

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

_____	:	Master File No. 12-md-02311
IN RE AUTOMOTIVE PARTS	:	Honorable Marianne O. Battani
ANTITRUST LITIGATION	:	
_____	:	
IN RE: EXHAUST SYSTEMS CASES	:	
_____	:	
THIS DOCUMENT RELATES TO:	:	2:16-cv-03701-MOB-MKM
ALL DIRECT PURCHASER CASES	:	2:16-cv-13968-MOB-MKM
_____	:	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 12th day of February, 2018 (“Execution Date”) by and between Tenneco Inc.; Tenneco Automotive Operating Co., Inc.; and Tenneco GmbH (collectively, “Tenneco”), and Direct Purchaser Plaintiffs (as defined in Paragraph 4), both individually and on behalf of a class of direct purchasers of Automotive Exhaust Systems (“Settlement Class”), as more particularly defined in Paragraph 9.

WHEREAS, Direct Purchaser Plaintiffs are prosecuting the above *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (“MDL Litigation”); and the *Exhaust Systems Cases*, 2:16-cv-03701 (E.D. Mich.), *Manny’s Auto Supply, Inc. and Irving Levine Automotive Distributors, Inc. v. Bosal Nederland, B.V., et al.*, 2:16-cv-13968 (E.D. Mich.), and any other case number that may be assigned by the Court to an Automotive Exhaust Systems case brought by any Direct Purchaser Plaintiff (together, the “Action”) on its own behalf and on behalf of the Settlement Class against, among others, Tenneco;

WHEREAS, Direct Purchaser Plaintiffs allege that they were injured as a result of Tenneco's participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Automotive Exhaust Systems (as defined below) in violation of Section 1 of the Sherman Act, as set forth in Direct Purchaser Plaintiffs' Class Action Complaint (2:16-cv-13968, Doc. No. 1) and in the Class Action Complaint Direct Purchaser Plaintiffs will file on or near the date this Agreement is executed, which will name Tenneco as a Defendant (together, the "Complaint");

WHEREAS, Tenneco denies Direct Purchaser Plaintiffs' allegations and may assert defenses to Direct Purchaser Plaintiffs' claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Tenneco, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Direct Purchaser Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims against Tenneco, according to the terms set forth below, is in the best interests of Direct Purchaser Plaintiffs and the Settlement Class because of the payment of the Settlement Amount and the value of the Cooperation (as that term is defined below) that Tenneco has agreed to provide pursuant to this Agreement;

WHEREAS, the Action will continue against Defendants (as defined below) that are not Releasees (as defined below);

WHEREAS, Tenneco, despite its belief that it is not liable for the claims asserted by Direct Purchaser Plaintiffs and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the

distraction of burdensome and protracted litigation, and to obtain the release, order, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Tenneco with respect to Automotive Exhaust Systems based on the allegations made in the Action, as more particularly set out below;

WHEREAS, Tenneco has agreed to provide Cooperation (as defined below) to Direct Purchaser Plaintiffs in the ongoing prosecution of the Action against Defendants that are not Releasees (as defined below), as set forth in this Agreement, and such Cooperation will reduce Direct Purchaser Plaintiffs' substantial burden and expense associated with prosecuting the Action; and

WHEREAS, Direct Purchaser Plaintiffs recognize the benefits of Tenneco's Cooperation, and recognize that because of joint-and-several liability, this Agreement with Tenneco does not impair Direct Purchaser Plaintiffs' ability to collect the full amount of damages to which it and the Settlement Class may be entitled in the Action, including any damages attributable to Tenneco's alleged conduct.

NOW, THEREFORE, in consideration of the covenants, agreements, and release set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiffs, the Settlement Class, or Tenneco, subject to the approval of the Court, on the following terms and conditions:

A Definitions

1. "Cooperation" refers to those provisions set forth below in Section K.
2. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by Tenneco under the terms of this Agreement.

