

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHAD UDEEN, MARY JANE
JEFFERY, LYDIA RUNKEL,
MICHAEL BOLICK, GARY GILPIN,
ALICIA SMITH, and SUSAN
WILLIAMS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., and
SUBARU CORPORATION,

Defendants.

No. 1:18-cv-17334-RBK-JS

JURY TRIAL DEMANDED

CLASS ACTION

**DECLARATION OF BENJAMIN F. JOHNS IN SUPPORT
OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND ATTORNEY'S
FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

I, Benjamin F. Johns, declare as follows:

1. I am a partner at the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP ("CSK&D") and one of the attorneys appointed as Class Counsel in this litigation.

2. I am admitted to practice before the Supreme Courts of Pennsylvania and New Jersey and in various federal courts in the United States. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Attorneys' Fees, Litigation Expenses, and Service Awards. I have

personal knowledge of the matters discussed herein and, if called as a witness, I could and would testify competently thereto.

Background of the Litigation

3. This case is a consumer class action against Subaru. Plaintiffs are owners and lessees of Subaru vehicles, namely the 2018 Outback, 2018 Legacy, 2018 Forester, 2018 Crosstrek, 2018 BRZ, and 2017-2018 Impreza (collectively “Class Vehicles”), with allegedly defective Starlink infotainment systems.

4. Specifically, Plaintiffs allege that the head units, the main physical component of the Starlink systems, that are equipped in Class Vehicles suffer a range of technical glitches that cause them to freeze, black-out, become non-responsive, or otherwise malfunction.

5. This action was originally filed in New Jersey Superior Court on November 28, 2018. It was removed to this Court on December 18, 2018. ECF No. 1. On January 31, 2019, Plaintiffs filed the operative Amended Complaint asserting 17 claims on behalf of a nationwide class and several state sub-classes. ECF No. 24.

6. On February 28, 2019, Subaru filed a motion to dismiss, which was then fully briefed. ECF Nos. 28, 32, 33. Additionally, counsel for Subaru sent a letter to the Court seeking to stay all discovery pending the disposition of its motion to dismiss. *See* ECF No. 10. Magistrate Judge Schneider held conference

calls with counsel on January 16 and February 15, to address Subaru's request. *See* ECF Nos. 15, 25. Following letter briefing from the parties and oral argument, Judge Schneider issued an opinion which denied Subaru's motion to stay, and permitted "limited and focused discovery on core issues." ECF No. 31. Judge Schneider required the parties to meet and confer further, and scheduled a Rule 16 conference. After the parties had several meet and confers, the Rule 16 conference was stayed when the parties advised the Court that they had scheduled a mediation.

7. On January 30, 2019, Judge Schneider issued an order appointing myself along with Andrew W. Ferich of my firm, Daniel R. Lapinski (now of Motley Rice LLC) and Kevin P. Roddy of Wilentz, Goldman & Spitzer, PA as interim co-lead counsel for Plaintiffs and the putative class. ECF No. 23.

8. The parties engaged in protracted settlement negotiations which included a full-day meeting on April 30, 2019, and two full-day mediations with Judge Dennis M. Cavanaugh in Newark, New Jersey on May 6 & 14, 2019. By the end of the second mediation, with substantial assistance from Judge Cavanaugh, the parties reached an agreement on the material terms of the settlement as well as attorneys' fees, expenses, and incentive awards.

9. After several months of negotiating and documenting the settlement, the parties signed the Settlement Agreement.

10. After reaching an agreement, the parties engaged in extensive confirmatory discovery, as discussed in more detail below. The parties subsequently filed for and received preliminary approval of the settlement.

The Settlement

11. The Settlement Class consists of all persons in the United States who purchased or leased a model year 2017 Subaru Impreza, 2018 Subaru Impreza, 2018 Subaru Outback, 2018 Subaru Legacy, 2018 Subaru Forester, 2018 Subaru Crosstrek, and 2018 Subaru BRZ vehicle equipped with a Generation 3.0 Starlink Infotainment System manufactured by Harman International Industries, Inc.

12. The parties have agreed that Subaru will make available to the class benefits with an estimated value of over \$6,250,000. The notice and administrative costs will be paid by Subaru separately from the relief provided to the Class.

13. Under the Settlement, Subaru will provide an extended warranty of 5 years/100,000 miles on the Starlink Systems in Class Vehicles. Subaru estimates this extended warranty represents a value of \$2,451,546 to the class. Class Members will not need to submit a claim form in order to receive the warranty extension and it will be fully transferable to future Class Vehicle owners. Additionally, the Settlement provides for a \$5 payment to Class Members who already purchased extended service plans from Subaru.

