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Plaintiffs,

vs.

COOPER TIRE & RUBBER COMPANY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
CIVIL ACTION
DOCKET NO. L-008830.00

OPINION AND ORDER

Argued: January 29-30, 2002
Decided: September 13, 2002

Allan Kanner for plaintiffs (Kanner & Associates)

John E. Keefe for plaintiffs (Lynch Martin)
Arvin Maskin for defendants (Weil, Gotshal & Manges)

This is a Joint Motion by Class Representatives and Cooper Tire & Rubber Company ("Cooper") for an order certifying and approving the nationwide settlement class embodied in the settlement agreement entered into by the parties on September 7, 2001 and preliminarily approved for settlement on October 26, 2001, respectively. For the reasons set forth below, the court will grant the motion, certify the class and approve the settlement pursuant to R. 4:32[1]. The court's analysis, findings of fact, conclusions of law, ethical considerations and attorney fee issues are as follows:

I. HISTORY OF COOPER TIRE & RUBBER COMPANY

The matter before this court is to determine whether the settlement reached by class counsel and the defendant, is fair, reasonable and adequate. Cooper Tire & Rubber Company (hereinafter "Cooper") is the second largest tire distributor in the country. Middlesex County, New Jersey is the site of Cooper's largest tire distribution center servicing customers in twelve states throughout the East Coast with 7 million of the 40 million tires produced annually by Cooper passing through the distribution center. Cooper's sales in the tri-state are substantial. Pursuant to deferral among the state courts, the Multi District Litigation ("MDL") Federal Court and all parties, New Jersey was selected as the situs for settlement.

Cooper is headquartered in Findlay, Ohio and specializes in the manufacture and marketing of automotive products. Cooper products include automotive, motorcycle and truck tires, inner tubes, tread rubber and equipment. Cooper-Standard Automotive is an original equipment supplier of sealing, trim, NVH control systems and fluid handling systems for the automotive industry in North America, Europe, Australia and South America. Cooper has more

[1] New Jersey Court Rule 4:32 Pressler, Rules Governing the Court of the State of New Jersey (Gann 2002).

than 20,000 employees and 55 manufacturing facilities in 13 countries. By class definition, this case pertains solely to first purchaser consumers who purchased automobile tires from January 1, 1985 to the first day of the first production of January 6, 2002, excluding those who are not involved in personal injury or property damage lawsuits.

II. NATIONAL/STATE LITIGATION

The parties in this litigation engaged in hard fought and highly contentious litigation for approximately twelve months in numerous courts, both state and federal. This settlement is the culmination of extensive litigation arising under the New Jersey Consumer Fraud Act (hereinafter "NJCFA") pursuant to N.J.S. 56:8-1 to -48 et seq and similar unfair trade practice acts in both state and federal courts. The claims arose as a result of the defendant's alleged acts and omissions regarding the sale of its steel belted radial tires. This settlement comes after the completion of extensive discovery including confirmatory discovery and investigation of all available claims and defenses.

On October 27, 2000, plaintiffs Anthony Talalai and David Michael Thompson, Talalai, et al, v. Cooper Tire, No. L-008830-00, filed a national class action lawsuit against defendant Cooper Tire & Rubber Company in the Superior Court of New Jersey, Middlesex County, Law Division, alleging violations of the NJCFA. Counsel chose to pursue the consumer fraud theory rather than the products liability theory because the remedy focused on consumer expectations which could be best addressed under an aggressive consumer class action statute such as the NJCFA.

Specifically, plaintiffs challenge: (1) the ingredients used by defendant, which allegedly lead to the production of defective tires, *e.g.*, tires with adhesion problems in various layers of the tire (which would be manifested as visible gas bubbles or blisters on the inner liner); (2) the

decision by defendant to sell many of these tires instead of discarding or rejecting them; (3) the decision by defendant to "awl"[2] or otherwise eliminate the manifestation of these adhesion problems prior to sale, although non-manifest bubbles or adhesion problems remained elsewhere in the tire; and (4) the decision by defendant to "cover up" the foregoing in various ways, including but not limited to its adjustment processes and warranty practices in violation of various customer fraud or unsafe practice statutes throughout the country.

As a result of defendant's alleged acts and omissions, plaintiffs filed class actions in numerous state courts throughout the country on behalf of the owners of approximately 170 million tires manufactured by defendant, pursuant to consumer protection acts, unfair and deceptive trade practices acts, or the like. Talalai was the first of these class actions filed and is the only national class action. The remaining 32 class actions are state class actions pending in various state and federal courts. These combined 33 class actions are collectively referred to herein as the "related actions." This court issued Case Management Order ("CMO") No.1 on February 8, 2001 which ruled that this litigation would be governed by the Federal Judicial Center's Manual for Complex Litigation (Third Edition 2000) and the Rules of the Courts of the State of New Jersey. This court appointed John E. Keefe Jr. of Lynch Martin, as liaison counsel and Allan Kanner of Allan Kanner & Associates, as Lead Counsel for the plaintiffs. Alan E. Kraus of Latham & Watkins, and Anne M. Patterson of Riker, Danzig & Scherer, Hyland & Paretti, were named as liaison counsel for the defendant. These appointments as well as case procedures were embodied in CMO No. 1 which were promulgated on the court's web page and provided to all appropriate parties.

[2]During the tire manufacturing process, some tires manifest visible gas bubbles or blisters in the inner lining (which result from the hot trapped gas). Awling is a process in which a tire is punctured with an "awl" or an ice pick in order to release the trapped gas.

Class counsel, led by Allan Kanner consisted of forty eight (48) law firms, with a total of 124 attorneys and 91 paralegals/clerks. Class counsel kept contemporaneous records of the time each attorney, paralegal and clerk spent performing work on this case.

Each of the related actions was initially filed in state court and subsequently removed by defendant to federal court. Thereafter, plaintiffs filed motions to remand. Plaintiffs were successful in getting five (5) actions remanded to state court, and the parties and courts have proceeded in a coordinated fashion. Talalai, et al. v. Cooper Tire & Rubber Co., No. 00-5694 (AJL), slip op. (D.N.J. Jan. 5, 2001)(Lechner, J., granting remand); Krystyan v. Cooper Tire & Rubber Co., No. 00-40431, slip op. (E.D. Mich. Jan. 22, 2001) (Gadola, J., granting remand); Nolan v. Cooper Tire & Rubber Co., No. 01-83, slip op. (E.D. Pa. Mar. 14, 2001) (Ludwig, J., granting remand); D'Alessio v. Cooper Tire & Rubber Co., No. 00-395-P-C, slip op. (D. Maine Jan. 31, 2001) (Carter, J., granting remand); Dunn v. Cooper Tire & Rubber Co., No. A1-00-136, slip op. (D. N.D. Feb. 6, 2001) (Conmy, J., granting remand) (referred to as Talalai, Krystyan, Nolan, D'Alessio, and Dunn respectfully in their individual capacity, or collectively as the "remanded actions").

Each state named above has denied Cooper's motions to dismiss. When it became apparent that motion practice and discovery in the various states were becoming duplicative in time and resources, the state court judges began joint coordination and devised a more equitable, economical and expedient plan. In all five active state actions even subsequent to the remand, cooperation commenced in a historic multi-state judicial/bar proceeding. State court judges, Corodemus of New Jersey, Colombo of Michigan, Humphrey of Maine, Wefald of North Dakota, Herron of Pennsylvania, as well as the MDL Judge, Holschuh of the United States District Court for the Southern District of Ohio, shared information on the status of the litigation

in their respective courts. This novel approach to interstate/MDL court coordination significantly reduced litigation time, costs and resources. Although this cooperative practice is alluded to in the Manual for Complex Litigation (Third Edition 2000), this appeared to be the first case to actually implement this level of interstate coordination. Continuing this practice, counsel compacted in one year what would have normally taken three years of litigation time. Thus, persons unfamiliar with the procedural history of this case may be mistaken in interpreting the work accomplished by counsel as unusually short in duration.

The key to accomplishing this type of interstate cooperation was the parties' joint consent to a Special Master suggested by Judge Columbo of the State of Michigan, Circuit Court, Wayne County. All state judges after having received consent from the parties agreed to have Professor Francis McGovern of The Duke University School of Law as the Special Master. Professor McGovern was instrumental in coordinating discovery, legal issues, joint hearings, notifications and facilitating the transfer of information between counsel and the courts. In the summer of 2001, with the parties request and consent, Professor McGovern was subsequently selected by the parties to serve as the mediator between the plaintiffs and Cooper.

The majority of the non-state class actions pending in federal court were consolidated in the United States District Court for the Southern District of Ohio for MDL treatment before Judge Holschuh. All briefing, discovery and other pretrial matters were stayed in the MDL pending a ruling on plaintiffs' motions to remand and defendants' motions to dismiss. Upon the preliminary notification to the coordinated state courts that a settlement was close, this court ordered settlement counsel to appear before Judge Holschuh prior to any commitments for resolution in state court. This court was prepared to defer to Judge Holschuh for total resolution. All state court judges chose to defer to New Jersey as the national class complaint had been

previously filed here by the plaintiffs. Thus, this is not a case where multi-jurisdictional examination is contested, in controversy or overlapping. Rather it is a settlement of all state litigation with deferral to New Jersey for settlement proceedings. Since it was acknowledged by the state court judges and the MDL judge that New Jersey's CFA statute was the broadest statute in scope, venue remained in New Jersey.

It has been represented on the record by counsel that after reviewing the NJCFA, Judge Holschuh would not seek to prevent New Jersey courts from proceeding. Judge Holschuh recognized this Court's jurisdiction over this litigation:

> [I]t is obvious that I have no control over proceedings that are pending in a state court. I have no jurisdiction that extends to those proceedings. My jurisdiction is confined to the cases on the MDL docket that have been transferred to me. I can issue no orders to state court judges. Any order of that kind would be far beyond my jurisdiction and would be totally inappropriate....
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> * * *
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> But it would be entirely, solely within the discretion and the judgment of the state court judge, as to whether he or she felt that [coordination of state court case with federal court litigation] would be appropriate. But I have no power or authority with regard to the state court proceedings that are not within my jurisdiction. I cannot restrain a state court judge from taking action in his or her case.
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> [In re Cooper Tire & Rubber Co. Tire Products Liability Litigation, MDL No. 1393 (S.D. Ohio 3/19/01), Transcript of March, 19, 2001 Proceeding at 23:13-21, 24-25:5.]

The Federal MDL Court, like the state courts deferred to this court the task of ruling on final approval after a settlement was presented to this court.

On August 31, 2001, the parties entered into a Stipulation of Stay in all proceedings, memorialized in a Consent Order signed by Professor McGovern, for ten (10) business days in order to allow the parties to pursue national settlement. Formal and informal stays were agreed

to among the parties. The courts associated with the actions pending in federal court assisted the parties in this effort.

On September 7, 2001, the parties entered into a memorandum of understanding ("MOU"), which continued the previous stay which resulted in a stipulation of settlement. At that time all counsel in state litigation were aware of the existence of the MOU and anticipated proceedings seeking preliminary approval. The stipulation mandated that the defendant establish a settlement procedure wherein each class member would receive notice of the proposed class action settlement and would be provided with a form to be completed and returned by a January 15, 2002, in the event a class member wished to opt out of the settlement class or object to the proposed settlement. The bilingual notice described the benefits class members would receive under the settlement and indicated that defendant will pay the costs of notice and settlement.

On October 26, 2001, the parties submitted a Joint Motion for Preliminary Approval, Stipulation of Settlement and Release, and plaintiff's Memorandum of Law in Support of the Joint Motion. After conferring with each of the state courts, on November 1, 2001, this court entered an order preliminarily approving the settlement reached between class counsel and defense counsel for Cooper Tire & Rubber Company, for a national class and directing the dissemination of nationwide notice. The court set January 29, 2002 as the date to commence a fairness hearing regarding the settlement agreement. Pursuant to CMO 1, any party, whether liaison or not, had access to this court to communicate any problems or objections with the litigation, settlement, etc. All case management orders were timely posted on the court's web page under the Mass Tort Information Center at www.judiciary.state.nj.us.

Following entry of the Superior Court's Order dated November 1, 2001, the federal MDL court entered its order deferring to the Superior Court in Middlesex County, the job of ruling on

the issue of final approval and other matters. In re Cooper Tire & Rubber Co. Tire Products Liability Litigation, MDL No. 1393 (S.D. Ohio Nov. 9, 2001) (Holschuh, J.), Order No. 3 and Order No. 4; see also, McKinney v. Cooper Tire & Rubber Co., No. 01-M-1450 (Matsch, J.), Order Discharging Order to Show Cause and For Stay. Judge Matsch's Order Discharging Order to Show Cause and For Stay dated November 27, 2001 states,

> **Pursuant to the joint response, filed November 26, 2001, to the order to show cause issued November 9, 2001, it is ORDERED that the order to show cause is discharged and this civil action is stayed until either final approval of the settlement pending before the Superior Court of New Jersey in Talalai, et al. v. Cooper Tire & Rubber Co., No. L-008830-MT, or a final order by the Judicial Panel on Multidistrict Litigation.**
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> [Judge Matsch. Order Discharging Order to Show Cause and For Stay dated November 27, 2001.]

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Judge Holschuh's Order No. 4 dated January 2, 2002 states,

The Parties through their Joint Motion To Dissolve Orders For Preservation Of Record And Tires, have informed this Court of the following:

> **1. The Parties have reached a national settlement of all plaintiffs' claims embodied in the proceedings before this Court and all related actions, which settlement is being implemented in the New Jersey action styled Talalai, et. al. v. Cooper Tire & Rubber Co., No. L-008830-MT (Superior Court of N.J. Middlesex County).**
> **2. The New Jersey court has preliminary certified a national settlement class in Talalai and, following a period for notice and opportunity for opt out and comment/objection, will hold a hearing on final approval of the settlement, currently scheduled for January 29, 2002. *Assuming approval of the settlement, there would be no basis for further pursuit of the cases in this proceeding, and the parties will move this Court for their dismissal with prejudice.***
> **3. There are certain orders in the Talalai action that provide for evidence preservation, addressing both documents and tires, which have been provided to and examined by this Court. Assuming the settlement in Talalai is approved, the**

> **preservation orders there will be dissolved upon the effectiveness of the settlement. At that point, but for restrictions arising from orders in other courts including orders in this Court , Cooper would be able to dispose of materials, thus relieving it of the burdens associated with preservation.**
>
> **4. As reflected in the record of proceedings in this Court, there are two orders that, in combination, address preservation of documents and tires. One order was filed on January 9, 2002 by Magistrate Judge Roby of the Eastern District of Louisiana, before that case was transferred to this Court. The other order was entered by this Court on March 23, 2001. Both of these orders are still in effect.**
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> ***5. There is nothing material in the orders in the proceedings in this Court that is not within the scope of the broad Talalai orders, which now exist in the context of a proposed settlement with a tentatively certified national class.***
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> **6. A dissolution of the orders in this case would help to centralize matters for disposition in a single forum, to lay the foundation for Cooper to take appropriate action on collected material when the settlement in Talalai becomes effective, and to avoid the potential for collateral impairment of, or delay in achieving, certain of the results expected form the settlement.**
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> Based on the representations by Lead Counsel and the Court's examination of the various orders described above, the Court determined that the orders in the proceedings in this Court – specifically, the January 9, 2002 and March 23, 2001 orders described above – are redundant and no longer necessary, and should be dissolved. Accordingly, the Court GRANTS the Joint Motion and ORDERS that the preservation orders dated January 9, 2001 and March 23, 2001 be, and they hereby are dissolved.
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> [Judge Holschuh, Order No. 4 dated January 2, 2002] (emphasis added).

