

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

In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION	: : : : :	Case No. 12-md-02311 Honorable Sean F. Cox
In Re: SMALL BEARINGS CASES	: : : : :	
THIS DOCUMENT RELATES TO: ALL DIRECT PURCHASER ACTIONS	: : : : : : : :	2:17-cv-04201-SFC-RSW 2:17-cv-10853-SFC-RSW

**DIRECT PURCHASER PLAINTIFF’S MOTION FOR FINAL APPROVAL OF  
PLAN OF DISTRIBUTION OF THE MINEBEA SETTLEMENT FUND AND  
REQUESTS FOR ATTORNEYS’ FEES, REIMBURSEMENT OF LITIGATION  
EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD**

Direct Purchaser Plaintiff hereby moves the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for final approval of the proposed plan of distribution of the Minebea Settlement Fund and Settlement Class Counsel’s requests for attorneys’ fees, reimbursement of litigation expenses, and a service award to the Class Representative. In support of this motion, Plaintiff relies upon the accompanying memorandum of law, which is incorporated by reference herein.

Direct Purchaser Plaintiff does not request a hearing for this motion. Concurrence has not been sought because the Minebea Defendants were dismissed from this case and are no longer parties.

**DATED:** August 7, 2023

Respectfully submitted,  
  
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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
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_____	:	
<b>In Re: AUTOMOTIVE PARTS</b>	:	<b>Case No. 12-md-02311</b>
<b>ANTITRUST LITIGATION</b>	:	<b>Honorable Sean F. Cox</b>
_____	:	
	:	
<b>In Re: SMALL BEARINGS CASES</b>	:	
_____	:	
	:	
<b>THIS DOCUMENT RELATES TO:</b>	:	<b>2:17-cv-04201-SFC-RSW</b>
<b>ALL DIRECT PURCHASER ACTIONS</b>	:	<b>2:17-cv-10853-SFC-RSW</b>
_____	:	

**MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF  
PROPOSED PLAN OF DISTRIBUTION OF THE MINEBEA SETTLEMENT FUND  
AND REQUESTS FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION  
EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD**

**STATEMENT OF ISSUES PRESENTED**

Whether the Court should approve: (a) the proposed pro rata plan of distribution of the Minebea Settlement Fund; (b) Settlement Class Counsel's request for attorneys' fees and reimbursement of litigation expenses; and (c) Settlement Class Counsel's request for a service award to the Class Representative.

Suggested Answer: Yes.

**STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES**

*Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)

Fed. R. Civ. P. 23(d)(1)(B)

Fed. R. Civ. P. 23(h)(1)

## I. INTRODUCTION

In February 2017, Plaintiff McGuire Bearing Company (“Plaintiff”) entered into a settlement with Defendants MINEBEA MITSUMI Inc., NMB (USA), Inc., and NMB Technologies Corporation (collectively, “Minebea” or the “Minebea Defendants”) in a lawsuit brought on behalf of a class of direct purchasers of “Small Bearings.”<sup>1</sup> The Minebea Defendants agreed to pay \$9,750,000 to resolve the Settlement Class’s claims against them based on direct purchases of Small Bearings during the period from June 1, 2003 through February 15, 2017.<sup>2</sup> In March 2018, the Court granted final approval of the Minebea settlement, certified a Direct Purchaser Minebea Settlement Class, and approved Settlement Class Counsel’s request for an award of attorneys’ fees and expenses. (2:17-cv-04201, ECF Nos. 21, 22).

Plaintiff now respectfully moves this Court for approval of the proposed plan for distributing the Minebea Settlement Fund to members of the Minebea Settlement Class, Class Counsel’s request for an award of attorneys’ fees and litigation expenses in the amount of \$200,000, and the request for a service award to the Class Representative in the amount of \$25,000.

