handling all aspects of settlement administration. The statements of fact in this Declaration are based on my personal knowledge and information provided to me by other experienced Epiq employees working with me and under my supervision in

the ordinary course of business. If called on to do so, I could and would testify competently thereto.

2. The Court appointed Epiq as the Settlement Administrator on October 13, 2015. *See, e.g.*, Corrected Order Granting End-Payor Plaintiffs' Motion for Authorization to Disseminate Notice to the End-Payor Plaintiff Settlement Classes, No. 2:13-md-02203 (Oct. 13, 2015), ECF No. 152. I submit this Declaration to provide additional details in support of Settlement Class Counsel's Omnibus Reply to Objections to their Motion for an Award of Attorneys' Fees in Connection with the Rounds 1-5 Settlements ("Omnibus Reply"). Epiq relayed much of the information in this section to the Court in the publicly filed $100 Distribution Declaration and/or *Pro Rata* Distribution Declaration, but reiterates these facts here along with some additional supporting details in response to the statements contained in the CAC Claims Objection at pgs. 27-33.[1]

3. On May 5, Epiq began emailing the Notice of Settlement Class Counsel's Motion for an Award of Attorneys' Fees in Connection with the Rounds

[1] All capitalized terms not otherwise defined in this document shall have the same meanings ascribed to them in the Omnibus Reply and the Declaration of Peter Sperry Regarding End-Payor Plaintiffs' Motion for Distribution of $100 Minimum Payments, Case No. 2:12-md-00103, (Aug. 29, 2024), ECF No. 656 (the "$100 Distribution Declaration"), and the Declaration of Michelle M. La Count Regarding End-Payor Plaintiffs' Motion for *Pro Rata* Distributions to Authorized Claimants, Case No. 2:12-md-00103, (Dec. 27, 2024), ECF No. 664 (the "*Pro Rata* Distribution Declaration").

1-5 Settlements (the "Fee Motion Notice")[2] to all Settlement Class Members who provided an email address.[3] On May 9, 2025, the Settlement Administrator posted notifications on the settlement website to reflect that Settlement Class Counsel was filing its motion for additional fees. The notifications further informed Settlement Class Members that Epiq would update the website with a copy of that motion once it was filed.

4. On or about May 9, 2025, Epiq completed emailing the Fee Motion Notice. On May 12, 2025, Epiq posted Settlement Class Counsel's Motion for an Award of Attorneys' Fees in Connection with the Rounds 1-5 Settlements, Case No. 2:13-md-01103 (May 9, 2025), ECF No. 249 (the "Fee Motion") to the settlement website.

5. The Fee Motion Notice instructed Settlement Class Members that wished to file an objection to do so in writing and mail those objections to the Court

[2] The Fee Motion Notice contained the following language: "Settlement Class Counsel will ask the Court for an award of attorneys' fees and reimbursement of costs and expenses for all of their services in this litigation to be paid from the total Settlement Amounts established by the Rounds 1 through 5 Settlements, including any interest earned on those amounts. The total amount of fees requested, combined with all fees previously awarded by the Court, will not exceed 30 percent of the total Settlement Amounts of all of the Rounds 1 through 5 Settlements, including any interest earned." A copy of the final content of the Fee Motion Notice is attached as Exhibit A.

[3] The objecting parties identified in ¶ 5 below were among the Settlement Class Members with an email address on file and the emails were not reported back as undeliverable.

and Epiq as the Settlement Administrator no later than May 23, 2025, at the mailing addresses indicated. The Court subsequently extended the deadline for the receipt of objections to June 6, 2025. A list of objections known to Epiq as of June 16, 2025, is provided below, including whether the request conformed with the instructions in the Fee Motion Notice and why:

	Objecting Party	**Objection Document ECF No.**	**Conformed with Court-Approved Filing Instructions**	**Additional Information**
#1	Lynette Armstrong	N/A	N	Did not serve the objection on the Clerk of the Court
#2	Michael Garbinski	N/A	N	Did not serve the objection on the Clerk of the Court
#3	Britney Garbinski	N/A	N	Did not serve the objection on the Clerk of the Court
#4	The Hertz Corporation, Avis Budget Group, Inc. and Element Fleet Management Corp.	149	N	Untimely
#5	Crowell and Moring LLP	150	Y	Timely
#6	Overland West, Inc. and Booton, Inc.	152	Y	Timely

6. Upon receipt of the six objections from the 182,287 Class Members who were sent the Fee Motion Notice, Epiq forwarded the objections to Settlement Class Counsel. As described below, Epiq has reviewed all objections received to date.

Objections Submitted by Individual Claimants with Small Claim[4] Submissions

7. **Objection** #1: The claimant objected to the "cost related to the product or service" but did not provide any additional information explaining the basis for the objection. Attached as Exhibit B. Objection #1 was not served on the Clerk of the Court as required by the instructions set forth in the Fee Motion Notice. Furthermore, it is not anticipated that this objector will be eligible for additional payment beyond the $100 Minimum Distribution already issued.

8. **Objections #2 and #3:** The claimants objected to personally paying attorney fees. Attached as Exhibits C and D. Objections #2 and #3 were not served on the Clerk of the Court as required by the instructions set forth in the Fee Motion Notice. Furthermore, it is not anticipated that this objector will be eligible for additional payment beyond the $100 Minimum Distribution already issued.

Objections Submitted by Third-party Claims Filers on behalf of Authorized Claimants with Large Claim Submissions[5]

9. **Objection #4**: CAC, a third-party claims filer, filed an objection to the Fee Motion on behalf of claimants The Hertz Corporation, Avis Budget Group, Inc. and Element Fleet Management Corp., ECF No. 185 (the "CAC Claims Objection").

[4] "Small Claim Submissions" refer to "claims where five or fewer vehicles were included as part of the submission." (Pro Rata Distribution Declaration at ¶ 5).

[5] "Large Claim Submissions" refer to claims where "six or more vehicles were included as part of the submission." (*Id.)*

The CAC Claims Objection was timely filed with the Court, but was not received until June 9, 2025, which was after the extended receipt deadline.

10. **Objection #5**: Crowell & Moring ("Crowell"), a third-party claims filer and law firm, filed an objection to the Fee Motion on behalf of 218 claimants, ECF No. 437 (the "Crowell Claims Objection").

11. **Objection #6**: Professional objector, M. Frank Bednarz of the Hamilton Lincoln Law Institute's Center for Class Action Fairness ("CCAF"), filed an objection to the Fee Motion on behalf of claimants Overland West, Inc. and Booton, Inc., ECF No. 440 (the "CCAF Claims Objection"). Overland and Bootan's settlement claims were submitted by third-party claim filer CC Advocacy and Epiq has never had any direct communication with either of these two parties.

