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-00507-MOB-MKM Case No. 2:14-cv-13356-MOB-MKM
THIS DOCUMENT RELATES TO TRUCK AND EQUIPMENT DEALER CASES	

COUNSEL FOR THE TRUCK AND EQUIPMENT DEALERS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS

Counsel for the Truck and Equipment Dealers hereby move the Court, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), for an award of attorneys' fees of one-third of the approximately $5.7 million in settlement funds (after deduction of class notice and claims administration expenses), reimbursement of out-of-pocket expenses, and service awards for the class representative Truck and Equipment dealerships.

Dated: February 22, 2017

By: /s/ J. Manly Parks

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TRUCK AND EQUIPMENT DEALERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS

STATEMENT OF ISSUES PRESENTED

1. Should counsel for the Truck and Equipment Dealers, who have obtained approximately $5.7 million in class settlements, be awarded a portion of those settlements for attorneys' fees?

   Suggested Answer: Yes.

2. Should counsel for the Truck and Equipment Dealers be reimbursed for the out-of-pocket costs and expenses they have incurred in pursuing the claims in this case in which settlements have been presented?

   Suggested Answer: Yes.

3. Should the Truck and Equipment Dealer class representatives receive service awards for their efforts involved in this litigation?

   Suggested Answer: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

- *In re Automotive Parts Antitrust Litig.*, No. 12-cv-00103 (Doc. 498 entered June 20, 2016)
- *In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483 (E.D. Mich. 2008)
- *In re Packaged Ice Antitrust Litig.*, 08-MDL-01952, 2011 WL 6209188 (E.D. Mich. Dec. 13, 2011)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

BACKGROUND

After two and a half years of hard-fought litigation, counsel for the Truck and Equipment Dealer Plaintiffs ("TED Plaintiffs") have negotiated settlements with three Defendants in the *Bearings* case totaling approximately $5.7 million. While meaningful, these settlements resolve only a portion of the Truck and Equipment Dealers' claims in this case. These settlements provide significant cash and non-cash benefits, such as fulsome cooperation from the settling Defendants. All of the net proceeds from these settlements will be paid to eligible new Truck and Equipment dealerships—there is no *cy pres* reversion to Defendants or third-party charities.[1]

Truck and Equipment Dealer class representatives and their counsel have zealously pursued this complex antitrust litigation. Although some Defendants have settled, all Defendants have mounted a spirted defense. And while there were undoubtedly antitrust violations, the Defendants have argued, among other things, that the illegal conduct as it related to Trucks and Equipment was primarily related to overseas markets, that none of the Plaintiffs suffered an antitrust injury, and that no litigation class could be certified.

The settlements currently before the Court provide substantial benefits to Truck and Equipment Dealers and are notable in light of the formidable opposition from Defendants—even those that pleaded guilty to criminal charges. The Court and Special Master have seen first-hand much of the work done by the attorneys representing the Truck and Equipment Dealers. Defendants directed significant discovery efforts at the Truck and Equipment Dealer class representatives, and responding to this discovery—and the discovery that remains ongoing—has

[1] The JTEKT Settlement Agreement contains a most favored nation provision wherein the settlement amount could be reduced if the most favored nation provisions were to be triggered by a qualifying settlement at an amount below the relevant amount. *See* JTEKT Settlement Agreement at ¶ 42. Also, some of the settlement agreements include provisions whereby settlement funds can be reduced if there are a sufficient number of opt-outs. *See, e.g.*, *id.* at ¶ 29(d).

consumed a significant amount of time and resources for Truck and Equipment Dealer class representatives and their counsel.

Truck and Equipment Dealers and their counsel submit this motion in support of their request for: (1) reimbursement of litigation expenses already incurred in this case; (2) an award of attorneys' fees; and (3) service awards for the class representatives. As discussed in this brief, the case law from the Sixth Circuit and other federal courts, as well as this Court's prior rulings in this MDL proceeding, support these requests.

Like the percentage-of-the-fund award this Court previously approved for Truck and Equipment Dealers, Direct Purchasers and Automobile Dealers in this MDL, counsel for Truck and Equipment Dealers seek a fee award based on a percentage of the approximately $5.7 million in settlement funds currently available to eligible members of the Truck and Equipment Dealer settlement classes. This Court has previously supported this approach in this MDL. *See, e.g., In re: Automotive Parts Antitrust Litig*., No. 2:14-cv-14451, at 2 (Doc. 128 Dec. 28, 2016) (applying percentage-of-the-fund approach from *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 515 (6th Cir. 1993)). The award requested—one-third of the settlement fund after certain costs have been deducted—is within the range of fee awards made by this Court. *See, e.g., id.* (awarding one-third of the fund). A lodestar cross-check will confirm that the amount sought is reasonable, showing that the fees requested represent just 64.8% of the lodestar reflecting the value of the professional fees devoted by counsel for the prosecution of the Truck and Equipment Dealers' claims in *Bearings*.

