

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____)
IN RE VISTEON CORP. ERISA LITIGATION) Case No. 05-71205 (AC) (DAS)
_____)

**NAMED PLAINTIFFS' MOTION AND MEMORANDUM
FOR APPROVAL OF PLAN OF ALLOCATION**

Pursuant to the Findings and Order Preliminarily Certifying Settlement Class, Granting Preliminary Settlement Approval, Approving Form and Method of Notice, and Setting a Date and Time for Fairness Hearing on Final Approval (“Preliminary Approval Order”), Named Plaintiffs¹/Class Representatives David Maran and Onie Moore hereby move the Court for an Order approving the Plan of Allocation for the Settlement Distribution Amount. A copy of the proposed Plan of Allocation is submitted as Exhibit B to the Declaration of Lynn Sarko in Support of (1) Motion for Final Approval of ERISA Class Action Settlement; (2) Class Counsel’s Motion for Award of Attorneys’ Fees, Reimbursement of Expenses and Award of Compensation to Class Representatives; and (3) Motion for Approval of Plan of Allocation (“Sarko Decl.”). In conjunction with filing this Motion, Class Counsel are posting this Plan of

¹ Capitalized terms not otherwise defined in this Motion have the same meaning as ascribed to them in the Settlement Agreement.

Allocation on the Settlement information website identified in the Notice of Class Action Settlement approved by the Court (the “Class Notice”), www.KellerSettlements.com. Class Counsel have also taken the additional step of providing this Plan of Allocation to Professor Theodore J. St. Antoine, the Independent Fiduciary in this matter, for his review.

The Court should approve the Plan of Allocation because it provides a fair, adequate, and reasonable allocation of relief to all members of the Settlement Class. *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 529 (E.D. Mich. 2003). As noted by other courts, an allocation formula need only have a reasonable, rational basis, particularly if recommended by “experienced and competent” class counsel. *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (citing *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D. Minn. 1993), *aff’d*, 41 F.3d 402 (8th Cir. 1994)); *In re Oracle Sec. Litig.*, No. 90-0931, 1994 U.S. Dist. U.S. Dist. LEXIS 21593, at *3 (N.D. Cal. Jun. 16, 1994) (“A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.”).

Here, the Plan of Allocation was designed by experienced Class Counsel familiar with the strengths and weaknesses of the potential claims of the Settlement Class members. It provides recovery to Settlement Class members, net of administrative expenses and attorneys’ fees and expenses that the Court may choose to award, on a pro rata basis according to each Class member’s recognized claims of damages.

The Plan of Allocation was generally described in the Class Notice approved by the Court and mailed to Settlement Class members on December 29, 2006, pursuant to the Preliminary Approval Order. The Class Notice is also posted on Class Counsel’s settlement-

dedicated website, www.KellerSettlements.com.² As stated in the Class Notice, in general terms, the Distribution Amount will be allocated to Settlement Class members on a pro rata basis such that the amount received by each Settlement Class member will depend on his or her calculated loss, relative to the losses of other Class members, related to Plan investments in Company stock. Because the Distribution Amount is less than the total losses alleged to be suffered in this action, each Class member's proportionate recovery will be less than his or her alleged loss. If a Settlement Class member's proportionate recovery is *de minimis* (less than \$10), it may be forfeited to the Plans or distributed pro rata to other Class members.

The deadline for submitting objections was February 19, 2007. As of the date of this filing, Class Counsel have received no objections to the above-summarized method of allocating the Distribution Amount, either from Class members or from the Independent Fiduciary, who, in his January 23, 2007 evaluation, concluded that the proposed Settlement "would appear to provide a fair and reasonable return to the unnamed Class Members." *See* Report of Independent Fiduciary at p. 4 (Jan. 23, 2007), submitted as Exhibit E to the Sarko Decl.³

Class Counsel also note that plans of allocation similarly allocating class action settlement funds on a pro rata basis in ERISA company stock actions and securities actions have recently been approved by other courts as a reasonable approach to calculating and distributing

² Summary Notice, in the form previously approved by the Court, was published in *The Detroit Free Press* on January 8, 2007.

³ On February 21, 2007, Class Counsel received a letter from Mr. Ed Kwiecinski that purports to "reject the settlement," but does not pertain to the claims alleged in this Action or address or object to the Settlement terms, Plan of Allocation, or proposed attorneys' fees, reimbursement of expenses, or Class Representative compensation. Mr. Kwiecinski's letter is discussed in more detail in Section IV.5&6 of Named Plaintiffs' Memorandum in Support of Motion for Final Approval of ERISA Class Action Settlement, and a copy of his letter is submitted as Exhibit H to the Sarko Decl.

settlement funds. *See, e.g., In re CMS Energy ERISA Litig.*, No. 02-72834, 2006 U.S. Dist. LEXIS 55836, *7 (E.D. Mich. June 27, 2006) (Steeh, J.) (approving plan of allocation virtually identical to the plan presented here); *In re AOL Time Warner, Inc. Secs. & ERISA Litig.*, No. 02-5575, MDL No. 1500, 2006 U.S. Dist. U.S. Dist. LEXIS 17588, at *59 (S.D.N.Y. April 6, 2006) (plan of allocation provided “recovery to damaged investors on a pro rata basis according to their recognized claims of damages”); *Stoneridge Inv. Partners LLC v. Charter Communications, Inc.*, No. 02-1186, 2005 U.S. Dist. U.S. Dist. LEXIS 14772, at *33 (E.D. Mo. June 30, 2005) (plan of allocation approved as fair and reasonable where some shareholders could “benefit more from the Settlement than others depending upon when they purchased [the] shares, and if and when they sold those shares”); *In re Lucent Techs., Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 649 (D.N.J. 2004); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (ERISA company stock case plan of allocation approved as fair and reasonable where it allocated “the settlement amount among plan participants based on their losses”); *In re WorldCom, Inc., ERISA Litig.*, No. 02-4816, 2004 U.S. Dist. U.S. Dist. LEXIS 20671, at *29 (S.D.N.Y. Oct. 18, 2004) (Plan of Allocation approved as fair, adequate and reasonable where it was based on the “proportional share of the loss of each participant”), *vacated in part on other grounds* (fees); *Maley*, 186 F. Supp. 2d at 367 (approving Plan of Allocation as fair, adequate, and reasonable when it was devised by experienced class counsel familiar with the strengths and weaknesses of the potential claims of class members and proportionately reimbursed class members based on the extent of their injuries).

