

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION
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5 TRAVIS BEAVER, et. al.,)
6 vs.) No. 3:22-CV-785
7 NISSAN OF NORTH AMERICA,)
8 INC., and NISSAN MOTOR CO.,)
LTD.,)

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13 BEFORE THE HONORABLE ELI J. RICHARDSON, DISTRICT JUDGE

14 TRANSCRIPT OF PROCEEDINGS

15 JULY 18, 2025
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1 The above-styled cause came to be heard on
2 July 18, 2025, before the Hon. Eli J. Richardson,
3 District Judge, when the following proceedings were
4 had at 1:00 p.m., to-wit:

5
6 THE COURT: All right. We are here this
7 afternoon for a so-called fairness hearing in
8 the matter of Beaver, et. al., vs. Nissan of
9 North America; that is, we're here for a hearing
10 on post-approval of the settlement reached
11 between the Plaintiffs and the Defendant.

12 If counsel could make their appearances,
13 please?

14 MR. PADGETT: Good afternoon, Your Honor.
15 Cody Padgett, Capstone Law APC. With me today
16 is Melissa Weiner and Larry Deutsch representing
17 Plaintiffs and the settlement class.

18 THE COURT: All right. Good afternoon,
19 Counsel.

20 All right. For the Defendant?

21 MR. HICKS: Good afternoon, Your Honor.
22 John Hicks, Paul Cauley, and Brad Andreozzi for
23 Nissan.

24 Mr. Cauley will be giving the remarks
25 today.

1 THE COURT: Okay. All right. Thank you
2 for that, Mr. Hicks.

3 Okay. The Court notes that it had granted
4 preliminary approval to the class action
5 settlement. I think this was late in 2024, and
6 the Court had indicated that it preliminarily
7 appeared that this settlement could be approved
8 as fair, reasonable, and adequate based on the
9 motion that was made for preliminary approval.
10 The Court approved a particular notice protocol.

11 The filings in the lead-up to this hearing
12 indicate that the protocol was followed with
13 good results, and the Court is aware of the
14 information available about the opt-outs and
15 also the objections.

16 It looks like we had -- I think the most
17 recent information was 792 timely and adequate
18 opt-outs is what I think I saw. It looked like
19 we had a total of four objections. There was a
20 fifth one, a purported objection that came in
21 more recently. I think very late. It seems to
22 be off the mark in terms of the issues involved
23 in this fairness hearing, but I would ask
24 counsel to comment on that as well.

25 The Court is familiar with the record.

1 There were a variety of different filings that
2 were made in connection with the hearing. There
3 were memoranda from both sides in support of the
4 proposed settlement.

5 The sides also each responded to the
6 objections that were made, four objections as I
7 indicate, not counting that fifth one that came
8 in late. The parties did that. The Court notes
9 the motion for approval, the final approval of
10 the class action settlement at Docket Number
11 104 -- excuse me -- 109. And at Docket Number
12 114 is the corresponding motion for approval of
13 an award of attorney's fees and costs, and also
14 service awards for the named Plaintiffs.

15 The Court is familiar with the brief in
16 support of that motion as well.

17 All right. With all of that as
18 background, we'll hear from the Plaintiffs'
19 side, then the Defense side in support of the
20 motion for approval.

21 And the Plaintiffs may want to speak to
22 their motion for attorney's fees and costs
23 separately if they want to.

24 And then if we have anyone here that wants
25 to speak in favor of any objection, then we'll

1 do that if we have anyone that fits that
2 description.

3 All right. Mr. Padgett, do you wish to
4 speak on behalf of the settlement?

5 MR. PADGETT: I do.

6 THE COURT: All right. Thank you.

7 MR. PADGETT: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MR. PADGETT: So I will be prepared to
10 discuss fair, reasonable, and adequate under
11 23(e) (2) .

12 Melissa Weiner will be prepared to discuss
13 certification of the class for settlement
14 purposes.

15 The papers that we filed have everything
16 the Court needs to grant final settlement
17 approval, and we're happy to make a record if
18 the Court desires, or to respond to any
19 questions the Court may have.

20 THE COURT: Let me run a couple questions
21 by you. One of the things -- I'm not saying
22 that this cuts against the settlement, but given
23 the class years for the -- given the years
24 involved, the model years for the class
25 vehicles, would it be fair to say that by now,

1 the extended warranty -- even the extended
2 warranty period would have expired for most
3 vehicles? Is that fair to say?

4 MR. PADGETT: The prospective coverage or
5 prospective warranty for the majority of the
6 class has passed.

7 THE COURT: Yeah.

8 MR. PADGETT: But the retrospective
9 coverage is available.

10 THE COURT: Yeah. Yep. And, you know,
11 that's, you know, obviously a huge part of the
12 settlement, the retroactive application, and the
13 benefits to potential class members, who either
14 had repairs made either by a Nissan dealer or
15 not by a dealer, or, as I understand it, had a
16 recommendation made from an authorized Nissan
17 dealer, didn't do it, didn't have the repairs
18 made during the extended warranty period, but
19 may wish to do so in the first 120 days. As
20 long as they're within 96,000 miles, they could
21 still do that.

22 Do I understand that correctly?

23 MR. PADGETT: That is correct, Your Honor.

24 THE COURT: Yeah. Yeah. One of the
25 things you noted is that the 120 days and

1 96,000 miles is a little more generous than you
2 were able to negotiate under, you know, similar
3 class actions, as I understand it, prior class
4 actions against Nissan.

5 Is that fair to say?

6 MR. PADGETT: Given the composition of the
7 class, we wanted to address that. And the
8 96,000-miles situation that you described is
9 what we did to address that.

10 THE COURT: Okay. All right. Now, the
11 voucher for \$1,500, which I understand is an
12 option, if I understand correctly, if someone
13 wants to use the \$1,500 voucher, that's fine.
14 But they can't use that and a repair -- and have
15 a repair remedy; is that right?

16 MR. PADGETT: They need to choose between
17 the reimbursement remedy or the voucher, that's
18 correct.

19 THE COURT: Okay. All right. Would it be
20 fair to say that one of the substantial benefits
21 to a class member now, who, you know -- we'll
22 take the typical class member -- would not have
23 filed their own lawsuit, based on an alleged
24 problem with the CVT.

25 It might be fair to say that many, if not

1 most of them, would potentially have a statute
2 of limitations problem on any claim.

3 Fair to say?

4 MR. PADGETT: That is fair to say,
5 Your Honor.

6 THE COURT: Yep.

7 The extended warranty, the provisions here
8 for retroactive relief would be a huge benefit
9 to persons that, you know, had repairs or still
10 need to have repairs in the CVT, who, otherwise,
11 would have the statute of limitations problem.

12 Fair to say?

13 MR. PADGETT: That is fair to say,
14 Your Honor, yes.

15 THE COURT: All right. Now, I wanted to
16 ask: What information is available?

17 And maybe Defendant knows more. What
18 information do you think is available about how
19 common CVT repairs have been or have needed to
20 be?

21 MR. PADGETT: Certainly. Well, we have
22 statistics on the claims submitted so far. As
23 of yesterday, 5,162 timely claims have been
24 received by Verita, the claims administrator,
25 seeking a total dollar amount of \$17,248,324.

1 THE COURT: Okay. And, you know, if I
2 understand correctly, you're talking about
3 500,000 and change class vehicles?

4 MR. PADGETT: That's correct.

5 THE COURT: So, you know, maybe, based on
6 what you're seeing there, it's about 1 percent.

7 Does that sound about right?

8 MR. PADGETT: Yes, of the class vehicles,
9 correct.

10 THE COURT: All right. Do you think that,
11 you know, and Nissan -- one of the things about
12 Nissan's brief in support of the class
13 settlement, it wants to do something that is
14 obviously not your issue and not on your agenda.
15 They want to talk about, I think, in more
16 detail, their view about how Nissan had all
17 kinds of defenses.

