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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

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THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

IN RE: TOYOTA MOTOR
CORPORATION UNINTENDED
ACCELERATION MARKETING,
SALES PRACTICES, AND
PRODUCTS LIABILITY
LITIGATION.

MDL-10-2151-JVS (FMOx)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Santa Ana, California
July 19, 2013

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1 SANTA ANA, CALIFORNIA; FRIDAY, JULY 19, 2013; 9:00 A.M.

2 THE CLERK: Item No. 1, MDL 10-2151-JVS, In Re:
3 Toyota Motor Corporation Unintended Acceleration Marketing,
4 Sales Practices, and Products Liability Litigation.

5 Counsel, please state your appearances for the
6 record.

7 MR. BERMAN: Good morning, Your Honor. Steve
8 Berman for the class.

9 MR. SELTZER: Good morning, Your Honor. Mark
10 Seltzer for the class.

11 MR. PETRI: Good morning, Your Honor. Frank Petri
12 on behalf of the plaintiff class.

13 MR. ROBINSON: Good morning, Your Honor. Mark
14 Robinson for the plaintiffs.

15 MS. CABRASER: Good morning, Your Honor.
16 Elizabeth Cabraser for the plaintiffs.

17 MR. SLAVIK: Good morning, Your Honor. Don Slavik
18 for plaintiffs.

19 MR. COONEY: Good morning, Your Honor. Gordon
20 Cooney for Toyota.

21 MR. HOOPER: Good morning, Your Honor. John
22 Hooper for Toyota.

23 THE COURT: Good morning.

24 Anyone else?

25 MR. KURILICH: Good morning, Your Honor. Matt

1 Kurilich for Objector No. 66.

2 MR. BERNSTEIN: Good morning, Your Honor. Josh
3 Bernstein for the Estate of Jerome Bernstein.

4 MR. COFFMAN: Good morning, Your Honor. Richard
5 Coffman for the Bolles objectors.

6 MR. BARNOW: Good morning, Your Honor. Ben Barnow
7 for the Bolles objectors also.

8 THE COURT: Good morning.

9 This is a continuation of the fairness hearing
10 which we had last month. As indicated by the tentative, I
11 believe that the problems identified at the last hearing
12 have been resolved and that the form of the settlement that
13 is before me now is fair, just, and reasonable.

14 Mr. Berman.

15 MR. BERMAN: I want to begin, Your Honor, by going
16 through briefly the amendments and why they occurred. We
17 had a choice when we were negotiating the settlement of
18 trying to figure out the best way -- we did try to figure
19 out the best way to make money available to class members.
20 One of the things we talked about right off the bat is why
21 not just give checks? And there are actually four reasons
22 why we didn't just mail checks.

23 The first was that we knew from data, although
24 it's the best data out there, is not comprehensive, is not
25 complete. There are registrations, for example, that just

1 doesn't pick up. There are time lags in the data, so we
2 knew the data was imperfect.

3 Second, the data does not identify class members
4 who returned a leased vehicle before the lease period was
5 up, so we couldn't mail checks to lessees. That was a
6 problem. The data doesn't identify those vehicles that had
7 a UA that were sold at a loss.

8 And, fourth, we felt that there were certain class
9 members perhaps who just wouldn't care about a \$200 check.
10 I mean, I'm not -- take the Lexus, which is a very high-end
11 car, it may not mean that much to them. It may mean a lot
12 more to someone who has a Corolla or some other lower level
13 vehicle. By allowing those who cared the most claim, they
14 potentially would not be pro rata reduced if everyone
15 claimed. So people who cared, stood up, they actually get
16 more money. We felt that was actually a fairer way to go
17 about the distribution the way we did it.

18 We have been aware of this problem from the
19 get-go. Even before we filed our first papers and the first
20 notice went out on March 1, 2013, we filed the First
21 Amendment to the settlement agreement, which said that if
22 there were unused funds in one fund, it could be used to
23 help out the other fund. So we were thinking about it.
24 When we filed our first brief, a memorandum of support, on
25 April 23, 2013, we advised the Court in that brief that we

1 were thinking about additional steps.

2 We then had dozens of meetings between Toyota and
3 my team. Eventually we came up with Amendment No. 2. We
4 also had discussions. We have been working on and watching
5 this on a weekly basis. So we have kept apprised how this
6 was going, and that's why we did this amendment. It wasn't
7 in response to Mr. Barnow or anyone else out there.

8 Your Honor, you asked us to report on the numbers,
9 and we reported on the numbers. I am not going to comment
10 on the tentative. The money is going out to the class
11 members. Those who took the effort to make a claim are
12 getting 100 percent. Those who are getting checks in the
13 mail are getting -- the checks range from \$9 to \$1,500. So
14 we think that it's a fair settlement.

15 Now, unless you have some questions --

16 THE COURT: No.

17 MR. BERMAN: -- I will turn to the objections if
18 that's okay.

19 First, I am going to deal with the floor mat
20 objection. The Court has already rejected this objection,
21 but I want to point out a couple of things. First of all,
22 in his papers, Mr. Barnow cites to the Complaint to say that
23 floor mats -- he claims we should be seeking for loss of use
24 of floor mats and carpet cleaning, and he cites to the
25 Complaint.

