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

In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION	**Case No. 12-md-02311** **Honorable Marianne O. Battani**
In Re: SMALL BEARINGS CASES	
THIS DOCUMENT RELATES TO: ALL DIRECT PURCHASER ACTIONS	**2:17-cv-04201-MOB-MKM** **2:17-cv-10853-MOB-MKM**

DIRECT PURCHASER PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION COSTS AND EXPENSES

Direct Purchaser Plaintiff hereby moves the Court, pursuant to Rules 23 and 54 of the Federal Rules of Civil Procedure, for an award of attorneys' fees and litigation costs and expenses from the proceeds of the settlement with MINEBEA MITSUMI Inc., NMB (USA), Inc., and NMB Technologies Corporation (collectively, "Minebea" or the "Minebea Defendants"). In support of this motion, Direct Purchaser Plaintiff relies upon the accompanying memorandum of law and the Declarations attached thereto, which are incorporated by reference herein.

Dated: December 18, 2017

Respectfully submitted,

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DIRECT PURCHASER PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION COSTS AND EXPENSES

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I. INTRODUCTION

A $9,750,000 settlement with MINEBEA MITSUMI Inc., NMB (USA), Inc., and NMB Technologies Corporation (collectively "Minebea" or the "Minebea Defendants") has been obtained in the *Small Bearings Cases* through Plaintiff's Counsel's efforts.[1] In addition, the settlement provides for Minebea's cooperation in the prosecution of the litigation against the NSK Defendants.[2]

Plaintiff's Counsel have devoted time and money in pursuing these claims on behalf of the class members. Here, instead of long, drawn-out discovery against Minebea, the parties exchanged information early in the case and, after due consideration of that information, embarked on a path to settle the case in the most efficient manner possible. Plaintiff's and Minebea's counsel were able to do so, thus minimizing the burden and expense for all concerned.

Although the case settled relatively early, plenty of work has been required. In pursuing the case, Plaintiff's Counsel have drafted complaints; reviewed, analyzed, and coded documents; prepared for and took the deposition of an NSK employee; informally obtained information regarding Plaintiff's allegations; negotiated the Minebea settlement; and prepared the settlement agreement and the attendant notices, orders, and preliminary and final approval documents. The work is, of course, not over with final settlement approval, as Plaintiff's Counsel will be deeply involved in claims processing and the distribution of the settlement funds to the class member claimants. Moreover, Plaintiff's Counsel are still litigating the case against the NSK Defendants.

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[1] This motion is submitted by Interim Liaison Counsel and Interim Co-Lead and Settlement Class Co-Lead Counsel and Settlement Class Counsel appointed by the Court.

[2] NSK Corporation, NSK Ltd., and NSK Americas, Inc. ("NSK" or the "NSK Defendants").

Plaintiff's Counsel now respectfully move for an order awarding: 1) attorneys' fees of 30% of the Minebea settlement funds; and 2) $19,145.37 for litigation costs and expenses of Plaintiff's Counsel. For the reasons set forth herein, Plaintiff's Counsel respectfully submit that the requested fee and expense awards are fair, both to the class members and Plaintiff's Counsel, and reasonable under both well-established Sixth Circuit precedent concerning awards of attorneys' fees in class action litigation and this Court's prior decisions awarding fees and expenses in the *Automotive Parts Antitrust Litigation*.

II. BACKGROUND AND SUMMARY OF WORK PERFORMED TO DATE BY PLAINTIFF'S COUNSEL

The background of the *Small Bearings Cases* is set forth in the Memorandum in Support of Direct Purchaser Plaintiff's Motion for Final Approval of Proposed Settlement With Minebea Defendants, which was filed on December 18, 2017, and will not be repeated here. In connection with the *Small Bearings Cases*, Plaintiff's Counsel have:

- Investigated the bearings industry generally, and small bearings specifically, and drafted and filed complaints against Minebea and the NSK Defendants;
- Reviewed, analyzed, and coded documents;
- Prepared for and conducted the deposition of an NSK employee;
- Informally obtained information regarding Plaintiff's claims;
- Negotiated the settlement and prepared the settlement agreement;
- Prepared the settlement notices, orders, and the preliminary and final approval briefs seeking approval from the Court; and
- Worked with the claims administrator to design and send notices to the members of the Settlement Class and to create and maintain a settlement website.

In addition, the case continues against NSK.