Communications with Settlement Class Members During the Three Years Following the Initial Claim Filing Deadline

12. CAC asserts in its objection that for the three years following the June 2020 filing deadline, claimants "heard nothing." CAC Claims Objection at 29. Accordingly, the paragraphs in this section specifically call out administrative activity during that July 2020 to May 2023 period.

13. The claim filing deadline was initially March 16, 2020, the day after the mandatory shutdowns of businesses resulting from the imposition of COVID-19 restrictions. Due to the unprecedented disruptions caused directly by the COVID-19 pandemic, the claims filing deadline was extended to June 18, 2020. Epiq posted

information regarding the extension of the claims filing deadline on the settlement website along with general updates and documents including those related to resolution of appeals and objections, and/or stipulations related to Financial Recovery Strategies, LLC ("FRS"), Crowell, CAC, and others between July 2020 and May 2023.

14. Throughout its administration of these Settlements, Epiq has maintained and continues to maintain a toll-free number with an Interactive Voice Response ("IVR") system that provides recorded information about the Settlements, including the claim filing deadline. The IVR is available 24 hours a day, seven days a week. Callers have the option of speaking with a customer service representative Monday through Friday, between the hours of 9:00 a.m. to 5:00 p.m. Eastern Time. Between July 2020 and May 2023, Epiq received 48,249 calls to the toll-free number.

15. Epiq also received communications from Settlement Class Members via email at info@autopartsclass.com and responded promptly to those inquiries. Based on a review of email correspondence volume, Epiq identified 61 separate emails with CAC during the period from July 2020 to May 2023.

16. In October 2022, Epiq sent Round 5 notices by US Mail and email to over 250,000 potential Settlement Class Members and third-party claims filers,[6] with a response deadline of January 7, 2023.

Claims and Documentation Audits

17. In 2021, the Settlement Administrator conducted a claims audit to address: (1) transmission errors related to emailed data sets that were encrypted or were over size limits that needed to be identified and requested through other means; (2) filings with multiple instances of similar, identical, and duplicate file names contained in a number of Large Claim Submissions from third-party filers; and (3) issues arising with attempts to download claim submission information from third-party claims filers' secure server locations with expired links, etc. The Settlement Administrator conducted this audit to validate claim counts. However, the Settlement Administrator was unable to complete the audit at that time due to ongoing disputes between Settlement Class Counsel and FRS, CAC, and Crowell concerning the potential acceptance or rejection of subrogation claims submitted by insurance companies and other claims submitted by Fleet Management Companies ("FMCs"). Before such claims could be considered, Epiq was required to enact

[6] Declaration of Brian A. Pinkerton Regarding Dissemination of Round 5 Notice and Settlement Administration, Case No. 2:21-cv-04503, (Nov. 18, 2022), ECF No. 9-3 at ¶¶ 9 & 13.

further modifications to the case database structure in order to validate claim counts within the Settlement Administrator's claims database structure.

18. In addition, Epiq discovered that the FMC claims submitted by CAC included hundreds of thousands of claims for vehicles that were duplicative of those CAC submitted on behalf of its own clients. In addition, Epiq identified over 1.6 million VINs in the CAC filing that overlapped with other claims from other claimants, yielding nearly six million duplicate issues. This massive number of duplicate claims, sometimes involving four or five entities submitting claims for the same vehicle, caused Epiq to implement additional procedures to identify duplicate claims and request changes from CAC and others.

19. Once the Court entered the FMC stipulated orders secured by Settlement Class Counsel, which governed the method and manner that claims submitted by FMCs and FMC customers would be handled, it massively changed the landscape of the claims administration process. As a result of these changes, Epiq was forced to expend well in excess of 1,000 hours to revise elements within the claims database to accommodate the millions of additional claimed vehicles. This required Epiq to retrofit the claims database by programming additional custom data fields and correlated reporting, then loading the additional data points and completing quality assurance (QA) and quality control (QC) steps to test the changes and ensure that no data corruption occurred. Following updates to the database, the

Settlement Administrator had to undertake a manual review of tens of thousands of records that could not be validated programmatically (using automated means) due to the complexity of the additional claims data. In some instances, Epiq was required to add data elements and make substantive architectural changes to the database, which involved programmers developing new processing screens, connecting them to the existing SQL database structure, QAing, and QCing those changes, testing, and performing a roll out of the changes to the live claims database environment, drafting new procedures, and training staff on the new features to process the additional data points within the claims database.

20. The Settlement Administrator initially established the claims database to address vehicle claim submissions by a single claimant or third-party claims filer submissions on behalf of clearly identified claimants. However, the FMC data that CAC submitted did not consistently identify the corresponding FMC customer, where the purchase occurred, or where the FMC customer held its principal place of business. Some of the submissions contained no data whatsoever about the identity of the FMC Customer that purchased or leased the vehicle. CAC and others representing FMCs also submitted data in a manner that largely differed from the format that the Settlement Administrator requested for Large Claim Submissions. The Settlement Administrator expended considerable time and resources attempting

to resolve these and other data discrepancies caused by the manner in which CAC and other third-party claims filers submitted data for FMC claims.

21. In 2023, the Settlement Administrator conducted another audit to validate claim counts. This audit considered claims submitted before the claims filing deadline as well as corrected filings that had been resubmitted to remove ineligible or duplicative vehicles from within a claim. The 2023 audit naturally included additional claimants and vehicle claims submitted since 2021 in relation to Round 5 claims as well. Many of the claims submitted by the other third-party claims filers included similar, identical, and/or duplicate file names. The 2023 audit allowed Epiq to account for additional data discrepancies identified through the defect process that Epiq had not previously identified due to the uncertainty raised by potential FMC and subrogation claims. As a result of this audit, Epiq identified a number of issues created by several third-party filers' decision to use their own internal secure sites to submit claims data instead of the Settlement Administrator's secure web portal. This created additional difficulties validating the timing and content of claim submissions that CAC and others changed or updated, and created other disconnects with particular downloads going stale or being corrupted during the download process.

22. In connection with the 2023 audit, Epiq confirmed that claims submission information and defect response documentation was properly identified,

included all intended contents, and contained no transmission errors or corrupt files. The notices requesting defect documentation were not created and were not issued until June 2023, so there was no opportunity to audit anything in 2021 with regard to those documentation requests. Given that CAC submitted certain documentation through its internal claim submission portal before the Settlement Administrator requested such documentation, the unilaterally submitted documentation did not have a review process connected to it. Without an underlying request for documentation, it could be received, imaged and saved to a location in the database, but because it was not associated to a request for information for a specific claim it did not go to a review queue. In some cases, third-party claims filers provided unsolicited so early, there was not even a claim number to associate it to yet. As such, Epiq was required to request documentation that, in some instances, may have been provided previously but needed to be filed in a manner consistent with the Settlement Administrator's instructions and procedures to be properly identified and associated to achieve defect resolution. The Settlement Administrator has requirements and processes in place to effectuate efficiency and when filers fail to adhere to them, they may reasonably be asked to revise or refile requested documentation.

