

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE AUTOMOTIVE PARTS ANTTITRUST
LITIGATION

Master File No. 2:12-md-02311
Hon. Sean F. Cox

IN RE: WIRE HARNESS SYSTEMS
IN RE: INSTRUMENT PANEL CLUSTERS
IN RE: FUEL SENDERS
IN RE: HEATER CONTROL PANELS
IN RE: BEARINGS
IN RE: OCCUPANT SAFETY SYSTEMS
IN RE: ALTERNATORS
IN RE: ANTI-VIBRATIONAL RUBBER
PARTS
IN RE: WINDSHIELD WIPER SYSTEMS
IN RE: RADIATORS
IN RE: STARTERS
IN RE: AUTOMOTIVE LAMPS
IN RE: SWITCHES
IN RE: IGNITION COILS
IN RE: STEERING ANGLE SENSORS
IN RE: HID BALLASTS
IN RE: INVERTERS
IN RE: ELECTRONIC POWERED
STEERING ASSEMBLIES
IN RE: AIR FLOW METERS
IN RE: FAN MOTORS
IN RE: FUEL INJECTION SYSTEMS
IN RE: POWER WINDOW MOTORS
IN RE: AUTOMATIC TRANSMISSION
FLUID WARMERS
IN RE: VALVE TIMING CONTROL
DEVICES
IN RE: ELECTRONIC THROTTLE BODIES
IN RE: AIR CONDITIONING SYSTEMS
IN RE: WINDSHIELD WASHER SYSTEMS

Case No. 2:12-cv-00103
Case No. 2:12-cv-00203
Case No. 2:12-cv-00303
Case No. 2:12-cv-00403
Case No. 2:12-cv-00503
Case No. 2:12-cv-00603
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Case No. 2:13-cv-00903
Case No. 2:13-cv-01003
Case No. 2:13-cv-01103
Case No. 2:13-cv-01203
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IN RE: CONSTANT VELOCITY JOINT
BOOT PRODUCTS
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Case No. 2:17-cv-04303
Case No. 2:21-cv-04403
Case No. 2:21-cv-04503

THIS DOCUMENT RELATES TO:
End-Payor Actions

**OVERLAND WEST, INC. AND BOOTON, INC'S
MOTION FOR LEAVE TO FILE
A SEVEN-PAGE SUR-REPLY
IN RESPONSE TO CLASS COUNSEL'S REPLY TO
OBJECTIONS FOR AN AWARD OF ATTORNEYS' FEES IN
CONNECTION WITH THE ROUND 1-5 SETTLEMENTS**

Objectors Overland West, Inc. and Booton Inc. (“Overland Objectors”) move for leave to file a sur-reply (attached as Exhibit 1) in response to Settlement Class Counsel’s twenty-five page Omnibus Reply to Objections, *e.g.* No. 2:12-cv-00103, ECF 681 (“Reply”), in order to respond to arguments raised for the first time in their reply.

CONCISE STATEMENT OF ISSUE PRESENTED

Whether Overland Objectors may file a sur-reply in response to Class Counsel's Omnibus Reply to Objections, *e.g.* No. 2:12-cv-00103, ECF 681, in order to address arguments that Class Counsel has raised for the first time in their Reply.

Objectors' Answer: Yes

Class Counsel's Answer: No

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Scottsdale Ins. Co. v. Flowers, 513 F.3d 546 (6th Cir. 2008)

Key v. Shelby Cnty., 551 F. App'x 262 (6th Cir. 2014)

Engineering & Mfg. Servs., LLC v. Ashton, 387 F. App'x 575 (6th Cir. 2010)

McDole v. City of Saginaw, No. 07-13697-BC, 2010 WL 458472, 2010 U.S. Dist.

LEXIS 10453 (E.D. Mich. Feb. 8, 2010)

INTRODUCTION

Overland Objectors respectfully requests leave to file a sur-reply to respond to the new arguments that Class Counsel raised for the first time in its Omnibus Reply to Objections, *e.g.* No. 2:12-cv-00103, ECF 681 (“Reply”).¹ Class Counsel deprived Objectors of the opportunity to brief belatedly-presented issues and to provide this Court with both sides of the arguments. “As a matter of litigation fairness and procedure,” this Court should grant leave to file the attached sur-reply. *See Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 553 (6th Cir. 2008).

The seven-page sur-reply is drawn exclusively to new arguments raised by Class Counsel; in fact, *this* motion is longer because Class Counsel advised that they oppose it. This motion should be granted.

BACKGROUND

Class Counsel seeks \$94 million in additional attorneys’ fees as a percentage of the common funds from all five rounds of settlements, plus interest. *E.g.* No. 2:12-cv-00103, ECF 681 (“Fee Motion”), PageID 20857 & n.12. The fifth and final round of settlements adds only \$3.154 million to class recovery and Class Counsel claims only \$8.515 million of uncompensated attorney time since hours included in the Round 4 fee motion were granted in full. *Id.* PageID 20890.

¹ As before, Objectors cite exemplary copies from the lowest-numbered available docket using the signal “*e.g.*” The page cites for these particular copies are cited herein.

The Overland Objectors, among others, objected to this request, arguing that it violates Judge Battani’s “resolution” of the fees in this case, contradicts Class Counsel’s prior representations, and exceeds amounts permitted by prior notice relied on by class members. *E.g.* No. 2:12-cv-00103, ECF 679 (“Objection”).

The Overland Objectors also they lodged a contingent objection to the interest requested by Class Counsel, because the Fee Motion does not specify how interest will be calculated. *Id.* PageID 21429-31. Objectors suggested that the Court “should request disclosure of the interest earned” to resolve the ambiguity, especially in view of a recent complaint by Boies Schiller Flexner LLP pleading that settlement administrators received kickbacks from banks paying class funds artificially low interest rates. *Id.* 21431. To be clear: Overland Objectors agree that attorneys are entitled to interest, but *only* the interest attributable to the principal of any new fee award—not interest taxed from the entire common fund, which would shortchange the class. The Fee Motion does not describe what should occur, and one of the co-lead firms recently secured excessive interest in another case. *Id.* at n.9.

The Overland Objectors expected that Class Counsel’s Reply would articulate an unobjectionable methodology to moot their secondary, contingent objection.

