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## Ford Fiesta, Focus Transmission Settlement Gets Final OK

By **John Kennedy**

Law360, New York (October 19, 2017, 3:45 PM EDT) -- A California federal judge on Wednesday put his final stamp of approval on a class action settlement between Ford Focus and Fiesta drivers and the automaker, overruling objectors and ending a five-year-old lawsuit over allegedly defective transmissions.

U.S. District Judge Andre Birotte Jr. said he had determined that the deal, which was **announced in March**, is fair and reasonable and that none of the objectors, either alone or together, convinced him otherwise. As a "claims made" agreement under which Ford Motor Co. must pay out all legitimate claims, the settlement does not have a set value, but an expert for the drivers has estimated its value at \$35 million.

It aims to provide "substantial cash payments" and other benefits to people across the U.S. who owned or leased new or used 2011-2016 Fiestas and 2012-2016 Focuses — a total of about 1.5 million vehicles. The drivers claimed that the vehicles' PowerShift transmissions malfunctioned in a way that caused their cars to buck, kick or jerk when they attempted to accelerate.

The benefits include at least \$200 in cash for drivers who had to have their transmission repaired at least three times, or a discount toward the purchase of another Ford vehicle. Drivers will be able to collect increasing amounts for every repair after the third one, for a possible \$2,325 in cash or \$4,650 in credit each. It also provides cash payments for software repairs and an arbitration process for drivers who want Ford to repurchase their vehicles.

Capstone Law APC, Berger & Montague PC and Zimmerman Law Group, which represented the class, will receive \$8.5 million in attorneys' fees and about \$326,000 for costs. The 18 named plaintiffs will each get between \$5,000 to \$10,000.

Thomas A. Zimmerman Jr., a lawyer for the drivers, told Law360 in an emailed statement Thursday that he and his clients are pleased that the court approved the settlement. Ford also said Thursday that it was pleased with the deal.

The objections to the settlement fell into four main categories: cash payment, arbitration procedure, settlement value and attorneys' fees and costs.

Some objectors argued that some class members are being "sold out" for the benefit of others because they will never qualify to receive cash, but are still bound by the deal. Judge Birotte disagreed, finding that the purpose of the settlement is to reimburse class members for the inordinate inconvenience associated with repeated failed repair attempts, not out-of-pocket expenses, because those were covered by vehicle warranties. The parties agreed that three repairs was the minimum amount necessary to establish such an injury, and that's reasonable, he explained.

Those who objected to the arbitration procedure mostly said it is not as consumer-friendly as state lemon laws, but Judge Birotte said that argument is mainly based on misunderstandings about the process, which he considers more consumer friendly than most lemon laws. The objectors said there should have been a way to bring fraud or similar claims in arbitration proceedings, but the judge said that the absence of that option doesn't make the settlement unfair, it just shows that it is a

compromise.

He added that those who want to preserve fraud and other similar claims can opt out, as **nearly 12,500** have done. A 150-page list of every person who appropriately opted out was attached to Judge Birotte's order. Some people have improperly opted out, but the judge said he would give them a reasonable chance to fix their defective submissions.

Ford **recently argued** that the firms representing those who opted out lied to their clients to get them to leave the settlement class. The judge has not yet ruled on the automaker's arguments or request to order a new opt-out period.

Objectors who took issue with the settlement's valuation said that because it is a "claims made" deal, there is no way to determine its ultimate value, so it can't be called fair. The judge rejected that argument as well, saying Ford is required to pay every legitimate claim and pointing to the expert's estimate, which he said was well-reasoned.

As for the attorneys' fees, objectors said the amount was reached via collusion because Ford agreed not to object to it. But that claim is based on the argument that the settlement lacks value, when it actually provides substantial value, the judge said.

Ford is represented by John M. Thomas and Tamara A. Bush of Dykema Gossett PLLC.

The class is represented by Jordan L. Lurie, Tarek H. Zohdy, Cody R. Padgett and Karen L. Wallace of Capstone Law APC, Russell D. Paul of Berger & Montague, and Thomas A. Zimmerman Jr. of Zimmerman Law.

Those who opted out are represented by Stern Law and Liblang Law.

The case is Omar Vargas et al. v. Ford Motor Co., case number 2:12-cv-08388, in the U.S. District Court for the Central District of California.

--Editing by Stephen Berg.

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