

**SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs and Class Representatives, Deana Careccio, Arvind Chandran, Brenda Chaquette, Chad J. Cook, Jeffrey Costa, Lisa Costanza, William Hoyer, Kevin Morris, and Edward Mota (collectively “Plaintiffs” or “Class Representatives”), by and through their counsel, and Defendants, BMW of North America, LLC (“BMW NA”), Bridgestone Americas Tire Operations, LLC (“BATO”) and Bridgestone Corporation (“Bridgestone”) (collectively, “Defendants”), by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of the claims herein described against Defendants (the “Settlement”).

**WHEREAS**, Plaintiffs have filed a putative class action against Defendants in the United States District Court for the District of New Jersey (*Chandran v. BMW of North America, LLC, et al.*, Case No. 2:08-CV-02619-KSH-PS) (the “Litigation”), which action was filed on May 28, 2008, following the voluntary dismissal of an action filed against BMW NA by certain of the named Plaintiffs on July 18, 2007 in the United States District Court for the Northern District of California (and captioned *Morris, et al. v. BMW of North America, LLC*, Civil Action No. 07-cv-02827) (“California Action”).

**WHEREAS**, on or about October 24, 2008, Defendants filed extensive motions to dismiss which were fully briefed by all Parties. During the pendency of these motions, the parties engaged in discovery, including exchanging Rule 26 Initial Disclosures, responding to documents requests and interrogatories, and producing documents.

**WHEREAS**, Plaintiffs and Defendants have vigorously contested and explored virtually all of the factual and legal issues in this Litigation;

**WHEREAS**, Plaintiffs and Defendants, following discovery, briefing, and argument of the issues in this Litigation, agreed to participate and participated in a mediation session with the Honorable John J. Hughes (Ret.) (“Mediator”) on June 24, 2009, in New York, New York;

**WHEREAS**, after a full day of vigorous discussions and negotiations with the assistance of the Mediator, the Parties made substantial progress toward reaching an agreement to resolve the Litigation and the disputes between them, but were not able to reach agreement as to all outstanding issues;

**WHEREAS**, the Parties continued their discussions after June 24, 2009, by and between themselves and with the assistance of the Mediator, and ultimately reached an agreement, subject to the Court’s approval, to resolve the Litigation on October 9, 2009, after four (4) months of negotiations and settlement discussions;

**WHEREAS**, for purposes of this settlement only, Plaintiffs and Defendants (the “Parties”) agree to the certification of a settlement class (“Class” or “Settlement Class”) defined as follows:

All current and former owners and lessees of model year 2006 and 2007 BMW 3 Series Vehicles (E90 and E91) sold or leased in the United States originally equipped with Turanza EL42 run-flat tires manufactured by Bridgestone (the “Vehicles”), where, as set forth in Service Information Bulletin 36 06 06 (the “SIB”) of BMW of North America, LLC that was issued in February 2008:

a. the Bridgestone Turanza EL42RFT 205/55R16 (16-inch) tire bears a DOT number indicating manufacture on or before the 22<sup>nd</sup> week of 2007 (*i.e.*, “2207”) and the BMW 3 Series Vehicle was manufactured on or before September 10, 2007; or

b. the Bridgestone Turanza EL42 RFT 225/45R17 (17-inch) tire bears a DOT number indicating manufacture on or before the 26th week of 2006 (*i.e.*, “2606”) and the BMW 3 Series Vehicle was manufactured on or before September 14, 2006 (collectively “Turanza Tires”).

**WHEREAS**, the Parties agree that the following persons and entities should be excluded from the Class: Defendants, as well as Defendants' affiliates, employees, officers and directors, including franchised dealers, any person who has experienced physical injury as a result of the alleged defects at issue in this litigation, and the Judges and Mediator to whom this case is assigned;

**WHEREAS**, Plaintiffs and Defendants have conducted a thorough examination and investigation of the facts and law relating to the matters in this Litigation;

**WHEREAS**, Defendants expressly deny any wrongdoing alleged in the pleadings and do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against them in this Litigation. Even though Defendants expressly deny any wrongdoing, Defendants have concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of the Plaintiffs and all members of the Class which were or could have been asserted by Plaintiffs and the Class in this Litigation;

**WHEREAS**, Plaintiffs recognize the substantial benefits to Plaintiffs and the Class under the terms of this Settlement Agreement and the costs, risks, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation and believe that it is in their interest, and the interest of all Class Members, to resolve this Litigation, and any and all claims against Defendants in order to provide effective relief promptly to Plaintiffs and the Class, in this Settlement Agreement;

**WHEREAS**, significant arm's-length settlement negotiations have taken place between the Parties and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein;

**WHEREAS**, the undersigned Parties believe that this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate, and in the best interest of Class Members; and

**WHEREAS**, this Settlement Agreement is made and entered into by and among Plaintiffs, individually and on behalf of the Class, and Defendants.

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

**I. DEFINITIONS**

As used in this Settlement Agreement and the attached exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference), the following terms shall have the meaning set forth below, unless this Settlement Agreement specifically provides otherwise. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. **Action.** "Action" shall mean the above described class action that also is defined as the "Litigation."

B. **BATO.** "BATO" shall mean Bridgestone Americas Tire Operations, LLC and its predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, and employees.

C. **BMW NA.** “BMW NA” shall mean BMW of North America, LLC and its predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, and employees.

D. **Bridgestone.** “Bridgestone” shall mean Bridgestone Corporation and its predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, and employees.

E. **California Action.** “California Action” shall mean the litigation commenced on July 18, 2007 in the United States District Court for the Northern District of California and captioned *Morris, et al. v. BMW of North America, LLC*, Civil Action No. 07-cv-02827.