A fairness hearing was held in the Superior Court of New Jersey, Middlesex County, Law Division, on January 29–30, 2002 to determine whether the proposed settlement was fair, reasonable and adequate. Approximately nineteen (19) class members through counsel filed objections to the settlement agreement. Objections were filed by only twenty-six (26) individuals of the potential 42,500,000 million putative class members and only one public

interest group's objections; Public Citizen[3]. There were seven objections filed by pro se claimants. On August 30, 2002, this court received letters from the objectors, other than the pro se claimants, withdrawing their objections and motions to intervene. To date, all the objectors represented by counsel have withdrawn their objections and all motions which were filed before this court.

On January 23, 2002, the plaintiffs submitted their memorandum in addressing the motion for final approval of class action settlement, class certification, ethical matters in opposition to objections, motions to intervene and motions for pro hac vice admission. On January 25, 2002, plaintiffs filed their memorandum in support of an award of attorney's fees. On the same day, defendant filed it's memorandum in support of plaintiffs' motion for final approval of class action settlement and in opposition to the objections.

On February 6, 2002 this court issued an interim order requiring certain former class counsel, then objectors, to cease and desist from transmitting documents amongst other counsel or third parties of confidential documents as described under the Talalai case, without Mr. Talalai's permission.

On March 1, 2002 defendant submitted it's memorandum in rebuttal to objections to the final approval of class action settlement. The court closed the record on January 30, 2002, any subsequent filings not otherwise directed or ordered by the court were deemed improper and are not considered herein.

III. PROCEDURAL HISTORY OF TALALAI

Since the filing of the related actions, plaintiffs and defendant have been immersed in discovery, motion practice and trial preparation. The temporal duration of actual litigation does

[3] Most objectors failed to file timely motions for pro hac vice, for admission to practice in New Jersey under R. 1:21-2 and intervention under R. 4:33-1 and R. 4:33-2.

not accurately reflect the amount of work that occurred on the Cooper Tire cases when one considers the breadth and scope of this national litigation prior to coordination which ensured judicial consistency in federal and state courts. In examining the expedition of time, expenses and resources for litigation to continue in a meaningful and equitable manner, the stakes were becoming cost prohibitive. For example, at the time of settlement, the annual 10Q disclosure statement revealed that defense costs by Cooper were $40 million as of September 1, 2001, with a virtual army of national, state and local defense counsel at work. Thus, coordination was successful in maximizing coordinated equity, time and resources. No single plaintiff could have withstood the strident responses of the defendant. At this juncture, the stakes, time and expenses were rising for both sides.

A. Documents, Depositions and Tires

The discovery in the related actions was extensive and sufficiently complete to form a valid basis for the parties to enter into an arms length settlement negotiation. Defendant produced almost 3,000 boxes of documents to the depository in Cleveland, Ohio. At the time the stay was entered to permit settlement negotiations, class counsel's document review team committed four consecutive weeks to reviewing those documents.

Plaintiffs received a plethora of documents from various other sources, including regulatory agencies, governmental agencies, other tire manufacturers, and numerous other third parties. These documents, as well as the voluminous public literature on tire manufacturing, agency regulations and other tire industry publications were reviewed for use in discovery and preparation for trial. [4]

[4] The parties at that time were under a Protective Order of Confidentiality, Order No. 2, dated April 16, 2001, issued by Judge Columbo of the State of Michigan, Circuit County, Wayne County, which in pertinent part states, "this order shall govern Confidential Material produced or disclosed by Cooper in response to discovery conducted in this matter… Access to Confidential Material shall be limited to Authorized Persons, solely in the performance of their

After months of discussions regarding the scheduling of depositions, plaintiffs deposed John Ebert, Thomas Griffith, Stephan Cramer, Gene Arnold, James Geers, James Keller, Brian Siferd, Douglas Fenbert, Wayne Pneuman, Jay Richburg and Travis Reeves. Plaintiffs were preparing for additional depositions when the settlement discussions began and the parties entered into a voluntary discovery stay in all of the related actions. Plaintiffs were also preparing to take the depositions of various third party tire dealers that sold tires manufactured by the defendant, including PepBoys and Sears.

Defendant took the depositions of named plaintiffs in Krystyan and Berends v. Cooper Tire & Rubber Co., No. C2-01-181 (S.D. Ohio) and was preparing to take the depositions of the named plaintiffs in Dunn, D'Alessio, and Talalai. Defendant also inspected the named plaintiffs' tires and vehicles in Krystyan, Dunn and D'Alessio and was preparing to do the same in Talalai. The litigation was fierce and contentious on all fronts, often with admonitions by the court to parties about professionalism.

The parties, their experts and consultants expended weeks inspecting thousands of defendants' tires accumulated under the Michigan court's preservation order and discovery ordered by this court. It was represented to the court that the scope of the tire inspection was unprecedented. Discovery was ongoing when the settlement talks began in August 2001.

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duties in connection with trial preparation and trial of this case." Order No. 2 was later vacated by Confidentiality Order No. 4, dated August 6, 2001, which stated that, "[A]ll matters covered by the New Jersey court's order of 7/20/01 shall remain confidential until a final interlocutory appeal or the court's order becomes otherwise effective. All other discovery shall proceed expeditiously and remain confidential."

Judge Columbo issued a national trial schedule that both parties adhered to while running a dual track of advocacy in litigation and settlement-mediation. Judge Corodemus issued discovery orders on issues that were otherwise not settled with the Special Master.

B. General Motion Practice, Hearings and Trial Preparation

Over one hundred briefs were filed in the combined related actions. In Talalai[5], the parties submitted a multitude of briefs on issues of federal jurisdiction associated with plaintiffs' motion to remand, as well as other briefs on stay, dismissal, NJCFA, discovery and protective order issues. Numerous memoranda and letter briefs were submitted in Talalai regarding evidence preservation, including tire preservation. Each of these briefs, as well as other briefed issues not specifically mentioned, were accompanied by numerous exhibits supporting the parties' respective positions. Similar motions were made by both sides in state and federal courts. As initial jurisdictional issues were raised, the remand, stay and dismissal issues were briefed in each of the other state class actions as well. In addition, following defendant's request for consolidation and coordination on the federal level, multiple briefs were filed by the parties addressing whether multidistrict treatment of the class actions pending in federal court was appropriate. Following the Judicial Panel on Multidistrict Litigation's ("JPML") creation of an MDL court, the parties were required to address the transfer of subsequent cases to the MDL court. No state or federal judge operated in a vacuum. Facilitation of communication was efficiently organized and implemented by Professor McGovern.

The parties were operating under various scheduling orders issued in the remanded cases, with the deadline for discovery related to class issues looming. Numerous discovery motions were filed in the remanded cases. In addition, the parties and courts in these remanded cases

[5] Talalai, et al, v. Cooper Tire & Rubber Co., No. L-008830-00 MT, Superior Court of New Jersey, Law Divison, Middlesex County.

reached a historic agreement to cooperate to the extent practicable for discovery purposes. Issues of confidentiality and protective orders were briefed extensively in the coordinated process, as well as other discovery motions and letter briefs addressed to the court-appointed Special Master Professor McGovern. Innovative motion practices of joint interstate telephonic hearings were employed for the resolution of joint discovery issues. Plaintiffs were preparing motions to compel certain discovery and motions for sanctions at the time settlement discussions began. The New Jersey Superior Court held a video conference motion with state and national counsel increasing productivity and reducing costs. So aggressive was the litigation at times however, that counsel's zeal seemed to outweigh the issues before the court.

As mentioned above, plaintiffs' document review team was in the process of reviewing the documents produced by defendant in its Cleveland depository, and plaintiffs' technical team, along with their experts and consultants, had just concluded an initial inspection of the thousands of tires that defendant had accumulated under preservation orders and were proceeding to work out a destruction, protocols for testing future inspections of tires, at the time settlement discussions began. Therefore, substantial ground in pleadings and discovery was covered when negotiations with Professor McGovern commenced.

In August and September 2001 the parties entered into confidential negotiations. By request and consent, both sides selected Professor Francis McGovern as mediator for settlement discussions. Defendant was now represented for settlement purposes by attorney Arvin Maskin of Weil, Gotshal & Manges, New York, New York. Negotiations took place into October 2001 until a Memorandum of Understanding was signed. What followed was the result of continuous negotiations. By consent, the class and defense counsel resolved all disputes and assented to all settlement terms and subsequently settled counsel fees and costs.

IV. THE PROPOSED SETTLEMENT

A. The Proposed Class

The settlement class is defined as follows:

> All First Purchasers of a steel belted radial tire in the United States[6] manufactured by COOPER TIRE & RUBBER COMPANY in the United States (whether sold under the COOPER TIRE & RUBBER COMPANY label or a private label) from January 1, 1985 until, but not including, the first day of the first production period of 2002 (i.e. January 6, 2002), and who still retain said tire, excluding**:** (a) defendant; (b) consumers who have sustained personal injury and/or property damage; (c) any Used Tire Business; and, (d) any judicial officer(s) presiding over the related actions.
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> [Plaintiffs' Memo in Support of Final Approval ("Plaintiff's Memo") at 19.]

By definition, the class does not include personal injury or property damage claims or products liability theories. Likewise, the settlement does not involve a recall. Rather, the settlement resolves small consumer fraud claims nationwide which have not been brought in the past. It is integral to remember this case is one for consumer fraud only and not, a products liability or related tort action. This case is a vehicle to resolve consumer fraud claims where persons would not otherwise be able to do so on an individual basis.

B. The Benefits of the Settlement

The proposed settlement before the Court provides the following benefits: (1) an Enhanced Warranty Program; (2) an Enhanced Finishing Inspection Program; (3) a Consumer Education Program; and (4) Resolution of Counsel Fees.

[6] Included Puerto Rico, U.S. Virgin Islands and Guam.

The settlement also provides for the payment of all costs of settlement notice, administration, the Special Master appointed by the court to aid in pretrial discovery, a settlement administrator to be appointed by the court to oversee the settlement administration, the independent Compliance Monitor, independent auditing firms, incentive awards to named plaintiffs, class counsel's attorney fees and litigation costs to be paid by defendant, separate and apart from the benefits to class members.

The Enhanced Warranty provided in this settlement does not require class members to complete any claim forms. Instead the warranty benefit is an addition to the existing warranty that class members currently have on their tires. Thus, if a class member overlooked the original class notice, he still may attain the warranty enhancement benefit.

The settlement also provides for ongoing compliance monitoring. The compliance monitoring here, albeit consensual, carves a valuable precedent for consumers seeking equitable relief in future cases. The settlement resolves the claims of plaintiffs and class members related to defendant's alleged fraud in the sale of its tires.

The settlement allowed individuals to opt out and bring their own individual suit with all the rights and remedies of their local law. There have been approximately one hundred and fifty-six (156) class members who chose to opt out from a potential class of 4,250,000 members.

C. Terms of Settlement

The settlement provides three primary benefits to class members.

1. Enhanced Finishing Inspection Program

> **Enhanced Finishing Inspection Program** - Defendant began implementation of an enhanced finishing inspection program, which includes metering of tires ("flow rate"), additional inspection processes and procedures (with associated capital improvements), inspector training and retraining, increased inspection or audits of inspectors ("over inspection"), development

> and implementation of inspection best practices (uniform system for inspection), and enhanced testing control. Moreover, defendant reaffirms the company-wide policy, allegedly put into place no later than 1995, that awl venting is no longer an approved procedure for the repair of inner liner blisters on cured tires. Defendant's Enhanced Finishing Inspection Program will include a focus on proper finishing repair procedures, and will reiterate its policy regarding awl venting.
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> [Plaintiffs' Memorandum in Support of Joint Motion for Preliminary Approval of Proposed Class Action Settlement ("Joint Motion") at 6-7.]

The Enhanced Finishing Inspection Program is designed as an over-inspection program, to prevent tires that should not be sold from getting to consumers. Cooper has fully implemented the Enhanced Finishing Inspection Program and has thus far committed $3,565,500 in funds to the Program. Cooper Tire & Rubber Company's Memorandum in Support of Plaintiff's Motion for Final Approval ("Cooper's Memo") at 34. Furthermore, Cooper has committed to having monthly inspections performed to ensure that each of it's four plants is in compliance with written standards and maintaining reports of each inspection for review.

The Enhanced Finishing Inspection Program, includes a Best Practices Standardization, Physical Inspection of Tires, Metering of Tires to Inspectors, Lighting, Additional Over-Inspection, Enhanced Training and Enhanced Communication. The "Best Practices Standardization" is utilized by tire manufacturers to make continuous improvements to their products and is found to be the most effective way to implement changes. This will provide a benefit to class members who tend to be repeat customers and who will be receiving these inspected tires as replacement tires. The physical inspection of tires will implement the high quality tire inspection processes, recommended by expert tire technology consultants, in use by major tire manufacturers. Cooper has also enhanced it's metering of tires – the control of the flow of tires to the finishing inspectors- by installing metering systems that enable inspectors

with a newly determined mix of tires at a new pace which allows for additional time to inspect each tire. In addition, Cooper has implemented new lighting systems in the Finishing Inspection areas which will assist in the enhancement of the existing tire inspection accuracy and environment in Cooper's tire plants. Cooper's Memo at 35-37.

Moreover, as the Enhanced Finishing Inspection Program is implemented, defendant's scrap rate should increase as additional tires with defects are retained by defendant. This increase in scrap rate will likely lead to changes in defendant's manufacturing processes. Plaintiffs' Memo at 21.

Further, defendant reaffirms the company-wide policy, allegedly put into place no later than 1995, that awl venting is no longer an approved procedure for the repair of inner liner blisters on cured tires. The Court questioned defendant's counsel about the awling during the preliminary approval hearing and defendant's counsel confirmed that awling is no longer an authorized procedure at defendant's plants.

> MR. MASKIN: So but in connection with this agreement as well, it is made clear and is a re-affirmation on the part of Cooper Tire and Rubber that no awling will take place at any of its plants herein after.
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> [Talalai, et al. v. Cooper Tire & Rubber Co., No. L-008830-00-MT, (N.J. Sup. Ct.), Transcript of October 29, 2001 Hearing ("Oct.29 Tr.") at 47:8-11.]

Likewise, class counsel conducted confirmatory discovery on this issue, which substantiated the above. Plaintiffs' Memo at 21-22.

An additional layer to ensure implementation of the settlement terms is the creation of the position of a court appointed compliance master who must report to the court the detailed restructuring of the tire manufacturer and inspection process.

2. Enhanced Warranty Program

Enhanced Warranty Program - The settlement creates an Enhanced Warranty Program which provides settlement class members with a choice between a replacement tire at no cost or, in the alternative, an alternative dispute resolution (ADR) mechanism in the event of an Adjustable Separation on an Eligible Cooper Tire, subject to the provisions forth below.

[Joint Motion at 7.]

Free Replacement Option. Under the Enhanced Warranty Program, settlement class members who present an Adjustable Separation[7] on an Eligible Cooper Tire with more than 2/32nds tread, and in the case of Medium Truck Tires, more than 4/32 tread, will be entitled to an enhanced warranty that will allow such settlement class members to receive, at no charge, a replacement tire (including balancing, mounting, disposal costs, except with respect to Medium Truck Tires, which shall include mounting and disposal costs only). To qualify for participation in the Enhanced Warranty Program, settlement class members must present their Eligible Cooper Tire at the location of purchase or other authorized dealer. Settlement class members may locate the nearest authorized dealer by reading Cooper Tire's internet website, or by calling the phone number listed in their warranty information. To receive the free replacement tire, settlement class members must sign a Certification in the form annexed to the Stipulation, certifying under penalty of perjury that they fall within the definition of the settlement class and that they meet the requirements to participate in this settlement and receive the rights and benefits hereunder.

