

# Resolutions

## Product Liability

### Federal Court in California OKs Settlement Worth \$100 Million Over Ford Manifolds

**S**AN FRANCISCO—A federal judge approved Oct. 7 a class settlement that provides Ford Motor Co. will reimburse customers for or replace defective composite manifolds (*Chamberlan v. Ford Motor Co.*, N.D. Cal., No. 4:03-cv-02628-CW, 10/7/05).

The settlement reached on the eve of trial in the U.S. District Court for Northern California covers some 1.8 million vehicles in California, Alabama, and Oklahoma. Ford agreed to reimburse consumers who bought new or used vehicles in which the manifolds failed or are likely to fail in the future.

Plaintiffs' counsel estimates the settlement is worth more than \$100 million, including \$4.5 million in attorneys' fees, \$738,818 in costs, and \$1 million in costs for publicizing the settlement.

The settlement will provide actual cost reimbursement to those who already paid to replace the manifolds, and have the paperwork to prove it. The provision includes reimbursement for repairs from damages caused by the defective manifolds.

Those without documentation can receive \$735 if a dealership verifies the manifold had been replaced.

**Plastic Intake Manifold.** Plaintiffs alleged Ford knowingly manufactured, sold, and distributed automobiles containing a plastic intake manifold that was more likely to crack and cause coolant leaks than the aluminum models Ford used on other cars. Ford, which denies the charges, implemented design changes generally by the 2002 model year, according to court documents.

The settlement also provides an extended retroactive warranty to cover fatigue cracks in the intake manifolds, which can cause coolant leaks at the crossover coolant passage. The coverage period for the extended warranty is seven years from the warranty sale date without mileage limitation.

Plaintiffs estimated if 8 percent of the owners covered in the class make claims, at an average cost of each claim of \$735 that Ford agreed to pay, the total class payout will be \$105,840,000.

"Plus, we have not even included Ford's cost of administering the warranty program, which should also be considered a benefit to the class," lead co-counsel Michael Ram, of Ram, Levy & Olson in San Francisco, said in court papers.

Judge Claudia Wilken, after a brief hearing, approved the settlement, saying the amount "seems quite reasonable to me, as well as the attorneys' fees."

Only one objection was brought in the case. An individual whose father bought a vehicle that is eight years old, one year too old for the cutoff for the class, challenged the deal.

**Ford Comment.** Ford spokeswoman Kathleen Vokes said the vehicles that were the subject of the class action "all provided excellent value to our customers. For example, the cooling systems in these vehicles, which included the all-composite intake manifolds, were all rated good to excellent by *Consumer Reports*. In addition, these vehicles cost no more to maintain than peer vehicles."

"Although we believe this class action was without merit, we are pleased that the trial court has approved a settlement that will provide additional value to our customers by extending the warranty to cover cracking in crossover coolant passage for seven years from the initial sale, regardless of mileage," Vokes said in an Oct. 7 e-mail to BNA. "Although the trial court has approved the settlement, the extended warranty will only become effective if and when any appeals are resolved."

The settlement covers separate class actions in California, Alabama, and Oklahoma (*McGettigan v. Ford Motor Co.*, Ala. Cir. Ct., No. CV-2002-3400-JRL; *Rhea v. Ford Motor Co.*, Okla. D.C., Adair County, No. CJ-05-55).

Settlement negotiations followed the U.S. Court of Appeals for the Ninth Circuit per curiam decision March 31 declining to hear Ford's challenge to the class certification (*Chamberlan v. Ford Motor Co.*, 9th Cir., No. 04-80074, 3/31/05; 6 CLASS 231, 04/8/05). Wilken in September 2004 certified a class of some 150,000 Californians who spent about \$105 million on repairs. Settlement was tentatively approved last June (6 CLASS 480, 07/8/05).

**Models Covered** Covered under the settlement are current and former owners and lessees of 1996-2002 model-year Ford, Lincoln, or Mercury vehicle equipped with a 4.6-liter, 2-valve V-8 engine having an all-composite air intake manifold as original equipment, other than vehicles which already have received an extended warranty.

Models covered include Mercury Grand Marquis 1996-2001; Lincoln Town Car 1996-2001; Ford Crown Victoria 1996-2001; Mercury Cougar, Ford Thunderbird, and Mustang 1997 (build date after June 24, 1997); Ford Mustang 1998-2001 (some vehicles); and certain 2002 Ford Explorers equipped with the 4.6-liter, 2-valve V-8 engine.

The retired judge who oversaw settlement negotiations said Ford was not going to give individual consumers a settlement greater than the automaker gave to fleet owners in an earlier settlement, Ram told Wilken. "That's what we got," Ram said.

Lead class counsel are Michael Ram with Levy, Ram & Olson in San Francisco, and Richard Dorman, with Cunningham, Bounds, Yance, Crowder & Brown in Mobile, Ala.