Through the efforts of counsel for the Truck and Equipment Dealers and the dealerships who serve as named plaintiffs, substantial cash settlements have been obtained. Counsel have pursued the litigation vigorously; succeeded in discovery motions ; provided a team of document

reviewers that reviewed, translated, analyzed, and coded documents provided by the Defendants; obtained cooperation from certain Defendants; and negotiated beneficial settlements during the two and a half years of litigation since this case was filed. Counsel for the Truck and Equipment Dealers have substantially advanced the claims of the Truck and Equipment Dealers on a contingent fee basis.

None of the Truck and Equipment Dealer settlements before the Court would have been possible without the efforts of the Truck and Equipment dealers who stepped forward to serve as class representatives. Those dealers have advanced the claims of similarly situated dealerships in the face of relentless and extremely burdensome discovery demands. These dealers continue to spend considerable time and resources to respond to Defendants' demands for information about virtually every aspect of their business spanning a period of more than 15 years. While class representative service awards are routinely made in class action settlements, they are particularly warranted here.

A. Counsel for Truck and Equipment Dealers Have Committed Significant Resources in this Litigation

The Court has noted several times that this litigation is unique in its size and complexity. Antitrust litigation is inherently risky, with high stakes, and the outcome of this litigation has been far from certain. From the outset, counsel for the TED Plaintiffs worked on a contingent basis to advance the claims of Truck and Equipment dealerships authorized by OEMs to sell new vehicles.

The Department of Justice has described its investigation of the bid-rigging and price-fixing conspiracies at issue here as the largest criminal investigation it has ever undertaken. The conduct involves a staggering number of parts, affected models, and conspiring participants. Most of the Defendant groups have had one or more of their corporate affiliates convicted of

serious crimes in the United States, Europe, and/or Asia. The list of settling and non-settling Defendants includes well-known companies that are dominant players in their industries.

The Truck and Equipment Dealers asserted damage claims under laws of twenty-nine states and the District of Columbia, as well as a federal claim for injunctive relief. Some states permit indirect purchaser actions under state antitrust laws; others permit them under state consumer protection laws; and others permit them under general laws of restitution.

Since 2015, many of the attorneys for the Truck and Equipment Dealers have worked nearly full-time on this case. It has been and will continue to be a huge undertaking. Counsel's activities have included:

- Collecting and synthesizing information from a variety of sources and evidence produced by Defendants;
- Collecting and analyzing information and discovery;
- Researching various aspects of the laws of the states under which laws the Complaints assert claims, and drafting and editing the Complaints and amendments thereto;
- Reviewing, selecting, hiring, and consulting with economic and other liability and damages experts;
- Drafting and negotiating key case management documents, protocols, and stipulations;
- Reviewing, in conjunction with the other plaintiff groups, English and foreign language documents produced by the Defendants;
- Receiving and reviewing cooperation materials from amnesty applicants, and traveling to and attending in-person attorney and witness proffers from amnesty applicants;
- Drafting, preparing for, and arguing oppositions to multiple motions to dismiss;
- Drafting, preparing for, and arguing discovery motions and oppositions to discovery motions;
- Negotiating discovery issues with defense counsel including innumerable meet and confer sessions;

- Preparing correspondence with respect to timing, stipulations, and case planning issues;

- Obtaining and analyzing documents and data from the class representatives, including multiple telephone conferences;

- Locating, reviewing, and producing of over 870,000 pages of documents from the class representatives;

- Participating in telephone conferences and meetings to help formulate OEM subpoenas and discovery from third-parties;

- Preparing/coordinating service of in excess of 50 OEM subpoenas throughout the United States;

- Preparing for, traveling to, and attending more than 100 days of depositions of Defendants and Defendant witnesses throughout the United States;

- Preparing a witness for, traveling to, attending, and defending the deposition of a corporate representative of Rush Enterprises, Inc.;

- Responding to scores of discovery emails from Defendants demanding discovery;

- Participating in innumerable telephone calls with Defendants regarding discovery and motion practice before the Special Master and appeals to Judge Battani;

- Traveling to and attending several MDL status conferences;

- Performing all the tasks necessary to reach these settlements, including assessing the potential value of claims and risks associated with continued pursuit of those claims, formulating demands, negotiating, preparing, reviewing, and revising various drafts of settlement agreements, preparing, reviewing, and revising various drafts of escrow agreements;

- Interviewing, selecting, hiring, and communicating with an escrow agent;

- Interviewing, selecting, hiring, and communicating with a settlement administrator;

- Drafting preliminary approval motions, and attending and arguing at the preliminary approval hearing;

- Receiving cooperation materials from settling Defendants disclosing the details of the conspiracies, and reviewing and analyzing cooperation materials from settling Defendants; and

- Drafting settlement notices, developing claim forms, and preparing other settlement-related documents and consulting with the claims administrator regarding those materials.