[Joint Motion at 7.]

ADR Option. Alternatively, at the occurrence of an Adjustable Separation on an Eligible Cooper Tire, settlement class members may choose to participate in an ADR process, as set forth herein, in lieu of accepting a replacement tire at no charge. The ADR Option

[7] An adjustable separation shall mean an adjustable condition determined by and in accordance with Defendant's standard adjustment policies, procedures and manuals which consists of: a separation between plies, a separation between belts, a tread separation, a separation between the liner and the body, a separation in the sidewall, a separation at wind and tread junction, a separation at ply and belt, a separation at rim flange, a distorted tread (radial tires), and/or pick corwicking.

> was set up by the parties as a prompt and efficient way to resolve disputes among settlement class members and defendant. The ADR Option shall be governed by New Jersey law.
>
> An ADR Administrator, approved by the Court, as recommended by the parties, will implement the ADR process for the ADR Option Participants. Under the ADR Option, settlement class members who choose to participate in the ADR process in lieu of receiving a replacement tire at no charge must submit a claim. A verified claim form may be provided to all ADR Option Participants containing questions designed to elicit information relating to the ADR Option Participant's alleged economic loss, as well as the evidentiary basis and/or bases for any additional claims that the ADR Option Participant may seek to have resolved through the ADR Option. ADR Option Participants will also be asked to submit any supporting documents in their possession. Their lack of such documentation may be considered by the ADR Administrator. The ADR Administrator will establish a toll-free hotline to allow ADR Option Participants to speak to someone who is trained to answer such inquiries, assist with filling out claim forms and provide advice to them with respect to the collection of supporting documents once the claim form is submitted. Defendant is obligated to pay for this ADR Option's process and hotline, as well as locate its records pertaining to the claim and submit them, along with a written response, for consideration by the ADR Administrator.
>
> The ADR Option Participant must provide 30 days' notice to defendant's counsel of their selection of this Remedy. Punitive damages shall not be available under the ADR Option**,** and ADR Option Participants, by electing such option, expressly waive any such punitive damages which may be available under governing law.
>
> The Enhanced Warranty Program will last for five (5) years and extend to all settlement class members. Defendant will pay to document its compliance with its obligation under the Enhanced Warranty Program.
>
> [Joint Motion at 8.]

The Enhanced Warranty Program monitoring duties will be delegated to the Compliance Master, whose name will be submitted by both parties and approved by this court. This

component of the plan will be overseen by a court appointed ADR master who again will be responsible to frame and implement a cost efficient and equitable ADR program. Regular reporting intervals will be crafted into the process allowing the court to add, correct or modify the process, so as to insure maximum compliance by the defendant and consumers.

The Enhanced Warranty Program provides class members whose tires have incurred an adjustable separation the opportunity to acquire a new replacement Cooper tire, with its own warranty at no cost (including mounting, balancing and disposal costs). Alternatively, it sets up an ADR process for those class members who may seek cash reimbursement instead of a new Cooper tire. Plaintiffs' Memo at 22, Cooper's Memo at 20.

The Enhanced Warranty allows consumers to go to their local independent dealer to determine whether they have suffered an adjustable separation. If this is the case, the consumer has the option of receiving a new tire or monetary compensation. If the class member wants money, the defendant is allowed a thirty day (30) period to negotiate to satisfy the customer or allow the matter to proceed to ADR. The defendant will cover all costs associated with ADR as well as attorney fees and treble damages if liable. Plaintiffs' Memo at 22-23.

On the other hand, if the dealer does not find an adjustable separation, the consumer is allowed to appeal to the defendant. The defendant from that point will have thirty (30) days to investigate and determine whether it concurs with the dealer's decision and apprise the consumer of it's decision. During this period, defendant must retain records of all claims and decisions and report to the Compliance Monitor. The Compliance Monitor will continually inform the court and class counsel if there are any deviations in compliance, thereby allowing this court to make necessary recommendations. Plaintiffs' Memo at 23.

Class members will not have to concern themselves with claim forms or notices but can avail themselves of relief automatically. However, the number of class members who will benefit from the Enhanced Warranty is unascertainable as the number may increase with the publicity of the notice as well as the impact of the Consumer Education Program. Plaintiffs' Memo at 24.

Here, the enhanced warranty (from pro rata to complete replacement for any separation) is a type of insurance for 170,000,000 tires that has immediate market value. Class counsel believe this value to be at least $6.00 per tire. (Plaintiffs' Memo, App. Ex. B, See Brown Affidavit at 3, ¶12)[8] (referencing Martin study)[9]. The Enhanced Warranty Program is an appropriate way to compensate those that have been harmed. This settlement at its basic level, is the quintessence of a "put up or shut up" scenario. That is, if the tires are found to be defective, Cooper will replace those tires, if not, the consumer is unharmed or explore ADR at no cost. The essence of the enhanced warranty is immediate insurance worth at least $6.00 per tire, combined with a wager about the quality of defendant's tires -- if defendant's tires are bad, defendant pays a lot more. If, as defendant believes, its tires are good, it pays much less. Cooper is sending a

[8] Documents cited to herein were attached to Plaintiffs' Memo in Support of Final Approval as the Appendix to the Exhibits and is referred to as "App. Ex. _ , _ Affidavit. "

[9] Mark Browne is a professor of insurance and risk management at the University of Wisconsin, Madison. He is the chairman of the Department of Actuarial Science, Risk Management, and Insurance in the School of Business. Currently the president-elect of the American Risk and Insurance Association. Mr. Browne is plaintiffs' expert and commented on the reasonableness and value of the proposed settlement warranty as compensation to the class members. He believes that the warranty offers value to class members in a number of ways: first, it sends a signal from Cooper to class members that the company believes its tires are of high quality; second, it ensures that Cooper will take e financial responsibility if it's tires perform below par; third, the warranty enhances consumers' expectations about the quality of tires. Mr. Browne opined that it is reasonable to expect that consumers would be willing to pay 10% more for a tire with the warranty under the settlement than a tire without the warranty and concludes that consumers value warranties because they are financially backed assurance that the tires they purchased will perform as expected. He stated that a reasonable estimate of the value of the settlement warranty to a class member is $6; this is based on the cost of other tire warranties compared to the benefits provided under the settlement warranty. Assuming that the number of tires insured under the settlement warranty is 170 million, the estimate value of the settlement warranty is $1,020,000,000.

signal to its consumers that their tires are of high quality and they are willing to accept financial responsibility if their tires do not meet the standards of the warranty. Plaintiffs' Memo, App. Ex. B, See Brown Affidavit at 1. Thus, the equities are balanced between allegations of defects verses confidence in product and warranty. Plaintiffs' Memo at 24-25. Thus, the settlement is a compromise of position, placing the truly wronged consumer in a win/win position.

Affidavits in support of the joint resolution value were submitted by both class and defense counsel. The plaintiffs employed Professor Mark Browne, professor of insurance and risk management at the University of Wisconsin-Madison. He holds a doctorate in economics and managerial science from the Wharton School of Business.

Professor Browne was requested by the plaintiffs to value the proposed settlement warranty. In summary, he reached the following:

1. This resolution sends a signal from Cooper to the class that their tires are of a high quality and implicitly that they are prepared to back up that claim with free replacements.
2. Such a commitment is not only a signal of quality, but that Cooper accepts all financial responsibility should their tires not meet the quality levels required by the warranty.
3. Cooper financially backs its promise.
4. The proposed separation settlement warranty provides coverage against the loss that, to the best of the Professor's knowledge IS NOT AVAILABLE THROUGH OTHER WARRANTIES ON THE MARKET. (emphasis added).
5. Placing a finite dollar value on the settlement is extremely difficult because there is no warranty currently available through other warranties on the same market providing an equivalent level of coverage.
6. The warranty should enhance consumers' expectations about the quality of their tires.
7. Analyzing current road hazard warranties, containing many exclusions, as selling for approximately 10% of the value of the tires thus holding a monetary equivalent of $5-$7.
8. Warranties are important in the in the market place, as signals of quality and insurance. Likewise for sellers they represent a significant economic undertaking and signal quality.
9. Such enhanced warranties as negotiated here are valuable to the customer demonstrating:

a. A guarantee by the manufacturer that the product is sound.
b. They provide insurance should the product fail.
c. They provide information to the consumer about the quality of the product.

10. From a social perspective, warranties have 2 benefits:
a. Create an incentive for manufacturers to produce high quality products. Hedging the bet that products sold with a poor warranty will incur potentially significant costs.
b. Serves to bridge the information gap between manufacturers of complex products and their purchasers.
c. That there is an indemnification to purchasers of defective products. Thus purchasers are not financially responsible for defective products.
d. Warranties provide peace of mind to consumers.

11. There is an apparent symmetry in remedying a consumer fraud complaint with a warranty or enhanced warranty. The consumer expectation is met by the added value, and the manufacturer backs its product with its net worth.

12. The market-based approach to valuation of the settlement warranty would provide the most accurate measure of the perceived value of the warranty to the class members. Plaintiffs' Memo, App. Ex. B, Brown Affidavit at 1-5.

Using the results of Cooper's expert Claude Martin and the focus group inquiries, two conclusions are possible:

a. Consumers feel the settlement warranty would provide value to the purchasers of the tires.
b. The result of the study suggesting $10 is a reasonable value on the enhanced warranty. Cooper Memo's, App. Ex. C, Martin Affidavit at 7[10].

Therefore the total estimated value of the settlement warranty to class members, based on the settlement warranty value of $10 and there being 170 million tires covered by this warranty is $1,700,000,000.

13. Acting upon the assumption that the settlement value warranty is $6 and that the settlement warranty covers roughly 170 million tires, the estimate value of the settlement is $1,020,000,000.

[10] Documents cited to herein were attached to Cooper's Memo in Support of Final Approval as the Appendix to the Exhibits and is referred to as "App. Ex. _ , _ Affidavit. "

Thus to give a concrete projection of a potential risk scenario, Professor Browne utilizes the government figure of 30% of a sample of randomly chosen Firsetone Wilderness AT tires that were showing signs of separation.[11] If 30% of class members' tires are found to have suffered an adjustable separation and the costs to Cooper of a new tire, balancing, mounting is $60, the payout under the settlement will be in excess of $3,000,000,000. Plaintiffs' Memo, App. Ex. B, Brown Affidavit at 5.

In the third quarter of 2001, Cooper Rubber and Tire Company reported a $55 million dollar pre-tax charge in anticipation of settling the class. This charge represented Cooper's estimated costs and not the value of the settlement. Such a figure was misinterpreted by hosts of previous objectors causing disinformation to class members, the media and unfortunately, the marketplace.

In conclusion, Professor Browne comments:

> I feel that the settlement warranty in this case provides value to the class members. Market data on consumers' purchases of road hazard warranties suggests that an estimate of $6 per tire is a reasonable estimate of the value a consumer would place on the warranty. At $6 per tire, the total value of the settlement warranty to the class is approximately $1,020,000,000. Clause Martin's study indicates that tire consumers estimate the value of the settlement warranty at $10, and I have no reason to question his findings. At $10 per tire, the total value of the settlement warranty to the class is approximately $1,700,000,000. The ultimate loss costs Cooper will bear under the warranty will only be known in time. If the loss experience on the tires purchased by class members is similar to the Firestone Wilderness AT tires studied by the NHTSA, the value of the warranty to the class could exceed $3,000,000,000. The pledge by Cooper that the tires are sound and Cooper's financially backing this pledge by its agreement to provide new tires, if they are not, will serve to restore consumers' expectations of Cooper tires.

[11] October 2001 Offiec of Defects Investigation of the U.S. Department of Transportation's National Highway Safety Administration.

[Plaintiffs' Memo, App. Ex. B, Brown Affidavit at 5.]

The settlement reflects a real and immediate warranty benefit covering all 170,000,000 tires of class members, as well as new tires for the next five years. Case law emphasizes that focus should be placed on the value created for class members, not the alleged costs to defendant. In re Prudential, 962 F. Supp. 450, 557 (D.N.J. 1997). ("The cost of the relief to Prudential is not the measure of class member benefit. The value of the relief to the Class, which may be substantial, is what matters," (quoting New York Life, No. 94/127804, 1995 N.Y. Misc. LEXIS 652, at *60, 'class members benefited from the settlement regardless of cost to defendant')).Plaintiffs' Memo at 25.

The settlement places the warranty process under the court's jurisdiction for a period of five years, requiring audits and a Compliance Monitor, new safeguards against possible abuse; it also must be taken into account that all ADR and compliance shall be conducted with a reporting obligation to this court. However, there have been no complaints launched against defendant's compliance with warranties in the past. In fact, Pep Boys and TBC Corporation, two of Cooper's largest dealers, have attested to Cooper's liberal approach towards adjustment credits[12]. Plaintiffs' Memo at 25, Coopers' Memo at 25.

[12] Pep Boys has revised its tire program and decided to make Cooper its exclusive tire supplier. Donald E. Kolmodin, Assistant Vice President of Merchandising for Pep Boys, has the buying responsibility for tires manufactured by Cooper since 1993. Mr. Kolmodin opines that Pep Boys considers Cooper to be a reputable organization and a valued vendor. Cooper's Memo, App. Ex. E, Kolmodin Affidavit at 3-4.

[17] The National Safety Council, founded in 1913 and chartered by the United States Congress in 1953, is the nation's leading advocate for safety and health. The Council is a nonprofit, non-governmental, international public service organization dedicated to improving the safety, health and environmental well-being of all people. See www.nsc.org.

3. Consumer Education Program

> **Consumer Education Program** - The settlement also provides for a Consumer Education Program. Defendant shall design and implement a consumer awareness program including a telephone help-line, a web site and point of purchase materials that will focus on proper tire maintenance, actions in the event of a separation and proper trouble shooting, including identification of possible precursor events to separation. Defendant will pay for an independent compliance monitor for a period of three (3) years.
>
> [Joint Motion at 12.]

The Consumer Education Program is a valuable benefit to class members and consumers at large. Under the Consumer Education Program, defendant is working with the National Highway Traffic Safety Administration ("NHTSA") in distributing materials on proper tire care and maintenance. Cooper has also formed a union with the National Safety Council[13] ("NSC"). The NSC will disseminate information on safety measures and Cooper will provide the funding and assistance needed. These NSC materials will be distributed to the NSC's 37,500 members and Cooper dealers. Cooper's Memo at 31.

On November 30, 2001, NHTSA announced that it would launch a new tire safety campaign based on the theme: See, "NHTSA: America Driving on Bald Tires, Check Your Pressure." NHTSA stated that the purpose of its campaign was to "stress the importance of proper tire inflation and vehicle load limits." As part of that campaign, NHTSA, developed brochures, point of purchase materials, and other information regarding proper inflation pressure, load limits, tire maintenance and safe practices. NHTSA's safety campaign and its proposed rules regarding improved tire labeling underscore the value of consumer education. Plaintiffs' Memo at 27.

NHTSA published its Advance Notice of Proposed Rulemaking, as required by the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act of 2000[14], announcing its plans to improve the labeling of tires and ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of motor vehicles. Proposed Federal Motor Vehicle Safety Standards (2001) available at http://www.nhtsa.dot.gov/cars/rules/rulings/TREAD/NPRM/Index.htm.