WHEREFORE, Class Counsel respectfully request that this Court enter an order approving the Plan of Allocation as fair, reasonable, and adequate.

A proposed form of Order and Final Judgment, in substantially the same form as submitted with the Preliminary Approval Motion, and which provides for final approval of the Settlement, Plan of Allocation, and request for attorneys' fees, reimbursement of expenses and award of compensation to Named Plaintiffs/Class Representatives, is submitted herewith.

Respectfully submitted this 27th day of February, 2007.

KELLER ROHRBACK L.L.P.

By: s/ Lynn Lincoln Sarko

Lynn Lincoln Sarko

Elizabeth A. Leland

Erin M. Riley

1201 Third Avenue, Suite 3200

Seattle, WA 98101-3052

(206) 623-1900

lsarko@kellerrohrback.com

bleland@kellerrohrback.com

eriley@kellerrohrback.com

Lead Counsel for Plaintiffs

Joseph Meltzer

Gerald D. Wells, III

SCHIFFRIN BARROWAY TOPAZ

& KESSLER, LLP

280 King of Prussia Road

Radnor, PA 19087

(610) 667-7706

jmeltzer@sbtclaw.com

gwells@sbtclaw.com

Michael Lieder

Mark Amadeo

SPRENGER & LANG, PLLC

1400 Eye Street, N.W. Suite 500

Washington, DC 20005

(202) 265-8010

mlieder@sprengerlang.com

mamadeo@sprengerlang.com

Plaintiffs' Executive Committee Counsel

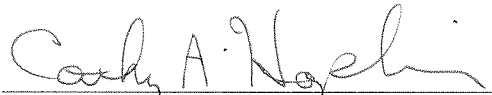
Stephen Wasinger
STEPHEN F. WASINGER PLC
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
(248) 544-6306
sfw@sfwlaw.com
Michigan Bar No. (P-25963)

Plaintiffs' Liaison Counsel

CERTIFICATE OF SERVICE

I, Cathy A. Hopkins, hereby certify that a true and correct copy of the foregoing **NAMED PLAINTIFFS' MOTION AND MEMORANDUM FOR APPROVAL OF PLAN OF ALLOCATION** s being served this date upon all involved parties by sending a copy of the same to all counsel listed on the attached service by electronic notification or first-class mail, postage pre-paid.

Dated this 27th day of February, 2007.

By: 
Cathy A. Hopkins, Legal Assistant
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Telephone: 206) 623-1900
Fax: (206) 623-3384
chopkins@kellerrohrback.com

Electronic Notification

<p>Jenice C. Mitchell (P61511) John R. Trentacosta (P31856) Scott T. Seabolt FOLEY & LARDNER LLP One Detroit Center 500 Woodward Avenue, Suite 2700 Detroit, MI 48226-3489 jmitchell@foley.com</p> <p>Counsel for Defendants Visteon Corp., Marla Gottschalk, Steven K. Hamp, Kathleen T. Hempel, Thomas Stallkamp, Robert M. Teeter, Kenneth R. Woodrow, Peter Pestillo, Michael F. Johnston, Robert H. Jenkins, Charles L. Schaffer, Daniel Coulson, William H. Gray III, Karl Krapek, Patricia L. Higgin, James D. Thornton, and Anjan Chatterjee (collectively the “non- Committee Defendants”)</p>	<p>John F. Hartmann Michael A. Duffy KIRKLAND & ELLIS, LLP 200 East Randolph Drive Chicago, IL 60601 maduffy@kirkland.com</p> <p>Counsel for Defendants Visteon Corp., Marla Gottschalk, Steven K. Hamp, Kathleen T. Hempel, Thomas Stallkamp, Robert M. Teeter, Kenneth R. Woodrow, Peter Pestillo, Michael F. Johnston, Robert H. Jenkins, Charles L. Schaffer, Daniel Coulson, William H. Gray III, Karl Krapek, Patricia L. Higgin, James D. Thornton, and Anjan Chatterjee (collectively the “non- Committee Defendants”)</p>
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Via U.S. MAIL

<p>Paul J. Ondrasik, Jr. STEPTOE & JOHNSON LLP 1330 Connecticut Avenue NW Washington, D.C. 20036</p> <p>Liaison Counsel For Committee Defendants, Defendants: John Cavanaugh, David Doster, Derek Fiebig, John F. Kill, Peter Look, Robert H. Marcin, David Peace, Barbara Quilty, Darren Wells and Mary Winston</p>	<p>Lawrence F. Campbell Thomas G. McNeil DICKINSON WRIGHT PLLC One Detroit Center 500 Woodward Avenue, Suite 4000 Detroit, MI 48226</p> <p>Local Counsel for Committee Defendants: John Cavanaugh, David Doster, Derek Fiebig, John F. Kill, Peter Look, Robert H. Marcin, David Peace, Barbara Quilty, Darren Wells and Mary Winston</p>
<p>Ed Kwiecinski 12500 Tech Drive Livonia, MY 48150</p>	