1 Well, I went and looked at the Complaint to see
2 what he was talking about. It was actually very
3 interesting. I will just spend a few seconds going through
4 the paragraph to show that it has nothing to do with what
5 Mr. Barnow claims. He cites paragraph ten of the Complaint.
6 What paragraph ten says is in 2010 there were 14,000 UA
7 customer complaints. Most of these vehicles supposedly had
8 been fixed by floor mat recalls. It goes on to say that
9 floor mats were not the trouble. So we are not seeking
10 relief for floor mats. We are pointing out that something
11 else is going on here besides the floor mats.

12 In paragraph 213, there's a discussion of a field
13 technical report about a UA where the technician says it's
14 not a format problem. Yes, it's floor mats, but the
15 Complaint says something else is going on here.

16 I will just go through a few more examples.

17 THE COURT: But isn't your point that this is a
18 negotiated settlement with tradeoffs on both sides as to the
19 extent of monetary payment, other relief, and exactly what
20 was covered?

21 MR. BERMAN: Yes.

22 THE COURT: Isn't it the Court's duty to pass on
23 the settlement as a whole?

24 MR. BERMAN: Yes, but I did want to respond to the
25 notion that this carpet cleaning or loss of use of floor

1 mats was part of the case, and the paragraphs he cited don't
2 make it part of the case. They actually point out that the
3 floor mats weren't the issue. There was something else
4 going on.

5 The other point I want to make about floor mats is
6 that we had to look in the context of what this case was
7 about. We came before Your Honor. They took and repaired
8 the floor mats. So you got it fixed. What we were about
9 was when the news of safety issues came out, as you know,
10 there is a diminution in the value of cars. That's what the
11 economic loss that we pursued in this case was about, not
12 about floor mats. I think it's telling that we sent out
13 25 million notices, and the only person complaining about
14 floor mats is Mr. Barnow. If there was a real issue for a
15 class, where are they?

16 The last point I want to make about floor mats and
17 then I will move on is that Mr. Barnow had a chance years
18 ago to come before the Court and say, Mr. Berman,
19 Mr. Seltzer, Mr. Petri, I am not pursuing this carpet claim,
20 and I am not pursuing the loss of the use of floor mat
21 claim. You gave all the lawyers in the country a chance to
22 come in and object if there were claims that weren't in the
23 operative Complaint that we were bringing, and Mr. Barnow
24 didn't step forward. In fact, something he put in the
25 record is an e-mail exchange between myself, Mr. Barnow, and

1 Mr. Petri saying we are not going to do this. We don't
2 understand how you would possibly model damages for carpet
3 cleaning. It's not happening. Mr. Barnow didn't step
4 forward. So if there was no pursuance of the carpet claim,
5 it's his own problem. It's too late for him to come in and
6 object.

7 Then, Your Honor, continuing for a moment with
8 Mr. Barnow, the second argument he makes -- I am not sure if
9 it's solely for his attorneys' fees or whether as someone
10 who is objecting to the settlement -- he says that whatever
11 happened between the time we filed the first settlement
12 agreement and the amendments were the result of his work.
13 That's not true, Your Honor. If you look at the real reason
14 he is bringing this carpet issue is he wants a fee. He is
15 asking for \$8 million. He claims that he and his co-counsel
16 devoted 738 hours to their objection. That's 92 attorney
17 days, 92 attorney days for two briefs.

18 At the beginning of this case, Mr. Barnow was busy
19 organizing all the lawyers. He wanted to be lead counsel.
20 He wasn't lead counsel. I think his objection is just sour
21 grapes and should be rejected by the Court.

22 The last point I want to make on Mr. Barnow is he
23 also claims that the escheatment part of the settlement is
24 improper cy pres, and I think Your Honor did it right in the
25 tentative. It's not cy pres. It's there for the consumer

1 to be claimed at a later date.

2 THE COURT: Wouldn't the escheatment laws come
3 into play in any event if there were unclaimed monies
4 regardless of whether the settlement was set up to recognize
5 that and have the claim administrator initiate the
6 escheatment process?

7 MR. BERMAN: That's correct.

8 Unless you have any further questions, that's all
9 I have.

10 THE COURT: No.

11 Anyone else? Mr. Hooper.

12 MR. HOOPER: May it please the Court, Your Honor,
13 I will just briefly address some of the issues with regard
14 to Amendment No. 2. If it please the Court, Mr. Cooney
15 right after me will address the objections.

16 THE COURT: That's fine.

17 MR. HOOPER: Your Honor, Toyota is pleased that in
18 your ruling yesterday you recognized that the settlement is
19 fair, reasonable, and adequate, but in a lot of ways, this
20 settlement has more meaning to Toyota. It has always had
21 more meaning to Toyota. Although Toyota fought this case
22 vigorously as noted in Your Honor's prior order and although
23 the parties fought every point, and Toyota was convinced
24 that it would probably prevail after many years of
25 litigation, it made a decision to settle, but when it made

1 the decision to settle, it put significant time and
2 resources and focus on the settlement as well. The reason
3 why it did that is because the meaning of the settlement for
4 Toyota has always been about -- we were at a table with
5 plaintiffs' counsel trying to find a resolution that would
6 drive value to its customers and put this litigation past
7 it.

8 Well, in so many ways as you note, the settlement
9 drives values to Toyota customers or class members, probably
10 in more ways than many other settlements that have been
11 presented to this or many Courts. How has it done that?
12 Well, first of all, the settlement was no secret. The
13 settlement had a tremendous publication notice program as
14 noted by the Court and noted by the administrator. It sent
15 out an almost unprecedented 22 million notices directly to
16 individuals. Toyota cooperated with the claims
17 administrator and with plaintiffs' counsel to make sure that
18 that happened because frankly they had the industry
19 knowledge on how to do that.