In its supporting documentation, NHTSA cited a 2000 Bureau of Transportation Statistics Omnibus Survey, conducted in September 2000, which contained four questions on the public's knowledge of tire pressure issues. The survey contained 1,017 household interviews and indicated that at least 54.7% of the respondents did not know how to determine the proper pressure for their tires. NHTSA also cited a AAA Tire Safety Study based on an omnibus nationwide telephone survey of 1070 adult Americans who drive motor vehicles at least once a week inquiring on how to identify the correct tire pressure. The responses concluded that American drivers lack sufficient knowledge about how to determine optimum tire pressure. The results of these surveys indicate that many consumers do not know how to determine proper tire pressure or where to look for information regarding the same. Accordingly, consumer education is extremely valuable to consumers. Plaintiffs' Memo at 27-28.

The importance of the Consumer Education Program is reaffirmed also by the actions taken by the Attorney General of the State of Tennessee. The Attorney General entered into a settlement agreement with Bridgestone/Firestone, Inc., which included among its remedies, a

[14] TREAD Act requires NHTSA to address numerous matters through rulemaking including, but not limited to, the 1) improvement of the labeling of tires, 2) assist consumers in identifying tires that may be subject of a recall, and 3) ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. See www.nhtsa.dot.Gov/nhtsa /announce/testimony/ TREAD.html.

consumer education program, similar to the consumer education program originated by the parties here. Therefore, such practice is in accord with public interest to educate the public and prevent any further consumer losses. Clearly, the consumer education aspect of the proposed settlement seeks to do the same. Plaintiffs' Memo at 28.

D. Release of Claims

As part of the settlement, plaintiffs and all class members who do not opt out of the settlement, will be precluded from bringing claims similar to those raised in these class actions. A complete description of the claims released is found in the Release. However, claims for personal injury and property damage are not barred by this settlement as they are specifically excluded by the class definition.

E. The Notice

A settlement class notice must meet the due process requirements of R. 4:32-4 of the New Jersey Court Rules and Federal Rule of Civil Procedure 23. R. 4:32-4 provides that "a class action shall not be dismissed or compromised without the approval of the court ...." To afford interested parties an opportunity to be heard, the rule further provides that "notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Morris County Fair Housing Council v.Boonton Tp., 197 N.J. Super 359, 367, 484 A.2d 1302 (1984). F.R.C.P. 23(e) requires that the court consider the mode of dissemination and its content to assess whether the notice was sufficient. However, the notice need not be unduly specific. In re Diet Drugs, 2000 WL 1222042, *34 (E.D. Pa. 2000); See In re "Agent Orange" Prod. Liab. Litig., 818 F.2d 145, 170 (2d Cir. 1987) (holding that settlement notice that failed to detail distribution plan was not inadequate); Greenspun v. Bogan, 492 F.2d 375, 382 (1st Cir. 1974) (stating that notice need not indicate arguments in favor of and against proposed

settlement). The notice must only be reasonably calculated to inform interested parties of the pendency of the proposed settlement and afford them the opportunity to present their objections. In re Diet Drugs, 2000 at *34; See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (stating that due process requires "notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

The parties learned during settlement talks that direct notice to class members would be impractical. Nonetheless, the parties conferred with class action notice experts on a reasonable manner in which to reach as many class members as possible. See Special Master's Findings of Fact and Recommendations at 4, February 22, 2002. Courts have held that where direct notification would be unreasonably burdensome, "[p]ublication and representative notice . . . will be permitted." See, Sulcov v. 2100 Linwood Owners, Inc., 303 N.J. Super. 13, 696 A.2d 31, 36 (App. Div.), certif. granted 152 N.J. 10 (1997) (citing Pressler, Current N.J. Court Rules, comment 1 on R. 4:32-2 (1997)).

Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were placed in more than 900 Sunday newspapers throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups. Cooper's Memo at 7, App. Ex. A, See Hilsee Affidavit[15] at 6. The Notice was also published in the leading newspapers in Puerto Rico, Guam and the U.S. Virgin Islands, and was printed in Spanish in the two leading Spanish-language

[15] Mr. Hilsee designed the notification plan for the proposed settlement in accordance with this court's November 1, 2001 Order. Mr. Hilsee is the president of Hilsoft Notifications and is well versed in implementing and analyzing the effectiveness of settlement notice plans.

newspapers in Puerto Rico. Moreover, a neutral press release was issued to consumer media and appropriate trade publications on November 19, 2001, to more than 2,400 consumer media outlets as outlined in the Plan. This Notice Plan required bilingual notification in English and Spanish nationwide. Cooper's Memo at 7-8.

The Notice Plan was designed, through multiple insertions in various media, to provide each person exposed to the Notice with many opportunities to read and understand the Notice. As planned, Cooper Tire owners were exposed to the Notice an average of 3.5 times. Adults age 35 and older were exposed an average of 3.5 times and men age 35 and older, 3.6 times. Analysis shows that the broader population of all U.S. adults were exposed an average of 3.4 times. Including repeat exposures, the notice appeared in print media vehicles that were opened, read or viewed by U.S. adults more than 562 million times. The use of paid internet banner notices resulted in the creation of 739,925 more impressions than originally expected. Under a conservative estimate, 83.2% of Cooper Tire owners, 83.2% of U.S. adults age 35 and older, and 82.9% of men age 35 and older were exposed to the Notice. Cooper's Memo at 8.

The Notice reached many potential members of the class who were exposed to, or responded to, the published and Internet Notices. For example, by January 29-30, 2001 more than 1,197,774 hits to the neutral website www.coopertirelitigation.com, and 224,121 unique visitor "user sessions" were recorded. Over 17,700 phone calls were fielded by a 24-hour a day voice response unit, 12,039 notices were requested to be mailed via the toll-free number and the website, and 9,143 class members checked the eligibility of their tires on the website. Cooper's Memo at 9.

Therefore, the comprehensive Notice Program satisfied the requirements of due process by apprising the class members of their rights pursuant to the settlement.

V. JURISDICTION, VENUE AND DUE PROCESS

A multi-state class action, typically requires that each plaintiff's claims be governed by the laws of his or her domicile. See, e.g., Wilks v. Ford Motor Co. (In re Ford Motor Company Ignition Switch Prod. Liability Litigation), 174 F.R.D. 332, 348 (D.N.J. 1997). The New Jersey Supreme Court has established the process for determining which state's substantive law should govern a controversy with multiple jurisdictional schemes of law. Gantes v. Kason Corp., 145 N.J. 478, 679 A.2d 106 (1996). New Jersey applies the "governmental interest analysis" to choice of law determinations which "requires application of the law of the state with the greatest interest in resolving the particular issue that is raised in the underlying litigation." Gantes v. Kason Corp., 145 N.J. 478, 484, 679 A.2d 106 (1996). Veazey v. Doremus, 103 N.J. 244, 248, 510 A.2d 1187 (1986).

Choice of law resolution requires two (2) steps:

1) Whether actual conflict exists between the laws of New Jersey and the laws of other jurisdictions. Gantes at 484.
2) To determine the interest that each state has in resolving the specific issue in dispute. Id. at 484.

This requires "an identification of governmental policies underlying the law of each state and how those policies are affected by each state's contacts to the litigation. The governmental interest analysis looks to the "connection of the parties to the respective states, the nature of the pertinent events that have transpired within each state, and the character of each state's policy preferences relevant to the particular litigation." State Farm Mutual Auto Ins. Co. v. Estate of Simmons, 84 N.J. 28, 36, 417 A.2d 488 (1980).

New Jersey has significant contacts and great interest in resolving consumer fraud claims. Kugler v. Romain, 58 N.J. 522, 538, 279 A.2d 640 (1971) (public policy of the state to provide broad protection for "the greatest possible good for the greatest possible number of consumers

who have common problems and complaints.") There is no evidence of a material conflict of law between the consumer protection statutes of the various states that would prohibit, on due process grounds, the application of New Jersey law to the class members' claims and the interests of New Jersey in this settlement outweigh that of any other state. Nor has any party, class member, interest group or "objector" raised any opposition to New Jersey being the situs of processing and implementing the settlement.

New Jersey's interest in this litigation is to ensure the efficient administration of justice and provide compensation for injured plaintiffs. New Jersey would not mandate a choice of law which automatically applies the laws of 50 states and the District of Columbia, thereby frustrating the ability of the plaintiff to obtain redress by making actions virtually impossible. Delgazzo v. Kenny, 266 N.J. Super. 169, 193, 628 A.2d 1080 (App. Div. 1993). Here the class members' interests are being advanced with the application of the NJCFA.

New Jersey law is appropriate to apply to this national class settlement for several reasons. First, defendant has stipulated to the certification of a national class for settlement purposes in New Jersey. Second, Middlesex County, New Jersey, the location of this court, is the site of defendant's largest tire distribution center, servicing customers in twelve states throughout the east coast, with 7 million of the 40 million tires produced annually by defendant passing through this distribution center. Third, defendant's sales in the tri-state area are substantial and New Jersey's highways are some of the busiest in the nation. Fourth, there is no evidence of a material conflict of law between the consumer protection statutes of the various states that would prohibit, on due process grounds, the application of New Jersey law to the class members' claims. Fifth, out-of-state class members will be given the opportunity to opt out of the settlement class if they desire to seek individual adjudication of their rights under their home

state. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985). Lastly, all state courts as well as the MDL Court have deferred to the New Jersey Superior Court to adjudicate In re: Cooper Tire & Rubber Co. Tire Products Liability Litigation.

This court has authority to approve a national class action settlement under Phillips Petroleum v. Shutts, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985). In Shutts, the Supreme Court held that the forum state may exercise jurisdiction over absent class members if given notice and opportunity to opt-out, i.e., minimal procedural due process protection. Id. at 811-12. As discussed above, the settlement class notice met the due process requirements of R. 4:32-4 and F.R.C.P. 23.

The courts involved in this litigation maximized results by utilizing time, money and equity efficiently through multi-state coordination. The judges with the parties' permission, coordinated motions, oral arguments, discovery and agreed on a mutually satisfactory master. All state courts as well as the MDL Court have deferred to New Jersey to adjudicate In re: Cooper Tire & Rubber Co. Tire Products Liability Litigation. Order No. 3 entered by Judge Holschuh states:

> The Parties, through their Joint Motion for Stay of Proceedings, have informed this Court of the following:
>
> **1. That the Parties have reached a national settlement of all plaintiffs' claims embodied in the proceedings before this Court and all related actions, which settlement is being implemented in the New Jersey action styled Talalai, et al. v. Cooper Tire & Rubber Co., No. L-008830-MT (Superior Court if N.J. Middlesex County).**
>
> **2. That all Plaintiffs, as well as all members of the purported classes, in the cases pending in MDL No. 1393, are members of the Talalai national class. In addition, *all claims raised by the Plaintiffs in any of the cases that are part of the MDL 1393 are covered in the***

Talalai class action and addressed by the Talalai national settlement (emphasis added).

2. **On November 1, 2002, on the Joint Motion of the Parties, the Superior Court of New Jersey, by the Honorable Marina Corodemus, entered an order preliminary certifying for settlement purposes a national opt out class; conditionally approving the proposed class action settlement; and authorizing the dissemination of a nationwide notice program. The New Jersey Court also set a hearing on Final Approval for January 29, 2002.**

3. **If the New Jersey Court grants Final Approval and there are no appeals, the Parties, within ten days thereafter, intend to jointly move this Honorable Court to enter an order dismissing with prejudice all cases pending in MDL No. 1393. If any other scenario transpires, the Parties will immediately advise the Court so that the Court may discuss with the Parties whether to continue the stay pending possible appeals, or to take other action.**

Based upon the representations by Lead Counsel, this Court hereby GRANTS and ORDERS a stay of all proceedings pending notification from the Parties that their settlement has been approved by the New Jersey Court and become final.

[Judge Holschuh, In re: Cooper Tire & Rubber Co. Tire Products Liability Litigation. Order No. 3.]

New Jersey has allowed certification of class actions involving national and multiple state cases. Kropinski v. Johnson & Johnson et als., No. A-3979-97T1 (N.J. Super. Jan. 7, 1999) (court certified a national class of all contact lense users despite individual fact issues); Delgazzo v. Kenny, 266 N.J. Super. 169, 628 A.2d 1080 (1993) (in a breach of warranty and consumer fraud action, the New Jersey Superior Court certified a class consisting of 35,000 purchasers of defective heaters residing in 25 different states, despite the existence of factual individual issues relating to the manner of installation and service.)

Accordingly, the New Jersey Superior Court has appropriate jurisdiction to govern this

multi-state class action.

VI. THE FAIRNESS HEARING

Pursuant to this court's order of October 20, 2001, this court granted preliminary approval for a national class action setting the date of January 29-30, 2002 for a fairness hearing. The fairness hearing provided the parties, objectors appearing through counsel and all individual pro se objectors an opportunity to express their positions to the court[16]. On January 29-30, 2002, this court held the fairness hearing to assist in determining whether the proposed settlement is fair, reasonable and adequate. Class counsel, including liaison counsel John E. Keefe Jr. and lead class counsel Allan Kanner as well as lead settlement counsel for Cooper, Arvin Maskin fully briefed and supported their joint application for approval with numerous affidavits and exhibits. No live testimony was requested nor offered. All reports and affidavits were represented to be consistent with discovery findings. Oral argument was requested an granted.

By the court's tally a total of nineteen objections were filed in both written and oral presentations by pro se and attorney represented litigants. This number is out of a potential pool of 42,500,000 class members who were sold Cooper tires during the class definitional period. That list included the following persons:

1. Objection of Plaintiff William H. Randall, Jr. of New Jersey represented by Philip Tarr of Maclachlan Law Offices L.L.C. in Ridgewood, New Jersey ("Randall Objection");
2. Objection of Michelle O'Konski of California represented by Garrett Kendrick of Kendrick and Nutley in Beverly Hills, California ("O'Konski Objection");
3. Objection of Matthew A. Schroeder of Missouri represented by John J. Pentz of The Objectors Group in Sudbury, Massachusetts ("Schroeder Objection");

[16] Though N.J. Court Rules do not explicitly require a fairness hearing, Federal Rule of Civil Procedure 23(e) requires such. The parties requested and the court granted the precertification fairness hearing. This procedure has been utilized in prior New Jersey class actions. The procedure will allow for maximum due process protections.

