

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

---

Master File No. 12-md-02311  
Hon. Marianne O. Battani

IN RE: WIRE HARNESSSES  
IN RE: OCCUPANT SAFETY SYSTEMS

---

Case No. 2:14-cv-14451-MOB-MKM  
Case No. 2:14-cv-00107-MOB-MKM  
Case No. 2:15-cv-12050-MOB-MKM  
Case No. 2:15-cv-00607-MOB-MKM

THIS DOCUMENT RELATES TO  
TRUCK AND EQUIPMENT DEALER  
CASES

---

**TRUCK AND EQUIPMENT DEALER PLAINTIFFS' MOTION FOR APPROVAL  
OF ALLOCATION PLANS FOR SETTLEMENTS PRELIMINARILY  
APPROVED BY THE COURT**

The Truck and Equipment Dealer Plaintiffs hereby move the Court for approval of Plans of Allocation for certain parts at issue in the settlements between the Truck and Equipment Dealer Plaintiffs and the Settling Defendants in the above matters. This Motion is based upon the argument and authority set forth in the Memorandum submitted in support of this Motion.

Respectfully submitted,

Dated: November 7, 2016

By: /s/ J. Manly Parks  
Wayne A. Mack (PA Bar #46654)  
J. Manly Parks (PA Bar #74647)  
Andrew R. Sperl (PA Bar #311467)  
William Shotzbarger (PA Bar #320490)  
**DUANE MORRIS LLP**  
30 S. 17<sup>th</sup> Street  
Philadelphia, PA 19103  
Phone: (215) 979-1000  
Fax: (215) 979-1020  
wamack@duanemorris.com  
jmparks@duanemorris.com  
arsperl@duanemorris.com  
wshotzbarger@duanemorris.com

*Counsel for Truck and Equipment Dealer  
Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

---

Master File No. 12-md-02311  
Hon. Marianne O. Battani

---

IN RE: WIRE HARNESSSES  
IN RE: OCCUPANT SAFETY SYSTEMS

---

Case No. 2:14-cv-14451-MOB-MKM  
Case No. 2:14-cv-00107-MOB-MKM  
Case No. 2:15-cv-12050-MOB-MKM  
Case No. 2:15-cv-00607-MOB-MKM

---

THIS DOCUMENT RELATES TO  
TRUCK AND EQUIPMENT DEALER  
CASES

---

**TRUCK AND EQUIPMENT DEALER PLAINTIFFS' MEMORANDUM IN SUPPORT  
OF MOTION FOR APPROVAL OF ALLOCATION PLANS FOR SETTLEMENTS  
PRELIMINARILY APPROVED BY THE COURT**

## **STATEMENT OF ISSUES PRESENTED**

1. Whether the Court should approve the Plans of Allocation for parts involved in the Truck and Equipment Dealer settlement classes for which the Court previously granted final approval?

**Suggested Answer: Yes**

**CONTROLLING OR MOST APPROPRIATE AUTHORITIES**

- *In re Packaged Ice Antitrust Litigation*, No. 08-MD-01952, 2011 WL 6209188, at \*15-16 (E.D. Mich. Dec. 13, 2011)

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Introduction.....	1
Background.....	1
I.    The Plans of Allocation of Parts Involved in the Settlements .....	1
Argument .....	2
I.    The Court Should Approve the Plans. ....	2
Conclusion .....	4

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*In re Aetna, Inc.*, No. Civ. A. MDL 1219, 2001 WL 20928 (E.D. Pa. Jan.4, 2001) .....3

*In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003) ..... 2-3

*In re Ikon Office Solutions Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000) .....3

*Meijer, Inc. v. 3M*, Civ. No. 04-5871, 2006 WL 2382718 (E.D. Pa. 2006) .....3

*In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 WL 6209188 (E.D. Mich. Dec. 13, 2011) ..... 2-3

**Other Authorities**

Fed. R. Civ. P. 30(b)(1).....3

Fed. R. Civ. P. 30(b)(6).....3

## **INTRODUCTION**

Truck and Equipment Dealer Plaintiffs (“TEDPs”) seek approval of two plans of allocation (the “Plans”): one for the *Wire Harnesses* case settlements and the other for the *Occupant Safety Systems* case settlements. Through this motion, TEDPs respectfully request that the Court approve the Plans being submitted with this Motion. As with the allocation plans previously approved by the Court in this MDL, the Plans were developed using information obtained during discovery and from cooperating settling Defendants. TEDPs’ allocation consultant, William Wickersham, was involved in the development of the Plans and supports their approval.