3. “Defendant” means, for purposes of this Settlement Agreement only, any or all of the following: Tenneco Inc.; Tenneco Automotive Operating Co., Inc.; Tenneco GmbH; Bosal Nederland, B.V.; Bosal Industries-Georgia, Inc.; Bosal USA, Inc.; Friedrich Boysen GmbH & Co. KG; Eberspacher Exhaust Technology GmbH & Co. KG; Eberspacher North America, Inc.; Faurecia SA; Faurecia Emissions Control Technologies, USA, LLC; Faurecia Exhaust Systems, Inc.; and Meritor, Inc. f/k/a ArvinMeritor.

4. “Direct Purchaser Plaintiffs” means the Settlement Class Members, as defined in Paragraph 9 who are the named plaintiffs in the Complaint.

5. “Document” is defined to be synonymous in meaning and equal in scope to the use of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term. For purposes of this Agreement, Document shall include all English translations in Tenneco’s custody, possession or control, other than materials protected by the attorney client and attorney work product privilege.

6. “Automotive Exhaust Systems” for purposes of this Agreement, has the same definition as set forth in the Complaint, specifically “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).”

7. “Releasees” shall refer to Tenneco Inc.; Tenneco Automotive Operating Co., Inc.; and Tenneco GmbH, their respective past and present, parents, owners, subsidiaries, affiliates, divisions, predecessors, successors, assigns, officers, directors, employees, principals, partners, members, heirs, representatives, and agents. “Releasees” does not include any Defendant in the MDL Litigation other than Tenneco or any other person or entity other than those set forth in the preceding sentence of Paragraph 7.

8. “Releasers” shall refer to Direct Purchaser Plaintiffs and the members of the Settlement Class, as defined in Paragraph 9, below, as well as each of their respective past and present, parents, owners, subsidiaries, affiliates, divisions, predecessors, successors, assigns, officers, directors, employees, principals, partners, members, heirs, representatives, and agents.

9. For purposes of this Agreement, the “Settlement Class” is defined as:

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 the Execution Date of this Agreement. 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.

10. “Settlement Class Counsel” shall refer to the following law firms: Freed Kanner London & Millen LLC, 2201 Waukegan Road, Suite 130, Bannockburn, IL 60015; Kohn, Swift & Graf, P.C., One South Broad Street, Suite 2100, Philadelphia, PA 19107; Preti, Flaherty, Beliveau & Pachios, LLP, One City Center, Portland, ME 04101; and Spector Roseman & Kodroff, P.C., 1818 Market Street, Suite 2500, Philadelphia, PA 19103.

11. “Settlement Class Member” means each member of the Settlement Class who has not timely and validly elected to be excluded from the Settlement Class.

12. “Settlement Amount” shall be US \$9,000,000 as specified in Paragraph 22.

13. "Settlement Fund" shall refer to the Settlement Amount plus accrued interest on said amount as set forth in Paragraph 24.

B. Approval of this Agreement and Dismissal of Claims Against Tenneco

14. Direct Purchaser Plaintiffs and Tenneco shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Action as to the Releasees only.

15. Within fifteen (15) business days after the execution of this Agreement, or at any other time agreed to by the parties, Direct Purchaser Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement (the "Motion"). The Motion shall include the proposed form of an order preliminarily approving this Agreement. The text of the proposed order shall be agreed upon by Direct Purchaser Plaintiffs and Tenneco before submission of the Motion. Tenneco shall have a reasonable opportunity to review and comment on the Motion, and Direct Purchaser Plaintiffs shall reasonably consider Tenneco's comments.

16. Direct Purchaser Plaintiffs, at a time to be decided in their sole discretion, shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to the Settlement Class (the "Notice Motion"). The Notice Motion shall include a proposed form of, method for, and proposed dates of dissemination of notice. Before submission Tenneco shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiffs shall reasonably consider Tenneco's comments.

