

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JUNIOR CERDES

CIVIL ACTION NO. 06-0922

VERSUS

MAGISTRATE Div. (4)

CUMMINS DIESEL SALES
CORPORATION, ET AL

SECTION "B"

**ORDER PRELIMINARILY APPROVING SETTLEMENT,
CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY, SETTING
FINAL HEARING DATE, AND DIRECTING CLASS NOTICE**

Considering the Joint Motion for Preliminary Approval of the Proposed Class Action Settlement (the "Joint Motion") seeking preliminary approval of the proposed settlement of the Action, certification of a Class for settlement purposes only, a final hearing date, and an order approving and directing Notice of the proposed settlement; and considering the evidence submitted in support, and the arguments and recommendations of counsel, the Court HEREBY ORDERS, ADJUDGES, AND DECREES that:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement, attached as Exhibit A, dated February 6, 2009 by and between the parties in this Action.
2. The Court has, and retains, jurisdiction over the subject matter of this proceeding.
3. Venue is proper in this judicial district.
4. The Court finds preliminarily that the Settlement Agreement is the result of extensive arms-length negotiations among experienced counsel, with sufficient discovery and full knowledge of the risks and benefits inherent in this Action and its proposed settlement.

5. The Court finds preliminarily that the parties entered into the Settlement Agreement in good faith, at arms length, and without collusion.

6. The Court finds preliminarily that the Parties have made an informed decision as to the fairness and adequacy of the proposed Settlement Agreement.

7. The proposed settlement and the Settlement Agreement are preliminarily approved as fair, adequate, and reasonable to the Class as a whole.

8. A Class is certified, for settlement purposes only, of all past and present owners of recreational and commercial Cummins 6B and 6C marine diesel engines (including the QSM-11 model) purchased in the United States on or after January 1, 1996 with Seawater Aftercoolers having no drain hole or valve at the time of original manufacture, whether the engines were operated in fresh or salt water, who originally purchased their engines from Cummins or an authorized Cummins dealer or distributor, or originally purchased their engines as factory-installed original equipment in a boat purchased directly from a manufacturer which purchased directly from Cummins or an authorized Cummins dealer or distributor. The settlement Class does not include Defendants, Class Counsel, or Defendants' Counsel, or the employees of any of them, or this Court or any of the Judges or law clerks of this Court or any court that would have appellate jurisdiction of this case.

9. Junior Cerdas is appointed and approved as an adequate Class Representative to represent the settlement Class.

10. Robert H. Murphy and Gary J. Gambel of Murphy, Rogers, Sloss & Gambel, One Shell Square, Suite 400, 701 Poydras Street, New Orleans, Louisiana 70139, and Jennifer Willis of Willis & Buckley, 3723 Canal Street, New Orleans, Louisiana 70119 are appointed and

approved as adequate Class Counsel to represent the Class Representative and the settlement Class.

11. The parties shall provide Class Notice to the settlement Class as set forth in the Settlement Agreement. The forms of Notice attached to the Settlement Agreement, and the notice plan for distribution and publication of such Notice described in the Settlement Agreement, are approved as satisfying all requirements of due process and the Federal Rules of Civil Procedure. Notice shall be completed on or before April 24, 2009.

12. The last day for members of the settlement Class to opt out of the settlement shall be June 5, 2009. All requests to opt out must be postmarked by, and mailed to:

Christopher M. Mason
NIXON PEABODY LLP
437 Madison Avenue
New York, New York 10022
Attention: *Cerdes v. Cummins* Opt-Out

13. The last day for members of the settlement Class to object to the proposed settlement, or any part of it, shall be June 5, 2009. The Class member must make the objection in writing, providing the Class member's name, address and telephone number; the name, address and telephone number of the Class member's attorney, if any; proof of Class Membership, including the serial number or numbers of the Covered Engine or Engines, and proof of purchase of such engine or engines or the boat containing them; a statement of the objection or objections, any declarations or other supporting evidence, and any legal arguments the Class member wishes to introduce; and a statement whether the Class member or the Class member's attorney, if any, intend to appear at the Final Hearing. The Class member must mail the objection and all supporting evidence to Class Counsel and Defendants' Counsel, addressed as below, postmarked by the date above, as follows:

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

Jennifer N. Willis
WILLIS & BUCKLEY
3723 Canal Street
New Orleans, Louisiana 70119
Attention: *Cerdes v. Cummins* Objection

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

Christopher M. Mason
NIXON PEABODY LLP
437 Madison Avenue
New York, New York 10022
Attention: *Cerdes v. Cummins* Objection.