14. The Settlement also provides for compensation to Class Members who had to take their vehicles into dealerships for two or more Starlink repairs. Class Members will be entitled to \$150 for two visits, and \$300 for three or more visits. The Settlement also affords Class Members the option of selecting coupons with a higher value than the cash relief, ranging from \$200-\$400 in value.

15. The Settlement further allows Class Members to claim compensation in the amount of \$16 for each day spent without a functioning head unit during the period when replacement units were on backorder.

16. Additionally, Class Members may make claims for reimbursement of out of pocket damages such as rideshares or rental cars stemming from the alleged defect.

17. In my judgment and based on my experience, the terms of this settlement are fair, reasonable, and adequate within the meaning of FRCP 23(e)(2).

Attorneys' Fees, Expenses, and Incentive Awards

18. Subaru agreed not to oppose an award of up to \$1,500,000 inclusive to cover both the fees and expenses of all Plaintiffs' counsel. Subaru has also agreed not to oppose incentive awards of \$3,500 to each of the named Plaintiffs in this case. The attorneys' fees and expenses, and incentive awards are to be paid by Subaru separate from, and in addition to, the relief to be made available to the Class (which as discussed above is estimated to be more than \$6,250,000).

Payment of requested attorneys' fees, expenses, and incentive awards is a separate payment by Subaru, and will not decrease the recovery of the class.

19. All of the work performed by Plaintiffs' Counsel has been done on a contingency-fee basis, and the law firms have not been reimbursed for the billable time or out of pocket expenses advanced to prosecute this case over the past 14 months.

The Work Performed By Class Counsel

20. During the course of this litigation, my firm performed the following tasks for the benefit of Plaintiffs and the class:

- Investigated the alleged Starlink defect beginning in April 2018, spoke with affected consumers, and drafted and then filed the initial complaint on November 28, 2018;
- Researched complex issues of law related to various consumer protection statutes and warranty laws;
- Consulted with potential experts regarding the Starlink defect;
- Drafted and then filed the operative amended complaint in this Court on January 31, 2019;
- Researched and drafted a motion to appoint interim co-lead counsel, which was subsequently granted;
- Researched, wrote, and filed an opposition to Subaru's motion to dismiss;
- Prepared and served Plaintiffs' Initial Disclosures;
- Prepared and served a detailed set of requests for production of documents;

- Engaged in multiple meet and confers with Subaru's counsel to discuss the document requests served upon Subaru;
- Prepared document requests and a subpoena to third-party Harman International Industries, Inc.;
- Met and conferred with Subaru's counsel regarding a discovery confidentiality order which was filed with the Court;
- Researched and provided letter briefing to the Court in opposition to Subaru's request to stay discovery, which Plaintiffs largely prevailed upon;
- Communicated regularly with Plaintiffs to keep them apprised of developments in this litigation and to seek their input on and approval of the settlement;
- Negotiated a written settlement term sheet with Subaru;
- Prepared for the mediation sessions with Subaru. This included selecting a mediator, speaking with him several times over the telephone, researching relevant consumer automotive class action settlements, speaking with our clients and various intakes to gather facts, and submitting an ex parte mediation statement;
- Attended a pre-mediation meeting with defense counsel on April 30, 2019 in Philadelphia;
- Participated in two full-day mediation sessions with (Ret.) Judge Dennis M. Cavanaugh in Newark, New Jersey, on May 6 and May 14, 2019;
- Subsequent to reaching a settlement, assisted in the preparation of the settlement agreement, drafted the claim form and class notices, worked with the claims/notice administrator, and fielded questions from class members, among other tasks;
- Drafted and filed a motion seeking preliminary approval of the settlement, including submission of numerous settlement-related documents and a detailed brief in support of the motion for preliminary approval;

- Engaged in confirmatory discovery to verify that the terms of the settlement were fair, reasonable and adequate to Plaintiffs and Class Members;
- Reviewed and analyzed 6,373 pages of documents produced by Subaru, including vehicle service and warranty history for each of the named Plaintiffs; Technical Service Bulletins; owners' manuals and warranty manuals for each of the Settlement Class Vehicles; warranty claims data for the Settlement Class Vehicles; and documents identifying Defendants' internal investigation, analysis, and conclusions; and
- Took a FED. R. CIV. P. 30(b)(6) deposition of Subaru's representative on July 12, 2019.

