

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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Honorable Sean F. Cox
IN RE: EXHAUST SYSTEMS CASES	
THIS DOCUMENT RELATES TO: ALL DIRECT PURCHASER CASES	<u>2:16-cv-03701-SFC-RSW</u> <u>2:16-cv-13968-SFC-RSW</u> <u>2:18-cv-12166-SFC-RSW</u>

NOTICE

NOTICE OF PROPOSED SETTLEMENTS OF DIRECT PURCHASER CLASS ACTION WITH BOSAL, EBERSPÄCHER, FAURECIA, MERITOR, AND TENNECO DEFENDANTS, AND HEARING ON:

- (1) APPROVAL OF PROPOSED SETTLEMENTS;**
- (2) PLAN OF DISTRIBUTION OF THE SETTLEMENT FUND; AND**
- (3) MOTION OF SETTLEMENT CLASS COUNSEL FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES, AND INCENTIVE PAYMENTS TO THE CLASS REPRESENTATIVES**

TO: ALL INDIVIDUALS AND ENTITIES THAT PURCHASED AUTOMOTIVE EXHAUST SYSTEMS IN THE UNITED STATES DIRECTLY FROM DEFENDANTS (OR THEIR SUBSIDIARIES OR AFFILIATES) FROM JANUARY 1, 2002 THROUGH FEBRUARY 12, 2018.

PLEASE READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED BY LITIGATION NOW PENDING IN THIS COURT.

WHAT IS THE PURPOSE OF THIS NOTICE AND WHY WAS IT SENT TO ME?

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of Michigan, Southern Division (the "Court"). The purpose of this Notice is to inform you of a hearing before the Court to consider:

- (1) Proposed settlements with Defendants: Bosal Industries-Georgia, Inc. and Bosal USA, Inc. (collectively, the "Bosal" Defendants); Eberspächer Exhaust Technology GmbH & Co. KG and Eberspächer North America, Inc. (collectively, the "Eberspächer Defendants"); Faurecia Emissions Control Technologies, USA, LLC and Faurecia Exhaust Systems, Inc. (collectively, the "Faurecia Defendants"); Meritor, Inc. f/k/a ArvinMeritor (the "Meritor Defendant"); and Tenneco Inc., Tenneco Automotive Operating Co., Inc., and Tenneco GmbH (collectively, the "Tenneco Defendants") (all Defendants referenced in this paragraph are collectively referred to as the "Settling Defendants");
- (2) A proposed plan of distribution of the Bosal, Eberspächer, Faurecia, Meritor and Tenneco settlement proceeds to Settlement Class members and a proposed Claim Form that you may submit in order to share in the settlement proceeds; and
- (3) Settlement Class Counsel's motion for an award of attorneys' fees and reimbursement of litigation costs and expenses, and incentive payments to the Class Representatives.

This Notice provides information concerning the proposed settlements, the proposed plan of distribution, and the motion for attorneys' fees and reimbursement of litigation costs and expenses, and incentive payments. The Notice also advises you of your rights to: participate in the settlement claims process; exclude yourself from any or all of the Settlement Classes; and object to the terms of the proposed settlements, the plan of distribution, and the requests for fees, costs and expenses, and incentive payments to the Class Representatives in connection with the Court hearing on these matters.

BACKGROUND

Plaintiffs have reached settlements with the Bosal Defendants, the Eberspächer Defendants, the Faurecia Defendants, the Meritor Defendants, and the Tenneco Defendants totaling \$13,798,000. Under the terms of the proposed settlements, Bosal will pay \$48,000 (the “Bosal Settlement Fund”), Eberspächer will pay \$1,850,000 (the “Eberspächer Settlement Fund”), Faurecia will pay \$1,900,000 (the “Faurecia Settlement Fund”), Meritor will pay \$1,000,000 (the “Meritor Settlement Fund”), and Tenneco will pay \$9,000,000 (the “Tenneco Settlement Fund”) (the five settlement funds are collectively referred to as the “Automotive Exhaust Systems Settlement Fund”). The Court has preliminarily approved each of these settlements.

As discussed below: the Eberspächer Settlement Agreement is subject to rescission or reduction based upon requests for exclusion by members of the Eberspächer Settlement Class; the Faurecia settlement amount is subject to reduction based upon requests for exclusion by members of the Faurecia Settlement Class; and the Meritor Settlement Agreement is subject to rescission or reduction based upon requests for exclusion by members of the Meritor Settlement Class.