F. **Claim Form.** “Claim Form” shall mean a form in substantially the same form as that attached hereto as Exhibit “A.”

G. **Claims Period.** “Claims Period” shall mean the time period through which Claim Forms may be submitted by Class Members and shall conclude one hundred and eighty (180) days following the Effective Date of the Settlement.

H. **Class Counsel.** “Class Counsel” shall mean Shepherd, Finkelman, Miller & Shah, LLP; Kemnitzer, Anderson, Barron, Ogilvie and Brewer, LLP; Carella Byrne Bain Gilfillan Cecchi Stewart & Olstein, PC; and Seeger Weiss, LLP (“Class Counsel”).

I. **Class Counsel Fees and Expenses.** “Class Counsel Fees and Expenses” shall mean the reasonable attorneys’ fees and expenses in the amount of One Million Two Hundred Thousand Dollars and No Cents (\$1,200,000) that Defendants have agreed to pay to Class Counsel as part of the resolution of this Litigation, subject to approval of the Court. The Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Class.

J. **Class Members.** “Class Members” shall mean all current and former owners and lessees of the Vehicles originally equipped with Turanza Tires.

K. **Class Representatives.** “Class Representatives” shall mean Deana Careccio, Arvind Chandran, Brenda Chaquette, Chad J. Cook, Jeffrey Costa, Lisa Costanza, William Hoyer, Kevin Morris, and Edward Mota.

L. **Class Notice.** “Class Notice” shall mean the Court-approved form of notice to Class Members informing them of, *inter alia*, the (i) preliminary approval of the Settlement; (ii) scheduling of the Final Approval Hearing; and (iii) opportunity to submit a claim, in substantially the same form as that attached hereto as Exhibit “B.”

M. **Court.** “Court” shall mean the United States District Court for the District of New Jersey, the Honorable Katharine S. Hayden presiding, or her duly appointed successor.

N. **Defendants.** “Defendants” shall mean BMW NA, BATO, and Bridgestone, as well as their predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, and employees.

O. **Defendants’ Counsel.** “Defendants’ Counsel” shall mean Buchanan Ingersoll & Rooney PC and Herrick, Feinstein LLP.

P. **Defendants’ Lead Counsel.** “Defendants’ Lead Counsel” shall mean Rosemary J. Bruno of Buchanan Ingersoll & Rooney PC (who represents BMW NA) and Susan T. Dwyer of Herrick, Feinstein LLP (who represents BATO and Bridgestone).

Q. **Effective Date.** “Effective Date” shall mean the date following the entry of the Final Approval Order on which the time for any appeal expires or the date upon which any appeal is finally terminated, whichever date is later.

R. **Final Approval Hearing.** “Final Approval Hearing” shall mean the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order.

S. **Final Approval Order.** “Final Approval Order” shall mean the Court order that approves this Settlement Agreement, approves payment of attorneys’ fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement.

T. **Incentive Awards.** “Incentive Awards” shall mean the Thirty-Four Thousand Five Hundred Dollars and No Cents (\$34,500) in payments that the Defendants have agreed to pay to Plaintiffs to compensate them for their time and efforts on behalf of the Class, subject to approval of the Court. Plaintiffs Morris and Cook shall each receive Five Thousand Dollars and No Cents (\$5,000) and Plaintiffs Careccio, Chandran, Chaquette, Costa, Costanza, Hoyer, and Mota shall each receive Three Thousand Five Hundred Dollars and No Cents (\$3,500).

U. **Lead Class Counsel.** “Lead Class Counsel” shall mean James C. Shah of Shepherd, Finkelman, Miller & Shah, LLP.

V. **Litigation.** “Litigation” shall mean the Action as defined above.

W. **Mediator.** “Mediator” shall mean the Honorable John J. Hughes (Ret.).

X. **Objection Date.** “Objection Date” shall mean the date agreed upon by the Parties or otherwise ordered by the Court for Class Members to object to the Settlement Agreement’s terms or provisions and submit any required statements, proof, or other materials and/or argument.

Y. **Opt-Out Deadline.** “Opt-Out Deadline” shall mean the date agreed upon by the Parties or otherwise ordered by the Court, by which any Class Members who do not wish to be included in the Settlement Class and participate in the Settlement Agreement must complete the acts necessary to properly effect such election.

Z. **Opt-Out List.** “Opt-Out List” shall mean a written list prepared by Class Counsel of all Class Members who submit timely Requests for Exclusion.

AA. **Parties.** “Parties” shall mean the Plaintiffs and Defendants.

BB. **Plaintiffs.** “Plaintiffs” shall mean the Class Representatives as defined above.

CC. **Preliminary Approval Order.** “Preliminary Approval Order” shall mean the order of the Court preliminarily approving this Settlement Agreement, in substantially the same form as that attached hereto as Exhibit “C.”

DD. **Release.** “Release” shall mean the release and waiver set forth in Section VII of this Settlement Agreement and in the Final Approval Order.

EE. **Request for Exclusion.** “Request for Exclusion” shall mean any request by any Class Member for exclusion from the Settlement.

FF. **SIB.** “SIB” shall mean BMW NA’s Service Information Bulletin 36 06 06 (February 2008).

GG. **Settlement.** “Settlement” shall mean the agreement by the Parties to resolve this Litigation, the terms of which have been memorialized and provided for in this Settlement Agreement.

HH. **Settlement Administrator.** “Settlement Administrator” shall mean Gilardi & Co.

II. **Settlement Agreement.** “Settlement Agreement” shall mean this Settlement Agreement and all the exhibits attached hereto.

