

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER A. VASILAS, SCOTT DIAMOND, ROBERT
KASINDORF, and PAUL THOMAS, JR.
individually, and on behalf of all others similarly
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., SUBARU AUTO
LEASING LTD., FUJI HEAVY INDUSTRIES, LTD.
and SUBARU OF INDIANA AUTOMOTIVE, INC.,

Defendants.

2007-CV- 2374 (GBD)

**ORDER AND FINAL
JUDGMENT**

The matter having come on for a hearing on November 8, 2010, upon the joint motion of plaintiffs Peter A. Vasilas, Scott Diamond and Paul Thomas, Jr. ("Plaintiffs" or "Named Plaintiffs") and the Settlement Class they represent, and Defendants Subaru of America, Inc. ("SOA"), Subaru Auto Leasing Ltd. ("SAL"), Subaru of Indiana, Inc. ("SIA") and Fuji Heavy Industries Ltd. ("FHI") (collectively, "Defendants"), pursuant to Rule 23(e)(1)(C) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1715(d), for final approval of the proposed Settlement of this action on the terms set forth in the Stipulation and Agreement of Settlement dated May 14, 2010 (the "Settlement Agreement"), and;

Due notice of said hearings having been given in accordance with the terms of the Court's June 25, 2010 Preliminary Approval Order; the respective parties having appeared by their attorneys of record; the Court having heard and considered evidence in support of the proposed settlement of these actions (the "Settlement"); the attorneys for the parties having been heard; an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the class notice; Plaintiffs and Defendants having complied with the Preliminary

Approval Order; and notices to the Settlement Class certified in this action were adequate and sufficient and complied with the requirements of due process,

The Court having considered the Settlement Agreement, all papers and proceedings held herein, and all oral and written comments received regarding the proposed settlement, and having reviewed the entire record in this action (the "Action"), and good cause appearing, the Court finds that:

IT IS HEREBY ORDERED AND ADJUDGED that:

1. The Settlement set forth in the Settlement Agreement is hereby approved.

2. "Settlement Class" is defined as follows:

All persons and entities who either bought or leased, in the continental United States of America and Hawaii, a Subaru vehicle, Model Years 2002 through 2007 (the "Class Vehicles").

Specifically excluded from the Settlement Class are: (a) all federal court judges who have presided over this case and their spouses and anyone within three degrees of consanguinity from those judges and their spouses, (b) all persons and entities who elect to exclude themselves from the Settlement Class, (c) all persons and entities who have previously executed and delivered to SOA releases of their claims, (d) the Companies' employees, officers, directors, agents, and representatives and their family members.

3. The Settlement Class is hereby certified solely for settlement purposes, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court having determined that this action meets all the prerequisites of Rule 23(a), and (b)(3) and (c) of the Federal Rules of Civil Procedure, including numerosity, predominance of common issues, and typicality, and that Plaintiffs and their counsel are adequate representatives of the Settlement Class.

4. The Court finds:

a. The Settlement Class satisfies the numerosity requirements. The Settlement Class, consisting of more than one million members, amply satisfies the requirement, as joinder would be impracticable;

b. The commonality requirement is met for the Settlement Class. The Named Plaintiffs' claims have facts and legal theories sufficiently common to the claims of the proposed class. Each claim arises out of the common alleged act of Defendants' manufacture and calibration of the vehicle odometer. Their claims also are based upon a common legal theory, based upon a common statute, the Federal Odometer Act. These claims share at least the following common connection that renders them suitable for class treatment:

Whether the conduct alleged by Plaintiffs regarding odometer calibration violates the Federal Odometer Act.

c. Named Plaintiffs are adequate class representatives, and have interests cocxtensive with and not antagonistic to the interests of the Settlement Class. Accordingly, Named Plaintiffs Peter A. Vasilas, Scott Diamond and Paul Thomas, Jr. are hereby approved as representatives of the Settlement Class;

d. Named Plaintiffs' Counsel, Hinckley & Heisenberg LLP and The Law Offices of Paul F. Condzal ("Class Counsel"), are qualified to serve, and are hereby approved, as class counsel, as demonstrated by their established history in litigation of this type, and their conduct before the Court in this Action;

e. The common questions of law and fact listed above predominate, as the claims derive from the Federal Odometer Act, and class treatment is far superior to individual litigation. Suits by individual class members would be cost prohibitive and create a risk

of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct.

f. The Settlement Class definition is consistent with the claims asserted in the litigation and reasonably congruent with the payment of benefits under the Settlement Agreement.

5. Certification of the Settlement Class shall be solely for settlement purposes and without prejudice to the parties in the event the settlement does not take effect.

6. The Settlement between Plaintiffs and Defendants was achieved through arms-length negotiations by experienced counsel, without collusion.

7. The Settlement is approved as fair, reasonable and adequate within the meaning of Fed. R. Civ. P. 23. The Settlement provides substantial and reasonable benefits to the Settlement Class and is in the best interests of the Settlement Class Members.

a. Of the more than 1.2 million Settlement Class members, the court received only 12 responses that either objected to the settlement, or asked to opt-out of the settlement. This small number creates a presumption of fairness and indicates approval of the Settlement by the Settlement Class.

b. Of the 12 responses, only three were timely and proper requests for exclusions, and two constituted timely objections.

