

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER A. VASILAS, SCOTT DIAMOND,
ROBERT KASINDORF, and PAUL THOMAS, JR.
individually, and on behalf of all others similarly
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., SUBARU AUTO
LEASING LTD., FUJI HEAVY INDUSTRIES,
LTD. and SUBARU OF INDIANA AUTOMOTIVE,
INC.,

Defendants.

2007-CV- 2374 (GBD)

STIPULATION AND AGREEMENT OF SETTLEMENT

This Settlement Agreement is entered into this 14th day of May, 2010 by and among plaintiffs Peter A. Vasilas, Scott Diamond and Paul Thomas, Jr. (the "Named Plaintiffs") and defendants Subaru of America, Inc. ("SOA"), Subaru Auto Leasing Ltd. ("SAL"), Fuji Heavy Industries Ltd. ("FHI") and Subaru of Indiana Automotive, Inc. ("SIA"), collectively ("the Companies"), by and through their respective counsel.

RECITALS

WHEREAS, on March 22, 2007, an action was filed titled *Peter A. Vasilas, Robert Kasindorf and Scott Diamond against Subaru of America, Inc. and Subaru Auto Leasing Ltd.*, Case No.: 07-CV-2374 (GBD), in the United States District Court for the Southern District of New York, alleging causes of action against SOA and SAL for breach of warranty, violation of the Federal Odometer Act and unjust enrichment, alleging that the odometers in Subaru vehicles overstate mileage; and seeking certification of a nationwide class of owners and lessees of Subaru vehicles sold or leased in the United States from March 22, 2002 to the present;

WHEREAS, on May 22, 2007, plaintiffs filed a First Amended Complaint, substantially in the form of the initial Complaint;

WHEREAS, on June 1, 2007, SOA and SAL filed a Motion to Dismiss the Action, wherein they argued that plaintiffs' claims should be dismissed because even if the facts plead in the Complaint were proven at trial they would fail to state a claim under the Federal Odometer Act because the Act was not intended to apply to the design or manufacture of an odometer, or to a claim that an odometer design was defective. SOA and SAL also argued, *inter alia*, that the facts as plead in the complaint if proven at trial could not support a claim for breach of express warranty and/or the implied warranty of merchantability, and that the facts as plead in the complaint if proven at trial could not support a claim of injury. Furthermore, it was argued that

the claims of individual plaintiffs were barred by the statute of limitations, and that the claim for unjust enrichment should be dismissed;

WHEREAS, on March 18, 2008, the Court denied the Motion to Dismiss the Action in a minute order, and on August 5, 2009 the Court issued a Memorandum Decision and Order, holding that under the applicable pleading standard, the facts as plead in the complaint could state a claim under the Federal Odometer Act and for breach of express and implied warranty of merchantability;

WHEREAS, on July 30, 2008, plaintiffs filed a Second Amended Class Action Complaint adding Paul Thomas Jr. as a named plaintiff, and FHI and SIA as named defendants.

WHEREAS, on July 24, 2009, the Companies filed an Answer to the Second Amended Complaint, denying the operative allegations and asserting various affirmative defenses;

WHEREAS, on July 24, 2009, plaintiffs filed a motion to have this action certified as a class action in accordance with Rule 23 of the Federal Rules of Civil Procedure;

WHEREAS, on February 22, 2010, based upon discovery, plaintiffs requested that the Court modify the class definition to exclude all 2008 Model Year Subaru vehicles and subsequent Model Year Subaru vehicles;

WHEREAS, on January 29, 2010, Robert Kasindorf voluntarily stipulated to the dismissal of his claims without prejudice;

WHEREAS, Class Counsel conducted a thorough investigation and evaluation of the facts and law relating to the claims asserted in the Action, to determine how best to serve the interests of the Named Plaintiffs and the Settlement Class. The Named Plaintiffs and Class Counsel believe, in view of the costs, risks, and delay of continued litigation balanced against the benefits of settlement to the Settlement Class, that the settlement as provided in this Settlement Agreement is in the best interests of the Settlement Class and that the settlement provided in this Settlement Agreement represents a fair, reasonable, and adequate resolution of the Action;

WHEREAS, Class Counsel engaged in extensive discovery to educate themselves about the facts relevant to this Action, and counsel for the Settling Parties thereafter conducted extensive arm's-length negotiations regarding the substance and procedure of a possible class settlement prior to entering into this Settlement Agreement;

WHEREAS, the Named Plaintiffs, as well as Class Counsel, believe the Released Claims have merit. The Named Plaintiffs and Class Counsel, however, recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Released Claims against the Companies through trial and appeals. The Named Plaintiffs and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation. The Named Plaintiffs and Class Counsel are mindful of the inherent problems of proof under, and possible defenses to, the Released Claims. The Named Plaintiffs and Class Counsel believe that the proposed Settlement confers substantial benefits upon the Settlement Class. Based on their evaluation of all of these factors, the Named Plaintiffs and Class Counsel have determined that this Settlement is in the best interests of the Settlement Class; and

WHEREAS, the Companies deny any liability to the Named Plaintiffs or the Settlement Class, and the Companies believe they have meritorious defenses to all of the claims raised in the Action, but the Companies recognize and acknowledge the expense and length of continued proceedings that would be necessary to defend the Action through trial and appeals;

WHEREAS, in agreeing to enter this Settlement, the Companies also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation;
NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED, by and among the Settling Parties that, subject to approval of the Court, the Action and the Released Claims shall be fully and finally compromised, settled, and released and that the Action shall be dismissed with prejudice subject to and upon the terms and conditions described below.

