

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

**IN RE AUTOMOTIVE PARTS
ANTITRUST LITIGATION**

**Master File No. 2:12-md-02311
Honorable Sean F. Cox**

IN RE: SHOCK ABSORBERS

**THIS DOCUMENT RELATES TO:
ALL DIRECT PURCHASER CASES**

**2:15-cv-03301-SFC-RSW
2:16-cv-13616-SFC-RSW**

NOTICE

NOTICE OF PROPOSED SETTLEMENTS OF DIRECT PURCHASER CLASS ACTION WITH KYB AND HITACHI ASTEMO DEFENDANTS, AND HEARING ON:

- (1) APPROVAL OF PROPOSED KYB AND HITACHI ASTEMO SETTLEMENTS;**
- (2) MOTION OF SETTLEMENT CLASS COUNSEL FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES, AND SERVICE AWARDS TO THE CLASS REPRESENTATIVES; AND**
- (3) PLAN OF DISTRIBUTION OF THE KYB AND HITACHI ASTEMO SETTLEMENT PROCEEDS.**

TO: ALL INDIVIDUALS AND ENTITIES THAT 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.

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

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

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

- (1) Proposed settlements with (a) Defendants KYB Corporation (f/k/a Kayaba Industry Co., Ltd.) and KYB Americas Corporation (collectively, "KYB" or the "KYB Defendants") and (b) Defendant Hitachi Astemo, Ltd. (f/k/a Hitachi Automotive Systems, Ltd.), successor to Defendant Showa Corporation ("Hitachi Astemo") (all Defendants referenced in this paragraph are collectively referred to as the "Settling Defendants");
- (2) Settlement Class Counsel's motion for an award of attorneys' fees and reimbursement of litigation costs and expenses from the KYB and Hitachi Astemo settlement proceeds;
- (3) A proposed plan of distribution to Settlement Class members of the proceeds of the KYB and Hitachi Astemo settlements and a proposed Claim Form that you may submit to share in those settlement proceeds; and
- (4) the request for service awards for the Class Representatives, which would be paid from the Shock Absorbers Settlement Fund.

This Notice provides information concerning the proposed settlements, the motion for attorneys' fees and

reimbursement of litigation costs and expenses, and service awards, and the proposed plan of distribution of the Shock Absorbers Settlement Fund. The Notice also advises you of your rights with respect to a Court hearing on these matters.

BACKGROUND

Plaintiffs have reached settlements with the KYB and Hitachi Astemo Defendants totaling \$6,000,000. Under the terms of the proposed settlements, KYB will pay a total of \$3,500,000 (the “KYB Settlement Fund”), and Hitachi Astemo will pay a total of \$2,500,000 (the “Hitachi Astemo Settlement Fund”) (the KYB and Hitachi Astemo Settlement Funds are collectively referred to herein as the “Shock Absorbers Settlement Fund”).

This litigation, and the proposed settlements, are part of coordinated legal proceedings involving several parts used in motor vehicles. This litigation and the proposed settlements relate solely to Shock Absorbers purchased in the United States **directly** from a Defendant (or their controlled subsidiaries, affiliates, or joint ventures). “Shock Absorbers,” as defined in each settlement agreement (and as set forth in the Claim Form that is included with this Notice), are: part of the suspension system on automobiles (including passenger vehicles, pickup trucks, light trucks, crossovers, minivans, vans, and sport utility vehicles) and motorcycles. They absorb and dissipate energy to help cushion vehicles on uneven roads leading to improved ride quality and vehicle handling. They are also dampers, and on motorcycles are referred to as front forks and rear cushions. These proposed settlements do not relate to, and have no effect upon, cases involving any product other than Shock Absorbers.

If you are a member of the KYB and/or Hitachi Astemo Settlement Classes (defined below), you have the rights and options summarized here:

- You may remain in either or both of the KYB or Hitachi Astemo Settlement Classes and be eligible to share in the proceeds of, and be bound by the terms of, any settlement in which you elect to participate;
- You may exclude yourself from either or both of the KYB or Hitachi Astemo Settlement Classes, in which case you will **not** be bound by any settlement from which you exclude yourself and will **not** be eligible to share in the proceeds of that settlement;
- If you remain in either or both of the KYB or Hitachi Astemo Settlement Classes, you may object to that proposed settlement, to the proposed plan of distribution of the Shock Absorbers Settlement Fund, or to Settlement Class Counsel’s request for an award of attorneys’ fees and reimbursement of litigation costs and expenses, and service awards for the Class Representatives. You may also appear at the hearing where the Court will consider these matters; and
- You may enter an appearance in the litigation through your own counsel at your own expense.