c. Seven responses did not comply with the Preliminary Approval Order, as they failed to include the information of the model, model year and vehicle identification. The emails of Peter K. Pleinter/Cynthia Hayward-Pleitner and Dan Cojanu requesting exclusion from the proposed settlement do not contain their address, telephone number,

model and model year, and vehicle identification number of their purported vehicles, and therefore does not comply with the Preliminary Approval Order. (¶13). Similarly, the comments of Jeff Hoerr, purporting to object to the settlement, fails to include proof of ownership or lease of a Class Vehicle, and does not state whether he has objected to a class action settlement in the last five years. The letter of Dorothea E. Brennan expressed agreement with the settlement, and simply noted two issues for consideration by the court in structuring the settlement.” Ms. Brennan’s comments and suggestion do not constitute an objection within the Court’s Preliminary Approval Order. Accordingly, the Court rejects and overrules these purported objections. In addition, the Court has considered the comments, and finds them inapplicable, lacking in merit, and otherwise insufficient to preclude the final approval of this Settlement.

d. Messrs. GrosJean, Pirm, and Trump validly opted out of the Settlement. Their comments that they believed the claims were “without merit” do not raise questions about the fairness of the Settlement, as Defendants were able to protect their own interests during the settlement negotiations.

e. David Johnson’s purported objection is invalid because it failed to timely provide required information required by the Preliminary Approval Order, including Mr. Johnson’s address and telephone number, the model and vehicle identification number of his vehicle, proof of ownership or lease of a Class Vehicle, and his signature on the objection. Accordingly, there was no timely evidence that he was a member of the Settlement Class. Further, the objection, as untimely supplemented, was filed by Attorney Darrell Palmer, and fails to disclose Mr. Palmer’s objections in prior actions, as

required by the Preliminary Approval Order. Accordingly, the Court rejects and overrules this purported objection.

f. The Objection that he filed addresses claims that have not been asserted in this Action. Because the Objection does not address the actual merits of the Settlement, it lacks merit. In addition, the Court has considered the stated grounds for this purported objection, and finds them inapplicable, lacking in merit, and otherwise insufficient to preclude the final approval of this Settlement. The objection provides no benefit to the class, and therefore Mr. Johnson's request for an incentive award is denied.

g. The Objection of David Abrams does not prevent approval of the Settlement. Mr. Abrams complains that the Settlement does not provide additional compensation to Subaru owners who may sell their car for less than they would receive if the car's odometer reflected fewer miles driven. A fair and reasonable settlement does not require the parties to secure all relief that could be obtained at trial, and the fact that the Settlement does not provide for this speculative possibility of injury does not alter the fact that the compromise is fair, reasonable and compliant with the requirements of Fed. R. Civ. P. 23. Accordingly, the Court rejects and overrules this objection.

8. The Action is dismissed on the merits and with prejudice against Plaintiffs and all members of the Settlement Class except the aforesaid three persons (GrosJean, Pirn and Trump) who validly and timely requested exclusion from the Settlement Class, and without costs. Named Plaintiffs and all Settlement Class Members and anyone claiming through or on behalf of any of them are forever barred and enjoined from commencing, instituting or continuing to prosecute any action or proceeding, in any court of law or equity, arbitration, tribunal, administrative

forum, or other forum of any kind, asserting any Released Claims as defined in the Settlement Agreement against any of the Released Parties.

9. The Court dismisses on the merits and with prejudice the Action (including all Complaints and Amended Complaints) filed in this Court entitled *Peter A. Vasilas, et al. v. Subaru of America, Inc.*, Case No.: 07-CV-2374 (GBD). In addition, the Court also dismisses all claims which any Settlement Class Members alleged or could have alleged that relate in any way to the design, manufacture, accuracy and/or operation of the odometer system and related components of the odometer system in the Class Vehicles. Upon the Effective Date of the Settlement, the Named Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of this Final Order and Judgment shall have, released, waived and discharged Subaru of America, Inc., Subaru Auto Leasing, Ltd., Subaru of Indiana Automotive, Inc., Fuji Heavy Industries Ltd., New Sabina, Nippon Seiki, Chase Auto Finance d/b/a Subaru Motors Finance, and all other Released Parties as set forth in the Settlement Agreement, from any and all claims, demands, actions, causes of action, and suits pleaded against Defendants in the Action and all other claims, demands, actions, causes of action of any nature whatsoever, including but not limited to any claim for violations of federal, state, or other law (whether in contract, tort, consumer protection, consumer fraud statutes, fraud, or otherwise, including statutory and injunctive relief, common law, property, warranty and equitable claims), and also including "Unknown Claims", as set forth in the Settlement Agreement, that were or could have been asserted against the Released Parties in the Action that relate in any way to the design, manufacture, accuracy and/or operation of the odometer system and related components of the odometer system in the Class Vehicles.

10. Class Counsel is awarded reimbursement of costs and expenses in the amount of \$19,538.33, and attorneys' fees in the amount of \$1,580,461.67, for a total amount of \$1,600,000.00, covering all legal services provided to the Named Plaintiffs and Settlement Class Members in connection with the litigation and settlement of this Action. The Court finds that this award of attorneys' fees and expenses is fair and reasonable, measured using both the percentage of recovery approach and the lodestar approach. The payment of the award shall be made by Defendants, as provided in the Settlement Agreement.

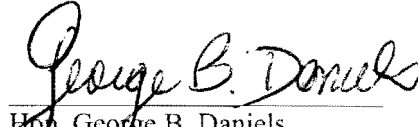
11. Pursuant to the terms of the Settlement Agreement, Named Plaintiffs Peter A. Vasilas, Scott Diamond and Paul Thomas Jr. each are awarded a \$10,000 Incentive Award, for the time and effort expended in connection with this Action, with said payment to be made by Defendants separately from the fee and expense award;

12. Without affecting the finality of this Final Order and Judgment for purposes of appeal, the Court shall retain continuing and exclusive jurisdiction as to all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and this Final Order and Judgment, and for any other necessary purpose.

13. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay. The Clerk of the Court is hereby directed to enter this Judgment without delay, as a final judgment of dismissal as to Defendants on the merits.

New York, New York
Dated: November 8, 2010

SO ORDERED:


Hon. George B. Daniels
United States District Judge