17. Direct Purchaser Plaintiffs shall seek the entry of an order and final judgment, the text of which Direct Purchaser Plaintiffs and Tenneco shall agree upon, and such agreement will not be unreasonably withheld. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Class described in Paragraph 9, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a settlement class for the Action;

(b) as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(c) as to Tenneco, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(d) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, and consummation of this settlement, as well as over Tenneco for its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Action as to Tenneco shall be final; and

(f) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any Defendant, including Tenneco, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this

Order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

18. This Agreement shall become final when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 9 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment dismissing the Action with prejudice as to Tenneco without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Tenneco described in (i) hereof has expired in the Action or, if or there is an appeal, approval of this Agreement and the final judgment in the Action as to Tenneco has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Direct Purchaser Plaintiffs and Tenneco have executed this Agreement, Direct Purchaser Plaintiffs and Tenneco shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 56.

19. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any and all negotiations, documents, and discussions associated with them, shall be deemed or construed to be an admission by Tenneco or any other Releasee, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Tenneco or any other Releasee, or of the truth of any of the claims or allegations contained in any complaint or any



other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the MDL Litigation, or in any other arbitration, action or proceeding whatsoever, against Tenneco or any other Releasee. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Section K, subject to the limitations in those paragraphs, against any other defendants in the MDL Litigation, to establish any of the above or to develop and promulgate a plan of allocation and distribution. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Tenneco or any other Releasee, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims (defined below), or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue

20. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 18, and in consideration of payment of the Settlement Amount, as specified in Paragraph 22, into the Escrow Account (defined below), and for other valuable consideration (Cooperation), the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, damages, judgments, losses, and rights of action of every nature and description, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the settlement, whether directly, representatively, derivatively or in any other capacity) under any federal, state, local, statutory, or common law of any jurisdiction in the United States, that

Releasors, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any conduct, act or omission of the Releasees prior to the Execution Date alleged in the Complaint, or in any future complaint concerning price fixing, bid rigging, or market, customer, or supply allocation of Automotive Exhaust Systems including but not limited to any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Action (the "Released Claims"), provided however, that nothing herein shall release: (1) any claims based on indirect purchases of Automotive Exhaust Systems; (2) claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, breach of product warranty, securities or other similar claim relating to Automotive Exhaust Systems; (3) claims brought outside the United States relating to purchases of Automotive Exhaust Systems outside the United States; (4) claims brought under laws other than those of the United States relating to purchases of Automotive Exhaust Systems outside the United States; and (5) claims concerning any product other than Automotive Exhaust Systems. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless the Agreement, for any reason, does not become final, or is rescinded or otherwise fails to become effective.

21. In addition to the provisions of Paragraph 20, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as

set out in Paragraph 18, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 20, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Tenneco and Direct Purchaser Plaintiffs have agreed to release pursuant to Paragraph 20, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount

22. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Tenneco shall pay or cause to be paid the Settlement Amount of \$9,000,000. The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Section E (“Escrow Account”) within the later of (i) thirty (30) days following entry of an order preliminarily approving this Agreement or (ii) thirty (30) days following the date that Tenneco is provided with the account number, account name, and wiring transfer information for the Escrow Account. No part of the

Settlement Amount paid by Tenneco shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

E. Escrow Account

23. An Escrow Account shall be maintained by Settlement Class Counsel at The Huntington National Bank. The Escrow Account shall be administered under the Court's continuing supervision and control.

24. All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund. Tenneco shall have no responsibility for, or liability in connection with, the Settlement Fund or Escrow Account, including, without limitation, the investment, administration, maintenance, or distribution thereof.

25. The Settlement Fund held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as the Settlement Fund shall be distributed pursuant to this Agreement or further order(s) of the Court.

