

**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 GRANTING PRELIMINARY APPROVAL OF PROPOSED SECOND
AMENDED SETTLEMENT WITH KYB DEFENDANTS AND PROPOSED
SETTLEMENT WITH HITACHI ASTEMO, FOR PROVISIONAL CERTIFICATION
OF THE DIRECT PURCHASER KYB AND HITACHI ASTEMO SETTLEMENT
CLASSES, AND FOR AUTHORIZATION TO DISSEMINATE NOTICE TO THE
DIRECT PURCHASER KYB AND HITACHI ASTEMO SETTLEMENT CLASSES**

Upon consideration of the Direct Purchaser Plaintiffs’ Motion for Preliminary Approval of Proposed Second Amended Settlement with Defendants KYB Corporation (f/k/a Kayaba Industry Co., Ltd.) and KYB Americas Corporation (collectively, “KYB”) and Proposed Settlement with Defendant Hitachi Astemo, Ltd. (f/k/a Hitachi Automotive Systems, Ltd.), successor to Defendant Showa Corporation (“Hitachi Astemo”), for provisional certification of the Direct Purchaser KYB and Hitachi Astemo Settlement Classes, and for Authorization to Disseminate Notice to the Direct Purchaser KYB and Hitachi Astemo Settlement Classes (the “Motion”), it is hereby ORDERED as follows:

1. The October 22, 2021 Order preliminarily approving the KYB settlement and certifying a KYB settlement class (2:15-cv-3301, ECF No. 73) is amended as set forth below.
2. The Motion is hereby **GRANTED**.

3. Terms used in this Order that are defined in the Second Amended KYB Settlement Agreement or the Hitachi Astemo Settlement Agreement are, unless otherwise defined herein, used as defined in each of the respective Settlement Agreements.

Preliminary Approval of Second Amended KYB Settlement Agreement

4. The terms of the Second Amended KYB Settlement Agreement are hereby preliminarily approved as being fair, reasonable, and adequate to the Second Amended KYB Settlement Class, subject to a fairness hearing. In preliminarily approving the Second Amended KYB Settlement Agreement, the Court makes the following findings:

- a. The proposed Class Representatives and Co-Lead Settlement Class Counsel have adequately represented the Second Amended KYB Settlement Class;
- b. The Second Amended KYB Settlement Agreement was entered into at arm's length by experienced counsel and is sufficiently within the range of reasonableness that notice of the Second Amended KYB Settlement Agreement should be given to members of the proposed Second Amended KYB Settlement Class;
- c. The relief provided for the Second Amended KYB Settlement Class is adequate; and
- d. The Second Amended Settlement Agreement treats members of the Second Amended KYB Settlement Class equitably relative to each other.

Preliminary Approval of Hitachi Astemo Settlement Agreement

5. The terms of the Hitachi Astemo Settlement Agreement are hereby preliminarily approved as being fair, reasonable, and adequate to the Hitachi Astemo Settlement Class, subject to a fairness hearing. In preliminarily approving the Settlement Agreement, the Court makes the following findings:

- a. The proposed Class Representatives and Co-Lead Settlement Class Counsel have adequately represented the Hitachi Astemo Settlement Class;
- b. The Hitachi Astemo Settlement Agreement was entered into at arm's length by experienced counsel and is sufficiently within the range of reasonableness that notice of the Hitachi Astemo Settlement Agreement should be given to members of the proposed Hitachi Astemo Settlement Class;
- c. The relief provided for the Hitachi Astemo Settlement Class is adequate; and
- d. The Settlement Agreement treats members of the Hitachi Astemo Settlement Class equitably relative to each other.

Class Certification

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Second Amended KYB Settlement, the Court hereby finds that the prerequisites for a class action have been met, and provisionally certifies the following class for settlement purposes (the "Second Amended KYB Settlement Class"):

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.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Hitachi Astemo Settlement, the Court hereby finds that the prerequisites for a class action

have been met, and provisionally certifies the following class for settlement purposes (the “Hitachi Astemo Settlement Class”):

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.

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

9. The Court finds that provisional certification of the KYB and Hitachi Astemo Settlement Classes is warranted in light of the Settlement Agreements because: (a) the KYB and Hitachi Astemo Settlement Classes are so numerous that joinder is impracticable; (b) the Direct Purchaser Plaintiff Class Representatives’ claims present common issues and are typical of the KYB and Hitachi Astemo Settlement Classes; (c) the Direct Purchaser Plaintiff Class Representatives and Co-Lead Settlement Class Counsel (identified below) will fairly and adequately represent the Settlement Classes; and (d) common issues predominate over any individual issues affecting the members of the KYB and Hitachi Astemo Settlement Classes. The Court further finds that the Direct Purchaser Plaintiff Class Representatives’ interests are aligned with the interests of all other members of the KYB and Hitachi Astemo Settlement Classes. The

Court also finds that settlement of this action on a class basis is superior to other means of resolving the matter.

Appointment of Class Representatives and Co-Lead Settlement Class Counsel

10. The Court hereby appoints VIP, Inc. and Performance Internet Parts, LLC (“Plaintiffs”) to serve as Class Representatives for the KYB and Hitachi Astemo Settlement Classes.

11. The Court hereby appoints 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 KYB and Hitachi Astemo Settlement Classes, having determined that the requirements of Rule 23(g) are fully satisfied by these appointments.