(*See generally*, McConnell Decl.)

B. The Truck and Equipment Class Representatives Have Provided a Great Service to the Settlement Classes and Have Committed Significant Effort to Respond to Discovery and to Represent Settlement Class Members.

The Truck and Equipment Dealer class representatives have shouldered a substantial burden representing the absent class members to assist in gaining the settlements before the Court. Defendants have made a coordinated and concerted effort to put an extreme strain on the dealerships who have acted as representatives of the Truck and Equipment dealer community to protect the rights of the class members injured by the Defendants' criminal conduct.

Defendants have asked the class representative Truck and Equipment dealers to produce documents for an over 14-year period that include: (1) all documents or data referring, or relating to any actual or potential term of every new vehicle-related transaction, including thousands of hard copy "deal files"; (2) information regarding any and all costs incurred in connection with their businesses; (3) financing and insurance details; (4) what and how they paid their sales employees; (5) every negotiation for every one of the tens of thousands of vehicles sold by the class representatives during the period in question; (6) sales and margin targets; (7) inventory management documents including but not limited to, business guidelines, handbooks, strategy presentations, and planning presentations; and (8) salesperson training materials. Defendants have sought documents and data located at all locations where the class representatives did business during the period in question, as well as hard copy documents located at every such location (including in storage at off-site locations). Counsel for the TED Plaintiffs have had to negotiate these demands with Defendants and have brought and opposed multiple discovery motions and objections. (*Id.*)

Defendants have also sought electronic data from the class representative TED Plaintiffs, including hundreds of fields of electronic data from sales and inventory databases and electronic files reflecting years of finance and insurance related data.

The dealership class representatives have faced additional discovery demands and depositions in this case. The class representative TED Plaintiffs have met with and communicated through their in-house counsel and other representatives with their lawyers countless times over the course of this litigation and have actively participated in the litigation. They have opened their business records and files, provided access to documents and data, have provided over 870,000 pages of documents that have been produced to-date, have turned over highly sensitive business information, and have offered up a senior executive of their corporate parent for deposition. (*Id.*) In addition, the class representatives will continue to incur significant burden as litigation and discovery proceeds in this MDL.

C. The Settlements Were Reached After Arms-Length Negotiation and Adversarial Proceedings.

The settlements before the Court were reached after litigation was well underway and were negotiated by experienced counsel on both sides. The settlements were reached through lengthy negotiations of the parties, some of which took many months. (*Id.*) In each instance, counsel was armed with transactional data, documents and materials produced by the settling Defendants, and a strong understanding of the claims and defenses.

Attorneys' Fees and Expenses Standard of Review

Fed. R. Civ. P. 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and non-taxable costs that are authorized . . . by law." District courts may award reasonable attorneys' fees and expenses from the settlement of a class action upon motion under Fed. R. Civ. P. 54(d)(2) and 23(h). This Court has adopted a two-part analysis

when assessing the reasonableness of a petition seeking an award of attorneys' fees. *See, e.g.*, *In re Automotive Parks Antitrust Litig.*, No. 2:12-cv-00102, at 2 (Doc. 401 entered Dec. 7, 2015) (citing *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). 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." *Id.* (citing *Rawlings*, 9 F.3d at 513, 516). In common fund cases, the award of attorneys' fees need only "be reasonable under the circumstances." *Id.*. The court will then analyze and weigh the six factors described in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974). *Id.*

ARGUMENT

I. The Court Should Reimburse Class Counsel for Past Expenses.

For over two and half years, counsel for the Truck and Equipment Dealers funded the substantial expenses required to advance the litigation and continue to do so without any guarantee of being reimbursed. Having achieved the settlements currently before the Court, counsel for the Truck and Equipment Dealers should be reimbursed for the litigation expenses incurred in connection with the settled claims.

A. Reimbursement of Costs Already Incurred.

The Court should follow the approach it has previously adopted in this MDL and award reimbursement the litigation expenses already incurred in this case. *See, e.g.*, *In re Automotive Parts Antitrust Litig.*, 2:12-cv-00102, at 3-5(Dec. 7, 2015) (citing Fed. R. Civ. P. 23(h); *In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 504 (E.D. Mich. 2008) ("Under the common fund doctrine, class counsel are entitled to reimbursement of all reasonable out-of-

pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses." (Citation and internal quotation marks omitted.)); *Cardizem*, 218 F.R.D. at 535; *B & H Med., L.L.C. v. ABP Admin., Inc.*, No. 02–73615, 2006 WL 123785, at *3 (E.D. Mich. Jan.13, 2006).)