I. DEFINITIONS.

In addition to words and terms defined elsewhere in this Stipulation and Agreement of Settlement, the following words and terms shall have the definitions stated in this Article I.

A. "The Action."

"The Action" means the lawsuit entitled Peter A. Vasilas, et al. v. Subaru of America, Inc., et al., filed and pending in the United States District Court for the Southern District of New York under Case No. 07-CV-2374 (GBD), including all claims and causes of action on behalf of the Named Plaintiffs and the putative nationwide class which were asserted therein.

B. "Class Counsel."

"Class Counsel" means "Named Plaintiffs' Counsel" as defined herein.

C. "Class Notice."

"Class Notice" means the notice of settlement that will be mailed to the "Settlement Class Members," as defined herein, containing the language in Exhibit B, and the Short Form Notice containing the language in Exhibit C.

D. "Class Vehicles."

"Class Vehicles" means all 2002 through 2007 Subaru model year vehicles purchased or leased in the continental United States of America and Hawaii.

E. "The Companies"

"The Companies" means SOA, SAL, SIA and FHI.

F. "Effective Date of Settlement."

"Effective Date of Settlement" means the first date after (1) the Court enters the Final Order and Judgment, in all material respects similar to the form attached hereto as Exhibit D, and (2) all appellate rights with respect to said Final Order and Judgment have expired or been exhausted in such a manner as to affirm the Final Order and Judgment, except that an appeal solely from any award of attorneys' fees to Class Counsel shall not extend the Effective Date of Settlement.

G. "Fairness Hearing."

The "Fairness Hearing" is the final hearing, held after the Preliminary Approval Order is issued, in which the Court will determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate and whether the proposed Final Order and Judgment should be entered, and if so, to determine the amount of attorneys' fees and costs to be awarded Class Counsel.

H. "Named Plaintiffs."

"Named Plaintiffs" means Peter A. Vasilas, Scott Diamond and Paul Thomas, Jr.

I. "Named Plaintiffs' Counsel."

"Named Plaintiffs' Counsel" are Traiger & Hinckley LLP, and Law Offices of Paul F. Condzal.

J. "Released Parties."

"Released Parties" means SOA, SAL, SIA and FHI, as well as all other Subaru designers, manufacturers, related companies, and their past or present directors, officers, employees, partners, principals, agents, heirs, executors, administrators, successors, reorganized successors, subsidiaries, divisions, parents, related or affiliated entities, distributors, authorized dealers,

underwriters, insurers, co-insurers, re-insurers, licensees, financiers, joint ventures, all lessors of Subaru vehicles, including Chase Auto Finance d/b/a Subaru Motors Finance, all suppliers (including but not limited to suppliers of all equipment associated with odometers and odometer systems, including New Sabina and Nippon Seiki), sub-suppliers, assigns, associates, and attorneys.

K. "Released Claims."

"Released Claims" means any and all claims, demands, actions, causes of action, and suits pleaded or alleged against the Companies in the Action and all other claims, demands, actions, causes of action of any nature whatsoever, including but not limited to any claim for violations of federal, state, or other law (whether in contract, tort, consumer protection, consumer fraud statutes, fraud, or otherwise, including statutory and injunctive relief, common law, property, warranty and equitable claims), and also including all claims and "Unknown Claims" that were or could have been asserted against the Released Parties in the Action, based upon the design, manufacture, accuracy and/or operation of the odometer system and related components of the odometer system in the Class Vehicles.

L. "Settlement."

"Settlement" means the settlement contemplated by this Stipulation and Agreement of Settlement.

M. "Settlement Agreement."

"Settlement Agreement" means this Stipulation and Agreement of Settlement.

N. "Settlement Class" or "Settlement Class Members."

"Settlement Class" or "Settlement Class Members" means:

All persons and entities who either bought or leased in the continental United States of America and Hawaii a Subaru vehicle, Model Years 2002 through 2007 (the "Class Vehicles").

Specifically excluded from the Settlement Class are: (a) all federal court judges who have presided over this case and their spouses and anyone within three degrees of consanguinity from those judges and their spouses, (b) all persons and entities who elect to exclude themselves from the Settlement Class, (c) all persons and entities who have previously executed and delivered to SOA releases of their claims, (d) the Companies' employees, officers, directors, agents, and representatives and their family members.

O. "Settling Parties."

"Settling Parties" means Peter A. Vasilas, Scott Diamond, and Paul Thomas, Jr. ("Named Plaintiffs"), and SOA, SAL, SIA and FHI ("The Companies").

P. "Unknown Claims."

"Unknown Claims" means any and all Released Claims that any member of the Settlement Class does not know to exist against any of the Released Parties which, if known, might have affected his or her decision to enter into or to be bound by the terms of this Settlement. The Named Plaintiffs and the members of the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this release, but nevertheless fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, may hereafter exist, or heretofore have existed which relate in any way to the design, manufacture, accuracy and/or operation of the odometer system and related

components of the odometer system in the Class Vehicles, without regard to subsequent discovery or existence of such different or additional facts concerning each of the Released Parties.