Instead, the Reply deepened the ambiguity. The Reply responds to another objector by asserting that “substantial interest” has been earned on class funds (Reply, PageID 21664), but declines to give a ballpark figure even though it would help rebut the objection. The Reply does explain what portion of the interest Class Counsel

actually seeks, and a footnote (*id.* at PageID 21663) raises questions about the Fee Motion’s assertion that “[t]he Court granted Settlement Class Counsel the pro rata percentage of interest earned on the Rounds 1–4 principal settlement amounts, which has been paid.” Fee Motion, PageID 20857 n.12. The cited order granted a fee award “equal to 22% of the Round 4 Settlements including a ***pro rata share of the interest earned thereon.***” *E.g.* 2:12-cv-00403, ECF 320 (Round 4 Fee Order, also attached to Overland Objection, Bednarz Ex. B6), PageID 11171 (emphasis added). To the extent interest has already been collected from Rounds 1–3, it appears *ultra vires*, and raises further questions about Class Counsel’s interest request.

Additionally, the Reply introduces new arguments that could have and *should have* been raised in Class Counsel’s Fee Motion, but were not. Most astonishing, it includes an entirely new basis for attorneys’ fees based on Class Counsel’s alleged preservation of the fund against prospective claimants. Reply, PageIDs 21646-47, 21660-63.

In accordance with E.D.Mich. LR 7.1(a) counsel for the Overland Objectors requested Class Counsel’s concurrence for leave to file the sur-reply. In hopes of avoiding motion practice, the undersigned emailed class counsel on Friday June 20, requesting figures for interest earned and costs taken from the funds. William Reiss responded for Class Counsel on Tuesday June 24 that their interest request was “clear.” The undersigned replied on that date that the Reply remains ambiguous, and asked at minimum what the actual interest requested is. Mr. Reiss responded Thursday June 26

“We believe our request to the Court is clear and that no further discussion is warranted at this time.”

The undersigned copied Class Counsel in an email to the Courtroom Deputy on Friday June 27 concerning the logistics of filing of this motion and a motion for accounting interest. Following this message, Mr. Reiss asked to confer on the proposed motions and about their basis. The undersigned replied that the motion for accounting concerns the interest issue and that the sur-reply “also addresses new arguments offered for the first time in your reply, specifically the discounting of Judge Battani’s remarks, the heavy weight placed on the word ‘interim,’ and the new basis for fees for ‘preservation of the fund.’” The proposed meeting occurred telephonically on Monday, June 30. On the call, Class Counsel asserted that interest is complicated and cannot be easily reduced to a formula. In subsequent correspondence, Class Counsel declined to endorse Overland Objectors’ suggested clarifying language.² Counsel did not indicate whether interest from Rounds 1–3 was indeed deducted as the Fee Motion suggests. The associated email exchanges are attached to this motion as Exhibits 2 & 3

Instead, Mr. Reiss suggested on the call that the interest question could be deferred, and offered to draft a proposed stipulation if the Overland Objectors were amenable. Over the holiday weekend, Overland Objectors agreed to a stipulation. which

² Proposed language: “Class Counsel agrees that pro rata interest to class counsel is the interest earned in the fund (net of taxes) multiplied by the new fee award divided by the aggregate principal value of all the funds before the recent \$100 distributions.”

the undersigned understands was submitted to the Court on Monday. As noted in the Overland Objection, the Court may moot the contingent interest objection by awarding no further attorneys' fees for funds in Rounds 1–4. Objection, PageID 21431.

However, the parties reached an impasse regarding this motion. Class Counsel opposes it, contending that their Reply contains no new arguments except those responding to objections.

ARGUMENT

“A reply must not present matters that do not relate to the response.” Fed. R. App. P. 27(a)(4). The same principle applies to district court memoranda, for the same reason as in appellate courts: “Raising the issue for the first time in a reply brief does not suffice; reply briefs reply to arguments made in the response brief – they do not provide the moving party with a new opportunity to present yet another issue for the court's consideration.” *United States v. Peterson*, No. 20-20448, 2022 WL 3230424, at *4, 2022 U.S. Dist. LEXIS 142667, at *11 (E.D. Mich. Aug. 10, 2022) (quoting *Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 553 (6th Cir. 2008)).

When a movant *does* raise new arguments for the first time on reply, courts can either grant the non-movant leave to file a sur-reply or discount the new arguments. *See Engineering & Mfg. Servs., LLC v. Ashton*, 387 F. App'x 575, 583 (6th Cir. 2010) (abuse of discretion to deny motion to file sur-reply when reply brief violates the non-movant's right to notice and a reasonable opportunity to respond by raising new arguments); *Key v. Shelby Cnty.*, 551 F. App'x 262, 265 (6th Cir. 2014) (“[S]ur-replies . . . may be allowed

in the appropriate circumstances, especially “[w]hen new submissions and/or arguments are included in a reply brief, and a nonmovant’s ability to respond to the new evidence has been vitiated.”) (cleaned up); *see also McKay v. Federspeil*, No. 14-cv-10252, 2014 WL 7013574, at *18 n.17 (E.D. Mich. Dec. 11, 2014) (court can disregard new arguments raised on reply or “provid[e] the non-movant with the opportunity to file a sur-reply”); *Seay v. TVA*, 339 F.3d 454, 482 (6th Cir. 2003) (precluding district court “from considering any of the new submissions ... until [nonmovant] has been provided an adequate opportunity to respond to that new evidence.”).

Class Counsel has the burden of establishing the reasonableness of its fee request, as they know well. The Court only issued interim fee awards in Rounds 1 & 2 because of its concerns that 30% (or 27.5%) would wind up to be an excessive fee from a billion-dollar fund. *See* Objection, at PageID 21413-14 (discussing history and quoting Judge Battani: “I just think that when we add this all up it may come to a point that it is simply not reasonable.”). “Given the fact that it is Plaintiff’s burden to prove the reasonableness of an award of attorney fees, and the fact that the Court previously denied Plaintiff’s motion for attorney fees because Plaintiff had not provided a basis for the Court to make a reasonable calculation, the issue of reasonableness cannot be said to have first been raised in Defendant’s response.” *McDole v. City of Saginaw*, No. 07-13697-BC, 2010 WL 458472, *2, 2010 U.S. Dist. LEXIS 10453, at *4 (E.D. Mich. Feb. 8, 2010) (striking belated support for fee motion first filed in reply).