20 We created a customer support program that would
21 last for over ten years to support the resolution of this
22 case. With respect to that program, what's unique about
23 that program is that they will start administering that
24 within days of Your Honor issuing its decision on whether
25 the settlement is fair and reasonable. They will not wait

1 until all appeals have exhausted. They intend to honor that
2 agreement. They have been working for literally seven
3 months to find parts for vehicles that are still out there,
4 because when you try to find over 700 parts, which is what
5 we are talking about here, you are going to run out of some
6 parts. Toyota spent six months trying to get repair bills
7 because it's part of driving value that it has agreed to do
8 to its customers.

9 If you take a look at the BOS Reflash Program,
10 it's a very easy program. Again, we are administering that
11 within days of approval before appellate review has
12 extinguished.

13 If you look at the \$30 million education program,
14 that is the program to fund research and education around
15 driver safety.

16 Your Honor, especially the cash funds, while there
17 have been, quote, "a low number of folks who are claiming
18 in," unquote, the cash funds speak to how Toyota has tried
19 drive value to its customers. How is that? It's about as
20 easy a program as you could come up with as Your Honor has
21 noted for an individual or customer, a Toyota customer, to
22 lay a claim. While we are talking about low numbers, we
23 have over 500,000 individuals and companies that are going
24 to be laying claims in this case.

25 So in a lot of ways, I think the parties,

1 plaintiffs' counsel, and Toyota have some pride in the fact
2 that this is a class member/Toyota customer friendly
3 resolution. When we appeared before you the last time, we
4 had an issue that we went back and started to work on to
5 provide Your Honor with some additional numbers. That was
6 in dealing with the fact that we had nearly \$350 million of
7 funds that we had projected are not going to be used in the
8 initial program. So with the same focus of class member
9 focus and customer focus, the parties got together and
10 designed another program, and that program is what I call
11 the 100 percent program because 100 percent of the folks who
12 took the time out to file a very simple claim form -- those
13 folks will get 100 percent of what they are claiming are
14 their damages.

15 Additionally, having listened to Your Honor at the
16 last hearing and having reworked the program, 100 percent of
17 the rest of the dollars after a fairly small number as you
18 point out that is spent on administration goes to Toyota
19 customers. This plan is focused on getting the maximum
20 amount to our customers.

21 While these have been heated negotiations over a
22 year and a half of negotiating, I think when the focus
23 became clear on both sides that we were talking about the
24 same person, a class member or a Toyota customer, the
25 concept of how we would work together to get that done was

1 important to both sides.

2 The other number I use is zero percent, really
3 zero percent effort for class members to do their claim to
4 get their checks. They will be mailed. There will be a
5 second check for those people who don't take the limited
6 effort of depositing their check, and then they will be a
7 reminder notice. So in many ways, as Your Honor has pointed
8 out, this is a fair, reasonable, and adequate settlement.
9 But for Toyota and I'm sure for class counsel the key to the
10 settlement for Toyota is driving value to our customers
11 because, frankly, in this process, we feel great.

12 Thank you, Your Honor. Unless you have any
13 questions --

14 THE COURT: No. Thank you.

15 I would be happy to hear objectors at this point
16 for no more than ten minutes. I would advise you to focus
17 on what is new to this hearing, namely, the second
18 amendment. I fully appreciated the arguments that were made
19 the last time, and I would much prefer to hear new matter
20 than repetition of arguments previously made at the last
21 hearing.

22 Who would like to be heard?

23 MR. BARNOW: Ben Barnow, Your Honor. I would like
24 to be heard.

25 THE COURT: Good morning.

1 MR. BARNOW: Again, thank you for the opportunity
2 to be here.

3 Judge, I am here today not as a representative of
4 Ben Barnow's objection but on behalf of the objectors that
5 are listed. I guess it's easy to try to change the focus.
6 So with those corrections in mind, I will proceed.

7 One comment that sticks out -- the sour grapes
8 comment runs a little over the top. There are no sour
9 grapes. The proof I have from that is hopefully in the
10 quality of the work that we presented to the Court. I would
11 hope that the Court agrees with me that -- it is our
12 position that this was well founded and well intended.

13 Some time ago I received a call -- I haven't
14 mentioned it the previous papers, but I think it's relevant
15 today. I got that call from Mr. Petri early on. He had
16 actually called another lawyer to see if I would talk to
17 him. I was frankly taken back by the thought that I
18 wouldn't. I said of course I will talk to him. I am
19 plaintiffs' counsel, and I am plaintiffs' counsel, and I
20 have been plaintiffs' counsel for a lot of years. I have
21 been in class actions for over 20 years.

22 What Mr. Petri said to me was that you might have
23 the best claim in this case for floor mats. I agreed with
24 him. I said it was worth hundreds of million. I can't
25 state what number today I used, but we went through the math

1 briefly. Things stalled after that. He did call
2 Mr. Berman. Mr. Berman was clearly not that big on it.
3 That part of the call was brief.

