

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**ROBERT B. KUGLER  
UNITED STATES DISTRICT JUDGE**

**MITCHELL H. COHEN U.S. COURTHOUSE  
1 John F. Gerry Plaza – Room 6040  
Camden, NJ 08101  
856-757-5019**

April 15, 2019

TO: ALL COUNSEL

Re: Chad Udeen, *et al.* v. Subaru of America, *et al.*  
Civil No. 18-17334 (RBK/JS)

Dear Counsel:

Currently, there is a fairness hearing on the pending Motion (Doc. No. 52) for final approval of the class action settlement scheduled for May 7, 2020. However, due to the ongoing national emergency caused by the COVID-19 pandemic, I no longer believe that it will be feasible to hold the hearing on that date. I appreciate your patience and cooperation as we navigate this crisis.

Nevertheless, I have reviewed the briefing and exhibits submitted by Plaintiffs' counsel in support of the pending Motion. Regardless of what happens at the hearing, I have concluded that I cannot adjudicate the Motion without supplemental briefing on several points, chiefly relating to Plaintiffs' counsel's request for attorneys' fees.

First, I require additional explanation on the valuation of the proposed settlement's various forms of relief so that I can cross-check the fee award using the percentage of recovery method. See *Granillo v. FCA US LLC*, No. 16-153, 2019 WL 4052432, at \*8 (D.N.J. Aug. 27, 2019) (explaining that after calculating a fee award using the lodestar method, courts should cross-check the award using the percentage of recovery method (citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 820 (3d Cir. 1995))). The parties estimate that the total value of the settlement to the class members will be in excess of \$6.25 million. (Doc. No. 52-2 at 34). Of this amount, approximately \$2.45 million is attributed to the warranty extension provision, which is valued at \$5 per vehicle. (Doc. No. 52-2 at 15). Yet the basis for this \$5 per vehicle valuation is not explained. The parties must submit additional documentation that supports this figure.

The rest of the \$6.25 million figure comes from the estimated valuations of the various forms of monetary relief contemplated by the settlement. Given that as of March 2, 2020, only 3,281 claim forms had been submitted to the settlement administrator, (Doc. No. 57

at ¶ 21), it appears that the actual amount of monetary compensation provided to the class members will be lower than the parties' initial estimates. Now that the deadline for claims submission is past, the parties must submit revised estimates of the total amount of monetary compensation to be provided, in light of the total number of claim forms actually submitted.

Second, the parties' lodestar figure includes \$4,680 billed by David W. Birch, an information technology ("IT") specialist at Chimicles Schwartz Krine & Donaldson-Smith LLP. (Doc. No. 52-3 at 12). Attorneys' fees may be awarded for work performed by IT specialists, but only if such work directly relates to the lawsuit. See *Gen. Protecht Grp., Inc. v. Leviton Mfg. Co.*, 122 F. Supp. 3d 1114, 1150–51 (D.N.M. 2015); *Leviton Mfg. Co. v. Shanghai Meihao Elec., Inc.*, 613 F. Supp. 2d 670 (D. Md. 2009), *vacated and remanded on other grounds sub nom. Leviton Mfg. Co. v. Universal Sec. Instruments, Inc.*, 606 F.3d 1353 (Fed. Cir. 2010). Plaintiffs' counsel must explain the nature of the work performed by Birch so that I can ascertain whether it may properly serve as the basis for a fee award.

Finally, I am concerned about the proposed timing of the payment of the attorneys' fees award from Defendants to Plaintiffs' counsel. I am required to consider the timing of the payment of attorneys' fees by Federal Rule of Civil Procedure 23(e)(2)(C)(iii). Under the settlement agreement, this payment is scheduled to occur within ten business days of the Court's final approval of the settlement agreement. (Doc. No. 44-1 at XIII.3). Yet the class members whose claims are approved need not be paid until sixty days after the Court approves the settlement, and class members whose claims are initially denied may be stuck in an appellate process for many months thereafter. (*Id.* at VII.A–VII.B). In order to ensure that Plaintiffs' counsel remains invested in safeguarding the rights of the class members during the payout process, I am prepared to impose, as a condition of final approval of the settlement, that payment of attorneys' fees to Plaintiffs' counsel be deferred until all eligible class members are paid. If you have any objection to this course of action you should explain it in the supplemental briefing mandated by the other sections of this letter-order.

Consequently, **IT IS HEREBY ORDERED** that the parties submit supplemental briefing on the issues identified in this letter-order on or before May 21, 2020; and that the fairness hearing on Plaintiffs' Motion for final approval of the class action settlement is **RESCHEDULED** for June 4, 2020 at 9:30 am.

Thank you.

Very truly yours,

s/ Robert B. Kugler

ROBERT B. KUGLER  
United States District Judge