4. Objection of Liza Mosley, personally and (putatively on behalf of all persons similarly situated in the State of Florida, Tammy Edwards, personally and (putatively) on behalf of all persons similarly situated in the State of Arkansas and Kelly Comfort, personally and (putatively) on behalf of all persons similarly situated in the State of New York by Bruce Kaster of Green Kaster Falvey in Ocala, Florida, Jerry Kelly of Kelly & Huckabee in Lonoke, Arkansas, Paul Byrd of Law Offices of James E. Swindoll in Little Rock, Arkansas, James Cahill of Cahill & Beehm in Endicott, New York, and Mark C. Menser of Viles Law Firm in Fort Meyers, Florida ("Mosley Objecion");

5. Objection of Matthew G. Kaiser and Francis X. Sullivan by Bonnie Robin-Vergeer of Public Citizen Litigation Group in Washington, D.C.and Baher Azmy of Seton Hall University School of Law in Newark, New Jersey ("Kaiser Objection");

6. Objection of Eleanor Smith by Jonathan Nachsin of Jonathan Nachsin, P.C. in Chicago, Illinois ("Smith Objection");

7. Objection of Ben Hutsler represented by Kearney Dee Hutsler in Birmingham, Alabama ("Hutsler Objection");

8. Objection of Southern Roots Nursery, Inc., represented by John P. Willis, IV of Smith & Alspaugh in Birmingham, Alabama. Papers submitted by Lawrence W. Lindsay of Loughry & Lindsay, LLC in Camden, New Jersey and ("Southern Roots Objection");

9. Objection of Albert Foret, Jr. of Louisiana represented by Chance C. White of The White Law Firm in Laplace, Louisiana. Papers submitted by Lawrence W. Lindsay of Loughry & Lindsay, LLC in Camden, New Jersey ("Foret Objection");

10. Objection of Gregory Cambre represented by Chris Trepagnier of The Trepagnier Law Firm in Covington, Louisiana. Papers submitted by Lawrence W. Lindsay of Loughry and Lindsay, LLC in Camden, New Jersey ("Cambre Objection");

11. Objection of Suzanne Colvin of Florida represented by Frank H. Tomlinson of Pritchard, McCall & Jones in Birmingham, Alabama, Robin Reznick of Michigan represented by Bryan D. Marcus of Livonia, Michigan, Jeanine Schweinberg of Florida represented by Edward W. Cochran of Cochran & Cochran in Shaker, Ohio, Paul Tenney of Florida represented by Paul S. Rothstein of Gainesvilee, Florida and Douglas J. Elmore of Florida represented by N. Albert Bacharach of Gainesville, Florida. Papers submitted by John I. Lisowski of Morgan, Melhuish, Monaghan, Arvidson, Abrutyn & Lisowski, in Livington, New Jersey ("Colvin Objection");

12. Objection of Thomas Ferguson by Douglas Cole of Stem & Cole in Milford, New Jersey ("Ferguson Objection");

13. Objection of Amos L. Hosey, Sr. of Kenedy, Texas, pro se litigant ("Hosey Objection");

14. Objection of Edward Boyd of Pompton Lakes, New Jersey, pro se litigant ("Boyd Objection");

15. Objection of Virginia Harris Tate of Daniell, Georgia, pro se litigant ("Tate Objection");

16. Objection of Joseph Barron of Dickson City, Pennsylvania, pro se litigant ("Barron Objection");

17. Objection of Shirley A. Woodward of Lomita, California, pro se litigant ("Woodward Objection");

18. Objection of Kent M. Tayler of San Luis Obispo, California, pro se litigant ("Taylor Objection");

19. Objection of Kathy Aubrey of Great Falls, Montana, pro se litigant ("Aubrey Objection");

On August 30, 2002, this court was notified that all objectors represented by counsel withdrew their objections and any motions filed.

a. Ethical Considerations

Allegations were made by class counsel that one objector, who was previously co-lead counsel for the class as well as having his own personal injury cases against Cooper, had taken privileged documents without the permission of the leading class representative, Talalai. These privileged documents were disseminated amongst other attorneys, both class attorneys and objectors.

Since all parties have resolved their objections, the actions of some class counsel are not before this court. However, an attorney who has not complied with this court's order to return otherwise confidential documents, pursuant to court order or confirmatory settlement discovery, will be in violation of this court's order.

On February 6, 2002 this court ordered in an interim order, also under Judge Colombo's Confidentiality Order, that all documents obtained from Talalai were to be retained and not further disseminated as part of the settlement. Class and defense counsel have agreed that all such documents will be destroyed or returned to defendant. That shall be part of this final order.

b. Objections

The objections fell into four main classifications: (1) the settlement does not provide for immediate inspection and/or replacement of all tires; (2) the defendant cannot be trusted in implementing the terms of the settlement; (3) the settlement provides little value to class members; (4) attorney's fees are grossly disproportionate to the relief afforded to class members. Each of these is found to be inadequate for denial of final approval as explained in the discussion and analysis.

c. Pro Se Objections

There were seven (7) pro se objectors who filed objections to the settlement. However, two of the pro se objectors were not class members because one did not own his tires any longer and is thereby excluded from the class definition of the proposed settlement. The other requested to be excluded from the settlement. Their objections are recited below.

Edward Boyd timely filed his objection on January 15, 2002. Mr. Boyd disagrees with the component of the Enhanced Warranty which only provides for a replacement tire if there is an "adjustable separation." He believes the settlement can be improved by implementing provisions which allow all owners of "eligible Cooper Tires" to receive replacements before an "adjustable separation" develops and without regard to the date of purchase. He objects to the "fairness, reasonableness and adequacy of the 'proposed settlement.'" Boyd Objection at 1-2.

This objection does not warrant this court denying the final approval of the settlement as explained in the discussion and analysis below.

Kent M. Taylor timely filed his objection on January 14, 2002. In his objection he states that the settlement is doing little to help consumers who purchased defective tires. He believes

that Cooper is being given the opportunity to decide whether or not their tires have defects and finds that every class member should receive a replacement. Taylor Objection at 1.

An independent dealer, not Cooper, determines whether a tire has suffered an adjustable separation. There are also many procedures which have been implemented in this settlement to safeguard against noncompliance. Therefore, this objection does not warrant this court denying the final approval of the settlement for the reasons stated above and as explained in the discussion and analysis.

Kathy Aubrey untimely filed her objection on January 16, 2002. Ms. Aubrey believes that the settlement should provide class members with the option of monetary reimbursement. She believes that class members also should not have to wait to suffer an adjustable separation to receive a free replacement. Aubrey Objection at 1-2.

This is a consumer fraud in which defendant is replacing any Cooper tires which fail to meet consumer expectations. This settlement improves defendant's manufacturing process, provides for consumer education on tire safety and maintenance, offers replacement tires and an ADR process which allows for class members to receive monetary reimbursement if so desired. Therefore, this objection does not warrant this court denying the final approval of the settlement for the reasons stated above and as explained in the discussion and analysis.

Shirley A. Woodward timely filed her objection on January 14, 2002. Ms. Woodward objects to the settlement and believes that the only people benefiting are the attorneys. She does not want to wait to suffer an adjustable separation to receive a replacement. Woodward Objection at 1. This proposed settlement provides vast benefits for class members and an enhanced warranty like none other on the market today, valued at least at $1,020,000,000 to

$3,000,000,000. Therefore, this objection does not warrant this court denying the final approval of the settlement for the reasons stated above and as explained in the discussion and analysis.

Joseph Barron untimely filed his objection on January 18, 2002. He objects to the benefits offered in the settlement, the adequacy of representation and the award of attorney's fees. He finds the Consumer Education and the Enhanced Inspection Program only provide benefits to future purchasers of Cooper tires and no benefit to the class members. He believes that the burden of tire inspection should be placed on the defendant and not the untrained customer. He also believes Cooper should utilize the agreed to attorneys' fees to inspect and replace their faulty tires. He states that the consumers should be the recipients of the tangible benefits. Barron Objection at 1-2.

All consumers are the recipients of tangible benefits through this proposed settlement as explained in the discussion and analysis. Many courts praise and approve settlements which improve a defendant's business practices which thereby help future consumers. This settlement goes beyond this standard by providing immediate benefits to class members. Under this proposed settlement, defendant will give an insurance like warranty to all class members. Defendant is also offering free replacements to any class member who suffers an adjustable separation. Therefore, this objection does not warrant this court denying the final approval of the settlement.

Amos L. Hosey timely filed his objection on January 8, 2002. Mr. Hosey also filed Objections to the Plaintiffs' Memo in Support of Motion for Final Approval of Class Action Settlement on February 13, 2002. Mr. Hosey is a Texas Prisoner who states that a tire replacement is futile to him. He states that his Cooper tires have already experienced adjustable separations and have been replaced and therefore he is out of pocket approximately $1600 to

$1900. He wishes to be awarded a monetary award instead of a tire replacement. Hosey Objection at 1. However, Mr. Hosey is not a class member because he no longer owns his Cooper tires and therefore does not have standing.

Virginia Harris Tate filed her request for exclusion on January 15, 2002 and therefore is not subject to this settlement.

VII. COUNSEL FEES

The issue of counsel fees and costs have also been resolved subsequently to the resolution of the terms of the settlement. As part of the stipulation of settlement, defendants have agreed to pay all attorneys' fees and costs for implementation of the Related Actions up to $27.5 million and $2.5 million respectively.

As negotiated between the parties, payments of attorneys' fees, costs, expenses and the payment of incentive awards to the named plaintiffs will not reduce any benefits made available to the settlement class. Nor will the settlement class members pay any portion of class counsel's attorney fees, costs or expenses. Plaintiffs were advised in the settlement class notice of class counsel's intent to seek fees, including likely amount. Special Master fees will also be paid by the defendant. Any incentive payments allocated and/or promised to the class representatives are also negotiated terms.

This court need not undertake an extensive analysis of attorneys' fees and employ the percentage of fund or lodestar method. This case differs from most, being that a Special Master, Francis E. McGovern, was appointed by request and consent of counsel, to oversee the whole process of negotiations. He has attested to this court that negotiations for payment of attorney fees and costs occurred at arm's length. He stated that the fees "…[R]epresent a market-based approach and a prudent decision by the parties to compromise what could have been a protracted

battle over fees." McGovern, Special Master's Findings of Fact and Recommendations, February 22, 2002. Parties here have agreed to the attorney fees and payment of such fees will have no impact on the class members' benefits. Plaintiffs also are entitled to fees being that they are the prevailing party under the NJCFA.

Our New Jersey Supreme Court has long recognized the appropriateness of a settlement agreement in the resolution of class actions including the terms of counsel fees. In Coleman v. Fiore Brothers, Inc., 113 N.J. 594, 552 A.2d 141 (1989), Justice O'Hern wrote for a unanimous court setting forth the proper procedure litigants must follow for resolving claims for statutory fees negotiated under the NJCFA pursuant to N.J.S.A. 56: 8-1 to -48, et seq.

Recognizing that fee shifting cases provided for by statute represent a departure from the American Rule (each party to bear their own fees), the Court reasoned that public policy is best served when the court allows the prevailing party to recover legal fees. The New Jersey Supreme Court relied on the United States Supreme Court in Evans v. Jeff D., recognition that there is a need in fee shifting (civil rights) cases to attract competent counsel. 475 U.S. 717, 731, 106 S. Ct. 1531, 1539, 89 L. Ed. 2d 747, 760 (1986). Although the NJCFA language is not identical to the federal acts, "they share the common purpose of ensuring that plaintiffs with bone fide claims are able to find lawyers to represent them. Both are designed to attract competent counsel in cases involving an infringement of statutory rights, to achieve uniformity in those statutes and to ensure justice for all citizens." Coleman supra, 113 N.J. at 597-598, 552 A.2d at 143.[17]

The Court grappled with the ethical and legislative purposes of resolving attorney fees during simultaneous negotiations on the merits of the settlement or subsequent to the negotiations. It specifically rejected the recommendation of the Third Circuit Court of Appeals

[17] Although the specific issue in Coleman addresses fees for public interest firms, it nevertheless provides guidance for private counsel fees. Coleman v. Fiore Brothers, Inc., 113 N.J. 594, 603, 552 A.2d 141 (1989).

1985 Task Force Report which set forth that the simultaneous negotiation of merits and fees would require a waiver of fees in such settlement negotiations. Court Awarded Attorneys Fees, reprinted 108 F.R.D. 237, 269 (1985). Our Supreme Court in Coleman, supra, ultimately held:

> Nonetheless, we believe that private counsel will still retain a negotiating chip in consumer fraud cases that public-interest counsel may lack. Because the client remains responsible to private counsel for the fee, attorney and client both have the same interest. The client has a financial interest in seeing the attorney paid by the defendant. ***Hence, private attorneys can insist, without ethical conflict, on a fee allowance because they would not be reducing their clients' share. In addition, private attorneys can arrange a fee agreement that would allow them to insist upon a statutory fee as part of any settlement.*** See Blanchard v. Bergeron, 831 F.2d 563 (5th Cir. 1987), cert. granted, 487 U.S. 2869, 108 S. Ct. 2869, 101 L. Ed. 2d 904 (1988) (addressing whether private counsel's contingent fee arrangement limits a § 1988 award). The private attorney will be free then, without impairing client's interests, to insist on vindication of the fee-shifting provisions of the Act. Thus the Act's policy of encouraging counsel to take on these cases is not significantly deterred. In the ordinary non-class, consumer fraud action brought by private counsel, we see no need to alter the general rule that simultaneous negotiation of counsel fees and merits may be entertained. (emphasis added.)
>
> [Coleman v. Fiore Brothers, Inc., 113 N.J. 594, 603, 552 A.2d 141 (1989).] (emphasis added).

Thus the Court held that the record demonstrated that the statutory claims for fees were encompassed within the settlement, even when involving public interest lawyers.[18]

In Warrington v. Village Supermarket, Inc. 328 N.J. Super. 410, 746 A.2d 61 (App. Div. 2000), a wheelchair-bound customer brought suit against a supermarket alleging that the design of the shopping cart corral violated the Handicapped Access Law (HAL), Law Against Discrimination (LAD), and Americans with Disabilities Act (ADA). The pertinent issues before

[18] Although the Supreme Court later agreed with the Third Circuit's holding in El Club del Barrio v. United Community Corps., Inc., 735 F.2d 98, 100 (3d Cir. 1984) and Ashley v. Atlantic Richfield Co., 794 F.2d 128, 130 (3d Cir. 1986).

the Appellate Division was whether plaintiff was a prevailing party, even though a consent judgment was entered, and if plaintiff was entitled to receive an award of attorneys' fees pursuant to the state and federal fee-shifting statutes. The Appellate Division concluded that plaintiff as the prevailing party was entitled to attorneys' fees even though there was no finding or admission that defendants had violated LAD and/or ADA.

In the case at bar, the court has not made a finding nor has the defendant admitted that it violated the NJCFA. Warrington, 328 N.J. Super. at 420, 746 A.2d at 66. "Furthermore, it is immaterial that plaintiff received only some of the relief requested. In Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40, 50 (1983), the Supreme Court held: [it is not] necessarily significant that a prevailing plaintiff did not receive all the relief requested." Warrington, 328 N.J. Super at 421, 746 A.2d at 66.

More importantly, "Entitlement to attorneys' fees is predicated on the relationship between the relief sought and the relief obtained. Warrington, 328 N.J. Super. 410, 419, 746 A.2d, 61, 66; See Institutionalized Juveniles v. Secretary of Pub. Welfare, 758 F.2d 897, 911 (3d Cir. 1985); Singer v. State, 95 N.J. 487, 495, 472 A.2d 138, cert. denied, 469 U.S. 832, 105 S. Ct. 121, 83 L. Ed. 2d 64 (1984) A plaintiff is considered a prevailing party 'when actual relief on the merits of [the] claim materially alters the relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.'" Farrar v. Hobby, 506 U.S. 103, 111-12, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494, 503 (1992); see also Metropolitan Pittsburgh Crusade for Voters v. City of Pittsburgh Pa., 964 F.2d 244, 250 (3d Cir. 1992) (a " 'plaintiff must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant' ") Warrington, supra, 328 N.J. Super. at 66, 746 A.2d at 419.

Here, class counsel has negotiated a settlement which significantly alters the defendant's behavior. Under the settlement, defendant is required to guarantee the performance of its tires. If a Cooper tire fails to meet consumer expectations and suffers an adjustable separation, defendant is required to replace that tire at no cost to the class member. If the class member prefers monetary compensation instead of a replacement tire, the class member may resort to ADR. Defendant has also implemented a consumer education program in collaboration with NHTSA in which defendant will distribute important tire maintenance materials developed by NHTSA as well as materials developed in conjunction with the NSC and Rubber Manufacturers' Association[19] ("RMA") thereby reducing the number of tire failures and unsafe tires on the road. Defendant has also enhanced its inspections process that will presumably place a better tire in the marketplace. More importantly, defendant has reaffirmed that the practice of awling is no longer in use. Clearly, this "lawsuit acted as a catalyst which prompted [defendants] to take action to correct the unlawful practice" Warrington, 328 N.J. Super. at 421, 746 A.2d at 66. quoting N.A.A.C.P. v. Wilmington Med. Ctr., Inc., 689 F.2d 1161, 1167 (3d Cir. 1982) (citation omitted), cert. denied, 460 U.S. 1052, 103 S. Ct. 1499, 75 L. Ed. 2d 930 (1983), and therefore plaintiffs as the prevailing party are entitled to the agreed upon fees.

