

NOTICE OF CLASS ACTION SETTLEMENT

Cerdes v. Cummins Diesel Sales Corp., No. 06-0922
United States District Court for the Eastern District of Louisiana
C151 Hale Boggs Federal Building, 500 Poydras Street, New Orleans, Louisiana 70130

WHY AM I RECEIVING THIS NOTICE?

You are receiving this notice because you may be a member of a class entitled to receive settlement benefits if the proposed settlement of this case is approved by the court.

HOW DO I KNOW IF I AM A MEMBER OF THE CLASS?

To be a member of the class in this case, and be entitled to seek settlement benefits if the settlement is approved, you must meet all of the following criteria:

- Have purchased a Cummins brand 6B or 6C marine diesel engine (including the QSM-11 model),
- Equipped with a seawater aftercooler having no drain hole or valve at the time of original manufacture,
- In the United States on or after January 1, 1996,
- Directly from Cummins, Inc. or a Cummins, Inc. dealer or distributor, or as factory-installed original equipment in a boat purchased directly from a manufacturer which purchased directly from Cummins, Inc. or a Cummins, Inc. dealer or distributor.

If you do not meet all of these criteria, you cannot be a member of the class.

WHO IS THE PLAINTIFF IN THIS CASE?

The plaintiff who started this lawsuit is Junior Cerdes, who bought one of the marine diesel engines covered by the proposed settlement. Mr. Cerdes would be the representative of the class if the settlement is approved.

WHAT ARE THE PLAINTIFF'S CLAIMS IN THIS CASE?

The plaintiff claims that when liquid water created in a seawater aftercooler enters the power cylinders of a marine diesel engine, it causes premature wear-out of the engine's power cylinders. The defendants strongly deny these claims as to their engines.

WHO REPRESENTS ME IN THIS CASE?

The lead counsel representing you are Gary J. Gambel and Robert H. Murphy of Murphy, Rogers, Sloss & Gambel and Jennifer Willis of Willis & Buckley.

DO I HAVE TO PAY THE ATTORNEYS ANYTHING FOR THE SETTLEMENT?

No. Counsel for plaintiff and the class will seek an award of attorneys' fees and an award for the plaintiff at the end of this case. Any amount awarded as attorneys' fees or as an incentive award to plaintiff will be paid by Cummins, Inc. not by you, and will not diminish the settlement benefits available to you or other class members. The Court will have sole discretion to determine the amount of any attorneys' fees awarded to Class Counsel and any amount awarded to plaintiff. You may object to the proposed award of attorneys' fees, or to the proposed incentive award for plaintiff, or both, as part of any objection to the proposed settlement.

WHO ARE THE DEFENDANTS IN THIS CASE?

Cummins, Inc. and an affiliate of Cummins, Inc. are the defendants in this case on the theory that they manufactured and sold the marine diesel engines covered by the proposed settlement.

WHO REPRESENTS THE DEFENDANTS IN THIS CASE?

Harry Joseph Philips, Jr. of Taylor, Porter, Brooks & Philips, LLP and Christopher M. Mason of Nixon Peabody LLP.

WHAT IS THE PROPOSED SETTLEMENT?

To resolve this lawsuit, the parties have agreed to a proposed settlement in which class members would be entitled to certain benefits upon a timely qualifying request. These include the installation (at no charge up to \$650) of a drain hole or valve or other device for limiting aftercooler condensation from entering the power cylinders of an engine, reimbursement of certain covered repair costs or retrofit costs performed prior to the settlement, and, for commercial engines only, a limited extended warranty.

HOW DO I GET SETTLEMENT BENEFITS OR MORE INFORMATION?

To review the Settlement Agreement, obtain a claim form, or get more information, go to www.cumminsmarinedieselsettlement.com or write to *Cerdes v. Cummins* Settlement c/o The Garden City Group, Inc., P.O. Box 9349, Dublin Ohio 43017-4249. YOU MUST PROPERLY COMPLETE A CLAIM FORM TO BE CONSIDERED FOR SETTLEMENT BENEFITS.

