IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Navistar MaxxForce Engines Marketing, Sales Practices and Products Liability Litigation	)	**Master Case No. 1:14-CV-10318**
	)	This filing applies to All Class Cases
	)	**Honorable Joan B. Gottschall**

PRETRIAL ORDER NO. 31

The plaintiffs in this multi-district litigation ("MDL") generally allege that model year 2010–13 commercial trucks manufactured by the defendants ("class trucks"), referred to collectively here as Navistar, are defective. The purported defect allegedly caused breakdowns and engine damage to trucks owned or leased by the plaintiffs. After nearly four years of discovery and more than a year of negotiations with the assistance of a mediator, a class-wide $135 million settlement has been reached. Unlike most settlements, a settlement that binds a class requires court approval. Fed. R. Civ. P. 23(e)(2). After notice of the proposed settlement was sent to the class, a fairness hearing was held on November 13, 2019, and the court received supplemental briefing after the hearing. Before the court are a motion for final approval of the settlement; an accompanying, and uncontested, motion for attorneys' fees and costs; and the objections filed October 10, 2019, of four class members (collectively "objectors"). For the following reasons, the court overrules the objections and approves the proposed settlement.

I. BACKGROUND

A. Nature of Action and Plaintiffs' Allegations

The Third Amended Complaint ("TAC," ECF No. 637), proposes to certify a nationwide class of purchasers or leaseholders of class trucks for damages and for purposes of seeking

declaratory relief. *See* Third Am. Compl. ("TAC") ¶ 436(a), ECF No. 626 at 74. Alternatively, plaintiffs propose to certify state-specific subclasses for certain states' warranty laws and for purposes of seeking declaratory or injunctive relief. *Id.* ¶ 436(b). Personal injury claims are excluded from the class definitions. *Id.* ¶ 437.

On behalf of the nationwide class, plaintiffs request a declaratory judgment on seven allegedly common questions including "whether the Engines have an inherent design Defect that causes failures." *Id.* ¶ 450. Plaintiffs plead several contract claims: a breach of express warranty (count two); breach of implied warranty (count three); and breach of the implied covenant of good faith and fair dealing (count four). TAC ¶¶ 455–89. Plaintiffs plead an unjust enrichment claim in count eight. TAC ¶¶ 517–22. They also bring several fraud-based claims. Counts six and seven are fraudulent concealment and fraud in the inducement claims respectively based on Navistar's alleged failure to disclose the alleged defect to customers after receiving complaints about the class engines. *See* TAC ¶¶ 498–516.

Plaintiffs bring two negligence claims on behalf of the nationwide class or, alternatively, on behalf of state subclasses. In count five, plaintiffs plead a negligent misrepresentation claim premised on Navistar's failure to disclose the alleged defect in the class engines after receiving substantial complaints about them. Count nine asserts a negligence claim based on Navistar's alleged breach of a duty to design and manufacture the engines' emissions system in a manner that would not lead to the types of failures that allegedly occurred. TAC ¶ 524.

Finally, plaintiffs assert a host of state-specific claims. Depending on the state, these claims range from strict products liability theories to claims under state deceptive trade practices statutes and consumer protection laws. TAC ¶¶ 527–669 (includes a breach of implied warranty

claim under Ohio law, which is allegedly a tort claim in Ohio). For each state-specific claim, the TAC identifies a specific named plaintiff as a potential subclass representative. *See id*.

B. Notice and Claims Process to Date

The court did not immediately grant preliminary approval to the settlement. Instead, the parties filed a round of supplemental briefing and made court-ordered modifications to the preliminary approval order and notice to class members. The modified preliminary approval order was entered as pretrial order ("PTO") Number 29 on June 12, 2019. ECF No. 648.

