

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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311
IN RE: SHOCK ABSORBERS	Hon. Sean F. Cox
THIS RELATES TO: ALL DIRECT PURCHASER ACTIONS	2:15-cv-03301-SFC-RSW 2:16-cv-13616-SFC-RSW

ORDER AND FINAL JUDGMENT

VIP, Inc. and Performance Internet Parts, LLC (the “Direct Purchaser Plaintiffs”), on behalf of themselves and the Settlement Class members, and Defendants KYB Corporation (f/k/a Kayaba Industry Co., Ltd.) and KYB Americas Corporation (collectively, “KYB”), entered into a Settlement Agreement to fully and finally resolve the Settlement Class’s claims against KYB and the other Releasees. On March 1, 2023, the Court entered an Order granting preliminary approval of the proposed KYB settlement and authorizing the Direct Purchaser Plaintiffs to disseminate notice of the proposed settlement with KYB, the fairness hearing, and related matters to the Settlement Class (the “Preliminary Approval and Notice Order”). (2:15-cv-03301, ECF No. 80). Notice was provided to the KYB Settlement Class pursuant to the Preliminary Approval and Notice Order, and the Court held a fairness hearing on June 8, 2023.

Having considered the Direct Purchaser Plaintiffs’ Motion for Final Approval of the Proposed Settlement with KYB, oral argument presented at the fairness hearing, and the complete record in this matter,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. This Court has jurisdiction over the subject matter of this litigation.

2. Terms capitalized in this Order and Final Judgment and not otherwise defined herein have the same meanings as those used in the Settlement Agreement.

3. The Preliminary Approval and Notice Order outlined the form and manner by which the Direct Purchaser Plaintiffs would (and subsequently did) provide the KYB Settlement Class with notice of the settlement, the fairness hearing, and related matters. The notice program included individual notice via first class mail to members of the KYB Settlement Class who could be identified through reasonable efforts, as well as the publication of a summary notice in *Automotive News*. Additionally, an Informational Press Release targeting automotive industry trade publications was issued nationwide via PR Newswire's "Auto Wire." Finally, a copy of the Notice was (and remains) posted on-line at www.AutoPartsAntitrustLitigation.com/ShockAbsorbers. Proof that mailing, publication, and posting conformed with the Preliminary Approval and Notice Order has been filed with the Court. This notice program fully complied with Fed. R. Civ. P. 23, and the requirements of due process. It provided due and adequate notice to the KYB Settlement Class.

4. The settlement was attained following an extensive investigation of the facts. It resulted from vigorous arm's-length negotiations, which were undertaken in good faith by counsel with significant experience litigating antitrust class actions.

5. The settlement was entered into by the parties in good faith.

6. Final approval of the settlement with KYB is hereby granted pursuant to Fed. R. Civ. P. 23(e), because it is "fair, reasonable, and adequate" to the KYB Settlement Class. In reaching this conclusion, the Court considered the complexity, expense, and likely duration of the litigation, the KYB Settlement Class's reaction to the settlement, and the result achieved.

7. The KYB Settlement Class provisionally certified by the Court in its Preliminary Approval and Notice Order is hereby certified as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and is composed of: “All individuals and entities who purchased Shock Absorbers in the United States directly from Defendants (or their controlled subsidiaries, affiliates, or joint ventures) from January 1, 1995 through September 18, 2021 (the “Settlement Class Period”), with the exception of the following purchasers, which are specifically excluded from the Settlement Class: American Honda Motor Co, Inc.; Nissan Motor Co., Ltd.; Subaru of America, Inc.; Toyota Motor Corporation; and each of these entity’s respective present and former parent companies, subsidiaries, and affiliates. Also 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.”

8. The Court adopts and incorporates herein all findings made under Rule 23 in its Preliminary Approval and Notice Order.

9. The Court’s certification of the KYB Settlement Class as provided herein is without prejudice to or waiver of the rights of any Defendant to contest certification of any other class proposed in these coordinated actions. The Court’s findings in this Order shall have no effect on the Court’s ruling on any motion to certify any class in these actions or on the Court’s rulings concerning any Defendant’s motion, and 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.

10. The entities identified on Exhibit “A” hereto have timely and validly requested exclusion from the KYB Settlement Class and, therefore, are excluded. Such entities are not

included in or bound by this Order and Final Judgment. Such entities are not entitled to any recovery from the settlement proceeds obtained through this settlement.

11. The Action and all Released Claims are hereby dismissed with prejudice with respect to the Releasees and without costs. The Releasors are barred from instituting or prosecuting, in any capacity, an action or proceeding that asserts a Released Claim against any of the Releasees. This dismissal applies only in favor of KYB and the other Releasees.

12. The Escrow Account, plus accrued interest thereon, is approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

13. Neither the Settlement Agreement, nor any act performed or document executed pursuant to the Settlement Agreement, may be deemed or used as an admission of wrongdoing in any civil, criminal, administrative, or other proceeding in any jurisdiction.

14. This Order and Final Judgment does not settle or compromise any claims by the Direct Purchaser Plaintiffs or the Settlement Class against any other Defendant or other person or entity other than KYB and the other Releasees, and all rights against any other Defendant or other person or entity are specifically reserved.

15. Without affecting the finality of this Order and Final Judgment, the Court retains exclusive jurisdiction over: (a) the enforcement of this Order and Final Judgment; (b) the enforcement of the Settlement Agreement; (c) any application for distribution of funds, attorneys' fees or reimbursement of expenses made by Plaintiffs' Counsel; and (d) the distribution of the settlement proceeds to Settlement Class members, including any service awards for the Class Representatives.

16. Pursuant to Fed. R. Civ. P. 54, the Court finds that there is no just reason for delay and hereby directs the entry of judgment as to KYB.

IT IS SO ORDERED.

Dated: June 15, 2023

s/Sean F. Cox

Sean F. Cox
U. S. District Judge

EXHIBIT A

AUTOMOTIVE PARTS ANTITRUST LITIGATION, CASE NO. 2:12-MD-02311,
SHOCK ABSORBERS, 2:15-CV-03301-SFC-RSW; 2:16-CV-13616-SFC-RSW

REQUESTS FOR EXCLUSION FROM THE DIRECT
PURCHASER KYB SETTLEMENT CLASS

<p>NISSAN Nissan Motor Co., Ltd. and Nissan North America, Inc., along with their subsidiaries and majority-owned affiliates</p> <p>SUBARU OF INDIANA Subaru of Indiana Automotive, Inc.</p>	
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