18 And you talk about that as one reason to
19 settle, but Nissan moves in at a little more
20 depth and a little more emphasis.

21 Is that fair to say?

22 MR. PADGETT: Yes, it is.

23 THE COURT: All right. But even with a
24 low claims rate indicating potentially a low
25 percentage of occasions on which a CVT

1 transmission problem manifests itself, that's
2 not necessarily inconsistent with your view that
3 there is a flaw in the CVT design or
4 manufacture; right? It could be both. Like,
5 it's rare that it manifests itself, but when it
6 manifests itself, it's the result of a design or
7 manufacturing defect.

8 Those two things can go together?

9 MR. PADGETT: They sure can, Your Honor.
10 We feel that this is a strong case; however, we
11 would face arguments from Nissan that it has
12 improved the CVT over the years, and that these
13 models reflect some changes that improve the
14 failure rate.

15 We would contest that -- you know, we
16 would get into contesting that issue if we were
17 in litigation, but we're not. And, you know,
18 that failure rate supports settlement because of
19 the improvements.

20 THE COURT: Okay. The next thing I wanted
21 to ask was as regards to the objections,
22 you know, one of -- obviously, one of your many
23 arguments against the objections to the
24 settlement is that, you know, listen -- and I
25 think this is one of your arguments if not, top

1 of mind, I think Nissan did. But it's this
2 notion that, you know, look, if there was --
3 even if there was a CVT problem, it doesn't mean
4 that the complainant can prove it; right?

5 Fair to say?

6 MR. PADGETT: Having done these cases for
7 a long time, yes, I can say that.

8 THE COURT: Yeah. Yeah. And a relatively
9 low rate of claims -- you know, as we were
10 saying, talking the rate of 1 percent -- that's
11 something that could be consistent with the
12 notion that the parties acted reasonably in
13 drawing the line somewhere. Particularly when
14 the evidence doesn't suggest that their --
15 you know, half the cars are having transmission
16 problems, then, you know, when the documented
17 problems with transmissions from any cause seem
18 to be relatively rare, then it becomes much more
19 reasonable for Plaintiffs' counsel not to push
20 to cast the net of liability to Nissan under the
21 settlement too widely.

22 Does that make sense?

23 MR. PADGETT: Correct. The risks of
24 litigation favor settlement, yes.

25 THE COURT: Yeah. Okay. All right.

1 Now, let's see if I had any more here.

2 And then I want to ask you a couple of things
3 about the objections.

4 One thing it says here: "No settlement
5 class member will be entitled to receive more
6 than 5 vouchers."

7 At most, you get one voucher per
8 automobile class vehicle; right?

9 MR. PADGETT: That's correct.

10 THE COURT: So the notion is, well, if for
11 some reason you had more than five, you know,
12 class vehicles -- probably pretty rare; right?

13 MR. PADGETT: Yes.

14 THE COURT: We're going to cap you at
15 five, but we would anticipate that that wouldn't
16 happen very often; right?

17 MR. PADGETT: If at all, yes, Your Honor.

18 THE COURT: If at all, yeah. All right.

19 Now, I wanted to ask you about the service
20 awards, which are not Nissan's issue, but
21 they're part of the proposed settlement.

22 So one of the things that the Sixth
23 Circuit has said, you know, regarding service
24 awards and incentives awards -- a couple years
25 ago, I did a lot of homework on this because I

1 was asked to speak about class actions at ABA's
2 National Class Action Conference. And the issue
3 there was service fees, incentive fees. And
4 having dealt with them, I was certainly
5 qualified to speak on that because I had ruled
6 on a lot of it. And yet, this occasion we had
7 to really go in depth, so it's something I tend
8 to focus on.

9 I believe the most recent view of the 11th
10 Circuit, unless it's changed in the past year or
11 something, is service or incentive awards are
12 unauthorized.

13 Is that your understanding of the current
14 law in the 11th Circuit?

15 MR. PADGETT: In the 11th, that is my
16 understanding.

17 THE COURT: Okay. Now, here's what I
18 think the statement most on point that you get
19 from the Sixth Circuit, sort of the most
20 definitive thing: In Re: Dry Max Pampers
21 Litigation, 724 F.3d. 713. And here's what the
22 Court said there:

23 "Our Court has never approved the practice
24 of incentive payments to class representatives.
25 Though, in fairness, we have not disapproved the

1 practice either. Thus, to the extent that
2 incentive awards are common, they are like
3 dandelions on an un-mowed lawn, present more by
4 inattention than by design."

5 It's a colorful metaphor. Right?

6 "And we have expressed a sensible fear
7 that incentive awards may lead named Plaintiffs
8 to expect a bounty for bringing suit, or to
9 compromise the interest of the class for
10 personal gain.

11 "We have no occasion, in this case, to lay
12 down a categoric rule one way or the other as to
13 whether incentive payments are permissible, but
14 we do have occasion to make some observation
15 relevant to our decision here. The propriety of
16 incentive payments is arguably at its height
17 when the award represents a fraction of the
18 class representative's likely damages.

19 "For in that case, the class
20 representative is left to recover the remainder
21 of his damages by means of the same mechanism
22 that unnamed class members must recover theirs.
23 The members incentives are thus aligned.

24 "But we should be most dubious of
25 incentive payments when they make the class

1 representatives whole, or, as here, even more
2 than whole.

3 "For, in that case, the class
4 representatives have no reason to care whether
5 the mechanisms available to unnamed class
6 members can provide adequate relief."

7 So, you know, kind of what they're saying
8 is if the incentive payment is
9 disproportionately large compared to what a
10 named Plaintiff gets from the settlement, it
11 looks really suspicious and maybe should be cut
12 back. 5,000 is on the high end, but under the
13 circumstances, it may not be too high.

14 So my practice is to look at two things.
15 Look at this as settlement payment versus --
16 well, let me put it this way. I look at the
17 recovery to the particular named Plaintiffs
18 under the particular settlement proposed, and
19 then compare it to what I would sort of consider
20 a net benefit for being the named Plaintiff with
21 the service award, which is to say, you know,
22 the cash value minus what really could be
23 subtraction of sort of time and effort costs to
24 the named Plaintiff.

25 So I don't want that to be disaligned

1 when -- you know, disproportionate if I accept
2 the \$5,000 service award.

3 Are you able to talk about why, you know,
4 the net benefit to a named Plaintiff is not
5 proportionately large compared to what the named
6 Plaintiffs are getting?

7 MR. PADGETT: Certainly, Your Honor.

8 THE COURT: Okay.

9 MR. PADGETT: Well, first of all, the
10 named Plaintiffs are getting the same thing that
11 every class member is getting. It's a seven
12 year, 84,000 mile extended warranty. That has
13 significant value as our motion for final
14 approval and motion for attorney's fees reflect,
15 including the valuation performed by Lee Bohran.

16 The named Plaintiffs seek \$5,000, which is
17 a number that has been approved by Courts
18 throughout the country, including in the Sixth
19 Circuit. It has not increased to keep up with
20 inflation, and it is close to the value of the
21 extended warranty. Not quite there, but it's
22 close.

23 And that's offset by the fact that
24 Ms. Pineda, Ms. Hanes, Mr. Beaver, and
25 Mr. Kirksey have put their names out there on

1 the complaint. They have responded to
2 discovery. We have -- they've kept closely
3 involved with the action, and they have done a
4 good job for the class. And so we ask that the
5 Court award them the full \$5,000.