## **BACKGROUND**

### **I. The Plans of Allocation of Parts Involved in the Settlements**

The terms of the Truck and Equipment Dealer settlements preliminarily approved by the Court require considerable cooperation from the settling Defendants. Using information obtained from such cooperation and through discovery, TEDPs’ counsel and their allocation consultant, William Wickersham, have developed the Plans for fairly distributing the settlement proceeds to eligible members of the Truck and Equipment Dealer settlement classes.

Counsel for TEDPs used information available about the parts, brands, and models targeted by anticompetitive conduct to devise a point-based system that provides greater weight to the purchase of models and brands for which there is more significant evidence that efforts were made to coordinate bids and fix prices for component parts used in those vehicles. (*See* Exs. A and B.) The Plans use an approach similar to the allocation plans the Court approved for the Auto Dealer settlements in the *Wire Harnesses* and *Occupant Safety Systems* cases.



## ARGUMENT

### **I. The Court Should Approve the Plans.**

TEDPs request that the Court approve the Plans. The Plans fairly and equitably distribute the net settlement proceeds to members of the Settlement Classes who submit claim forms for new vehicles and affected component parts purchased in the Included States.<sup>1</sup> They use information available about the parts and brands and models targeted by anticompetitive conduct and apply a point-based system that provides greater weight to the purchase of models and brands for which there is evidence that efforts were made to coordinate bids and fix prices for component parts used in those vehicles. (*See* Exs. A-B).

The Plans provide a scoring system for vehicles and parts purchased by eligible Truck and Equipment Dealers. (*See* Exs. A-B). Every eligible dealership that submits a valid claim will receive a minimum allocation of ten points under the Plans, thereby ensuring some proportional recovery by every such member of the Settlement Classes. (*Id.*)

The Plans provide a fair and reasonable method for distributing the settlement funds, provide eligible members of the Settlement Classes with information about how the calculations will be made, and therefore should be approved by the Court. *See In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 531 (E.D. Mich. 2003). “Approval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole; the distribution plan must be fair, reasonable and adequate.” *In re Packaged Ice Antitrust Litig.*, No. 08-MD-01952, 2011 WL 6209188, at \*15-16 (E.D. Mich.

---

<sup>1</sup> The Included States are as follows: Arizona, Arkansas, California, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

Dec. 13, 2011) (quoting *Meijer, Inc. v. 3M*, Civ. No. 04-5871, 2006 WL 2382718, at\*17 (E.D. Pa. 2006)); *In re Ikon Office Solutions Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)).

“Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable.” *In re Packaged Ice*, 2011 WL 6209188, at \*15-16 (quoting *In re Aetna, Inc.*, No. Civ. A. MDL 1219, 2001 WL 20928, at \*12 (E.D. Pa. Jan.4, 2001)); *Cardizem*, 218 F.R.D. at 531 (approving a plan as fair and reasonable that adopted a pro rata method for calculating each class member's share of the settlement fund). The approach used by the Plans provides reimbursement to the eligible members of the Settlement Classes based on the relative extent of injury the Truck and Equipment Dealers believe they sustained. The Plans assign weighted point scores based on the volume of purchases of affected vehicles and parts.

Vehicles and parts for which there is significant evidence of coordinated bid and pricing activity receive more weight. Through written discovery, extensive document review, Fed. R. Civ. P. 30(b)(1) and 30(b)(6) depositions, and attorney proffers and other forms of cooperation, TEDPs discovered substantial evidence of coordination by certain Defendants for certain vehicle parts. This coordination was often tied to requests for quotations (“RFQs”) from original equipment manufacturers (“OEMs”) for certain specific makes and models of vehicles to Defendant vehicle parts suppliers. Specifically, in the *Wire Harnesses* case, the makes and models of medium-duty trucks outlined in Exhibits A and B were believed to be affected by Defendants’ price-fixing and bid-rigging. Thus, the makes and models in Exhibits A and B reflect vehicles that TEDPs believe were most affected by the conspiracy, and, therefore, the dealers of those trucks should receive a higher allocation of settlement funds.