In accordance with PTO 29 and subsequent orders, the settlement administrator, a corporation for which Jennifer Keough ("Keough" or "settlement administrator") speaks, filed several declarations updating the court on the notice, opt-out, and claims process. *See* 1st Keough Decl., Aug. 9, 2019, ECF No. 660; 2d Keough Decl., Oct. 13, 2019, ECF No. 696; 3d Keough Decl., Oct. 22, 2019, ECF No. 698. The settling parties also filed a joint status report on August 26, 2019, ECF No. 663. The following is gleaned from those papers:

- The settlement administrator identified 45,224 potential class members. There are 66,518 class trucks (vehicle identification numbers). 1st Keough Decl. ¶ 6.
- As of August 26, 2019, 156 of the mailed notices had been returned as undeliverable; the settlement administrator performed skip tracing. Jt. Status Report ¶ 2, ECF No. 663.
- Court-approved email notices were sent to 18,547 class members. Jt. Status Report ¶ 3 (excluding emails returned as undeliverable).
- The settlement administrator mailed notices required by the Class Action Fairness Act, 28 U.S.C. § 1715, to state attornies general. 1st Keough Decl. ¶ 7.
- About 1,510 unique individuals viewed the settlement website as of August 6, 2019. *Id.* ¶ 13.
- As of October 23, 2019, the settlement administrator received 41 timely requests for exclusion (opt-outs). 3rd Keough Decl. ¶ 5; *see also id.* Ex. A (list of class members opting out). The administrator deemed two of the opt-out requests incomplete. *Id.* ¶ 6.

- FedEx Ground Package System, Inc. opted out but said that it was not feasible to provide a list of vehicles it and its delivery partners owned or leased. *Id.*

- Not counting FedEx, the 39 opt-out class members owned or leased 2,116 class trucks. That makes the average fleet size of a valid opt-out class member 54 class trucks (to say nothing of non-class trucks and other trucks the class member owns). *Id.* Ex. B.

C. Class Members' Options Under the Settlement

The proposed settlement agreement gives each class member three compensation options.[1] *See* Settlement Agreement, ECF No. 632-1 at 17–19. The settling parties often use the maximum amount recoverable for each option when describing it. The settlement does not guarantee maximum recovery, however. Each option applies on a per-class-truck basis, and each option is prorated by the number of qualifying months the class member owned or leased a class truck. *See id.*

1. The "cash option." A lump sum payment of up to $2,500. No proof of damages is needed, though the class member must prove the length of qualified ownership of a class truck.

2. The "rebate option." A rebate of up to $10,000 toward the purchase of a new Navistar truck (purchased at the best negotiated retail price). Proof of damages is not required. The class member must prove the length of ownership or lease. The settlement limits this option to no more than 10 trucks per class member. *Id.* At the fairness hearing, the settling parties told the court that the 10-truck cap was intended to prevent the claims of class members with large fleets from depleting the funds for the other options.

3. The "prove up" option. The class member submits documentary evidence of damages for "covered expenses" totaling no more than $15,000.

Navistar will contribute $85 million to a common fund to pay claims under options one and three and $50 million to a rebate fund to cover the costs for option two. *Id.* at 17. If one fund is oversubscribed and the other is undersubscribed, the balance in the undersubscribed fund will be used to cover expenses in the oversubscribed fund. *Id.* at 21.

[1] The settlement agreement dated May 28, 2019, is attached as Exhibit A to the motion for preliminary approval, ECF No. 632-1.

D. Objections

1. Withdrawn Objections

Class member LaDawn Hall ("Hall"), a self-represented individual, did not file a written objection in compliance with the settlement agreement.[2] ECF No. 722-1 Ex. A at 1. However, by agreement of all parties present, she addressed the court at the fairness hearing and described her concerns about the settlement's fairness to owners of small fleets of trucks. Plaintiffs' counsel requested an opportunity to meet with Ms. Hall and discuss the settlement and her options under it. Ms. Hall agreed, and the court gave her a week to send a letter stating her position on the settlement. ECF No. 717. The meeting lasted about two hours. Counsel explained the risks, potential costs, and tradeoffs of further litigation. Resp. to Nov. 13, 2019, Ct. Order at 1–2, ECF No. 722. By letter dated November 13, 2019, Ms. Hall confirmed that the meeting occurred and withdrew her objections. ECF No. 722-2 Ex. B at 1. The court therefore does not consider them.[3]

2. Pending Objections

[2] Ms. Hall sent the court a letter stating that she wished to be heard at the fairness hearing. For reasons unknown to the court, the letter was not docketed. Plaintiffs have made her letter a part of the record. ECF No. 722-1 Ex. A.