6 THE COURT: Do any of them have claims
7 for, sort of, retroactive reimbursement of any
8 expenses for repairs?

9 MR. PADGETT: Yes. Mr. Kirksey has
10 submitted a claim for reimbursement. That's
11 correct.

12 THE COURT: Okay. Now, when we look at
13 sort of how much time -- I'm always interested
14 in how much time and hassle it is to be a named
15 Plaintiff. So for these named Plaintiffs, in
16 terms of time expenditure, are we talking a
17 couple hours? 20 hours? Any way to ballpark
18 it?

19 You know, knowing that, you know, they're
20 not submitting time sheets to you. I get that.
21 But are you able to provide a representation as
22 to, sort of, orders of magnitude, at least?

23 MR. PADGETT: Yes. I drafted the
24 complaints, and I helped the Plaintiffs with
25 discovery. And I think 20 hours is a fair

1 estimate. I've had several phone calls with
2 them. They had to gather their documents.
3 Sometimes they have to go to the dealerships to
4 collect them. They have to search their emails.
5 And, you know, as we improve the allegations of
6 the complaint, anticipating motions to dismiss
7 and summary judgment, we need to ask some very
8 detailed questions to ensure that the
9 allegations support the claims made.

10 And so I would say 20 hours is a
11 reasonable estimate.

12 THE COURT: Okay. Just one final thing.
13 The estimate of the value, you know, the average
14 value across the board of the extension of the
15 warranty, do you have a figure for that?

16 MR. PADGETT: Yes. So Mr. Bohran did an
17 analysis, and he values the extended warranty at
18 \$66,394,000.

19 THE COURT: Because I saw the net value of
20 the settlement that he had in there. So that
21 portion is the -- just the extended warranty
22 portion?

23 MR. PADGETT: That's correct.

24 THE COURT: Yeah. Yeah. Okay. And there
25 are a couple other things that may be in there.

1 MR. PADGETT: Yes.

2 THE COURT: All right. Okay. Let's see
3 if I have anything else.

4 Oh, do you want to speak about that late
5 arriving reported objection? You know the one
6 I'm talking about?

7 MR. PADGETT: Yes, Your Honor.

8 THE COURT: Yep. You know, I have my own
9 views on it but would like yours.

10 MR. PADGETT: Certainly. So we received a
11 purported objection. I believe it was filed on
12 July 8th from Mr. Osita Obieke. He states in
13 his objection that he purchased a 2016 Maxima.
14 He purchased it on May 12th, 2023, which
15 means -- with a service date of March 19th,
16 2016 -- that the vehicle was already beyond the
17 limits of the extended warranty before this
18 purported objector purchased the vehicle.

19 In his objection, he seeks a recall. This
20 is a common misconception from objectors that,
21 you know, the question for the Court is what
22 should the settlement be?

23 But the question for the Court is whether
24 to approve the settlement as it is as fair,
25 reasonable, and adequate.

1 So to the extent the Court considers the
2 late objection, it is without merit.

3 THE COURT: All right. So there's that
4 one. And I should note there's another one.

5 Did you see this thing from Amyr Naeem?
6 Does that ring a bell? Docket Number 123.

7 MR. PADGETT: Yes. Yes, it does, Your
8 Honor.

9 THE COURT: Uh-huh. I think there's an
10 easy answer to this, but I want your thoughts.

11 MR. PADGETT: Yes. Yes, Your Honor. We
12 did review this one. You know, to the extent we
13 can make any sense of it, it seems to seek
14 something having to do with used car prices and
15 the current administration and tariffs.

16 This is way outside the scope of this
17 lawsuit. This lawsuit involves extending a
18 warranty to provide more coverage, and so this
19 purported objection is really off the mark and
20 without merit.

21 THE COURT: He's not really talking about
22 CVTs at all; right? Nothing to do with CVT?

23 MR. PADGETT: That's correct.

24 THE COURT: Yeah. Yeah. Okay. And it's
25 also late.

1 MR. PADGETT: That is also correct.

2 THE COURT: Okay. All right. One final
3 thing. I did have one final question. Oh, you
4 know, one of the things you note is, listen, the
5 benefits to a class member generally could be
6 comparable to what they could expect to receive,
7 even if they were individually successful at
8 trial in their own cases.

9 Do you want to explain why you -- and I
10 don't disagree, but can you articulate why you
11 think that sort of the range of recovery would
12 look something like this in, you know, the
13 average case?

14 MR. PADGETT: Certainly, Your Honor.

15 So were these claims brought individually,
16 a lot of them would be past the statute of
17 limitations, as we discussed previously. And
18 when a vehicle drives trouble-free beyond seven
19 years and 84,000 miles, in our experience, it is
20 very difficult to convince a trier of fact that
21 that vehicle was defective, or that they
22 overpaid at the time of sale. We believe they
23 did, but we would face vigorous response from
24 our opponent here.

25 And so the relief that we achieve in the

1 settlement is close, if not better, for many
2 class members than what they would have received
3 if we had gone to trial, considering those risks
4 that we faced.

5 THE COURT: Yeah. And you think the
6 remedy -- well, if you got a -- the transmission
7 problem, the remedy you're going to get, even if
8 someone would deem, you know, a design or
9 manufacturing defect to be the problem,
10 you know, when a car is old, rather than just
11 normal wear and tear, right, what you could
12 expect is a remedy that looks like this and not
13 much better?

14 MR. PADGETT: Correct.

15 THE COURT: Fair to say? They're not
16 going to get some windfall of punitive damages
17 or consequential damages or whatever.

18 MR. PADGETT: No. These are economic
19 damages, and had we proceeded to trial, we would
20 need to calculate damages.

21 And, commonly, the calculation of damages
22 is the cost of repair. And here, you know, that
23 cost of repair is provided out to a negotiated
24 point of time and miles.

25 THE COURT: Okay. All right. Thanks for

1 that, Mr. Padgett. And before I hear from
2 Ms. Weiner, we'll hear from Mr. Cauley.

3 Thank you.

4 MR. PADGETT: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 MR. CAULEY: Good afternoon, Your Honor.

7 THE COURT: Good afternoon, Mr. Cauley.

8 MR. CAULEY: I just have a few comments on
9 behalf of Nissan in support of the settlement.
10 And, of course, I'll answer any questions that
11 the Court may have.

12 Obviously, the Court is interested in
13 assessing a settlement that was negotiated by
14 others, not by the Court, and assessing whether
15 it's fair, reasonable, and adequate.

16 I would simply note that the
17 consideration, in terms of this settlement, are
18 consistent with other cases of like nature that
19 have been presided over by this Court and other
20 judges in this district, and previously approved
21 as fair, reasonable, and adequate.

22 I would note that counsel for Nissan and
23 counsel for the Plaintiffs are both experienced
24 with these types of cases and have a great deal
25 of institutional knowledge and background that

1 went into the assessment of this case.

2 And as we have before Your Honor,
3 certainly in assessing whether something is --
4 whether a settlement is fair reasonable and
5 adequate, the Court has to consider, just like
6 the counsel have to consider, the risk of going
7 forward.

8 And as you've already noted in our papers,
9 we have laid out in a little bit more detail all
10 of the headwinds that we think the Plaintiffs
11 would have faced in even getting a case
12 certified, in light of the law in the Sixth
13 Circuit. If they were able to certify the case,
14 there's still a risk that merits Nissan would
15 win. And if Nissan did not win, there would be
16 appeals. And, ultimately, the class, even if it
17 succeeded at each of the gates along the way,
18 would not see a recovery for years. And the
19 negotiated settlement gives the class
20 recovery -- gives them consideration and
21 recovery right now.