Any Settlement Class member who wishes to participate in the distribution of the Shock Absorbers Settlement Fund must complete and submit a copy of the Claim Form on or before **June 22, 2023**.

WHO IS IN THE SETTLEMENT CLASSES?

The Court has provisionally certified a Direct Purchaser KYB Settlement Class (the “KYB Settlement Class”), and a Direct Purchaser Hitachi Astemo Settlement Class (the “Hitachi Astemo Settlement Class”).

The KYB Settlement Class is defined as follows:

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.

The Hitachi Astemo Settlement Class is defined as follows:

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”). Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies, and instrumentalities.

For purposes of the KYB and Hitachi Astemo Settlement Class definitions set forth above, the following entities are Defendants: KYB Corporation (f/k/a Kayaba Industry Co., Ltd.); KYB Americas Corporation; Hitachi, Ltd.; Hitachi Astemo, Ltd. (f/k/a Hitachi Automotive Systems, Ltd.), successor to Showa Corporation; and Hitachi Astemo Americas, Inc. (f/k/a Hitachi Automotive Systems Americas, Inc., and successor to American Showa, Inc.).

Plaintiffs VIP, Inc., and Performance Internet Parts, LLC, have been appointed by the Court to serve as “Class Representatives” for the KYB and Hitachi Astemo Settlement Classes.

The Court has appointed the law firms of Freed Kanner London & Millen LLC; Kohn, Swift & Graf, P.C.; Preti, Flaherty, Beliveau & Pachios LLP; and Spector Roseman & Kodroff, P.C., to serve as “Co-Lead Settlement Class Counsel” for the Settlement Classes. These firms, along with Cera LLP, which worked extensively with Co-Lead Settlement Class Counsel on this case, are referred to collectively as “Settlement Class Counsel.”

WHAT IS THIS LITIGATION ABOUT?

In October 2016, Plaintiffs filed a class action lawsuit against Defendants on behalf of direct purchasers of Shock Absorbers, alleging that they conspired to suppress and eliminate competition for Shock Absorbers by agreeing to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Shock Absorbers sold in the United States, in violation of federal antitrust laws. Plaintiffs further allege that because of the conspiracy, they and other direct purchasers of Shock Absorbers were injured by paying more than they would have paid in the absence of the alleged illegal conduct.

The Settling Defendants all deny Plaintiffs’ allegations and liability and have asserted defenses to Plaintiffs’ claims. The Settling Defendants have agreed to settle this matter to avoid the expense and burden of further litigation. The Court has not issued any findings or rulings with respect to the merits of Plaintiffs’ claims or the Settling Defendants’ defenses. This litigation will be fully resolved if the Court approves the settlements with the KYB and Hitachi Astemo Defendants.

WHAT RELIEF DO THE PROPOSED SETTLEMENTS PROVIDE?

Plaintiffs, on behalf of the KYB Settlement Class, entered into a settlement with the KYB Defendants on January 27, 2023 (the “KYB Settlement Agreement”), under which the KYB Defendants have agreed to pay \$3,500,000. Pursuant to the KYB Settlement Agreement, the KYB Defendants also agreed to cooperate with Plaintiffs in the prosecution of the lawsuit against any remaining, non-settling Defendants.

Plaintiffs, on behalf of the Hitachi Astemo Settlement Class, entered into a settlement with Hitachi Astemo on November 16, 2022 (the “Hitachi Astemo Settlement Agreement”), under which Hitachi Astemo agreed to pay \$2,500,000. Hitachi Astemo also agreed to cooperate with Plaintiffs in the continuing prosecution of any remaining, non-settling Defendants.

This Notice is only a summary of the terms of the proposed settlements. The KYB and Hitachi Astemo Settlement Agreements contain other important provisions, including the release of certain claims against the KYB and Hitachi Astemo Defendants (and companies and people affiliated with them). For the complete terms of the settlements, you are referred to the Settlement Agreement, which are on file with the Clerk of Court and are available on-line at www.AutoPartsAntitrustLitigation.com/ShockAbsorbers. The proposed settlements must receive final approval by the Court to become effective.

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

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

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

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

HOW WILL THE SETTLEMENT FUNDS BE DISTRIBUTED?

The Shock Absorbers Settlement Fund, with accrued interest, less any amounts approved by the Court for payment of attorneys' fees, litigation and settlement administration costs and expenses, and service awards to the Class Representatives (the "Net Shock Absorbers Settlement Fund"), will be distributed among the members of the Settlement Classes who complete and timely submit a copy of the Claim Form that is included with this Notice, postmarked on or before **June 22, 2023**. The Net Shock Absorbers Settlement Fund will be distributed pro rata to all Claimants based upon their **direct** purchases in the United States from Defendants during the applicable Class Period. The distribution will take place as soon as practicable after review, determination, and audit of the Claim Forms by the Settlement Administrator and approval by the Court of the Settlement Administrator's recommendations as to the amounts to be paid to the Claimants.