JJ **Settlement Class.** “Settlement Class” shall mean all Class Members who or which do not affirmatively exclude themselves from (“opt out” of) the Settlement as approved by the Court.

**KK. Settlement Class Members.** “Settlement Class Members” shall mean all Class Members who or which do not affirmatively exclude themselves from (“opt out” of) the Settlement as approved by the Court.

**LL. Turanza Tires or Tires.** “Turanza Tires” or “Tires” shall mean Turanza EL42 run-flat tires manufactured by Bridgestone where, as set forth in the SIB:

- a. the Bridgestone Turanza EL42RFT 205/55R16 (16-inch) tire bears a DOT number indicating manufacture on or before the 22<sup>nd</sup> week of 2007 (*i.e.*, “2207”) and was installed on BMW 3 Series Vehicles manufactured on or before September 10, 2007; or
- b. the Bridgestone Turanza EL42 RFT 225/45R17 (17-inch) tire bears a DOT number indicating manufacture on or before the 26<sup>th</sup> week of 2006 (*i.e.*, “2606”) and was installed on BMW 3 Series Vehicles manufactured on or before September 14, 2006.

**MM. Vehicle(s).** “Vehicle(s)” shall mean all model year 2006 and 2007 BMW 3 Series Vehicles (E90 and E91) sold or leased in the United States originally equipped with the Turanza Tires manufactured by Bridgestone.

## **II. REQUIRED EVENTS**

**A.** Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendants’ Counsel shall take all reasonable and necessary steps, subject to the Court’s availability, to obtain entry of the Preliminary Approval Order on or before December 7, 2009 and to obtain entry of the Final Approval Order on or before March 15, 2010.

2. The Parties shall seek entry of a Preliminary Approval Order in substantially the same form as that attached hereto as Exhibit “C.” The Preliminary Approval Order shall, among other things:

- a. Certify a nationwide settlement-only class, approve Deana Careccio, Arvind Chandran, Brenda Chaquette, Chad J. Cook, Jeffrey Costa, Lisa Costanza, William Hoyer, Kevin Morris, and Edward Mota as Class Representatives and appoint their counsel as Class Counsel, pursuant to Fed. R. Civ. P. 23;
- b. Preliminarily approve the Settlement;
- c. Require the dissemination of Class Notice and the taking of all necessary and appropriate steps to accomplish this task;
- d. Determine that the Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
- e. Schedule a date and time for a Final Approval Hearing to determine whether the Preliminary Approval Order should be finally approved by the Court;
- f. Require Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in the Settlement Agreement and Class Notice and advise that a failure to do so shall bind those Class Members who remain in the Class;
- g. Require Class Members who wish to object to the Settlement Agreement to submit an appropriate and timely written statement as directed in the Agreement and Class Notice;
- h. Require Class Members who wish to appear to object to the Agreement to submit an appropriate and timely written statement as directed in the Settlement Agreement and Class Notice;

- i. Require attorneys representing Class Members, at the Class Members' expense, to file a notice of appearance as directed in the Settlement Agreement and Class Notice;
  - j. Appoint the Settlement Administrator;
  - k. Authorize Defendants to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement;
  - l. Issue other related orders to effectuate the preliminary approval of the Settlement Agreement.
3. After the Final Approval Hearing, the Parties shall seek to obtain from the Court a Final Approval Order in a form to be agreed upon by the Parties. The Final Approval Order shall, among other things:
- a. Find that the Court has personal jurisdiction over all Class Members, the Court has subject matter jurisdiction over the claims asserted in this Litigation, and that venue is proper;
  - b. Finally approve the Settlement Agreement, pursuant to Fed. R. Civ. P. 23;
  - c. Finally certify the Class for settlement purposes only;
  - d. Find that the Class Notice and the Class Notice dissemination methodology complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;
  - e. Dismiss the Action with prejudice;
  - f. Incorporate the Release set forth in the Settlement Agreement and make the Release effective as of the date of the Final Approval Order;

g. Authorize the Parties to implement the terms of the Settlement Agreement;

h. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and for any other necessary purpose; and

i. Issue related orders to effectuate the final approval of the Settlement Agreement and its implementation.

4. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

5. In the event that the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, this Settlement Agreement is voidable by either Party. However, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

6. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement is essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

7. Upon Entry of the Final Approval Order, this Action and the Litigation shall be dismissed, on its merits and with prejudice, subject to the continuing jurisdiction of this Court.

### **III. SETTLEMENT TERMS**

A. **Future Replacements.** Turanza Tires replaced after the Effective Date will be eligible for the pro-rata discount on replacement tires pursuant to the terms of the SIB. In addition, if a Settlement Class Member can demonstrate through appropriate proof that the condition identified in the SIB manifested prior to 20,000 miles, but he/she/it did not seek correction from a BMW or Bridgestone-affiliated service center until between 20,001 and 30,000 miles, the Settlement Class Member will be entitled to replacement Bridgestone tires at a 35% discount on the tires and 50% discount on the labor at a BMW Center or Bridgestone-affiliated service center. Appropriate proof will consist of service records or similar documents demonstrating (1) odometer mileage at time of manifestation; and (2) that the Turanza Tires were manifesting the condition addressed by the SIB.