26. Reasonable disbursements for expenses associated with providing notice of the settlement to the Settlement Class and expenses for maintaining and administering the Settlement Fund may be paid without approval from the Court. Taxes and expenses incurred in connection with taxation matters may also be paid without approval from the Court and these taxes and

expenses shall not be refundable to Tenneco in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective, to the extent such expenses have actually been expended or incurred. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

27. The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Tenneco, a “relation back election” as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end. At the direction of Settlement Class Counsel, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not Final Approval has occurred. In the event federal or state income tax liability is finally assessed against and paid by Tenneco as a result of any income earned on the funds in the Escrow Account, Tenneco shall be entitled to reimbursement of such payment from the funds in the Escrow Account after approval of the Court and whether or not Final Approval has occurred. Tenneco will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, Tenneco and any Releasee, and their respective counsel, shall have no responsibility to make any tax filings related to the Settlement Fund or to pay any taxes or tax expenses with respect thereto, and neither Tenneco nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

28. If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 9, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Tenneco into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 26 and 30), shall be returned to Tenneco from the Escrow Account along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or Settlement Class.

F. Exclusions

29. Within ten (10) days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel will cause copies of all timely requests for exclusion from the Settlement Class to be provided to counsel for Tenneco. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, Tenneco reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a direct purchaser of any allegedly price-fixed Automotive Exhaust Systems or has standing to bring any claim.

G. Payment of Expenses

30. Tenneco agrees to permit use of US \$100,000 (which limitation is effective up until the date of final approval of this settlement) of the Settlement Fund towards notice to the Settlement Class and the costs of administration of the Settlement Fund. The notice and administration expenses (up to the maximum of US \$100,000) are not recoverable by Tenneco if this settlement does not become final or is terminated to the extent such funds have actually been expended or the expenses have been incurred for notice and administration costs. Any remaining expenses in excess of the maximum of US \$100,000 shall be recoverable by Tenneco if this Agreement does not become final or is terminated. Other than as set forth in this Paragraph, Tenneco shall not be liable for any of the costs or expenses of the litigation of the Action,

including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

31. To mitigate the costs of notice and administration, the Direct Purchaser Plaintiffs shall use their best efforts, if practicable, to disseminate notice with any other settlements reached with other Defendants in the Action and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

32. Within (30) days after the Execution Date, Tenneco will supply to Settlement Class Counsel, in an electronic mailing format, the names and addresses of putative Settlement Class Members to whom it or its subsidiaries or affiliates sold Automotive Exhaust Systems during the Settlement Class Period to the extent they are identifiable through reasonable efforts.

H. The Settlement Fund.

33. Releasors' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Fund, and Releasors shall have no other recovery against Tenneco or any other Releasee as to the Released Claims.

34. After this Agreement becomes final within the meaning of Paragraph 18, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 26 and 30.

35. Direct Purchaser Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs, as provided by Court Order and the provisions of Paragraphs 26 and 30. Tenneco and the other Releasees shall not be liable for any costs, fees, or expenses of any of Direct Purchaser Plaintiffs' or the Settlement Class' respective attorneys, experts, advisors, agents, or representatives. Instead, all such costs, fees, and expenses as approved by the Court, or authorized by Paragraphs 26 and 30, shall be paid out of the Settlement Fund.

I. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Award for the Class Representative

36. Subject to Court approval, Direct Purchaser Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all past, current, or future litigation costs and expenses and any award of attorneys' fees. An incentive award to each Direct Purchaser Plaintiff, if approved by the Court, will also be paid solely out of the Settlement Fund. Attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 54.

37. The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs and expenses, or incentive awards for class representatives to be paid out of the Settlement Fund are not part of this



Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement, and any order or proceeding relating to a request for attorneys' fees and reimbursement of expenses or incentive awards, or any appeal from any such order, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

38. Neither Tenneco nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or Direct Purchaser Plaintiffs of any fee and expense award, or incentive award, in the Action.

39. Neither Tenneco nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, Direct Purchaser Plaintiffs and/or any other person who may assert some claim thereto, of any fee and expense Award that the Court may make in the Action.