FRS's Motion to Intervene to Assert Subrogation Claims

23. FRS filed a motion to intervene on June 18, 2020, seeking to expand the settlement class definition to include subrogation claims from insurance companies and obtain an extension of time to gather the data associated with potential subrogation claims.[7]

24. Settlement Class Counsel opposed this motion and Epiq filed a declaration in support of the opposition that explained the enormous administrative complexities surrounding inclusion of subrogation claims, including completely divergent documentation requirements, the potential need to re-notice the Settlement Classes, and the necessity to provide other Settlement Class Members an opportunity to object or file similar claims.[8]

25. At Settlement Class Counsel's request, Epiq analyzed the potential dilution of Settlement Class Members' recovery that would have occurred had GEICO and FRS's insurance company clients been permitted to recover for subrogation claims. Based on Settlement Class Counsel's estimate that Geico and FRS's insurance company clients may have been able to recover for as many as 9.4 million additional vehicles under their subrogation claims, Epiq estimates that if

[7] Financial Recovery Services, LLC's Motion to Intervene, Case No. 2:12-md-02311-SFC-RSW, ECF No. 2060 (June 18, 2020).

[8] Declaration of Brian A. Pinkerton in Support of End-Payor Plaintiffs' Opposition to Financial Recovery Strategies, LLC's Untimely Motion to Intervene Case 2:12-md02311 ECF No. 2097 ¶¶ 11-29.

subrogation claims were permitted, approximately $185 million in recovery would have otherwise gone to insurance companies instead of the Settlement Class Members in this action. A $185 million difference in recoveries to Settlement Class Members would have reduced each Settlement Member's current claim value by an average of approximately 20%.[9] These figures would be exponentially larger if additional insurance companies were ultimately permitted to file subrogation claims.

FMC Claims and Duplicate VINs

26. On multiple occasions, but starting in 2020, Epiq grappled with issues caused by claim submissions that included duplicate vehicle identification numbers ("VINs") across claims. Before it could appropriately account for and weed out duplicate vehicle claims, Epiq faced the initial hurdle of confirming whether all the relevant vehicle claims were included in the database. As initial claims intake/processing and validation was winding down in 2021 and Epiq's analysis of duplicate vehicle claims was ramping up, FRS filed its motion regarding subrogation claims. If FRS were successful, the vehicle population that Epiq would be required to analyze would increase by multitudes of millions. FRS's motion was followed shortly thereafter by CAC and Crowell's motions, which sought to add FMCs to the

[9] This sample extrapolation is a simplification of the actual calculation logic provided only for illustrative purposes. This would likely be a maximum value assuming 100% sampling validation across all claims.

Settlement Class.[10] This introduced further uncertainty as to the overall population of claims and vehicles to be assessed. Although the FRS Motion was dispensed with by the Appellate ruling in 2022, the FMC issue remained outstanding until May 2023.

27. It was impossible for Epiq to send defect notices to claimants or select vehicles for sample documentation review prior to resolution of the FMC issues because inclusion of all the vehicles claimed by Settlement Class Members is a prerequisite for making determinations concerning duplicate vehicle claims. Epiq had no means of processing claims at that time because it could not ascertain whether the claim submissions would contain duplicate VIN information affecting the eligibility of the claimed vehicles. As such, before Epiq could undertake any defect analysis, including duplicate vehicle claims, it was required to process all claimed vehicles into the database. By way of illustration, the potential inclusion of FMC claim submissions alone implicated over 40 million additional vehicles. The issue of FMCs loomed until May 2023. Once the Court entered the FMC Stipulations, the size of the data set ballooned tenfold.

[10] Element Fleet Corporation, Wheels, Inc., Donlen LLC, and Automotive Rentals, Inc.'s Motion to Enforce Settlement Agreements, Case No. 2:12-md-02311, ECF No. 2149 (Sept. 15, 2021) ("CAC FMC Objection"); Motion to Enforce End Payor Settlements and Strike Contradictory and Improper Stipulation, Case No. 2:12-md-02311, ECF No. 2192 (Mar. 17, 2022) ("EFM Objection") (together referred to as the "FMC Objections").

28. Upon resolving the FMC question, Settlement Class Counsel set aggressive targets to move work forward. Epiq completed loading additional FMC data, including follow up for corrective data files to reduce evident duplication, and embarked on finalizing enhanced duplicate review logic over a period of 45 days while also developing the defect notice logic. Both sets of coded logic were applied in a test environment and extensive QA and QC reviews were performed to confirm the programmatic assignment of duplicate and other defect codes before applying that logic to the production database and repeating the QA and QC steps. While litigating the FMC Objections and negotiating the FMC Stipulations,[11] Settlement Class Counsel identified many duplication issues and required the objecting third-party filers, particularly CAC, to revise and resubmit data. Despite this effort, Epiq still incurred a substantial amount of time analyzing and applying priority status as it discovered millions of duplicate vehicle claim sets when running comparisons against the claims of other third-party claims filers. As noted above, CAC's initial submission of FMC claims data presented approximately six million duplicate claims that overlapped with claims submitted by other claimants.

[11] Stipulation and Order Regarding End-Payor Plaintiff Settlements, Case No. 2:12-md-02311, ECF No. 2182 (Jan. 10, 2022) ("CAC FMC Stipulation"); Stipulation and Order Regarding End-Payor Plaintiff Settlements, Case No. 2:12-md-02311, ECF No. 2244 (May 4, 2023) ("Crowell EFM Stipulation") (together referred to as the "FMC Stipulations").

Defect and Sample Notice Campaign

29. Upon completing development of the revised duplicate VIN programmatic logic, which compared groups of two or more duplicate VINs, Epiq began preparations to issue the Defect Notice and Sample Validation List Notices ("Sample Notices") (together the "Defect and Sample Notices").

30. Settlement Class Counsel mandated that the Defect and Sample Notice campaign begin in May 2023. Defect Notices were sent to all Settlement Class Members who had one or more vehicles with a defect present; Sample Notices were issued only to claimants with Large Claim Submissions based on the total count of claimed vehicles.

31. In May 2023, Epiq sent over 460,000 Defect Notices to claimants with Small Claim Submissions. These claimants only received Defect Notices, with no request for sample documentation. The Defect Notices included instructions for curing defects.