B. **Reimbursement For Past Replacements.** Every Settlement Class Member who paid for replacement Turanza Tires for the conditions described in the SIB prior to the Effective Date and who met the mileage limitations of the SIB but did not receive the pro-rata discount provided for in the SIB, will be eligible for the benefits afforded under this Settlement for past reimbursement upon submission of appropriate proof, as defined herein. Upon submission of appropriate proof, Settlement Class Members who replaced Turanza Tires prior to the Effective Date from other than a BMW Center will be eligible for reimbursement (in the form of a check) on replacement tires equal to what they would have received had they sought replacement tires from a BMW Center pursuant to the terms of the SIB. Appropriate proof will consist of service records or similar documents demonstrating (1) odometer mileage at time of manifestation; (2) that the Turanza Tires were manifesting the condition addressed by the SIB; (3) that the Turanza Tires were replaced for the reason addressed in the SIB; and (4) proof of cost of replacement

tires and labor to replace the tires. In addition to the foregoing, the following Settlement Class Members will also be entitled to reimbursement for past replacements:

1. Settlement Class Members whose Turanza Tires manifested the condition prior to 10,000 miles but who did not seek replacement until between 10,001 and 15,000 miles:

If a BMW NA record for the Settlement Class Member's specific Vehicle indicates that the Settlement Class Member initially sought correction of the issue identified in the SIB prior to 10,000 miles but did not obtain the replacement until between 10,000 miles and 15,000 miles and was not reimbursed at the 100% but rather the 50% level, such Settlement Class Member will be treated as if he/she/it had sought to obtain replacement prior to 10,000 miles. Such Settlement Class Member will be entitled to reimbursement of the 50% differential upon submission of appropriate proof. Appropriate proof will consist of BMW NA service records demonstrating (1) that the Settlement Class Member brought the Vehicle with the Turanza Tires to a BMW Center with an odometer mileage of less than 10,000 miles at time of manifestation; (2) that the BMW Center determined that Turanza Tires were manifesting the condition addressed by the SIB; (3) that the BMW Center did not replace the Turanza Tires until after the Vehicle's odometer exceeded 10,000 miles but was less than 15,000; and (4) that the BMW Center reimbursed the Settlement Class Member at the 50% level. If the Settlement Class Member obtained replacement tires from a service provider other than a BMW Center, such Settlement Class Member will be entitled to 100% reimbursement for the cost of the replacement tires (up to the cost of replacement Bridgestone Turanza or similar Bridgestone tires in accordance with the SIB) upon submission of appropriate proof. Appropriate proof will consist of service records or similar documents demonstrating (1) that the Settlement Class Member brought the Vehicle with the Turanza Tires to a BMW Center with an odometer mileage of less than 10,000 miles at time

of manifestation; (2) that the BMW Center determined that Turanza Tires were manifesting the condition addressed by the SIB; (3) that the Settlement Class Member paid for replacement tires at a service provider other than a BMW Center when the Vehicle's odometer exceeded 10,000 miles but was less than 15,000; (4) that the Turanza Tires were replaced for the reason addressed in the SIB; and (5) proof of cost of replacement tires and labor to replace the tires.

2. Settlement Class Members whose Turanza Tires manifested the condition prior to 20,000 miles but who did not seek replacement until between 20,001 and 30,000 miles:

If a Settlement Class Member can demonstrate through appropriate proof that the condition identified in the SIB manifested prior to 20,000 miles but he/she/it did not seek correction until between 20,001 and 30,000 miles and paid for replacement tires, such Settlement Class Member will be entitled to reimbursement of 35% of the cost of replacement tires (up to the cost of replacement Bridgestone Turanza or similar Bridgestone tires in accordance with the SIB) and 50% of the cost of labor. Appropriate proof will consist of service records or a detailed explanation under oath provided in the Claim Form demonstrating (1) an odometer mileage of less than 20,000 miles at time of manifestation; (2) that the Turanza Tires were manifesting the condition addressed by the SIB; (3) that the Turanza Tires were replaced for the reason addressed in the SIB; (4) that the Turanza Tires were replaced when the Vehicle had an odometer reading of between 20,001 and 30,000 miles; and (5) proof of cost of replacement tires and labor to replace the tires.

No Settlement Class Member may receive reimbursement which, when combined with the value of any prior benefit from the SIB, "goodwill," or other pricing adjustment, coupon, reimbursement, or refund from BMW NA, Bridgestone, or any person or entity, such as a tire

insurance program, would exceed the reimbursement provided for under this Settlement Agreement.

C. **Claim Review.** All claims submitted for reimbursement when replacement occurred after 20,000 miles will be decided by the Settlement Administrator and will be subject to review by Defendants to determine if there is any reason to believe that an accepted claim is fraudulent or otherwise invalid. If Defendants determine that any such claim should be rejected, the Parties will meet and confer in an effort to resolve the dispute. To the extent the Parties are unable to resolve any dispute by meeting and conferring, the claim will be submitted to a Special Master, whose determination shall be final and binding. The Special Master is hereby designated as Hon. Ronald J. Hedges, U.S.M.J. (ret.). If the designated Special Master is unable or unwilling to serve in this capacity in the future for any reason, the Parties shall jointly agree upon a replacement Special Master. The costs associated with the use of the Special Master in this regard shall be borne equally by the Parties (unless otherwise ordered by the Special Master). Any other dispute regarding relief under the terms of the Settlement, including the validity of any Claim Form submitted, shall also be submitted to the Special Master under the terms set forth in this paragraph.

#### IV. **NOTIFICATION TO CLASS MEMBERS**

A. Defendants shall be responsible, subject to the Court approving the same, for the following notice program, which shall be effectuated within thirty (30) days of the entry of the Preliminary Approval Order:

1. Individual direct mail (first class) notice regarding the Settlement (“Class Notice”) will be sent to all original and subsequent owners and lessees of the Vehicles that are in the Settlement Class using BMW NA’s database.