The foregoing waiver includes, without limitation, an express waiver to the fullest extent permitted by law, by the Named Plaintiffs and the Settlement Class Members of any and all rights under California Civil Code § 1542 or any similar law of any other state or of the United States, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
WHICH IF KNOWN BY HIM OR HER MIGHT HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

or contains a similar provision to such effect.

II. SETTLEMENT CONSIDERATION.

In consideration for the Release provided for herein and the dismissal of the Action with prejudice, under the terms of this Settlement Agreement, the Companies agree to provide consideration to the Settlement Class Members as follows.

A. Notice of Class Settlement.

The Companies agree to pay all expenses in connection with a notice program on the terms provided in Section III.

B. Warranty Extension.

After the effective date of the Settlement, SOA will retroactively extend, by five percent (5%), all mileage-based coverage periods of any (a) original written warranties of SOA that applied to the Class Vehicles when initially sold or leased; (b) original written warranties that are provided in connection with the purchase of Subaru Certified Pre-Owned Class Vehicles, and (c) Subaru Added Security Agreements, applicable to Class Vehicles, purchased before the Effective Date of the Settlement.

For example, a 3 year/36,000 mile Basic New Vehicle Limited Warranty and Wear Item Limited Warranty will be extended to 3 years/37,800 miles subject to all other terms and conditions; a 5 year/60,000 mile Powertrain Limited Warranty will be extended to 5 years/63,000 miles; and a 7 year/70,000 mile California emissions warranty will be extended to 7 years/73,500 miles subject to all other terms and conditions.

The five percent (5%) extension is transferable to the same extent that the underlying warranty is transferable. Specifically, new vehicle warranties as extended are transferable with the sale of Class Vehicles to other individuals or entities. Pursuant to their terms, Subaru Added Security Agreements and Subaru Certified Pre-Owned Class Vehicle warranties as extended are transferable only if the transferee of the Class Vehicle is a private individual. All warranties so extended remain subject to all other terms and conditions of the original warranty, including the time limitations and other limitations and exclusions regarding the warranties.

C. Reimbursement for Repairs.

The Companies will establish a claims process by which Settlement Class Members can obtain reimbursement for out-of-pocket expenses incurred performing “Otherwise Warranted Repairs” that were made within the five percent (5%) extended warranty mileage-based coverage period

of the Extended Warranties. “Otherwise Warranted Repairs” means: repairs or replacements within the time-based limits of the warranty coverage period of component parts that were defective in material or workmanship under normal use as defined and covered by the original warranty, including all limitations and exclusions. Otherwise Warranted Repairs does not include routine maintenance (such as, but not limited to, all non-covered items including oil and filter changes/tire rotations, etc.), or vehicle repairs or replacements necessitated by customer abuse, modification, or misuse, or repairs and replacements already paid for by the Companies or any other Released Party.

Customer claims shall consist of the model and model year of the Class Vehicle, the vehicle identification number, proof of payment, proof of date and mileage at the time of the repair, and documents sufficient to show that the repair was Otherwise Warranted and that the vehicle is a Class Vehicle. In addition, Settlement Class Members must provide proof of date of original purchase of the Class Vehicle. Such claims must be received at the SOA Customer Dealer Service-Odometer Settlement within one hundred eighty (180) days after the Effective Date of Settlement in order to be processed and paid. SOA shall not be required to pay claims received after this date.

SOA may reject any claim that does not include the required information specified above. If SOA rejects the claim, it will advise the Settlement Class Member of the reason for the rejection (*e.g.*, missing information, ineligibility for a refund). If the claim is rejected due to missing information, SOA will give the Settlement Class Member thirty (30) days to resubmit the claim with complete information, so long as the original claim is submitted by the deadline noted above. Although it is the Settlement Class Member's obligation to obtain and submit the required information in support of a claim, SOA will, at the request of a Settlement Class Member, provide the Class Member with requested information necessary to prepare a claim if such information is within SOA's possession and can readily be obtained from SOA's records. It remains the Class Member's responsibility to submit a complete claim. The fact that SOA does not have the requested information a Class Member requires to submit a claim does not relieve the Class Member of the obligation to provide the required information or documentation. SOA does not have possession of records concerning customer paid repairs performed at independent Subaru dealerships or otherwise.

All disputes between a Settlement Class Member and the Companies arising out of any such reimbursement request shall be resolved as provided in Section IV.G of this Agreement.

SOA may, but shall not be required to, send a letter to Settlement Class Members who receive a refund explaining the reason for the refund. The form and content of any such letter will be jointly approved by counsel for SOA and Class Counsel.

D. Lease Extension.

The Companies will increase by five percent (5%) the mileage allowances for all leases for Class Vehicles leased from SAL. For example, if a Settlement Class Member has a three-year lease for a Class Vehicle that permits up to 36,000 miles of driving without any charge for excess mileage, the allowed mileage will be increased to 37,800. SOA may, but shall not be required to, send a letter to applicable Settlement Class Members informing them of this lease extension. The form and content of any such letter shall be jointly approved by counsel for the Companies and Class Counsel.

E. Reimbursement for Excess Mileage Lease Charges.

The Companies will establish a claims process by which Settlement Class Members who leased Class Vehicles can obtain reimbursement for excess mileage charges they paid with respect to “excess” miles up to five percent (5%) over the mileage allowed under the terms of their leases (“Reimbursable Mileage Charges”). By way of example, if a class member drove 38,000 miles during the three-year period (as recorded by the odometer) and was charged and paid an excess mileage fee of \$300 (2,000 excess miles x \$0.15), the Companies would reimburse this person or entity \$270 (the first 1,800 miles x \$0.15).