21. As noted above, on May 6 and May 14, 2019 the parties engaged in two full-day mediation sessions with retired Judge Cavanaugh in Newark, New Jersey. With the assistance of Judge Cavanaugh, the parties reached agreement on the material terms of the settlement. Thereafter, the parties were unable to reach agreement as to the amount of Plaintiffs' attorneys' fees and expenses that would be sought. By the end of the second full-day mediation session, fees and expenses, too, had been agreed upon. The parties did not discuss or negotiate the requested attorneys' fees and expenses until after all of the substantive terms of the settlement had been agreed upon. All negotiations regarding settlement were conducted at arm's length, in good faith, and free of any collusion.

22. After agreeing on the terms of the Settlement, we, along with defense counsel, drafted and negotiated the details of the written Settlement Agreement, and all related exhibits. Counsel for both parties and the claims administrator

reviewed, negotiated, and made sure that all administrative aspects of the Settlement, including the notice plan, the form of the claim form, the settlement schedule, were in the best interest of Plaintiffs and Class Members.

23. Class Counsel, including my firm, worked diligently and vigorously to secure the best outcome and relief for members of the class.

24. From the inception of this case through January 24, 2020, my firm devoted a total of 1,511.60 billable hours of work on this case. This total excludes certain time that I have reduced or eliminated, based on the exercise of my billing judgment. Based upon hourly rates currently charged to my firm's clients, the total lodestar value of this billable time is \$740,410.00. Attached as **Exhibit A** to this Declaration is a chart that identifies the attorneys and paralegals who worked on this litigation, the number of hours billed by each, the number of years of professional experience, their respective positions, and their respective billable rates. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. My firm's detailed time records are available to the Court for inspection upon request.

25. All of the time billed to this case by my firm was reasonable and necessary in the prosecution of this case. It was also performed on a contingency basis. As noted above, my firm has not been compensated for any of its work on this matter to date. My firm has already incurred and will continue to incur

additional billable time after January 24 for activities such as attending the final approval hearing on March 4, and overseeing the claims administration process.

26. As detailed in **Exhibit B** attached to this Declaration, my firm has incurred a total of \$11,832.85 in unreimbursed expenses in connection with the prosecution of this litigation through January 24, 2020. These expenses were also reasonable and necessary in the prosecution of this case. As with our billable time, my firm has not been reimbursed for these expenses.

27. The expenses incurred in this action are reflected on my firm's the books and records. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. Underlying receipts are available for inspection upon request.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: January 31, 2020

By: /s/ Benjamin F. Johns
Benjamin F. Johns

EXHIBIT A

UDEEN, et al. v. SUBARU OF AMERICA, et al.
**FIRM NAME: CHIMICLES SCHWARTZ KRINER
 & DONALDSON-SMITH LLP**

**LODESTAR REPORT
 INCEPTION - JANUARY 24, 2020**

NAME	STATUS *	YEARS OF EXPERIENCE	HOURLY RATE	TOTAL HOURS	CUMULATIVE LODESTAR
Benjamin F. Johns	P	15	700.00	393.90	\$275,730.00
Andrew W. Ferich	A	8	525.00	255.60	\$134,190.00
Samantha E. Holbrook	A	9	525.00	20.40	\$10,710.00
Alex M. Kashurba	A	6	450.00	586.60	\$263,970.00
Zachary P. Beatty	A	3	400.00	15.90	\$6,360.00
David W. Birch	IT	5	300.00	15.60	\$4,680.00
Corneliu P. Mastraghin	PL	14	250.00	1.00	\$250.00
Justin P. Boyer	PL	5	200.00	183.90	\$36,780.00
Madeline C. Landry	PL	2	200.00	38.70	\$7,740.00
TOTALS				1,511.60	\$740,410.00

P = Partner

A = Associate

PL = Paralegal

IT = Information Tech

EXHIBIT B

UDEEN, et al. v. SUBARU OF AMERICA, INC., et al.
EXPENSE CHART

**FIRM NAME: CHIMICLES SCHWARTZ KRINER
 & DONALDSON-SMITH LLP**

REPORTING PERIOD: INCEPTION TO JANUARY 24, 2020

DESCRIPTION	TOTAL EXPENSES
Mediation Fees	\$3,950.00
Travel/Food/Lodging	\$2,014.57
Computer Research	\$1,877.04
Photocopies/Internal	\$1,431.50
Deposition Transcripts	\$1,259.85
Filing Fees	\$970.00
Adwords	\$224.06
Courier/Express Mail	\$76.33
Postage	\$29.50
TOTAL	\$11,832.85