More recently our Supreme Court addressed the issues of prevailing party, counsel fees and arbitration. In a case decided by our Supreme Court, Riding v. Towne Mills Craft Center, Inc. 166 N.J. 222, 764 A.2d 1004 (2001) (hereinafter "Riding"), a plaintiff sought to confirm an award issued in a nonbinding arbitration of her age discrimination action under the Law Against

[19] RMA is the primary national trade association for the finished rubber products industry in the U.S. RMA is headquartered in Washington, D.C. and is recognized as the leading business advocate, resource and information clearinghouse for and about today's diversified rubber industry. RMA developed a consumer education program in 1969 and has had continued involvement in matters of consumer safety regarding proper tire care and maintenance.

Discrimination (LAD) and requested attorney fees. The trial court confirmed the arbitration award but denied the request for attorney fees. In a split decision, the Appellate Division reversed and defendant appealed. Justice LaVecchia writing for the Supreme Court by majority vote affirmed the decision of the Appellate Division.

Justice LaVecchia held that in statutory fee cases, in conjunction with non-binding arbitration programs, the parties may voluntarily proceed into ADR. Even under the court's pending arbitration such as the pilot project involved in Riding, "[P]laintiff was not a prevailing party until the de novo trial had passed. Riding, 166 N.J. at 231, 764 A.2d at 1009 (2001). Plaintiff then requested fees by petition. Riding, supra.

Recognizing the current gap between the R. 4:42-9(d) mechanism for applying for adjudication of prevailing parties under the arbitration rules and judicial confirmation of arbitrator's awards under N.J.S.A. 2A:23A-26, the court held: "In the future, in nonbinding arbitration, statutory fee-shifting issues will be reserved for court resolution unless the parties otherwise agree to submit the fee demand to the arbitrator." Riding, 166 N.J. at 234 (2001).

In the instant case, plaintiffs as the prevailing party seek fees under the NJCFA. This issue was presented to Professor McGovern who with the parties resolved the counsel fees, post the merits agreement.

Unlike the pilot program of arbitration referred to by Justice LaVecchia in Riding, here the parties were engaged in an unprecedented resolution of a national class action involving multiple state and MDL courts. The state judges, like the parties, relied upon Professor McGovern to coordinate, facilitate and resolve all issues within this case. The result was a maximum victory for class members with free replacement tires, enhanced warranty, consumer

safety education and all monies of costs and fees to be paid directly by the defendant, not the class members.

Professor McGovern attests to the court in a second affidavit of February 2002 that states:

> **The amount of attorneys fees and costs agreed upon by the parties, in my opinion, represents a market-based approach and a prudent decision by parties to compromise what could have been a protracted battle over fees. Defendant offered to pay counsel fees and costs which was les than defendants own costs of defending the litigation and if accepted by class counsel, would resolve the issue on its part. Class counsel accepted defendant's offer, which was a reasonable alternative to litigation on this issue.** (emphasis added).
>
> [McGovern, Special Master's Findings of Fact and Recommendations, February 22, 2002.]

Unlike the cases considered by Justice LaVecchia in Riding, this is a track four case, though fee shifting resulted in a consent order for mediation, not arbitration. The Justice's prescription for future cases effects nonbinding arbitration for statutory fee-shifting issues to be reserved for court resolution unless the parties otherwise agree to submit the fee demand to arbitration. Here, no additional review by the court is necessary as this court finds:

(1) Counsel fees were resolved at arms length after the merits of the case were resolved

(2) No member of the class is responsible for either fees or costs, thereby not compromising their relief

(3) The class members received the optimum recovery or replacement tires, costs borne by defendants including mounting, balancing and disposal of the tires

(4) Class members receive an enhanced warranty, may if desired go to an expedited ADR program for alternative tire replacement costs

(5) The plaintiffs counsel fees recovered in the agreement as of October 2001 were $15 million less than defense costs, at that time

(6) The plaintiffs counsel fees are as recommended by Professor McGovern, representative of a market based approach

(7) No petition for counsel fees was made to this court that required resolution, review or reconsideration.

Therefore, our courts have contemplated that settlement agreements, once the merits of the case have been settled, may also then contain a resolution of counsel fees and costs for the prevailing party. Here, plaintiffs and the defense negotiated a unique and sophisticated resolution of a national class action with the assistance and recommendation of Professor McGovern. The Coleman court's affirmation that the statutory claims for attorneys' fees of the client were encompassed within the negotiated settlement and stipulation of dismissals.

Unlike the holding in Rendine v. Pantzer, 141 N.J. 292, 661 A.2d 1202 (1995) and Incollingo v. Canuso, 297 N.J. Super. 57, 687 A.2d 778 (App. Div. 1997), where petitions were made to the court for the awarding of fees, all the terms in this case like those of the Coleman case were settled. Therefore, this court adopts counsel fees and costs as recommended by Professor McGovern in this matter.

VIII. DISCUSSION

The first pronouncement on procedures for handling a class action settlement in the State of New Jersey was offered by Judge Skillman in his 1984 decision of Morris County Fair Housing Council v. Boonton Township, et al, 197 N.J. Super. 354, 484 A.2d 1302 (App. Div. 1984) (hereinafter "Morris County").

He begins, as does this court, with a recitation of R. 4:32-4 that "[a] class action shall not be compromised without approval of the court…" There has been no change in the 2002 Rule Book, Pressler Rules Governing the Courts of the State of New Jersey, 2002 Edition. In the 2003

Edition effective September 1, 2002, Morris County, 197 N.J. Super. at 360, the following has been added, "2nd notice of the proposed dismissal or compromise shall be given to all members if the class in such manner as the court directs."

The analysis continues by observing that there is a paucity of case law pertaining to the procedure for judicial approval and of the standards applied in determining whether approval of a class should be given citing: City of Paterson v. Paterson General Hospital, 104 N.J. Super. 472, 250 A.2d 427 (App. Div. 1969), aff'd 53 N.J. 421, 251 A.2d 131 (1969); see also New Jersey State Bar Ass'n v. New Jersey Ass'n of Realtor Bds., 186 N.J. Super. 39, 452 A.2d 1323 (Ch. Div. 1982), mod. 93 N.J. 470, 461 A.2d 1112 (1983).

Observing that New Jersey R. 4:32-4 was taken from and is identical to Fed.R.Civ.P. 23(e), citing 2 M. Schnitzer & J. Wildstein, N.J. Rules Service at 1160-1166 (1959); Morris County, 197 N.J. Super. 370. Therefore, Judge Skillman finds it appropriate for NJ state court judges to seek "guidance in the federal case law in determining the procedures and standards for approval of settlements or representative actions. Cf. Riley v. New Rapids Carpet Center, 61 N.J. 218, 294 A.2d 7 (1972) (primary reliance placed upon federal precedents in determining maintainability of a class action). Id. 369.

Judge Skillman suggests a five step procedure which governs the approval of proposed settlements of class actions in the federal courts, citing 3B J. Moore & J. Kennedy, Moore's Federal Practice ¶23.80 (2d ed. 1982), 7A C. Wright & A. Miller, Federal Practice and Procedure, § 1797 (1972); Manual for Complex Litigation §1.46 (5th ed. 1982).

1. The Court Must Make a Preliminary Determination that the Proposed Settlement has Sufficient Apparent Merit to Justify Scheduling a Hearing to Review its Terms

This court on November 1, 2001 (Prelim. Appr.), granted preliminary approval to the settlement and conditionally certified a settlement class. At that time, this court found that the requirements of numerosity, commonality, typicality and adequacy of representation were met. A further analysis revealed that common issues predominated over individual issues, a class action was the superior method of adjudication of the controversy, there was no significant interest in proceeding in separate actions, the proposed settlement class is manageable, and there were no other consumer protection litigations pending from the same factual allegations.

The findings of this court were set forth in a detailed and lengthy opinion which was available to the national public through class counsel, the defendant, the Clerk's Office of the Middlesex County Courthouse and this court's internet Mass Tort Information Center.

2. A Formal Notice Approved by the Court Must be Given to All Members of the Class and Others Who May Have an Interest in the Settlement

Since 1984 much has been learned about the successful methodology of giving class notice. This court required bilingual notification (English/Spanish) to be made in the most widely cast net as possible in this national class settlement. To that end, a variety of notice mechanisms were employed including but not limited to 900 Sunday newspapers throughout the United States and in major national consumer publications, including those most widely read by the Cooper Tire Owners demographic groups.

Affidavits of Todd B. Hilsee, dated January 22, 2002 (Cooper Memo's, App. Ex. A, Hilsee Affidavit at 8), an expert secured by the plaintiffs, demonstrated an extremely successful market absorption. Notice was also published in the leading newspapers in Guam, U.S. Virgin Islands and in Spanish in the two leading Spanish newspapers in Puerto Rico. A neutral press

release was issued to consumer media and appropriate trade publications on November 9, 2001, to more than 2,400 consumer media outlets.

Notice given on the Internet yielded 1,197,774 hits to the website designated www.coopertirelitigation.com and 224,121 unique visitor "user sessions" were recorded. Over 17,700 phone calls were taken by a 24 hour a day response unit, 12,039 notices were requested to be mailed via a toll-free number and the website, with 9,143 class members checking the eligibility of their tires on the website.

This court finds that the notice was extensive, comprehensive, successful and equitable in the breadth, depth and scope of the notice. The interactive component of 24 hour telephone and website take the notice requirement far beyond any contemplated in 1984.

3. Sufficient Time Must be Allowed Class Members and Others Interested Parties to Prepare Documentary Material and/or Oral Testimony in Opposition to the Proposed Settlement

From November 1, 2001 potential objectors and/or intervenors were given two and one half months to submit any documents and motions. Only 19 attorney represented objectors filed objections and/or motions to intervene and 7 pro se objectors filed objections with the court.

Despite applications from objectors' attorneys that were replete with defects, this court held two days of a fairness hearing allowing any person pro se or with counsel for objectors to speak. The court, while reserving on potential procedural defects, was more concerned with ascertaining any substantive arguments that would seriously call into question the fairness, reasonableness and adequacy of the settlement.

4. A Hearing Must be Held

The court held a fairness hearing on January 29 and 30, 2002. Parties who requested

extensions to supplement materials were liberally granted time to supplement materials in February. However, the court closed the record on January 30, 2002 to all persons who had not previously filed motions or requested extensions to supplement materials. While supplements were requested and considered, sur rebuttals were denied as within the court's discretion. Id. 370, citing Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1997); Patterson v. Stouzll, 528 F.2d 108 (7th Cir. 1976); Flynn v. FMC Corp., 528 F.2d 1169, 1172 (4th Cir. 1975).

5. The Court Must Reach a Conclusion Based Upon Adequate Findings of Fact that the Settlement is "Fair and Reasonable" to the Members of the Class

Judge Skillman, citing to the federal courts defines "fair and reasonable," as adequately protecting the interests of the persons on behalf of the action brought. Armstrong v. Milwakee Bd. Of School Directors, 616 F.2d 305, 314-315 (7th Cir. 1980).

In light of this Court's extensive analysis of the prerequisites to the propriety of a settlement class at the preliminary approval stage, and because no new facts which bear upon class certification have been developed since the time of Preliminary Approval, it is not necessary to undertake this analysis again. See Pozzi v. Smith, 952 F. Supp. 218, 221 (E.D. Pa. 1997) (concluding that final class certification was appropriate where parties represented to the Court that they were unaware of any material changes in conditions subsequent to provisional certification, and the Court was unaware of any additional information which would alter its findings). The Court accordingly adopts the preliminary analysis taken in the preliminary approval opinion and incorporates the same hereto.

Unlike the considerations present before Judge Skillman in the Morris County case, the present settlement is a national class action. It presents considerations and inquiries that are not addressed by a New Jersey case to date. Accordingly, guidance may be derived from the federal courts.

The Third Circuit Court of Appeals has utilized at least nine factors which it believes must be assessed to determine whether a proposed settlement is fair, reasonable, and adequate, and deserving of court approval under Federal Rule of Civil Procedure 23(e): (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir.1975) (hereinafter the "Girsh factors"); see also Lake v. First Nationwide Bank, 900 F. Supp. 726, 732 (E.D. Pa. 1995). This nine-factor test require that this Court conduct both "a substantive inquiry into the terms of the settlement relative to the likely rewards of litigation" and "a procedural inquiry into the negotiation process." General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 796 (3d Cir.), cert denied, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995) ("G.M. Trucks"). The Court must ensure that this case did not settle in the absence of sustained effort by class representatives sufficient to protect the interests of the class. Accordingly, the Court should consider also whether the parties completed sufficient discovery prior to settlement; the adequacy of settlement relief in light of the preliminary discovery; whether the settlement omits major causes of action or types of relief; and whether the parties negotiated simultaneously on attorneys' fees and class relief. See G.M. Trucks, 55 F.3d at 806.

1. The Complexity and Duration of the Litigation

This factor is "intended to capture the probable costs of continued litigation." G.M. Truck, 55 F.3d at 812; In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148

F.3d 283, 318 (3rd Cir. 1998) (approving settlement where "litigation would require expensive and time consuming discovery, would necessitate the use of several expert witnesses, and would not be completed for years"). If this litigation continued plaintiffs and defendants would be spending tens of millions of dollars in the continuation of discovery and litigation regarding the confidentiality of Cooper's proprietary information and/or numerous motions to dismiss, motions to remand, motions for class certification in at least thirty-three cases involving 87 firms throughout the United States. Continued litigation would result in additional party and fact witness depositions, as well as further document review of over 3,000 boxes of documents produced by Cooper, additional tire inspections, plant inspections and other discovery, which would likely cost the parties millions of dollars over a span of years. Counsel costs for both parties, prior to negotiation were estimated at $57 million per year. Plaintiffs' Memo at 34-35, Cooper's Memo at 12-13.

Clearly this factor weighs heavily in favor of settlement.

2. The Reaction of the Class to the Settlement

This factor must be analyzed by examining the number and vociferousness of the objectors, as well as gauging whether members of the class support the settlement. In re Diet Drugs, 2000 WL 1222042, 60 (E.D. Pa. 2000) (this factor was found to favor settlement when the court concluded that less than thirty objectors and 50,000 opt outs was found to be a low number in the face of a potential class size of six million). In the case at bar, with 170 million tires at issue, of the at least 42 million potential class members, there remains approximately seven pro se objectors and only 156 class members who chose to opt out. This is well below the percentage Judge Bechtle found necessary in approving the Diet Drug Settlement. See Id. Plaintiffs' Memo at 37, Cooper's Memo at 14.

While the Fairness Hearing had 19 attorney represented objectors, this court was notified at four o' clock on August 30, 2002 that the last attorney represented objectors, voluntarily withdrew their motion to intervene and objection.

3. The Stage of the Proceedings

"To ensure that a proposed settlement is the product of informed negotiations, there should be an inquiry into the type and amount of discovery the parties have undertaken." In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d at 319. It is appropriate to measure the stage of proceedings either in the class action at issue or in some related proceeding. In re General Motors, 55 F.3d at 813. The settlement came almost one year after the filing of Talalai. When the settlement negotiations began, Class Counsel had already taken numerous depositions, examined hundreds of tires, and had begun reviewing over 3000 boxes of documents, in addition to the electronic media regarding downgrades and adjustments that had been provided by Cooper.

