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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARK HALE, et al.,)
)
 Plaintiffs,)
)
 vs.) No. 12-cv-00660-DRH-SCW
)
 STATE FARM MUTUAL AUTOMOBILE)
 INSURANCE COMPANY, et al.,)
) September 4, 2018
 Defendants.)

RECORD OF TRIAL
BEFORE THE HONORABLE DAVID R. HERNDON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 *(Proceedings convened in open court at 2:32 p.m.)*

2 **THE COURT:** Let the record reflect that we're in
3 open court. We've called the matter of *Mark Hale, et al.*
4 *vs. State Farm, et al.*, 12-660.

5 The parties are present together with an abundance
6 of counsel. So, if you -- if any lawyer needs your
7 appearance for this particular hearing, just give Alex your
8 name and who you represent and she'll make sure that there's
9 an appearance showing for you.

10 So, filed literally moments ago were documents
11 relating to a possible settlement of this matter, including
12 Settlement Agreement and Memorandum in Support from both
13 sides, along with a proposed order, which I have in my hand.

14 So, from the plaintiffs' perspective, I've read
15 through all of these things, in fact, several times now.
16 Anything that you want to talk about before I make findings
17 based on what I've read? Mr. Clifford?

18 **MR. CLIFFORD:** Your Honor, no, other than to
19 express our deep appreciation to the Court and its staff for
20 the abundance of courtesies and energies and efforts that
21 have been expended on behalf of the class and our clients,
22 and also to counsel on the other side of this case who have
23 litigated this matter with professionalism and courtesy and
24 considerable effort. We didn't always see eye-to-eye but we
25 did it with a smile on our face and respect for those who

1 were saying what they were saying, and we are grateful to
2 have litigated a case with that kind of civility being
3 demonstrated by the parties and their lawyers.

4 Thank you, sir.

5 **THE COURT:** Thanks so much.

6 Mr. Safer, anything defendant would like to add for
7 State Farm?

8 **MR. SAFER:** No, Your Honor.

9 **THE COURT:** Mr. Veith, for Defendant Murnane?

10 **MR. VEITH:** No, Your Honor. Thank you.

11 **THE COURT:** Mr. Scott, for Defendant Shepherd?

12 **MR. SCOTT:** Only that, Your Honor, we would join in
13 the response that was filed by State Farm.

14 **THE COURT:** Sure.

15 So, Mr. Clifford made reference to the
16 professionalism, and it certainly showed in the times that I
17 have personally handled matters in this case and throughout
18 the course of our selection of a jury, and I appreciate your
19 comments but also appreciate the professionalism which both
20 parties have shown during the course of this long dispute.

21 So, this judge, while not presiding over discovery
22 disputes and status conferences, having delegated those
23 responsibilities to Magistrate Judge Williams, has reviewed
24 the record, held numerous meetings and conferences with
25 Judge Williams in person and by phone, ruled on a number of

1 dispositive motions, ruled on appeals of Judge Williams'
2 orders, prepared and reviewed documents in preparation for
3 trial, including ruling on many motions pursuant to Federal
4 Rule of Evidence 702, ruled on numerous motions in limine,
5 presided over the selection and impaneling of the jury, all
6 of which, when considered together, was accomplished over
7 the years, this case having been pending since 2012.

8 As a consequence, the Court is completely, fully,
9 and thoroughly familiar with the complaints and answers, the
10 multitude of pleadings, and the Final Pretrial Order. The
11 Court is fully aware of the facts alleged by plaintiffs,
12 denials and affirmative defenses of defendants, the multiple
13 and complex legal issues at stake. The Court has reviewed
14 the Settlement Agreement, the Motion for Preliminary
15 Approval, and all the supporting documents, including a
16 proposed Amended Complaint. Therefore, this Court is
17 singularly suited to make the findings, and they are as
18 follows.

19 The Amended Complaint, first of all, will be
20 received and the filing will be allowed instanter. There's
21 been more than extensive motion practice and discovery over
22 the course of this litigation, starting in 2012, plus the
23 lawyers had a base of knowledge from portions of a prior
24 case. All of that is significant from the standpoint of the
25 lawyers on both sides of this litigation being more than

1 prepared to move the Court for approval of the settlement
2 proposal, especially when one considers that the extent of
3 knowledge is likely as close to complete as one could ever
4 achieve in a piece of litigation, short of knowing what the
5 jury would do.

6 The settlement proposal clearly and exceedingly
7 brings this disposition well within the range of possible
8 approval. While it is clear that the motion practice and
9 discovery in this matter have been extraordinarily
10 protracted and complex, with dozens of trial witnesses
11 committed to providing testimony, with thousands of trial
12 exhibits with a vast number contested, a trial schedule
13 already published by the Court which anticipates the next
14 month-and-a-half in trial, all of which would clearly result
15 in substantial expense to both sides, the complexity,
16 length, and expense of this case favors a settlement such as
17 the one proposed here today.

18 I should note that without preliminary approval of
19 this settlement an impaneled jury stands ready to return for
20 trial at my beck and call. Each side has a trial team that,
21 I'm convinced, believes strongly in their case, but from the
22 perspective of the party required to prosecute this case,
23 many difficulties lay ahead if the matter's not settled with
24 fair, adequate, and reasonable terms.

