

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN
DIVISION

STEVE CHAMBERS, an individual, *et al.*)
) Case No. 8:11-cv-01733-FMO-
) MLG
)
 Plaintiffs,)
)
 v.)
)
 WHIRLPOOL CORPORATION, a)
)
 Delaware Corporation, *et al.*,)
)
)
 Defendants.)

EXPERT REPORT OF
LEE M. BOWRON, ACAS, MAAA
KERPER AND BOWRON LLC

I, Lee M. Bowron, hereby declare as follows:

1. I am an actuary with Kerper and Bowron LLC, and I make this declaration in support of Plaintiff's Renewed Motion for Award of Attorneys' Fees and Expenses.
2. I have personal knowledge of the facts stated below and, if called upon, could and would competently testify thereto.

Background of Kerper and Bowron LLC

3. Kerper and Bowron LLC is an experienced consulting and actuarial firm that specializes in evaluating property and casualty exposures, including extended warranty, consumer product service contracts, vehicle service contracts, GAP insurance, personal and commercial lines, and environmental reserving. Additionally, Kerper and Bowron LLC and our affiliates are industry experts in providing reinsurance accounting, advanced analytics for the finance and insurance industry and statements of actuarial opinion. We also have provided expert reports in the past. Please see the appendix for a detailed resume.
4. I have over 30 years' experience as an actuary, with the last 20 years as an independent consultant. Further details on my experience are located on the attached resume.
5. I am an Associate of the CAS (ACAS) and my basic education includes credit for Exam 7 – Estimation of Policy Liabilities, Insurance Company Valuation,

and Enterprise Risk Management. Knowledge relating to U.S. financial reporting and regulation was obtained through experience working as a credentialed actuary in the U.S. property/casualty insurance industry for over 20 years as well as obtaining relevant continuing education.

6. Kerper and Bowron LLC is being compensated for time spent by me and my team at standard billing rates and for out-of-pocket expenses at cost. Kerper and Bowron currently bills for our time at \$425 per hour for a partner, \$275 for a credentialed actuary and \$175 for an analyst. Kerper and Bowron LLC's fees are not in any way contingent upon the outcome of this matter.

Purpose of Report

7. At the request of the Class Counsel, Kerper and Bowron LLC calculated the range of the minimum value to class members of the insurance-like coverage for Future Overheating Events provided by the class action settlement in *Chambers v. Whirlpool*.
8. The settlement provides "service contract like" coverage for Whirlpool-manufactured dishwashers manufactured between 2002 and 2011. The settlement provides that if an owner's dishwasher suffers a Future Overheating Event within 10 years after purchase, the owner can choose either a minimum \$100 cash payment or a 30% rebate off the price of a new Whirlpool-manufactured dishwasher. This report is limited to estimating the minimum expected retail market price in 2016 of a service contract which would provide coverage for the Future Overheating Events as described above. Based on Whirlpool's previously-submitted expert reports identified

below, I have assumed that the settlement provides coverage for approximately 13.4 million dishwashers.

9. As part of our analysis we reviewed the following reports and data:
 - The expert report of Peter A. Salomon, CPA, CFF dated May 5, 2016.
 - The responses to this expert report by Rose M. Ray, Ph.D. dated June 23, 2016, and David A. Hall, CMA, CVA, CFE, MBA, dated June 24, 2016.
 - Actual Future Overheating claims data provided by Whirlpool after the settlement date and through approximately January 2021.

10. In his report, Mr. Hall utilized an income approach to value the coverage benefit. This approach estimates the present value of the expected future benefits to be paid to dishwasher owners based on the assumption that every class member who suffered a Future Overheating would submit a claim for coverage, even though Mr. Hall acknowledged the likelihood that only a fraction of these would actually make a claim for coverage.¹ Mr. Hall's analysis simply takes the total expected payout and divides it by the number of dishwashers. In essence his methodology assigns no value to the coverage except the sum of the payouts. I disagree with this approach because

¹ That observation finds support in scholarly literature. See Drew Hyman et al., *Consumer Complaints and Public Policy: Validating the "Tip-of-the-Iceberg" Theory*, SOCIOLOGICAL PRACTICE, Vol. 10:1 (1992) (“[R]eported complaints are only the “tip-of-the-iceberg” to the extent that many consumers—especially those of lower socioeconomic status—do not even realize their rights to complain.”)

warranties, service contracts, and insurance coverage have value to consumers even if a covered event never occurs.