This litigation, and the proposed settlements, are part of coordinated legal proceedings involving a number of parts used in motor vehicles. This litigation and the proposed settlements relate solely to Automotive Exhaust Systems purchased in the United States **directly** from a Defendant, or its subsidiaries or affiliates. The term “Automotive Exhaust Systems” refers to “one or more of the following: “manifolds, flex pipes, catalytic converters, converters, diesel oxidation catalysts, diesel particulate filters, oxygen sensors, isolators, gaskets, clamps, resonator assemblies, pipe accessories, mufflers, muffler assemblies, and tubes. An exhaust system has a ‘hot end,’ which is the part of the exhaust system that is mounted to the engine (generally comprising the manifold and/or catalytic converter) and a ‘cold end,’ which is the part of the exhaust system that is mounted to the underbody of the car (and contains, for example, the muffler, pipes and/or the catalytic converter).”

These proposed settlements do not relate to, and have no effect upon, cases involving any product other than Automotive Exhaust Systems.

If you are a member of the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Classes (defined below), you have the rights and options summarized here:

- You may remain in any or all of the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Classes and be eligible to share in the proceeds of, and be bound by the terms of, those settlements in which you elect to remain;
- You may exclude yourself from any or all of the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Classes, in which case you will **not** be bound by any settlement from which you exclude yourself and will **not** be eligible to share in the proceeds of that settlement;
- If you remain in the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Classes, you may object to that proposed settlement, to the proposed plan of distribution of the Automotive Exhaust Systems Settlement Fund, or to Settlement Class Counsel’s requests for an award of attorneys’ fees and reimbursement of litigation costs and expenses, and incentive payments to the Class Representatives. You may also appear at the hearing where the Court will consider these matters;
- You may enter an appearance in the litigation through your own counsel at your own expense; and
- Any Settlement Class member who wishes to participate in the distribution of the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Funds must complete and submit a copy of the Claim Form **on or before November 21, 2020**.

WHO IS IN THE SETTLEMENT CLASSES?

The Court has provisionally certified a Direct Purchaser Bosal Settlement Class (the “Bosal Settlement Class”), a Direct Purchaser Eberspächer Settlement Class (the “Eberspächer Settlement Class”), a Direct Purchaser Faurecia Settlement Class (the “Faurecia Settlement Class”), a Direct Purchaser Meritor Settlement Class (the “Meritor Settlement Class”), and a Direct Purchaser Tenneco Settlement Class (the “Tenneco Settlement Class”) for the purpose of disseminating notice of the proposed Bosal, Eberspächer, Faurecia, Meritor, and Tenneco settlements.

The Bosal, Eberspächer, Meritor, and Tenneco Settlement Classes are defined as follows:

All individuals and entities who purchased Automotive Exhaust Systems in the United States directly from Defendants (or their subsidiaries or affiliates) from January 1, 2002 through February 12, 2018. Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

For purposes of the Eberspächer, Meritor, and Tenneco Settlement Class definition set forth above, the following entities are Defendants: Bosal Industries-Georgia, Inc.; Bosal Nederland, B.V.; Bosal USA, Inc.; Eberspächer Exhaust Technology GmbH & Co. KG; Eberspächer North America, Inc.; Faurecia Emissions Control Technologies, USA, LLC; Faurecia SA; Faurecia Exhaust Systems, Inc.; Friedrich Boysen GmbH & Co. KG; Meritor, Inc. f/k/a ArvinMeritor; Tenneco Automotive Operating Co., Inc.; Tenneco GmbH; and Tenneco Inc.

For purposes of the Bosal Settlement Class definition set forth above, the following entities are Defendants: Tenneco Inc.; Tenneco Automotive Operating Co., Inc.; Tenneco GmbH; Bosal Industries-Georgia, Inc.; Bosal USA, Inc.; Friedrich Boysen GmbH & Co. KG; Eberspächer Exhaust Technology GmbH & Co. KG; Eberspächer North America, Inc.; Faurecia SA; Faurecia Emissions Control Technologies, USA, LLC; Faurecia Exhaust Systems, Inc.; and Meritor, Inc. f/k/a ArvinMeritor.

