

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re: CATERPILLAR, INC., C13 and C15
ENGINE PRODUCTS LIABILITY LITIGATION

Master Docket No. 14-3722(JBS)(JS)

I, MICHAEL R. O’CONNOR, ESQ., hereby declare and state as follows:

1. I am a Vice President at Epiq Class Actions & Claims Solutions, Inc. (“Epiq”) and a licensed attorney in Oregon. Prior to joining Epiq in 2010, I was an owner at the Garvey Schubert Barer law firm in Portland, Oregon, and was engaged in private practice for 13 years. I received my Juris Doctorate from the University of Oregon Law School in 1997 and my Bachelor of Arts degree from Yale University in 1994. I have first-hand knowledge of, and am competent to testify, regarding the matters stated herein.

2. Epiq was established in 1968 as a client services and data processing company. Epiq has been administering bankruptcies since 1985 and settlements since 1993, including settlements of class actions, mass tort litigations, Securities and Exchange Commission enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes, bankruptcies, and other major litigation. Epiq has administered more than 1,000 settlements, including some of the largest and most complex cases ever settled.

3. Epiq was retained as the Settlement Administrator for this matter. Our services for this engagement include, but are not limited to: providing class members with notice; sending out claim forms; adjudicating received claims; hosting a website for class members; establishing a toll-free number with both recorded answers to frequently asked questions and live operators;

establishing, updating and maintaining a class member database; managing settlement funds; responding to requests from counsel; responding to written inquiries from class members; filing tax returns for the qualified settlement fund (“QSF”) and issuing payments to eligible class members.

4. The claims process began in 2016 and was completed earlier this year. The data received from the defendant contained 35,315 unique engine serial numbers that were known to be part of the settlement. 3,035 claimants filed 4,343 total claims, covering 16,811 engines. 28% of the claims were filed online and 72% were filed using traditional paper claim forms. 2,083 claimants were approved for payment for 2,419 claims, covering 11,685 engines. The 16,811-engines number referenced herein does not include the engines that are now subject to a review, as will be described below.

5. On Friday, March 30, 2018, Epiq issued payments to 2,083 claimants. Fourteen of those claimants received wires and the rest were mailed checks.

6. On Tuesday, April 3, 2018, Class Action Capital (“CAC”), a third-party filer that filed claims on behalf of 27 entities, reached out to Class Counsel and Epiq with a question about its clients’ payments. CAC believed the payments were not accurate and too low. Over the course of April 3 and 4, CAC and Epiq exchanged a number of e-mails related to CAC’s claims. An internal review of the CAC claims was also initiated on April 3.

7. By the evening of April 4, 2018, Epiq determined an error had likely occurred when CAC’s claims were reviewed. That initial finding was immediately escalated to me and other senior leaders at Epiq to further vet this initial finding and determine next steps. At 9:44 p.m., my colleague, Epiq Vice President Adam Palmer, notified Class Counsel that we understood the urgency

of determining what had happened with CAC's claims and would need an opportunity to speak with them the following day.

8. While Epiq is continuing our internal investigation regarding what went wrong, we do know the most critical pieces. For class members who filed online claims, they were allowed to list claimed engines in a table with several identifying fields. Supporting documentation could also be uploaded, including items such as engine receipts, repair receipts, proof of engine ownership, etc. After a claim was submitted, our claims analysts reviewed these supporting documents to determine whether the materials provided supported the claims made on the form, engine by engine.

9. For CAC's claims, it listed one or more engines in the fields provided. It then uploaded a spreadsheet of additional engines that it wished to include as part of its claims via the supporting documents portal (the "Spreadsheet Engines"). There were no cover letters for the spreadsheets indicating that this was CAC's intent.

10. When reviewing CAC's claims, the analysts—who were trained to look for receipts and other types of supporting documentation to support the claims listed on the claim form—did not recognize CAC wanted to include the Spreadsheet Engines as part of its claims. Thus, for one of CAC's claims where one engine was listed on the claim form, and 99 additional engines were listed on a spreadsheet uploaded to "supporting documentation," Epiq only included one engine as "approved" for payment (assuming adequate supporting documentation was provided for that engine). The 99 Spreadsheet Engines were not understood to supplement CAC's claim. CAC filed 28 claims in this manner.