III. CLASS NOTICE

On October 25, 2017, the Court approved the dissemination of notice to the members of the Settlement Class.[3] Notice Dissemination Order, Doc. 5. On November 14, 2017, one thousand and forty-seven (1,047) copies of the Notice (attached as Exhibit 1) were mailed to potential Settlement Class members identified by Defendants. As required by Fed. R. Civ. P. 23(h), the Notice informed class members that Plaintiff's Counsel would request an award of attorneys' fees of up to one-third of the settlement funds and payment of expenses from the settlement funds, and explained how class members could object to the requests. (*Id.* at 2, 7-9). Summary notice was published on November 27, 2017 in the national edition of *The Wall Street Journal* and in *Automotive News*. In addition, a copy of the Notice is posted online at www.autopartsantitrustlitigation.com.

The deadline for objections is January 8, 2018. Plaintiff's Counsel have not received any objections thus far. We will provide the Court with a final report on any objections before the Fairness Hearing.

IV. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

Rule 23(h) of the Federal Rules of Court Procedure provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). As discussed above, Plaintiff's Counsel have complied with the requirements of Rule 23(h)(1) and (2), which provides for notice to the class of the attorneys' fees request and an opportunity to object. Thus, what remains for the Court to determine is whether the requested fee is reasonable and fair to the class members and Plaintiff's Counsel under the circumstances. As discussed below, Plaintiff's

[3] A Declaration or Affidavit confirming that notice to the Settlement Class was disseminated in compliance with the Court's order will be filed at least ten (10) days prior to the Fairness Hearing.

Counsel believe that their attorneys' fees request of 30% of the settlement funds is fair to the class members, reasonable under the circumstances, and well-supported by the applicable law.

A. THE PERCENTAGE OF THE RECOVERY METHOD PREVIOUSLY EMPLOYED BY THE COURT IN THIS MDL IS THE APPROPRIATE METHOD FOR ASSESSING THE FEE REQUEST.

As the Court has previously observed, Sixth Circuit law grants district courts discretion to select an appropriate method for determining the reasonableness of attorneys' fees in class actions. *In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *1 (E.D. Mich. Dec. 28, 2016) (citations omitted). *See generally Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (discussing the advantages and disadvantages of each method). In this MDL, the Court has used the "percentage-of-the-fund" method. *E.g., In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *1 (collecting cases) (holding that "the percentage-of-the-fund … method of awarding attorneys' fees is preferred in this district because it eliminates disputes about the reasonableness of rates and hours, conserves judicial resources, and aligns the interests of class counsel and the class members"). Plaintiff's Counsel respectfully request that the Court apply the same method here. *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *16 (E.D. Mich. Dec. 13, 2011); *In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008).[4]

[4]At the Court's request, Interim Lead Counsel for the Direct Purchasers previously submitted a brief on attorneys' fees generally. Direct Purchaser Class Plaintiffs' Memorandum of Law Regarding Attorneys' Fees, 2:12-md-02311-MOB-MKM (Doc. No. 1399) (June 14, 2016). Plaintiff's Counsel's fee request here is consistent with the approach suggested in that brief.

B. THE REQUESTED FEE CONSTITUTES A FAIR AND REASONABLE PERCENTAGE OF THE SETTLEMENT FUND.

Plaintiff's Counsel respectfully request a fee of 30% of the proceeds of the Minebea settlement created by their efforts. As detailed below, there is extensive precedent to support the requested fee. Additionally, Plaintiff's Counsel request reimbursement of litigation costs and expenses paid or incurred through November 30, 2017.

The requested 30% fee is well within the range of fee awards approved as reasonable by this Court and many others. To date in the *Automotive Parts Litigation*, the Court has approved several fee awards of 33.3% of the settlement fund in question, finding that percentage to be reasonable. *In re Automotive Parts Antitrust Litig.*, 2016 WL 8201516, at *2 (E.D. Mich. Dec. 28, 2016) (awarding counsel for the Truck and Equipment Dealer Plaintiffs 33.3% of a $4,616,499 settlement fund in the *Wire Harness* and *Occupant Safety Systems* cases); 12-cv-00102-MOB-MKM, Doc. 401 (awarding counsel for the Auto Dealer Plaintiffs 33.3% of a $55,500,504 settlement fund in *Wire Harness*).