22 THE COURT: And even if they were to
23 recover, you would agree that recovery would not
24 necessarily look much better than what's
25 provided for by the settlement?

1 MR. CAULEY: It may be very different.
2 And certainly this settlement really seeks to
3 compensate class members who have, in fact,
4 experienced an issue with their transmission.
5 If they get a repair at a Nissan dealership,
6 they're getting reimbursed at 100 percent of the
7 cost. And even if they go to a third-party
8 facility, they're still getting reimbursed up to
9 a cap of \$5,000. That is a very high individual
10 reward.

11 THE COURT: Is it 50 percent up to a cap
12 of 5,000?

13 MR. CAULEY: No, it's just a cap of 5,000.
14 It's 100 percent up to a cap of 5,000.

15 THE COURT: All right. So some of your
16 remarks also are relevant to the objections in
17 this sense. You know, the objections -- to the
18 extent they're saying, well, the mileage and
19 time duration period should have been longer,
20 your comments are relevant to that because if
21 Nissan has -- to the extent Nissan has defenses,
22 an objector, understanding their feelings, they
23 seem to be assuming that it's a slam dunk that
24 they should get any relief. And, therefore,
25 since that's actually not the case, because

1 Nissan's got a lot of defenses, it's reasonable
2 to draw the line on the duration and the mileage
3 limitations at some point.

4 Fair to say?

5 MR. CAULEY: I think that's fair to say,
6 and we've discussed it in previous hearings. We
7 certainly -- you have to draw the line
8 somewhere. You draw the line somewhere when you
9 issue a warranty in the first place. Where you
10 draw the line is a matter of negotiation between
11 experienced counsel on both sides and parties,
12 and we -- given the risk to both sides, that's
13 why you end up with settlement in the first
14 place.

15 I certainly know from negotiations in this
16 case, as well as previous cases, that
17 Plaintiffs' counsel negotiated the maximum that
18 Nissan would agree to. And if there had been a
19 demand for a longer warranty, we would not have
20 a settlement today.

21 THE COURT: So in that sense, you know, no
22 one can say that, you know, Plaintiffs' counsel
23 is settling out the class just to get a deal
24 done and get an attorney's fee award.

25 From your perspective, they got as much as

1 they could get under a settlement; is that fair?

2 MR. CAULEY: They absolutely did. And
3 certainly, we have experience with Plaintiffs'
4 counsel from this case and other cases.
5 Certainly, we have seen no indication of
6 anything other than zealous representation of
7 the class on their side. And hotly negotiated
8 and litigated and -- but we would not have been
9 able to -- they've achieved as much as they
10 would be able to achieve in this negotiation.

11 THE COURT: And would you say that the
12 settlement was sort of the result, the outcome
13 of a mediator getting involved?

14 MR. CAULEY: We used the same mediator as
15 we've used before, Hunter Hughes, who I find to
16 be one of the most outstanding mediators in the
17 country.

18 THE COURT: I don't know if you'd been in
19 here when I mentioned this before, but when I
20 was a year out of law school, I went to work.
21 It was a pretty small firm. It was with Rogers
22 and Harmon and did some work for him. Back
23 then, he was all about employment litigation for
24 big airlines, really, multiple ones. He was
25 very well respected, very experienced, and

1 very -- he was an outstanding attorney.

2 You know, that was 32 years ago. So I know what
3 you're saying when you're saying, you know, that
4 he's very good and very experienced.

5 So I think that that does give the Court
6 an extra level of comfort.

7 All right. Any other thoughts about the
8 proprietary of the settlement?

9 MR. CAULEY: I don't believe we have
10 anything we would add, Your Honor.

11 THE COURT: Okay. Very well. Thank you.
12 All right. Let's see. Anyone else in the
13 courtroom wish to speak at this time?

14 All right. Can you identify yourself?

15 MS. SALZER-WILCZEK: I'm Laura
16 Salzer-Wilczek. I'm not objecting to the
17 settlement in its entirety -- entirety. Had I
18 taken this to my dealer, who I took it to the
19 first time, and they did not fix my problem,
20 4,000 miles later, I had no transmission. I had
21 only 55,000 miles on my car when I took it in
22 the first time. I told them the gears were
23 slipping. I drove a stick in my youth, and I
24 was very -- they returned it to me, said they
25 adjusted the computer, and it didn't stick as

1 much.

2 In 4,000 miles, I got stone stopped on a
3 hill -- thank goodness -- and got to roll into
4 my subdivision to go home. I had to get my car
5 towed. They wanted \$7,800 to fix my car. I
6 knew a transmission guy in Fairview. I took it
7 to him -- I actually called him. "What do you
8 think you're going to charge me?"

9 Actually, they gave me an estimate for
10 9,000. I didn't realize that it also included
11 tires. They thought I needed two tires.

12 Anyhow, I end up paying -- he had to take
13 it to another dealer also. And he took it to
14 the Dixon dealer, because the computer cannot be
15 adjusted by a private transmission guy.

16 So I'm objecting to the amount of money
17 that they're paying for people who went outside
18 of the dealership. I didn't trust the dealer at
19 the time because he didn't fix it the first
20 time. And then they wanted all this money, and
21 it was Christmastime. Of course, I'm in shock
22 anyways.

23 But I just put this out there, that I
24 believe that if you took it to the dealer and
25 you could get it done for less, that you should

1 be reimbursed the full amount that they would
2 have paid the dealer, or the person who took it
3 to the dealer. That's my objection.

4 THE COURT: Okay. Thank you very much.

5 So, Counsel, you would have heard just as
6 well as I, but sort of the notion is, if I
7 understand correctly, it's this notion that,
8 well, under the settlement proposal here,
9 someone can be penalized by the cap of \$5,000,
10 if you take it to a non-Nissan dealer for
11 repairs, when you shouldn't be penalized if you
12 went there because it was, you know, it was
13 going to be cheaper than what the dealership was
14 talking about for repairs. That's the way I
15 understand the nature of the objection.

16 Anyone want to respond to that?

17 MR. PADGETT: Your Honor, I would be happy
18 to.

19 Look, as you mentioned, we mediated this
20 case in front of Hunter Hughes, and had we been
21 able to increase the reimbursement amount for
22 third-party repair shops, believe me, we would
23 have. We tried. 5,000 is the best negotiated
24 figure that we could reach.

25 I understand part of the reason for that

1 is that independent repair shops have an
2 interest in charging people as much as they can.
3 And sometimes they get fraud in these cases;
4 sometimes we get overbilled invoices in these
5 cases. And from Nissan's perspective, they make
6 arguments that you have to impose a reasonable
7 cap when the entity is a third party.

8 You know, Nissan dealerships are the
9 agents for service. The new vehicle limited
10 warranty directs class members to take their
11 vehicles into the dealerships for repairs.

12 And, you know, while we take every
13 objection very seriously, and we try to get the
14 best results that we can for each and every
15 class member, in this circumstance, 5,000 was
16 the maximum amount that was available. And so
17 that's where the settlement reached.

18 THE COURT: Okay. All right. Thank you.

19 Mr. Cauley.

20 MR. CAULEY: Your Honor, there are -- in
21 any settlement, there are certain idiosyncrasies
22 that, for a particular class member, they may
23 not be as happy with as others.

24 I will say the cap -- there are reasons
25 that the cap is put in place, and there are

1 reasons borne out of significant experience with
2 having settled a number of class actions in
3 seeing what can and cannot happen in the claims
4 process, particularly what can happen in the
5 claims process with repairs by third-party
6 shops. That's not to throw every third party
7 shop into the same group. That would absolutely
8 not be fair. But we have certainly seen that.