4 I do know the e-mails, however, that Mr. Berman
5 references, and I don't come to the same conclusion that he
6 does. Was there dialog regarding this? You bet. The Court
7 will recall why it was eventually brought to the Court's
8 attention. It because it was stated that I did not
9 communicate with them, Mr. Berman, whatever. Well, that
10 flies in the face of the call with Mr. Petri, and it also
11 flies in the face of what those e-mails were actually
12 saying. No where in it do I see Mr. Berman's conclusion
13 that he then said they wouldn't pursue it.

14 Frankly, I respect them as lead counsel. That's
15 why I told Mr. Petri of course I will talk to you. I am
16 plaintiffs' counsel. I didn't say I was lead counsel. I
17 was working with them.

18 I knew Mr. Berman -- he is a very good lawyer.
19 There is no issue about that -- would go through the
20 allegations in the various Complaints. Frankly, we had gone
21 through all of the consolidated. Each one mentioned them,
22 but there are other paragraphs. It's simply not fair to say
23 that the Complaint does not highlight the floor mats. It
24 does.

25 Also, in the prayer for relief, they talk about

1 restitution. That is in our papers. I think what is more
2 important today coupled with what was said before -- and I
3 don't want to repeat because I know the Court knows -- is
4 that Mr. Berman stated floor mats were not part of the case.
5 Okay, then why is there a release? There shouldn't be.
6 Defective product, from day one Toyota has said that. They
7 said it in the press releases. Mr. Berman said we weren't
8 able to prove sudden acceleration, but we did other things.

9 Why did they sent out eight million letters
10 approximately? How many of those people were told them to
11 put the floor mats back in? How many were told they were no
12 longer defective? None that I know of. We have repeatedly
13 asked -- the record doesn't show how many of those were
14 actually remediated. Now, if the issue was safety and the
15 issue is those floor mats are defective, why would you not
16 follow up with some kind of communication?

17 Now, Your Honor, has spoken regarding how you have
18 to look to the whole settlement.

19 THE COURT: Isn't that the law?

20 MR. BARNOW: It is to a degree. You can't
21 disregard significant portions. There is no question the
22 Court should and can smooth over the differences, but this
23 is not smoothing over a difference. This is disregarding a
24 significant portion of this class that are the only ones
25 with a proven defective product, and that's where I think

1 the analysis falls apart. When you look at all of it, they
2 haven't told us how many of the eight million were
3 remediated. Let's pick a number, three million. That
4 leaves four to five million people with a defective
5 product.

6 If you look at the damages that Mr. Petri and I
7 discussed and simple math shows, Toyota having all those
8 funds probably winds up being the funding for almost this
9 entire settlement. If they are not in the class, then when
10 you say you look at the whole settlement, the whole
11 settlement should include a release for people that weren't
12 litigated. Carve it out. We will litigate it. Defective
13 product, not litigated, no consideration, no release. So
14 when you say look at the whole settlement, what right do
15 they have to go in and loop people in with a defective
16 product that by class counsels' own admission were not
17 included?

18 Unless the Court has any questions, that would be
19 the conclusion.

20 THE COURT: Very good. Thank you.

21 Would any other objectors like to address the
22 Court?

23 MR. BERNSTEIN: Good morning, Your Honor. Josh
24 Bernstein for the Estate of Jerome Bernstein.

25 I am quite cognizant of Your Honor's comment not

1 to rehash the issues that we had raised in our objection
2 originally. The principal issue as Your Honor knows is the
3 question of the adequacy of damages for that substantial
4 segment of the class -- or potentially substantial segment
5 that has incurred damages as a result of actual SUV events.

6 The second distribution is relevant to that for a
7 couple of reasons, Your Honor. First off, as you have heard
8 Mr. Berman say, there will be no additional distribution,
9 and the second distribution for any of those folks -- or at
10 least folks who experienced early lease terminations --
11 other types of members of the class who will not have access
12 to the second distribution, which as the --

13 THE COURT: But the theory of the first
14 distribution is that it makes each member of the class who
15 made a claim whole 100 percent regardless of the
16 shortcomings and the legal theories in the particular
17 states. Those estimates, the matrix, is based on the work
18 of plaintiffs' expert as to what the damages are for each
19 member of the class.

20 MR. BERNSTEIN: You are absolutely right.

21 THE COURT: So I guess there is no need for a
22 second distribution as to any person who made a claim
23 because that person is paid 100 cents on the dollar in
24 accordance with the unrebutted showing of plaintiffs'
25 economic expert as to damages.

1 MR. BERNSTEIN: Yes. Our fundamental objection in
2 this case is that there must be a distinction drawn. In
3 fact, the class is comprised essentially of two segments:
4 those class members who experienced actual SUV events, which
5 I may note represent the vast majority of the class
6 representatives in this case, and those who do not.

7 As Your Honor ruled with respect to standing,
8 diminution in value, loss in value, is sufficient to
9 establish injury to the class as a whole and the amount of
10 relief for that basis. However, as Your Honor also noted at
11 the time, the question of damages for -- diminution of value
12 is a limited number of damages. Our fundamental argument is
13 that in the case of those class members who experienced SUA
14 events, the only rational and equitable way to compensate
15 those class members is to look at what they overpaid for
16 their vehicles. So, for example --

17 THE COURT: Well, isn't it correct that a class
18 member sustaining an SUA event and the vehicle was totaled
19 that they would be compensated for the economic loss?