Some of the remanded state class actions had proceeded with pretrial preparations. Numerous pretrial motions were briefed and ruled upon such as defendant's motion for protective order on confidentiality. Other issues in dispute were briefed at great length and included: (1) the preservation of evidence; (2) the trade secrets involved in discovery; (3) the timing of merits versus class discovery; (4) the scope of discovery; (5) the scope and applicability of third party discovery; (6) whether and which documents should be protected or privileged; (7) whether NHTSA regulations preempted plaintiffs' claims; (8) whether plaintiffs' stated a cause of action for damages; and (9) whether plaintiffs' suffered damages within the meaning of the Consumer Fraud Act. Plaintiffs' Memo at 41.

In light of the extensive discovery, the court finds that class counsel were informed of the

merits of this litigation. In re General Motors, 55 F.3d at 814 ("To the extent that this stage-of-proceedings factor also aims to assure that courts have enough exposure to the merits of the case to enable them to make these evaluations, it cannot support settlement approval here. With little adversarial briefing on either class status or the substantive legal claims, the district court had virtually nothing to aid its evaluation of the settlement terms.").

This factor weighs in favor of settlement.

4/5. The Risks of Establishing Liability and Damages

"The fourth and fifth Girsh factors survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of the immediate settlement." In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d at 319. It is obvious to the court that "the risks surrounding a trial on the merits are always considerable." In re Diet Drugs, No. Nos. 1203, 99-20593, 2000 WL 1222042, at *61 (E.D.Pa. 2000) (quoting Weiss v. Mercedes-Benz of N. Am., Inc., 899 F. Supp. 1297, 1301 (D.N.J. 1995), aff'd, 66 F.3d 314 (3d Cir. 1995)). In order to determine the risks of litigation, a court must "examine what potential rewards (or downsides) of litigation might have been had class counsel decided to litigate the claims rather than settle them" and balance "the likelihood of success if the case were taken to trial against the benefits of immediate settlement." Milkman v. American Travellers Life Ins. Co., 2002 WL 778272 at *13 (Pa. Com. Pl. 2002) (quoting In re Safety Components, Inc. Sec. Litig., 166 F.Supp. 2d 72, 89 (D.N.J.2001)). The court found the risks of litigation to be substantial:

- Although plaintiffs prevailed on the motion to dismiss, there is some question whether it would have survived summary judgment in whole or in part. For example, would the court require that each plaintiff show that his or her tire in fact had a delamination or an awl hole? If so, and defendant was vigorously urging this approach, would anyone come forward with such proof what

would it consist of? Defendant argues that awl holes are undetectable as is most delamination. Leaving aside the question of whether there is a competent expert or process (like sherography) to find these holes. Even if, say, sherography worked and Class Counsel employed it in case preparation, what attorney would pay a couple of hundred dollars a piece to screen a few million tires? Such an order on proof then would devastate the case.

- Equally devastating would have been a denial of class certification. There is no guarantee Talalai would not meet the same fate, given the court's discretion to modify or decertify a class at any time. Again, certification can mean many different things and involve different trial plans. A key question would be how to prove class damages without evidence that each and every tire had that defect.

- Liability would be difficult to establish. First, you have to define what a reasonable consumer expectation would have been to define the actionable fraud, *e.g.,* not disclosing certain problems. Next, for a jury, you would need to show that those problems related to the plaintiffs tires and that full disclosure would have led the consumer to buy a different tire. But what evidence could we provide that all tires were subject to the same production vagaries?

- Other problems plaintiffs face in this case are the facts that most of the defendant's customers are repeat customers, and that NHTSA has not found any systemic problem and in fact, declined to investigate defendant.

- Evidence to prove liability is also needed, and to prove it for the entire class and the entire class period. For example, proof of manufacturing problems in the 1985-1987 time frame at the Tupelo plant means that the class definition may be narrowed, or that only some people recover. If you do not know how many 1985-1987 Tupelo tires are out there, do you opt-in? Fluid recovery?

- Assuming the class definition was narrowed, and then the issue is who is still in the Class. Specifically, if the average tire lasts four (4) years or 10,000 miles, how many awled tires, *e.g.,* 1985-1987 Tupelo tires, are still on the road?

- Other proof problems turn on experts. Basically, plaintiff would rely on industry outcasts who are in the business of testifying to criticize the manufacturing process of a successful company. Juries do not like that, but will forgive it given enough hot

documents. However, where as here, you have various process changes occurring over time, the old documents become less helpful to prove the case of the tires still on the road.

- Plaintiffs also have to rely on former employees of defendant for some of their evidence. There is a possibility that a jury may not have believed disgruntled workers and their claims of awling and other manufacturing problems. In addition, defendant denied awling and the documents widening awling seem to end earlier than expected at the time suit was filed. Plaintiffs' review of defendant's documents did not reveal any evidence of awling post-1995, which arguably undercut plaintiffs' claims.

- Damages would have been a highly contested matter. How does a jury value the "diminished expectations of consumers?

- Defendant had many defenses, which if true, would prevent plaintiffs from recovering any damages or at least would result in reduced damages.

- The difficulty in sustaining large verdicts in novel areas on appeal is a real concern that limits counsel's willingness to "swing for the fences." Defendant had already shown its willingness to appeal certain rulings, and undeniably, defendant would appeal a large jury verdict.

- Procedurally, defendant had tried to get the MDL judge to take control of the state proceedings. In the unlikely event that that court was found to have jurisdiction, this issue would certainly resurface.

  [Plaintiffs' Memo at 43-46.]

- Under NJCFA, adjudication favorable to plaintiff would result in treble damages.

These risks of establishing liability and damages indicate that great uncertainties existed as to whether plaintiffs' would prevail at trial. Thus, this factor weighs in favor of settlement.

6. The Risks of Maintaining a Class Action

This factor requires consideration of the fact that the court has authority to decertify a class that proves unmanageable, and thus, establishes that there is always a risk that the class

may not be maintained throughout trial. In Amchem Products, Inc. v. Windsor, the Supreme Court found that taking settlement into consideration negates the inquiry into whether the case, if tried, would present intractable management problems. Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997). The Third Circuit has stated that "after Amchem the manageability inquiry in settlement-only class actions may not be significant. In re Diet Drugs, No. Nos. 1203, 99-20593, 2000 WL 1222042, at *61 (quoting In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d at 321.)

Thus, the court finds that this factor does not weigh against the settlement.

7. The Ability of the Defendants to Withstand a Greater Judgment

This factor does not require that the defendant pay the maximum it is able to pay. In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d at 321-22 (finding that defendant's declining credit rating during litigation supported settlement). "Where the ability of the defendant to take a bigger hit is in doubt ... the courts generally view this as a major factor weighing in favor of the settlement." In re Chambers Dev. Sec. Litig., 912 F.Supp. 822, 839 (W.D. Pa. 1995).

Cooper has attested and class counsel's experts have verified that a judgment larger than the benefits provided under the settlement would be difficult, if not impossible, for Cooper to sustain. Class counsel's experts in their affidavits have stated that Cooper would be unable to withstand a larger verdict and declare bankruptcy if there was a larger damages award obtained at trial under the New Jersey Consumer Fraud Act. Plaintiffs' Memo at 49-50, Cooper's Memo at 17-18.

Therefore, this factor weighs in favor of settlement.

8/9. The Range of Reasonableness of the Settlement in Light of the Best Recovery and All the Attendant Risks of Litigation

"The last two Girsh factors ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial." In re Diet Drugs, Nos. 1203, 99-20593, 2000 WL 1222042, at *62 (quoting In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d at 322.) The settlement provides an estimated value from over $1 billion to class members. Plaintiffs' Memo at 50. Though this figure is dependent on the number of tires brought to Cooper's dealers. A best case scenario would generate a $3 billion recovery at trial and would be reduced by the additional attorneys' fees. "In conducting this evaluation, it is recognized 'that settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution and courts should guard against demanding to large a settlement based on the court's view of the merits of the litigation.'" In re Safety Components, 166 F.Supp. 2d at 92. This court has articulated the risks of litigation and the likely disputes which would be encountered if this case proceeded to trial. This settlement also offered the right to opt out to class members who wanted to go to trial. In re Diet Drugs, No. Nos. 1203, 99-20593, 2000 WL 1222042, at *62 (The right to opt out viewed as a choice in determining the reasonableness of settlement in light of the best possible recovery).

Cooper maintains that if this case had gone to trial, there is a significant likelihood that the class members would have received nothing because plaintiffs would not have been able to prove their case. Cooper also correctly highlights that this case is about consumer expectations and consumer fraud and allegations were made that consumers were paying for a tire which had a higher risk of separation. Cooper also argues that damages are so speculative since so few class members have suffered any separations and that it is "highly unlikely" that they will suffer an adjustable separation. Cooper's Memo at 18.

Class counsel and Cooper obtained experts to ascertain the value provided under the settlement. Plaintiffs' actuarial expert, Mark Browne is a professor and chairperson of the Department of Actuarial Science, Risk Management, and Insurance at University of Wisconsin – Madison's School of Business. Professor Browne comments upon the reasonableness and value of the proposed settlement as compensation to the class members by illustrating the implications of the settlement warranty. First, the warranty signals Cooper Tire's confidence in their product and their willingness to accept the financial consequences if their product fails to meet the quality level required by the warranty. Second, the warranty provides coverage against loss that is unparalleled in the tire industry. As a result, it is reasonable to expect that many consumers will be willing to pay 10% more for a tire with the type of insurance offered by this warranty. There is a considerable demand by consumers for warranties. This demand will be increased by the quality of the settlement warranty.

Professor Browne declares that there is insufficient data to determine the expected loss costs, under the settlement warranty, but the actual costs may be greater under the settlement than under a comparison of other warranties because (1) consumers are more aware of the defects covered under the settlement warranty, (2) settlement provides greater compensation to those with defective tires by replacing the tire and mounting and balancing the tire, (3) settlement warranty contains less exclusions than the standard warranty. (Plaintiffs' Memo, App. Ex. B, Brown Affidavit at 4). However, the value of a class action settlement is not determined from the cost or benefit to the defendant, but rather the benefit obtained by the class. See In re The Prudential Ins. Co., of Amer. Sales Practices Litig., 962 F.Supp. 450, 557 (D.N.J. 1997), aff'd 148 F.3d 283 (3d Cir. 1998). Based on the cost of other warranties, a reasonable estimate of the value of the settlement warranty to a class member is $6. Assuming the number of tires insured

under the warranty is 170, 000,000, the estimate of the value of the settlement is $1,020,000,000. This valuation was developed independent of Professor Martin during the settlement negotiation process. Plaintiffs' Memo, App. Ex. B, Brown Affidavit at 4. Based on Professor Brown's figures, this settlement provides significant value to class members.

Defendants submitted an affidavit of Claude R. Martin to attest to the value of the settlement. Professor Martin has taught at the University of Michigan since 1965 and from 1980 through the present has been the Isadore & Leon Winkelman Professor of Marketing. Professor Martin believes that the overall value to the class members of the Enhanced Warranty is over $3 billion. He found the average value of the Enhanced Warranty to be $17.75 per tire as determined by sixteen independent focus groups in four different regions of the United States. Accordingly, with 170 million tires potentially at issue, the overall value to class members is approximately $3,017,500,000 (170 million tires x $17.75 = $3,017,500,000).

Professor Martin believes that the appropriate way to measure the value of any warranty is to determine the value the consumer places on the warranty as opposed to the potential cost to the manufacturer. Therefore, when the individuals in the sixteen focus groups were surveyed and asked to choose between a tire with a standard warranty or a tire with an Enhanced Warranty as is provided in this settlement, each chose the tire with the Enhanced Warranty. Professor Martin believes that the Enhanced Warranty can be viewed as an insurance policy and provides significant value to the class members as is demonstrated by the results of the survey.

Therefore, this court believes that the class members are receiving reasonable benefits in light of the best possible recovery and litigation risks.

IX. ANALYSIS

This settlement has resulted from extensive efforts taken by class counsel and Cooper

counsel. Two major concepts need to be recognized in this suit: (1) this is a consumer fraud case; (2) a compromise with integrity is the ideal settlement. Many courts approving fair, reasonable and adequate settlements have reiterated that no settlement is perfect, nor is it the duty of the court to construct or dictate settlement terms.

The Third Circuit has observed that in assessing the fairness of a proposed settlement, the Court should be careful not to use its image of an perfect settlement for the compromising parties' views: "The Court, however, cannot substitute its concept of an "ideal" settlement for the one presented by the parties: 'Significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class.'" In re Cendant Corporation Securities Litigation, 109 F.Supp. 2d 235, 255 (2000) (quoting Lake v. First Nationwide Bank, 900 F.Supp. 726, 732 (E.D. Pa. 1995). "Thus, the issue is whether the settlement is adequate and reasonable, not whether one could perceive of a better settlement." In re Cendant at 255 (citing In re Domestic Air Transp. Antitrust Litig., 148 F.R.D. 297 (N.D. Ga. 1993)).

Hence, the parties reached a settlement agreement tailored to address the claims in the complaint. The complaint states,

> Plaintiffs, who purchased steel belted radial tires manufactured by Cooper Tire suffered an ascertainable loss of money, as a result of the use or employment of methods, acts or practices declared unlawful by the Consumer Fraud Act and bring this private action to recover damages in the amount necessary to obtain non-defective tires.
>
> [Amended Complaint at ¶56.]

Consumer fraud claims are directed at diminished expectations and redressing wrongs. Here the class members' claims are being compensated through the three prongs of the settlement: (1) the

Enhanced Warranty; (2) The Enhanced Finishing Inspection; and (3) Consumer Education Program.

The Enhanced Warranty guarantees that if the consumer did not receive what was originally bargained for, a tire free of any defects, Cooper will replace the tire, at no charge. The Enhanced Warranty also offers class members an insurance policy and the peace of mind which comes along with an insurance-like warranty.

If a class member prefers to have monetary compensation in place of a new tire, the settlement provides an ADR remedy. The ADR component of this settlement is in compliance with New Jersey public policy. New Jersey public policy dictates that disputes be resolved in a manner that is both expeditious and affordable.[20] As a consequence of this strong policy consideration, New Jersey courts are enthusiastic supporters of alternative dispute resolution.[21] This includes but is not limited to arbitration, mediation and a myriad of other processes created to assist parties in resolving differences. Under the leadership of Chief Justice Wilentz, New Jersey pioneered a "statewide court-annexed dispute resolution system[22]". This nationally recognized system illustrates the commitment the New Jersey Judiciary has maintained to ensure expeditious and affordable dispute resolution. Therefore, the ADR component of the settlement

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[20] Justice Marie L. Garibaldi, Chief Justice Robert N. Wilentz's Role in the Development of Complimentary Dispute Resolution, Seton Hall Const. L. J., 335 (1997).
[21] See id. at 336.
[20] Id. at 337 (noting Complementary Dispute Resolution (CDR) is so named to accentuate the supplementary nature of the dispute resolution program. It is not intended to replace court adjudication, but complement it.).
[21] Stephen J. Ware, Arbitration Under Assault: Trial Lawyers Lead the Charge, Cato Institute-Policy Analysis No.433 (April 18, 2002) available at www.cato.org/pubs/pas/pa-433es.html at 9 (arguing that arbitration of consumer disputes lowers prices of certain products).
[22] Id. at 3 (noting that arbitration "gains speed and efficiency by streamlining discovery, pleadings, and motion practice.")
23 Garibaldi, supra note 1 at 337 (stating "[i]t [dispute resolution] seeks to improve the quality and efficiency of the justice system, increase access to justice, reduce delay and cost, and meet the growing demands of burgeoning caseloads.").

is firmly supported by New Jersey public policy, as well as most scholars who agree that ADR typically reduces costs[23] of litigation,[24] conserves time, and relieves some of the strain on judicial resources.[25]

The Enhanced Finishing Inspection Program ensures that there will be an ongoing physical inspection of tires. To accomplish this, Cooper will continue to evaluate its processes and will make necessary improvements and/ or changes in its manufacturing process. This aspect of the settlement displays Cooper's continued commitment to producing a high-quality tire. Many courts have recognized that improving business practices imparts a substantial benefit to repeat Cooper customers and the public as a whole. Wisser v. Kaufman Carpet Co., Inc., 188 N.J.Super. 574, 579, 458 A.2d 119 (App.Div. 1983); See Dumont v. Charles Schwab & Co., Nos Civ. A. 99-2840, 99-2841, 2000 WL 1023231 (E.D. La. 2000), Garza v. Sporting Goods Props., Inc., 1996 WL 56257; Schwartz v. Dallas Cowboys Football Club Ltd., No. Civ. A. 97-5184, 2001 WL 1689714 (E.D. Pa. 2001); In re Dun & Bradstreet Credit Servs. Customer Litig., 130 F.R.D. 366 (S.D. Ohio 1990) (court approved settlements where improvements in business practice concluded to be beneficial to class members).