9 That's what led to -- each of the previous
10 settlements also had a reimbursement cap for
11 third-party repair shops, and that concern over
12 fraud, that concern over misdiagnosis that can
13 be experienced is what guided the parties in
14 negotiations and why we insisted on a cap.

15 But I will also note something the Court
16 has already identified, and that is the
17 negotiation wasn't, We'll only pay 50 percent of
18 out-of-pocket repair shops, or 25 percent. It
19 was 100 percent up to that cap.

20 So we still have the risk of some fraud
21 being involved, as you do with any claims
22 process with any settlement, but the Plaintiffs
23 negotiated 100 percent reimbursement up to that
24 cap. And so I think that's something the Court
25 should take into consideration.

1 THE COURT: Yeah. It occurs to me, you
2 know, when I said that, I had said it, and then,
3 of course, it was corrected. And it immediately
4 occurred to me that, well, I was thinking where
5 was I coming from? And it was in my own mind --
6 I was running through scenarios -- maybe even
7 one or two from objections -- where someone felt
8 like the net effect was maybe only getting
9 50 percent of the total. But that's different
10 than saying it's only 50 percent up to a cap of
11 5,000. It's 100 percent up to 5,000. If, you
12 know, 10,000 in repairs, the effective
13 reimbursement rate would be 50 percent. But if
14 you're under 5,000, then it's going to be 100
15 percent.

16 Yeah. Okay. All right. Thank you,
17 Mr. Cauley.

18 All right. Anything further anyone else
19 wants to say in response to the oral remarks
20 regarding the objection?

21 Okay. All right. At this time, we'll
22 hear from Ms. Weiner regarding class
23 certification.

24 MS. WEINER: If this podium was a little
25 higher, I don't know if I would be able to see

1 over it.

2 THE COURT: It is pretty high, actually,
3 now that I look at it. There's probably a way
4 to go a little lower, I think.

5 MS. WEINER: That's fine. It's my third
6 courtroom this week, so we're good.

7 Good afternoon, Your Honor.
8 Melissa Weiner.

9 THE COURT: Good afternoon.

10 MS. WEINER: I was actually at the ABA
11 conference when you spoke about those service --

12 THE COURT: You were there?

13 MS. WEINER: I was. I'm on the committee
14 for the ABA conference.

15 THE COURT: Yeah. Did we talk at that
16 time?

17 MS. WEINER: We did not. I think you came
18 in and promptly had to go back to the bench, but
19 I think that I presented the day after you did.

20 THE COURT: Okay. I was going to say, you
21 know, I don't recall meeting you, and I'm sure I
22 would have.

23 So, yeah, you'll recall that that was on
24 the agenda, as it was one of, sort of, the
25 issues. And I did occasion a deep dive about

1 service awards.

2 MS. WEINER: It did. I would have passed
3 Mr. Padgett I know, but I actually did get a
4 service award in the 11th under Georgia
5 substantive law. So I think that is the path --
6 I don't remember if we talked about that at the
7 conference, but that is -- they still are being
8 awarded in the 11th but under state substantive
9 law.

10 THE COURT: Okay.

11 MS. WEINER: And that was actually a case
12 that Hunter Hughes mediated.

13 THE COURT: Oh, is that right?

14 MS. WEINER: It was an airline case.

15 THE COURT: So it all comes full circle.

16 MS. WEINER: Well, Mr. Padgett had the
17 hard job. I, Your Honor, am simply here to
18 answer any questions, or, if you'd like, do a
19 brief presentation on why this case is
20 certifiable under Rule 23 at the settlement
21 stage.

22 We actually briefed this in preliminary
23 approval. And just for purposes of not wasting
24 ink and repeating exactly what we had, in which
25 the Court preliminarily approved, we didn't copy

1 and paste it.

2 THE COURT: Yeah. Stand by one moment.

3 Let me see if I can -- okay. So here's
4 what you have in paragraph 1 of the proposed
5 order: "The Court finds that the settlement
6 class, as defined in paragraph 36 of the
7 settlement agreement and also defined below, is
8 so numerous that joinder of all members is not
9 practicable."

10 Here, the settlement class would be over a
11 million individuals and/or companies.

12 Fair to say?

13 MS. WEINER: Yes, Your Honor.

14 THE COURT: So I think we can confirm
15 that. Questions of law and fact are common to
16 the settlement class, and I think those are in
17 the nature of, you know, what -- the common
18 questions would be related to the CVT
19 transmission and its design and so forth.

20 Fair to say?

21 MS. WEINER: Yes, Your Honor.

22 THE COURT: Okay. Next, that the claims
23 of the Plaintiffs are typical of the claims of
24 the settlement class.

25 Now, do you want to speak to that briefly

1 in light of your particular interaction with the
2 Plaintiffs, the named Plaintiffs?

3 MS. WEINER: Sure, Your Honor.

4 Here, the Plaintiffs allege that their
5 vehicles, as well as all of the class vehicles,
6 were manufactured in a defective way, and that
7 resulted in the Defendants receiving an unjust
8 benefit because the CVT, as we've alleged, are,
9 across the board, manufactured defectively, were
10 replaced with defective CVTs.

11 So these Plaintiffs had class vehicles,
12 which are defined within that class period, make
13 and model, the Murano and the Maxima, and the
14 Courts regularly find -- I can give the Court a
15 bunch of citations that these claims are typical
16 when the Plaintiffs' vehicles are alleged to
17 have experienced the same defect as that of the
18 class that we are seeking to certify for
19 settlement purposes.

20 THE COURT: Okay. All right. I think
21 that does cover, correctly, typicality.

22 And, then, it's written here: "The
23 Plaintiffs and class counsel have and will
24 fairly and adequately protect the interest of
25 the settlement class without conflicts of

1 interest."

2 You know, and I did focus in, in some
3 detail, about the named Plaintiffs where,
4 you know, there is always a potential for a
5 conflict of interest, based on the size of a
6 service award. I had one recently where someone
7 with -- I think the request was, like, for
8 20,000, and someone must have had a \$100.
9 Really, a stake of \$100.

10 At the outside, that can pose a big
11 conflict of interest, and I attempted to satisfy
12 my concerns on that with the dialogue with
13 Mr. Padgett.

14 And then regarding class counsel, you
15 know, I think, based on the representative --
16 the representations of the Defendant, it sounds
17 like they're convinced that you achieved about
18 as much success as you could have and were
19 zealous advocates for your clients.

20 Anything you want to say on that
21 additional?

22 MS. WEINER: No, Your Honor, other than --
23 I think you can see by the relief that we have
24 negotiated, and Mr. Padgett represented, that
25 Mr. Kirksey has filed a claim that the

1 Plaintiffs in this case, who walked the line all
2 the way up until the finalization of the
3 settlement agreement, were onboard with all of
4 these negotiated benefits to the settlement
5 class, even if they didn't specifically give
6 those individuals benefits, because they were
7 acting on behalf of this entire class.

8 I can tell you personally, in dealing very
9 closely with defense counsel throughout the
10 course of these negotiations, as well as
11 negotiations in past cases, that I personally
12 pushed Mr. Cauley as far as I believe possible
13 in this case. And I think Your Honor can see
14 that.

15 We did get additional relief. So this
16 wasn't just a case where we took a model that we
17 had in past cases and just applied it in the
18 future. We went in at the very outset with
19 additional terms, and there are additional terms
20 as well that we've negotiated in terms of how we
21 deal with class notice. We have been very
22 specific along the way to make sure that we
23 improve this settlement because we have learned
24 in past settlements, and we want to make sure
25 this settlement is fair, reasonable, and

1 adequate.

