

**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

**ORDER REGARDING TRUCK AND EQUIPMENT DEALERS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES**

The above matter came before the Court on the Truck and Equipment Dealers' motion for an award of attorneys' fees and reimbursement of litigation expenses.

The Court has reviewed the memorandum submitted by the Truck and Equipment Dealers in support of their motion seeking an award of attorneys' fees and reimbursement of litigation expenses. The Court has also reviewed the various declarations and submission relating to that motion and held a hearing on September 13, 2017.

Based on the record and proceedings before the Court, it is hereby **ORDERED:**

1. The Court has considered the relevant case law and authority and finds that awards of attorneys' fees and reimbursement of expenses to the Truck and Equipment Dealers and their counsel are appropriate under Fed. R. Civ. P. 23(h) and Fed. R. Civ. P. 54(d)(2).

2. The Court engages in a two-part analysis when assessing the reasonableness of a petition seeking an award of attorneys' fees. *In re Cardinal health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 760 (S.D. Ohio 2007). The Court first determines the method of calculating the attorneys' fees:

it applies either the percentage of the fund approach or the lodestar method. *Id.*; *Van Horn v. Nationwide Prop. and Cas. Inc. Co.*, 436 F. App'x 496, 498 (6th Cir. 2011).

3. The Court has the discretion to select the appropriate method for calculating attorneys' fees "in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them." *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). In common fund cases, the award of attorneys' fees need only "be reasonable under the circumstances." *Id.* The Court has also analyzed and weighed the six factors described in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974).

4. The Court will award fees to the Truck and Equipment Dealers using the percentage-of-the-fund approach. This method of awarding attorneys' fees is preferred in this district because it eliminates disputes about the reasonableness of rates and hours, conserves judicial resources, and aligns the interests of class counsel and the class members. *Rawlings*, 9 F.3d at 515; *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, No. 10-cv-14360, 2015 WL 1498888 at* 15 (E.D. Mich. March 31, 2015); *In re Packaged Ice Antitrust Litig.*, 08-MDL-01952, 2011 WL 6209188, at *16 (E.D. Mich. Dec. 13, 2011); *In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008); *Cardinal*, 528 F. Supp. 2d at 762 (the Sixth Circuit has "explicitly approved the percentage approach in common fund cases."); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, *1 (E.D. Tenn. Jun. 30, 2014).

5. The Court **GRANTS** the Truck and Equipment Dealers' request for reimbursement of past litigation expenses in the amount of \$219,122.77. The past litigation expenses incurred in specific parts cases involved in these settlements, as set forth in the declaration submitted by counsel for the Truck and Equipment Dealers, shall be deducted from the settlement funds available in those cases. The past litigation expenses incurred in the general prosecution of the

cases with settlements currently before the Court shall be reimbursed on a pro rata basis from each of the settlements.

6. The Court authorizes class counsel for the Truck and Equipment Dealers to pay the costs of the accepting, holding, and distribution of settlement funds by the escrow agent (being handled by U.S. Bank) from the settlement funds in accordance with the fee schedule set forth in the Escrow Agreements up to a maximum amount of \$18,000.00.

7. The Court authorizes class counsel for the Truck and Equipment Dealers to pay the costs of the settlement notice and claims administration (being handled by RG/2 Claims Administration) from the settlement funds in accordance with the provisions of the Settlement Agreements up to a maximum amount of \$290,000.00.

8. Counsel for the Truck and Equipment Dealers requested a fee award of \$1,479,000, representing one-third of the settlement funds remaining after the cost of escrow and class notice and claim administration have been deducted. The award requested is within the range of fee awards made by courts in this Circuit. *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (awarding one-third of the fund); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19; *Skelaxin*, 2014 WL 2946459, at *1; *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013); *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010); *Bessey v. Packer/and Plainwell, Inc.*, No. 4:06-CV-95, 2007 WL 3173972, at *4 (W.D. Mich. 2007); *Delphi*, 248 F.R.D. at 502-03; *In re National Century Financial Enterprises, Inc. Investment Litig.*, 2009 WL 1473975 (S.D. Ohio, May 27, 2009); *Kogan v. AIM CO Pox Chase, L.P.*, 193 F.R.D. 496, 503 (E.D. Mich. 2000).

9. The Court has considered the six *Ramey* factors in weighing a fee award to counsel for the Truck and Equipment Dealers: (1) the value of the benefits rendered to the class; (2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (3) whether the services were undertaken on a contingent fee basis; (4) the value of the services on an hourly basis [the lodestar cross-check]; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel on both sides. 508 F.2d at 1194-97.

10. The *Ramey* factors and a cross-check of the lodestar incurred by counsel for the Truck and Equipment Dealers indicate that a fee representing thirty percent (30%) of the settlement funds remaining after the cost of escrow and class notice and claim administration have been deducted constitutes fair and reasonable compensation for the work done and the benefits achieved for the members of the settlement classes. The fee awarded represents just 81.8% of the total lodestar, so the lodestar multiplier is currently a negative number and is entirely reasonable.

11. The Court **GRANTS** an award of attorneys' fees to counsel for the Truck and Equipment Dealers in the amount of thirty percent (30%) of the net settlement funds available after the deduction of: (1) the cost of the settlement notice and claims administration; and (2) the costs associated with escrow referenced above. These attorneys' fees, totaling \$1,331,100, shall be paid on a pro rata basis from the net settlement funds available for each settlement currently before the Court.

Date: November 16, 2017

s/Marianne O. Battani
MARIANNE O. BATTANI
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on November 16, 2017.

s/ Kay Doaks
Case Manager