11. Mr. Salomon utilized a market approach, which, as Mr. Hall notes, “compares the asset being valued to observable prices paid for investments or assets with similar investment characteristics and risk that have been the subject of an actual transaction.” I believe this is a more appropriate approach to valuing the coverage here, as it correctly places value on the coverage even for dishwashers that never experience an Overheating Event.
12. I understand that as of January 2021, approximately around 1,000 claims for Future Overheating coverage have been received. This data does not include class members whose dishwashers suffered Future Overheating Events but did not submit claims, and it does not include any additional future claims that may occur prior to the end of coverage. Regardless of the actual claims’ history, I believe that in order to ascertain the expected market value of the coverage, the relevant analysis is determining what an insurance provider would have charged customers in the marketplace at the outset of providing the coverage. In any event, that analysis is consistent with the task assigned to me by Class Counsel - to calculate the minimum expected retail market price in 2016 of a service contract which would provide coverage for the Future Overheating Events as provided under the settlement.
13. To undertake this evaluation, as a starting point I reviewed the SquareTrade data in the Salomon report, which reflect real-world market prices for extended dishwasher warranties. As reflected in the Solomon report, as of 2016 SquareTrade sold extended warranty policies on dishwashers, which

vary in price based on the original cost of the dishwasher and the length of the policy selected. SquareTrade sold these policies solely on new appliances purchased within 30 days. The prices for SquareTrade extended warranty policies, as of May 4, 2016, were as follows:

Appliance Price Range	3 Year Coverage	5 Year Coverage
Up to \$199.99	\$ 27.99	\$ 55.99
\$200 - \$299.99	\$ 38.99	\$ 77.99
\$300 - \$399.99	\$ 49.99	\$ 99.99
\$400 - \$499.99	\$ 59.99	\$ 119.99
\$500 - \$699.99	\$ 69.99	\$ 139.99
\$700 - \$999.99	\$ 99.99	\$ 199.99
\$1000 - \$1499.99	\$ 129.99	\$ 259.99
\$1500 - \$1999.99	\$ 149.99	\$ 299.99
\$2000 - \$2999.99	\$ 189.99	\$ 379.99

14. So, for a dishwasher in the \$500-700 price range, and 3 years of coverage, the cost to a consumer to purchase a SquareTrade extended warranty is \$69.99. The average cost per year for the first three years of coverage is \$23.33 per year. The average cost per year for the next two years of coverage is \$35 per year, an increase of about 50% per each additional year.

15. Based on the distribution of settlement exposures, we estimated that the average length of the Future Overheating Events benefits coverage provided under the settlement was 2.7 years, with the shortest eligible class having a length of 2 years and the longest with a length of 5 years. *See Exhibit A.*

16. Using the average cost per year for the first three years of coverage of \$23.33 per year for SquareTrade coverage and applying the 2.7 year average length of the Future Overheating Events benefits coverage, translates into a cost of about \$62.91 per dishwasher. However, the coverage provided by the settlement is more limited than a SquareTrade plan, because it is limited to one defect, specifically Overheating Events (even though it also provides coverage for dishwashers that are much older). Accordingly, the \$62.91 amount must be heavily discounted to account for the fact that covered Overheating Events are rare.

17. As noted, however, the retail value of the coverage is not merely a function of the failure rate, claims rate and projected payout. The retail value of a service contract is determined, in part, based on expected losses, but also includes transaction cost and profit components. Moreover, the value to a consumer, and therefore the market value, of coverage includes the peace of mind of knowing that a covered event, which here is a known failure mode, will be covered. Thus, ultimately, the retail or market value of coverage, which represents the value to consumers, includes all of these considerations.

18. In order to estimate the minimum transaction cost and profit components that would necessarily be included in the retail cost of coverage, we researched a variety of service contracts offered on small, inexpensive products. This data in Exhibit B reflects the costs of service contracts for online purchases of small electronic goods with an average retail price of \$24.25, although many of the products cost less than \$20.