The Consumer Education Program provides consumers with information about tire safety and the importance of proper maintenance. It teaches consumers to avoid tire problems by caring for their tires properly and paying attention to the condition of their tires. The importance of this prong of the litigation was reaffirmed by NHTSA' safety campaign (purpose of campaign is to "stress the importance of proper tire inflation and vehicle load limits") and its proposed rules regarding tire labeling. See, "NHTSA: America Driving on Bald Tires, Check Your Pressure."

Cooper is assisting NHTSA with its campaign by supplying class members with literature on tire maintenance, since under-inflated tires lead to 49 to 79 deaths and 6,585 to 10,635 injuries annually. See, NHTSA press release, Many U.S. Passenger Vehicles Are Driven on Under-inflated Tires (August 29, 2001). Hence, the Consumer Education Program is highly beneficial to this Settlement and its' class members as well as to the average driver.

The settlement's terms and remedies appropriately reflect both parties' compromise on the contested issues, in light of the risks inherent in litigation. The Motor Vehicle Safety Act, 49 U.S.C. §30101, et seq., gives NHTSA the authority to investigate complaints concerning automobile defects and to order a recall where appropriate. NHTSA, the administrative agency that Congress has vested with this power, has determined that a recall, much less an investigation was unwarranted. This court cannot be left to dictate the terms of the settlement to the parties. It cannot order the parties to provide remedies unavailable under the NJ Consumer Fraud Act, which is the alleged violation in the complaint.

Thus for this Court to direct Cooper to provide replacements for all their tires under this settlement would require proof of liability. Proof of liability entails years of litigation and proving that all Cooper tires are defective. Such demands would be the equivalent of having the court issue a virtual recall in a consumer fraud case rather than seek the available monetary costs, reimbursement, and, or counsel fees.

On the other hand, there is a significant likelihood that Cooper could have prevailed at trial and that the class members would have received nothing. Considering all their options as well as what they have learned in discovery, the parties concluded that the terms of the settlement represented the best possible resolution.

> …[I]t is important that the Settlement and the Class's expectations be viewed not in a vacuum where each of the Complaint's

> allegations are treated as fact, but rather in the context of the risks of continuing litigation, the likelihood if a successful prosecution of the Class's claims and the length and complexity of further litigation.
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> [Milkman v. American Travellers Life Insurance, 2002 WL 778272, *4 (Pa. Com. Pl. 2002).]

In Milkman, supra, The Pennsylvania Court of Common Pleas approved a global settlement from claims which arose from defendant's alleged fraud and other illegal conduct related to the sale of long term care and home health care insurance policies, although it believed that the settlement did not award all that the complaint or class members sought from a suit.

A settlement by definition is a compromise. "That liability often remains contested is a necessary corollary of the fact that settlements reflect a 'yielding of absolutes and an abandoning of high hopes,'" Snell v.Allianz Life Ins. Co., No. Civ. 97-2784 RLE, 2000 WL 1336640, at *17 (D. Minn. 2000). This settlement correctly provides the appropriate compensation for class members who suffer an ascertainable loss as explicitly stated in the complaint.

Many have mistaken this litigation for a products liability case and believe that Cooper should provide these benefits under products liability law and labeled this as a safety case. As the court frequently noted during the Fairness Hearing, this is not a products liability case. The complaint alleged that Cooper sold defective tires and that consumers should be reimbursed for their ascertainable losses under the NJ Consumer Fraud Act. This case strictly deals with the financial injury – if any – that consumers have suffered. The complaint deliberately excluded personal injury and property damages. Moreover, the release was drafted to exclude any claims, which would arise from property damage and personal injury, and explicitly stated:

> It is not the intent of this Release to release claims that are unrelated to the claims or conduct described in subparagraph b. above or unrelated to the conduct alleged in the related actions. Thus, for example, the following claims are not released by this

> Stipulation: **(***i) any claims against Defendant for property damage or personal injury....*
>
> [Notice at 6, &(c).]

Consequently, class members have the ability to pursue a personal injury suit against Cooper in the event they suffer any physical injuries.

Prior objectors presumed that the allegations in the complaint were correct. Class counsel engaged in extensive discovery and neither proved, nor did Cooper admit, that the tires at issue were defective. Nor was it established that awling and inner blisters constituted a defect, which may have led to the separation. Alleging that Cooper tires are "ticking-time bombs,"[26] incorrectly assumes that everything that was alleged in the Complaint was proven. Proving plaintiff's allegations would be very difficult, expensive and could ultimately result in a finding of no cause. Therefore, the remarks made by some regarding the quality of Cooper tires are purely speculative in the context of actual evidence and do not warrant consideration.

Settlement agreements are essentially a compromise, thus when deciding the fairness of a proposed settlement the court guards against being overly biased towards one side or the other:

> In deciding the fairness of a proposed settlement, we have said that the evaluating court must, of course, guard against demanding too large of a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.
>
> [Prudential, 148 F.3d. at 316-17.]

A fair and reasonable settlement agreement, like the proposed settlement in this case, is to the benefit of a vast majority of the individuals involved in litigation. This settlement does not

[26] Summary of Kaiser Objection at 2 ("Those Cooper tires with latent defects are ticking time-bombs that present an unacceptable level of risk to their owners, to passengers, and others on the roads…").

recall all tires nationwide or reengineer the construction of the tire industry or destroy a domestic industry, all of which are unavailable remedies under the penumbra of a consumer fraud case nor the purpose behind a consumer fraud statute. However, this settlement does provide a remedy to class members that have been wronged by offering replacement tires.

Class counsel undertook extensive discovery in document review, depositions, tire inspections, outside interviews and research to determine whether their initial allegations in the Complaint were supported by evidence and could withstand trial. Only through this discovery were they able to speculate as to the likely results from continued litigation versus the benefits of settlement. For example, the issue of "precursors" to tread separation (such as ride disturbance, localized accelerated wear, and scooped-out, concave grooves on the tires) was extensively discussed, examined, and negotiated. This was done with the assistance of experts on both sides of the negotiating table. The parties determined that the most sensible and efficient way to deal with this issue was through the implementation of the Consumer Education Program. To require Cooper to cover all "precursors" under their Enhanced Warranty would be unfair and unworkable. Essentially Cooper would be obliged to replace all their tires including those which have performed perfectly but, through no fault of the manufacturing process have failed as the result of a road hazard. Cooper, as a tire manufacturer, cannot be made to guarantee that their tires will continue to function even if subjected to misuse by the consumer or a third party. The complaint in this case addressed the financial rather than physical injury suffered by class members and therefore is providing financial compensation in the form of a replacement tire with its own warranty (including mounting, balancing and disposal costs) if the tire is defective. Clearly, it would be a windfall to class members if Cooper were required to provide four free tires per car, regardless of fault. This would be inequitable under the law.

A similar concern was raised in In the Matter of Bridgestone/Firestone Inc., 2002 WL 831990 (7th Cir. 2002) (plaintiffs brought class action complaints and alleged that their tires were defectively designed or manufactured and sought relief under the consumer protection laws; district court certified two national classes and the defendants appealed). The Seventh Circuit United States Court of Appeals stated that, "the suit is not a products liability suit, since all who suffered physical injury are bound to opt out." In the case at bar, the class members do not have to go through the process of opting out because they are already explicitly excluded from the complaint and release.

The plaintiffs in In the Matter of Bridgestone/Firestone Inc., asserted that their injury was "financial rather than physical and sought to move the suit out of the tort domain and into that of contract (the vehicle was not the flawless one described and thus is not merchantable, a warranty theory) and consumer fraud (on the theory that selling products with undisclosed attributes, and thus worth less than represented, is fraudulent)." In the Matter of Bridgestone/Firestone Inc., 2002 WL 831990, *3 (7th Cir. 2002). The Seventh Circuit also stated that it was unsure whether that maneuver actually moved the case from tort to contract. However, it concluded that "if tort law fully compensates those who are physically injured, then any recoveries by those whose products function properly mean excess compensation," and provided this example:

> Defendant sells 1,000 widgets for $10,000 apiece. If 1% of the widgets fail as the result of an avoidable defect, and each injury creates a loss of $50,000, then the group will experience 10 failures, and the injured buyers will be entitled to $500,000 in tort damages. That is full compensation for the entire loss; a manufacturer should not spend more than $500,000 to make the widgets safer. See Bammerlin v. Navistar International Transportation Corp., 30 F.3d 898, 902 (7th Cir. 1994); United States v. Carroll Towing Co., 159 F.2d 169, 173 (2d Cir. 1947) (L. Hand, J.). Suppose, however, that uninjured buyers could collect damages on the theory that the risk of failure made each widget

> less valuable; had they known of the risk of injury, these buyers contend, they would have paid only $9,500 per widget--for the expected per- widget cost of injury is $500, and each buyer could have used the difference in price to purchase insurance (or to self-insure, bearing the risk in exchange for the lower price). On this theory the 990 uninjured buyers would collect a total of $495,000. The manufacturer's full outlay of $995,000 ($500,000 to the 10 injured buyers + $495,000 to the 990 uninjured buyers) would be nearly double the total loss created by the product's defect. This would both overcompensate buyers as a class and induce manufacturers to spend inefficiently much to reduce the risks of defects. A consistent system--$500 in damages to every buyer, or $50,000 in damages to every injured buyer--creates both the right compensation and the right incentives. A mixed system overcompensates buyers and leads to excess precautions.
>
> [In the Matter of Bridgestone/Firestone Inc., 2002 WL 831990, *3 (7th Cir. 2002).]

Similarly, this court observes that requiring Cooper to replace old tires that are performing properly with brand new tires, would be a windfall to class members and overcompensate them. Accordingly, it would be unreasonable, unfair and inequitable. Cooper cannot be made to replace all tires which suffer damages due to the misuse of drivers or other road hazards caused by rocks, broken glass, nails, screws, keys, and other events over which Cooper has no control. This case does not focus on safety or defects but on meeting reasonable consumer expectations. By exempting the personal injury and property damage claims, Cooper under this litigation is only responsible for compensating class members' whose tires do not meet reasonable consumer expectations. Therefore, the three prongs of the settlement work in unison to adequately compensate class members and hold Cooper accountable for any tire that falls below that reasonable consumer expectation.

The judgment of counsel also weighs in favor of approving the proposed settlement. In re The Prudential Insurance Company of America Sales Practices Litigation (hereinafter "In re Prudential"), 962 F. Supp. 450, 543 (D.N.J. 1997). Therefore, this court will consider counsel's

views when determining the fairness of the settlement. The Court is entitled to rely heavily on the opinion of competent counsel. Armstrong v. Board of Sch. Directors of City of Milwakee, 616 F.2d 305, 325 (7th Cir.1980). In re Inter-Op Hip Prosthesis Liab. Litig., 204 F.R.D. 359, 380 (N.D. Ohio 2001) ("When a settlement is the result of extensive negotiations by experienced counsel, the Court should presume it is fair.") Grove v. Principal Mut. Life Ins. Co., 200 F.R.D. 434, 445 (S.D. Iowa 2001) ("A settlement that is the product of arm's-length negotiations conducted by experienced counsel is presumed to be fair and reasonable."); Lazy Oil Co. v. Watco Corp., 95 F. Supp. 2d 290, 336 (W.D. Pa.1997) (quoting Manual for Complex Litigation §30.42 (3d ed.1995) to state that " 'a presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery."'). In this case, the parties are represented by highly experienced and competent counsel. Counsel for the parties spoke of their high opinions of this settlement at the fairness hearing. Lead class counsel, Allan Kanner, expressed his assenting views of the settlement stating that,

> The range of reasonableness of the settlement fund, I think, is outstanding; that we can get people three billion dollars in value; we can make systemic changes in the inspection process; we can raise the class members' consciousness and sophistication about tires and drivers' safety, which all point unequivocally to the need, to one that's created, not just high value or better value, but a better value and benefit than we could have gotten three or four years from now after trial, which is, as you know, had we tried this case in three or four years with appeals, the average tire is on the road for four years.
>
> [Jan. 29 Tr. at 36:7-20.]

Cooper's lead settlement counsel, Arvin Maskin, believes the settlement is exceptional and states:

> First and foremost, in connection with these proceedings, the terms and conditions of this agreement and the careful, deliberative process that led up to the final agreement was and is transparent and validatable. And that should be self-evident from the record. And as sophisticated as some of the technological concerns and terms are that Mr. Kanner described, the fact of the matter when viewed, it is not too complicated to understand and appreciate the real value that's been created here for the real consumer. And the real consumer is well-known to us. And let me submit, your Honor, that the real consumer has expressed his voice and those voices are being heard today. We believe it is clear from the record that there can't be any serious dispute as a matter fact or law that the proposed agreement is fair and reasonable and adequate.
>
> [Jan. 29 Tr. at 51:14-52:8.]

Class counsel and Cooper counsel, who are both experienced in complex litigation have endorsed the terms of this settlement and this court accords their recommendations substantial weight.

This litigation has spanned over twelve months and at times has been bitter and contentious. Without intercounsel, interstate judicial and MDL cooperation this litigation may well have taken another three to six years nationally. There is no effectual method or utilization of judicial resources or use of the parties' time and money, which would have allowed for a better result. Anything short of this joint coordination would have resulted in a waste of the court's and the parties' resources. On September 7, 2001, after extensive negotiations, class counsel and Cooper filed a Motion for Preliminary Approval of the Proposed Class Action settlement. Some underestimated the efforts taken by class counsel in discussions and negotiations to deliver the best settlement to class members. Class counsel had engaged in months of intense discovery and motion practice when they recognized that some of the allegations made in the complaint lacked evidentiary proof. Issues were extensively discussed, examined and negotiated with the assistance of experts on both sides of the negotiating table.

The parties came to settlement terms, as discussed above, through months of hard fought and acrimonious litigation and in light of the inherent risks of litigation.

X. SUMMARY

In conclusion, upon consideration of the factors set forth by Judge Skillman in Morris County Fair Housing Council v.Boonton Tp., 197 N.J. Super 359, 367, 484 A.2d 1302 (1984) and the Third Circuit in Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975), this court finds the settlement to be fair, reasonable and adequate. Thus it will approve the settlement in accordance with New Jersey R. 4:32 as reflected in F.R.C.P 23(e).

XI. CONCLUSION

For the reasons set forth above, the court grants the Joint Motion for Class Representatives and Cooper for an order certifying and approving the nationwide settlement class embodied in the settlement agreement entered into by the parties on September 7, 2001 and preliminary approved on October 26, 2001. An appropriate order will follow.