

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE MERCEDES-BENZ :
: MASTER FILE NO. 99-4311 (AMW)
: ANTITRUST LITIGATION :
: MEMORANDUM OPINION

This matter is before the Court pursuant to class plaintiffs' motion for preliminary approval of a proposed partial settlement. Plaintiffs have moved for an order approving the settlement in accordance with a Settlement Agreement dated March 19, 2003 and a Settlement Agreement dated May 6, 2003. The defendants who agreed to the proposed settlement are the Mercedes-Benz dealers, Benzel Busch Motor Cars, Inc., Ralley Motors, Inc., Silver Star Motors, Inc., Contemporary Motors Cars, Inc. and Competition Imports (collectively, the "Settling Dealer Defendants" or "SDD").

The only cogent objection to the motion is from defendant Mercedes-Benz U.S.A. ("MBUSA"), who claims that the proposed settlement is not fair to the class members.¹ Most courts agree that a non-settling defendant in multiple defendant litigation has no standing to object to the adequacy of a settlement by other defendants. See In re Beef Industry Antitrust Litig., 607

¹ The Court notes the irony in MBUSA's argument because although MBUSA presents its objection on behalf of the class members, it also maintains that the class members' suit is without merit.

F.2d 167 (5th Cir. 1979); Quad/Graphics, Inc. v. Fass, 724 F.2d 1230 (7th Cir. 1983); In re Fine Paper Antitrust Litig., 1979 WL 1743 (E.D. Pa. 1979); see also Newberg on Class Actions, ¶ 11.55 p. 179 (4th Ed. 2002). However, although there are several authoritative rulings against allowing standing to parties in similar positions to that of MBUSA, the Court has an independent duty to rule on the fairness of the settlement. Therefore, the Court will consider the arguments presented regardless of their source.

The facts of the case are outlined in a number of previous opinions. The Court will not restate the facts of this case, but will proceed directly to the arguments at issue.

DISCUSSION

I. Standard for Approval

The fundamental issue in determining whether to grant preliminary approval of a class settlement is whether the proposed settlement is "within the range of possible approval." Manual for Complex Litigation (Third) § 30.41; see Gautreaux v. Pierce, 690 F.2d 616, 621 n. 3 (7th Cir. 1982). A court should also consider whether (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected. In re General

Motors Corp., 55 F.3d 768, 784 (3d Cir. 1995).

Pursuant to the terms of the proposed settlement, the SDD have agreed to pay a common fund total of \$4,587,500, plus an additional \$112,500 toward notice and administration expenses.

The Court has reviewed the proposed partial settlement and using a reasonableness inquiry, has found that proposed settlement is fair to the class members. The settlement amount is within the range of possible outcomes. The negotiations were at arms-length between experienced class-action counsel. Discovery is ongoing, but significant information has already changed hands during the protracted motion practice this case has already endured. The only objector to the settlement, thus far, is a co-defendant, MBUSA. Nevertheless, in the following sections the Court entertains the arguments raised by MBUSA against granting approval for the preliminary settlement.

II. Amount of Relief and the Allocation of Funds

MBUSA alleges that approval for the proposed partial settlement should be denied because the proposed notice of settlement (the "Notice") fails to sufficiently detail when and how the settlement funds will be distributed. Plaintiffs contend that the Notice provides sufficient information for the absent class members to determine whether they wish to object. The Notice informs the class as to the amount of settlement and

further states that the allocation of funds will be based on the class members' purchases or leases of new Mercedes Benz vehicles during the Class Period. Lastly, the Notice explains that the process of allocation of any settlement funds will be made at a future date.

The Court agrees with plaintiffs that the pertinent information is contained in the Notice. The Court also finds that it is reasonable for the settlement amount to be put into an income-producing account pending finalization of the litigation. The Court further holds that plaintiffs need not address the exact allocation and timing of the payments to the class members pending finalization of the litigation. The objector, MBUSA, well knows that this issue may yet be the subject of litigation. Moreover, the Notice clearly explains that the funds from the settlement will not be distributed to the class until the conclusion of the litigation.