20 MR. BERNSTEIN: With all due respect, that's
21 absolutely not the case. What they would be compensated for
22 in that case is the --

23 THE COURT: Well, why could they not be recovered?
24 I would assume that if you have got a recovery for
25 diminished value that it would also be available to you the

1 ability to recover for the further diminution or elimination
2 of value, if you will, of a vehicle as a result of the
3 accident. A property damage claim -- that's carved out.

4 MR. BERNSTEIN: I am not sure that a property
5 damage claim -- that a consequential loss of a property
6 damage claim would be the amount that -- which is an
7 economic loss issue -- would be an amount that the class
8 member overpaid --

9 THE COURT: But isn't it the point, that you can
10 opt out if you so chose and bring that property damage claim
11 and claim all those elements of damage?

12 MR. COONEY: We are not seeking a property damage
13 claim. We are seeking a claim for economic losses.

14 THE COURT: But isn't it the case that if you are
15 compensated for the economic loss you still have available
16 to you if you opted out of the class the full economic loss
17 that you think was sustained as a result of the event, or at
18 a minimum, the difference between whatever diminished value
19 was paid and the rest of the value of the car that was a
20 total loss? Isn't that carved out one way or the other?

21 MR. BERNSTEIN: Well, certainly the matrix
22 provides compensation for the diminution of value.
23 Insurance coverage will provide compensation for the
24 physical loss to the vehicle, but the economic loss arises
25 from a breach of warranty of the product was sold or leased

1 by Toyota, which is the substantial depreciation loss. For
2 example, Your Honor, I don't understand how you could
3 recover in your example of a property claim the amount that
4 was expended by a Toyota customer in the inception for a
5 service plan for which they received essentially no value
6 because in my father's case the vehicle was totaled two
7 months after the service plan was instituted. I am not sure
8 that those damages are covered.

9 Our view is that what we are talking about are
10 economic losses, and the settlement encompasses these
11 economic losses. It's designed to encompass these
12 economic losses. It's absolutely no different from the
13 economic losses that are awarded by the vast majority of
14 class members, because in that case as the settlement
15 parties agree, they characterize those losses as excess
16 depreciation due to market effects. In this case, we are
17 seeking the actual depreciation due to a breach of warranty
18 in the product that was sold -- or at least to the Toyota
19 customer.

20 So our fundamental point, Your Honor, is that --
21 we recognize that the Court has really not had the
22 opportunity to look at the damages issue.

23 THE COURT: I wouldn't say that's accurate. You
24 presented a delayed objection which I entertained. The last
25 time you had the opportunity to address the Court, and you

1 have had the opportunity to address the Court today, so I
2 can't say that the Court is uninformed with respect to your
3 theory of damages.

4 MR. BERNSTEIN: I agree, Your Honor. I meant that
5 in the context of a broader settlement that to my knowledge
6 this is really the first time -- what is the plan of
7 allocation? An allocation of settlement proceeds based --
8 an allocation on the damage award. I think it's incumbent
9 on the Court to ensure that the distribution of settlement
10 proceeds through the allocation process accounts for the
11 fundamental difference in the situation between those class
12 members that have experienced SUA events and those who have
13 not.

14 THE COURT: Would it be accurate to say that when
15 you reviewed the settlement notice and related notices that
16 you perceived the fact that the settlement wouldn't have a
17 peculiar situation to the estate?

18 MR. BERNSTEIN: I'm not sure I entirely understand
19 the question.

20 THE COURT: I assume you reviewed the settlement
21 notice and all the disclosures.

22 MR. BERNSTEIN: Yes.

23 THE COURT: I believe you are the trustee as well.

24 MR. BERNSTEIN: I am the co-executor.

25 THE COURT: I believe that you were able to

1 perceive the benefit or lack of benefit of the settlement.

2 MR. BERNSTEIN: Yes.

3 THE COURT: And therefore were sufficiently
4 informed as to whether you wanted to remain in the class or
5 opt out.

6 MR. BERNSTEIN: No question. I believe Your Honor
7 asked last time why we didn't opt out. Really the simple
8 answer to that question -- very briefly, I did make a claim
9 to Toyota. Had Toyota done the right thing three years ago,
10 I would not be here today. I have never filed an objection
11 in a class action before. Toyota rejected that claim. I
12 did not file a lawsuit because I don't think it would have
13 been cost efficient to file a lawsuit on damages, but I
14 filed a claim with Toyota. They investigated. They said it
15 was something to do with the floor mats. The implication
16 was they were after-market floor mats, that my father was
17 somehow in error. Six months later we received a safety
18 recall notice saying: Dear Mr. Bernstein: Please bring
19 your car in because there is a risk with the floor mats.

20 Had Toyota done the right thing I would not be
21 here today, but the reality is that opting out is not a
22 viable option. I would just point out that the damages we
23 are seeking in this case, \$2,600, is a quarter of what a
24 Lexus owner is going to get in diminution in value of
25 damages based on market effects where that Lexus owner never

1 experienced an SUA event.

2 THE COURT: Thank you, sir. Your time is up.

3 Any other objectors?

4 MR. KURILICH: May I be heard? I am for Objector
5 No. 66.

6 THE COURT: Good morning.

7 MR. KURILICH: I somehow got confused. I have
8 been under some medical treatment recently. I honestly am
9 not addressing any of the mechanics of the distributions
10 that are being referred to here. I am totally concerned
11 with the attorney's fees. I would like to respond to
12 counsels' papers --

13 THE COURT: Sir, this isn't the time or place.
14 You have addressed attorneys' fees in your written
15 objection. They have been considered fully. We had a
16 hearing. No objector addressed the subject of attorneys'
17 fees.