The Faurecia Settlement Class is defined as follows:

All persons and entities that purchased Automotive Exhaust Systems in the United States directly from a Defendant (or any of a Defendant's subsidiaries or affiliates) from January 1, 2002 through February 12, 2018. Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

For purposes of the Faurecia Settlement Class definition set forth above, the following entities are Defendants: Bosal Industries-Georgia, Inc.; Bosal Nederland, B.V.; Bosal USA, Inc.; Eberspächer Exhaust Technology GmbH & Co. KG; Eberspächer North America, Inc.; Faurecia Emissions Control Technologies, USA, LLC; Faurecia Exhaust Systems, Inc.; Friedrich Boysen GmbH & Co. KG; Meritor, Inc. f/k/a ArvinMeritor; Tenneco Automotive Operating Co., Inc.; Tenneco GmbH; and Tenneco Inc.

Plaintiffs Manny's Auto Supply, Inc. and Irving Levine Automotive Distributors, Inc. have been appointed by the Court to serve as "Class Representatives" for the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Settlement Classes.

The Court has appointed the law firms of Freed Kanner London & Millen LLC, Kohn, Swift & Graf, P.C., Preti, Flaherty, Beliveau & Pachios LLP, and Spector Roseman & Kodroff, P.C. to serve as "Co-Lead Settlement Class Counsel" for the Settlement Classes.

WHAT IS THIS LITIGATION ABOUT?

In November 2016 and July 2018, Plaintiffs filed class action complaints against Defendants on behalf of direct purchasers of "Automotive Exhaust Systems." Plaintiffs allege that Defendants conspired to raise, fix, maintain, and stabilize prices, rig bids, and allocate markets and customers for Automotive Exhaust Systems sold in the United States in violation of federal antitrust laws. Plaintiffs further allege that as a result of the conspiracy, they and other direct purchasers of Automotive Exhaust Systems were injured by paying more for those products than they would have paid in the absence of the alleged illegal conduct.

Defendants deny Plaintiffs' allegations and liability and have asserted defenses to Plaintiffs' claims. Defendants have agreed to settle this matter to avoid the expense and burden of further litigation. The Court has not issued any

findings or rulings with respect to the merits of Plaintiffs' claims or Defendants' defenses. Certain Boysen entities were originally named as defendants in this litigation but have been dismissed. Thus, these settlements, if approved by the Court, will fully resolve Plaintiffs' claims in this litigation.

WHAT RELIEF DO THE PROPOSED SETTLEMENTS PROVIDE?

Plaintiffs, on behalf of the Bosal Settlement Class, entered into a settlement with Bosal on June 2, 2020, under which the Bosal Defendants agreed to pay \$48,000.

Plaintiffs, on behalf of the Eberspächer Settlement Class, entered into a settlement agreement with the Eberspächer Defendants on January 8, 2019 (the "Eberspächer Settlement Agreement"), under which the Eberspächer Defendants have agreed to pay \$1,850,000. The Eberspächer Settlement Agreement gives Eberspächer the right to withdraw from the settlement, or to reduce the amount of the settlement to no less than \$1,110,000, based upon requests for exclusion by members of the Eberspächer Settlement Class.

Plaintiffs, on behalf of the Faurecia Settlement Class, entered into a settlement agreement with the Faurecia Defendants on May 17, 2018 (the "Faurecia Settlement Agreement"), under which the Faurecia Defendants agreed to pay \$1,900,000. The Faurecia Settlement Agreement gives Faurecia the right to reduce the amount of the settlement to no less than \$1,575,000, based upon requests for exclusion by members of the Faurecia Settlement Class.

Plaintiffs, on behalf of the Meritor Settlement Class, entered into a settlement with Meritor on October 30, 2019, under which the Meritor Defendant agreed to pay \$1,000,000. The Meritor Settlement Agreement gives Meritor the right to withdraw from the settlement, or to reduce the amount of the settlement to no less than \$500,000, based upon requests for exclusion by members of the Meritor Settlement Class.

Plaintiffs, on behalf of the Tenneco Settlement Class, entered into a settlement with Tenneco on February 12, 2018, under which the Tenneco Defendants agreed to pay \$9,000,000.

As part of their respective settlements, the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Defendants have each agreed to provide specified cooperation with Settlement Class Counsel in the prosecution of claims against any remaining Defendant, should the need for such cooperation arise.