If any excess mileage charges were waived by the lessor or not paid for by the Settlement Class Member for any reason, the Settlement Class Member will only be eligible for reimbursement for excess mileage charges to the extent, if any, that the Reimbursable Mileage Charges exceed the amount of the waived or unpaid charges. For example, in the above example, if SAL waived \$150 of the Settlement Class member's \$300 excess mileage charge, meaning the Settlement Class member paid only \$150, SOA would reimburse this person or entity \$120 (\$270 less the \$150 already waived). If SAL waived the total payment of \$300, the Settlement Class member would not be entitled to any reimbursement.

To the extent possible, the Companies will identify Settlement Class Members who leased their vehicles from SAL and thereafter paid an excess mileage charge, attempt in good faith to calculate the amount (if any) of such charges to be reimbursed pursuant to the Settlement, and send that amount to the Settlement Class Member within ninety (90) days after the Effective Date of Settlement without requiring such persons or entities to submit a claim. SOA will provide Class Counsel with a list of all persons and entities receiving such automatic refunds and the amounts to be refunded within ninety (90) days of the entry of the Preliminary Approval Order. The Class Notice and the Short Form Notice will inform Settlement Class Members that those Settlement Class Members believing themselves entitled to a refund but who have not received a check from SOA or one of its affiliates within ninety (90) days after the Effective Date of Settlement should submit a claim for a refund of the excess mileage paid that the Class Member feels should be reimbursed.

Settlement Class Members for whom SOA lacks sufficient information to calculate a reimbursement, including Settlement Class Members who leased their vehicle from a company other than SAL, must submit a claim in order to receive an excess mileage charge reimbursement benefit. To receive reimbursement, the Settlement Class Member must submit proof of the year and model of the Class Vehicle, the vehicle identification number, the lease of a Class Vehicle, the mileage allowed by the lease, the mileage driven during the lease period, the per-mile excess mileage charge under the lease, any waivers or credits of excess mileage charges given by the lessor, and the actual excess mileage charge paid by the Settlement Class Member. Such claims must be received at the SOA Customer Dealer Service-Odometer Settlement within one hundred eighty (180) days after the Effective Date of Settlement or within sixty (60) days after the lease's termination, whichever is later, in order to be processed and paid. SOA shall not be required to pay claims received after this date.

SOA may reject any claim that does not include the required information specified above. If SOA rejects the claim, it will advise the Settlement Class Member of the reason for the rejection (*e.g.*, missing information, ineligibility for a refund). If the claim is rejected due to missing information, SOA will give the Settlement Class Member thirty (30) days to resubmit the claim with complete information. Although it is the Settlement Class Member's obligation to obtain

and submit the required information in support of a claim, SOA will, at the request of a Settlement Class Member, provide the Class Member with requested information necessary to prepare a claim if such information is within SOA's possession and can readily be obtained from SOA's records. It remains the Class Member's responsibility to submit a complete claim. All disputes arising out of any such reimbursement request shall be resolved as provided in Section IV.G of this Agreement.

SOA may, but shall not be required to, send a letter to Settlement Class Members who receive a refund explaining the reason for the refund. The form and content of any such letter shall be jointly approved by SOA and Class Counsel.

F. Administration of the Settlement.

SOA Customer Dealer Service-Odometer Settlement will administer the program described above and will bear all costs and expenses related to the administration of this Settlement. SOA will advise Class Counsel how the SOA Customer Dealer Service-Odometer Settlement will receive and appropriately respond to communications from Settlement Class Members (including Requests for Exclusion, claims, and questions) in response to Class Notice. The SOA Customer Dealer Service-Odometer Settlement will include (a) personnel assigned to manage the settlement approval and implementation process, (b) a toll-free telephone number that Settlement Class Members may call to request claim forms or ask questions, (c) mailing addresses to which Settlement Class Members can send Requests for Exclusion and claims for benefits, and (d) a web site containing information about the Settlement, including claim forms that can be downloaded and submitted by mail. Class Counsel will provide input into the running of the SOA Customer Dealer Service-Odometer Settlement by, for example, working with SOA to design the information to be included on the web site; preparing talking points for SOA Customer Dealer Service-Odometer Settlement personnel to use in responding to Frequently Asked Questions posed by Settlement Class Members; designing forms and reports for SOA Customer Dealer Service-Odometer Settlement personnel to use in responding to and documenting actions taken in response to inquiries, claims, and Requests to Exclude; preparing training materials designed to help SOA Customer Dealer Service-Odometer Settlement employees correctly identify Settlement Class Members, understand the eligibility criteria for benefits under the Settlement, and determine what benefits to provide under the Settlement. Class Counsel and the Companies' Counsel will cooperate in performing appropriate quality control over SOA Customer Dealer Service-Odometer Settlement activities, and will consult as necessary to resolve issues requiring attorney intervention if they arise.

SOA will maintain a database of all contacts from Settlement Class Members and of the steps taken by SOA Customer Dealer Service-Odometer Settlement to address their concerns. Between the time the Preliminary Approval Order is entered and one hundred eighty (180) days after the Effective Date of Settlement, SOA will provide Class Counsel with monthly reports of all telephonic and mail communications between Settlement Class Members and SOA Customer Dealer Service-Odometer Settlement. This report will include: (a) a list of all requests for reimbursements for repairs and SOA's responses to those requests; (b) a list of all requests for reimbursement for excess mileage charges and SOA's responses to those requests; (c) a list of individuals to whom checks were sent and that were returned; and (d) an itemization of all amounts paid to Settlement Class Members. SOA will provide Class Counsel with an accounting of items (a)-(d) within forty-five (45) days after the submission of the final monthly report referenced above.