WHEN WILL THE SETTLEMENT BE APPROVED?

The Court will decide whether to approve the proposed settlement or not. A hearing for that purpose is currently set for *JULY 22, 2009 at 10:00 a.m.* No settlement benefits can or will be provided without approval of the Court.

DO I HAVE TO ACCEPT THE SETTLEMENT?

No. If you believe you are a member of the class, but do not want to be part of the proposed settlement, *you may opt out by sending a written request, on or before JUNE 5, 2009, to be excluded.* The request must include your name, address, telephone number, e-mail address, and a statement that you wish to be excluded from the class. You must send it, postmarked by the date above, to Christopher M. Mason, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022 Attention: *Cerdes v. Cummins* Opt-Out.

If you want to remain in the class, but object to the proposed settlement, *you may file an objection with the Court on or before JUNE 5, 2009.* It must be in writing, and must include your name, address, telephone number, and e-mail address (if any); the name, address, telephone number, and e-mail address (if any) of your attorney (if any); proof of Class Membership, including the serial number or numbers of your engine or engines, and proof of purchase of such engine or engines or the boat containing them; a statement of your objection or objections, any declarations or other supporting evidence, and any legal arguments you want to introduce; and a statement whether the Class member or the Class member's attorney (if any) intend to appear at the Final Hearing. You must send this, postmarked by the date above, to Robert H. Murphy, Gary J. Gambel, Murphy, Rogers, Sloss & Gambel, Suite 400, One Shell Square, 701 Poydras Street, New Orleans, Louisiana 70139 Attention: *Cerdes v. Cummins* Objection; to Jennifer N. Willis, Willis & Buckley, 3723 Canal Street, New Orleans, Louisiana 70119 Attention: *Cerdes v. Cummins* Objection; to Harry Joseph Philips, Jr., Taylor, Porter, Brooks & Phillips, LLP, 451 Florida Street, P.O. Box 2471, 8th Floor, Bank One Centre, Baton Rouge, Louisiana 70821 Attention: *Cerdes v. Cummins* Objection; and to Christopher M. Mason, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022, Attention: *Cerdes v. Cummins* Objection. You must also file any objection with the Clerk of Court, United State District Court, Eastern District of Louisiana, C151 Hale Boggs Federal Building, 500 Poydras Street, New Orleans, Louisiana 70130.

If you want to appear in person at the final hearing to object, you must provide all the information above, and must, not later than thirty days before the final hearing, also file with the Clerk of Court and mail to counsel, at the addresses above, a list of all witnesses and copies of all exhibits that you will or may offer at the final hearing.

If you remain in the class and the settlement is approved, *you will be bound by it and will release all claims.* If you do not remain in the class and the settlement is approved *you cannot receive settlement benefits.*

WHAT HAPPENS NEXT?

On July 22, 2009 at 10:00 a.m., Judge Ivan L. R. Lemelle will hold a final hearing at C501 Hale Boggs Federal Building, 500 Poydras Street, New Orleans, Louisiana 70130 to decide whether to approve this settlement. If he approves it, all class members will be bound by the resulting judgment and court orders, and eligible class members will be entitled to seek or receive certain benefits. **IF YOU DON'T OPT OUT OF THE SETTLEMENT AND IT IS APPROVED, YOU WILL FOREVER RELEASE ANY RIGHTS YOU HAVE TO SUE CUMMINS, INC. OR RELATED ENTITIES FOR ANYTHING RELATED TO THE FACTS OR CLAIMS COVERED IN THE SETTLEMENT.**

For further information, please visit www.cumminsmarinedieselsettlement.com or *write* (do not call) Gary J. Gambel, Murphy, Rogers, Sloss & Gambel, Suite 400, One Shell Square, 701 Poydras Street, New Orleans, Louisiana 70139. **DO NOT CONTACT THE COURT FOR SUCH INFORMATION.**