

the merits of the case," so this factor weighs in favor of settlement. See *Martina*, 2013 U.S. Dist. LEXIS 145285, 2013 WL 5567157, at \*6 (finding adequate appreciation of merits when parties "exchanged initial disclosures and arrived at the Settlement after negotiation before a retired federal judge.").

#### **4. *Girsh* factors four and five: the risks of establishing liability and damages**

The fourth and fifth *Girsh* factors require the Court to balance the Parties' relative likelihood of success in establishing liability and damages against the immediate benefits derived from a settlement. See *Prudential*, 148 F.3d at 319. The Court weighs these factors against the best and worst possible outcomes for Plaintiffs. *In re Cendant Corp. Litig.*, 264 F.3d 201, 237-39 (3d Cir. 2001).

Although Plaintiffs survived an initial motion to dismiss, see ECF No. 39, the Court has not yet ruled on the substantive issues underlying the litigation – namely, whether Defendants caused defective timing chain tensioners to be installed in the Class Vehicles and whether they are liable for damages. The Court lacks the factual record necessary to determine Plaintiffs' likelihood of success on the merits, but Plaintiffs claim that "all parties," including Defendants, "remain confident of their chance at prevailing at trial." ECF No. 92 at 26-27.

Plaintiffs state that [\*52] their best possible outcome would likely involve "years of litigation," including an appeal to the Third Circuit after Plaintiffs received a favorable decision in this Court. *Id.* at 27. This would require "a very substantial expenditure in attorneys' fees and costs by both parties," but would likely "not result in an increased benefit to the Class." *Id.* Though it is difficult to accurately estimate Plaintiffs' likelihood of success in establishing either liability or damages, the Court finds that the fourth and fifth *Girsh* factors weigh in favor of approving the settlement.

#### **5. *Girsh* factor six: the risks of maintaining a class action**

The sixth *Girsh* factor "measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial. A district court retains the authority to decertify or modify a class at any time during the litigation if it proves to be unmanageable." *Warfarin Sodium*, 391 F.3d at 537 (citing *Prudential*, 148 F.3d at 321). Because of this, the "specter of decertification makes settlement an appealing alternative." *O'Brien v. Brain Research Labs, LLC*, 2012 U.S. Dist. LEXIS 113809, 2012 WL 3242365, at \*18 (D.N.J. Aug. 9, 2012).

Plaintiffs maintain – and the Court agrees, at this point – that this action could be properly maintained as a class action. ECF No. 92 at 27. Although Plaintiffs speculate that there are "myriad [\*53] risks of maintaining class action status," including potential arguments Defendants may raise involving individualized issues, *id.* at 28, the Court is not convinced that this factor weighs in favor of approving the settlement.

#### **6. *Girsh* factor seven: the ability of Defendants to withstand a greater judgment**

The seventh *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement." *In re Cendant*, 264 F.3d at 240. Still, the fact that a defendant "could afford to pay more does not mean that it is obligated

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