2 THE COURT: Okay. All right. Very well.
3 Thank you.

4 And then, you know, the toughest issue
5 sometimes is probably predominance.

6 Do you want to speak to the predominance
7 of common questions over individual questions?

8 MS. WEINER: Sure. So common questions
9 will predominate in this case where the
10 certified liability class will prevail or fail
11 in unison.

12 And here, we have an alleged common defect
13 that applies, as we've stated in our complaint,
14 in one fell swoop across all of these vehicles.

15 So either we proceed and we win, and we
16 are able to prove that there was a common defect
17 as alleged, or we lose. And so at this stage in
18 the litigation, there is nothing to suggest that
19 there are individualized issues with respect to
20 any defenses that Nissan, I'm sure, would make
21 that would prevail over -- or predominate over
22 common questions of fact and law.

23 THE COURT: All right. And regarding
24 superiority, I think the notion is when there
25 are so many class members, the most efficient

1 way of resolving any claims. And in this case,
2 we see that, you know, 5100 ones have come in
3 regarding particular repair costs, that doing it
4 in one action versus 5100, potentially, is the
5 way to go.

6 Fair to say?

7 MS. WEINER: Yes, Your Honor.

8 THE COURT: Anything else on superiority?

9 MS. WEINER: Nothing else, Your Honor, on
10 superiority.

11 THE COURT: All right. Thanks very much.

12 Would you speak briefly to the attorney's
13 fee request?

14 MS. WEINER: I can. I think Mr. Padgett
15 was prepared to talk about that.

16 THE COURT: All right.

17 MS. WEINER: So I might switch with him,
18 if that's okay with you?

19 THE COURT: All right. Very well. Sure
20 thing.

21 MR. PADGETT: So with respect to the
22 attorney's fee request, Your Honor, the motion
23 for attorney's fees, costs, and service awards
24 sets forth our Lodestar. It sets forth the
25 valuation of the settlement performed by

1 Lee Bohran.

2 I mentioned today that the value of the
3 claims received to date is 17 million. The fees
4 sought is 16.7 percent of that figure in claims
5 received to date alone. It's a much smaller
6 fraction of the total value of the settlement.

7 The Lodestar supports a 1.1 multiplier,
8 which is a very modest multiplier. And so the
9 attorney's fees and costs, adding up to
10 3.45 million, are well supported by the value
11 and the results achieved in this case.

12 And so I'm happy to answer any further
13 questions, but the papers do set forth the
14 arguments in some detail.

15 THE COURT: What I had in, for example,
16 the proposed final order, pursuant to the
17 settlement agreement, you had: "The Court
18 approves an award of 3.45 million as reasonable
19 payment for attorney's fees, costs, and
20 expenses, which shall be paid by NMA and
21 distributed by co-lead class counsel, as
22 provided in the settlement agreement."

23 As it turns out, the figure has actually
24 come in a little under 3.45 million; right?
25 It's going to be \$3,387,950.22?

1 MR. PADGETT: If that's what's reflected
2 in the papers, that's what we're seeking.

3 THE COURT: Yeah. Yeah. That was the
4 figure. So to make -- just to make clear that,
5 you know, the Court won't use the maximum figure
6 on any documents that would be an approval of
7 this. It would be the lower figure.

8 And I do note that counsel is not actually
9 gone up to the very limit. Coming in a little
10 bit under.

11 All right. Okay. Mr. Cauley, I'm not
12 asking you to say more than you want to on this,
13 but I did want to ask: Did you see anything
14 in -- anything related to the request for
15 attorney's fees that struck you as potentially
16 inaccurate in any way?

17 MR. PADGETT: Your Honor, I have a slight
18 correction.

19 THE COURT: Yeah. Oh, sorry.

20 MR. PADGETT: You know, my understanding
21 is the amount sought is attorney's fees plus
22 costs, and those figures add up to 3.45 million.

23 THE COURT: Okay. The reason I ask -- and
24 hold on one second. Hold on one second.

25 The reason I had asked, just to be clear,

1 on that figure -- hold on one second. All
2 right.

3 Let me ask it this way, then. All right.
4 Now I see the breakdown.

5 So it does come to 3.45. It needs to be
6 broken down as the figure I gave you, plus the
7 remaining amount to get you to 3.45 million is
8 \$62,049.78; is that right?

9 MR. PADGETT: Exactly. That's the hard
10 cost.

11 THE COURT: So, you know, in presenting
12 that, was it -- you probably cut -- you know,
13 presumably if you reach that figure, you
14 probably went over but were capped. So you
15 probably -- I don't know -- chopped some off of
16 probably the expenses; right?

17 MR. PADGETT: Well, the way we present
18 fees and costs, we do discretionary billing
19 adjustments downwards every time, yes.

20 THE COURT: It's billing on the fees, not
21 really necessarily the expenses.

22 MR. PADGETT: Yes.

23 THE COURT: Yeah. Okay. Gotch you.

24 So, you know, the Lodestar analysis is 1.1
25 based on what you're requesting. It might have

1 a little higher, if you had requested the full
2 amount, but we're not. So we're looking at the
3 Lodestar figure for what you are requesting,
4 which is 1.1 ratio; right?

5 MR. PADGETT: That's right.

6 THE COURT: All right. Thank you. All
7 right.

8 Mr. Cauley, anything you want to say?

9 You know, when I do this, I typically,
10 you know, I don't ask opposing counsel to
11 endorse the other side and its litigation
12 tactics or whatever, but I do want to know if
13 they think there's a representation made that
14 they might disagree with?

15 MR. CAULEY: Your Honor, we have seen
16 nothing inconsistent in any papers that were
17 filed that would cause us any concern. We offer
18 no opinion on attorney's fees.

19 The only opinion I'll offer is that class
20 counsel certainly zealously represented the
21 class and pushed for the best deal they could,
22 and I defer to the Court on the award of the
23 fees there.

24 The only thing -- the only other thing I
25 would add is, you know, obviously, this is --

1 you are evaluating settlement -- excuse me --
2 certification for settlement purposes. The
3 analysis of class certification in a settlement
4 context is not the same as assessment for a
5 litigated class.

6 And, obviously, if this was -- and as
7 we've said in our papers, if this was a
8 litigated class, we certainly would oppose some
9 of the 23(a) elements. And we certainly would
10 oppose 23(b) (3).

11 But for purposes of settlement, we believe
12 those elements have all been met and would be
13 appropriate to approve.

14 THE COURT: For purposes of settlement,
15 that's right. And I imagine, for example, if
16 you had to litigate it, one of the reasons why
17 Plaintiffs had litigative risk is -- I'm
18 confident you would not have agreed to
19 predominance. You would have said any alleged
20 failure of a transmission is an individualized
21 question, and issues regarding CVT design and so
22 forth do not dominate over the individual
23 question of what caused an alleged transmission
24 failure in a particular case.

25 Do I have that right?

1 MR. CAULEY: We certainly would oppose
2 predominance under 23(b)(3). We may also
3 challenge commonality under 23(a), but that's
4 for purposes of a litigated class analysis. Not
5 for a settlement class.

6 And we believe, for settlement class
7 purposes, that we don't challenge whether those
8 elements have been met.

9 THE COURT: Okay. Thank you. All right.

10 Anything else in the courtroom?

11 Do you have something to say, Mr. Padgett?

12 MR. PADGETT: Just one more comment,
13 Your Honor, about the fee.

14 I just wanted to state for the record that
15 the Lodestar we submitted was as of May 23rd.
16 And between then and now, we've done significant
17 work, preparing for this hearing and responding
18 to objections. And in the future, we're going
19 to do more work, including reviewing claims
20 denials, interfacing with the claims
21 administrator, presenting to Nissan claims that
22 we wish to get paid, and those require
23 significant work.