Duane Morris, as counsel for the TED Plaintiffs, has invested approximately $697,822.26 of its own money to pay for reasonable litigation expenses in this case with settlements before the Court. (McConnell Decl.) These costs included economic experts, document review and hosting for the millions of pages produced in this case, harvesting ESI, scanning and preparation of 870,000 pages of dealer documents, travel to court hearings, conferences, depositions, proffers, and other meetings, translations of extensive numbers of documents, compensation of translators for depositions, payment of court reporters and videographers for deposition services, and other reasonable litigation expenses. (*Id.*) Counsel for TED Plaintiffs are not requesting that any percentage of the settlement funds be set aside to pay for future expenses, as this Court has permitted the Auto Dealer, End Payors, and Direct Purchasers to do. *See, e.g.*, *In re Automotive Parts Antitrust Litig.*, No. 12-cv-00103, at 2 (Doc. 498 entered June 20, 2016) (End Payors); *In re Automotive Parts Antitrust Litig.*, 2:12-cv-00102, at 3-5 (Doc. 401 entered Dec. 7, 2015) (Auto Dealers); *In re Automotive Parts Antitrust Litig.*, 2:12-cv-00101, at 1 (Doc. 232 entered Mar. 20, 2015) (Direct Purchasers). Duane Morris incurred these expenses in this case without any guarantee of recovery and should be reimbursed from the settlement funds. (*Id.*) Having achieved the settlements currently before the Court, Duane Morris should be awarded the amount of the litigation expenses incurred in this case through the end of 2016 when these settlements

were preliminarily approved by the Court. *See In re Automotive Parts Antitrust Litig.*, 2:14-cv-00507 (Doc. 45, Dec. 5, 2016).

II. The Court Should Award Attorneys' Fees to Counsel for the Truck and Equipment Dealers.

The Court has settlements before it totaling approximately $5.7 million for the benefit of the Truck and Equipment Dealers. Counsel for TED Plaintiffs have been litigating this case on a contingent basis for over two and a half years and have already spent thousands of hours in the case. Counsel for the Truck and Equipment Dealers request an award of attorneys' fees based on the work done to achieve these settlements.

Fee awards are appropriate in large-scale litigation in which settlements are reached periodically. *See In re Air Cargo Shipping Serv. Litig.*, No. 06-md-1775 (JG) (VVP), 2011 WL 2909162, at *5-7 (E.D.N.Y., Jul. 15, 2011) (interim fee award granted); *In re Sterling Foster & Company, Inc. Sec. Litig.*, 238 F. Supp. 2d 480, 484-85, 489-90 (E.D.N.Y. 2002) (interim attorneys' fees awarded). Counsel for the Truck and Equipment Dealers have already litigated this case for over two and a half years and will continue to vigorously represent the interests of dealerships. *See In re Diet Drugs Prod. Liab. Litig.*, 2002 WL 32154197, at *12 (E.D. Pa., Oct. 3, 2002) (awarding an interim fee after years of litigation and noting "to make them wait any longer for at least some award would be grossly unfair").

A. The Court Should Again Use the Percentage-of-the-Fund Approach.

The Supreme Court recognizes that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Delphi*, 248 F.R.D. at 502. When calculating attorneys' fees under the common fund doctrine, "a

reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

The Court has previously awarded fees in this MDL using the percentage-of-the-fund approach. *See, e.g.*, *In re Automotive Parts Antitrust Litig.*, 2:14-cv-14451-MOB-MKM (Doc. 128 Dec. 28, 2016). Counsel for the Truck and Equipment Dealers seek the same approach here. Courts in this Circuit prefer this method of awarding attorneys' fees 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. *See, e.g., 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) (Page Hood, J.); *In re Packaged Ice Antitrust Litig.*, 08-MDL-01952, 2011 WL 6209188, at *16 (E.D. Mich. Dec. 13, 2011); *Delphi*, 248 F.R.D. at 502; *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) ("the lodestar method is cumbersome; the percentage-of-the-fund approach more accurately reflects the result achieved; and the percentage-of-the-fund approach has the virtue of reducing the incentive for plaintiffs' attorneys to over-litigate or 'churn' cases.") (citations omitted).