2. The Class Notice will also be posted in a prominent location on Class Counsel's websites until thirty (30) days after the close of the Claims Period. The Parties shall also work cooperatively so that all other pertinent information to submit a claim, request exclusion from the Settlement, object to the Settlement, or provide notice of an intention to appear in Court, is provided to all Class Members on Class Counsel's websites until thirty (30) days after the close of the Claims Period.

B. Upon consultation and approval of Class Counsel, Defendants shall retain a Settlement Administrator to help implement the terms of this Settlement Agreement. Following the Court's preliminary approval of this Settlement Agreement, the Settlement Administrator shall disseminate Class Notice to the Class as specified in the Preliminary Approval Order and herein, and in compliance with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution.

1. The Settlement Administrator shall be responsible for, without limitation: (a) printing, mailing or arranging for the mailing of the Class Notice; (b) handling return mail not delivered to Class Members; (c) attempting to obtain updated address information for any Class Notice returned without a forwarding address; (d) making any additional mailings required under the terms of this Settlement Agreement; (e) responding to requests for Class Notice; (f) forwarding written inquiries to Class Counsel or its designee for a response, if warranted; (g) establishing a post office box for the receipt of any correspondence; (h) responding to requests from Class Counsel and/or Defendants' Counsel; (i) establishing a web site and toll-free voice response unit with message capabilities to which Class Members may refer for information about the Action and the settlement; (j) determining whether claims submitted for reimbursement when replacement occurred after 20,000 miles will be subject to reimbursement; (k) administering

payment to Class Members whose claims are approved; and (l) otherwise implementing and/or assisting with the dissemination of the notice and/or administration of the settlement.

2. If the Settlement Administrator makes a material or fraudulent misrepresentation to, or willfully conceals requested material from, Class Counsel, Defendants, or Defendants' Counsel, then the Party to whom the misrepresentation is made shall have the right to demand that the Settlement Administrator immediately be replaced. If the Settlement Administrator fails to perform adequately on behalf of Defendants or the Class, the Parties may agree to remove the Settlement Administrator. The other Party shall not unreasonably withhold consent to remove the Settlement Administrator, but this shall occur only after Defendants and Class Counsel have attempted to resolve any disputes regarding the retention or dismissal of the Settlement Administrator in good faith, and if they are unable to do so, after the matter has been referred to the Court for resolution.

B. The Parties shall agree on language for any statements about the Settlement in connection with responding to any inquiries from the press or third parties and no additional or different statements shall be allowed by Plaintiffs or Plaintiffs' representatives. Nothing in this paragraph shall be deemed to prevent Class Counsel from communicating with Plaintiffs and Class Members and discussing the nature, benefits, and reasons for this Settlement with them.

C. All costs of the Class Notice program will be paid by Defendants. There shall be no charge to Defendants for the posting of the Class Notice on Class Counsel's websites or for posting any other information on such websites.

D. Contents of the Class Notice: The Class Notice, in a form substantially similar to the one attached to the Settlement Agreement as Exhibit B, shall advise Class Members of the following:

1. General Terms: The Class Notice shall contain a plain and concise description of the nature of the Action, the history of the Litigation, the preliminary certification of the Class, and the proposed Settlement, including information on the identity of Class Members, how the proposed Settlement would provide relief to the Class and Class Members, what claims are released under the proposed settlement and other relevant terms and conditions.

2. Exclusion/Opt-Out Rights: The Class Notice shall inform Class Members that they have the right to request exclusion from (opt out of) the settlement. The Class Notice shall provide the deadlines and procedures for exercising this right.

3. Objection to Settlement: The Class Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Final Approval Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.

4. Fees and Expenses: The Class Notice shall inform Class Members about the amounts being sought by Class Counsel as Attorney's Fees and Expenses and shall explain that Defendants will pay the fees and expenses awarded to Class Counsel in addition to the relief being made available to Class Members and without reducing such relief amounts.

5. Claim Form: The Class Notice shall include the Claim Form, which shall inform the Class Member that he/she/it must fully complete and timely return the Claim Form within the Claim Period to be eligible to obtain a recovery.

E. No later than ten (10) days prior to the Final Approval Hearing, Defendants shall provide an affidavit to the Court, with a copy to Class Counsel, attesting that Class Notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or those otherwise required by the Court.

**V. REQUESTS FOR EXCLUSION BY CLASS MEMBERS**

A. The provisions of this paragraph shall apply to any Request for Exclusion. Any Class Member may make a Request for Exclusion by mailing or delivering such request in writing to Lead Class Counsel and Defendants' Lead Counsel at the addresses set forth in the Class Notice. Any Request for Exclusion must be postmarked or delivered not later than the Opt Out Deadline specified in the Court's Preliminary Approval Order. Any Request for Exclusion shall (i) state the Class Member's full name and current address, (ii) identify the model year and Vehicle Identification Number ("VIN") of his/her/its Vehicle(s) and the approximate date(s) of purchase or lease, and (iii) specifically and clearly state his/her/its desire to be excluded from the Settlement and from the Settlement Class.

B. Any Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

C. Class Counsel shall report the names of all individuals who have submitted a Request for Exclusion to the Court no less than ten (10) days prior to the Final Approval Hearing.

**VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

A. Any Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the Settlement, or to the award of Attorney's Fees and Expenses, must file a written notice of objection by the Objection Date, as well as a notice of intention to appear at the Final Approval Hearing. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in his/her/its written objection: (i) his/her/its full name,

current address, and current telephone number; (ii) the model year of his/her/its Vehicle(s), as well as the VIN of his/her/its Vehicle(s); (iii) the DOT number on the Tires; (iv) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; and (v) provide copies of any other documents that the objector wishes to submit in support of his/her/its position. To be valid, an objection also must include a detailed statement of each objection asserted, including the grounds for objection. In addition, any Class Member objecting to the Settlement shall provide a detailed list of any other objections to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she/it shall affirmatively so state in the written materials provided in connection with the objection to this Settlement. Finally, subject to approval of the Court, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees, incentive awards, and reimbursement of reasonable litigation costs and expenses. The objecting Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") by the Objection Deadline or on such other date that may be set forth in the Class Notice. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Class Notice, and who has not filed an objection in

complete accordance with the deadlines and other specifications set forth in this Settlement and the Class Notice, will be deemed to have waived any objections to the Settlement and shall be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with such Class Member's due process rights. The Preliminary Approval Order and Class Notice will require all Class Members who have any objections to file such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon Class Counsel and Defendants' Lead Counsel at the addresses set forth in the Class Notice, by no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail properly or timely to file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, shall not be heard during the Final Approval Hearing, and their objections will be waived and will not be considered by the Court.

C. Any Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein is approved, as long as the objecting Class Member complies with all the requirements of this Settlement Agreement applicable to Class Members.

**VII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT**

The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Approval Order:

A. In consideration for the settlement benefits described in this Settlement Agreement, Plaintiffs and all Class Members, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and successors, hereby release, acquit, and discharge Defendants from and for any and all manner of claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments, and demands whatsoever, both at law and in equity, whether past, present, or future, mature or not yet mature, known or unknown, suspected or unsuspected, whether based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, or any claim that Plaintiffs or Class Members ever had, now have, may have, or hereafter can, shall, or may ever have in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the claims asserted in this Action.

B. Plaintiffs and Class Representatives represent and warrant that they are the sole and exclusive owner of all claims that they are releasing under this Settlement Agreement. Plaintiffs and Class Representatives further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned, or encumbered any right, title, interest, or claim arising out of or in any way whatsoever pertaining to the Action, including, without limitation, any claim for benefits, proceeds, or value under the Action, and that Plaintiffs and Class Representatives are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action.

C. Plaintiffs and Class Representatives further represent that there are no outstanding liens or claims against the Action and/or settlement proceeds, it being recognized that Plaintiffs

and Class Representatives will solely be charged with the responsibility to satisfy any other liens or claims asserted against the Action and/or settlement proceeds or arising in any way from this Settlement Agreement.

D. Plaintiffs and Class Representatives further represent that they are not aware of any Class Members who have filed Claims or Actions for the relief sought in this Action.

E. Without in any way limiting its scope, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs, or any other fees, costs, and/or disbursements incurred by Class Counsel, or by Plaintiffs or the Class Representatives, except to the extent otherwise specified in the Settlement Agreement.

F. Plaintiffs and Class Representatives expressly agree that this Release will be and may be raised as a complete defense to and will preclude any action or proceeding encompassed by this Release, or arising out of or relating to the allegations in the Action.

G. Plaintiffs and Class Representatives expressly understand and acknowledge that certain principles of law, including but not limited to Section 1542 of the California Civil Code, provide that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

To the extent that anyone might argue that these principles of law are applicable - notwithstanding that the Class and Defendants have chosen New Jersey law to govern this Settlement Agreement - Plaintiffs and Class Representatives hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived,

relinquished, and released by Plaintiffs and Class Representatives. Plaintiffs and the Class Representatives recognize that, even if they may later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and accompanying Judgment, Plaintiffs and Class Representatives fully, finally, and forever settle and release any and all claims covered by the Release. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement.

H. This Settlement Agreement and Release does not affect the rights of Class Members who timely and properly request exclusion from the Settlement.

I. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

J. Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Defendants shall not be subject to liability or expense of any kind to any Class Member(s) except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all released claims against Defendants in any federal or state court in the United States or any other tribunal.

K. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.

L. Plaintiffs and Class Representatives hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Settlement Agreement and shall be included in any Final Approval Order entered by the Court.

**VIII. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS**

A. All expenses incurred in administering this Settlement Agreement, including, without limitation, all attorneys' fees and costs, the cost of the Class Notice, and the cost of distributing and administering the benefits of the Settlement Agreement, shall be paid by Defendants, subject to the limitations contained herein.

B. Defendants have agreed to pay, subject to Court approval, and to support the award of attorneys' fees, costs, and expenses, in the total sum of One Million Two Hundred Thousand Dollars And No Cents (\$1,200,000), which shall be paid upon application by Class Counsel to the Court. In no event shall Defendants be required to pay Plaintiffs, Class Members, Lead Class Counsel, Class Counsel or other counsel in aggregate any attorneys' fees, costs, or expenses in an amount greater than \$1,200,000 for any activity related in any way to this Action or Litigation. Such award shall be paid by wire transfer and shall be delivered to an account to be designated and agreed upon by the Parties within five (5) days after the date the Final Approval Order is entered. In the event that the Final Approval Order is reversed, and such reversal becomes final (*i.e.*, all appeals and avenues of review are exhausted), the full amount of any attorneys' fees, costs, expenses, and interest shall be remitted to Defendants within ten (10) days of such reversal becoming final.

C. Given the efforts of the Plaintiffs on behalf of the Class Members, Defendants have agreed to pay Plaintiffs a total amount of Thirty-Four Thousand Five Hundred Dollars and No Cents (\$34,500) in Incentive Awards, to be paid as follows: Five Thousand Dollars and No Cents (\$5,000) each to Chad J. Cook and Kevin Morris (who were deposed in the California Action); and Three Thousand Five Hundred Dollars and No Cents (\$3,500) each to Deana Careccio, Arvind Chandran, Brenda Chaquette, Jeffrey Costa, Lisa Costanza, William Hoyer, and Edward Mota, all of whom actively participated in the Litigation and performed significant work on behalf of the Class. Such award shall be paid by wire transfer and delivered to an account to be designated and agreed upon by the Parties within (5) days after entry of the Final Approval Order. In the event that the Final Approval Order is reversed, and such reversal becomes final (*i.e.* all appeals and avenues of review are exhausted), the full amount of all Incentive Awards shall be remitted to Defendants within ten (10) days of such reversal becoming final.