25 In addition to a significant question regarding

1 *Rooker-Feldman*, the plaintiffs face difficult issues having
2 to do with *Noerr-Pennington*, perhaps *res judicata*, and a
3 fact-based statute of limitations issue in the setting of a
4 case of a class of persons allegedly adversely affected and
5 the question of the base of knowledge and timing thereof
6 which would rule the day on the question of the statute of
7 limitations. Therefore, the strength of the plaintiffs'
8 case compared to the terms of the settlement heavily favor
9 settlement.

10 At this preliminary stage of the process, the Court
11 is not aware of any plaintiff opposition to the settlement,
12 but the process continues and a fair determination on this
13 issue, like the others, must wait for the final fairness
14 hearing, which clearly must be pursued by this Court on the
15 strength of the favorable findings relative to a settlement
16 of this matter. With extensive work and knowledge of this
17 case, counsel for both sides are more than qualified to
18 opine on the appropriateness of this settlement proposal,
19 and all counsel support the settlement, even if some are
20 having to throttle down their trial adrenaline.

21 The Court was favorably impressed with the notice
22 plan and declaration of the notice provider which was
23 provided to the Court prior to the beginning of the trial
24 with an indication that a similar plan is in the offing for
25 the settlement process for which the Court expects

1 finalization imminently, and would direct that that plan be
2 filed tomorrow.

3 The class proposed in association with the proposed
4 settlement is the same as previously certified by the Court
5 and is defined as follows:

6 All persons in the United States, except
7 those residing in Arkansas and Tennessee, who,
8 in between July 28, 1987, and February 24,
9 1998, (1) were insured by a vehicle casualty
10 insurance policy issued by Defendant
11 State Farm, and, (2) made a claim for vehicle
12 repairs pursuant to their policy and had
13 non-factory authorized and/or non-OEM
14 (Original Equipment Manufacturer) "crash
15 parts" installed on or specified for their
16 vehicles or else received monetary
17 compensation determined in relation to the
18 cost of such parts.

19 Excluded from the class are employees of
20 Defendant State Farm, its officers, its
21 directors, its subsidiaries, and affiliates.

22 In addition, the following persons are
23 excluded from the class: (1) All persons who
24 resided or garaged their vehicles in Illinois
25 and whose Illinois insurance policies were

1 issued/executed prior to April 16, 1994, and
2 (2) all persons who resided in California and
3 whose policies were issued/executed prior to
4 September 26, 1996. Excluded from the class
5 are all persons who previously opted out of
6 the class.

7 The Court hereby confirms Mark Hale, Todd Shadle,
8 and Laurie Loger as class representatives. Epiq Class
9 Action and Claims Solutions, Incorporated is appointed
10 claims administrator and, for the purpose of effectuating
11 proper notice, will consult with Cameron R. Azari of Hilsoft
12 Notifications.

13 The Court hereby sets the final fairness hearing
14 and possible approval, if supported, for Thursday,
15 December 13, 2018, at 9 a.m. in this courtroom.

16 A number of deadlines are established by the Court
17 for the purpose of notice, filings, objections, and other
18 associated pleadings in order to allow the Court sufficient
19 time to examine closely each such filing, and those will be
20 in the order of the Court following this hearing.

21 Court notes that if this settlement is not
22 consummated for some reason, a close and aggressive timeline
23 is established to resume a trial in this matter. The Court
24 further notes that the legal theory of recovery on which
25 this proposed settlement is based is unjust enrichment, and

1 that defendants all deny liability to compensate plaintiffs
2 but agree with plaintiffs that the proposed settlement is an
3 appropriate resolution of this lengthy, costly, complex
4 class litigation.

5 Therefore, the Court finds the proposed settlement
6 meets the requirements for preliminary approval and will,
7 therefore, preliminarily approve the same subject to the
8 final fairness hearing.

9 So, Ms. Cabraser, anything I forgot to talk about?

10 **MS. CABRASER:** No, Your Honor. And thank you very
11 much for reviewing and considering the proposed settlement
12 by the parties and by setting dates in connection with
13 granting preliminary approval.

14 The parties have been under an order of
15 confidentiality to this moment so that we were able to
16 complete the negotiation and documentation and review
17 process, and with the Court's permission, the parties have
18 prepared and agreed press release so that the public can be
19 informed of their positions in the matter, and we would
20 appreciate the Court's allowance of going forward with that
21 and being relieved of our Court ordered confidentiality.

22 **THE COURT:** You're quite welcome. And I need about
23 five minutes after I get off the bench to go sign that order
24 and then you can issue your press releases.

25 Ms. Birnbaum, anything I forgot to talk about?

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MS. BIRNBAUM: No, Your Honor. We thank you for giving us the room and time and space to get this done. We appreciate your efforts. Thank you.

THE COURT: You're quite welcome. I appreciate the efforts of all parties in this case for a conclusion of this nature.

And if there's nothing further, we stand adjourned. Thank you, folks.

(Proceedings adjourned at 2:45 p.m.)

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REPORTER'S CERTIFICATE

I, Laura A. Esposito, RPR, CRR, CRC, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported in shorthand the proceedings contained in the foregoing 11 pages, and that the same is a full, true, correct, and complete transcript from the record of proceedings in the above-entitled matter.

Dated this 4th day of September, 2018.

 Digitally signed by Laura Esposito
Date: 2018.09.04 16:27:22 -05'00'

LAURA A. ESPOSITO, RPR, CRR, CRC