The lodestar method, on the other hand, "has been criticized for being too time-consuming of scarce judicial resources," as it requires that courts "pore over time sheets, arrive at a reasonable hourly rate, and consider numerous factors in deciding whether to award a multiplier." *Rawlings*, 9 F.3d at 516-17. Moreover, "[w]ith the emphasis it places on the number of hours expended by counsel rather than the results obtained, it also provides incentives for overbilling and the avoidance of early settlement." *Id.* at 517; *see also* MANUAL FOR COMPLEX

LITIGATION (Third) § 24.12 at 189 (West 1995). There is a "'trend towards adoption of a percentage-of-the-fund method in [common fund] cases.'" *Delphi*, 248 F.R.D. at 502 (quoting *Rawlings*, 9 F.3d at 516-517).

B. The Fee Requested by Counsel for the Truck and Equipment Dealers is Appropriate.

The Court is well-versed with the complexity of this litigation. For the case at issue here, counsel for the Truck and Equipment Dealers have worked for over two and a half years and dedicated more than 4,500 attorney hours and 1,100 hours for paralegals and law clerks. (*See* McConnell Decl.) Interim Lead Counsel was solely responsible for prosecuting this case and had no assistance from other counsel, except to the extent the parties coordinated, as ordered by the Court, with respect to issues such as briefing, depositions and third-party discovery. (*Id.*)

Counsel for the Truck and Equipment Dealers request that the Court award fees totaling one-third of the settlement funds remaining after the deduction of: (1) the notice and administration costs; and (2) the costs of escrow anticipated in this case. Precedent supports applying the selected percentage to the settlement fund before deducting the litigation costs and expenses from the funds. *See, e.g., In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *17; *Delphi*, 248 F.R.D. at 505 (attorneys' fees awarded on gross settlement fund); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 531-535 (E.D. Mich. 2003) (awarding costs in addition to percentage of the fund fee). Reasonable fee awards range from 20 to 50 percent of the common fund. *In re Telectronics Pacing Sys., Inc., Accufix Atrial "J" Leads Prods. Liab. Litig.*, 137 F.Supp.2d 1029, 1046 (S.D. Ohio 2001); *In re Cincinnati Gas & Elec. Co. Sec. Litig.*, 643 F. Supp. 148, 150 (S.D. Ohio 1986); Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS (4th ed. 2002), §14:6 at 551 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around

one-third of the recovery."). Courts in this District routinely approve attorneys' fees in antitrust class actions of one-third of the common fund created for the settlement class. *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19; *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010); *Bessey v. Packerland 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. AIMCO Fox Chase, L.P.*, 193 F.R.D. 496, 503 (E.D. Mich. 2000). The Court previously awarded one-third of a similar, approximate $5.1 million settlement fund in this MDL to counsel for TED Plaintiffs because it "constitutes fair and reasonable compensation for the work done and the benefits achieved for the members of the settlement classes." *See In re Automotive Parts Antitrust Litig.*, 2:14-cv-14451-MOB-MKM, at 4 (Doc. 128 Dec. 28, 2016).[2]

[2] The same is true in other districts. *See Standard Iron Works v. Arcelormittal*, 2014 WL 77815572, at *1 (N.D. Ill. Oct. 22, 2014) (attorneys' fee award of one-third of $163.9 million settlement); *In re Fasteners Antitrust Litig.*, 2014 WL 296954, *7 (E.D. Pa. Jan. 27, 2014) ("Co-Lead Counsel's request for one third of the settlement fund is consistent with other direct purchaser antitrust actions."); *In re Titanium Dioxide Antitrust Litig.*, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (one-third fee from $163.5 million fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (noting that "in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees" and awarding one-third fee from $150 million fund); *Heekin v. Anthem, Inc.*, No. 05-cv-01908, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012) (awarding one-third fee from $90 million settlement fund); *In re Ready-Mixed Concrete Antitrust Litig.*, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (approving one-third fee); *Williams v. Sprint/United Mgmt. Co.*, 2007 WL 2694029, at *6 (D. Kan., Sept. 11, 2007)(awarding fees equal to 35 per cent of $57 million common fund); *Lewis v. Wal-Mart Stores, Inc.*, 2006 WL 3505851, at *1 (N.D. Okla., Dec. 4, 2006) (awarding one-third of the settlement fund and noting that a "one-third [fee] is relatively standard in lawsuits that settle before trial."); *New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("[A] one-third fee from a common fund case has been found to be typical by several courts.') (citations omitted), *aff'd*, 534 F.3d 508 (6th Cir. 2008); *In re AremisSoft Corp., Sec., Litig.*, 210 F.R.D. 109, 134 (D.N.J. 2002) ("Scores of cases exist where fees were awarded in the one-third to one-half of the settlement fund.") (citations omitted); *Moore v. United States*, 63 Fed. CI. 781, 787 (2005) ("one-third is a typical recovery").