24 And so the Lodestar here is significantly
25 short of what we're going to end up working on

1 the case.

2 THE COURT: So -- and you know what? It
3 occurs to me -- I think I said it backwards last
4 time. If you had cut back your fees from --
5 well, let me say it this way. I had this
6 reversed.

7 The way you get to the amount you're
8 seeking is based on 3.45 minus the expenses that
9 you're claiming.

10 So that's what gets us to 3,387,950.22.

11 Your point would be, hey, in our papers,
12 we had shown actual billings that were between
13 3 million and 3.1 million. And now you're
14 saying that figure is higher. So our Lodestar
15 figure is even closer to one than it used to be.
16 It's even closer to one.

17 MR. PADGETT: Exactly, Your Honor. That's
18 what I'm saying.

19 THE COURT: Yeah. It may be approaching
20 the particular figure claiming 3.387 million.
21 Okay.

22 MR. PADGETT: We spent time preparing, and
23 we will spend time in the future.

24 THE COURT: Yeah. Yeah. Understood.
25 Thanks. I appreciate it. I think in my earlier

1 remarks, I was speaking as if 3.387 was related
2 to your actual billings when, of course, you did
3 represent in your papers the actual billings
4 were, like, 3.162 at the time of filing.

5 So the point being Lodestar is looking
6 about 1.1, maybe even closer to 1.0 at this
7 point, which, as the papers note, is certainly
8 not out of line with things that Courts have
9 found acceptable.

10 The Court also notes that, you know, that
11 there is, from an expert witness, a valuation of
12 the net benefit to the settlement class, and the
13 attorney's fee award here would be barely
14 5 percent of that, which is certainly well
15 within the range that's acceptable.

16 Okay. The Court notes that the Sixth
17 Circuit still has this unfortunate thing where
18 you've got to go through 23(e) factors regarding
19 the fair, reasonable, adequate analysis
20 regarding the settlement. But you've also got
21 to -- you know, it would be prudent to also
22 touch on the factors, which are somewhat
23 overlapping, that the Sixth Circuit has
24 traditionally used.

25 Under Rule 23(e) (2), it's provided as

1 follows: If the proposal would bind the class
2 members, the Court may approve it only after a
3 hearing and only after finding that it's fair,
4 reasonable, and adequate after considering
5 whether, A, the class representatives and class
6 counsel have adequately represented the class,
7 as I think my remarks in the papers indicate. I
8 can find that adequacy.

9 B, the proposal was negotiated at arm's
10 length. That's been made abundantly clear in
11 the papers and in the remarks today, especially
12 given the role of a veteran neutral mediator and
13 reaching a resolution.

14 C, the relief provided for the class is
15 adequate, taking into account, one, the cost,
16 risks, and delay of trial and appeal.

17 Two, the effectiveness of any proposed
18 method of distributing relief to the class,
19 including the method of processing class member
20 claims.

21 Three, the terms of any proposed award of
22 attorney's fees, including timing of payment.

23 And, four, any agreement required to be
24 identified under Rule 23(e) (3).

25 On that, the Court finds the relief

1 adequate because there was substantial risk,
2 potential delay, and costs that would be
3 associated with going to trial on behalf of the
4 class.

5 The issues regarding, you know, the
6 certification alone, I think would have been
7 substantial. Particularly the issue of
8 predominance could have been potentially a
9 substantial issue.

10 Obviously, any relief was merely possible
11 on the front end, far from assured and would
12 likely have taken a long time.

13 The proposed method of distributing relief
14 to the class is effective because everyone in
15 the class automatically gets the extended
16 warranty. And I think that the relief, in terms
17 of, you know, hey, if you had repairs during the
18 extended warranty period, submit claims to that
19 effect. And, hey, if you had gotten a
20 recommendation for a repair from a Nissan
21 dealer, and now you have 120 days to submit such
22 a claim, as long as you are under your
23 96,000 miles, that seems to be effective to me.

24 And the indications are that the class
25 member claims are in good shape to be processed

1 effectively.

2 Regarding the terms of any proposed award
3 of attorney's fees, including the timing of
4 payment, I find that appropriate here because
5 it's not coming out -- that is, the award of
6 attorney's fees is not coming out of a common
7 fund, and it's not too large.

8 It's appropriate in terms of the Lodestar
9 multiplier barely being over 1.0. And given the
10 relatively small percentage of the proposed
11 award compared to the estimate, the expert
12 opinion, regarding the overall value of the
13 relief obtained, the Court has reviewed the
14 settlement agreement that was submitted here,
15 and so for all those reasons, I find the
16 required adequacy.

17 The proposal treats class members
18 equitably relative to each other. It is the
19 final requirement there in (e)(2). With the
20 exception of the service awards, everyone is
21 pretty much in the same boat.

22 I would say, because everyone gets the
23 extended warranty, everyone is eligible for
24 awards -- excuse me -- as part of the relief,
25 reimbursement for costs previously incurred and

1 is similarly eligible for prospective relief
2 within the next 120 days, as long as they're
3 under 96,000 miles.

4 Now, it is true that, you know, as one of
5 our objector that spoke in Court said, you know,
6 there's a sense in which someone that went to a
7 non-Nissan dealer may, you know, get a result
8 that happens to be -- turn out to be sort of
9 unfavorable to a person that got a repair in a
10 non-Nissan location.

11 And the fact that, you know, in a
12 particular case, maybe someone didn't make out
13 as well as they were -- they could have, or
14 didn't make out as well as if something had been
15 a little bit different in the settlement
16 agreement, or if their factual circumstance had
17 been a little bit different doesn't mean that
18 the settlement agreement treats people
19 differently and inequitable with respect to each
20 other.

21 And here, I think we do have an equitable
22 treatment of folks in the class relative to each
23 other.

24 And then, to the extent the Sixth Circuit
25 factors are different or additional, I'm just

1 going to walk through them. And the Court
2 notes -- stand by one moment -- the Sixth
3 Circuit factors. Here's what we've got:

4 Sixth Circuit factors, number one, the
5 risk of fraud or collusion.

6 I think the colloquy today, the papers,
7 and the involvement of Mr. Hughes indicate that
8 there's a very low risk of that.

9 Second, the complexity, expense, and
10 likely duration of litigation.

11 As touched on earlier, we could expect
12 some substantial complexity, including regarding
13 technical and scientific issues regarding the
14 CVT design. We could expect those things to be
15 large: Complexity, expense, and duration.

16 Number three, the amount of discovery
17 engaged in by the parties. Their
18 representations made by Plaintiffs' counsel that
19 are not disputed about the Defendant provides
20 some claims-related information that appears to
21 have been material. It looks like we didn't go
22 to substantial things like depositions and so
23 forth, but there was definitely some relevant
24 discovery exchanged based on the record.

25 The likelihood of success on the merits,

1 the lower that is, the more reasonable --
2 generally, the lower the likelihood of success
3 on the merits, the more reasonable it is for the
4 Court to say, Hey, even if the settlement didn't
5 give every class member their wish list, the
6 settlement is fair, reasonable, and adequate.

7 Here, the likelihood of success on the
8 merits was certainly possible, but there are a
9 variety of defenses that could jeopardize the
10 likelihood of success on the merits.

11 The opinion of class counsel and class
12 representatives. Everyone is onboard that this
13 is an appropriate class settlement for the
14 class.

15 A very low rate of opt-outs, and a very
16 low rate of objections as well indicates that
17 with respect to our next factor, the reaction of
18 absent class members that likewise almost
19 everyone is onboard, meaning not just the class
20 representatives and class counsel, but most
21 class members.