III. Detailing the Opt-Out Trigger

As is typical in class-action settlements, a defendant may rescind its agreement to settle if a certain number of claimants exercise their right to opt out. MBUSA asserts that the Notice is deficient because it does not set forth the number of opt-outs that would allow a settling defendant to terminate its settlement. MBUSA fails to explain why an absent class member's

knowledge of the number of exclusions would inform his individual decision to object to the settlement or opt out of the class. If certain defendants terminate their participation in the settlement, the class members' claims against them in the ongoing litigation will be revived and the class members will suffer no prejudice. If a large number of class members opt out, the Court will still have to determine whether settlement remains fair as to those that remain. Again, no prejudice can attach to the remaining class members. Therefore, the Court finds MBUSA's argument is without merit and is thus not an obstacle to preliminary approval.

IV. Attorneys' Fees and Expenses

MBUSA also asserts that the settlement agreement and notice contain insufficient information regarding attorneys' fees. However, the settlement agreement provides that class counsel will not seek more than 33% of the fund. The class counsel does not need to specify the actual fee amount in the class notice. Rather, the class must have knowledge of the maximum possible attorneys' fee and the Court must determine that the fee is fair.

The Court finds no unfairness in the percentage amount allotted to attorneys' fees in the Notice. Therefore, the Court finds MBUSA's argument is not an obstacle to preliminary approval.

V. Plain Language

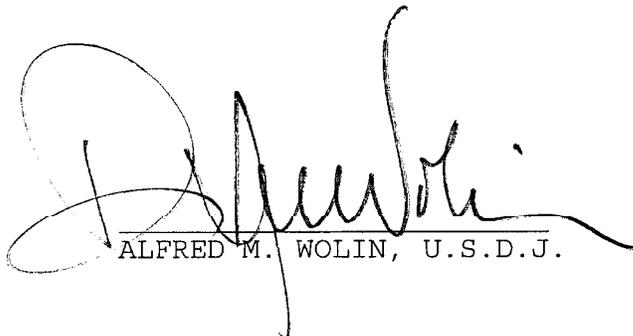
Finally, MBUSA asserts that the Notice is not in plain language. However, MBUSA did not provide any specific deficiencies as to how the Notice varies from plain language. Therefore, the Court will not favor MBUSA's argument and finds that the Notice is indeed drafted in plain language.

CONCLUSION

The Court finds that MBUSA's objections to the settlement and notice are insubstantial. Moreover, the Court finds that class counsel has satisfied the threshold for preliminary approval of the partial class action settlement. Therefore, the Court grants preliminary approval of the settlements.

An appropriate order is attached.

Dated: September 5, 2003



ALFRED M. WOLIN, U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE MERCEDES-BENZ :
ANTI-TRUST LITIGATION : MASTER NO. 99-4311 (AMW)
: :
: :
: ORDER

This matter being opened before the Court by plaintiffs' Motion for Preliminary Approval of Settlements with the defendants Benzel Busch Motor Car Corp., Ralley Motors, Inc., Silver Star Motor Car Corp., Contemporary Motor Cars, Inc., and Competition Imports (collectively, the "SDD") pursuant to Rule 23 of the Federal Rules of Civil Procedure; and the Court having read and considered the submissions including the settlement agreements of the parties and heard the arguments of counsel; and for the reasons set forth in the Memorandum Opinion filed herewith

It is on this ^{5th} day of September 2003,

1. ORDERED that plaintiff's motion is hereby granted. The settlement agreements dated March 19, 2003 and May 6, 2003 that are the subject of this motion (the "Settlement Agreements") are hereby preliminarily approved.