11. In our experience, it is not unusual for claimants to include supporting materials irrelevant to their claims. Thus, the fact that there may have been additional spreadsheets or receipts

that did not match engines listed on a claim form, would not necessarily have raised an alarm for the analyst reviewing a claim. Hundreds of thousands of images were reviewed in connection with the claims submitted in this case.

12. When Epiq's leadership team looked at the situation, we believed the right thing to do was to ensure CAC was paid for all eligible engines, including those submitted in spreadsheets as supporting documents. In our view, it was the good-faith intent of CAC to include these engines as part of their claim and it seemed neither fair nor reasonable to deny CAC's clients full payment under the terms of the settlement agreement because Epiq analysts didn't recognize the spreadsheet contents as an intent to include additional engines as part of a claim.

13. We quickly assessed how many engines were inadvertently excluded from our calculation of CAC's claims. Applying the pro rata calculation used to pay claimants on March 30, we estimated the amount CAC's clients may have been underpaid was well over a million dollars.

14. On the morning of April 5, as part of our analysis of this unfolding issue, we also became concerned that CAC's approach to claim filing (uploading a spreadsheet list of engines not included in the online claim form) might also have been tried by other claimants. The likelihood of that happening appeared high, and we decided we needed to re-review the supporting documentation of every claim filed.

15. On April 5, 2018, I led a call with Class Counsel to fully disclose the nature of the error and to discuss our suggested next steps for addressing the situation. We notified counsel of our intent to stop payment on all checks so that we could complete our re-review of supporting documentation to see if there were other engines inadvertently excluded from our pro rata calculation. We explained that until that review was complete, we would not understand the

magnitude of the situation. While stopping payment on the checks was a difficult decision, and we knew it would greatly inconvenience claimants, it was the best way to preserve QSF monies for corrected payments to class members.

16. During the April 5 call, Epiq also described the outreach efforts to class members we planned to take to try to minimize the impact of the canceled checks, which are detailed in the next paragraph.

17. On April 6, 2018:

- (a) letters were mailed to all 2,083 claimants who were issued payments. A true and accurate copy of that letter is attached as Exhibit 1;
- (b) emails were sent to all claimants who were issued payments and for whom we had an email address with the same content as Exhibit 1;
- (c) we began a call campaign to all claimants who were issued payments and for whom we had a telephone number, providing the same basic information contained in Exhibit 1. As of April 16, we had or were able to obtain 1,964 phone numbers. We spoke to or left voicemails for 1,662 of those claimants. 52 of the 1,964 numbers were tried, but the number we had appeared to be out of service. 250 of the 1,964 telephone numbers were successfully dialed, but there was no way for us to leave a voicemail. We are continuing to try to find numbers for the remaining claimants;
- (d) we updated our call center scripting for inbound calls to be sure that all callers to the toll-free line were notified of the error;

- (e) I called all of the claimants who received wire payments to notify them of the issue and to let them know it was likely the fund would need to reclaim some of the money disbursed to them. The wire recipients collectively received \$12,806,560.60;
- (f) Our Vice President of Client Services called the highest-value claimants who had already negotiated their checks to notify them of the issue and to let them know it was likely the fund would need to reclaim some of the money disbursed to them; and
- (g) Our Manager of Client Services called the highest-value claimants who had not yet negotiated their checks to explain the issue, to let them know we were working to resolve the issue, and to instruct them not to negotiate the checks they received.

18. From Friday, April 6 to Monday, April 9, Epiq claim analysts reviewed more than 1,300 claims and nearly 5,000 supporting documents totaling almost 100,000 pages. Through April 12, they expanded that review to look at all incoming emails and paper correspondence received over the administration of the settlement and all supporting documentation submitted with paper claims. Epiq believed it was important to make sure no additional engines were included in anything we received from claimants, via every possible submission method. We wanted to be methodical and complete as we evaluated the scope of this issue.