[3] The 2018 Advisory Committee's notes to Rule 23 make clear that court approval is only required to withdraw an objection when the objector receives consideration for the withdrawal. *See infra* note 5 (finding that the amended version of Rule 23 applies). When approval is required, the court asks whether the withdrawal is likely to prejudice absent class members. *See Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, 710 F.3d 754, 757–58 (7th Cir. 2013); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 498 (N.D. Ill. 2015); *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 813–14 (E.D. Wis. 2009). At the fairness hearing, and with the consent of all parties, the court approved counsel paying Ms. Hall's travel expenses for attending the hearing. But the payment did not depend on whether Ms. Hall withdrew her objections. The court has no reason to believe that Ms. Hall received any consideration for withdrawing her objections. In her letter withdrawing her objections, Ms. Hall writes, "though I personally have my own reservations I do believe that the settlement would be for the common good. I now understand the risk involved with not accepting such settlement. I do wish there were better protections under the law for small businesses." ECF No. 722-1.

Four defendants filed timely written objections to the settlement on October 9, 2019. ECF No. 694. The objectors argue that the prove-up option is inadequate because it provides no compensation for a truck's lost resale value resulting from the alleged defect. Class plaintiffs represent that they intend the first two options to compensate class members for lost resale value. Pls.' Resp. to Objecs. 4–5, ECF No. 700. All parties agree that lost resale value does not fall within the prove-up options' comprehensive definition of "covered costs." *Id*. at 14–15.

The court solicited three rounds of supplemental briefing on the objections—two prior to the fairness hearing and one after it. *See* ECF Nos. 702, 714, 717. In its briefing orders and at the fairness hearing, the court sought information on how widespread the issues the objectors identify are, whether the interests of class members have been adequately represented, and how the objectors proposed to prove up damages for lost resale value. *See id*.

II. ANALYSIS

Federal Rule of Civil Procedure 23(e) requires court approval of a settlement that binds the class. The Rule was amended in 2018. The court must find, after a hearing, that the settlement "is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, the court plays a role similar to a fiduciary for the class. *See Williams v. Rohm and Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011) (citing *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652–53 (7th Cir. 2006)).

In the 2018 Amendment to Rule 23(e)(2), the Advisory Committee sought to simplify the approval analysis. The Seventh Circuit has identified at least five factors to be considered when assessing a proposed settlement.[4] *See Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863–64 (7th

[4] The Seventh Circuit factors are: (1) the strength of plaintiffs' case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among affected parties; (4) reaction of members of the class to the settlement (5) the opinion of

Cir. 2014); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652–53 (7th Cir. 2006). Other circuits, according to the Advisory Committee's note, had lists of up to a dozen factors. Recognizing that "[t]he sheer number of factors can distract both the court and the parties from the central concerns that bear on review under Rule 23(e)(2)," the Advisory Committee made a "shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal." 2018 Advisory Committee's note to Fed. R. Civ. P. 23(e)(2). That four-factor list now appears in Rule 23(e)(2). The list "subsumes" some, if not all, of the Seventh Circuit's factors. *Snyder v. Ocwen Loan Servicing*, 2019 WL 2103379, at *5 (N.D. Ill. May 14, 2019). To effectuate the Advisory Committee's goal of simplifying and focusing the analysis, this court shapes its analysis in terms of the four Rule 23(e)(2) factors. The existing Seventh Circuit case law applying Rule 23(e)(2) has the same binding force, however, and the court looks to it for guidance in applying the Rule 23(e)(2) factors.[5] See *Charvat v. Valente*, 2019 WL 5576932, at *5 (N.D. Ill. Oct. 28, 2019); *Snyder v. Ocwen Loan Servicing*, 2019 WL 2103379 , at *5–6 (N.D. Ill. May 14, 2019); Advisory Committee's Note ("The goal of this amendment is not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision . . . .").

