

**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: BEARINGS

Case No. 2:14-cv-13356-MOB-MKM
Case No. 2:14-cv-00507-MOB-MKM

THIS DOCUMENT RELATES TO
TRUCK AND EQUIPMENT DEALER
CASES

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

The Truck and Equipment Dealer Plaintiffs hereby move the Court for approval of a Plan of Allocation for bearings at issue in the settlements between the Truck and Equipment Dealer Plaintiffs and the Settling Defendants in the *Bearings* case. This Motion is based upon the argument and authority set forth in the Memorandum submitted in support of this Motion.

Respectfully submitted,

Dated: March 13, 2017

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

STATEMENT OF ISSUES PRESENTED

1. Whether the Court should approve the Plans of Allocation for bearings 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 (E.D. Mich. Dec. 13, 2011)

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INTRODUCTION

Truck and Equipment Dealer Plaintiffs (“TEDPs”) seek approval of a plan of allocation (the “Plan”) for the three *Bearings* case settlements for which the Court has granted preliminary approval. *See* Case No. 14-cv-00507, Doc. No. 45 (granting preliminary approval to TEDPs’ settlements with the JTEKT Defendants, NTN Defendants, and Schaeffler Defendants). Through this Motion, TEDPs respectfully request that the Court approve the Plan being submitted with this Motion as Exhibit A. As with the allocation plans previously approved by the Court in this MDL, *see, e.g.*, Case No. 14-cv-14451, ECF. No. 126, the Plan was developed using information obtained during discovery and from cooperating settling Defendants. TEDPs’ allocation consultant, William Wickersham, also was involved in the development of the Plan and supports its approval.

BACKGROUND

I. The Plan of Allocation of Bearings 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.¹ Using information obtained from such cooperation and through discovery, TEDPs’ counsel and their allocation consultant, William Wickersham, have developed the Plan 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 and brands targeted by anticompetitive conduct to devise a point-based system that provides greater weight to the purchase of brands for which there is more significant evidence that efforts were made to fix, and

¹ TEDPs’ settlement agreements with the JTEKT and Schaeffler Defendants both required attorney proffers from JTEKT and Schaeffler. TEDPs’ settlement agreement with the NTN Defendants, on the other hand, required more limited cooperation from NTN.

artificially stabilize, prices for industrial and automotive bearings used in those vehicles. (*See* Ex. A.) The Plan uses an approach similar to the allocation plan the Court previously approved for TEDPs' settlements in the *Wire Harnesses* and *Occupant Safety Systems* cases. *See, e.g.*, Case No. 14-cv-14451, Doc. No. 126 (Order granting approval to prior allocations plans).

ARGUMENT

I. The Court Should Approve the Plan.

TEDPs request that the Court approve the Plan. The Plan fairly and equitably distributes 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.² It uses information available about the parts and brands targeted by anticompetitive conduct and applies a point-based system that provides greater weight to the purchase of brands for which there is evidence that efforts were made to artificially stabilize and fix prices for automotive and industrial bearings used in those vehicles. (*See* Ex. A).

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

The Plan provides a fair and reasonable method for distributing the settlement funds, provides 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*

² The Included States are as follows: Arizona, Arkansas, California, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Utah, Vermont, and Wisconsin.

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. 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 Plan provides reimbursement to the eligible members of the Settlement Classes based on the relative extent of injury the TEDPs believe they sustained. The Plan assigns weighted point scores based on the volume of purchases of affected vehicles and bearings.

Vehicles and bearings 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, attorney proffers, confidential witness interviews, and other forms of cooperation, TEDPs discovered substantial evidence of coordination by certain Defendants for certain bearings. This coordination was often tied to five price increase requests from Defendants to the original equipment manufacturers (“OEMs”) in 2004, 2005, 2007, 2008, and 2010. The basis of these price increase requests was the rising price of steel. TEDPs allege—and possess substantial evidence showing that—Defendants coordinated these price increase requests to the OEMs. This coordination occurred at meetings

through formal channels such as the Japanese Bearing Industry Association Policy Committee and “the Secretariat,” and through less formal meetings such as dinners, drinks, coffee, golf outings, fishing trips, et cetera. Additionally, TEDPs possess evidence of certain Defendants respecting one another’s “commercial rights” by not competitively pursuing requests for quotation from an OEM that was historically supplied by another Defendant.