18 MR. KURILICH: I did file a written objection
19 relating to attorney fees.

20 THE COURT: That's fine. They have been
21 considered.

22 MR. KURILICH: I thought you said no one appeared
23 to raise an objection --

24 THE COURT: No, no. I said no objector at the
25 hearing orally addressed the issue of attorneys' fees.

1 MR. KURILICH: Yes, but you put out a memo that
2 said we could rely upon what we submitted.

3 THE COURT: Right, and the Court has considered
4 all written objections.

5 MR. KURILICH: But we objected to --

6 THE COURT: Sir, your objection is overruled. The
7 Court in substantial detail outlined its thinking as to why
8 the fees sought were appropriate.

9 MR. KURILICH: I understood when I got up you said
10 it was considered. There was no written reference to
11 considering attorneys' fees in that particular portion. You
12 just said earlier if I understood you that there were no
13 objections presented to attorneys' fees --

14 THE COURT: That's not accurate. What I said was
15 that at the hearing no objector who orally addressed the
16 Court addressed the issue of attorneys' fees. There were a
17 substantial number of objections that did treat attorneys'
18 fees, and the written order addressed those in some detail.

19 MR. KURILICH: Well, my understanding was that
20 they were not addressed because we did not get up and speak
21 on them.

22 THE COURT: Not accurate. The Court meant what it
23 said when it sent out an order establishing procedures for
24 the initial fairness hearing. What the Court said was the
25 Court would hear each objector for ten minutes, that the

1 Court would fully consider the written objections of any
2 class member and would take those into account, and if a
3 party wanted to rely on certain objections, it could do so.
4 The Court did not require a personal appearance in argument
5 in order for the Court to consider the substantive
6 objections. Indeed, not all the people who said they were
7 going to appear -- something like 15 people gave notice that
8 they would appear. I think only seven or eight actually
9 spoke. Nevertheless, all written objections were
10 considered.

11 MR. KURILICH: I think we were short-changed then.
12 I apologize to the Court for the misunderstanding. Thank
13 you.

14 THE COURT: Thank you.

15 Mr. Cooney, would you like to reply at this time?

16 MR. COONEY: I would, Your Honor. Thank you.

17 May it please the Court, with respect to the floor
18 mat related objections raised by Mr. Barnow, I just want to
19 say a couple of brief points. Again, this is really an
20 attempt to reargue something that was raised and fully
21 considered by Your Honor at the last hearing.

22 As Mr. Berman said, out of the millions of class
23 members we have just one objection with regard to floor
24 mats, and there is really a good reason for that. That's
25 because Toyota addressed the floor mat issues through the

1 NHTSA recalls. The objectors are wrong when they say the
2 floor mats were, quote, "admittedly defective products."

3 First of all, Toyota did recall vehicles and did
4 replace the all-weather floor mats. There was no finding of
5 a defect. The only floor mats that were replaced through
6 that program were the all-weather floor mats, not the
7 carpeted floor mats. The carpeted floor mats -- ultimately
8 NHTSA determined that those floor mats could be put back in
9 the vehicles, and there were other remedies that were done
10 in connection with those vehicles. As I mentioned to Your
11 Honor, the record reflects that Toyota offered to owners the
12 opportunity to have their carpets cleaned if they were
13 subject to the recall.

14 We went over the statistics at the last hearing.
15 There were over 20 million notices that were mailed by
16 Toyota. And I want the record to be very clear. I
17 mentioned that NHTSA's website has very detailed information
18 regarding the recall, Your Honor, and I want to go over some
19 of the kinds of information. This information was available
20 to Mr. Barnow. I think it's important for it to be in the
21 record. I think the Court can take judicial notice of
22 what's on NHTSA's website.

23 There are key documents related to each of those
24 recalls that are on the website, and they include such
25 things as all of the notice letters to the owners, the

1 instructions to dealers, and other technical documents.

2 There is also a requirement by NHTSA that for the first six
3 months -- for the first six quarters after a recall that
4 detailed reports have to be submitted to NHTSA, and those
5 are on the website. They show such things as the number of
6 defective vehicles, information regarding the notices that
7 went out. NHTSA actually requires the manufacturer to
8 report the number of returned notices because of bad
9 addresses, so you can look at the affected number of
10 vehicles and subtract the number of returned notices and get
11 a very good sense of the number of delivered notices.

12 In addition, the manufacturer has to report the
13 completion rate. I can represent to the Court that to this
14 day, which goes beyond the six quarters, approximately
15 78-and-a-half percent of those vehicles that were subject to
16 those recalls have been remedied, but you can see and the
17 record can reflect because of judicial notice what was done
18 in those first six quarters for each of the vehicles, and
19 it's a significant number.

20 More importantly, Your Honor, there is no
21 expiration. So those class members who have yet to take
22 advantage of the recall still can do so. I am frankly at a
23 loss to understand what we are even talking about here.
24 Toyota has fully addressed any concerns, including providing
25 carpet cleaning. As Your Honor might suggest, NHTSA doesn't

1 require manufacturers to do that, but picking up on
2 Mr. Hooper's point, Toyota was concerned about its customers
3 and wanted to make sure that if their carpets were dirty
4 because they were concerned about their floor mats that
5 their carpets would be cleaned free of charge. That's the
6 kind of customer service Toyota does, and that's the kind of
7 benefit that was being offered to the customers here. So I
8 am frankly at a complete loss to understand what we are even
9 talking about with respect to these floor mats issues.