Class Counsel shall further be entitled to reasonable access to the SOA Customer Dealer Service-Odometer Settlement records, provided they give seven (7) days advance notice to a person(s) designated by SOA to receive such notice, for the purpose of ensuring that Settlement Class Member inquiries and claims are being properly handled. Class Counsel shall be entitled to monitor Settlement Class Members conversations with SOA Customer Dealer Service-Odometer Settlement. If Class Counsel believes that SOA's processes for implementing the Settlement are inadequate, they may bring such concerns to SOA's attention, and SOA will respond to them in good faith. Class Counsel further reserve the right to seek a Court Order, if necessary, designed to ensure appropriate implementation of the Settlement.

The Companies shall establish and maintain at their own expense the domain name www.odometersettlement.com in order to provide information on the Settlement, notice and the claims process. The content of this website shall be developed by the Companies, in consultation with and approval of Class Counsel, and shall include the notice, and the forms for submitting settlement claims to SOA, provided that no confidential information or documents are referenced, shown or made available.

G. Attorneys' Fees and Costs.

The Companies have agreed to pay to Class Counsel reasonable attorneys' fees and costs and expenses, separate and apart from the consideration flowing to the Settlement Class. Class Counsel may apply to the Court for an award of attorneys' fees and costs and expenses covering all services provided by Class Counsel in the past and future to the Named Plaintiffs and Settlement Class Members in connection with the Action, the Settlement of the Action, any appeal in connection with the Settlement, implementation of the Settlement Agreement, and any other costs and expenses for which Class Counsel seeks an award (the "Fee and Expense Application"). The Fee and Expense Application, which the Companies will not dispute or oppose, shall not seek an amount exceeding \$1,600,000.00 in attorneys' fees, and verified costs and expenses. Further, Class Counsel may not be awarded, and shall not accept, any amount in excess of this sum.

The Court will determine what amount of fees and costs and expenses shall be awarded and issue an Order stating the amount of fees and costs and expenses to be awarded.

Should any counsel other than Class Counsel petition the Court for an award of attorneys' fees, costs or expenses, Class Counsel and the Companies and their counsel shall cooperate in opposing any such petition. Neither Class Counsel nor the Companies shall be required to pay any amounts of money to such counsel.

Within twenty (20) days after the Court's Order awarding fees and costs and expenses to Class Counsel becomes final and not subject to appeal, SOA will wire the total amount of the fee and cost and expense award to Class Counsel. Class Counsel must provide SOA with a completed W-9 form and completed wire transfer form before payment can occur. The procedure for and the grant or denial or allowance or disallowance by the Court of the Fee and Expense Application are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the Fee and Expense Application, or any appeal solely from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment approving this Agreement and the Settlement.

H. Publicity

The parties agree that other than the web site provided in Section F, no press releases or other publicity, will be prepared or provided by the parties or counsel. Nothing in the Stipulation and Settlement Agreement shall preclude Class Counsel from establishing and maintaining at their own expense an Internet presence at www.traigerlaw.com and www.hinckley.org, and referencing their role as Class Counsel in the Action. Class Counsel may only reference the Action to the extent and in the manner for which they have received the Companies' prior written approval, which approval shall be reasonably provided. In no event shall any reference be made to information designated as "Confidential."

I. Incentive Award for Named Plaintiffs Peter A. Vasilas, Scott Diamond and Paul Thomas, Jr.

As part of their motion seeking final approval of the Settlement at the Fairness Hearing, Class Counsel will submit to the Court an application for a \$10,000 Incentive Award for Named Plaintiffs to be paid to the Named Plaintiffs by the Companies separate from the fee and cost and expense award described above. The Companies agree not to oppose this application. SOA will pay the Court-approved Incentive Award within twenty (20) days after the Effective Date of Settlement by sending payment to Class Counsel for forwarding to the Named Plaintiffs.

III. SETTLEMENT APPROVAL PROCESS.

A. Preliminary Approval of Settlement.

Promptly after the execution of this Stipulation and Settlement Agreement, counsel for the Settling Parties shall jointly present this Stipulation and Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached as Exhibit A, which shall include the following:

1. preliminary certification under Federal Rule of Civil Procedure 23, for settlement purposes only, of the Settlement Class;
2. preliminary approval of the Settlement memorialized in this Settlement Agreement as fair, reasonable and adequate;
3. approval of the Class Notice containing the language in Exhibit B and the Short Form Notice containing the language in Exhibit C for distribution to Settlement Class Members;
4. a direction to SOA to distribute, at its expense, the Class Notice in the form approved by the Court to Settlement Class Members and to publish the Short Form Notice;
5. a direction that each potential Settlement Class Member who wishes to be excluded from the Settlement Class must respond to the Class Notice in writing in accordance with the instructions set forth in the Class Notice, and that their responses must be received by the date set forth in the Preliminary Approval Order;
6. a finding that the Class Notice and Short Form Notice constitute the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who can be identified with reasonable effort, and constitutes valid, due, and sufficient notice to Settlement Class Members in full compliance with the requirements of applicable law, including the due process clause of the United States Constitution;
7. a direction that, pending final determination of the joint application for approval of this Agreement, all proceedings in the Action other than settlement approval proceedings shall be stayed, and all Settlement Class Members who do not request exclusion from the Settlement Class shall be enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of action in any court or before any tribunal based upon the design, manufacture, accuracy

and/or operation of the odometer system and related components of the odometer system in the Class Vehicles;