This Notice is only a summary of the terms of the proposed settlements. The Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Settlement Agreements contain other important provisions, including the release of certain claims against the Settling Defendants (and companies and people affiliated with them). For the complete terms of the settlements, you are referred to the settlement agreements, which are on file with the Clerk of Court and are available online at www.AutoPartsAntitrustLitigation.com/Exhaust. The proposed settlements must receive final approval by the Court to become effective.

If you wish to object to the approval of any of the settlements, you may do so, but only in accordance with the procedures set forth below. If you do not object to a settlement, you do not need to take any action at this time to indicate your support for, or lack of objection to, that settlement.

HOW DO I REMAIN IN THE SETTLEMENT CLASSES AND WHAT HAPPENS IF I DO?

If you are a member of any of the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Classes as defined above, you will automatically remain in that Settlement Class unless you elect to be excluded. If you wish to remain in a Settlement Class, you do not need to take any action at this time with respect to that Settlement Class and your interests will be represented by the Class Representatives and by Settlement Class Counsel. If you remain in any of the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Classes and the proposed settlement with that Defendant is approved and becomes effective, you will be bound by its terms, including the release provisions, whether or not you receive a share of the settlement proceeds attributable to that settlement.

You will have no responsibility to individually pay attorneys' fees or expenses. Any such fees and expenses will be paid solely from amounts obtained from the Defendants, whether by settlement or judgment, and must be approved by the Court after notice to you and a hearing. If you choose, you may also have your own attorney enter an appearance on your behalf and at your expense.

HOW WILL THE SETTLEMENT FUNDS BE DISTRIBUTED?

The Automotive Exhaust Systems Settlement Fund, with accrued interest, less any amounts approved by the Court for payment of attorneys' fees, litigation and settlement administration costs and expenses, and incentive payments to the Class Representatives (the "Net Automotive Exhaust Systems Settlement Fund"), will be distributed among the members of the Settlement Classes who complete and timely submit a copy of the Claim Form that is included with this Notice, **postmarked on or before November 21, 2020**.

The Net Automotive Exhaust Systems Settlement Fund will be distributed *pro rata* to all Claimants based upon their **direct** purchases in the United States from Defendants during the applicable Class Period. The distribution will take place as soon as practicable after review, determination, and audit of the Claim Forms by the Settlement Administrator and approval by the Court of the Settlement Administrator's recommendations as to the amounts to be paid to the Claimants.

Do not dispose of any document that reflects your purchases of Automotive Exhaust Systems in the United States directly from any Defendant (or its subsidiaries or affiliates) during the period from January 1, 2002 through February 12, 2018. You may need those documents to complete and substantiate your Claim Form, which will be subject to inquiry and verification.

WHAT IF I DO NOT WANT TO REMAIN IN ONE OR MORE OF THE SETTLEMENT CLASSES?

You may exclude yourself from any or all of the five Settlement Classes. If you wish to exclude yourself from any or all of the Settlement Classes, you must send a request for exclusion, in writing, by certified mail, return receipt requested, **postmarked no later than October 5, 2020**, to Co-Lead Settlement Class Counsel, and to counsel for the Settling Defendants, at the addresses set forth below, and to the following address:

Automotive Exhaust Systems Direct Purchaser Antitrust Litigation
P.O. Box 3058
Portland, OR 97208-3058

Your request for exclusion must identify the Settlement Class or Classes from which you are seeking exclusion and must include the full name and address of the purchaser (including any predecessor or successor entities and any trade names). You are also requested to identify the Defendant(s) (or subsidiary or affiliate) from which you purchased Automotive Exhaust Systems during the Class Period for the Settlement Class from which you seek exclusion, the Automotive Exhaust Systems purchased during the Class Period, and the dollar amount of your purchases. If you validly exclude yourself from any or all of the Settlement Classes, you will not be bound by any decision concerning the Settlement Class or Classes from which you exclude yourself and you may pursue individually any claims you may have against that Defendant (at your own expense), but you will not be eligible to share in the settlement proceeds attributable to that Defendant.

REQUEST FOR ATTORNEYS' FEES AND EXPENSES, AND AN INCENTIVE PAYMENT

Settlement Class Counsel, together with other firms that have worked on this litigation, will file a petition for an award of attorneys' fees and reimbursement of their costs and expenses in prosecuting the case. The request of Settlement Class Counsel for attorneys' fees will not exceed 30 percent (30%) of the Automotive Exhaust Systems Settlement Fund.