A. <u>Procedural Fairness</u>

competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 864 (7th Cir. 2014) (quotation omitted);

[5] Many of the cases in this MDL began before the 2018 amendments took effect. "Generally a new procedural rule applies to the uncompleted portions of suits pending when the rule became effective . . . ." *Richardson Electronics, Ltd. v. Panache Broadcasting of Pa., Inc.*, 202 F.3d 957, 958 (7th Cir. 2000). This court sees nothing unjust or impracticable here about applying amended Rule 23(e)(2), particularly since the amendment simplifies the issues to be considered without changing existing settlement approval law.

The first two factors, which the Advisory Committee labelled procedural, favor settlement. The court finds that the settlement was negotiated at arm's length and that the class representatives and class counsel have adequately represented the class.[6] *See* Fed. R. Civ. P. 23(e)(2)(A), (B).

The parties reached this settlement after more than three years of intensive discovery limited to class certification. The discovery process was fraught. This court's observations of counsel throughout this MDL confirm that class members' interests have been adequately protected throughout. Moreover, the parties spent about two years in intensive negotiations mediated by a retired judge of this court, the Honorable Wayne R. Anderson.

Only on the eve of the deadline to file class certification motions did the parties come to an agreement—and that was after receiving multiple extensions to continue trying to settle. See ECF Nos. 601, 605, 609 (motions for extension of deadline to move for class certification). Counsel have filed declarations attesting to the hard-fought process of litigation and negotiation that led to the settlement. E.g., Selbin Decl. ¶¶ 29-30, ECF No. 632 Ex. B. This court's experience with the settlement confirms counsel's averments.

B. <u>Substantive Fairness</u>

The objections here primarily concern the substantive fairness of the settlement. The court considers whether the relief provided for the class is adequate, taking into account:

> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

[6] The court analyzes objectors' complaints that the interests of the named plaintiffs are misaligned with larger fleet owners and certain lessors in the next subsection. The court does this because objectors frame their arguments in terms of those factors. *See* Objections 10–11, ECF No. 694.

> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and

whether the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(C)–(D). Objectors contend that the settlement's compensation scheme is inadequate given the estimates of lost resale value by all of the experts. They also contend that indirect lessors, those who subleased a truck, fare even worse under the settlement because they must split the cash option payment with the primary lessor. The ten-truck cap on the rebate option disadvantages owners of large fleets, according to objectors, by forcing them to use the cash option or prove up damages that do not include lost resale value. Also, objectors submit that the rebate option is effectively a coupon, and its real economic value to class members is substantially smaller than $10,0000.[7]

1. Objectors' Proposal Is Unworkable

At first glance, the objectors appear to want the court to reject the settlement as a whole, but that is not so. Objectors "urge the Court to require that the parties redefine the Prove-Up Option to include documented lost resale value damages - within the $15,000 maximum recovery per truck under this option - thereby fairly allowing class members to recoup lost resale damages while not increasing the per truck Prove-Up compensation cap negotiated by the parties." ECF No. 694 at 9; *accord* Objectors' Reply 2, ECF No. 706. Counsel for the objectors confirmed again at the fairness hearing that this was the relief they were seeking. The court noted that much of the evidence of lost resale value submitted so far had come in the form of expert reports.

[7] Settling plaintiffs also argue that objectors should have opted out if the settlement was not favorable to them.

The court therefore gave the parties an opportunity to brief how each claimant could efficiently prove up lost resale value damages to the settlement administrator.