8. a direction that any Settlement Class Member who has not properly and timely requested exclusion from the Class will be bound by the Final Order and Judgment;

9. the scheduling of a final hearing to determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate and whether the proposed Final Order and Judgment should be entered (the "Fairness Hearing");

10. a direction that the Companies shall tabulate communications from prospective Settlement Class Members asking to be excluded from the Settlement Class and shall report the names and addresses of such persons and entities to the Court and to Class Counsel no less than seven (7) days before the Fairness Hearing;

11. a direction that Class Counsel shall file a Fee and Expense Application and Named Plaintiffs' Incentive Award application sixty (60) days prior to the Fairness Hearing; and that Class Counsel shall file any supplemental brief in support of final approval of the Settlement Agreement no later than seven (7) days prior to the Fairness Hearing; and that the Court shall determine at the Fairness Hearing in what amount attorneys' fees and reimbursement of costs and expenses should be awarded to Class Counsel as well as whether a \$10,000 Incentive Award should be awarded to Named Plaintiffs Peter A. Vasilas, Scott Diamond and Paul Thomas, Jr.; and

12. a direction that any Settlement Class Member who wishes to object in any way to the proposed Settlement Agreement, the proposed Final Order and Judgment, the Fee and Expense Application, and/or Named Plaintiffs Incentive Award must file and serve such objections no later than the date set forth in the Preliminary Approval Order, which shall be thirty-five (35) days before the Fairness Hearing, together with copies of all papers in support of his or her or its position as provided in Section III.D.1. of this Settlement Agreement. The Class Notice and Short Form Notice shall state that the Court will not consider the objections of any Settlement Class Member who has not properly served copies of his or her or its objections on a timely basis or complied with the requirements of Section III.D. I of the Settlement Agreement.

B. Notice to Attorneys General.

In compliance with the attorney general notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, within ten (10) days after the motion for Preliminary Approval Order is filed, the Companies shall provide notice of this proposed Settlement to the Attorney General of the United States, and the attorneys general of each state or territory in which a Settlement Class Member resides. The notice will include (1) a copy of the Original Class Action Complaint, the First Amended Complaint, the Second Amended Complaint, and the Court's Preliminary Approval Order (if entered at the time the notice is sent), (2) a copy of this Agreement and its exhibits, and (3) a reasonable estimate of the number of Class Members in each state/territory and their percentage representation in the Settlement Class. SOA will provide copies of such notifications to Class Counsel at the time of their submission to the attorneys' general.

C. Notice to Settlement Class Members.

The Companies will mail, by first-class mail at their expense, the Class Notice containing the language in Exhibit B. The Companies may format the Class Notice in such a way as to minimize the cost of the mailing, so long as Settlement Class Members can reasonably read it. The Class Notice will be sent to the current address of all original purchasers of the Class Vehicles for whom SOA can reasonably obtain a current address. The parties will work together to avoid unnecessary delay in providing Notice and unnecessary expenditures for mailing the Notice (*i.e.*, the notice may be included with other regular mailings by SOA or its affiliated

entities). SOA will endeavor to have the time period for the mailing of class settlement notice be three months or less after the signing of the Preliminary Approval Order.

The Companies will also pay for a "Short Form Notice" containing the language in Exhibit C to be published three times in *USA Today* during the three month notice period.

The Companies will prepare and file with the Court at least seven (7) days before the Fairness Hearing a Declaration describing their dissemination of Class Notice. The Declaration shall include: (a) the total number of Settlement Class Members, (b) a sample copy of the as-mailed Class Notice, (c) the process by which the Companies obtained a mailing list for the Class Notice, (d) the number of Class Notices mailed and the range of dates within which such Notices were mailed, (e) the number of Class Notices returned, (f) a sample copy of the published Short Form Notice, (g) the dates when the Short Form Notice was published, and (h) the estimated circulation of the *USA Today* editions in which the Short Form Notice was published.

D. Response to Notice.

1. Objection to Settlement.

Any Settlement Class Member who intends to object to the fairness of the Settlement must, by the date specified in the Preliminary Approval Order and recited in the Class Notice and Short Form Notice, file any such objection with the Court, and provide copies of the objection to: Christoph C. Heisenberg, Traiger & Hinckley LLP, 501 Fifth Avenue, Suite 506, New York, New York 10017, and Jeffrey L. Chase, Herzfeld & Ruben, P.C., 125 Broad Street, New York, New York 10004.

Any objection to the Settlement must include:

- (a) the objector's full name, address, and telephone number,
- (b) the model, model year, and vehicle identification number of the Settlement Class Member's Class Vehicle, along with proof that the objector has owned or leased a Class Vehicle (*i.e.*, a true copy of a vehicle title, registration, or license receipt),
- (c) a written statement of all grounds for the objection accompanied by any legal support for such objection,
- (d) copies of any papers, briefs, or other documents upon which the objection is based,
- (e) a list of all persons who will be called to testify in support of the objection,
- (f) a statement whether the objector intends to appear at the Fairness Hearing, and
- (g) a list of all cases in which the objector and/or their counsel has filed objections to a class action settlement in the preceding five (5) years.