2. A final settlement/fairness hearing shall be held (the "Final Hearing") before the Court on a date to be set by the Court after plaintiffs' counsel report to the Court concerning

the amount of time needed to prepare and furnish notice to the class, pursuant to paragraph 5 of this Order. The purpose of the Final Hearing shall be to determine (a) whether the terms and conditions of the proposed Settlement Agreements are fair, reasonable, and adequate, and (b) whether the proposed Settlement Agreements should be approved by the Court and judgment entered thereon. At the Final Hearing, or such adjourned date as the Court deems appropriate, class counsel, counsel for the SDD, and any interested person shall be heard on the fairness, reasonableness, and adequacy of the terms of the Settlement Agreements. The Court preliminarily approves the March 19, 2003 Settlement Agreement, and the May 6, 2003 Settlement Agreement including the procedures for establishing and administering the Settlement Fund and procedures for notice, acknowledgment, exclusion, and objection as described therein, as fair, reasonable, and in the best interests of the class.

3. The Court may adjourn the Final Hearing or any adjournment without further notice other than an oral announcement at or prior to the Hearing or any adjournment thereof. Subject to the requirements of due process of law, the Court may also approve either or both of the proposed Settlement Agreements at or after the Hearing, with or without modification, without further notice to members of the class. The Court shall retain jurisdiction to consider all applications arising out of

the proposed Settlement Agreements.

4. The Court approves as to form, content, and method the Notice of Class Action, Proposed Partial Settlement and Settlement Hearing, and the Summary Notice of Class Action, Proposed Partial Settlement and Settlement Hearing, in the forms attached to Plaintiffs' Motion as Exhibits C and D.

5. Class counsel shall cause to be forwarded a Notice of Class Action, Proposed Settlement and Settlement Hearing in substantially the form attached as Exhibit C to Plaintiffs' Motion (the "Notice") by United States mail, postage prepaid, to the last known mailing address of each class member ascertained through reasonable efforts from documents produced by the SDD pursuant to the Settlement Agreements and by the non-settling Defendants pursuant to this paragraph, to each class member identified through reasonable effort from such documents.

6. Class counsel shall also cause to be published, in the time and manner set forth in the Settlement Agreements, a Summary Notice of Class Action, Proposed Settlement and Settlement Hearing in substantially the form attached to Plaintiffs' Motion as Exhibit D (the "Summary Notice").

7. At least five business days prior to the Hearing, class counsel shall certify compliance with the provisions of paragraphs 6 and 7 of this Order by declaration describing the aforementioned mailings and publications.

8. The form and method of Notice and Summary Notice specified herein is hereby approved and determined to be the best notice practicable under the circumstances, and the Court finds that said Notice and Summary Notice comply with the requirements of Rule 23 of the Federal Rules of Civil Procedure and with applicable standards of due process.

9. Members of the class defined in the Court's February 19, 2003 Order will be excluded from the class only if they comply with the procedures for exclusion as set forth in the Notice and in both Settlement Agreements, which procedures are hereby approved as fair and reasonable. Unless they have excluded themselves, members of the class shall be bound by all determinations and judgments in this case relating to the proposed partial settlement, whether favorable or unfavorable, including without limitation the dismissal of this action with prejudice as to the SDD and the release of the SDD from liability to members of the class. Members of the class who exclude themselves will not be bound by any orders or judgments entered in this case, including any orders or judgments related to the settlements with the SDD and shall not receive any benefits provided for in the proposed Settlement Agreements in the event it is approved by the Court.

10. Any members of the class who do not exclude themselves may enter an appearance on their own behalf or through counsel of

their own choice at their own expense. Class members who do not enter an appearance will be represented by class counsel.

11. Members of the class who do not exclude themselves but who object to: (i) either or both of the proposed Settlement Agreements; (ii) dismissal of the action or the judgment and releases to be entered with respect thereto; or (iii) who otherwise wish to be heard, may appear in person or through their own attorney at the Final Hearing and present evidence or argument that may be proper and relevant. The right to be heard set forth in this paragraph is subject to the proviso that (except for counsel for the named plaintiffs and the SDD) no person shall be heard and no papers submitted by such person shall be considered by the Court if that person has failed to file and serve by United States mail upon the Court and counsel listed below a precise written statement of that person's objections and any related or supporting papers or briefs, stating his intention to appear and be heard at the Hearing, not later than 45 days from the date of mailing of individual notices to class members.