D. Defendants shall not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with this Action, this Settlement Agreement, or the proposed Settlement, other than the amount or amounts expressly provided for in this Settlement Agreement.

**IX. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

A. Lead Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs and Class Counsel, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This

Settlement Agreement has been duly and validly executed and delivered by Lead Class Counsel and Plaintiffs and constitutes their legal, valid, and binding obligation.

B. Defendants, through their undersigned attorneys, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Defendants of this Settlement Agreement and the consummation by them of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendants. This Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

**X. MISCELLANEOUS PROVISIONS**

A. The Parties expressly acknowledge and agree that this Settlement Agreement and the exhibits and related documents thereto along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Settlement Agreement, any of its provisions or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any juridical, administrative, regulatory, or other proceedings, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel.

Without limiting the foregoing, this Settlement Agreement, the exhibits thereto, any related documents, any related negotiations, statements, or court proceedings shall be not be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability, wrongdoing, fault, or omission of any kind whatsoever by

Defendants with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendants specifically deny all of the allegations made in connection with the Litigation. Neither this Settlement Agreement nor any class certification pursuant to it shall constitute, in this or in any other proceeding, an admission by any Defendant, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Litigation, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' understanding and agreement that (a) under applicable laws, it is appropriate that a class be certified for settlement purposes only (*i.e.*, without needing to satisfy fully the standard required for certification of the matter for litigation purposes); (b) Defendants contest and deny that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction, other than for the purposes of this Settlement Agreement; and (c) notwithstanding any other provisions of this Settlement Agreement, all actions and proceedings pursuant to it shall be consistent with the foregoing. This provision shall survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of settlement. In the event that the Final Approval Order is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation,

and all Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

C. Simultaneously herewith, Lead Class Counsel and Defendants' Counsel are executing a "Supplemental Agreement" setting forth, among other things, certain conditions under which this Settlement Agreement may be withdrawn or terminated by any of the Defendants including if, prior to the Settlement Hearing, more than the agreed-upon number of Class Members have submitted valid and timely Requests for Exclusion. For the purposes of determining whether the conditions set forth in the Supplemental Agreement have occurred, copies of all Requests for Exclusion timely received, together with copies of all written revocations of Requests for Exclusion, shall be delivered to the Defendants' Lead Counsel within three (3) days of receipt by Lead Class Counsel, but, in all events, not later than ten (10) Court days before the Final Approval Hearing. The Supplemental Agreement shall not be filed unless (i) required by the Court, (ii) a dispute arises regarding its terms, or (iii) the Defendants exercise their rights thereunder. In the event of a withdrawal from this Settlement Agreement in accordance with the terms of the Supplemental Agreement, this Settlement Agreement shall become null and void and of no further force and effect. Notwithstanding the foregoing, the Settlement Agreement shall not become null and void as a result of the election by any of the Defendants to exercise their option to withdraw from the Settlement Agreement, pursuant to the Supplemental Agreement, until the conditions set forth in the Supplemental Agreement have been satisfied.

In addition to the terms set forth in the Supplemental Agreement, this Settlement Agreement shall terminate at the discretion of either Defendants or the Plaintiffs, through Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any

portion of this Agreement or the proposed Settlement that the terminating Party in its (their) sole judgment and discretion reasonably determines(s) is material, including with out limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party in its (or their) sole judgment and discretion reasonably determine(s) is material. The terminating Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this paragraph, no later than 20 days after receiving notice of the event prompting the termination. The Parties will be returned to the positions that they occupied as of August 18, 2009.

Further, Defendants may unilaterally withdraw from and terminate this Settlement Agreement within 20 days after receiving notice of either of the following events:

- i. any state attorney general, federal agency, or regulatory or administrative authority, institutes a proceeding against any of the Defendants arising out of or otherwise related to the Release and any of the terms or conditions of this Settlement Agreement; or
- ii. any federal or state regulator or agency: (a) objects either to any aspect or term of the Settlement Agreement; or (b) requires any modification to the Settlement Agreement, including, without limitation, a constriction or expansion of the scope of the contemplated relief that Defendants in their sole discretion deem reasonably material.

D. If this Settlement Agreement is terminated pursuant to Section X then:

1. This Settlement Agreement shall be null and void and shall have no force or effect and no Party to this Settlement Agreement shall be bound by any of its terms, except for the terms set forth in the Supplemental Agreement and in paragraph D herein;

2. The Parties will petition to have any stay orders entered pursuant to this Agreement lifted;

3. All of the provisions, and all negotiations, statements, and proceedings relating to it, shall be without prejudice to the rights of Defendants, Plaintiffs, or any Class Member, all of whom shall be restored to their respective positions occupied as of August 18, 2009, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Parties' substantive or procedural rights are prejudiced by the attempted settlement;

4. Defendants expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that this Action may not be litigated as a Class Action;

5. Neither this Settlement Agreement, nor the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this Settlement Agreement, shall be admissible or entered into evidence for any purpose whatsoever;

6. Any Settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Agreement shall be deemed vacated and shall be without any force or effect; and

7. Defendants are not responsible for any of Class Counsel's attorneys' fees and/or internal costs for the settlement, including, but not limited to, any investigative, expert, and/or actuarial costs, or any other claims for fees or expenses.