Class Counsel introduced significant new arguments for the first time in reply:

- That earlier fee orders’ use of the word “interim” *means that* they were “incomplete,” which occupies a central part of the reply. Reply, PageIDs 21643-48. In contrast, the Fee Motion repeatedly asserted without explanation that prior awards were “interim and incomplete” or “...partial.” Fee Motion, at PageIDs 20880, 20894-95. Multiple objectors pointed out this is untrue, so Class Counsel belatedly argued in its Reply for a proposition previously asserted *ipse dixit*.
- That Judge Battani’s remarks about a 22.05% fee being “probably a fair resolution in a case with over a billion dollar recovery” should be ignored in favor of orders which allegedly permit Class Counsel to request fees years later and contrary to their prior representations. Reply, PageIDs 21648-51. Class Counsel may assert that this argument is simply responsive to objectors, but as officers of the Court, they previously found it pertinent to mention Judge Battani’s remarks in their Round 4 fee motion and at the Round 4 fairness hearing after Judge Battani’s retirement. *E.g.* Dkt. 2:12-cv-00403, ECF 297 at PageID 10567-68; MDL ECF 2273 at PageID 40397-98 (Tr. Sep. 17, 2020). Had they retained this candor, they would have advanced an argument about *why* Judge Battani’s words allegedly should not mean what they say. Instead, by withholding any discussion of the prior directive from the Court, they also prejudiced Overland Objectors by sandbagging their argument for reply.
- Class Counsel advances a wholly new basis for attorneys’ fees, including pages of citations and dozens of pages of declarations—for allegedly “preserving” the common fund. Reply at PageIDs 21646-47, 21660-63 (citing newly-filed declarations executed June 16, 2025). The word “preservation” or any derivative thereof appears only a single time in the Motion, in passing, regarding heretofore unpaid work “to administer and preserve the settlements since October 1, 2019.” Fee Motion, PageID 20895. The Fee Motion did not claim any particular sum “preserved,” nor suggest it a significant basis for the \$94 million fee request. The motion is based on an additional percentage of the entire common fund rather than the comparatively modest \$8.5 million lodestar of hours since 2019. *Id.* PageIDs 20896-97. This “preservation” theory is wholly new.
- Class Counsel cites a raft of new authorities related to these new arguments not cited in its Fee Motion, nor any objection. Reply, PageIDs 21644-45, 21647-49.

Whether intentional or accidental, Class Counsel's withholding of these arguments denied Overland Objectors an opportunity to rebut them. The Court has the discretion to prohibit Class Counsel for raising these arguments and ignore them. *Int'l-Matex Tank Terminals-Illinois v. Chem. Bank*, No. 1:08-CV-1200, 2009 WL 1651291, at *2, 2009 U.S. Dist. LEXIS 49225 (W.D. Mich. June 11, 2009) (exercising discretion to ignore new arguments). But if the Court chooses to consider them, sur-reply is the most appropriate remedy to protect Overland Objectors and assist the Court in deciding the underlying Fee Motion.

“As a matter of litigation fairness,” Defendants should not be allowed to profit by withholding arguments for their Reply. *Scottsdale*, 513 F.3d at 553. “[G]ood cause exists to permit a party to file a sur-reply when, as is the case here, that party seeks to address an issue raised for the first time in the opponent’s reply brief.” *Campbell v. Comm’r of Soc. Sec.*, No. 14-cv-14455-SFC, 2015 U.S. Dist. LEXIS 175976, at *8 n.1 (E.D. Mich. Nov. 10, 2015) (citing *Geiger v. Pfizer, Inc.*, 271 F.R.D. 577 (S.D. Ohio 2010)); *see also Key*, 551 F. App’x at 265; *Dupree v. Cranbrook Educ. Cmty.*, No. 10-cv-12094, 2012 WL 1060082, 2012 U.S. Dist. LEXIS 44395, at *1 n.1 (E.D. Mich. Mar. 29, 2012); *Findling v. Int’l Transmission Co.*, No. 04-72385, 2006 U.S. Dist. LEXIS 39468, at *8 (E.D. Mich. June 15, 2006).

In order to respond to the issues Class Counsel raised for the first time in reply, the Overland Objectors respectfully request leave to file the attached sur-reply.

The filing of Overland Objectors' proposed sur-reply will not prejudice Class Counsel, which will be able to review the seven-page sur-reply well before any hearing (none is scheduled currently). In contrast, all class members—including the Overland Objectors—are prejudiced by new arguments, which they have had no opportunity to respond to.

WHEREFORE, Overland Objectors respectfully request entry of an order which allows them leave to file the sur-reply attached as Exhibit 1.

Dated: July 10, 2025

/s/ M. Frank Bednarz

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Overland Sur-Reply Motion

EXHIBIT 1

Proposed Sur-Reply

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE AUTOMOTIVE PARTS ANTTITRUST
LITIGATION

Master File No. 2:12-md-02311
Hon. Sean F. Cox

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End-Payor Actions

**OVERLAND WEST, INC. AND BOOTON, INC'S [PROPOSED]
SUR-REPLY IN SUPPORT OF OBJECTION TO
CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES
IN CONNECTION WITH THE ROUND 1-5 SETTLEMENTS**

STATEMENT OF ISSUES PRESENTED

The issues presented in Class Counsel's Fee Motion (unaltered from the Overland Objection, No. 2:12-cv-00103, ECF 679 ("Obj.)) are:

1) Whether Settlement Class Counsel's assertion that all the prior fee awards from Round 1–4 Settlements were "incomplete" is supported by evidence on record and additional fee awards from Rounds 1–4 settlement funds may be granted?

Objectors' Answer: No

2) Does Settlement Class Counsel's Fee Motion request fees exceeding the amounts permitted under notice provided to the class for Round 1–4 Settlements?

Objectors' Answer: Yes

3) Whether Settlement Class Counsel's Award of Attorneys' Fees should include any interest earned from Class Members' share of the Rounds 1-4 settlement amounts even after Settlement Class Counsel's withdrawal of their fees from the settlement fund(s) years ago?

