

More Info Needed To Stop \$135M Navistar Deal, Judge Says

By Celeste Bott

Law360, Chicago (November 13, 2019, 4:50 PM EST) -- The Walt Disney Co. and US Foods Inc. have briefed only in “superficial terms” their concerns with a \$135 million deal to end multidistrict litigation over allegedly defective Navistar diesel engines, an Illinois federal judge said at a hearing Wednesday.

U.S. District Judge Joan Gottschall gave the objectors a week to submit additional briefing on how they would establish the lost resale value of their trucks to the settlement administrator.

The Disney group of objectors — which also includes Ferguson Enterprises LLC and Southern California Edison Co. — says the lost value of its trucks was “inexplicably omitted” from the proposed settlement and wants to return to the negotiating table, while truck buyers who signed on to the \$135 million settlement say the deal should be approved.

The proposed class of truck buyers and Navistar will have a week to respond to the additional briefing. Judge Gottschall said she would try to rule on the settlement within another week after briefing is filed.

“I don’t know if I want to close this record without understanding what this issue is about,” Judge Gottschall said. “It’s not too long to have the record be complete on this issue.”

Emma K. Burton of Crowell & Moring LLP, counsel for the objecting companies, urged the court to deny final approval to the \$135 million settlement, arguing that the current deal requires would require them to “surrender 100 percent of their claims but would not give them corresponding consideration in return.”

Counsel for the proposed class of truck buyers countered that the settlement was the best option given that “not a nickel” has been recovered in nine similar cases litigated on these issues.

“If they think they could have done better they should go litigate,” said Jonathan. D Selbin of Lieff Cabraser Heimann & Bernstein LLP. “If Walt Disney can’t afford to go litigate cases, I don’t know who can.”

Mark Lester of Latham & Watkins LLP, representing Navistar, also noted that the settlement gives class members some recovery for their losses when other litigated claims have failed.

“The track record on these claims is dismal to say the least,” he said.

Under the proposed settlement, Navistar would put \$85 million into a cash fund and \$50 million into a rebate fund. Class members can apply one of three options for relief for each of the vehicles included in the class.

The cash option would allow class members to receive up to \$2,500 per class vehicle, based on how many months they have owned or leased the vehicle, at a rate of \$27 to \$39 per month, depending on the model year. Under the rebate option, class members could receive up to \$10,000 toward buying a new Navistar Class 8 heavy-duty truck, based on how many months they had the previous vehicle, at a rate of between \$106 and \$156 per month based on model year. Class members could opt for up to \$15,000 in out-of-pocket costs from repairs related to the alleged defects in their vehicles.

It's an "outstanding result" that can finally resolve a complex, difficult case, said Laurel G. Bellows of The Bellows Law Group PC.

"There was nothing easy in this case. (The parties) fought long and hard over every word of the settlement," Bellows said. "We come to you today with a result of all that work. We are bringing a settlement to our plaintiffs that they've been looking forward to for five years."

The settlement was announced in May, with Navistar and numerous truckers and trucking companies saying it was the best way to resolve litigation over the vehicles equipped with 2010-13 model year MaxxForce 11, 13 or 15 Advanced "Exhaust Gas Recirculation" diesel engines that allegedly have a defectively designed integrated emissions system, according to court documents.

The truck buyers said that Navistar's MaxxForce engines were the only ones in the industry that used the EGR emissions technology to comply with U.S. Environmental Protection Agency standards. The EGR technology is defective because a large percentage of engine exhaust is recirculated, which generates far more engine heat than the selective catalytic systems used by most other manufacturers, they claimed, and because of this, MaxxForce engines break down more frequently than others in the industry.

The truck buyers are represented by Jonathan D. Selbin, Kenneth S. Byrd, Jason L. Lichtman, Andrew R. Kaufman and Avery S. Halfon of Lieff Cabraser Heimann & Bernstein LLP; Adam J. Levitt, John E. Tangren, Amy E. Keller and Adam Prom of DiCello Levitt Gutzler LLC; William M. Audet and Steven Weinmann of Audet & Partners LLP; and Laurel G. Bellows of The Bellows Law Group PC.

Navistar is represented by Cary R. Perlman, Robin M. Hulshizer, Mark S. Mester, Kathleen P. Lally and Kevin Jakopcheck of Latham & Watkins LLP.

The objectors are represented by William L. Anderson and Emma K. Burton of Crowell & Moring LLP and H. Patrick Morris and David F. Fanning of Johnson & Bell LTD.

The case is In re: Navistar MaxxForce Engines Marketing, Sales Practices and Products Liability Litigation, case number 1:14-cv-10318, in the U.S. District Court for the Northern District of Illinois.

--Editing by Peter Rozovsky.