The Class member must also file the objection with the Court, through the Clerk of Court, at the address below on or before June 5, 2009:

Clerk of Court
United State District Court
Eastern District of Louisiana
C151 Hale Boggs Federal Building
500 Poydras Street
New Orleans, Louisiana 70130.

14. If a Class member wishes to appear in person at the Final Hearing to object, the Class member 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 Class Counsel and Defendants'

Counsel, at the addresses above, a list of all witnesses and copies of all exhibits that the Class member will or may offer at the Final Hearing.

15. A Class member who does not timely and properly file and serve an objection satisfying all requirements of this Order and any further orders of the Court will be deemed to have waived any objection, will not be permitted to object in any fashion to the Settlement Agreement or the proposed settlement it contemplates, and will not be permitted to be heard at the Final Hearing.

16. All responses by Plaintiff or Defendants to any objections by any Class member, and all briefing in support of final approval of the proposed settlement, shall be filed with the Court on July 10, 2009.

17. The Final Hearing date to determine whether the proposed settlement may be finally approved as fair, adequate, and reasonable to the Class as a whole shall be July 22nd, 2009 at 10:00 a.m.

18. The Final Hearing date may be continued from time to time by order of this Court and without further notice to members of the settlement Class.

19. At or after Final Approval, Class Counsel may seek an award of reasonable attorneys' fees, costs, and out-of-pocket expenses for work on the Action and this proposed settlement. The amount of the fees, costs, and out-of-pocket expenses, if any, shall be determined solely and exclusively by the Court. Any fees, costs, and out-of-pocket expenses awarded by the Court will be paid by Cummins and not by the Class, and will not diminish the settlement benefits available to the Class.

20. Any Class member may object to attorneys' fees, costs, and out-of-pocket expenses for Class Counsel by objecting to the proposed settlement on that basis.

21. The hearing on any application for attorneys' fees, costs, and out-of-pocket expenses (a "Fee Application") by Class Counsel shall be conducted on a date, not more than one month after the Final Hearing, to be set by the Court at or before the Final Hearing.

22. Class Counsel shall, on the day after the Final Hearing, send by mail (or electronically, if the Class member has provided an e-mail or other electronic address), to any Class member who objected to attorneys' fees, costs, and out-of-pocket expenses for Class Counsel, a copy of any Fee Application made by Class Counsel, together with a copy of the Court's notice setting a hearing date for such Fee Application. If such Class member has otherwise complied with all requirements for objecting, the Class member shall be entitled to be heard as to the Fee Application on such hearing date.

23. At or after Final Approval, Class Counsel may seek, on behalf of the Class Representative, a reasonable incentive award for work by the Class Representative on the Action and this proposed settlement. Any such incentive award shall be solely and exclusively determined by the Court. Any incentive award ordered by the Court will be paid by Cummins and not by the Class.

24. Any Class member may object to an incentive award for the Class Representative by objecting to the proposed settlement on that basis.

25. The Court shall schedule a hearing on any incentive award for the Class Representative concurrently with any hearing on any Fee Application by Class Counsel.

26. Class Counsel shall, on the day after the Final Hearing, send by mail (or electronically, if the Class member has provided an e-mail or other electronic address), to any Class member who objected to an incentive award for the Class Representative, a copy of any application for such incentive award. If such Class member has otherwise complied with all

requirements for objecting, the Class member shall be entitled to be heard as to such application on the same date set by the Court for hearing any Fee Application.

27. Pending a final decision of this Court after the Final Hearing date, and the exhaustion of any appeals, all persons who are or could be members of the settlement Class are enjoined from commencing or prosecuting any claim against Defendant Cummins, Inc., Cummins Diesel Sales Corporation, or any other Releasee under the Settlement Agreement that is a claim that could be released or barred by final approval of the proposed settlement in this action.

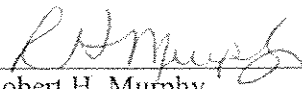
New Orleans, Louisiana this 25th day of February, 2009.



IVAN L. R. LEMELLE
UNITED STATES DISTRICT JUDGE

CERTIFICATION OF FILING AND SERVICE

I certify that on February 17th, 2009, a copy of the foregoing (Proposed) Order Certifying Class for Settlement Purposes Only, Preliminarily Approving Settlement, Setting Final Hearing Date, and Directing Class Notice was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.



Robert H. Murphy