The administration costs likely make submitting expert evidence to the settlement administrator impractical and perhaps even a net harm to the class. The settlement administrator is paid from the settlement fund, so an increase in administration costs reduces the amount of money available to pay claims. To put it mildly, sorting through competing expert estimates of diminished resale value for thousands of trucks would be time and labor intensive. *See* Fed. R. Evid. 702. And claims-processing costs multiply as the number and complexity of claims increases. *See Mangone v. First USA Bank*, 206 F.R.D. 222, 228–29 (S.D. Ill. 2001).

Likely recognizing the difficulties in proving up lost resale value, objectors propose to modify the settlement to use a simple formula for determining lost resale value: truck purchase price multiplied by a fixed percentage. The fixed percentage would come directly from the report of one of class plaintiffs' damages experts. *See id.* Consequently, to recover lost resale value damages, the claimant would need only to prove the truck's purchase price and length of ownership. *See id.*

As class plaintiffs aptly point out, the proposal is not a prove-up at all but a blanket entitlement that effectively modifies the cash option. The modification would constitute a 100% recovery of one of the estimates of lost resale value damages. The proposal does not so much represent a compromise between the positions of Navistar and the class as it does a victory for the class. Objectors have not explained why such a victory would be fair or how the court could rewrite the settlement as they propose. It cannot. Courts do not have the authority to rewrite a settlement during the final approval process. *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1133 (7th Cir. 1979); *In re Sears, Roebuck and Co. Front-Loading Washer*

Prods. Liab. Litig., 2018 WL 1138541, at *3 (N.D. Ill. Mar. 2, 2018); but *see American [Am.?] Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, 2011 WL 3290302, at *9 (N.D. Ill. July 2, 2011). Having concluded that objectors' proposal to rewrite the prove-up option to create a second cash option is unauthorized and unmanageable, the remaining question is whether the other two options are adequate as written.

2. The Relief Provided Is Adequate

"The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 864 (7th Cir. 2014) (quotations omitted). Objectors submit that the cash and rebate options were not intended to cover lost resale value. Class plaintiffs disagree in their briefing. Regardless of the parties' intent, both options effectively compensate for all economic damages, including lost resale value. Both represent a discount on the maximum estimates of lost resale value damages in the record.

The settling parties have made a substantial, and convincing, showing that the discount is justified by the risks of further litigation. First, the parties marshal several jury verdicts and expert reports to convince the court of the size of any lost resale value damages:

- Objectors: Ned Barnes, an accounting expert, opines that the actual diminished value of a sample of over 600 class trucks was $23,878 per truck without mileage adjustments and $26,616 with a mileage adjustment. ECF No. 694 at 6.

- Objectors: Certified equipment appraiser Richard Lolmaugh estimated that the average lost resale value for over 400 vehicles he inspected was $34,473. *Id*. at 5.

- Class plaintiffs' expert: average lost resale value damages estimated to be a more modest $9,354 per truck. Tangren Declaration, June 5, 2019, ECF No. 641-8 at 2.

- A state court jury verdict awarding multi-million dollar lost resale value damages, reversed on other grounds. *See Milan Supply*, 2019 WL 3812483, at *11.

Navistar and the class plaintiffs argue that their economic experts used a more rigorous methodology to estimate lost resale value. They note that their experts calculated damages for settlement purposes while the objectors' experts performed calculations in anticipation of trial. Navistar similarly attacks the methodology used by objectors' experts, accusing them of making unwarranted economic assumptions and failing to tie their loss estimate to losses attributable to the defect. *See* Navistar Resp. to Objs. 10–14, ECF No. 699.

The court considers it unnecessary to wade into this dispute or to make detailed findings in a battle of the experts. The history of litigation of related claims demonstrates that class members would run serious risks by litigating such claims to verdict and on appeal. *See Mirfasihi v. Fleet Mortg. Corp.*, 450 F.3d 745, 749–50 (7th Cir. 2006).