Objectors' Answer: No

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Fed. R. Civ. P. 23(h)

Shane Group, Inc. v. Blue Cross Blue Shield, 825 F.3d 299 (6th Cir. 2016)

Health Republic Ins. Co. v. United States, 58 F.4th 1365 (Fed. Cir. 2023)

Rawlings v. Prudential-Bache Properties, Inc., 9 F.3d 513 (6th Cir. 1993)

In re Mercury Interactive Corp. Secs. Litig., 618 F.3d 988 (9th Cir. 2010)

Overland West, Inc. and Booton, Inc. (“Overland Objectors”)¹ respectfully submit this sur-reply to address new arguments raised for the first time in Settlement Class Counsel’s Omnibus Reply. *E.g.* No. 2:12-cv-00103, ECF 681 (“Reply”).²

I. The argument that Rounds 3 and 4 fee orders were incomplete because they were “interim” is raised for the first time and unsupported.

The centerpiece of Class Counsel’s reply is that the Round 3 and 4 fee awards were “interim” and that supposedly this word means they were automatically subject to supplementation. Reply, PageIDs 21643-48. Relying on an online dictionary, Class Counsel equates “interim” with “temporary.” *Id.* PageID 21644.

This definition acts as a thin reed that Class Counsel relies on to repeatedly insist Judge Battani’s “resolution” is supposedly “contrary to the express language of the fee orders” or taken “out of context.” There are several problems with this new argument.

In the first place, “interim” has multiple meanings, and the most intuitive one in antitrust class actions like this is “periodic.” Their own cited source supports this: “the time between two particular periods or events” and “used to describe something that relates to only part of a company's business year, rather than the whole year.” *See*

¹ The Reply papers malign Overland’s counsel, the Hamilton Lincoln Law Institute, as “professional” or “serial objectors.” HLLI is not the objector—Overland West and Booton are. The Overland Objectors have not previously objected to *any* class action settlement, let alone serially. While HLLI *attorneys* have successfully won a number of important precedents concerning class action objections, their track record has no bearing on the legal merits here. “[T]he merits of an objection are relevant, not amateurism or experience.” *Pearson v. Target Corp.*, 968 F.3d 827, 831 n.1 (7th Cir. 2020).

² As before, Objectors cite exemplary copies from the lowest-numbered available docket using the signal “*e.g.*” The page cites for these particular copies are cited herein.

<https://dictionary.cambridge.org/us/dictionary/english/interim>.

This is the natural meaning in this context. Class Counsel accurately described how interim fee awards typically work in antitrust class action settlements with multiple tranches of settlement. “Interim fee awards are appropriate in large-scale litigation... where the litigation will last several years, and in which settlements are reached periodically throughout the course of the ongoing litigation.” *E.g.* 12-cv-00103, ECF 433, at PageID 13759 (Round 1 Fee Motion); *see also Kuhn v. State*, 924 P.2d 1053, 1059 (Colo. 1996) (“interim” fee in class action precedes the final case disposition but may be justified by the creation of a common fund). “Interim” refers to a periodic fee award that contemplates future fee requests, but the word does not imply that fees for each tranche of recovery are incomplete. In the context of consent decrees, for example, “interim” fee awards are almost invariably periodic awards. Interim awards are often complete in antitrust actions, as Class Counsel acknowledged. *Id.* PageID 13775 (parenthetically describing *Auto Refinishing Paint Antitrust* awards as “granting interim award of attorneys’ fees in connection with initial settlements based on analysis of all work done on case to-date, and later granting subsequent fee motion based on settlements with remaining defendants and work done after previous fee award”). This interpretation is consistent with Round 1–4 class notice, which Class Counsel drafted, the Court approved, and class members relied upon. *Obj.*, PageID 21425.

Courts also serve as their own lexicographers. While Class Counsel cites Overland Objector’s observation that the Round 1–2 fee orders were explicitly partial

(Reply, PageID 21643 n.4) they ignore the *expressio unius* implication of this fact: fees in Round 3–4 **were** complete as to those rounds, which did not reserve supplementation. This inference is especially warranted because Class Counsel appears to have drafted all of the relevant proposed orders itself.³ Class Counsel knew how to reserve the right to seek supplemental fees and either chose not to (consistent with notice and the fact the Court fully approved fees in Round 3–4), or the Court deliberately deleted proposed provisions from the entered orders. Either way, an ambiguous dictionary definition cannot contradict the class notice nor render Judge Battani’s “resolution” surplusage.

Class Counsel’s newly-cited cases prove this point. For example, *In re Diet Drugs Prods. Liab. Litig.* (discussed at Reply, PageIDs 21647-48) affirmed a 6.75% fee award for a multi-billion dollar settlement. 582 F.3d 524 (3d Cir. 2009). Consistent with the Overland Objection, the interim fee awards “expressed unequivocally that [the court] intends to revisit the issue and make a final award...” *In re Diet Drugs Prods. Liab. Litig.*, 401 F.3d 143, 159 (3d Cir. 2005). Likewise, Class Counsel deceptively quotes part of a sentence from notice in *Packaged Seafood*, “Counsel have agreed that no attorney fees

³ The second Round 1 order bears the branding “4770226v1/013283,” where “013283” appears to be one of co-lead Class Counsel’s document management code for this matter (seen on the Reply itself and numerous other filings). The Round 2 order was generated from a file named “Proposed_Order_20170605_17_46_52_644.docx.” Metadata in the Round 3 order has lists a “DocID” of “4930544v1/013283.” The Round 4 fee order was titled “Proposed_Order_20200904_17_20_39_618.docx.” *See Sakiko Fujimara v. Sushi Yasuda Ltd.*, 58 F. Supp. 3d 424, 436 (S.D.N.Y. 2014) (“By submitting proposed orders masquerading as judicial opinions, and then citing to them in fee applications, the class action bar is in fact creating its own caselaw on the fees it is entitled to. . . . No wonder that ‘caselaw’ is so generous to plaintiffs’ attorneys.”).

will be paid out of the COSI Settlement.” Reply, PageID 21655 & n.20. But the sentence concludes: “...at the time of final approval, but reserved the right to request attorneys’ fees at a later date.” Here, no such language reserves Class Counsel’s supposed right to siphon another \$100 million from class recovery years later. These cases prove Overland Objectors’ point.