The requested 30% award is also consistent with a wealth of authority from this Circuit and others approving class action fees in the range of 30% to one-third of a common fund. *Bessey v. Packerland Plainwell, Inc.*, 2007 WL 3173972, at *4 (W.D. Mich. 2007) ("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") (internal quotation marks omitted); *Thacker v. Chesapeake Appalachia, L.L.C.,* 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010) ("Using the percentage approach, courts in this jurisdiction and beyond have regularly determined that 30% fee awards are reasonable"). District courts in the Sixth Circuit (and elsewhere) have awarded 30% or more of settlement funds as reasonable attorneys' fees in antitrust cases. For example, this Court awarded 30% of the settlement funds in *Wire Harness* to

Direct Purchaser Plaintiffs' Counsel. Doc. 495 in 2:12-cv-00101. [5] Other courts have also awarded fees in that range. *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (one-third of a $19 million fund); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, *1 (E.D. Tenn. Jun. 30, 2014) (one-third of a $73 million fund); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013) (one-third of a $158.6 million fund); *In re Foundry Resins Antitrust Litig.,* No. 2:04-md-1638 (S.D. Ohio Mar. 31, 2008) (one-third of a $14.1 million fund); *In re Polyurethane Foam Antitrust Litig.,* 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (30% of a $148.7 million fund); *In re Refrigerant Compressors Antitrust Litig.,* MDL No. 2:09-md-02042 (E.D. Mich. June 16, 2014) (30% of a $30 million fund).[6] Accordingly, Plaintiff's Counsel's fee request is fully supported by the decisions in many cases.

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[5] The Court has also made fee awards that were lower than the range of 30% to one-third of a fund. *See Occupant Safety Systems,* 2:12-cv-00601, Doc. No. 128.

[6] *See, e.g., In re Plasma-Derivative Protein Therapies Antitrust Litig.*, 1:09-cv-07666 (N.D. Ill. Jan. 22, 2014) (awarding one-third interim fee from initial settlement in multi-defendant case); *Standard Iron Works v. Arcelormittal,* 2014 WL 7781572, 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, a 2.99 multiplier); *In re Linerboard Antitrust Litig.,* 2004 WL 1221350 (E.D. Pa. June 2, 2004) (30% of $202 million awarded, a 2.66 multiplier); *In re OSB Antitrust Litig.,* Master File No. 06-826 (E.D. Pa.) (fee of one-third of $120 million in settlement funds); *Heekin v. Anthem, Inc.*, 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% 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,*

C. CONSIDERATION OF THE FACTORS IDENTIFIED BY THE SIXTH CIRCUIT SUPPORTS THE REQUESTED FEE.

Once the Court has selected a method for awarding attorneys' fees, the next step is to consider the six factors that the Sixth Circuit has identified to guide courts in weighing a fee award in a common fund case: 1) the value of the benefit rendered to the class; 2) the value of the services on an hourly basis; 3) whether the services were undertaken on a contingent fee basis; 4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; 5) the complexity of the litigation; and 6) the professional skill and standing of counsel involved on both sides. *E.g., Bowling v. Pfizer, Inc.*,102 F.3d 777, 780 (6th Cir. 1996); *In re Wire Harness Cases*, 2:12-cv-00101 (E.D. Mich.) (Doc. 495), at 3-5. When applied to the facts of this case, these factors indicate that the fee requested constitutes fair and reasonable compensation for Plaintiff's Counsel's efforts.

1. PLAINTIFF'S COUNSEL SECURED A VALUABLE BENEFIT FOR THE CLASS.

The result achieved for the class is the principal consideration. *E.g., Delphi,* 248 F.R.D. at 503. Here, as more fully discussed in Plaintiff's brief filed in support of final approval of the settlement, Plaintiff's Counsel have achieved an excellent recovery of $9,750,000 for the

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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); *Klein v. PDG Remediation, Inc.,* 1999 WL 38179, at *4 (S.D.N.Y. Jan. 28, 1999) ("33% of the settlement fund…is within the range of reasonable attorney fees awarded in the Second Circuit"); *Moore v. United States,* 63 Fed. Cl. 781, 787 (2005) ("one-third is a typical recovery"); *In re FAO Inc. Sec. Litig.*, 2005 WL 3801469, at * 2 (E.D. Pa. May 20, 2005) (awarding fees of 30% and 33%); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *5 (E.D. Pa. Dec. 1, 2004) (awarding a 33% fee and noting that "[t]he requested percentage is in line with percentages awarded in other cases"); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433-44 (E.D. Pa. 2001) (awarding one-third of a $48 million settlement fund).

Settlement Class. The recovery for the class members is in cash, rather than in coupons, future discounts or injunctive relief, which can be difficult to quantify.