10 As Your Honor mentioned, regardless of whether a
11 claim is pursued or not pursued, the fact is the Court's
12 task as the Court's tentative recognizes is to look whether
13 the settlement as a whole is fair, reasonable, and adequate.
14 And particularly given what Toyota has done through the
15 NHTSA recalls, I think it's clear that the settlement
16 properly addressed these issues and provided the benefits of
17 the class in the form that it did rather than providing some
18 separate benefit with respect to floor mats.

19 If the Court doesn't have any questions with
20 regard to the floor mat issues, I will just move quickly to
21 Mr. Bernstein's issues.

22 THE COURT: Very good.

23 MR. COONEY: First, as the Court noted, the most
24 recent objection was not timely. It was not filed by the
25 deadline on the 17th of July, and I simply want to note that

1 for the record.

2 I am also at a loss to really understand what
3 Mr. Bernstein is talking about with regard to UA damages.
4 There is no inherent loss of money as a result of a UA event
5 absent property damage for personal injury. As Your Honor
6 correctly noted, the release in this case excludes property
7 damage and personal injury, so a claimant in this case can
8 recover the other aspects of the settlement here and still
9 pursue claims for property damage or personal injury or they
10 may opt out.

11 Also, Your Honor, it's clear under the settlement
12 that sellers, people who terminate their leases early, and
13 people who have their total losses because of an accident
14 during the dip period, are able to complain from the
15 diminished value fund.

16 So, again, all of those categories, as well as the
17 residual value insurers -- the data relied upon by
18 plaintiffs' experts show that that is the time period for
19 which there was alleged diminished value, and any of those
20 categories, including people that suffered a total loss in
21 the value of their vehicle because of an accident, are able
22 to claim.

23 I think what we are talking about here is an
24 idiosyncratic loss. What Mr. Bernstein is saying is he had
25 a particular interaction where it was maybe greater than or

1 different from whatever the plaintiffs' experts concluded.
2 His particular loss he claims was greater. The settlement
3 cannot and should not deal with those kinds of idiosyncratic
4 losses. The law is clear that in order to be approved that
5 the settlement does not need to take into account
6 idiosyncratic situations like that.

7 I think it's pretty clear that under the standards
8 under Lane and the other prevailing cases that we are not
9 talking here about a separate category of damages, because
10 if you have an unintended acceleration event, in and of
11 itself that doesn't create a loss. If you have an injury as
12 a result of an accident, the settlement fairly provides that
13 the property damage claims and the personal injury claims
14 are carved out.

15 So, Your Honor, we believe that objection should
16 be overruled.

17 Thank you, Your Honor.

18 THE COURT: Mr. Berman.

19 MR. BERMAN: Your Honor, just one point that
20 Mr. Barnow raised about the release. Floor mats aren't an
21 issue either. People who had the floor mat cars are
22 receiving benefits under the settlement. They are receiving
23 brake override, customer parts protection, and some of the
24 customers will be receiving diminution in value because when
25 the floor mat problem was announced, that's when the

1 diminution period started, so those people who then sold are
2 getting another benefit. There are three benefits going to
3 these vehicle owners.

4 That's all I have, Your Honor.

5 THE COURT: Mr. Petri.

6 MR. PETRI: Briefly, Your Honor.

7 Your Honor, the only point I want to speak to is
8 whether there was any clear communication to Mr. Barnow as
9 to whether floor mats would ever be part of the economic
10 loss case. I want this Court to know that consistent with
11 the obligations of co-lead counsel to reach out to all
12 counsel before they put together the Third Amended Complaint
13 that we reached out to all lawyers who had asserted theories
14 against Toyota to make decisions as to what finally would be
15 embodied in that Third Amended Complaint.

16 I have never considered filing a lawsuit about
17 floor mats. It was about the ECM and the ECM only. But
18 consistent with my obligation to hear everyone out, that's
19 what I did in calling Mr. Barnow. I wanted to flush out
20 what his theory was and what the basis of his claim was to
21 make a decision collectively among co-lead counsel as to
22 whether to include or not the floor mat claim.

23 I heard Mr. Barnow out. I heard his recitation of
24 damages. I heard his theory. I said, you know what, Ben,
25 if you are right, you have got a hell of a claim. But then

1 I did my own independent investigation to try to find out
2 whether indeed that floor mat claim was as valuable as
3 stated. What I found out was what Mr. Cooney just recited.
4 I then spoke to Mr. Berman. We heard Ben out again, and I
5 wrote an e-mail that said, Ben, this claim is put to rest.
6 It is not going in that Complaint.

7 So that's really the only point. Mr. Barnow
8 clearly knew after the end of a series of consideration that
9 floor mats would not be embodied in the Third Amended
10 Complaint, and I have heard nothing since then until these
11 recent conversations we have had with the Court.

12 Your Honor, there are a lot of tradeoffs that were
13 made in this settlement. When we first started out, the
14 diminished value and the people who had claims for damages
15 were thought to extend up to a two-year period. In fact,
16 after a lot of discussions, fighting back and forth, having
17 all of the economists at several settlement meetings, we
18 have all learned and we all understood that indeed that
19 period was too long and couldn't be supported by the facts,
20 so finally we had to agree on a shorter period.