This approach provides a fair and reasonable method for allocating more money to those Truck and Equipment dealers who sold more of the affected parts and vehicles. Both plans ensure that every valid claimant will receive some payment, the amount of which will depend on the number of valid claims submitted. The allocation plans also permit claims for replacement parts. The Plans and claims process are also designed to minimize the burden on Truck and Equipment Dealers in making a claim. These claims will be subject to audit by the settlement administrator. Accordingly, TEDPs believe that the Court should approve the Plans for the Truck and Equipment Dealer settlements involving Wire Harness Systems and Occupant Safety Systems.

### **CONCLUSION**

For the foregoing reasons, the Truck and Equipment Dealers respectfully request that the Court grant approval of the Plans of Allocation submitted with this motion.

Respectfully submitted,

Dated: November 7, 2016

By: /s/ J. Manly Parks  
Wayne A. Mack (PA Bar #46654)  
J. Manly Parks (PA Bar #74647)  
Andrew R. Sperl (PA Bar #311467)  
William Shotzbarger (PA Bar #320490)  
**DUANE MORRIS LLP**  
30 S. 17<sup>th</sup> Street  
Philadelphia, PA 19103  
Phone: (215) 979-1000  
Fax: (215) 979-1020  
wamack@duanemorris.com  
jmparks@duanemorris.com

*Counsel for Truck and Equipment Dealer  
Plaintiffs*

**CERTIFICATE OF SERVICE**

I, J. Manly Parks, hereby certify that I caused a true and correct copy of Truck and Equipment Dealer Plaintiffs' Motion and Memorandum in Support of Motion for Approval of Allocation Plans for Settlements Preliminarily Approved by the Court to be served via email upon all registered counsel of record via the Court's CM/ECF system on November 7, 2016.

/s/ J. Manly Parks

J. Manly Parks

DM1\7303374.3

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

---

Master File No. 12-md-02311  
Hon. Marianne O. Battani

---

IN RE: WIRE HARNESES

---

Case No. 2:14-cv-14451-MOB-MKM  
Case No. 2:14-cv-00107-MOB-MKM

---

THIS DOCUMENT RELATES TO  
TRUCK AND EQUIPMENT DEALER  
CASES

---

**PROPOSED / PENDING COURT APPROVAL DISTRIBUTION / ALLOCATION PLAN  
TRUCK AND EQUIPMENT DEALER WIRE HARNESES SETTLEMENTS**

This distribution / allocation plan (“Allocation Plan”) will be applied to the Truck and Equipment Dealer settlements in the Wire Harness case. The Allocation Plan includes allowances based on pro rata distributions and utilizes a “weighted” point system that recognizes instances of alleged collusion and bid-rigging. To the extent practicable, the principles applied here will be applied to settlements benefitting Truck and Equipment Dealers for other vehicle parts cases in this litigation. Each parts case will have its own plan of distribution and/or allocation. This proposed plan will, if approved by the Court, govern the Wire Harnesses and Occupant Safety Systems cases.

***Settlement Coverage:***

The Allocation Plan will allocate the net proceeds of each of the Wire Harness Settlements to:

- (1)** Dealers who purchased Trucks & Equipment,<sup>1</sup> defined generally as medium- and heavy-duty trucks, buses, commercial vehicles (excluding automobiles, vans, sports utility vehicles, crossovers or pickup trucks, and/or similar motor vehicles sold by automobile dealers), all-terrain vehicles, construction equipment, mining equipment, agricultural equipment, railway vehicles, materials-handling vehicles, and other similar vehicles, that were subject to alleged coordinated activity on bids for component parts;
- (2)** Dealers who purchased subsequent Trucks & Equipment that were subject to alleged coordinated activity on bids for component parts;

---

<sup>1</sup> The phrase “Trucks & Equipment” is expressly defined in each of the individual settlement agreements, as is the precise parameters of the settlement class.

- (3) Dealers who purchased Trucks & Equipment whose manufacturers experienced multiple instances of alleged coordinated activity on bids for component parts;
- (4) Dealers who purchased other Trucks & Equipment; and
- (5) Dealers who purchased component parts subject to allegedly coordinated activity.

This Allocation Plan is subject to Court approval and may be revised with Court approval if new relevant information becomes available. In addition, there may be supplements and additions to the list of Trucks and Equipment appended hereto, without Court approval.

Payments will take into account the number and type of new Trucks and Equipment and covered component parts that a Dealer purchased during the periods set forth in the Settlement Class definitions.