2. THE VALUE OF THE SERVICES ON AN HOURLY BASIS CONFIRMS THAT THE REQUESTED FEE IS REASONABLE.

The value of the services on an hourly basis supports the requested fee award. When fees are awarded using the percentage of the fund method, some courts (including this one) have applied a lodestar "cross-check" on the reasonableness of a fee calculated as a percentage of the fund. *In Re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 754 (S.D. Ohio 2007); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *18. Use of a lodestar cross-check is optional, however, and because it is only a check, the court is not required to engage in detailed scrutiny of time records. *Cardinal*, 528 F. Supp. 2d at 767. Here, the amount of time Plaintiff's Counsel have expended makes clear that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery, and does not constitute a "windfall." *See id.* at 764. To the contrary, here the lodestar cross-check reveals that the requested fee constitutes a reasonable multiplier on Plaintiff's Counsel's lodestar.

To calculate the lodestar, a court must first multiply the number of hours counsel reasonably expended on the case by their reasonable hourly rate. *See Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). Here, the time spent on the negotiation and documentation of the Minebea settlement and the tasks required to obtain final approval is significant. The firms also have spent time reviewing, analyzing, and coding documents (for which a cap of $350 per hour has been imposed), as well as obtaining information about the claims informally and through an NSK deposition. At all times, these tasks were managed with an eye toward efficiency, and avoiding duplication.

As the Declarations submitted by the law firms set forth,[7] Plaintiff's Counsel have expended 2,352.05 hours through November 30, 2017. Applying the historical rates charged by counsel to the hours expended yields a "lodestar" value of $1,219,614.00.[8] If the Court were to award the requested fee, Plaintiff's Counsel would be receiving a multiplier of approximately 2.4 on their lodestar. Positive multipliers vary, but in the Sixth Circuit they have been as high as 6. *Cardinal*, 528 F. Supp. 2d at 767-68 (approving multiplier of 6, and observing that "[m]ost courts agree that the typical lodestar multiplier" in a large class action "ranges from 1.3 to 4.5."). In *Prandin,* 2015 WL 1396473, at *4, the fee award amounted to a 3.01 multiplier.

The work done by Plaintiff's counsel is described above and in the separate firm Declarations. Plaintiff's Counsel submit that the hours expended on this case since inception are reasonable given the current status of the case. Further, early settlement based on sufficient information is encouraged. Indeed, one of the recognized benefits of using the percentage of the fund method is that it better aligns the interests of class counsel and the class members and eliminates any incentive to unnecessarily expend hours. Here, Plaintiff's Counsel were able to achieve an excellent recovery for the Settlement Class without a needless expense of time, effort, or money by anyone.

[7] The Declarations are attached as Exhibit 2.

[8] The United States Supreme Court has held that the use of current rates, as opposed to historical 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). Plaintiff's Counsel have nevertheless submitted their lodestar information at their lower historical rates, rather than at their current (higher) rates.

3. THE REQUESTED FEE IS FAIR AND REASONABLE GIVEN THE REAL RISK THAT PLAINTIFF'S COUNSEL COULD HAVE RECEIVED NO COMPENSATION FOR THEIR EFFORTS IF THE LITIGATION HAD NOT BEEN SUCCESSFUL.

Minebea is represented by highly experienced and competent counsel. Absent the settlement, Plaintiff believes that Minebea would have denied Plaintiff's allegations and asserted defenses, and that it was prepared to defend this case through trial and appeal. Litigation risk is inherent in every case, and this is particularly true with respect to class actions. Therefore, while Plaintiff is optimistic about the outcome of this litigation, it must acknowledge the risk that Minebea could prevail with respect to certain legal or factual issues, which could result in reducing or eliminating any potential recovery.

In light of this reality, the risk factor attempts to compensate class counsel in contingent fee litigation for the possibility that they may end up receiving less than their normal hourly rates, or even nothing at all. *See, e.g. Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981), *overruled on other grounds*, *Int'l Woodworkers of Am. AFL-CIO and its Local No. 5-376 v. Champion Intern. Corp*., 790 F.2d 1174 (5th Cir. 1986); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). While Minebea did plead guilty, the Department of Justice ("DOJ") did not seek recovery for the class members, instead leaving that up to Plaintiff's Counsel. As this Court has observed, success is not guaranteed even in those instances in which a settling defendant has pleaded guilty in a criminal proceeding brought by the DOJ, which is not required to prove impact or damages. *See, e.g., In re Automotive Parts Antitrust Litig.,* 12-MD-02311, 2:12-cv-00103, Doc. No. 497, at 11 (E.D. Mich. June 20, 2016). There was certainly a risk that Plaintiff's Counsel would recover nothing or an amount insufficient to cover their lodestar (as happened in *Wire Harness,* where the fee awarded corresponded to much less than one-half of the lodestar). The risk of non-payment is

another factor that supports the requested fee. *In re Wire Harness Cases*, 2:12-cv-00101 (E.D. Mich.) (Doc. 495), at 4.