Class Counsel argue for the first time that reading “interim” as not authorizing more fees would render the word superfluous. Reply, PageID 21644. Not at all. At the time of the Round 3 & 4 fee awards, several product-line cases remained pending against non-settling defendants. The awards were “interim” in the periodic sense—additional recovery in the case would precipitate a fee application on the new recovery.

II. Judge Battani’s directive is entirely consistent with the orders.

Class Counsel argues for the first time that Judge Battani’s statement that approximately 22% would probably be “a fair resolution in a case with over a billion dollar recovery” should be discounted because it does not appear in the fee orders they drafted. Reply, PageID 21645. While transcripts may not *contradict* written orders, Judge Battani issued a clear directive *consistent* with all of the orders. It was clear enough that Class Counsel abided by it and informed the Court of it in 2020. Obj., PageIDs 21421-22. Even without considering the hearing transcript, the directive itself suggests a complete fee award. If the 22.05% awarded for Round 4 was “partial” and subject to later supplementation, why require adherence to such a precise figure? The undersigned does not know any case where counsel requested and was granted a “partial” fee award

precise to the hundredth of a percent. The precision demonstrates finality, not deferral.⁴

Limiting Class Counsel’s fees would not contradict a single written or oral order issued by the Court. In contrast, granting Class Counsel’s fee request, would contradict binding notice, which uniformly limited future fees to *future* recovery. Obj., PageID 21425. Class Counsel faults Objectors for allegedly not quoting the “prefatory clause that cabins” two out of the four notices, to wit: “At the upcoming final fairness hearing, Class Counsel may ask the Court...” Reply, PageID 21652. The problem with this claim is that the “prefatory clause” is an *entirely different sentence* than the one that plainly states “Class Counsel may seek additional attorneys’ fees... from any additional Settlements or recoveries ***obtained in the future.***” Obj., PageID 21425 (emphasis added).

Simply put, Judge Battani’s remarks are consistent with all orders and notice, while Class Counsel’s fee motion does violence to all of them. Class Counsel’s selective citation to an online dictionary cannot overturn the law of the case.⁵

⁴ Class Counsel suggests the fee award inconsistent with the direct and dealer tracks, but the difference further confirms Judge Battani’s deliberation and concern with appropriate fees for a billion-dollar fund. The Dealer fee awards translated to a lodestar multiplier of just 1.32. By contrast, the Fee Motion would result in a 2.22 multiplier—a 68% increase over the Dealer fee. Notably, fee awards in these tracks were sometimes issued days apart (see, e.g., 2:12-cv-00102-SFC-RSW, ECF No. 568), further undermining the claim that this Court at any time endorsed a 30% fee award for the EPP track and the higher multipliers it would entail.

⁵ As for the claim that notices are “not ‘promises’” (*id.*) and so Class Counsel can unilaterally rubbish commitments made in approved notice years after the opt-out deadline, this contradicts Rule 23(h)(1)’s requirement for “reasonable” notice. Far smaller discrepancies have rightly been found misleading. *See Montgomery v. Cont'l Intermodal Grp.-Trucking LLC*, No. 19-940 GJF, 2021 WL 1339305 (D.N.M. Apr. 9, 2021) (reducing fee award by 0.33% to comport with notice).

III. Class Counsel offers a wholly new theory that post-settlement work justifies \$100 million in additional fees.

The word “preserve” only appears a single time in the Motion, in passing. *E.g.* No. 2:12-cv-00103, ECF 667, PageID 20895. The Reply turns this into a lengthy argument (Reply, PageIDs 21646-47, 21660-63) with dozens of pages of declarations detailing efforts to “fend off” insurance companies and third-party filers like CAC, which is they argue warrants an extraordinary retroactive fee award.

If Class Counsel wished to predicate their request on fund preservation (or administration), they were obligated to disclose that “rationale” in their opening brief so that all class members, objectors, and the Court could evaluate it without “handicap[.]” *Redman v. RadioShack Corp.*, 768 F.3d 622, 638 (7th Cir. 2014); *see generally Memmer v. United Wholesale Mortg., LLC*, 135 F.4th 398, 406 n.1 (6th Cir. 2025) (arguments not raised until reply are forfeited). They did not, and their new argument in reply consists of a claim to have saved \$185 million that boils down to unidentified “assumptions that Settlement Class Counsel believe are reasonable.” *E.g.* 12-cv-00103, ECF 681-3, ¶ 42 (Langham Decl.); Reply at PageID 21646 n.12. There is no way to estimate the claim without resorting to unverifiable assumptions about what (untimely) claims would have been allowed in the counterfactual world where they were allowed. In any event, insurers could have only prevailed if they class members, an issue that

Class Counsel misconstrue Overland Objectors as demanding simultaneous notice. Reply, PageID 21653. But the objection concerns substance, not timing. Notice defined a ceiling on fees from each round (whenever the motion would be filed). Then counsel reversed course to request more, 30% across all rounds, violating Rule 23(e).

neither Judge Battani nor the Sixth Circuit reached in denying the insurers' untimely intervention. Those efforts did not increase the fund by a single dollar, which is a fundamental requirement for equitable fee awards under the common fund doctrine. They simply finalized a class definition which was plausibly broad enough that GEICO thought to opt-out years earlier. Even if the estimate were accurate, Class Counsel now seek a manifestly excessive 50% of the hypothetical "savings."

Epiq—the settlement administrator—has primary responsibility for evaluating claims, and it has been compensated for this task. Class Counsel should not receive fees for the same work under the guise of "preserving" the fund.⁶

CONCLUSION

The Court should not permit Class Counsel to reshape their fee justification in reply. New arguments concerning "interim" dictionary definitions and "preservation of the fund" are all *post hoc* rationalizations not grounded in their Fee Motion nor record.

Dated: July 10, 2025

/s/ M. Frank Bednarz

M. Frank Bednarz (IL ARDC No. 6299073)
HAMILTON LINCOLN LAW INSTITUTE
CENTER FOR CLASS ACTION FAIRNESS
1440 W. Taylor St # 1487
Chicago, IL 60607
Phone: 801-706-2690
Email: frank.bednarz@hlli.org

Attorney for Objectors Overland West, Inc. and Booton, Inc.