32. Epiq issued Large Claims filers, primarily third-party claims filers like CAC and Crowell, Defect and Sample Notices in early June 2023. Epiq also reformatted the notifications for the third-party claims filers to provide them with combined, electronic lists of all vehicles for all claimants included in the third-party claims filers' submissions. In addition, the Defect Notices provided Large Claimants with a list of defective Vehicle Identification Numbers (VINs). Finally, the Defect

and Sample Notices sent to Large Claim filers included instructions on how to cure defects and a series of options for providing documentation on the list of sample vehicles selected by the Settlement Administrator and populated to the Sample Notice VIN list.

33. In all instances, Large Claim filers were required to provide proof showing the purchaser/lessee's name, that the vehicle was purchased or leased new, the year/make/model information, the VIN, and the state of purchase or proof of connection to a Damages State.

34. The documentation requirements concerning claims for vehicles purchased or leased prior to 2012 were less stringent. Epiq required that claims for these vehicles could be supported by an affidavit from the claimant attesting to the purchase or lease of the vehicles along with accompanying electronic records supporting the claim. Only a small subset of facially valid (non-deficient) vehicle claims were selected for sampling for each Large Claim Submission. The Large Claim Submissions comprised over 41 million of the total vehicles claimed, but even the largest claimants, including Hertz, Avis, Element, and Enterprise, were each only required to fully document 400 facially eligible vehicles selected by the Settlement Administrator as representative of the documentation that would be required to validate millions of claimed vehicles.[12]

[12] *Pro Rata* Distribution Declaration at ¶ 24.

Defect and Sample Notice Responses

35. At Settlement Class Counsel's direction, Epiq imposed a July 2023 deadline for responding to the Large Claim Defect and Sample Notices. All of the third-party filers that submitted claims, including CAC, requested additional time to respond and Settlement Class Counsel allowed Epiq to grant universal extensions until September 2023.

36. In October 2023, one month after the extended deadline for responding to the Defect and Sample Notices lapsed, Epiq, in consultation with Settlement Class Counsel, determined that as a group, the third-party claims filers, including CAC, had failed to meet the requirements to provide supporting documentation on the vast majority of their Large Claim sampling response submissions and there were certain data issues that required additional follow up.

"January 1 Issue" and Supplemental Defect Notices Mailed in November 2023

37. After the extended defect response deadline had passed in September 2023, Epiq loaded all revised data it received in connection with claimants' responses to the Defect Notices and conducted yet another analysis of duplicate VINs. It soon became apparent to Epiq that many of the Large Claim claimants had inaccurately claimed millions of vehicles listing a purchase date of January 1 of a particular calendar year (the "January 1 Issue") and had not attempted to correct this as part of their defect responses. The January 1 purchase dates were clearly

erroneous given that all automotive dealerships are closed on New Years Day. The January 1 Issue was particularly problematic for the millions of duplicate FMC records where a single VIN was being claimed multiple times by multiple claimants as the January 1 Issue applied to approximately 20% of the FMC population.

38. In November 2023, approximately 60 days after the extended deadline for providing defect responses, Epiq issued supplemental defect notices in an effort to resolve the January 1 Issue to those affected, including CAC. These supplemental defect notices listed vehicle make/model/year combinations that contained the problematic January 1 purchase or lease dates (the "January 1 Notice"). The January 1 Notice gave filers, including CAC, an opportunity to correct their submissions to the actual date of purchase rather than the previously provided January 1 placeholder. These updated purchase dates allowed Epiq to establish claim superiority when there were two or more claims for the same VIN within the claims database that both had previously indicated a January 1 purchase date.

39. In December 2023, Epiq addressed persisting defects. For instance, many Large Claim Submission claimants improperly attempted to support their claims for vehicles purchased or leased after 2011 with affidavits and little or no supporting documentation. In addition, many claimants failed to adequately provide proof that they purchased/leased a new vehicle and/or that such purchase took place in a "Damages State." If the Settlement Claims Administrator, under the direction of Settlement Class

Counsel, had not provided Settlement Class Members with an additional opportunity to remedy these defects, many Settlement Class Members, including those represented by CAC, would have faced a dramatic reduction in their recovery. Accordingly, Settlement Class Counsel approved Epiq to send "Supplemental Notice of Claim Deficiency" notifications to affected claimants on a rolling basis from late November to early December. The "Supplemental Notice of Claim Deficiency" provided that claimants had 60 days to cure their deficiencies. The final deadline passed in mid-February 2024.

40. CAC took full advantage of the additional opportunity to perfect its claims and submitted additional claims information and sample documentation, which enabled it to achieve a higher Adjusted Validation Rate for the Hertz, Avis, and Element claims.

41. In February 2024, Epiq commenced its final review of responses to the Supplemental Notice of Claim Deficiency responses regarding the Sample Notices. Only at this point could Epiq and Settlement Class Counsel develop the final models for effectuating distribution of claims involving millions of vehicles across 43 separate cases. This was because it was necessary for the Settlement Administrator, at the direction of Settlement Class Counsel, to determine whether allowances would be permitted with regard to the sampling validation rates. This analysis could not be done until all samples were received and reviewed.

42. In order to ensure that the lion's share of the Settlement Class received payment in full as soon as possible, Settlement Class Counsel prioritized the minimum $100 payment distribution, which took place at the end of 2024. Consistent with the representation made by Settlement Class Counsel to the Court in the $100 Distribution Memorandum at ¶ 38, Settlement Class Counsel filed End-Payor Plaintiffs' Motion for *Pro Rata* Distributions to Authorized Claimants, Case No. 2:12-md-00103, ECF No. 664 (December 27, 2024).

Illustrative Examples of CAC's Conduct Requiring Additional Administrative Work

43. Claims filed by CAC contained a material and significant amount of inaccurate data as evidenced by the number of denied/withdrawn claims and the number of duplicate VIN records within and among the claims of the three objecting claimants they represent:

Claimant	Total Vehicles Submitted	Denied/ Withdrawn Vehicle Count	Duplicate VIN Count
Hertz Corporation	5,119,589	534,690	162,230
Avis Budget	6,414,094	589,171	137,454
Element Vehicle Management Services LLC	3,083,558	986,290	412,855

However, this lack of accuracy is not limited to the three objecting Settlement Class Members in the CAC Claims Objection. Within CAC's submissions (following previous efforts to de-duplicate vehicles claimed by FMCs), there remained a total

of 927,482 vehicles that were deemed duplicative and denied. Of these, Epiq identified 151,025 vehicles as not only duplicate, but also purchased for resale based on the dates of purchase/lease in the competing claims. In over 2,000 instances, CAC filed the same VIN for two or more of its underlying clients, each requiring additional time and handling. CAC also claimed vehicles on behalf of its FMCs that were also claimed by underlying FMC customers.