19. As reflected in Exhibit B, a two-year service contract on even minimally valuable product costs at least \$2-3 dollars. For example, the cost for a 3-year service contract on a pair of \$12.40 headphones is \$3. Similarly, the cost of a 3-year service contract on a \$14 hand blender is \$3. The cost of a 2-year contract on a \$14 USB adapter is \$2.
20. There is no reason to believe that these products fail at unusually high rates. It is also unlikely that many consumers would go to the effort of making a claim on \$14 product, even if it were to fail. I do not believe, therefore, that the costs of these service contracts are due to an expected high payout rate. Instead, the cost of the service contracts on these products reflects the economic reality that there is an economic floor for the retail value of product coverage. In other words, reasonable economic actors do not sell coverage for a penny.
21. The minimum cost reflected on Exhibit B is \$1.00 per year of coverage, and the average is \$1.78 per year of coverage. Applying those numbers to the 2.7 average coverage period here would result in a minimum of \$2.70 and an average of \$4.80 per dishwasher. These amounts too must be discounted to reflect that the coverage here covers only one failure mode but, because the reference products are of *de minimis* value and the coverage prices largely reflect an economic floor, the discount applied to these prices is smaller than the discount that should be applied to the SquareTrade coverage.
22. Having considered the value of extended warranty coverage on dishwashers offered through SquareTrade and the minimum cost of coverage offered at retail for products of *de minimis* value, as well as based on my experience as

an actuary, I conclude that the expected market price of the coverage here is at least on average \$1.50 per covered dishwasher. It may, in fact, be worth more, but I believe an average of \$1.50 per covered dishwasher represents, to a reasonable degree of scientific certainty, the minimum floor market price, and therefore, the minimum expected value to the consumer.

23. Indeed, the \$1.50 minimum floor market price per covered dishwasher represents a discount of between about 44% and 69% of the range generated by analysis of the small, inexpensive products dataset and a discount of about 98% of estimated price generated by analysis of the SquareTrade data.

Scope and Limitations

24. *Data Reliance*

In performing this analysis, we relied upon data and other information provided to us by Class Counsel and Whirlpool Corporation, as well as industry sources of data. We did not independently audit or verify this data and information as such a review was beyond the scope of our assignment. We have no reason to believe it is inaccurate or incomplete and did not find material defects in the data.

25. *Significant Digits*

Numbers in the exhibits are generally shown to more significant digits than their accuracy suggests. This has been done to simplify review of the calculations.

26. *Interpretation of Conclusions*

Some of the assumptions, methods, and conclusions in this report are of a significantly technical nature. The recipient should understand the assumptions, methodology and possible variability in results that are inherent in our conclusions.

27. *Uncertainty*

Due to the uncertainties inherent in the estimation of future costs, it cannot be guaranteed that the estimates set forth in the report will not prove to be inadequate or excessive and actual costs may vary significantly from our estimates.

28. *Unanticipated Changes*

Unanticipated changes in factors such as judicial decisions, legislation actions, claim consciousness, claim management, claim settlement practices, and economic conditions may alter the conclusions.

29. *Best Estimate*

These caveats and limitations notwithstanding, the conclusions represent our best estimate of the suggested retail price for this extended insurance like coverage and are made within a reasonable degree of actuarial probability or certainty.

Dated: June 15, 2021

Respectfully submitted,



Lee M. Bowron

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Birmingham, AL 35216
lee@kerper-bowron.com

Lee M. Bowron, ACAS, MAAA

Work

J. Huell Briscoe and Associates, Chicago

Experience

Vice President

2013 - Present

- General management and strategic planning for Chicago based reinsurance accounting firm.

Kerper and Bowron LLC, Birmingham, AL

Principal

March 2001 - Present

- Founded consulting firm in March 2001. Clients include insurance companies, state governments, reinsurance companies, managing general agencies and financial consulting firms.
- Practice focuses on extended service contracts, GAP, and captive market. Extended service contract projects include:
 - Statutory Loss Reserve Opinion for regional service contract company
 - Product development for a major auto service contract company
 - Evaluation of liabilities for a major risk retention group for auto service contract
 - Auto service contract rate filings for a major auto service contract company
 - Sarbanes-Oxley compliance with actuarial function for a major service contract company
 - Development of pro-forma and reinsurance captive accounting for a regional service contract company
 - Acquisition due diligence for purchase of a service contract writers.