4. SOCIETY HAS AN IMPORTANT STAKE IN THIS LAWSUIT AND AN AWARD OF REASONABLE ATTORNEYS' FEES TO CLASS COUNSEL.

It is well established that 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 settlement of private antitrust litigation." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534 (E.D. Mi. 2003) (internal quotation marks omitted). *Accord, Delphi,* 248 F.R.D. at 504.

The DOJ specifically did not seek restitution from Minebea because it recognized that civil cases would potentially provide for recovery of damages. In this regard, the substantial recovery Plaintiff's Counsel obtained is necessary to make clear to businesses that antitrust violations will be the subject of vigorous private civil litigation, which will deter such conduct in the future. Thus, society as a whole – to the extent that an economy composed of competitive markets is superior to one in which free competition is stifled by collusion – stands to benefit from the work Plaintiff's Counsel have performed.

5. THE COMPLEXITY OF THIS CASE SUPPORTS THE REQUESTED FEE.

The Court is well aware that "[a]ntitrust class actions are inherently complex . . . ." *In re*

Cardizem, 218 F.R.D. at 533. S*ee also 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). While the case against Minebea settled at a relatively early stage, the case against NSK continues. As the Court has seen from the other *Bearings* case, this is also a complex case.

6. SKILL AND EXPERIENCE OF COUNSEL.

The skill and experience of counsel on both sides of the "v" is a factor that courts may consider in determining a reasonable fee award. *E.g, Polyurethane Foam,* 2015 WL 1639269, at * 7; *Packaged Ice,* 2011 WL 6219188, at *19. When the Court appointed Kohn, Swift & Graf, P.C., Preti, Flaherty, Beliveau & Pachios, L.L.P., Freed Kanner London & Millen, L.L.C., and Spector Roseman & Kodroff, P.C. as Interim Lead Counsel, it recognized that they have the requisite skill and experience in class action and antitrust litigation to effectively prosecute this litigation. Cera LLP and Cohen Milstein Sellers & Toll P.L.L.C. are also experienced antirust firms. In addition, when assessing this factor, courts also may look to the qualifications of the defense counsel opposing the class. Here, the quality of defense counsel at Arnold & Porter Kaye Scholer LLP is top-notch. The Arnold & Porter Kaye Scholer firm has an excellent reputation in the antitrust bar, significant experience, and extensive resources at its disposal.

In the final analysis, though, as a district court in Florida has observed, "[t]he quality of work performed in a case that settles before trial is best measured by the benefit obtained." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). As explained *supra*, a very substantial cash benefit was obtained for the

Settlement Class in this case, which provides the principal basis for awarding the attorneys' fees sought by Plaintiff's Counsel.

Given the excellent result achieved, the complexity of the claims and defenses, the work performed by Plaintiff's Counsel, the real risk of non-recovery (or recovery of less than the $9.75 million settlement amount), formidable defense counsel, the delay in receipt of payment, the substantial experience and skill of Plaintiff's Counsel, the reasonable multiplier on the lodestar, and the societal benefit of this litigation, a 30% attorneys' fee award from the settlement funds would be reasonable compensation for Plaintiff's Counsel's work.

V. AN AWARD OF LITIGATION EXPENSES

Plaintiff's Counsel respectfully request an award of litigation costs and expenses in the amount of $18,475.47. As the court stated in *In re Cardizem*, "class counsel is 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 productions, consulting with experts and consultants, travel and other litigation-related expenses." 218 F.R.D. at 535. The expenses incurred by each law firm are set forth in the Declarations attached as Exhibit 2. These expenses were reasonable and necessary to pursue the case, and to obtain the substantial settlement reached in this litigation.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion for an Award of Attorneys' Fees and Litigation Costs and Expenses.

Dated: December 18, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2017, I electronically filed the foregoing document with the Clerk of the court using the ECF system, which will send notification of such filing to all counsel of record registered for electronic filing.

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