K. Cooperation

40. In return for the release and discharge provided herein, Tenneco agrees to pay the Settlement Amount, and further agrees to use its reasonable best efforts to provide satisfactory and timely Cooperation, at its expense, as set forth specifically in this Section K, until the later of the entry of the final judgment or judgments with respect to all the remaining Defendants in the Action or dismissal with prejudice of those Defendants and when such judgments or dismissals become "final" as described in Paragraph 18. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with Tenneco's obligations, if any, to the United States Department of Justice ("DOJ"), the Japanese Fair Trade Commission, the European Commission, or any other government entity (collectively, "Government Entities"). All Cooperation shall be coordinated so as to avoid all unnecessary

duplication and expense, shall otherwise be reasonable, and shall not impose undue burden and expense on Tenneco to the extent practicable.

41. Identity of Individuals. Within ten (10) business days of the Execution Date Tenneco will provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of Tenneco who: (1) were interviewed and/or prosecuted by any of the Government Entities in connection with the alleged anticompetitive activity relating to Automotive Exhaust Systems sold in or into the United States or installed in Vehicles sold in or into the United States; or (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Automotive Exhaust Systems sold in or into the United States or installed in Vehicles sold in or into the United States; or (3) were disclosed to the DOJ as having knowledge or information relating to the DOJ's investigation into alleged antitrust violations with respect to Automotive Exhaust Systems sold in or into the United States or installed in Vehicles sold in or into the United States.

42. Documents. Tenneco will use its reasonable best efforts to substantially complete the production of the following Documents no later than ninety (90) days after the Execution Date of this Agreement: (1) Documents provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Exhaust Systems sold in or into the United States or installed in Vehicles sold in or into the United States; (2) Documents concerning a communication, meeting, or agreement regarding Exhaust Systems sold in or into the United States or installed in Vehicles sold in or into the United States collected and reviewed as of the Execution Date in connection with a communication, meeting, or agreement regarding Exhaust Systems sold in the United States or installed in Vehicles sold in or into the United States, by any employee, officer or director of Tenneco with any employee, officer, or director of

another manufacturer or seller of Exhaust Systems, but that were not provided to or seized by Government Entities; (3) Documents sufficient to show Tenneco's general methodology for determination of their prices for Exhaust Systems sold in or into the United States or installed in Vehicles sold in or into the United States; (4) Documents sufficient to show requests for quotation ("RFQ"), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Exhaust Systems sold in or into the United States or installed in Vehicles sold in or into the United States, including any Annual Price Reduction ("APR") Documents. As to Documents in Tenneco's possession, custody, or control that are not listed above, Tenneco will consider in good faith any reasonable request by Direct Purchaser Plaintiffs to collect and produce such Documents, provided the request would not impose an undue burden on Tenneco. All currently pending discovery requests will be withdrawn, and no further discovery will be sought from any Tenneco entity other than as provided for in this Agreement.

H. Transactional Data.

43. Within sixty (60) days of preliminary approval by the Court of the Agreement, Tenneco will produce transactional data regarding the GM Epsilon I, GM Epsilon II, and GM Delta II platforms. In addition, Tenneco shall within sixty (60) days of Direct Purchaser Plaintiffs' request produce: (1) transactional data concerning Tenneco's sales of Exhaust Systems to Original Equipment Manufacturers in the United States or installed in Vehicles sold in the United States identified by Tenneco or Direct Purchaser Plaintiffs that were subject to alleged collusion; and (2) up to ten (10) additional RFQs specifically identified by Direct Purchaser Plaintiffs or Tenneco concerning Exhaust Systems sold in the United States or installed in Vehicles sold in the United States. Except as provided herein, Tenneco will only need to produce transactional data that exists as of the Execution Date of this Agreement and will not

be obligated to do any analyses of the data for Settlement Class Counsel. In addition, Tenneco will provide, in response to a written request from Settlement Class Counsel, a single production of electronic transactional data generated during the two years after the Execution Date of this Agreement concerning Exhaust Systems sold to Original Equipment Manufacturers in the United States or installed in Vehicles sold in the United States, as it exists in Tenneco's electronic database at the time of the request, within sixty (60) days of the receipt of such request. Tenneco shall preserve such transactional data for at least two (2) years after the Execution Date of the Agreement.