Do not dispose of any document that reflects your purchases of Shock Absorbers in the United States directly from any Defendant (or its controlled subsidiaries, affiliates, or joint ventures) during the period from January 1, 1995, through September 18, 2021. You may need those documents to complete and substantiate your Claim Form, which will be subject to inquiry and verification.

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

You may exclude yourself from either or both of the Settlement Classes. If you wish to exclude yourself from either or both of the Settlement Classes, you must send a request for exclusion, in writing, by certified mail, return receipt requested, **postmarked no later than May 1, 2023**, to Settlement Class Counsel, and to counsel for the Settling Defendants, at the addresses set forth below, and to the following address:

Settlement Administrator
Shock Absorbers Direct Purchaser Antitrust Litigation
P.O. Box 3170
Portland, OR 97208-3170

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

REQUEST FOR ATTORNEYS' FEES AND EXPENSES

Settlement Class Counsel, together with other firms that have worked on this litigation, will file a petition for an award of attorneys' fees and reimbursement of their costs and expenses in prosecuting the case. The request of Settlement Class Counsel for attorneys' fees will not exceed one-third of the KYB and Hitachi Astemo settlement proceeds.

Settlement Class Counsel will also request service awards for Plaintiffs VIP, Inc., and Performance Internet Parts, LLC, which were appointed by the Court to serve as Class Representatives for the Settlement Classes, in the amount of \$25,000.

The application for attorneys' fees and litigation costs and expenses and service awards will be filed on or before April 10, 2023. After that date, the petition for attorneys' fees will be available for your review on the settlement website at www.AutoPartsAntitrustLitigation.com/ShockAbsorbers. If you remain a member of either or both of the KYB and Hitachi Astemo Settlement Classes and you wish to object to the requests for fees and expenses or service awards, you must do so in writing in accordance with the procedures for objections set forth below. If you do not oppose any of these requests, you do not need to take any action in that regard.

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

The Court will hold a hearing on June 8, 2023, at 2:00 p.m., at the Theodore Levin United States Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226, Courtroom 817 (or such other courtroom as may be assigned for the hearing), to determine whether to approve: the proposed KYB and Hitachi Astemo settlements; the proposed plan of distribution of the Shock Absorbers Settlement Fund; and Settlement Class Counsel's requests for an award of attorneys' fees and reimbursement of litigation costs and expenses, and service awards. If the Court believes that it is appropriate, the hearing may be conducted remotely by telephone or other electronic means. If the Court determines to hold the hearing remotely, Settlement Class Counsel shall post that information on the website devoted to the direct purchaser litigation (www.AutoPartsAntitrustLitigation.com/ShockAbsorbers) and provide any Settlement Class member that has informed the Court that it intends to participate at the hearing the information required to do so remotely. The hearing may be rescheduled, continued, or adjourned, and the courtroom assigned for the hearing may be changed, without further notice to you.

If you remain a member of either or both of the KYB or Hitachi Astemo Settlement Classes, and you wish to object to that proposed settlement, the proposed plan of distribution of the Shock Absorbers Settlement Fund, or to Settlement Class Counsel's requests for an award of attorneys' fees and litigation costs and expenses, and service awards, you must do so in writing and at your own expense. Any such objection must include the caption of this litigation, specify which settlement(s) are being objected to, must be signed, and must be **filed no later than May 1, 2023**, with the Clerk of Court, United States District Court for the Eastern District of Michigan, Southern Division, Theodore Levin United States Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226, and mailed to the following counsel, **postmarked no later than May 1, 2023**:

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Co-Lead Counsel for the Direct Purchaser Settlement Classes

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Counsel for the Hitachi Astemo Defendants

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

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

If this Notice reached you at an address other than the one on the mailing label, or if your address changes, please send your correct address to: Shock Absorbers Direct Purchaser Antitrust Litigation, P.O. Box 3170, Portland, OR 97208-3170.

The Settlement Agreements, Complaints, and other public documents filed in this litigation are available for review during normal business hours at the offices of the Clerk of Court, United States District Court for the Eastern District of Michigan, Southern Division, Theodore Levin United States Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226, and through the Court's Public Access to Court Electronic Records (PACER) system after registration and payment of a modest fee. Copies of the Settlement Agreements and certain other documents relevant to this litigation are available at www.AutoPartsAntitrustLitigation.com/ShockAbsorbers. Questions concerning the proposed KYB and Hitachi Astemo settlements, this Notice, or the litigation may be directed to any of the Settlement Class Counsel identified above.

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

Dated: March 9, 2023

BY ORDER OF:

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