Specifically, in this case, the OEMs outlined in Exhibit A were believed to be affected by Defendants’ price-fixing the most. Thus, the makes in Exhibit A reflect vehicles that TEDPs believe were most affected by the cartel conspiracy, and, therefore, the dealers of those trucks and equipment should receive a higher allocation of settlement funds. Schedule A within Exhibit A lists four truck manufacturers—Hino, Isuzu, Mitsubishi Fuso, and UD Trucks—known as the “Four Japanese Diesel/Truck Companies.” TEDPs possess the most evidence regarding these four predominantly (or exclusively) truck manufacturers being affected by the cartel conspiracy at issue. Similarly, Schedule B within Exhibit A lists other truck manufacturers, along with agricultural and construction equipment manufacturers. While these makes were certainly affected by the conspiracy, that evidence is not as strong as the evidence TEDPs possess for the four Japanese Diesel/Truck Companies. Therefore, TEDPs have allocated more weight to the four companies in Schedule A.

This approach provides a fair and reasonable method for allocating more money to those Truck and Equipment dealers who sold more of the affected bearings and vehicles. The Plan ensures that every valid claimant will receive some payment, the amount of which will depend on the number of valid claims submitted. The allocation plan also permits claims for replacement parts. The Plan and claims process are also designed to minimize the burden on Truck and Equipment Dealers in making a claim. But these claims will be subject to audit by the

settlement administrator. Accordingly, TEDPs believe that the Court should approve the attached Plan for the Truck and Equipment Dealer settlements involving Bearings.

CONCLUSION

For the foregoing reasons, TEDPs respectfully request that the Court grant approval of the Plan of Allocation submitted with this motion.

Respectfully submitted,

Dated: March 13, 2017

By: /s/ J. Manly Parks
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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 Plan 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 March 13, 2017.

/s/ J. Manly Parks

J. Manly Parks

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**INDEX OF EXHIBITS TO TRUCK AND EQUIPMENT DEALER PLAINTIFFS'
MOTION FOR APPROVAL OF ALLOCATION PLAN FOR SETTLEMENTS
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Exhibit

Description

A

TEDPs' Proposed Allocation Plan for *Bearings*

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
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IN RE: AUTOMOTIVE PARTS
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**PROPOSED / PENDING COURT APPROVAL DISTRIBUTION / ALLOCATION PLAN
TRUCK AND EQUIPMENT DEALER WIRE HARNESSSES SETTLEMENTS**

This distribution / allocation plan (“Allocation Plan”) will be applied to the Truck and Equipment Dealer settlements in the Bearings 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 Bearings case.

Settlement Coverage:

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

- (1) Dealers who purchased Trucks & Equipment,¹ 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 price-fixing for component parts;

¹ 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 price-fixing 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, 2000 and November 16, 2016:²

- Each new unit of the makes of vehicles identified Schedule A, for which there was significant evidence of coordinated activity affecting the price of a part used in that make, purchased by an eligible member of the Settlement Class will be assigned **300 points**;
- Each new unit of the makes of vehicles identified Schedule B, for which there was evidence of coordinated activity effecting the price of a part used in that make, 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 two paragraphs will be assigned **100 points**;
- Each new replacement bearing (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**.

² The time periods covered by the settlements vary slightly by the date of execution of the settlement agreement. The specific end dates are set forth in the respective 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. 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 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 makes of Trucks and Equipment will be assigned 300 points for each new unit purchased by an eligible member of the Settlement Class:

| Truck & Equipment Make |
|---------------------------------------|
| Isuzu |
| Hino |
| Mitsubishi Fuso |
| UD Trucks f/k/a Nissan Diesel |

Schedule B

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

| Truck & Equipment Make |
|--|
| Komatsu |
| Hitachi Construction Machinery |
| Yanmar |
| Kubota |
| John Deere |
| Caterpillar |
| Case New Holland (including Case IH, New Holland Agriculture, Case Construction, and New Holland Construction) |
| Toyota Forklifts |
| Mitsubishi Heavy Industries |
| General Motors |
| Ford |
| Yamaha all terrain vehicles (“ATVs”) |
| Suzuki ATVs |