If the objector intends to appear at the Fairness Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Fairness Hearing.

Any member of the Settlement Class who does not file a timely written objection to the Settlement and notice of his or her or its intent to appear at the Fairness Hearing or who fails to otherwise comply with the requirements of this section shall be foreclosed from seeking any adjudication or review of the Settlement by appeal or otherwise.

2. Request for Exclusion.

Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit a request for exclusion ("Request for Exclusion") to SOA at the address specified in the Class Notice by the date specified in the Preliminary Approval Order and recited in the Class Notice and Short Form Notice. To be effective, the Request for Exclusion must be sent to the specified address and:

(a) include the Settlement Class Member's full name, address, and telephone number,
(b) identify the model, model year, and vehicle identification number of the Class Member's Class Vehicle, and
(c) specifically and unambiguously state his or her or its desire to be excluded from the Settlement Class in the Action. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper address, shall be subject to and bound by this Settlement Agreement and every order or judgment entered pursuant to this Settlement Agreement. Any purported Request for Exclusion sent to such address that is ambiguous or internally inconsistent with respect to the Settlement Class Member's desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. The SOA Customer Dealer Service-Odometer Settlement will receive purported Requests for Exclusion and will follow guidelines developed jointly by Class Counsel and the Companies' counsel for determining whether they meet the requirements of a Request for Exclusion. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection, or a comment) as to which it is not readily apparent whether the Settlement Class Member meant to exclude himself or herself or itself from the Class will be evaluated jointly by counsel for the parties, who will make a good faith evaluation if possible. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be resolved by the Court. The SOA Customer Dealer Service-Odometer Settlement will maintain a database of all Requests for Exclusion, and will send the original written communications memorializing those Requests for Exclusion to SOA's counsel. SOA shall report the names and addresses of all such persons and entities requesting exclusion to the Court and the Class Counsel seven (7) days prior to the Final Hearing, and the list of persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

E. Fairness Hearing.

On the date set forth in the Preliminary Approval Order, which shall be approximately thirty-five (35) days after the deadline for submitting objections and Requests for Exclusion, a Fairness Hearing will be held at which the Court will: (a) decide whether to finally certify the Settlement Class, (b) decide whether to approve this Agreement as fair, reasonable, and adequate, (c) decide whether to approve the application for an Incentive Award for Named Plaintiffs, and (d) decide Class Counsel's petition for attorneys' fees and costs and expenses and issue an Order memorializing that decision.

F. Final Order and Judgment.

If this Settlement Agreement is finally approved by the Court, a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) shall be entered substantially in the form attached as Exhibit D, as follows:

1. certifying the Settlement Class solely for purposes of this Settlement Agreement;
2. approving this Agreement as fair, reasonable, and adequate as it applies to the Settlement Class;
3. declaring this Agreement to be binding on the Companies and Named Plaintiffs, as well as all members of the Settlement Class who have not been excluded;
4. dismissing on the merits and with prejudice the Second Amended Complaint filed in the Action and all claims that any Named Plaintiffs and Settlement Class Members alleged or could have alleged against any of the Released Parties based upon the design, manufacture, accuracy

and/or operation of the odometer system and related components of the odometer system in the Class Vehicles;

5. forever releasing and discharging the Released Parties from all Released Claims;

6. indicating the amount of the Incentive Award for Named Plaintiffs; and

7. providing that all Settlement Class Members who did not request exclusion from the Settlement Class shall be permanently enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of action in any court or before any tribunal based upon the design, manufacture, accuracy and/or operation of the odometer system and related components of the odometer system in the Class Vehicles.

G. Withdrawal from Settlement.

Either party shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if any of the following occurs:

(1) any objections to the proposed settlement are sustained and such objection results in changes to this Agreement that the withdrawing party deems in good faith to be material (*e.g.*, because it increases the cost of the Settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement);

(2) any Attorney General is allowed to intervene in the Action and such intervention results in changes to this Agreement that the withdrawing party deems in good faith to be material (*e.g.*, because it increases the cost of the settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement);

(3) the preliminary or final approval of this Settlement Agreement is not obtained without modification and any modification required by the Court for approval is not agreed to by each party and the withdrawing party deems any required modification in good faith to be material (*e.g.*, because it increases the cost of the Settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement);

(4) entry of the Final Order and Judgment described in this Agreement is reversed or substantially modified by an appellate court, except that a reversal or modification of an order awarding reasonable attorneys' fees and costs and expenses shall not be a basis for withdrawal.

The Companies shall, in addition, have the option to withdraw from this Settlement Agreement, and to render it null and void, if more than five percent (5%) of the persons and entities identified from SOA's records as being members of the Settlement Class exclude themselves from the Settlement Class;

To withdraw from this Settlement Agreement under this paragraph, the withdrawing party must provide written notice to the other party's counsel and to the Court. In the event either party withdraws from the Settlement, this Settlement Agreement shall be null and void, except with respect to the publicity provision, and shall have no further force and effect with respect to any party in the Action, and shall not be offered in evidence or used in this or any litigation for any purpose, including the existence, certification, or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Companies and Named Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

H. Release of Settlement Class Members' Claims.

Upon the Effective Date of the Settlement, the Named Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, released, waived, and discharged the Released Parties from his, her or its Released Claims as defined above.