44. CAC claimed over 5.1 million replacement parts through its Large Claim Submissions. CAC failed to provide the required documentation for a single one of its replacement parts claims. After being advised that none of its replacement parts claims were eligible for payment because of insufficient documentation, CAC pressed to have these parts included regardless. After extensive discussions with CAC and Settlement Class Counsel, CAC eventually acquiesced to Epiq's determination that those few claims submitted with documentation were still insufficiently supported and accepted that all its replacement parts claims would be denied.

45. In its objection (CAC Claims Objection at p. 28), CAC suggests that it is responsible for expanding the eligibility criteria for assessing claims by establishing that vehicles purchased or leased in a "Damages State" are eligible for recovery. Nonetheless, CAC proceeded to submit claims for 732,156 vehicles where the claimant neither purchased in a "Damages State" nor had an eligible connection to a "Damages State." This failure further complicated the defect process and extended the

time and effort Epiq was forced to expend reviewing ineligible vehicle data. Eventually, Settlement Class Counsel was forced to intercede and required CAC to revise its analysis and provide Epiq with a list of claimed vehicles to withdraw.

46. Despite the fact that from as early as March 2017, Epiq published a list of eligible vehicles (by make/model/year) on the settlement website, CAC submitted claims for 2,487,418 vehicles that did not correspond to the vehicles listed on the website and thus were not eligible for recovery. This further required Epiq to engage in additional administrative time to review the claims, send Defect and Sample Notices, and ultimately deny these claims.

47. Epiq dutifully followed up on no less than 549 emails with CAC between July 2020 – May 2025. Since the Defect and Sampling Notices were issued in June 2023, Epiq has spent an estimated 1,100 hours: (1) auditing Epiq's submissions; (2) conducting research in response to Epiq's specific inquiries; and (3) preparing for and attending 15 or more meetings with CAC representatives, all in an effort to assist CAC in perfecting its client's claims.

48. CAC was among a small contingent of prolific third-party claims filers that insisted on receiving detailed duplicate reporting and duplicate priority determination data that resulted in Epiq incurring hundreds of hours of additional time to program and quality check. As the process continued, Epiq came to learn that most of the duplicate conflict issues were created by these same handful of third-

party claims filers that requested the reports. As described in the *Pro Rata* Distribution Declaration at ¶¶ 11, 18 & 22, 3.4 million duplicate VINs[13] were ultimately submitted by claimants. Each of these vehicle claims required Epiq to: (1) conduct a detailed review; (2) provide each claimant that submitted a duplicate VIN with notice and an opportunity to cure; (3) conduct further follow up as necessary based on the responses received from each of the relevant claimants; and (4) conduct a rigorous and complex priority analysis before denying the inferior vehicle.

49. In October 2021, CAC's four FMC clients submitted in excess of 1.6M claims for vehicles that created 5.9M duplicate issues across all filed claims. Furthermore, within CAC's own FMC filings, it included over 350,000 claims for vehicles that were internally duplicative. Among these duplicate vehicle claims, 576,461 vehicles were also claimed by the rightful FMC end-user customers who leased the same vehicles from the FMCs represented by CAC and similar third-party claims filers. The FMC vehicle claims for those vehicles were thus denied. The process of deduplicating these vehicle claims was time consuming and substantially increased the costs to Settlement Class Members.

[13] This count of duplicate VINs provided in the *Pro Rata* Distribution Declaration is the final count after CAC's multiple iterations of revised data submissions. It excludes the millions of additional duplicate VINs that CAC submitted in its filings from 2020, but which CAC ultimately removed in a corrective filing pursuant to Settlement Class Counsel's request. *See* ¶ 49 above.

Timeline for Distribution

50. In my experience, it is common for settlement class counsel to receive attorneys' fees well before the distribution of the settlement fund to the settlement class. For instance, in *In re Libor-Based Financial Instruments Antitrust Litigation*, the court granted final approval and attorneys' fees for two successive rounds of settlements on December 16, 2020 and March 28, 2023, respectively. *See* No. 12-CV-1025 , 2020 WL 7388493, at *5 (S.D.N.Y. Dec. 16, 2020); 2023 WL 2663479 at *4 (March 28, 2023). However, the proceeds in connection with both of those settlement rounds were not distributed to class members until nearly four years after the first award of attorneys' fees in connection with the first round of settlements. *See* No. 12-CV-1025 (S.D.N.Y. July 24, 2024), ECF No. 4087; see also, No. 12-CV-1025 (S.D.N.Y. July 8, 2024), ECF No. 4085 (Motion for Disbursement of Funds). Here, issuing payment after each settlement was reached would have resulted in massive administrative inefficiencies given the same claims can and will exist across multiple defendants who may settle at different points in time. Further, the $100 minimum distribution feature in all five Plans of Allocations was set up to be cumulative. And, as set forth above, Epiq could not have effectively undertaken the claims determination process without knowing whether insurance companies asserting subrogation claims as well as FMCs, and the millions of vehicles they claimed, were permitted to recover.

As noted in the *Pro Rata* Distribution Declaration, just over 39,000 claimants will qualify for *pro rata* distributions. (*Pro Rata* Distribution Declaration at ¶ 51.) The vast majority of Settlement Class Members have received payment in full based on the $100 distributions issued in 2024. Epiq expects to begin making *pro rata* payments to non-objecting Settlement Class Members in September of this year and posted this as an update on the settlement website in March 2025. The Settlement Administrator has not yet made the *pro rata* payments because it was necessary to first provide claimants with claim determinations as well as an opportunity to object to such determinations. The deadline for submitting objections to the Settlement Administrator has passed and very few objections have been filed. The Settlement Administrator is currently working with claimants to resolve the few outstanding objections.

Settlement Class Counsel's Engagement

51. Throughout the ten years of this administration, Settlement Class Counsel has worked closely with Epiq to address the unique circumstances presented by such a complex settlement administration, including the data elements such as age and quality, the nuances created by specific filers, and establishing alternate opportunities to support and document claims.

52. Epiq and Settlement Class Counsel meet weekly to discuss, among other things, the status of the settlement administration and to address questions

raised by claimants. Both Settlement Class Counsel and Epiq have promptly addressed all questions raised by Settlement Class Members and third-party claims filers. In addition, at the direction of Settlement Class Counsel, Epiq has frequently updated the settlement website, including adding new FAQs in response to questions raised by Settlement Class Members, and posting Court documents such as Settlement Class Counsel's recent application for additional legal fees.[14]

53. In addition to their hundreds of phone calls and Microsoft Teams meetings, Settlement Class Counsel met in-person with Epiq for on-site, multi-day summits on two occasions in 2023 and 2024. During these summits, Settlement Class Counsel and Epiq devised strategies and procedures for arriving at final defect determinations and equitably distributing money to the Settlement Class, which complexity was magnified in large part by issues introduced by third-party claims filers.