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<sup>1</sup> “Small Bearings” refers to bearings whose outer diameter is 30 millimeters or less. Small Bearings are used in numerous applications, including but not limited to the following automotive applications: air conditioning compressors, alternators, anti-lock braking systems, cooling fans, fuel pumps, motors for electric control systems, starters, steering systems, transmissions, water pumps, wheels, and windshield wiper motors.

<sup>2</sup> In November 2015, a class action lawsuit was filed on behalf of a class of direct purchasers of Small Bearings against NSK Ltd., NSK Americas, Inc., and NSK Corporation (the “NSK Defendants”) (the “NSK Action”). *Bearing Service, Inc. v. NSK Ltd., et al.*, Case No. 2:15-cv-13945 (E.D. Mich.). Minebea was an unnamed co-conspirator in the NSK Action. Plaintiff filed a separate class action complaint alleging that Minebea conspired with the NSK Defendants to suppress and eliminate competition for Small Bearings, in violation of federal antitrust laws. Claims against the NSK Defendants for their involvement in an alleged conspiracy to fix prices of Bearings, including Small Bearings, were resolved via settlement in a separate *Bearings* action that was approved by the Court on June 10, 2021. (2:12-cv-00501, ECF No. 516; 2:15-cv-13945, ECF No. 52).

**II. NOTICE WAS PROPER UNDER RULE 23 AND CONSISTENT WITH DUE PROCESS.**

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). On June 20, 2023, the Court entered an order (“Notice Order”) authorizing dissemination of notice to the Minebea Settlement Class advising class members of the proposed plan of distribution and Settlement Class Counsel’s requests for fees, reimbursement of expenses, and a service award to the Class Representative (“Notice”).

Pursuant to the Notice Order, the Notice was sent to all members of the Minebea Settlement Class identified by Minebea as its direct customers of Small Bearings; additionally, a Summary Notice was published in *Automotive News* and 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 online at [www.AutoPartsAntitrustLitigation.com/SB](http://www.AutoPartsAntitrustLitigation.com/SB). The Notice, Summary Notice, and Press Release were in the form approved by the Court and informed members of the Minebea Settlement Class of the proposed plan of distribution of the settlement proceeds and that Settlement Class Counsel would seek an award of attorneys’ fees and reimbursement of expenses not to exceed \$200,000, and a service award for the Class Representative in the amount of \$25,000 from the Minebea Settlement Fund. Finally, the Notice informed class members that they had the right to object to the proposed plan of distribution, Settlement Class Counsel’s requests for attorneys’ fees and reimbursement of expenses, and the Class Representative service award. The deadline for such objections is August 25, 2023. To date, no objections have been received.

The content and method for dissemination of notice satisfied the requirements of Federal Rule of Civil Procedure 23 and due process.

**III. THE PROPOSED PLAN FOR DISTRIBUTION OF THE SETTLEMENT FUND IS FAIR REASONABLE, AND ADEQUATE AND MERITS APPROVAL.**

Approval of a settlement fund distribution in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the plan of distribution must be fair, reasonable, and adequate. *Packaged Ice*, 2011 WL 6209188, at \*15. *Accord Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 326 (3d Cir. 2011); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 107 (E.D. Pa. 2013); *Law v. National Collegiate Athletic Ass'n.*, 108 F. Supp. 2d 1193, 1196 (D. Kan. 2000). Generally, a plan of allocation that reimburses class members based on the type and extent of their injuries is a reasonable one. *Ikon Office Solutions*, 194 F.R.D. at 184; *MCI Telecoms Corp.*, 1993 WL 142006, at \*2; 4 *Newberg*, § 12.35, at 350 (noting that pro-rata allocation of a settlement fund “is the most common type of apportionment of lump sum settlement proceeds for a class of purchasers” and “has been accepted and used in allocating and distributing settlement proceeds in many antitrust class actions”). An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel. As with other aspects of a settlement, the opinion of experienced and informed counsel is entitled to considerable weight. *In re American Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001).