21 I am certain that there will be people out there
22 that say, gee, I sold my car in February 2012. I lost
23 money. But, you know what, the facts weren't there.
24 Decisions are made. Settlements have to consider all the
25 facts in negotiations.

1 One of the persons who isn't here is Pat Juno. I
2 want to commend Pat Juno. These settlement negotiations
3 were like a boxing match. It's like Ali Frazier. Pat Juno
4 in his own way -- when things got a little heated and people
5 might have hit below the belt, he made sure that people went
6 into their corners, regrouped, came back, got focused, and
7 focused on the issues. I want to thank him because only
8 through that process did we get to this settlement.

9 It isn't perfect, and no settlement ever is, but
10 it is the best settlement considering all the various
11 claims, claims filed all over the country, given the work
12 that was done and the input of experts from all sides. So I
13 did want to put that on the record for this Court to
14 consider, and I did want to thank Mr. Juno for his
15 outstanding efforts.

16 THE COURT: Thank you.

17 Anyone else?

18 MR. SELTZER: I would just like to join in the
19 remarks of Mr. Berman and Mr. Petri. This settlement was
20 the product of extremely intense, difficult ongoing
21 negotiations. There were many tradeoffs as Mr. Petri said.
22 We arrived at a settlement of a historic nature to benefit
23 the class.

24 Thank you, Your Honor.

25 MR. HOOPER: Just one housekeeping matter, we did

1 speak to the Court the last time about a proposed final
2 order that dealt with the ten-day period that we would need
3 to make sure we were fully ready for the CSP program. Just
4 in the confusion, Your Honor, I wanted to make sure that
5 Your Honor in looking at the various orders that it is the
6 last one we presented to the Court.

7 THE COURT: Okay.

8 MR. HOOPER: Finally, Toyota would have to join in
9 what Mr. Petri said about Mr. Juno and would like to thank
10 the Court for its time and indulgence and frankly the time
11 that Mr. Juno put into this. We had a 13 to 14-hour day the
12 day before we closed this deal. About 9:00 that night, one
13 of the paralegals told me it Pat Juno's birthday. It was
14 his 75th birthday, and he didn't tell any of the parties.
15 We just wanted to note the professionalism and help that he
16 brought to the parties to resolve this matter.

17 MR. BERMAN: One last thing, Your Honor. Just for
18 the record, with respect to Mr. Petri's remarks, I was Ali.
19 He was Frazier.

20 On a serious note, this will probably be the last
21 substantive discussion I have with you as MDL counsel. I
22 want to say thank you for the appointment. It has been a
23 privilege serving you. Thank you.

24 MR. SELTZER: Your Honor, I would like to join
25 Mr. Berman's comments in that regard. It has been a

1 privilege to appear before Your Honor, and we very much
2 appreciate the attention and time the Court has given to
3 this matter. And I also join in Mr. Hooper's comments about
4 Mr. Juno. Thank you.

5 THE COURT: Thank you.

6 Well, let me make a few concluding remarks. I
7 reaffirm my conclusion that this settlement is fair,
8 adequate, and reasonable. Moreover, it's extraordinary.
9 It's extraordinary in terms of the value that is being
10 conferred on class members. It's extraordinary that every
11 single dollar allocated for distribution is going to a class
12 member.

13 So many class settlements I see come up with a
14 number that looks inviting in terms of potential liability
15 only to find that a relatively small portion of that number
16 actually goes to class members. This settlement is
17 extraordinary in that every single dollar of the cash funds
18 will go to class members. It is extraordinary in that the
19 claimants will receive 100 percent of the value of their
20 claims, not as measured by the Court, not as measured on a
21 litigated basis, but as measured by plaintiffs' own experts.

22 I believe that the plaintiffs own experts were in
23 the best position to value the worth of the economic loss
24 claims and other claims. This settlement is extraordinary
25 in terms of its complexity and its continued complexity.

1 The settlement with all of its moving parties when presented
2 to me in the settlement is a complex undertaking that
3 reflected a year of negotiation and thought on the part of
4 the parties, but the parties also exhibited flexibility of
5 getting the changing facts, dealing with the reduced number
6 of claimants, to ensure that as the settlement evolved that
7 it continued to be fair, adequate, and reasonable. So I
8 think it's been extraordinary in many different respects.

9 It's also been extraordinary in the way this case
10 has been presented to me. I have been in many large cases
11 on both sides of the bench. I know extraordinary counsel
12 when I see extraordinary counsel, and the efforts here on
13 both sides have been truly extraordinary in terms of
14 professional competence, perseverance, and diligence.

15 Finally, I join all of you in thanking Pat Juno.
16 He really was part of my assessment that this case has been
17 extraordinary. His efforts to bring the parties together to
18 work through the problems and do all of that with good grace
19 I think has in itself has been an extraordinary undertaking.
20 He activities have been a true service to the Court and to
21 the parties.

22 So I thank you each of you for your courtesies
23 throughout. Thank you.

24 One housekeeping matter, I would like to hold a
25 telephone conference sometime in August and have you give me

1 an update on just how the mechanics of the settlement are
2 playing out. So why don't you confer on a convenient time
3 to do that.

4 Thank you.

5 (Whereupon, the proceedings were concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: July 23, 2013

Sharon A. Seffens 7/23/13

SHARON A. SEFFENS, U.S. COURT REPORTER