Only new Trucks and Equipment purchased are eligible for inclusion. Used and pre-owned Trucks and Equipment that a Dealer purchased at any time will not be included in or counted towards the allocation.

***Weighted Point Allocations:***

Allocations will be determined on a *pro rata* basis using a “weighted” value for each new covered vehicle or vehicle part that Dealers purchased between January 1, 1999 and August 31, 2016:<sup>2</sup>:

- Each new unit of the models of vehicles identified Schedule A, for which there was significant evidence of coordinated activity effecting the price of a part in that model, purchased by a an eligible member of the Settlement Class will be assigned **300 points**;
- Each new unit of the models of vehicles identified Schedule B, for which there was evidence of coordinated activity effecting the price of a part used in that model, purchased by an eligible member of the Settlement Class will be assigned **200 points**
- Each new unit of any other model of Truck or Equipment vehicle purchased by an eligible member of the Settlement Class during the Class Period that is not covered by the preceding paragraph will be assigned **100 points**;
- Each new complete replacement Wire Harness System (for Trucks and Equipment only) purchased by an eligible member of the Settlement Class during the Class Period will be assigned **25 points**;
- Each eligible member of the Settlement Class that submits a valid claim and purchased at least one new Truck or Equipment vehicle during the Class Period in the states listed in the settlement documents will receive a minimum allocation of **10 points**.

---

<sup>2</sup> The time periods covered by the settlements vary, and the specific end dates are set forth in the settlement agreements.

*Important Note:* The maximum payment for any claimant will depend on the application of the principles of allocation set forth herein and the total amount of each settlement fund, after expenses.

More details about the anticipated distribution of the settlement funds are available in the papers filed with the Court in support of settlement approval, which are available on the settlement website, [www.TruckDealerSettlement.com](http://www.TruckDealerSettlement.com). In order to receive a payment, a claimant must file a valid and timely claim. The settlement web site and claim form provide additional details about how to submit a claim. Further information is available at [www.TruckDealerSettlement.com](http://www.TruckDealerSettlement.com) or by calling the Settlement Administrator at [1-866-742-4955](tel:1-866-742-4955).

*Two Truck & Equipment Allocation charts are attached. The allocation information provided in these charts was not compiled or approved by Settling Defendants and is not to be construed as evidence or an admission against any Settling Defendants that they participated in coordinated activities with respect to the listed manufacturers or models of vehicles.*



**Schedule A**

The following models of Trucks and Equipment will be assigned 300 points for each new unit purchased by an eligible member of the Settlement Class:

<b>Truck &amp; Equipment Make</b>	<b>Truck &amp; Equipment Model</b>
Isuzu	NPR
Isuzu	NPR HD
Isuzu	NPR WIV
Isuzu	NPR Gas
Isuzu	NPR Diesel
Isuzu	NQR
Isuzu	NRR
GMC	W3500
GMC	W4500
GMC	W5500
GMC	W6500
Chevrolet	W3500
Chevrolet	W4500
Chevrolet	W5500
Chevrolet	W6500

**Schedule B**

The following models and model years of Trucks and Equipment will be assigned 200 points for each new unit purchased by an eligible member of the Settlement Class:

<b>Truck &amp; Equipment Make</b>	<b>Truck &amp; Equipment Model</b>
Isuzu	FRR
Isuzu	FSR
Isuzu	FTR
GMC	TopKick
GMC	C4500
GMC	C5500
GMC	C6500
GMC	C7500
GMC	C8500
Chevrolet	Kodiak
Chevrolet	C4500
Chevrolet	C5500
Chevrolet	C6500
Chevrolet	C7500
Chevrolet	C8500

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

IN RE: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION

---

Master File No. 12-md-02311  
Hon. Marianne O. Battani

---

IN RE: OCCUPANT SAFETY SYSTEMS

---

Case No. 2:15-cv-12050-MOB-MKM  
Case No. 2:15-cv-00607-MOB-MKM

---

THIS DOCUMENT RELATES TO  
TRUCK AND EQUIPMENT DEALER  
CASES

---

**PROPOSED / PENDING COURT APPROVAL  
DISTRIBUTION / ALLOCATION PLAN  
TRUCK AND EQUIPMENT DEALER  
OCCUPANT SAFETY SYSTEMS SETTLEMENTS**

This distribution / allocation plan (“Allocation Plan”) will be applied to the Truck and Equipment Dealer settlements in the Occupant Safety Systems case. The Allocation Plan includes allowances based on *pro rata* distributions and utilizes a “weighted” point system that recognizes instances of alleged coordinated activity. To the extent practicable, the principles applied here will be applied to settlements benefitting Truck and Equipment Dealers for other vehicle parts cases in this litigation. Each parts case will have its own plan of distribution and/or allocation. This proposed plan will, if approved by the Court, govern the Occupant Safety Systems case.