The Notice sent to members of the Minebea Settlement Class on July 6, 2023, describes the plan recommended by Settlement Class Counsel for the distribution of settlement funds to Settlement Class members who file timely and proper claim forms. The proposed distribution plan provides for the Minebea Settlement Fund, with accrued interest, to be allocated among approved claimants according to the amount of their recognized transactions during the Class Period, after



payment of attorneys' fees, litigation and administration costs and expenses, and a service award for the Class Representative.

This Court has approved similar pro-rata distribution plans in the *Automotive Parts Antitrust Litigation*, as have numerous other courts in other matters. *See, e.g., In re Wire Harness Cases*, 2:12-cv-00101, ECF No. 612. *See also 4 Newberg*, § 12.35, at 353-54 (noting propriety of pro-rata distribution of settlement funds). "Settlement distributions, such as this one, that apportion funds according to the relative amount of damages suffered by class members have repeatedly been deemed fair and reasonable." *In re Vitamins Antitrust Litig.*, No. 99-197, 2000 WL 1737867, at \*6 (D. D.C. Mar. 31, 2000) (finding proposed plan for pro-rata distribution of partial settlement funds was fair, adequate, and reasonable). *Accord Prandin Direct Purchaser Antitrust Litig.*, C.A. No. 2:10-cv-12141-AC-DAS, 2015 WL 1396473, at \*3 (E.D. Mich. Jan. 20, 2015) (approving a plan as fair, reasonable, and adequate that utilized a pro-rata method for calculating each class member's share of the settlement fund). The proposed plan for allocation and distribution satisfies the above criteria and should receive final approval.<sup>3</sup>

#### **IV. THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE REASONABLE.**

Federal Rule of Civil Procedure 23(h) 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." Settlement Class Counsel complied with the requirements of Rule 23(h)(1) and (2) (notice to the class of the attorneys' fees request and an opportunity to object). What remains for the Court to determine is whether the requested fee is reasonable and fair to the class

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<sup>3</sup> Settlement Class members may share in the distribution of the Minebea Settlement Fund by completing and timely submitting the Claim Form that was included with the Notice and available on the settlement website, postmarked on or before October 26, 2023.

members and Settlement Class Counsel under the circumstances of this case. As discussed below, Settlement Class Counsel's request for attorneys' fees and expenses in the amount of \$200,000 from the Settlement Fund is fair and reasonable and well-supported by applicable law.

The Court previously awarded Settlement Class Counsel attorneys' fees and expenses respectively in the amount of \$2,919,457.36 and \$18,475.47; the fee award constituted 30% of the Minebea Settlement Fund after deducting the reimbursed expenses. Settlement Class Counsel are now requesting an additional award of attorneys' fees and litigation expenses in the amount of \$200,000 for their time and expenses related to preparing the notice documents and pleadings in connection with obtaining the Court's approval of the proposed plan for distribution of the Minebea Settlement Fund and to the administration, approval, and payment of claims. An award of \$200,000, when combined with the fees previously awarded, would amount to a total fee award of \$3,119,457.36, which would be just under 32% of the Minebea Settlement Fund. Such an award is consistent with the fee awards previously approved as reasonable by the Court in other Direct Purchaser Automotive Parts cases. *See, e.g., In Re: Shock Absorbers*, 2:15-cv-03301-SFC-RSW (June 15, 2023) (ECF No. 88) (33% fee award); *In Re: Oxygen Sensors*, 2:15-cv-03101-SFC-RSW (September 22, 2022) (ECF No. 105) (33% fee award); *In Re: Bearings Cases*, 2:12-cv-00501-SFC-RSW (June 10, 2021) (ECF No. 515) (33 1/3%).

For all the reasons set forth in Direct Purchaser Plaintiff's initial Motion for An Award of Attorneys' Fees and Litigation Costs and Expenses, *see* 2:17-cv-04201-MOB-MKM (December 18, 2017) (ECF No. 12, PageID.234-240), consideration of the factors identified by the Sixth Circuit supports the additional fee award requested.