Fee awards of more than one-third are also common. *See, e.g., In re Combustion, Inc.*, 968 F. Supp. 1116, 1133, 1142 (W.D. La. 1997) (awarding fee of 36 percent and noting that "50 percent of the fund is the upper limit on a reasonable fee award from a common fund . . . . [D]istrict courts in the Fifth Circuit have awarded percentages of approximately one-third contingency fee"); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (fee of 36 percent); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291, 1292-94 (11th Cir. 1999); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. 2001) (awarding one third of $359 million antitrust recovery, which is "within the fifteen to forty-five percent range established in other cases."); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding fee of 45 percent).

C. Consideration Of the Factors Used By the Sixth Circuit Supports the Requested Fees.

Once the Court has selected a method for awarding attorneys' fees, it will consider the six *Ramey* factors in weighing a fee award in a common fund case: (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. *See, e.g.*, *In re Automotive Parts Antitrust Litig.*, 2:12-cv-00102, at 3-5 (Doc. 401, Dec. 7, 2015) (Auto Dealers) (citing *Ramey*, 508 F.2d at 1194-97). When applied here, these factors indicate that the fee requested is fair.

1. Counsel Secured Valuable Benefits For Truck and Equipment Dealers.

The result achieved for the class members is a principal consideration. *Delphi*, 248 F.R.D. at 503. As discussed in the memoranda filed in support of the preliminary approval of the

settlements, counsel for the Truck and Equipment Dealers have achieved excellent recoveries. These are cash settlements coupled with meaningful cooperation that will assist Truck and Equipment Dealers in the prosecution of this case. The settlement funds totaling roughly $5.7 million represent a significant recovery for class member dealerships that sell new Trucks and Equipment.

After the deduction of fees, notice and claims administration costs, and expenses, all of the net settlement funds will be paid to eligible dealerships that file claims. None of the money will revert to the settling Defendants or to a *cy pres* designee.[3] All eligible Truck and Equipment dealerships that file a claim for new vehicles and parts purchased in the indirect purchaser states will be entitled to share of the settlement fund. In addition to the money benefits, the cooperation terms of these settlements provide significant value to Trucks and Equipment Dealers in their prosecution of the claims against the non-settling Defendants.

2. Society Has an Important Stake Rewarding Attorneys With Reasonable Fees In This Litigation.

There is a "need in making fee awards to encourage attorneys to bring class actions to vindicate public policy (e.g., the antitrust laws) as well as the specific rights of private individuals." *In re Folding Carton Antitrust Litig.*, 84 F.R.D. 245, 260 (N.D. Ill. 1979). Courts in the Sixth Circuit weigh "society's stake in rewarding attorneys who [win favorable outcomes in antitrust class actions] in order to maintain an incentive to others . . . . Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee . . . . Society also benefits from the prosecution and

[3] The JTEKT Settlement Agreement contains a most favored nation provision wherein the settlement amount could be reduced if the most favored nation provisions were to be triggered by a qualifying settlement at an amount below the relevant amount. *See* JTEKT Settlement Agreement at ¶ 42.

settlement of private antitrust litigation." *In re Cardizem*, 218 F.R.D. at 534 (internal quotation marks omitted); *Delphi*, 248 F.R.D. at 504.

The Department of Justice did not seek restitution from the settling Defendants and the criminal actions were focused on conduct involving passenger cars, not commercial trucks or equipment. Any recovery for Truck and Equipment Dealers needed to come through the work of movants working on a contingent basis. The substantial recoveries counsel for the Truck and Equipment Dealers have achieved have helped serve the public policy of holding accountable those who violate antitrust laws in the United States. Society benefits when those who have violated laws fostering fair competition and honest pricing are required to reimburse affected consumers in civil proceedings.

3. Counsel For the Truck and Equipment Dealers Have Worked On a Contingent Basis.

Counsel for the Truck and Equipment Dealers have pursued, and will continue to pursue, litigation in this MDL proceeding on a contingent basis. The risk relating to doing so supports a reasonable fee award from a common fund. *See In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). The contingency factor "stands as a proxy for the risk that attorneys will not recover compensation for the work they put into a case." *Cardinal*, 528 F. Supp. 2d at 766. Indeed, "'some courts consider the risk of non-recovery as the most important factor in fee determination.'" *Kritzer v. Safelite Solutions*, LLC, 2012 WL 1945144, at *9 (S.D. Ohio May 30, 2012) (quoting *Cardinal*, 528 F. Supp. 2d at 766). "[W]ithin the set of colorable legal claims, a higher risk of loss does argue for a higher fee." *In re Trans Union Corp. Privacy Litig.*, 629 F. 3d 741, 746 (7th Cir. 2011).