IV. MISCELLANEOUS PROVISIONS.

A. Effect of Exhibits.

The exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

B. No Admission.

This Settlement Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Companies or any admissions by the Companies of any claim or allegation made in any action or proceeding against the Companies. If this Settlement Agreement is terminated and becomes null and void, the class action portions of this Settlement shall have no further force and effect with respect to any party to the Action and shall not be offered in evidence or used in the Action or any other proceeding. This Settlement Agreement shall not be offered or be admissible in evidence against the Companies or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Information provided by the Companies to the Named Plaintiffs and Class Counsel in connection with settlement negotiations is for settlement purposes only and shall not be used or disclosed for any other purpose whatsoever.

C. Return of Confidential Documents.

Upon the Effective Date of the Settlement, all originals and copies of documents and information, including but not limited to all documents produced in discovery, all non-privileged notes relating thereto, and all deposition transcripts, marked or designated Confidential, as defined in the So Ordered Stipulated Protective Order ("Protective Order") dated January 12, 2009, shall be returned to counsel for the Companies at the Companies' expense within the time period and procedures set forth in the Protective Order in the Action dated January 12, 2009. With respect to electronic copies of these documents, Counsel shall make a reasonable search of their computer mail delivery systems to identify copies transmitted by electronic mail. Copies maintained in such electronic form need not be returned to counsel, but shall be deleted from the mail program on which they reside. All notes protected as work product or attorney-client communications shall be destroyed pursuant to the Protective Order. Class Counsel shall provide a duly executed Affidavit confirming full and complete compliance with this provision. Counsel shall be entitled to maintain a copy of all pleadings filed in the action, including those filed under seal, solely for purposes of the retention requirement of New York law. To the extent Confidential documents are not destroyed due to a retention requirement by New York law, Class Counsel will maintain their confidentiality and not allow third parties to review or have access to the Confidential documents, and will return said Confidential documents to the Companies after the required New York State record retention period has expired.

D. Entire Agreement.

This Settlement Agreement represents the entire agreement and understanding among the Settling Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Settling Parties acknowledge,

stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of such modification or waiver is sought, and approved by the Court.

E. Counterparts.

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

F. Arm's-Length Negotiations.

The Settling Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions, and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Settling Parties in entering into this Settlement Agreement. The Settling Parties have all participated in the drafting of this Agreement and it is not to be construed in favor of, or against any of the Settling Parties.

G. Dispute Resolution.

Any dispute, challenge, question, or the like relating to this Settlement Agreement shall be heard only by this Court. Any dispute regarding any Class Members' entitlement to recovery under the warranty extensions or lease extensions shall be resolved by BBB Auto Line pursuant to the procedures described in SOA's warranty information booklet which is provided with the Class Vehicles when purchased or leased. Any decision by BBB Auto Line in connection with such dispute shall be final, non-appealable, non-reviewable and binding upon all parties.

H. Continuing Jurisdiction.

The Court shall retain continuing and exclusive jurisdiction over the parties to this Settlement Agreement, including all Settlement Class Members, for the purpose of the administration and enforcement of this Settlement Agreement.

I. Binding Effect of Settlement Agreement.

This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties, all Settlement Class Members, and their representatives, heirs, successors, and assigns.

J. Nullification.

In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, either party shall have the option to withdraw from this Settlement Agreement, and to render it null and void. However, such invalidity, illegality, or unenforceability shall not affect other provisions if the Companies and Class Counsel, on behalf of the Settling Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

K. Extensions of Time.

The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice (subject to Court approval as to Court dates).

L. Service or Notice.

Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to the Companies or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Settling Parties in writing:

As to Plaintiffs:
Christoph C. Heisenberg, Esq.
Traiger & Hinckley LLP
501 Fifth Avenue, Suite 506
New York, New York 10017

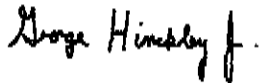
As to the Companies:
Jeffrey L. Chase, Esq.
Herzfeld & Rubin, P.C.
125 Broad Street
New York, New York 10004.

M. Authority to Execute Settlement Agreement.

Each counsel or other person executing this Settlement Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

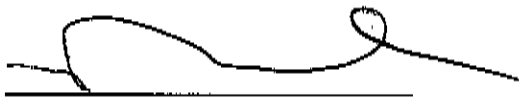
IN WITNESS HEREOF, the Settling Parties have caused this Settlement Agreement to be executed, by their duly authorized attorneys, as of May 14, 2010.

George R. Hinckley, Jr.



On Behalf of Plaintiffs

Paul F. Condzal



On Behalf of Plaintiffs

Jeffrey L. Chase

On Behalf of the Companies

As to Plaintiffs:
Christoph C. Heisenberg, Esq.
Traiger & Hinckley LLP
501 Fifth Avenue, Suite 506
New York, New York 10017

As to the Companies:
Jeffrey L. Chase, Esq.
Herzfeld & Rubin, P.C.
125 Broad Street
New York, New York 10004.

M. Authority to Execute Settlement Agreement.

Each counsel or other person executing this Settlement Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

IN WITNESS HEREOF, the Settling Parties have caused this Settlement Agreement to be executed, by their duly authorized attorneys, as of May 14, 2010.

George R. Hinckley, Jr.

On Behalf of Plaintiffs

Paul F. Condzal

On Behalf of Plaintiffs

Jeffrey L. Chase


On Behalf of the Companies