⁶ Class Counsel's estimate of \$5 million of attorney time for future work (Reply, PageID 21646 n.11) seems implausible unless perhaps counsel is counting time spent litigating their own extraordinary fee application, which does not benefit the class.

Overland Sur-Reply Motion

EXHIBIT 2

Conferral Email Chain



Frank Bednarz <frank.bednarz@hlli.org>

Auto Parts - Request for Clarification re: Interest

Reiss, William V. <WReiss@robinskaplan.com>

Thu, Jun 26, 2025 at 10:54 AM

To: Frank Bednarz <frank.bednarz@hlli.org>

Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>, Marc Seltzer <MSeltzer@susmangodfrey.com>, Adam Zapala <AZapala@cpmlegal.com>, Elizabeth Castillo <ecastillo@cpmlegal.com>, Steven Sklaver <ssklaver@susmangodfrey.com>, Chanler Langham <clangham@susmangodfrey.com>, "Anna St. John" <anna.stjohn@hlli.org>

Mr. Bednarz,

Thank you for your emails. We believe our request to the Court is clear and that no further discussion is warranted at this time.

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>

Sent: Tuesday, June 24, 2025 5:56 PM

To: Reiss, William V. <WReiss@RobinsKaplan.com>

Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: Re: [EXTERNAL] Re: Auto Parts - Request for Clarification re: Interest

Hello William,

The issue is that similar language appeared in Round 4, but based on your filing the interest was calculated differently than expected. For this reason, the mechanics of the actual request remain ambiguous to us.

Please report the figures shown, which would clarify what you did for the previous round and what you intend for this round.

Best regards,

Frank

M. Frank Bednarz

Hamilton Lincoln Law Institute
1440 W. Taylor St # 1487
Chicago, IL 60607

801-706-2690

On Tue, Jun 24, 2025 at 8:48 AM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Mr. Bednarz,

We disagree that there is any ambiguity in Settlement Class Counsel's papers with respect to our request. In your objection, you state: "If Class Counsel propose only a proportional share of interest earned from newly-awarded attorneys' fees, the Court may do so" because "[t]he pro rata share of interest for [each round] should be identical to the fee percentage . . . To do otherwise would shortchange attorneys." Bednarz Objection at 22-23.

As our papers make clear, this is precisely what Settlement Class Counsel seek in the present motion. *See, e.g.*, Fee Motion Reply at 24, n.27 ("Settlement Class Counsel's recovery of interest would be limited to their pro rata share of the interest accrued for each Settlement Fund based on the fee awarded.").

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>

Sent: Monday, June 23, 2025 5:18 PM

To: Jenna Farleigh <jfarleigh@susmangodfrey.com>

Cc: Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Reiss, William V. <WReiss@RobinsKaplan.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: [EXTERNAL] Re: Auto Parts - Request for Clarification re: Interest

Hello class counsel:

Any response to this? I am free to have a call to discuss. Again, we are trying to avoid arguing issues that may be unnecessary.

Best,

Frank

M. Frank Bednarz

Hamilton Lincoln Law Institute
1440 W. Taylor St # 1487
Chicago, IL 60607

801-706-2690

On Fri, Jun 20, 2025 at 4:10 PM Frank Bednarz <frank.bednarz@hlli.org> wrote:

Hello class counsel,

The Overland West/Booton objection flagged a contingent objection about the interest sought by class counsel. No. 2:12-cv-00103, ECF No. 679 at 22-25. The objection might be entirely moot, but class counsel's reply reads ambiguously to me. It is unclear what the interest accrued is and what amount of that interest class counsel actually seeks.

To potentially moot this portion of the Overland West/Booton objection, I've attached a spreadsheet of information that could clarify the funds at issue. We'd appreciate your assistance in completing the attached sheet.

We understand quarterly tax obligations may mean you have up-to-date information available for March 31, 2025, and it's perfectly fine to report data as of that date, or any other date convenient from regular statements.

Additionally, to expedite matters and avoid unnecessary motion practice, please feel free to initially complete just the highlighted columns in the spreadsheet if that is easier. This, along with the specific methodology or formula you're using to calculate the proposed pro rata interest allocation (and thus the specific interest fee sought as of, e.g. March 31), may resolve our concerns.

Please let us know if you have any questions, or if another format would be easier for your team. We are just looking to resolve this portion of our objection, if possible.

Best regards,

Frank

M. Frank Bednarz

Hamilton Lincoln Law Institute
1440 W. Taylor St # 1487
Chicago, IL 60607

801-706-2690

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Thank you in advance for your cooperation.

Robins Kaplan LLP
<http://www.robinskaplan.com>

Overland Sur-Reply Motion

EXHIBIT 3

Further Email Chain



Frank Bednarz <frank.bednarz@hlli.org>

Auto Parts - Conferral on motion for accounting

Elizabeth Castillo <ecastillo@cpmlegal.com> Mon, Jul 7, 2025 at 6:25 PM
To: Jenna Farleigh <JFarleigh@susmangodfrey.com>, "Reiss, William V." <WReiss@robinskaplan.com>, Frank Bednarz <frank.bednarz@hlli.org>
Cc: Marc Seltzer <MSeltzer@susmangodfrey.com>, Adam Zapala <AZapala@cpmlegal.com>, Chanler Langham <clangham@susmangodfrey.com>, "Anna St. John" <anna.stjohn@hlli.org>

We submitted the attached proposed order. Please see below screenshot.

Liz

ECF [Return To CM/ECF](#)

Proposal has been submitted!

Pursuant to ECF Policies & Procedures Rule 12(b), you must provide a copy of this proposed order to all other parties in the case by e-mail or other form. CM/ECF will NOT send a copy for you nor generate an NEF.

A text-only confirmation of this submission will be emailed to the email address provided on the previous screen.

[Submit another proposed order](#)

From: Elizabeth Castillo
Sent: Monday, July 7, 2025 2:24 PM
To: Jenna Farleigh <JFarleigh@susmangodfrey.com>; Reiss, William V. <WReiss@RobinsKaplan.com>; Frank Bednarz <frank.bednarz@hlli.org>
Cc: Marc Seltzer <MSeltzer@SusmanGodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Chanler Langham <clangham@SusmanGodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: RE: [EXTERNAL] Auto Parts - Conferral on motion for accounting

This just gets submitted via Utilities like a proposed order, right?