Counsel for the Truck and Equipment Dealers work on a contingent fee basis and advance funds and time associated with the litigation, risking not receiving payment for their

work or reimbursement of the out-of-pocket expenses they paid. Being rewarded only for success in litigation this complex creates a high degree of risk, which was enhanced by the fact that the claims being pursued on behalf of the Truck and Equipment Dealers were not squarely within the scope of the guilty pleas secured during the criminal enforcement proceedings against some of the Defendants. The substantial risk undertaken by counsel for the Truck and Equipment Dealers further supports the requested attorneys' fees. *Delphi*, 248 F.R.D. at 503-54.

4. A Lodestar Crosscheck Confirms That the Requested Fee Is Reasonable.

Some courts, including this one, apply a lodestar "cross-check" on the reasonableness of the fee calculated as a percentage of the fund. *See, e.g.*, *In re Automotive Parts Antitrust Litig.*, 2:12-cv-00102, at 3-5 (Doc. 401, Dec. 7, 2015) (Auto Dealers); *see also Cardinal*, 528 F. Supp. 2d at 764; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *18. A lodestar cross-check is optional, however, and the Court is not required to engage in a detailed scrutiny of time records. *Cardinal*, 528 F. Supp. 2d at 767. The time counsel for the Truck and Equipment Dealers had to expend confirms that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery, and does not constitute a "windfall." *Id.*

To calculate a reasonable fee under the lodestar method, the court determines the base amount of the fee by multiplying the number of hours counsel reasonably expended by their hourly rate. *Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). Counsel for the Truck and Equipment Dealers have done an enormous amount of work in this case. Discovery has been extensive, Defendants have been relentless in their pursuit of discovery from the Truck and Equipment Dealer class representatives, and there has been extensive motion practice related to discovery directed at them. Counsel for the Truck and Equipment Dealers have already received cooperation from settling Defendants and have used that information against the other

Defendants to secure settlements from them. All the while, counsel for the Truck and Equipment Dealers have been working to certify classes and bring this case to trial.

Counsel for the Truck and Equipment Dealers have vigorously prosecuted this case while being efficient and avoiding duplication and unproductive work. As shown in the declaration submitted with this motion, counsel representing the Truck and Equipment Dealers and their professional staff have worked more than 5,600 hours in the *Bearings* case (through December 31, 2016). Applying the rates charged by counsel to the hours expended yields a "lodestar" of approximately $2,789,390.50 million.[4] The requested fee is $1,809,000 which represents one-third of the funds remaining after deducting the fund for the escrow agent costs ($18,000) and notice and claims administration ($300,000). (*See* McConnell Decl.)

Whether analyzed as a "cross-check" on the percentage-of-the-fund method—or under the lodestar method—the requested fee is reasonable. The requested fee represents only 65% of the lodestar. A fee representing a multiplier of less than 1.0 like this one is entirely reasonable and is much lower than the positive multipliers approved in other cases. *See, e.g., Cardinal*, 528 F. Supp. 2d at 767-68 (approving multiplier of 6, and observing that "[m]ost courts agree that the typical lodestar multiplier" on a large class action "ranges from 1.3 to 4.5"); *Prandin*, 2015 WL 1396473, at *4 (3.01 multiplier). The lodestar here is conservative because it does not include the time spent prosecuting this case since December 31, 2016.

While the hours worked are substantial, they are reasonable and reflect the challenging nature of the litigation. Defendants are represented by able counsel who have asserted vigorous defenses. Defendants' efforts have required the Truck and Equipment Dealers to expend

[4] The use of current rates is appropriate to compensate counsel for inflation and the delay in receipt of the funds. *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 716 (1987).

considerable effort and skill in prosecuting this case. Given the excellent results achieved, the complexity of the claims and defenses, the real risk of non-recovery, the formidable defense teams, the delay in receipt of payment, and the substantial experience and skill of counsel, the requested multiplier on the lodestar and the resulting fee is reasonable compensation for the work done by counsel for the Truck and Equipment Dealers.

5. The Complexity of the Litigation Supports the Requested Fee.

As the Court is well-aware, "[a]ntitrust class actions are inherently complex . . . ." *In re Cardizem*, 218 F.R.D. at 533; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19; *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 639 (E.D. Pa. 2003) ("An antitrust class action is arguably the most complex action to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.") (citations and internal quotation marks omitted). This litigation is decidedly complex given the numerous conspiracies and parts involved, the international Defendants, and the sheer magnitude of the conduct and regulatory investigations.

6. Skill And Experience Of Counsel.

The skill and experience of counsel on both sides of the litigation is a factor courts consider in determining a reasonable fee award. *In Re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015 WL 1639269 at * 7; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6219188, at *19. The Court has already found Interim Lead Counsel for the Truck and Equipment Dealers to have the requisite skill and experience in class action and antitrust litigation to serve effectively as class counsel for the Truck and Equipment Dealers. *In re Automotive Parts Antitrust Litig.*, No. 2:14-cv-14451, at 6 (Doc. 119, Sept. 15, 2016); *id.*, 2:15-cv-12050, at 8 (Doc. 18, Oct. 7, 2016). In assessing this *Ramey* factor, courts also look to the qualifications of

the defense counsel opposing the class. Here, defense counsel comprise extraordinarily well-qualified and experienced antitrust and class action firms.