I declare under penalty of perjury under the laws of the United States and the State of Wisconsin that the foregoing is true and correct, and that this Declaration was executed on June 16, 2025, in Green Bay, Wisconsin.

MICHELLE M. LA COUNT, ESQ.
Project Director
Epiq Class Action & Claims Solutions, Inc.

[14] For instance, since September 1, 2015, Epiq has updated the settlement website FAQ, "How Will the Lawyers be Paid?" no fewer than 12 times.

EXHIBIT A

From: info@AutoPartsClass.com
Sent: Friday, May 2, 2025 5:04 PM
To: [redacted]
Subject: NOTICE OF CLASS COUNSEL FEE AND EXPENSE AWARD REQUEST

Auto Parts Settlements
P.O. Box 10163
Dublin, OH 43017-3163

NOTICE OF CLASS COUNSEL FEE AND EXPENSE AWARD REQUEST

Dear Claimant,

Settlement Class Counsel will ask the Court for an award of attorneys' fees and reimbursement of costs and expenses for all of their services in this litigation to be paid from the total Settlement Amounts established by the Rounds 1 through 5 Settlements, including any interest earned on those amounts. The total amount of fees requested, combined with all fees previously awarded by the Court, will not exceed 30 percent of the total Settlement Amounts of all of the Rounds 1 through 5 Settlements, including any interest earned.

Settlement Class Counsel intend to file their request for an award of attorneys' fees and reimbursement costs and expenses on May 9, 2025. When it is filed with the Court, Settlement Class Counsel's application will be made available on www.AutoPartsClass.com.

If you are a qualifying member of one or more of the Settlement Classes who has submitted a claim to participate in the Settlement Funds, and wish to object to Settlement Class Counsel's application, you must do so in writing. You must include the following in your written objection:

- Your name, address, telephone number, and claim number;
- The basis for your objection to the application, along with any supporting materials; and
- Your signature.

To be considered, any comment or objection to the application must be in writing and mailed to **both** of the addresses listed immediately below and must be received by both the Clerk of the Court and the Notice Administrator, no later than **May 23, 2025**, which is 14 days after the filing of Settlement Class Counsel's motion for attorneys' fees and reimbursement of costs and expenses. The addresses are:

Court	**Notice Administrator**

U.S. District Court for the Eastern District of Michigan Clerk of the Court Theodore Levin U.S. Courthouse 231 W. Lafayette Blvd., Room 599 Detroit, MI 48226	Auto Parts Settlements Objections P.O. Box 10163 Dublin, OH 43017-3163

You may contact the Settlement Administrator with questions by email at info@autopartsclass.com, by toll-free phone at 1-877-940-5043, or by mail at Auto Parts Settlements, P.O. Box 10163, Dublin, OH 43017-3163.

Sincerely,
Settlement Administrator

AL282 v.02

EXHIBIT B

Lynette Armstrong
[redacted]

Claim Number: 12-md-02311
Registration Number: 70200531

Subject: Objection to Application – Claim #12-md-02311 / Registration #70200531

To Whom It May Concern,

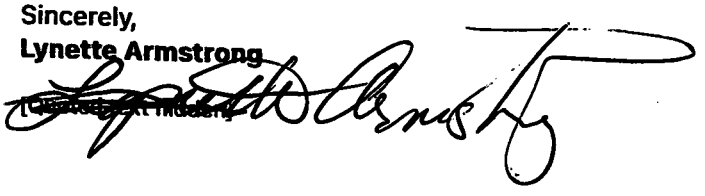
I am writing to formally object to the application associated with claim number 12-md-02311 and registration number 70200531. My objection is based on the following:

1. **Price** – The cost related to the product or service appears excessive relative to its value.
2. **Product Fit** – The product did not meet expectations or suit its intended use.
3. **Trust and Reluctance** – Due to concerns about transparency and prior inconsistencies, I am hesitant to proceed under the current terms.

I respectfully request that these concerns be reviewed as part of the evaluation process.

Thank you for your time and attention. Please confirm receipt of this objection and advise if additional documentation is needed.

Sincerely,
Lynette Armstrong
[redacted]



[redacted]

ATLANTA GA 302
12 MAY 2025 PM 4 L

USA FOREVER

RECEIVED
MAY 19 2025
LEGAL SERVICES

Auto Parts Settlements Objections
P.O. Box 10163
Dublin, OH. 43017-3163

43017-316363

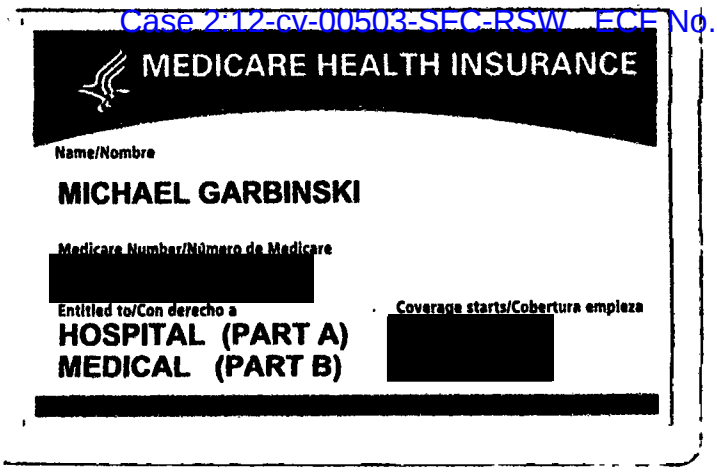
EXHIBIT C

Autoparts Settlements Objections - 05/13/2025

My name is Michael Garbinski, claim #10198176 and I reside at [redacted], New Jersey 08753. My phone # is [redacted]

I am including documentation objecting to attorney fees because I am permanetly disabled and on Medicare since 2016. I was never able to return to work on account of my [redacted]. I am indigent.

