

CLASS ACTION ATTORNEY FEE DIGEST

THOROUGH. RELIABLE. OBJECTIVE.

SAMPLE CONSUMER CASE ABSTRACT

Parker v. American Isuzu Motors Inc.

No. 030903476

(Pa. Ct. C.P. Philadelphia Co. Apr. 19, 2007)

JUDGE: Mark I. Bernstein

SUBSTANTIVE TOPIC: Consumer

PLAINTIFFS' COMPLAINT: Plaintiffs, purchasers and lessees of 1998 or 1999 Isuzu Amigos or Rodeos, alleged they suffered economic damages (e.g., payment of insurance deductibles) in connection with accidents caused by the vehicles' anti-lock brake system malfunction. Plaintiffs' claims are based on consumer fraud and breach of implied warranties of merchantability and fitness for a particular purpose.

SETTLEMENT BENEFITS: Claims-made settlement whereby Defendants have agreed to pay a minimum payment of \$450,000 to the class, and up to \$1,000,000 in total as a cap (inclusive of \$100,000 in notice and settlement administration costs). Each class member will receive up to \$500 in cash. If all valid claims total less than the maximum amount, then each eligible claimant will receive \$500. If the total of all claims made is less than the minimum payment, then each eligible claimant will receive \$500 and the excess funds between the amount paid and the minimum amount will be paid on a *pro rata* basis to those claimants who claimed damages in amounts above the \$500 benchmark. Any excess of this amount will be donated to a charity. If the sum of all valid claims exceeds the maximum amount, then each eligible claimant will receive a *pro rata* share of the settlement fund. The cost of notice and administration (with a cap of \$100,000) will be paid from this fund. (*See Editor's Notes* for a discussion of the estimate of the maximum claims to be made.)

The settlement will allow original and subsequent owners of the same vehicle to submit claims for accidents they experienced, and an owner who had several accidents with the same vehicle may submit claims for each accident. Claimants will be required to release Defendants from all claims relating to economic damages resulting from accidents; but personal injury claims are not released.

In addition to and separate from the above payments, Defendants will pay (and will not oppose) class counsel's fees and expenses up to \$150,000, plus \$3,000 to each of the named plaintiffs.

ATTORNEY FEES: \$137,200 (the negotiated amount requested, after deducting expenses; fee was paid by Defendants in addition to the \$450,000-\$1,000,000 claims-made settlement amount).

FEE AS % OF RECOVERY: 13.7%-30.5% (depending on the number of claims made, and without adding total of \$156,000 in fees, expenses, and named plaintiff awards to settlement value; 11.9%-22.6%, depending on the number of claims made, and with total of \$156,000 in fees, expenses, and named plaintiff awards added to settlement value).

EXPENSES: \$12,800

NAMED PLAINTIFF INCENTIVE AWARD: \$6,000 total. The Court approved \$3,000 each to two named plaintiffs.

HOURS: 790

MULTIPLIER: The agreed-upon fee is significantly lower than the \$350,976 lodestar.

COURT'S REASONING: Not stated.

EDITOR'S NOTES: Plaintiffs' supporting papers state that to receive a cash payment under the settlement, a class members merely needs to submit a sworn declaration: (1) stating that she owns or owned an Isuzu vehicle at issue and she experienced an accident which she believes was caused by faulty brakes; (2) describing the accident; (3) identifying one corroborating person, if any, who knows about the accident; (4) identifying the owner's insurance company, if known; and (5) describing and quantifying the amount of unreimbursed, out-of-pocket expenses incurred.

After an investigation by the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA), Isuzu and NHTSA agreed that Isuzu would conduct a voluntary safety improvement campaign to replace a computer chip in the ABS system. Defendant notified at least 161,927 owners of Rodeos and Amigos that as a result of the brake system, under certain circumstances, they may encounter extended stopping distances that could lead to a crash. The notice stated that a module in the ABS system would be replaced.

Plaintiffs' supporting papers state:

The \$1 million maximum agreed to by the parties was based upon the projected number of claims to be made. Statistics by NHTSA show that as of January 31, 2002, .0838% of the owners of the subject vehicles had

complained to NHTSA or Isuzu about crashes occurring with their vehicles that they believed were related to the brakes in the vehicles. If that figure is applied to the 161,927 subject vehicles, it equates to only 135 crashes. If 135 Class members submit valid claims and are paid \$500 each, that equals a total payout of only \$67,500, which is well below the \$1 million maximum (and the \$450,000 minimum) agreed to here. Even if the ultimate number of applicable crashes (including, *inter alia*, multiple claims made for a single vehicle, or multiple claims by the original and subsequent owners), represents a multiple of the 135 referred to here, the parties do not believe the \$1 million maximum will be reached.

Plaintiffs' supporting papers state that the parties completed a substantial amount of discovery, including class counsel having obtained from Defendants over 30,000 pages of documents. Moreover, pursuant to a FOIA request, class counsel obtained and reviewed many relevant documents produced by the National Highway Traffic Safety Administration in connection with its investigation of the Isuzu brakes, and Defendants' recall.

Plaintiffs' supporting papers state that: (1) settlement negotiations began in 2004; (2) in 2005, the Court denied

the parties' request for preliminary approval of a proposed settlement; and (3) the parties ultimately reached a resolution that addressed the Court's concerns about the prior settlement.

Plaintiffs' supporting papers state that the \$500 per class member settlement amount was formulated to compensate claimants for their greatest likely out-of-pocket loss (insurance deductible) and to also cover other foreseeable, but less likely expenses, e.g., rental cars, towing charges, and increased insurance premiums.

On March 1, 2004, the Court denied Defendants' motion for judgment on the pleadings.

Objections/Opt-outs— No objections were filed, and only two potential class members submitted requests to be excluded, after settlement notice was mailed to 219,065 class members.

DATE CASE FILED: September 23, 2003

DATE FEE AWARDED: April 19, 2007

PLAINTIFFS' COUNSEL: Sherrie R. Savett, Michael T. Fantini (Berger & Montague) (Philadelphia, Pa.).

DEFENDANTS' COUNSEL: Joseph Kernen, Keith E. Smith (DLA Piper) (Philadelphia, Pa.). Ω

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