From: Jenna Farleigh <JFarleigh@susmangodfrey.com>
Sent: Monday, July 7, 2025 1:42 PM
To: Reiss, William V. <WReiss@RobinsKaplan.com>; Frank Bednarz <frank.bednarz@hlli.org>
Cc: Marc Seltzer <MSeltzer@SusmanGodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Chanler Langham <clangham@SusmanGodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: RE: [EXTERNAL] Auto Parts - Conferral on motion for accounting

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Liz,

Let me know if you want me to have my secretary submit or if someone on your team is on it.

Best,

Jenna

Jenna G. Farleigh | Susman Godfrey L.L.P.

401 Union Street | Suite 3000 | Seattle, WA 98101

Phone: (206) 505-3826

HOUSTON • LOS ANGELES • SEATTLE • NEW YORK

jfarleigh@susmangodfrey.com | www.susmangodfrey.com

This message may be protected by the attorney client privilege or the work product doctrine.

From: Reiss, William V. <WReiss@RobinsKaplan.com>

Sent: Monday, July 7, 2025 1:31 PM

To: Frank Bednarz <frank.bednarz@hlli.org>

Cc: Jenna Farleigh <JFarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@SusmanGodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Chanler Langham <clangham@SusmanGodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

EXTERNAL Email

Hi Frank, this is good with us. I'm out today, but am coordinating with my co-counsel to get this submitted.

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>

Sent: Monday, July 7, 2025 1:47:17 PM

To: Reiss, William V. <WReiss@RobinsKaplan.com>

Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

We talked this over, and we are fine removing all of the language about finality. I've made only one additional edit providing a backstop to the date filing our joint statement in the event of an impasse. With this change, we agree that the stipulation can be submitted.

Best,

Frank

On Thu, Jul 3, 2025 at 7:05 PM Frank Bednarz <frank.bednarz@hlli.org> wrote:

Thanks. Have received.

On Thu, Jul 3, 2025 at 5:04 PM Reiss, William V. <WReiss@robinskaplan.com> wrote:

I'm resending with the redline version so you can see the edits.

-Will

From: Reiss, William V.

Sent: Thursday, July 3, 2025 8:01 PM

To: Frank Bednarz <frank.bednarz@hlli.org>

Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>;

Elizabeth Castillo <ecastillo@cpmlegal.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: RE: [EXTERNAL] Auto Parts - Conferral on motion for accounting

Frank,

Apologies for the delay. For some reason, the email I sent yesterday afternoon didn't go through.

We've accepted most of your edits. We did strike your suggested language referring to the fee order as non-final. We believe this language is unnecessary as the stipulated order makes clear that we cannot take interest on any fee award subject to our motion until after the Court approves our interest calculation.

Assuming you're on board with our edits, we will promptly submit this on Monday.

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>

Sent: Thursday, July 3, 2025 5:13 PM

To: Reiss, William V. <WReiss@RobinsKaplan.com>

Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

I don't seem to have it, thank you.

On Thu, Jul 3, 2025 at 2:02 PM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Hi Frank,

I sent yesterday afternoon. Did you not receive it? I will be home in a few hours and will resend.

From: Frank Bednarz <frank.bednarz@hlli.org>

Sent: Thursday, July 3, 2025 4:30:56 PM

To: Reiss, William V. <WReiss@RobinsKaplan.com>

Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

Hello Will,

Any thoughts on this? Open to other language to accomplish the same result.

Frank

On Tue, Jul 1, 2025 at 6:10 PM Frank Bednarz <frank.bednarz@hlli.org> wrote:

Hah, sorry. Attached.

On Tue, Jul 1, 2025 at 8:05 PM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Hi Frank,

Could you please forward the attachment?

Thanks,

Will

From: Frank Bednarz <frank.bednarz@hlli.org>
Sent: Tuesday, July 1, 2025 7:52:36 PM
To: Reiss, William V. <WReiss@RobinsKaplan.com>
Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

This mostly works, but there's no reason in our view to delay calculation of interest by years if there's an appeal. I've revised it to contemplate we'd work quickly to resolve interest following a fee order that awards interest. Let me know if this is agreeable from your perspective.

Frank

On Tue, Jul 1, 2025 at 3:42 PM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Frank,

Attached please find the stipulation and proposed order for your review.

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>
Sent: Monday, June 30, 2025 6:16 PM
To: Reiss, William V. <WReiss@RobinsKaplan.com>
Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

Sounds good; will review as soon as we get it.

Frank

On Mon, Jun 30, 2025 at 4:56 PM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Thanks, Frank. As I indicated on the call, we would prefer a stipulation that kicks this issue down the road. We'll circulate a draft for your review and consideration tomorrow.

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>
Sent: Monday, June 30, 2025 4:38 PM
To: Reiss, William V. <WReiss@RobinsKaplan.com>
Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler

Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

Hello Will,

We have conferred in view of our call.

Our preference would be a stipulation agreeing to precisely how interest should be calculated from the interest attributable to the principal of any new fee awards, as I explained on the call. Jenna suggested that we might not have a true disagreement on this matter. If so, a stipulation might resolve the matter once and for all. Our proposed language would be "Class Counsel agrees that pro rata interest to class counsel is the interest earned in the fund (net of taxes) multiplied by the new fee award divided by the aggregate principal value of all the funds before the recent \$100 distributions. Thus, if the court were to award an additional \$45 million, for example, the class counsel would be entitled to roughly 5% of the interest earned on the funds net of taxes. (Based on the December 27 filing, Exhibit A, the aggregate total was then \$990 million, and this sum less net interest is the aggregate principal value)."

We would also like confirmation that interest deducted for Round 4 was limited to interest on the Round 4 funds, and not interest from previous rounds. Footnote 12 in your fee motion says that interest was paid for Rounds 1-4, but none of the fee orders (except the Round 4 order cited by Footnote 27 of your reply) seem to allow this, and we read the Round 4 order as only permitting interest from the Round 4 funds. This is an independent reason we thought an accounting necessary.

That said, our clients are also open to your suggestion for a stipulation to kick this down the road. We would reserve all rights to brief the issue to the extent that the court awards any interest. If this is the resolution you prefer, please draft a proposed stipulation. We do intend to move for sur-reply in either case.