E. The attorneys' fees, expenses, and costs, including the fees and expenses of experts and consultants, as awarded by the Court, shall be paid in accordance with the terms set forth in Paragraphs VIII A and B of the Settlement Agreement within five (5) days of the entry of the Final Approval Order, notwithstanding the existence of any timely-filed objections, or potential appeal therefrom, or collateral attack on the Settlement or any part thereof. Lead Class Counsel may, at their discretion, allocate the attorneys' fees among Class Counsel in any manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Litigation. In the event attorneys' fees or expenses are awarded by the Court and paid to Class Counsel, all Class Counsel who receive any payment of attorneys' fees or expenses agree that they accept payment subject to the joint and several obligation of each and every one of Class Counsel (including their respective partners, shareholders, and/or firms) receiving payments to make repayment within ten (10) days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, of the entire amount required by any court or appellate court to be repaid with accrued interest, in the event, for any reason, including, without limitation, appeal, further proceeding on remand or successful collateral attack, the attorneys' fees or expense award is reduced or reversed. Furthermore, all Class Counsel (including their respective partners, shareholders and/or firms) agree that they remain subject to the continuing jurisdiction of the Court for the purpose of enforcing their joint and several obligation to repay required attorneys' fees and expenses as provided in this paragraph, as well as with respect to any restrictions contained in the Supplemental Agreement.

F. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

G. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing and signed by all of the Parties and with approval of the Court.

H. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

I. This Settlement Agreement and any amendments thereto shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without giving effect to any choice-of-law or conflict-of-law provision or rule that would cause the application of the laws of any other jurisdiction.

J. Any disagreement and/or action to enforce this Settlement Agreement shall be commenced and maintained only in the Court in which this Action is pending.

K. Except as otherwise provided in this Settlement Agreement, each Party to this Settlement Agreement shall bear his, her, or its own costs of the Litigation.

L. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

M. Proper notice shall be given to Plaintiffs and Defendants of all applications for Court approval or Court orders required under this Settlement Agreement.

N. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

O. All of the exhibits of this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supercede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Litigation.

P. The Parties agree that any disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, shall be submitted to the Court for resolution.

Q. The Parties agree and acknowledge that this Settlement Agreement includes a covenant of good faith and fair dealing.

R. The waiver by one Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

S. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

T. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the action to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this section “legal holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

U. **Notices.** All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

If to Plaintiffs, Lead Class Counsel or Class Counsel:

James C. Shah, Esq.  
Shepherd, Finkelman, Miller & Shah, LLP  
475 White Horse Pike  
Collingswood, NJ 08107  
(856) 858-1770  
(856) 858-7012 Fax  
[jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)

If to BMW NA or BMW NA's Counsel:

Rosemary J. Bruno, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street  
Suite 810  
Newark, NJ 07102  
(973) 273-9800  
(973) 273-9430 Fax  
[rosemary.bruno@bipc.com](mailto:rosemary.bruno@bipc.com)

If to BATO, Bridgestone, BATO's Counsel or Bridgestone's Counsel:

Susan T. Dwyer, Esq.  
Herrick, Feinstein LLP  
2 Park Avenue  
New York, NY 10016  
(212) 592-1403  
(212) 545-3303 Fax  
[sdwyer@herrick.com](mailto:sdwyer@herrick.com)

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: November 18, 2009

  
\_\_\_\_\_  
James C. Shah  
SHEPHERD, FINKELMAN, MILLER &  
SHAH, LLP  
475 White Horse Pike  
Collingswood, NJ 08107  
Telephone: (856) 858-1770  
Facsimile: (856) 858-7012  
Email: [jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)

Dated: November 18, 2009

\_\_\_\_\_  
Rosemary J. Bruno  
Christopher J. Dalton  
Buchanan Ingersoll & Rooney PC  
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Telephone: (973) 273-9800  
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Email: [rosemary.bruno@bipc.com](mailto:rosemary.bruno@bipc.com)

Attorneys for Defendant,  
BMW of North America, LLC

Dated: November 18, 2009

\_\_\_\_\_  
Susan T. Dwyer  
Ronald J. Levine  
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New York, NY 10016  
Telephone: (212) 592-1403  
Facsimile: (212) 545-3303  
Email: [sdwyer@herrick.com](mailto:sdwyer@herrick.com)

Attorneys for Defendants,  
Bridgestone Americas Tire Operations, LLC  
and Bridgestone Corporation

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: November 18, 2009

---

James C. Shah  
SHEPHERD, FINKELMAN, MILLER &  
SHAH, LLP  
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Telephone: (856) 858-1770  
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Email: [jshah@sfmsllaw.com](mailto:jshah@sfmsllaw.com)

Dated: November 18, 2009



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Attorneys for Defendant,  
BMW of North America, LLC

Dated: November 18, 2009

---

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Email: [sdwyer@herrick.com](mailto:sdwyer@herrick.com)

Attorneys for Defendants,  
Bridgestone Americas Tire Operations, LLC  
and Bridgestone Corporation

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: November 18, 2009

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James C. Shah  
SHEPHERD, FINKELMAN, MILLER &  
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475 White Horse Pike  
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Dated: November 18, 2009

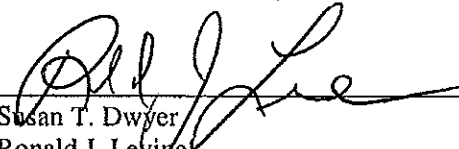
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Attorneys for Defendant,  
BMW of North America, LLC

Dated: November 18, 2009

---



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Attorneys for Defendants,  
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and Bridgestone Corporation