In addition, the economic loss rule also presents a substantial, though not necessarily insurmountable, obstacle to recovery in at least some states. This is presumably because Navistar's warranty excludes lost resale value damages (though Navistar does not direct the court to the warranty), meaning that lost resale damages are not a matter of contract in the context of Navistar. *See* Navistar Resp. to Objs. 3–5, ECF No. 699. The economic loss rule polices the line between tort and contract damages. Generally, "tort law . . . ordinarily (but with exceptions) does not permit recovery for purely economic losses, say, lost profits." *Saratoga Fishing Co. v. J.M. Martinac & Co.*, 520 U.S. 875, 879 (1997) (citing Restatement (Third) of Torts: Products Liability § 6, Comment d (Proposed Final Draft, Preliminary Version, Oct. 18, 1996)) (other citations omitted). Courts typically reason that "the loss of the value of a product that suffers physical harm—say, a product that destroys itself by exploding—is very much like the loss of the value of a product that does not work properly or does not work at all," and contract and warranty law is better suited than tort law to allocating the risks and responsibilities

among the manufacturer, buyer, and seller. *See id.* (citing *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S., 858, 870 (1986)); *see also Cooper Power Systems, Inc. v. Union Carbide Chemicals & Plastics Co., Inc.*, 123 F.3d 675, 681 (7th Cir. 1997) ("a commercial purchaser of a product cannot recover solely economic losses from the manufacturer under negligence or strict liability theories.") (quoting Wisconsin law, which states the general rule). Navistar obtained dismissals in state courts in Wisconsin and Kentucky of fraud-based claims under the economic loss rule. *See Milan Supply Chain Sols. Inc. v. Navistar Inc.*, 2019 WL 3812483, at *8 (Tenn. Ct. App. 2019); *Tankstar USA, Inc. v Navistar, Inc.*, 2017 WL 10966019, at *1 (Milwaukee Cty. Cir. Ct. 2017).

This court does not determine whether any state's economic loss rule precludes recovery, but it is certainly a risk of further litigation. Navistar cherry picks favorable state law. States differ as to the application of the economic loss doctrine. Although Wisconsin and Tennessee may not permit recovery of purely economic losses caused by intentional fraud, minimal research reveals that at least Illinois, Michigan, and Florida (all subclasses here), recognize some exception to the economic loss doctrine for intentional, fraudulent misrepresentation claims. *See Moorman Mfg. Co. v. Nat'l Tank Co.*, 435 N.E.2d 443 (Ill. 1982) (collecting authority: intentional misrepresentation claims); *Huron Tool & Engineering Co. v. Precision Consulting Services, Inc.*, 532 N.W.2d 541 (Mich. 1995) (limited exception for fraud in the inducement where fraud is extrinsic to the subject matter of the contract); *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So.2d 1238 (Fla. 1996) (substantively same as *Huron*); *see also Wheaton Theatre, LLC v. First Am. Title Insurance Co.*, 354 F. Supp. 3d 904, 904 (N.D. Ill. 2018) (discussing Illinois's exception for negligent misrepresentation claims against a defendant who is in the business of giving advice on which others rely).

Plaintiffs' fraud and misrepresentation claims are not boilerplate. They are based in part on statements made in public filings and earnings calls attributed to Navistar's former chief executive officer. To be sure, as Navistar argues, Resp. to Objs. 9–14, ECF No. 699, proving causation may be difficult given that most trucks were probably purchased by dealers. Still, none of the settling parties has given the court any reason to believe that the fraud claims are so doomed that they should not factor into a fair and reasonable compromise. Nor does Navistar even discuss the myriad statutory claims pleaded in the third amended complaint.

All that said, the risks discussed above are substantial, and they present potential obstacles to both class certification and on the merits. Given these risks, court finds that the settlement adequately factors lost resale value into the existing compensation scheme.

3. The Settlement Treats Class Members Equitably Relative to One Another

Objectors maintain that the rebate option favors class members with fleets of smaller than ten trucks. As they point out, most of the named plaintiffs (approximately 87%) owned or leased fewer than ten trucks. The court rejects this contention because the available evidence shows that the objectors raise isolated concerns. Indeed, class members with large fleets are participating in the claims process.