Michael Garbinski
Michael Garbinski


MEDICARE HEALTH INSURANCE

Name/Nombre

MICHAEL GARBINSKI

Medicare Number/Número de Medicare

[redacted]

Entitled to/Con derecho a

HOSPITAL (PART A)
MEDICAL (PART B)

Coverage starts/Cobertura empieza

[redacted]

[redacted]

AARP | MedicareRx Plans
[redacted]

Issuer [redacted]
Member ID [redacted]
Member:
MICHAEL GARBINSKI

MedicareRx
Prescription Drug Coverage

RxBIN: [redacted]
RxPCN: [redacted]
RxGrp: [redacted]

AARP MedicareRx Saver Plus (PDP)

[redacted]

06/02/2016 13:33 FAX 0001

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	
RECIPIENT ADDRESS	[redacted]
DESTINATION ID	
ST. TIME	06/02 13:32
TIME USE	01'11
PAGES SENT	2
RESULT	OK

MEDICAL CERTIFICATE – M01

1. Return to: Division of Temporary Disability Insurance PO Box 387 Trenton, NJ 08625-0387	2. Claimant's Name Garbinski, Michael J 3. *Date Disability Began* [redacted]	4. Soc Sec No [redacted]
5. Claimant's Occupation maintenance tech	6. Form Identification Number [redacted]	7. Form Date 5/30/2016

INSTRUCTIONS: The Medical Certificate can be completed and submitted via our website at http://lwd.dol.state.nj.us/labor/tdi/tdiindex.html#TDI5. You must use the Form Identification Number listed above to submit the information. If you do not have access to the internet you may also mail the completed Medical Certificate to our office at the address listed in Item 1 above or FAX it to (609) 984-4138. Submission of incomplete information will result in a delay in determining your patient's Temporary Disability Insurance claim.

1. TREATMENT

[redacted]

MEDICAL CERTIFICATE – M01

1. Return to: Division of Temporary Disability Insurance PO Box 387 Trenton, NJ 08625-0387	2. Claimant's Name Garbinski, Michael J	
	3. Date Disability Began [redacted]	4. Soc Sec No [redacted]
5. Claimant's Occupation maintenance tech	6. Form Identification Number [redacted]	7. Form Date 5/30/2016

INSTRUCTIONS: The Medical Certificate can be completed and submitted via our website at http://lwd.dol.state.nj.us/labor/tdi/tdiindex.html#TDI5. You must use the Form Identification Number listed above to submit the information. If you do not have access to the Internet you may also mail the completed Medical Certificate to our office at the address listed in Item 1 above or FAX it to (609) 984-4138. Submission of incomplete information will result in a delay in determining your patient's Temporary Disability Insurance claim.

1. TREATMENT

[redacted]

16053050017

GARBINSKI, MICHAEL J DOB: 5/5/1958 [redacted]

Claimant's Name	Form Identification Number	Soc Sec No
Garbinski, Michael J	[redacted]	[redacted]

MEDICAL CERTIFICATE – M01 continued

3. RESTRICTIONS AND LIMITATIONS

Physical Impairment – (if applicable) As defined in federal dictionary of occupations titles. N/A
Indicate class of physical impairment.

- ☐ Class 1 – No limitation of functional capacity; capable of heavy work. No restrictions (0 – 10%)
- ☐ Class 2 – Medium manual activity (15 – 30%)
- ☐ Class 3 – Slight limitation; capable of light work (35 – 55%)
- ☐ Class 4 – Moderate limitation; capable of clerical/administrative (sedentary) activity (60 – 70%)
- ☐ Class 5 – Severe limitation; incapable of minimum (sedentary) activity (75 – 100%)

Mental Impairment - (if applicable)
Indicate class of mental impairment.

- ☐ Class 1 – No limitation
- ☐ Class 2 – Slight limitation
- ☐ Class 3 – Moderate limitation
- ☐ Class 4 – Marked limitation
- ☐ Class 5 – Severe limitation

What is this patient's current DSM-IV-R diagnosis?

Axis I _____ Axis IV _____

Axis II _____ Axis V _____

Axis III _____

Do you believe this patient is competent to endorse checks/direct the use of proceeds? ☒ Yes ☐ No

Cardiac – (if applicable) N/A

☐ Class 1 (no limitation) ☐ Class 2 (slight limitation) ☐ Class 3 (marked limitation) ☐ Class 4 (complete limitation)

4. PROGNOSIS

[redacted]

5. CERTIFICATION AND SIGNATURE

I certify that the above statements, in my opinion, truly describe the patient's disability and the estimated duration thereof.

[redacted] _____

(Print Doctor's Name and Medical Degree) (Original Signature of Doctor Required)

Doctor's Address [redacted]

Telephone Number [redacted] FAX Number _____

Certificate License No and State [redacted] Specialty _____

National Provider Identifier _____ If resident, check ☐ Date Signed _____

WDS-1(R-12-15)

Claimant's Name: MICHAEL J. GARBINSKI

Claimant's Address: [redacted]

Claimant's Telephone No:([redacted]

Social Security Number [redacted]

PART B

MEDICAL CERTIFICATE
(TO BE COMPLETED BY YOUR DOCTOR AFTER YOU BECOME DISABLED)

[redacted]

11. I certify that the above statements, in my opinion, truly describe the patient's disability and the estimated duration thereof:

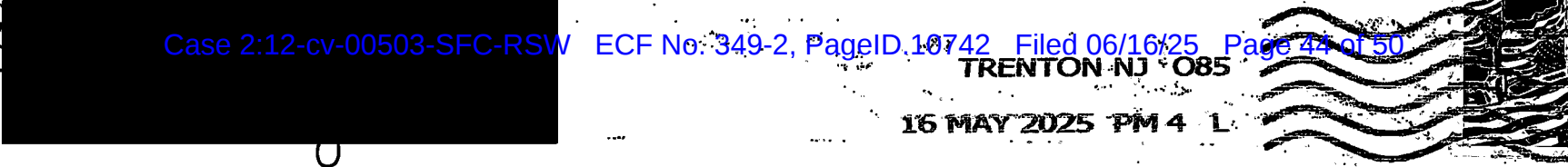
[redacted] (Original Signature of Doctor Required) 7/21 (Date Signed)

(Address) [redacted] (Certificate License No. and State) If Resident, check ☐

[redacted] (Specialty of Treating Physician)

(City) (State) (Zip Code)

Telephone Number: [redacted] FAX Number: [redacted]



Auto Parts Settlements Objections
P.O. BOX 10163
Dublin, OH 43017-3163

43017-316363

EXHIBIT D

05/11/2025

AutoParts Class Action Settlements objection –

My name is Britney Garbinski and I reside at [redacted] and my phone number is [redacted]. My Claim number is: 10198159.

I have included supporting documentation; my Medicaid Insurance acceptance and my acceptance for SNAP benefits (NJ foodstamps) which are both only for residents in poverty in New Jersey. These documents prove that I should be eligible of waiving attorney fees. Thank you. Please understand this dire situation.

Britney Garbinski
Britney Garbinski

OCEAN COUNTY BOARD OF SOCIAL SERVICES 1 OF 2 3653
1027 HOOPER AVENUE
POST OFFICE BOX 547
TOMS RIVER, NJ 08754 1-732-349-1500

DATE MAILED: APR 10 2025

TO: BRITNEY GARBINSKI [redacted] [redacted]

IMPORTANTE: SI USTED NO ENTIENDE ESTE AVISO, COMUNIQUÉSE CON UN REPRESENTANTE DE ESTA OFICINA.