44. It is understood that certain categories of the aforementioned information may not be maintained by Tenneco in the form of transactional data. To the extent gaps in data exist, Settlement Class Counsel and Tenneco shall use their best efforts to reach a reasonable, narrowly tailored agreement concerning the production of alternative sources of information in Tenneco's control. Tenneco shall also provide reasonable assistance to Settlement Class Counsel in understanding the transactional data produced, including, if appropriate, a reasonable number of communications with Direct Purchaser Plaintiffs' experts and between technical personnel.

45. Attorney Proffers, Witness Interviews, Depositions, Declarations, and Trial Testimony. Any attorney proffers, witness interviews, or depositions provided pursuant to the below obligations shall be coordinated with, and occur at the same time as, the attorney proffers, witness interviews, and depositions to be provided in settlements of indirect purchaser claims entered into by Tenneco in the MDL Litigation and any related obligations that may arise from any other settlement to the extent practicable.

(a) Tenneco's counsel will make themselves available for reasonable conversations in connection with the previously provided attorney's proffers, and will use best

efforts to respond to questions posed by Settlement Class Counsel. Tenneco further agrees to make reasonable best efforts to make five (5) persons, whose identities will be subject to a meet-and-confer by Tenneco and the Direct Purchaser Plaintiffs, available for interviews and depositions, provide five (5) declarations or affidavits from the same persons, and make those persons available to testify at trial. Each interview and deposition shall be conducted at a mutually agreed-upon location in the United States, and shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English, in which case each deposition shall be limited to a total of thirteen (13) hours over two (2) days.

(b) In addition to its Cooperation obligations set forth herein, at the request of Direct Purchaser Plaintiffs, Tenneco agrees to use its reasonable best efforts to provide affidavit(s) or written declarations and/or at trial, in Settlement Class Counsel's discretion, representatives qualified to authenticate, establish as business records, or otherwise establish any other necessary foundation for admission into evidence of any Documents or transactional data produced or to be produced by Tenneco, and to the extent possible, any Documents produced by Defendants or third parties in this Action. Settlement Class Counsel agree to use their best efforts to obtain stipulations that would avoid the need to call Tenneco witnesses at trial for the purpose of obtaining such evidentiary foundations.

(c) In addition, after conducting a reasonable search, Tenneco shall, to the best of its knowledge, identify those vehicles sold in the United States from January 1, 2002 through the Execution Date of this Agreement that contain Automotive Exhaust Systems sold by Tenneco.

46. Notwithstanding any other provision in this Settlement Agreement, Tenneco may assert where applicable the work product doctrine, the attorney client privilege, the joint defense

privilege, and the common interest privilege with respect to any Cooperation Materials requested under this Settlement Agreement and withhold production of that Document. If any Documents protected by the attorney client privilege, the work product doctrine, the joint defense privilege, and/or the common interest privilege are accidentally or inadvertently produced, upon notice by Tenneco of such inadvertent production, these Documents shall be promptly returned to Tenneco's counsel, and their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents. No Document shall be withheld under claim of privilege or work product if produced to or made available to any Government Entity, unless clawed back from those entities pursuant to Rule 502 or otherwise.