19. As our claims analysts reviewed the materials described in paragraph 18, they compiled a list of all engines (using serial numbers) mentioned in supporting documentation. Epiq's team of data analysts then ran that list against the list of engines included in the March 30 pro rata

calculation to see which ones may have been inadvertently excluded. From there, we were able to determine which claims would need to be re-reviewed.

20. Including CAC's client's claims, 173 claims were filed in a manner similar to CAC's approach and we are re-reviewing those as a part of this process ("Round 2 Claims"). The engine serial numbers associated with claims filed by CAC represent 62% of the engine serial numbers that will be scrutinized in Round 2.

21. Round 2 Claims are being adjudicated under the same processing rules, with the same documentation requirements as the original claims review process.

22. During the original claims review process, many claimants failed to successfully complete their claims with their first submission. Epiq provided these claimants with written notice of their claim deficiencies and gave them 30 days to provide additional information and cure their claims. It is our view that Round 2 Claims should have the same opportunity to cure claim deficiencies. We estimate we will complete our re-review of Round 2 Claims in approximately 60 days, which includes: (a) Epiq's re-processing of the claims to identify which ones are complete and which ones have deficiencies; (b) mailing out deficiency letters; (c) providing claimants who receive deficiency letters with 30 days to respond; (d) Epiq's processing of the deficiency responses; and (e) Epiq's re-calculation of the amounts due to successful claimants.

23. We would be able to reissue checks to successful claimants within three business days of the pro rata calculation being finalized and approved.

24. It is possible that there will also be some engines in the Round 2 Claims where multiple claimants are claiming ownership. A Special Master assisted us with those disputes during our original claims processing and we would expect to engage the Special Master again should this

situation arise. We believe that process could be completed in parallel with the deficiency process for Round 2 Claims and would not materially alter the completion date described in prior paragraphs.

25. In the Court's April 10, 2018 letter to counsel, the Court asked Epiq to supply certain information. The Court's first question asked Epiq to explain the specific error and how it happened. To the extent my explanation of what happened in the prior paragraphs of this declaration are inadequate, I would be happy to appear before the Court to answer any additional questions.

26. The Court's second question asks for the differences between the initial award calculations and the corrected calculations after Epiq's Round 2 Claims review. Until we finish our review of all Round 2 Claims and process all Round 2 Claim deficiencies, we cannot provide the Court with this figure.

27. The Court's third question relates to how many claimants are affected by this process. As previously stated, there are 173 claims currently undergoing a second review to determine if there are additional eligible engines that should be included in their claim award. Ultimately, because this is a pro rata calculation, all claimants eligible for an award are affected by this Round 2 Claims process.

28. The Court's fourth and fifth questions ask about notifications to class members. In addition to the outreach described in paragraph 16, Epiq's website for class members has also been updated to include the information contained in Exhibit 1. In consultation with counsel and the Court, Epiq expects to continue to provide class members with regular updates about the steps it is taking to reissue corrected payments to class members who have not yet received payment.

29. Since more than \$17 million in funds disbursed on March 30 have already been received by certain class members (via wires and checks negotiated before the stop payment), once final corrected calculations have been completed, Epiq will ask these paid claimants to return to the Settlement Fund the portion of their payments that turned out to be over the amount they were ultimately entitled to in the final pro rata calculation.

30. The Court's sixth question asks when claimants can expect to receive corrected distribution checks. If the parties and the Court do not want to wait until all Round 2 Claims are finished processing, Epiq could issue an interim payment to all non-Round 2 claimants for an amount below which we can be mathematically certain their claim awards will never fall. Such a payment could be issued within 5-10 days of the parties and/or Court's approval.

31. To accomplish this, Epiq could run a pro rata calculation that includes the entire universe of engines being scrutinized in Round 2. Based on our experience processing the original claims, there is virtually no chance 100% of the Round 2 engines will be approved for payment. Thus, by including 100% of the Round 2 engines in the pro rata calculation, we would be ensuring that the final pro rata calculation would not drop below this interim number because we know some percentage of Round 2 engines will not be approved. It is one way we could get some money to most claimants quickly while the Round 2 adjudications move forward. Claimants could then be issued a second payment for any additional amounts due after final calculations are determined.