The General Auto Insurance, Nashville, TN

February 1999 – February 2001

Vice President and Chief Actuary

September 1993 – February 1999

Actuary

- Broad responsibility for reserving and pricing for a book of private passenger, reinsurance, and captive operations. Responsible for managing the staff of both the product management and the actuarial department.
- Responsible for developing data warehouse.
- Reported to the CEO and participated in strategic planning, reinsurance strategies and information system implementations.
- Supervised the pricing and product development of a new non-standard program in several states.
- Responsible for all actuarial activities of the company, including ratemaking, reserving and statistical reporting.
- Assisted in acquisitions and negotiated loss portfolio transfer of reserve liabilities.

Alfa Insurance Companies, Montgomery, AL

July 1990 – August 1993

Actuarial Analyst

- Ratemaking for 2nd largest insurer in the state of Alabama

Education

1989

University of the South

Sewanee, TN

BS, Mathematics

**Prior Expert
Reports**

EMILY PINON, GARY C. KLEIN, KIM BROWN, JOSHUA FRANKUM, DINEZ WEBSTER, and TODD BRYAN, on behalf of themselves and all others similarly situated,
Plaintiffs,

v.

MERCEDES-BENZ USA, LLC, and DAIMLER AG

CHRISTOPHER GANN, LEANDRE BISHOP, KEVIN BURKE, ELISA ABEBE, ISRAEL CHIA, KRISTA COSTA, HILLARY DICK, JURA GERALD, SEIJI SILER-HYATTE, JEANINE INGRASSIA, ARNIKA IRELAND, MONTELL JONES, MICHAEL KANZLER, ALEXANDRA MCCULLOUGH, TERESE MIRANDA, AUTUMN PIERCE, ROBERT H. WEINBERG, ASHANDRIKA WILLIAMS, AND LAURA WINDOM, individually and on behalf of all others similarly situated,
Plaintiff,

v.

NISSAN NORTH AMERICA, INC

CHEYNE NORMAN and SOPHIA WESCOTT, individually, and on behalf of a class of similarly situated individuals.

v.

NISSAN NORTH AMERICA, INC.,

**Prior Expert
Reports**

PATRICIA WECKWERTH, PATRICIA CRUZ, MICHELLE FALK, CYNTHIA GARRISON, INDHU JAYAVELU, MICHAEL KNOTTS, WALDO LEYVA, AMANDA MACRI, DANIELLE TROTTER, and PAMELA PRITCHETT, individually, and on behalf of a class of similarly situated individuals,
v.
NISSAN NORTH AMERICA, INC.

KENAI BATISTA, ANDY CHANCE, GERARDO TORRES, ANGELA MATLIN, and TUNG NGUYEN
v.
NISSAN NORTH AMERICA, INC

**Professional
activities**

Associate, Casualty Actuarial Society

Member, American Academy of Actuaries

Approved Actuary for Captive Feasibility Studies, Alabama, Oklahoma, Tennessee, South Carolina, and the District of Columbia

Speaker, CAS Annual Meeting Fall 2007

Speaker, Casualty Actuaries of the Southeast, Fall 1998, March 2001, Fall 2007

Speaker, Midwest Actuarial Forum Fall 2007

Speaker, Southwest Actuarial Forum Spring 2008

Speaker, Quebec Actuarial, Spring 2008

Panelist, Ratemaking Seminar (2001, 2002)

Panelist, Dynamic Financial Analysis Seminar (2001)

Panelist, Predictive Modeling Seminar (2008)

Former Member, Casualty Actuarial Exam Committee

Former Member, Ratemaking Committee

Former Chair, Open Source Software Committee

Member, Case Competition Committee

Publications

“An Exposure Based Approach to Automobile Service contract Ratemaking and Reserving” , proposal accepted by Casualty Actuarial Society to be published in 2006.

“Ratemaking for Maximum Profitability”, published in the 2001 Ratemaking Discussion Forum

“Zipf’s Law”, published in the January 2004 issue of *Contingencies*

“Staying in the Race”, published in the December 2001 issue of *Best’s Review*.