22 Then, finally, the public interest. The
23 public interest tends to be reflected in a
24 couple of different things. The Court, having
25 resources freed up by settling complex and

1 involved litigation, and also this notion that,
2 you know, even though Nissan doesn't admit
3 liability, there is something to be said for the
4 litigation -- if it's resolved to both side's
5 satisfaction, where issues regarding potential
6 consumer-related issues was brought up and
7 resolved without an admission of liability, that
8 the benefit of the bargain from the Plaintiffs'
9 side be afforded to them, while, at the same
10 time, Nissan North America gets the repose
11 associated with the settlement, so the public
12 interest supports settlement.

13 All right. The Court, for those reasons,
14 finds the settlement fair, reasonable, and
15 adequate.

16 I've noted, through my remarks earlier,
17 that final certification is given for settlement
18 purposes to the class and class counsel. And no
19 one has raised any potential issues with the
20 language of the proposed order granting motion
21 for final approval of class action settlement.

22 There are a couple of blanks that need to
23 be filled in. I think the language looks fine.
24 It does cover not only the motion for final
25 approval class action settlement, but I think

1 the order also covers the attorney's fees aspect
2 of this as well in paragraph 17.

3 So what I'll probably do is do a short
4 order noting that for the reasons stated on the
5 record in this hearing, the two motions, the one
6 at 109 and the one at 114, that is for final
7 approval.

8 And then for the award of attorney's fees,
9 those will be granted. And the grant will be
10 reflected more fully in the order granting
11 Plaintiff's Motion for Final Approval of Class
12 Action Settlement to be entered separately.

13 So one order granting the two motions, and
14 then a separate entry of the order granting the
15 motion for final approval of the class action
16 settlement.

17 If counsel wouldn't mind emailing
18 Ms. Jackson to her email address a Word version
19 of that proposed order that we can see at Docket
20 Number 90-2. I think that would facilitate the
21 entry of the order granting approval of the
22 settlement.

23 All right. One final thing I wanted to
24 note. Regarding the objections. We had a few,
25 and I reviewed those in the briefings by both

1 sides on them.

2 You know, it's one of these situations
3 where anyone could be sympathetic to an objector
4 who wishes that the settlement could have
5 covered their situation when maybe it doesn't.
6 It could be frustrated, rightly or wrongly, by
7 the product, and the Court understands that.

8 I do think that most objectors -- and I
9 think it's true here, they sort of misapprehend
10 the Court's role, which is not to determine
11 whether the settlement could or maybe even
12 arguably, gee, hypothetically should have
13 covered their particular situation. That's not
14 the Court's role.

15 And it's certainly not the Court's role,
16 which some objectors, I think, don't grasp, to
17 rewrite the agreement, to make it fair, in the
18 Court's mind, in a way that would cover the
19 objector's situation.

20 Instead, the Court's role is to look at
21 what was proposed and say whether it's fair,
22 reasonable, and adequate, and that's what I
23 found.

24 Regarding the objections, I would agree
25 with what both sides have said about the nature

1 of them. There are really three different kinds
2 of objections, and one is basically saying that
3 the time duration should have been longer. Then
4 there's an objection to the effect that the
5 mileage limitations should have been longer.
6 And then there's an objection, really, to the
7 cap of \$5,000 on non-Nissan dealership repairs.

8 From my perspective, you know, it's been
9 adequately stated by the parties, which is -- it
10 is appropriate to draw these lines somewhere as
11 a negotiated settlement for folks that feel
12 aggrieved at where the lines were drawn. That's
13 why we do have the opt-out procedure.

14 You feel that the settlement wasn't really
15 fair to you or didn't cover you or didn't
16 protect your rights, then you can opt out. And
17 because you have the opt-out right, you know,
18 your grounds for complaining about the deal for
19 folks that stay in the class, those grounds are
20 much more limited because you could have opted
21 out. It's not to say objectors don't need to be
22 listened to when they scrutinize their claims
23 here closely, or that objectors occasionally
24 don't make points that, you know, could scuttle
25 a settlement.

1 Let's say they were able to be point out
2 something for some reason that would show
3 collusion. Well, I'm not going to say in that
4 scenario, Oh, well, you know, they can just opt
5 out if they don't like it.

6 You know, if they're showing collusion,
7 then they've shown me something that says, look,
8 I'm not just going to say, Oh, opt out if you
9 don't like it. I'm going to look closely at
10 whether the settlement agreement should be
11 settled at all.

12 So there is a role for objectors, and
13 objectors can make points that would scuttle a
14 settlement agreement.

15 But these particular ones, really, the
16 remedy, instead of -- understandably -- but
17 basically doing things in the nature of
18 complaining that the deal struck wasn't a little
19 bit different.

20 When complaints are in that nature, remedy
21 really is of opting out.

22 And I do think, to the extent the
23 complaint is that well, for cars that are older
24 or with more mileage, those should have been
25 covered. I think it ignores the reality that as

1 cars get older and more worn, you know, the
2 claim that if you have a transmission problem,
3 that it results from a product defect gets much
4 more tenuous. And for that reason, it's just
5 that much more logical not to keep pushing out,
6 you know, these mileage limits and these
7 durational limits longer and longer. I think
8 that we're putting an appropriate place here.
9 Seven years, 84,000 miles regarding the
10 different treatment where it's not 100 percent
11 if you're covered -- you're not covered at
12 100 percent if you're over 5,000 miles, if the
13 repairs were done by a non-Nissan dealer.

14 That is one of these where, you know, the
15 Court's convinced that's about as good as
16 Plaintiffs' counsel could have done. It's
17 meaningful relief. It's -- you know, it's
18 \$5,000 for anyone in that situation. If it's
19 not 100 percent, you could see the person being
20 aggrieved. But that doesn't mean that the
21 agreement, as a whole, is not fair, reasonable,
22 and adequate.

23 And, again, someone thinks, well, you
24 know, I should do better. Well, you do have the
25 option to prove that up by filing your own suit.

1 Opt out and file your own suit, if your point is
2 "I deserve more, and I should get more." You
3 have an opportunity to actually litigate
4 yourself and prove it, if that's your sincere
5 feeling.

6 So that's why I overrule all of the
7 objections. I will treat all of them as timely,
8 but I think they can all be overruled on the
9 merits. And I do think the one that came in
10 just on July 13th, it was totally talking about
11 something that was not at issue in this lawsuit.

12 All right. Anything further we need to
13 discuss, Mr. Padgett?

14 MR. PADGETT: No, Your Honor.

15 THE COURT: Thank you.

16 And, Mr. Hicks? Mr. Cauley?

17 MR. CAULEY: Nothing further, Your Honor.

18 THE COURT: All right. Thank you,
19 Counsel.

20 Then we'll proceed according with the
21 orders I had mentioned.

22 Have a good weekend. We stand in recess.

23 (Hearing concluded at 2:24 p.m.)
24
25

1 CERTIFICATE

2
3 I, Richard D. Ehrlich, Official Court
4 Reporter for the United States District Court for the
5 Middle District of Tennessee, with offices at
6 Nashville, do hereby certify:

7 That I reported on the stenotype shorthand
8 machine the proceedings held in open court.

9 The proceedings in connection with the
10 hearing were reduced to typewritten form by me;

11 That the foregoing transcript is a true and
12 accurate record of the proceedings to the best of my
13 skills and abilities;

14 This 22nd day of July, 2025.

15
16 S/Richard D. Ehrlich
17 Richard D. Ehrlich
18 Registered Merit Reporter
19 Certified Realtime Reporter
20 Licensed Court Reporter
21
22
23
24
25