**V. A SERVICE AWARD TO THE CLASS REPRESENTATIVE IS APPROPRIATE.**

Settlement Class Counsel request that the Court award a \$25,000 service award to McGuire Bearing Company (“McGuire”).<sup>4</sup> The Sixth Circuit has noted that such awards may be appropriate under certain circumstances. *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 311 (6<sup>th</sup> Cir. 2016); *Hadix v. Johnson*, 322 F.3d 895, 897 (6<sup>th</sup> Cir. 2003). In surveying decisions from other courts, the Court explained, “Numerous courts have authorized incentive awards. These courts have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class. Yet applications for incentive awards are scrutinized carefully by courts who sensibly fear that incentive awards may lead named plaintiffs to expect a bounty for bringing suit or to compromise the interest of the class for personal gain.” *Hadix v. Johnson*, 322 F.3d at 897 (internal citations omitted). A service award to the class representative is appropriate here. McGuire stepped forward to represent the class and without its efforts, there would not have been a settlement with Minebea in the amount of \$9,750,000, which inured to the benefit of all class members. This is not a case where the class representative compromised the interests of the class for personal gain. McGuire was not promised a service award. The settlement was negotiated by Settlement Class Counsel and then presented to the Class Representative for its review and approval without any discussion of a service award. The prospect of such an award was not a reason why McGuire approved the settlement. *Hillson v. Kelly Servs. Inc.*, 2017 WL 279814, at \*6 (E.D. Mich. 2017). Moreover, this is not a case where the requested service award will dwarf

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<sup>4</sup> This is Settlement Class Counsel’s first request for a Class Representative service award in this case.

the amount that class members will receive through the claims process.<sup>5</sup> McGuire devoted a significant amount of time and effort to representing the interests of the class members, including but not limited to the following:

- Assisting counsel in developing an overall understanding of the Small Bearings market;
- Discussing with counsel preservation of electronic and hard-copy documents and taking steps to implement preservation plans;
- Discussing with counsel and collecting documents for review and potential production to Defendants;
- Reviewing pleadings and keeping apprised of the status of the litigation; and
- Reviewing the settlement and conferring with counsel to determine whether the settlement was in the best interest of the settlement class.

Finally, a service award of this size or larger is not uncommon in lengthy, highly complex antitrust cases. Indeed, the Court previously approved a \$50,000 service award to each class representative in the Wire Harness and Bearings cases. *See* 2:12-cv-00101-MOB-MKM (ECF No. 495 at 6, ¶23) and 2:12-cv-00501-SFC-RSW (ECF No. 499 at 2, ¶6). *See also In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at \*5 (granting each class representative an award of \$50,000); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at \*1 (same). McGuire put in great effort and provided commendable service on behalf of the members of the

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<sup>5</sup> In cases where courts have rejected service awards, the awards were so disproportionately large relative to the cash benefits to the class that the courts called the class representatives' adequacy into question. For example, in *In re Dry Max Pampers Litig.*, 724 F.3d 713, 722 (6th Cir. 2013), the Court reversed the award of \$1,000 payments to the class representatives when class members received "nearly worthless injunctive relief." *In Machesney, v. Lar-Bev of Howell, Inc.*, 2017 WL 2437207, at \*11 (E.D. Mich. Jun. 2017), the court did not approve a proposed \$15,000 incentive payment because it was "30 times more than the maximum that any class member could receive under the proposed settlement."

Minebea Settlement Class to help create the \$9,750,000 Minebea Settlement Fund. The requested service award of \$25,000 is fair and appropriate under the facts and the law.

## VI. CONCLUSION

For the foregoing reasons, Plaintiff requests that the Court approve (1) the proposed plan of distribution, (2) Settlement Class Counsel's requests for attorneys' fees and expenses in the amount of \$200,000, and a \$25,000 service award to the Class Representative, McGuire Bearings Company.

**DATED:** August 7, 2023

Respectfully submitted,

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