The District Court:

Clerk of the Court
United States District Court
District of New Jersey
M.L. King, Jr. Federal Building &
U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

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Counsel for Contemporary Motors, Inc.:

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EFROS & WOPAT
130 Maple Avenue, Suite 10B
Red Bank, NJ 07701

Counsel for Competition Imports,
Competition Imports of Smithtown,
and Competition Imports, Inc.

Robert J. Kipnees
GREENBAUM, ROWE, SMITH, RAVIN,
DAVIS & HIMMEL, LLP
99 Wood Avenue South
Iselin, NJ 08330-2712

Any attorney retained by a class member must file and serve a Notice of Appearance on or before 45 days from date of mailing of Notice, at the addresses shown above. The written objections, together with any supporting materials, papers, or briefs, must refer to the name and numbers of the lawsuits shown on the face of this Order. Any objection not timely made and in the manner provided herein shall be forever barred.

12. All proceedings in this action relating to the SDD other than proceedings relating to the proposed Settlement Agreements, are hereby stayed and suspended until further Order of this Court. Pending final determination of whether the Settlement Agreements should be approved, plaintiffs and all members of the class, either individually, directly, representatively, derivately, or in any other capacity, are barred and enjoined from commencing or prosecuting any action or proceeding asserting any claims whatsoever on behalf of themselves or the class against the SDD, or any of them, that are described in the Consolidated Class Action Complaint, or Second Consolidated Amended Class Action Complaint or which relate to or in any way arise out of the claims as described therein.

13. If either or both of the proposed Settlement Agreements are not approved by the Court or shall not become effective for any reason whatsoever, then the proposed Settlement Agreement(s) (including any modification thereof made with the consent of the

parties as provided therein) that is not so approved or does not become effective, and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and have no further force and effect.

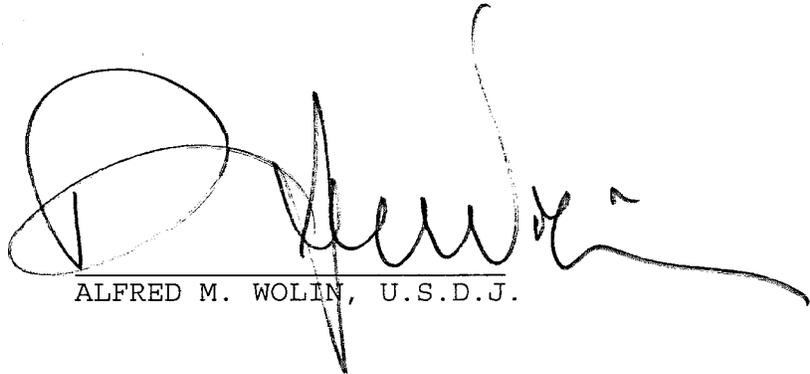
14. Neither of the proposed Settlement Agreements nor the provisions contained in the Settlement Agreements, nor any negotiations, statements, or proceedings in connection therewith shall be construed, or deemed to be evidence of, an admission or concession on the part of the plaintiffs, the SDD, their affiliates, or any member of the class, of any liability or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding (or be used in any way) as an admission or concession of any liability or wrongdoing of any nature, and shall not be construed as an admission or concession that plaintiffs, any member of the class, or any other person, has or have been injured or suffered any damage.

15. The SDD shall each have the option to withdraw from the proposed Settlement Agreement to which they are a party for the reasons set forth in that Settlement Agreement.

16. Class counsel is authorized to retain a Settlement Administrator to administer the Settlement and the Notice Program, under the supervision of class counsel. The fees and

expenses of the Settlement Administrator shall be paid in accordance with the provisions of the Settlement Agreements.

17. The Court reserves jurisdiction over the subject matter and as to each party to the Settlement Agreement with respect to the interpretation, effectuation, and implementation of the Settlement Agreements for all purposes, including enforcement of any of the terms thereof at the instance of any party and resolution of any dispute that may arise.



ALFRED M. WOLIN, U.S.D.J.