47. Direct Purchaser Plaintiffs and Settlement Class Counsel agree they will not use the information or Cooperation Materials provided by Tenneco or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of their claims in the MDL Litigation, and will use the information or Cooperation Materials in the MDL Litigation consistent with the Protective Order entered in the Wire Harnesses action (case number 12-md-02311, ECF No. 200) (the "Protective Order"), and will not use the information or Cooperation Materials beyond what is reasonably necessary for the prosecution of their claims in the MDL Litigation or as otherwise required by law. All Documents and other Cooperation Materials provided pursuant to this Agreement shall be governed by the terms of the Protective Order, as if they had been produced in response to discovery requests, and Tenneco shall have the right to designate any and all appropriate Documents and other Cooperation Materials as "Highly Confidential" pursuant to the Protective Order.

48. Tenneco's obligations to provide Cooperation shall not be affected by the release set forth in this Settlement Agreement. Unless this Agreement is rescinded, disapproved, or

otherwise fails to take effect, Tenneco's obligations to provide Cooperation under this Agreement shall continue in accordance with the provisions of Paragraph 41.

49. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class as defined in Paragraph 9, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against Tenneco, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any Documents or information or statements provided by Tenneco and/or the other Releasees, their counsel, or any individual made available by Tenneco and/or the other Releasees pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). This limitation shall not apply to any discovery of Tenneco which Settlement Class Counsel participate in as part of the MDL Litigation. Notwithstanding anything contained herein, Direct Purchaser Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against Tenneco in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class, as defined in Paragraph 18, or in the event that it is terminated by either party under any provision herein.

50. Tenneco need not respond to discovery requests made pursuant to the Federal Rules of Civil Procedure from Direct Purchaser Plaintiffs, meet and confer, or otherwise negotiate with Direct Purchaser Plaintiffs regarding discovery requests served in the Action or otherwise participate in the Action during the pendency of the Agreement, with the exception of the Cooperation provisions set forth in this Section K. This withdrawal of discovery and pending

motions shall be without prejudice to reinstating such discovery or motions if this Agreement fails to receive final approval by the Court or in the event that it is terminated by either party under any provision herein. Other than to enforce the terms of this Agreement, neither Tenneco nor Direct Purchaser Plaintiffs shall file motions against the other, in the Action, during the pendency of the Agreement.

51. In the event that Tenneco produces Documents, including translations, or provides declarations or written responses to discovery to any party or non-party in the MDL Litigation concerning or relating to Automotive Exhaust Systems (“Relevant Production”), Tenneco shall produce all such Documents, declarations or written discovery responses to Direct Purchaser Plaintiffs contemporaneously with making the Relevant Production to the extent such Documents, declarations or written discovery responses have not previously been produced by Tenneco to Direct Purchaser Plaintiffs. In addition, Tenneco shall provide Direct Purchaser Plaintiffs with all cooperation it provides pursuant to any settlement agreement with any other party in the MDL Litigation. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of witnesses in addition to those already provided for in Paragraph 45, Settlement Class Counsel shall be permitted to attend and/or participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period up to three (3) hours at any deposition (provided that this shall not expand the time permitted for any deposition).

52. This Agreement does not restrict Settlement Class Counsel from noticing, attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may attend and/or participate in any depositions of Tenneco’s witnesses in addition to the depositions set forth in Paragraph 45, provided that the time for participation of Settlement Class



Counsel shall not expand the time permitted for the deposition as may be provided by the Court, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a Tenneco current or former employee. Participation by Settlement Class Counsel in the depositions discussed in this Paragraph will not limit the number of depositions to be provided under Paragraph 45. Direct Purchaser Plaintiffs and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 45 above are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication.

53. If Settlement Class Counsel believe that Tenneco or any current employee, officer or director of Tenneco has failed to provide Cooperation under the terms of this Agreement, Settlement Class Counsel shall meet and confer with Tenneco. Upon reaching an impasse in any meet and confer, Settlement Class Counsel may seek an Order from the Court compelling Tenneco or such employee, officer, or director of Tenneco to provide the Cooperation sought. Nothing in this provision shall limit in any way Tenneco's ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement.

L. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered

54. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 17, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then Tenneco and Direct Purchaser Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 26 and 30 of this Agreement shall remain in effect in the event this Agreement is rescinded.

Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 66. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

55. In the event that this Agreement does not become final as set forth in Paragraph 18, or this Agreement otherwise is terminated, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to Tenneco less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 26 and 30. Tenneco expressly reserves all rights and defenses if this Agreement does not become final.

56. Further, and in any event, Direct Purchaser Plaintiffs and Tenneco agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by Tenneco, or the other Releasees, and shall not be used against Tenneco or the Releasees, or (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the MDL Litigation, and shall not be used against Tenneco or the Releasees, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation or in any other action or proceeding, against Tenneco or the Releasees. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiffs from using Cooperation Materials produced by Tenneco against any other defendants in any action to establish (i) or (ii) above.

57. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant

claims with respect to each Releasee as provided in this Agreement in exchange for the payment of the Settlement Amount as well as Cooperation by Tenneco.

M. Miscellaneous

58. Tenneco, Direct Purchaser Plaintiffs, and Settlement Class Counsel agree not to disclose publicly or to any other person, except to the Releasees or as otherwise required by law or statute in any jurisdiction, the terms of this Agreement until this Agreement is fully executed by all parties.

59. Tenneco shall submit all materials required to be sent to appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

60. This Agreement does not settle or compromise any claim by Direct Purchaser Plaintiffs or any Settlement Class Member asserted in the Complaint or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by Direct Purchaser Plaintiffs and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than Releasees for sales made by Releasees relating to alleged illegal conduct are specifically reserved by Direct Purchaser Plaintiffs and Settlement Class Members. Tenneco's and the other Releasees' sales to the Settlement Class and their alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part of any joint-and-several liability claims against other current or future Defendants in the Action or other persons or entities other than Releasees. Releasees shall not be responsible for any payment to Direct Purchaser Plaintiffs other than the Settlement Amount and the amounts specifically agreed to in Paragraphs 26 and 30.

61. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, interpretation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Direct Purchaser Plaintiffs and Tenneco, including challenges to the reasonableness of any party's action. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Michigan without regard to its choice of law or conflict of laws principles. Tenneco will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

62. This Agreement constitutes the entire, complete and integrated agreement among Direct Purchaser Plaintiffs and Tenneco pertaining to the settlement of the Action against Tenneco, and supersede all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Direct Purchaser Plaintiffs and Tenneco in connection herewith. This Agreement may not be modified or amended except in writing executed by Direct Purchaser Plaintiffs and Tenneco, and approved by the Court.

63. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiffs and Tenneco. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Direct Purchaser Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasees. The Releasees (other than Tenneco entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

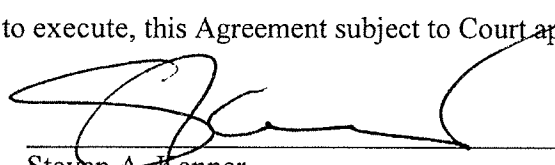
64. This Agreement may be executed in counterparts by Direct Purchaser Plaintiffs and Tenneco, and a facsimile or Portable Document Format (.pdf) image of a signature shall be deemed an original signature for purposes of executing this Agreement.

65. Neither Direct Purchaser Plaintiffs nor Tenneco shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.


66. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication or document shall be provided by facsimile, or electronic mail (provided that the recipient acknowledges having received that email, with an automatic “read receipt” or similar notice constituting an acknowledgement of an email receipt for purposes of this Paragraph), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

67. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement subject to Court approval.

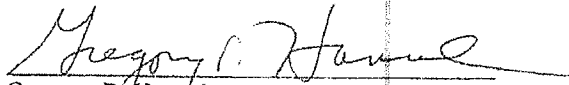
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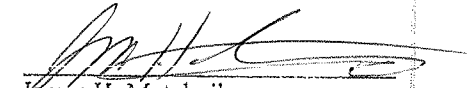


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