32. In my seven-plus years at Epiq, we have never had an administration where 100% of the checks issued were negotiated. In fact, even in cases like this, where claimants are receiving very substantial payments, it is virtually certain that some percentage of claimants will not negotiate their checks. Epiq can remind claimants to do so via email, postcards or telephone calls, but

inevitably, there will be a residual. If we have a 90% check negotiation rate in this case (which would be high in our experience), there will be well over \$3 million left in the settlement fund. In these types of situations, if the costs of an additional distribution are meaningfully less than the amount that would be distributed, we recommend issuing a second disbursement to claimants who negotiated their first check, applying the same pro rata formula to the remaining funds.

33. The Court's seventh question asks what additional steps Epiq has put into place to minimize the likelihood of a future, similar occurrence. In the twelve days since this incident became known, our team's energy has been appropriately focused on determining the scope of the problem and how to fix it. We are still in the early stages of the remediation process for the error, which includes a thorough investigation and analysis of the incident and recommendations for improved processes and/or controls in the future. We take errors like the one made on this matter very seriously and are always endeavoring to improve our execution with what I would describe as a thoughtful urgency.

34. Once Epiq has concluded our root cause analysis, I do expect additional improvements and new or revised controls to emerge from this incident. Once the dust has settled, and claimants are paid correctly, we can turn our focus inward. We need to very carefully examine how we are handling and reviewing incoming documents and the resources we are utilizing to look at those materials. In every case I have been a part of with Epiq, no matter how clear your instructions to claimants are that claims can only be submitted via method X and must include materials Y, there will be many claimants who submit claims via methods R, T and Z and include every material except Y. There is a balance between trying to limit how and what materials claimants can submit (which makes processing claims more efficient and introduces less risk) and

trying to make the process easy for claimants. When our internal review concludes, I would be happy to provide the Court with additional information.

35. With respect to the Court’s eighth question, Epiq does not believe an independent review of our work is necessary. The nature of the error is well understood and we have deployed every available resource to scour the claims received and ensure we have captured the complete universe of engines. We are acting promptly and transparently to correct this error and, as stated previously, we are willing to provide the Court with whatever supplementary information it believes was not covered herein, including my appearance via phone or in person to address further questions. In addition, if it meets with the Court’s approval, we can file a “Final Report” with the Court after the Round 2 Claims are paid, detailing how we executed against the plan described in this declaration.

36. The Court’s ninth and final question is directed to counsel. While we cannot undo what has happened to date, we are wholly committed to doing all we can to minimize the impact on class members, Class Counsel and this Court. On behalf of Epiq, I apologized to Class Counsel and their clients during our April 5 call. I also wish to apologize to this Court.

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I declare under penalty of perjury under the laws of the United States and the State of Illinois that the foregoing is true and correct and that this Declaration was executed on April 16, 2018 in Chicago, Illinois.



Michael R. O'Connor, Esq.
Vice President
Epiq Class Action & Claim Solutions, Inc.

Caterpillar Engine Settlement Administrator
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Dear Claimant:

On March 30, 2018, we sent you a payment in connection with the class action lawsuit entitled *In re: Caterpillar C13 and C15 Engine Products Liability Litigation*, Case 1:14-cv-03722-JBS-JS.

You submitted a valid Claim Form and are entitled to a settlement award, but the check you received was for an incorrect amount. Please do not attempt to cash, negotiate, or deposit the check, as a stop payment has been placed on it. If you try to cash, negotiate, or deposit the check, your bank may charge you fees. Within the next two weeks, we expect to issue you a replacement check for the correct amount you are entitled to.

If you have already negotiated or deposited your check, we will reach out to you with information on how to properly return the funds and further information on when a replacement check will be issued.

If you have any questions, please contact us at 1-888-593-5379.

We apologize for any inconvenience this has caused you.

Sincerely,

Caterpillar Engine Settlement Administrator