III. The Court Should Award Service Payments to the Truck and Equipment Dealer Class Representatives.

Class representatives are "an essential ingredient of any class action" and incentive awards are appropriate to induce a business or consumer to participate in worthy class action lawsuits. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 2008). "Such [i]ncentive awards serve an important function, particularly where the named plaintiffs participated actively in the litigation." *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) (citing *Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317, 2005 WL 388562, at *31 (S.D.N.Y. Feb. 18, 2005)).

The Sixth Circuit has noted that incentive awards are typically awarded to class representatives for their extensive involvement with a lawsuit. *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). Awards encourage members of a class to become class representatives and reward their efforts taken on behalf of the class. *Id.* Payment of incentive awards to class representatives is a reasonable use of settlement funds. *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 351 (6th Cir. 2009). Larger incentive awards than those to individual plaintiffs have been approved for organizational class representatives because of the greater burden in the course of litigation by producing greater numbers of documents and participating in Rule 30(b)(6) depositions. *See In re Vitamin C Antitrust Litig.*, No. 06–MD–1738, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012).

Interim Lead Counsel for the Truck and Equipment Dealers request a service award of $5,000 for each class representative in this case. Such an award is well within the Court's discretion. *See Prandin*, 2015 WL 1396473, at *5 (in a $19 million settlement, award of $50,000

to each class representative); *Skelaxin*, 2014 WL 2946459 (settlement of direct antitrust action, awarding $50,000 to each class representative); *Connectivity Systems Inc. v. National City Bank*, 2011 WL 292008, at *20 (S.D. Ohio Jan. 26, 2011) (in $10 million settlement, awarding $50,000 each to three named plaintiffs); *Liberte Capital Group v. Capwill*, No. 5:99 cv 818, 2007 WL 2492461, at *3 (N.D. Ohio Aug. 29, 2007) (awarding $97,133.83 and $95,172.47 to two named plaintiffs representing subclasses that received $11 million and $7 million); *Hainey v. Parrott*, No. 1:02–cv–733, 2007 WL 3308027 (S.D. Ohio Nov. 6, 2007) (approving award of $50,000 for each class representative); *Cardizem*, 218 F.R.D. at 535-36 (awarding $75,000 to each class representative); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913–14 (S.D. Ohio 2001) (granting a $50,000 service award out of a $5.25 million fund); *In re Revco Sec. Litig.*, 1992 WL 118800, *7 (N.D. Ohio May 6, 1992) ($200,000 incentive award to named plaintiff); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251 (S.D. Ohio 1991) (approving service awards of $50,000 to six class representatives out of a settlement fund of $56.6 million).

As described above, the class representative dealerships have already sustained a significant discovery burden, *see supra* at § B. The Truck and Equipment Dealers have been the target of extensive discovery efforts from the Defendants and have been deluged with requests for burdensome and commercially sensitive information. Defendants' discovery requests sought information on every purchase or sale of a vehicle over a more than 15 year period and numerous categories of financial and other information. In response, the class representative dealerships have located and produced hundreds of thousands of documents during discovery, have shared their knowledge of the industry, and have spent a great deal of time and resources during the litigation. Among other things, Plaintiffs have produced extremely sensitive, complete downloads of their inventory and sales databases. The class representatives' corporate parent has

provided Rule 30(b)(6) testimony. Without the class representatives' willingness to bring these claims and undertake these efforts, there would be no settlements for Truck and Equipment dealers. In addition, the class representatives will continue to incur significant burden as litigation and discovery proceeds in *Bearings* and the other parts cases.

A significant amount of effort from the dealerships has been required to advance this litigation. Such effort requires the class representative dealers to devote employee time away from the day-to-day demands of running their businesses. Service awards are intended to relieve some of this burden and are well-justified in litigation as lengthy and complex as the case before the Court. Therefore, the Court should award to each named plaintiff a $5,000 service award.

CONCLUSION

For the foregoing reasons, Interim Lead Counsel for the Truck and Equipment Dealers respectfully request that the Court grant their motion and award attorneys' fees, reimburse litigation expenses, and issue class representative service awards.

Dated: February 22, 2017

By: /s/ J. Manly Parks

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CERTIFICATE OF SERVICE

I certify that I served the foregoing MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS on all counsel of record by the Court's ECF system.

Dated: February 22, 2017 /s/ J. Manly Parks