***Settlement Coverage:***

The Allocation Plan will allocate the net proceeds of each of the Occupant Safety Systems Settlements to:

(1) Dealers who purchased Trucks & Equipment,<sup>1</sup> defined generally as medium- and heavy-duty trucks, buses, commercial vehicles (excluding automobiles, vans, sports utility vehicles, crossovers or pickup trucks, and/or similar motor vehicles sold by automobile dealers), all-terrain vehicles, construction equipment, mining equipment, agricultural equipment, railway vehicles, materials-handling vehicles, and other similar vehicles, that were subject to alleged coordinated activity on bids for component parts;

---

<sup>1</sup> The phrase “Trucks & Equipment” is expressly defined in each of the individual settlement agreements, as is the precise parameters of the settlement class.

- (2) Dealers who purchased subsequent Trucks & Equipment that were subject to alleged coordinated activity on bids for component parts;
- (3) Dealers who purchased Trucks & Equipment whose manufacturers experienced multiple instances of alleged coordinated activity on bids for component parts;
- (4) Dealers who purchased other Trucks & Equipment; and
- (5) Dealers who purchased component parts subject to allegedly coordinated activity.

This Allocation Plan is subject to Court approval and may be revised with Court approval if new relevant information becomes available. In addition, there may be supplements and additions to the list of Trucks and Equipment appended hereto, without Court approval.

Payments will take into account the number and type of new Trucks and Equipment and covered component parts that a Dealer purchased during the periods set forth in the Settlement Class definitions.

Only new Trucks and Equipment purchased are eligible for inclusion. Used and pre-owned Trucks and Equipment that a Dealer purchased at any time will not be included in or counted towards the allocation.

***Weighted Point Allocations:***

Allocations will be determined on a *pro rata* basis using a “weighted” value for each new covered vehicle or vehicle part that Dealers purchased between January 1, 2003 and July 27, 2016.<sup>2</sup>

- Each new unit of any Truck or Equipment vehicle purchased by an eligible member of the Settlement Class during the Class Period will be assigned **100 points**;
- Each complete air bag assembly (for Trucks and Equipment only) purchased as a replacement part will be assigned **5 points**;
- Each complete steering wheel assembly (for Trucks and Equipment only) purchased as a replacement part will be assigned **5 points**;
- Each complete anti-lock braking system (for Trucks and Equipment only) purchased as a replacement part will be assigned **5 points**;
- Each steering wheels (for Trucks and Equipment only) purchased as a replacement part will be assigned **3 points**;

---

<sup>2</sup> The time periods covered by the settlements vary, and the specific end dates are set forth in the settlement agreements.

- Each seat belt (for Trucks and Equipment only) purchased as a replacement part will be assigned **1 point**; and
- Each claimant that submits a valid claim and purchased the Trucks and Equipment or replacement parts in the states listed in the settlement documents will receive a minimum allocation of **10 points**.

*Important Note:* The maximum payment for any claimant will depend on the application of the principles of allocation and the total amount of each settlement fund, after expenses.

More details about the anticipated distribution of the settlement funds are available in the papers filed with the Court in support of settlement approval, which are available on the settlement website, [www.TruckDealerSettlement.com](http://www.TruckDealerSettlement.com). In order to receive a payment, a claimant must file a valid and timely claim. The settlement web site and claim form provide additional details about how to submit a claim. Further information is available at [www.TruckDealerSettlement.com](http://www.TruckDealerSettlement.com) or by calling the Settlement Administrator at [1-866-742-4955](tel:1-866-742-4955).

*A Truck & Equipment Allocation chart is attached. The allocation information provided was not compiled or approved by Settling Defendants and is not to be construed as evidence or an admission against any Settling Defendants that they participated in coordinated activities with respect to the listed vehicles and manufacturers.*