Notice to Potential Settlement Class Members

12. The Settlement Classes shall receive notice in accordance with the terms of this Order.

13. The Court approves the form and content of: (a) the Notice of Proposed Settlements of Direct Purchaser Class Action with KYB and Hitachi Astemo Defendants and Hearing on Settlement Approval and Related Matters, and Claim Form (the “Notice”), attached as Exhibit 3 to the Memorandum in Support of the Motion (the “Memorandum”); (b) the Summary Notice of Proposed Settlements of Direct Purchaser Class Action with KYB and Hitachi Astemo Defendants and Hearing on Settlement Approval and Related Matters (the “Summary Notice”), attached as Exhibit 4 to the Memorandum; and (c) the Informational Press Release (the “Press Release”), attached as Exhibit 5 to the Memorandum.

14. The Court finds that the mailing of the Notice and publication of the Summary Notice and Press Release in the manner set forth herein constitutes the best notice that is practicable under the circumstances, is valid, due and sufficient notice to all persons entitled thereto, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.

15. On or before March 9, 2023, the Notice, in substantially the same form as Exhibit 3 to the Memorandum, shall be mailed by first class mail, postage prepaid, to all potential members of the KYB and Hitachi Astemo Settlement Classes identified by Defendants. The Notice shall also be provided to all persons who request it in response to the Summary Notice or Press Release. In addition, a copy of the Notice shall be posted on the Internet at www.AutoPartsAntitrustLitigation.com, the website dedicated to this litigation.

16. On or before March 20, 2023, Co-Lead Settlement Class Counsel shall cause the Summary Notice, in substantially the same form as Exhibit 4 to the Memorandum, to be published in one edition of *Automotive News*. To supplement the notice program further, the Press Release, in substantially the same form as Exhibit 5 to the Memorandum, will be issued nationwide via PR Newswire's "Auto Wire," which targets auto industry trade publications.

17. On or before April 10, 2023, Co-Lead Settlement Class Counsel shall file with the Court their motion or motions for: final approval of the proposed settlements with KYB and Hitachi Astemo; an award of attorneys' fees and reimbursement of litigation costs and expenses; approval of the proposed plan of distribution of the Shock Absorbers Settlement Fund; and service awards to the Class Representatives.

18. All requests for exclusion from the KYB or Hitachi Astemo Settlement Classes must be submitted in writing, postmarked no later than May 1, 2023, and must otherwise comply with the requirements set forth in the Notice.

19. Any objection by any member of the KYB or Hitachi Astemo Settlement Classes to either of the proposed settlements, or to Settlement Class Counsel's requests for attorneys' fees and reimbursement of expenses, the proposed plan of distribution of the Shock Absorbers Settlement Fund, or to the request for service awards to the Class Representatives must be submitted in writing, must be filed with the Clerk of Court and postmarked no later than May 1, 2023, and must otherwise comply with the instructions set forth in the Notice.

20. At least ten (10) days before the date fixed by this Court for the Fairness Hearing, Co-Lead Settlement Class Counsel shall file with the Court affidavits or declarations of the person under whose general direction the mailing and posting of the Notice, and publication of the Summary Notice and Press Release, were made, showing that mailing, posting and publication were made in accordance with this Order.

21. The Court will hold a Fairness Hearing on **June 8, 2023, at 2:00 p.m.**, at the Theodore Levin U.S. Courthouse, 231 West Lafayette Blvd., Detroit, MI, 48226, Courtroom 817 (or such other courtroom as may be assigned for the hearing), to determine whether to approve: (1) the proposed KYB and Hitachi Astemo settlements; (2) Co-Lead Settlement Class Counsel's request for an award of attorneys' fees and litigation costs and expenses; (3) the proposed plan of distribution of the Shock Absorbers Settlement Fund; and (4) the requests for service awards to the Class Representatives. Any Settlement Class member who follows the procedure set forth in the Notice may appear and be heard at this hearing. 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, Co-Lead Settlement Class Counsel shall post that information on the website devoted to the direct purchaser litigation (www.AutoPartsAntitrustLitigation.com) and provide any Settlement Class member that has informed the Court that it intends to participate with the information required to do so remotely. The Fairness Hearing may be rescheduled, adjourned or continued, and the courtroom assigned for the hearing may be changed, without further notice to the Settlement Classes.

22. Any Settlement Class member who wishes to participate in the distribution of the Shock Absorbers Settlement Fund must submit a Claim Form in accordance with the instructions therein, postmarked on or before June 22, 2023.

Other Provisions

23. If either of the KYB or Hitachi Astemo Settlement Agreements is terminated in accordance with its provisions, the Settlement Agreement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo and rights of Plaintiffs, the KYB, or Hitachi Astemo Defendants, and the members of the KYB or Hitachi Astemo Settlement Classes.

24. The Court's provisional certification of the KYB and Hitachi Astemo Settlement Classes 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 KYB or Hitachi Astemo Settlement Classes as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

25. The Court approves the escrow account referenced in the KYB and Hitachi Astemo Settlement Agreements as a qualified settlement fund (“QSF”) pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder and retains continuing jurisdiction as to any issue that may arise in connection with the formation or administration of the QSF. Co-Lead Settlement Class Counsel are authorized to use funds from the QSF in accordance with the KYB and Hitachi Astemo Settlement Agreements, including to pay costs of notice, taxes, tax expenses, and costs of maintaining and administering the Settlement Fund.

26. The Direct Purchaser Class litigation against the KYB and Hitachi Astemo Defendants is stayed except to the extent necessary to effectuate the Settlement Agreements.

IT IS SO ORDERED.

Dated: March 1, 2023

s/Sean F. Cox
Sean F. Cox
U. S. District Judge