Best regards,

Frank

M. Frank Bednarz

Hamilton Lincoln Law Institute
1440 W. Taylor St # 1487
Chicago, IL 60607

801-706-2690

On Sat, Jun 28, 2025 at 1:27 PM Frank Bednarz <frank.bednarz@hlli.org> wrote:

Yes, that works for me.

Frank

On Fri, Jun 27, 2025 at 6:59 PM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Does 11:30am ET on Monday work?

From: Frank Bednarz <frank.bednarz@hlli.org>

Sent: Friday, June 27, 2025 6:01:52 PM

To: Reiss, William V. <WReiss@RobinsKaplan.com>

Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>

Subject: Re: [EXTERNAL] Auto Parts - Conferral on motion for accounting

Hello William,

Monday morning works for me, as early as you'd like.

The motion for accounting relates entirely to the interest issue in our objection, yes. The proposed sur-reply explains this continuing ambiguity, but also addresses new arguments offered for the first time in your reply, specifically the discounting of Judge Battani's remarks, the heavy weight placed on the word "interim," and the new basis for fees for "preservation of the fund."

Frank

On Fri, Jun 27, 2025 at 4:40 PM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Mr. Bednarz,

We are in receipt of your email to the Court. If you are interested in meeting and conferring, we are available on Monday. Please let us know some times that work for you.

Also, could you please confirm that your contemplated sur-reply and accounting motions relate to your objection to Settlement Class Counsel's calculation of interest in connection with our pending fee motion?

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>
Sent: Friday, June 27, 2025 3:30 PM
To: Reiss, William V. <WReiss@RobinsKaplan.com>
Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: [EXTERNAL] Auto Parts - Conferral on motion for accounting

Hello counsel,

Further to our conversation, we intend to file this weekend a motion for a short sur-reply and motion for accounting of funds to disclose the information we asked for. Please let me know your position on the proposed motions at your earliest convenience.

Best regards,

Frank

M. Frank Bednarz

Hamilton Lincoln Law Institute
1440 W. Taylor St # 1487
Chicago, IL 60607

801-706-2690

On Thu, Jun 26, 2025 at 10:54 AM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Mr. Bednarz,

Thank you for your emails. We believe our request to the Court is clear and that no further discussion is warranted at this time.

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>
Sent: Tuesday, June 24, 2025 5:56 PM
To: Reiss, William V. <WReiss@RobinsKaplan.com>
Cc: Jenna Farleigh <jfarleigh@susmangodfrey.com>; Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: Re: [EXTERNAL] Re: Auto Parts - Request for Clarification re: Interest

Hello William,

The issue is that similar language appeared in Round 4, but based on your filing the interest was calculated differently than expected. For this reason, the mechanics of the actual request remain ambiguous to us.

Please report the figures shown, which would clarify what you did for the previous round and what you intend for this round.

Best regards,

Frank

M. Frank Bednarz

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Chicago, IL 60607

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On Tue, Jun 24, 2025 at 8:48 AM Reiss, William V. <WReiss@robinskaplan.com> wrote:

Mr. Bednarz,

We disagree that there is any ambiguity in Settlement Class Counsel's papers with respect to our request. In your objection, you state: "If Class Counsel propose only a proportional share of interest earned from newly-awarded attorneys' fees, the Court may do so" because "[t]he pro rata share of interest for [each round] should be identical to the fee percentage . . . To do otherwise would shortchange attorneys." Bednarz Objection at 22-23.

As our papers make clear, this is precisely what Settlement Class Counsel seek in the present motion. *See, e.g.*, Fee Motion Reply at 24, n.27 ("Settlement Class Counsel's recovery of interest would be limited to their pro rata share of the interest accrued for each Settlement Fund based on the fee awarded.").

-Will

From: Frank Bednarz <frank.bednarz@hlli.org>
Sent: Monday, June 23, 2025 5:18 PM
To: Jenna Farleigh <jfarleigh@susmangodfrey.com>
Cc: Marc Seltzer <MSeltzer@susmangodfrey.com>; Adam Zapala <AZapala@cpmlegal.com>; Elizabeth Castillo <ecastillo@cpmlegal.com>; Reiss, William V. <WReiss@RobinsKaplan.com>; Steven Sklaver <ssklaver@susmangodfrey.com>; Chanler Langham <clangham@susmangodfrey.com>; Anna St. John <anna.stjohn@hlli.org>
Subject: [EXTERNAL] Re: Auto Parts - Request for Clarification re: Interest

Hello class counsel:

Any response to this? I am free to have a call to discuss. Again, we are trying to avoid arguing issues that may be unnecessary.

Best,

Frank

M. Frank Bednarz

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1440 W. Taylor St # 1487
Chicago, IL 60607

801-706-2690

On Fri, Jun 20, 2025 at 4:10 PM Frank Bednarz <frank.bednarz@hlli.org> wrote:

Hello class counsel,

The Overland West/Booton objection flagged a contingent objection about the interest sought by class counsel. No. 2:12-cv-00103, ECF No. 679 at 22-25. The objection might be entirely moot, but class counsel's reply reads ambiguously to me. It is unclear what the interest accrued is and what amount of that interest class counsel actually seeks.

To potentially moot this portion of the Overland West/Booton objection, I've attached a spreadsheet of information that could clarify the funds at issue. We'd appreciate your assistance in completing the attached sheet.

We understand quarterly tax obligations may mean you have up-to-date information available for March 31, 2025, and it's perfectly fine to report data as of that date, or any other date convenient from regular statements.

Additionally, to expedite matters and avoid unnecessary motion practice, please feel free to initially complete just the highlighted columns in the spreadsheet if that is easier. This, along with the specific methodology or formula you're using to calculate the proposed pro rata interest allocation (and thus the specific interest fee sought as of, e.g. March 31), may resolve our concerns.

Please let us know if you have any questions, or if another format would be easier for your team. We are just looking to resolve this portion of our objection, if possible.

Best regards,

Frank

M. Frank Bednarz

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Thank you in advance for your cooperation.

Robins Kaplan LLP
<http://www.robinskaplan.com>

CERTIFICATE OF SERVICE

I hereby certify that on July 10-11, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification to the ECF counsel of record.

/s/ M. Frank Bednarz
M. Frank Bednarz