The ten-truck cap on the rebate option does of course disadvantage what the parties refer to as "fleet" class members with larger numbers of trucks. This compromise is rationally related to the overall composition of the class:

- Fleet size of class members (average / median / mode) (see 4th Keough Decl., ¶¶ 6–9 Nov. 11, 2019, ECF No. 714-1):
  -- Entire class: 4.1 average / 1 median / 1 mode.
- Smaller class members (fewer than 10 trucks): 1 average / 1.5 median / mode unknown.
- Fleet class members more (than 10 trucks): 17.9 average / 23 median / mode unknown.

- 3.7% of class members (including objectors) have more than 10 trucks.

The settling parties have represented that the ten-truck cap was intended to strike a balance between the interests of fleet owners and the interests of class members without fleets. The statistics cited above show that non-fleet class members make up about 96% of the class, but fleet owners account for a disproportionate number of class trucks. To balance the interests of large and small class members the parties chose to draw an admittedly arbitrary ten-truck line. The line falls at about the mid-point between the average fleet size of all class members and the average fleet size of owners of larger fleets. The line must of course ultimately be somewhat arbitrary, but the court sees nothing unfair or unreasonable about the compromise reached here. It falls within the range of fair, reasonable, and adequate balancing of the interests of fleet and non-fleet class members.

That conclusion is further bolstered by the small number of fleet objectors and the participation of fleet class members in the claims process. Navistar has submitted declarations from fleet class members who together account for 2,180 class trucks. Each declarant considers the settlement to be fair, reasonable, and adequate, and each avers that the interests of fleet class members have been adequately represented.

- ❖ Estes' Express Lines (Decl. of K. Samuel, ECF No. 716-1): no state specified; fleet of more than 1,200 trucks.
- ❖ Boyd Companies (Decl. of D. Bassett, ECF No. 714-2): Alabama-based owner of "more than 100 trucks."
- ❖ Go Capital Leasing Co. (Decl. of W. Dunn, ECF No. 174-3): no state specified; "about 140" class trucks.
- ❖ Mesilla Valley Transp. (Decl. of D. Rigg, ECF No. 714-4): no state specified; "over 740 vehicles."

Additionally, the settling parties represented at the fairness hearing that other class members with large fleets are in the process, with the assistance of the settlement administrator, of submitting claims. That assistance, which the court understands to be administrative, is available to any class member who wants it.[8] While this assistance is not provided for in the settlement, the large number of fleet class members who are in the process of pursuing claims supports the court's conclusion that it treats fleet and non-fleet class members equitably relative to one another. *See Synfuel*, supra, 463 F.3d at 653 (court must consider "the amount of opposition to settlement among affected parties" (citation omitted)).

IV. Conclusion

For the reasons stated, the court finds that the settlement is fair, reasonable, and adequate. Indeed, given the likely expense, costs of risks of further litigation, the settlement represents an excellent compromise and recovery for class members. The motions for approval and an award of attorneys' fees and costs are granted.

Dated: January 3, 2020

/s/
Joan B. Gottschall
United States District Judge

[8] Objectors represented that after the objections were filed, counsel for fleet class member Hirschbach Motor Lines contacted objectors' lawyer. ECF No. 715 at 2. *See also* the declaration of Brian Kohlwes, objectors' general counsel. ECF No. 715-1 ¶¶1-3. Hirschbach claims that the settlement disadvantages fleet class members who must spend more time to gather records to take advantage of the prove-up option. Counsel for class plaintiffs told the court at the fairness hearing that Hirschbach asked the settlement administrator to gather information needed for the prove-up option at the cost of the administrator. The request asks the administrator to do far more than is required by the settlement and would compromise the administrator's ability to serve as an impartial reviewer of evidence submitted under the prove-up option. The request was unreasonable.