THIS LETTER AFFECTS YOUR WFNJ (CASH ASSISTANCE) AND/OR NJ SNAP BENEFITS.

NJ SNAP PROGRAM ACTION

YOUR FOOD STAMP APPLICATION HAS BEEN APPROVED. ON MAY 1, 2025, $**** [redacted] IN FOOD STAMP BENEFITS WILL BE DEPOSITED IN YOUR FAMILIES FIRST FOOD STAMP ACCOUNT. THIS BENEFIT COVERS THE PERIOD FROM MAY 1, 2025 TO MAY 31, 2025.

THEREAFTER, $**** [redacted] IN FOOD STAMP BENEFITS WILL BE DEPOSITED IN YOUR FAMILIES FIRST FOOD STAMP ACCOUNT EACH MONTH UNTIL YOU ARE NOTIFIED OTHERWISE. THOSE BENEFITS WILL BE AVAILABLE ON THE 2ND DAY OF EACH MONTH UNTIL YOUR CERTIFICATION PERIOD ENDS. YOUR CERTIFICATION PERIOD WILL EXPIRE ON OCTOBER 31, 2025, UNLESS YOU ARE NOTIFIED OTHERWISE, AND YOU WILL NO LONGER RECEIVE FOOD STAMP BENEFITS AFTER THAT TIME UNLESS YOU REAPPLY NO LATER THAN OCTOBER 15, 2025.

FAIR HEARING INFORMATION APPEARS ON THE LAST PAGE OF THIS NOTICE:

IF YOU WISH FREE LEGAL COUNSEL, CONTACT:

SOUTH JERSEY
LEGAL SERVICES, INC.

215 MAIN STREET
TOMS RIVER, NJ 08753
732-608-7794

[redacted]

Enrollment_Confirmation-Ltr_17

NJ FAMILYCARE
Affordable health coverage. Quality care.

PO Box 4818, Trenton, NJ 08650-4818

Policy Number: [redacted]

Si necesita la carta traducida en español por favor llame un Coordinador de Beneficios de Salud a 1-866-295-4389. Procure por un representante que hable español.

March 28, 2025

[redacted]
BRITNEY GARBINSKI
[redacted]

Dear BRITNEY GARBINSKI:

The family members listed below have been enrolled in the NJ FamilyCare HMO shown in the table. Also shown is the enrollment date, which is the date your health insurance through the HMO will begin.

Enrollment

Name	Birth Date	Plan	Enrollment Date	HMO
BRITNEY GARBINSKI	[redacted]	ABP	[redacted]	Horizon NJ Health

Please Note: If anyone in your household applied for benefits and did not appear in this letter, they will get a separate letter.

Call us at 1-866-472-5338 if you have any changes:

- In your family size.
- In household income (whether it goes up or down).
- If you move.
- If someone in your household is expecting a baby.
- If anyone in your household who applied for NJ FamilyCare gets other health insurance.

Remember:

- Your insurance needs to be renewed annually. We will send renewal information to you prior to the end of your twelve-month eligibility period. You must follow the instructions you get at that time to keep your insurance.
- When you receive services you will need to use your NJ FamilyCare I.D. Card and your HMO I.D. Card. You will get the HMO I.D. Card and an HMO Member Handbook directly from your new HMO.

If you have questions or need help call 1-866-472-5338 or TTY 711.

Sincerely,

NJ FamilyCare

OCEAN COUNTY
OCEAN-TOMS RIVER
1027 HOOPER AVE.
P.O. BOX 547
TOMS RIVER, NJ 08754-0547
MEREDITH SHEEHAN, DIRECTOR

Phone: (732) 349-1500
Fax: (732) 244-8075

BRITNEY GARBINSKI
[redacted]

Date: **04/05/2025**
Case No: [redacted]

NOTIFICATION FORM

IMPORTANTE: ESTE ES UN AVISO IMPORTANTE. SI USTED NO ENTIENDE LA INFORMACION CONTENIDA EN ESTE AVISO O NO LEE INGLÉS, COMUNÍQUESE CON UN REPRESENTANTE DE LA AGENCIA.

Please read it carefully and, if you have any questions about it, contact the agency immediately. If you disagree with the action below, you have the right to request a fair hearing. Information about fair hearings can be found on the next page. If you have a disability or family violence issue, you may not have to meet certain WFNJ or NJ SNAP requirements.

IMPORTANT NOTICE CONCERNING YOUR NJ SNAP CASE The (Check-marked) action will be taken on your NJ SNAP case :

I. For initial certification or recertification, your NJ SNAP benefits will be:

- [X] **Approved:** The first month you will receive $ [redacted] in NJ SNAP benefits which covers the period **05/01/2025** to **05/31/2025**. After that you will receive $ [redacted] in NJ SNAP benefits for each month until your certification period ends, unless otherwise notified.
- [X] Your certification period will end on the last day of **10/31/2025** and you will no longer receive NJ SNAP benefits after that unless you file an application no later than **10/15/2025**.
- [ ] **Denied:** You have been found ineligible to receive NJ SNAP benefits effective _____.
- [ ] If you take the action listed below within 30days following the date of this notice, we will reopen your NJ SNAP application without requiring a new application. The action that you must take reopen your application is:

  You must re-submit a new NJ SNAP application if, at the end of the 30-day period, you have not taken the needed action, and still wish to apply for NJ SNAP benefits.
- [ ] **Held Pending:** The final determination of your NJ SNAP benefits eligibility is being held in pending status. While your case is being held in pending status, you must report all changes in household circumstances, which may have a bearing on your case.

II. For changes that occur during the certification period :
Your NJ SNAP benefits will be:

- [ ] **Increased:** The amount of NJ SNAP benefits you are to receive has increased to $_____, effective _____. You will receive an additional NJ SNAP benefit for $_____ for the period from _____ to _____. If you do not provide us with the necessary verification by _____, your benefits will revert back to $_____.
- [ ] **Reduced:** Your NJ SNAP benefits will be reduced from $_____ to $_____ effective _____.
- [ ] **Terminated:** You are no longer eligible for NJ SNAP benefits, effective _____.

This action has been taken because **You completed your recertification. Based upon your current income and expenses, you are eligible to receive SNAP benefits.**

This is required by the following regulations: **10:87 5.4, 5.5, 5.10, 6.3, 9.1**

Sandra Faruolo	(732) 349-1500	Sebastian Balbuena	04/05/2025
Worker	Worker's Phone No.	Supervisor	Date

F,15,N,C159534015X,0003,000029929780

NJ SNAP-T15 03/24

TRENTON NJ 085

16 MAY 2025 PM 4 L

Auto Parts Settlements Objections

PO BOX 10163

Dublin, OH 43017-3163