Ford was represented by Brian C. Anderson with O'Melveny & Myers LLP in Washington, D.C., Michael Tubach, Steven Swaney, and Randall Edwards with O'Melveny & Myers in San Francisco, and Troy M. Yo-

shino, with Carroll, Burdick & McDonough LLP in San Francisco.

Information about the settlement is available online at <http://www.fordmanifoldsettlement.com>.

## Labor

### Electronic Arts Agrees to Pay \$15.6 Million To Settle Claims by Video Game Employees

**V**ideo game creator Electronic Arts will pay \$15.6 million to settle allegations that it failed to pay computer graphic artists overtime, the Redwood City, Calif., company announced Oct. 5 (*Kirschenbaum v. Electronic Arts Inc.*, Cal. Super. Ct., No. 440876, settlement reached 10/5/05).

If approved by a California Superior Court judge in San Mateo, the agreement would pay approximately 618 computer graphic artists working for the gaming giant \$15.6 million. It is one of the three major overtime class actions filed against the company.

The class action was brought by "image production employees" who alleged that under California law, they are owed overtime because they are not managers and do not have artistic or creative control over their work. The employees include animators, modelers, and artists involved in installing, producing or copying images for EA computer games.

The workers alleged in their complaint that they were under close supervision and control while creating images and that they were expected to follow specific instructions and specifications.

The two sides refused to comment on the agreement until it is approved.

According to a written statement by EA, the settlement will cover all claims by the class members, plaintiffs' attorneys' fees, any incentive payments to the named plaintiffs and all administrative costs of the settlement.

Any portion of the settlement fund that is unclaimed by class members will go to the Jackie Robinson Foundation, a national nonprofit organization that awards college scholarships to minority students, with a preference toward students interested in studying interactive entertainment, the statement explained.

**'Watching the Clock.'** In a March internal memo to EA's North American employees, the company said the "employment environment at EA was built to allow you flexibility as professionals, with the expectation that time on the job could be managed without watching the clock." In the memo, which was leaked to technology Web sites and journalists, EA said "labor laws have not kept pace with this spirit of entrepreneurialism, innovation and creativity. Also, recent lawsuits against EA, Sony and other California technology companies have led us to re-evaluate how we classify certain groups of workers."

The memo stated that EA considered its artists to be "creative" people and engineers to be "skilled" professionals who "relish flexibility," but that some people were using "outdated wage and hour laws to argue in favor of a workforce that is paid hourly like more traditional industries and conforming to set schedules."

EA is facing two other lawsuits. In a companion case in California—*Hasty v. Electronic Arts Inc.*, (Cal. Super. Ct., No. 444821)—engineers, called "producers" in the industry, allege they provide little creative control in overseeing the production of games and that they do not manage staff. In a third case, *Tam Su v. Electronic Arts Inc.*, (M.D. Fla., No. 6:05-cv-131-orl-19-JGG), artists and assistant artists at EA facilities in Florida are alleging violations of the Fair Labor Standards Act.

EA is the world's largest independent developer and publisher of interactive entertainment software for personal computers and advanced entertainment systems. The company produced Madden06, Tiger Woods PGA Tour 06, and The Sims.

Todd S. Heyman of Shapiro Haber & Urmy in Boston represents the workers in all three cases. He is joined by Miranda Kolbe of Schubert & Reed in San Francisco in the California cases.

Lynne Hermle of Orrick Harrington & Sutcliffe in Menlo Park, Calif., represents EA in the case that just settled.

## Discrimination

### Minnesota Mining Company Agrees to Settle Sex Discrimination Lawsuit for \$1.3 Million

**S**T. PAUL, Minn.—Northshore Mining Co., an iron ore mining facility located in Babbitt, Minn., Oct. 6 announced it had settled for \$1.3 million a sex discrimination class action in which plaintiffs alleged that the company hindered female employees' promotion and overtime opportunities (*Mathers v. Northshore Mining Co.*, D. Minn., No. CV 99-1938, 10/6/05).

Under the settlement, Northshore will pay 41 current and former employees and their attorneys \$1.3 million. The settlement will also require the mining company to appoint an anti-discrimination officer and modify its employment practices.

The settlement must still be approved by the U.S. District Court for the District of Minnesota in Duluth, Minn. Joseph J. Mihalek of Fryberger, Buchanan, Smith & Frederick of Duluth, attorneys for the class, said the court is expected to schedule a hearing for preliminary approval of the settlement within the next 30 days. The settlement likely will be finalized within the next three to four months, he said.

**Training, Promotion, Overtime.** Holly Mathers and three other female workers at Northshore sued the company in 1999, alleging that it had discriminated against them by denying them opportunities to be trained on work equipment. Under Northshore's employment practices, employees work at different "tech" levels. Promotions to the different levels are based on employee equipment operating skills, knowledge and ability. Employees who are denied the training for operating equipment are essentially being denied promotions and increased pay, Mihalek said.

The lead plaintiff, Holly Mathers, alleged that males hired after her were given training on company equipment before she was, thereby enhancing their promotion potential. She also alleged that she asked to operate a backhoe but was told by her supervisor that she could not because she was a female. She alleged that