Chambers v. Whirlpool
Analysis of Economic Impact of Proposed Settlement

	(1)	(2)	(3)	(4)	(5)
Model Year	Dishwashers Sold	Percent in Use	Eligible Dishwashers	Years of Coverage	Covered Years
2000	2,041,719	0%	-	2	-
2001	1,845,926	0%	-	2	-
2002	2,118,740	5%	105,937	2	211,874
2003	2,164,072	10%	216,407	2	432,814
2004	2,307,536	25%	576,884	2	1,153,768
2005	2,241,005	40%	896,402	2	1,792,804
2006	2,258,490	50%	1,129,245	2	2,258,490
2007	2,088,956	55%	1,148,926	2	2,297,852
2008	1,911,268	60%	1,146,761	2	2,293,522
2009	1,784,659	65%	1,160,028	3	3,480,085
2010	1,750,396	70%	1,225,277	4	4,901,109
2011	985,391	80%	788,313	5	3,941,564
	23,498,158	5	8,394,180	2.7	22,763,881

Chambers v. Whirlpool

Analysis of Economic Impact of Proposed Settlement

Item	Retail Price	Term of Service Contract	Service Contract Provider	Retail Service Contract Cost	Retailer	What is it?	Cost-per-Year
Modoker Vintage Laptop Backpack for Women Men,School College Backpack	\$ 23.99	4-year	Asurion	4.00	Amazon	Backpack	1.00
Coleman Camping Chair with Built-in 4 Can Cooler	\$ 34.99	2-year	Asurion	3.00	Amazon	Chair	1.50
Wyze Cam Spotlight, Wyze Cam v3 Security Camera with Spotlight Kit, 1080p HD Security Camera with Two-Way Audio and Siren, IP65 Weatherproof, Works with Alexa and Google Assistant	\$ 49.96	3-year	Asurion	6.00	Amazon	Security cam	2.00
Wireless Lavalier Microphone System BALILA UHF Dual Lavalier Mic Lapel Microphone for iPhone/Android, DSLR Camera Microphone Real-time Audio Monitor Recording Vlog Transmitter 1 + Receiver 1	\$ 45.99	4-year	Asurion	9.00	Amazon	Microphone	2.25
KitchenSmith Immersion Blender - Black	\$ 19.99	2-year	Allstate	3.00	Target	Blender	1.50
Belkin 2-port USB-A Car Charger 3.3ft with TPU USB-A to USB-C - Black	\$ 18.99	2-year	Allstate	3.00	Target	Charger	1.50
Bodum 8 Cup / 34oz Pour Over Coffee Maker	\$ 19.99	2-year	Allstate	3.00	Target	Pour-over coffee maker	1.50
Foldable Stereo Headphones with Bluetooth Wireless Technology - Black	\$ 12.40	3-years	Allstate	3.00	Walmart	Headphones	1.00
Elite Cuisine EHB-2425X Hand Blender with Detachable Wand	\$ 14.00	3-years	Allstate	3.00	Walmart	Blender	1.00
1200Mbps Wireless USB WIFI Adapter 802.11AC Dual Band 2.4G And 5.8G Wireless WIFI Dongle for Windows 7/8/10,XP, Mac, OS	\$ 14.00	2-years	Allstate	2.00	Walmart	USB	1.00
Roku SE Fast HD Streaming Media Player (White) (Manufacturer Refurbished)	\$ 24.00	2-years	Allstate	2.00	Walmart	ROKU Stick	1.00
Bella Pro Series - 2-qt. Analog Air Fryer - Black Matte	\$ 18.00	2-years	AIG WarrantyGuard	6.00	Best Buy	Air fryer	3.00
Quip - Rubber Kids Smart Electric Toothbrush Starter Kit - 2-Minute Timer, Bluetooth, Free App + Travel Case - All-Yellow	\$ 22.50	2-years	AIG WarrantyGuard	6.00	Best Buy	Electric toothbrush	3.00
Bella - Pro Series 2-Slice Extra-Wide-Slot Toaster - Stainless Steel	\$ 20.00	2-years	AIG WarrantyGuard	6.00	Best Buy	Toaster	3.00
Taco Tuesday 32-oz Green Citrus	\$ 25.00	2-years	eral Warranty Services Corpora	5.00	Lowes	Juicer	2.50
Average Retail Price	\$ 24.25					Average per Year	1.78