Settlement Class Counsel will also request incentive payments to Plaintiffs Manny's Auto Supply, Inc. and Irving Levine Automotive Distributors, Inc., which were appointed by the Court to serve as Class Representatives for the Settlement Classes, in the amount of \$25,000 each.

The application for attorneys' fees and litigation costs and expenses and incentive payments will be filed on or before September 14, 2020. If you remain a member of any of the Settlement Classes and you wish to object to the requests for fees and expenses or incentive payments, you must do so in writing in accordance with the procedures for objections set forth below. If you do not oppose any of these requests, you do not need to take any action in that regard.

WHEN WILL THE COURT CONSIDER THESE MATTERS AND HOW CAN I TELL THE COURT WHAT I THINK ABOUT THE SETTLEMENTS?

The Court will hold a hearing on November 5, 2020, at 2:00 p.m., at the Theodore Levin United States Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226, Courtroom 817 (or such other courtroom as may be assigned for the hearing), to determine whether to approve: the proposed Bosal, Eberspächer, Faurecia, Meritor, and Tenneco settlements; the proposed plan of distribution of the Automotive Exhaust Systems Settlement Fund; and Settlement Class Counsel's requests for an award of attorneys' fees and reimbursement of litigation costs and expenses, and incentive payments. If the Court believes that it is appropriate, the hearing may be conducted remotely by telephone or other electronic means. If the Court determines to hold the hearing remotely, Settlement Class Counsel shall post that information on the website devoted to the direct purchaser litigation (www.AutoPartsAntitrustLitigation.com/Exhaust) and provide any Settlement Class member that has informed the Court that it intends to participate at the hearing the information required to do so remotely. The Fairness Hearing may be rescheduled, continued or adjourned, and the courtroom assigned for the hearing may be changed, without further notice to you.

If you remain a member of the Bosal, Eberspächer, Faurecia, Meritor, or Tenneco Settlement Classes and you wish to object to that proposed settlement, or to the proposed plan of distribution of the Automotive Exhaust Systems Settlement Fund, or to Settlement Class Counsel's requests for an award of attorneys' fees and reimbursement of litigation costs and expenses, and incentive payments, you must do so in writing and at your own expense. Any such objection must include the caption of this litigation, specify which settlement(s) are being objected to, must be signed, and must be **filed no later than October 5, 2020**, with the Clerk of Court, United States District Court for the Eastern District of Michigan, Southern Division, Theodore Levin United States Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226, and mailed to the following counsel, **postmarked no later than October 5, 2020**:

Steven A. Kanner
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& MILLEN LLC
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Co-Lead Counsel for the Direct Purchaser Settlement Classes

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Counsel for the Eberspächer Defendants

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Counsel for the Faurecia Defendants

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Counsel for the Meritor Defendant

James H. Mutchnik
KIRKLAND & ELLIS LLP
300 North LaSalle
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Telephone: (312) 862-2350

Counsel for the Tenneco Defendants

If you do not object to any of the proposed settlements, or to the related matters set forth above, you do not need to appear at the hearing or take any other action at this time. **You must, however, complete and timely submit a Claim Form if you wish to share in the distribution of the Automotive Exhaust Systems Settlement Fund.**

WHAT SHOULD I DO IF I WANT ADDITIONAL INFORMATION OR IF MY ADDRESS CHANGES?

If this Notice reached you at an address other than the one on the mailing label, or if your address changes, please send your correct address to: Automotive Exhaust Systems Direct Purchaser Antitrust Litigation, P.O. Box 3058, Portland, OR 97208-3058.

The Settlement Agreements, Complaints, and other public documents filed in this litigation are available for review during normal business hours at the offices of the Clerk of Court, United States District Court for the Eastern District of Michigan, Southern Division,

Theodore Levin United States Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226, and through the Court's Public Access to Court Electronic Records (PACER) system after registration and payment of a modest fee. Copies of the Settlement Agreements and certain other documents relevant to this litigation are available at www.AutoPartsAntitrustLitigation.com/Exhaust. Questions concerning the proposed Bosal, Eberspächer, Faurecia, Meritor, and Tenneco settlements, this Notice, or the litigation may be directed to any of the Co-Lead Settlement Class Counsel identified above.

Please do not contact the Clerk of the Court or the Judge.

Dated: July 24, 2020

BY ORDER OF:

The United States District Court for the Eastern
District of Michigan, Southern Division