

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

IN RE AUTOMOTIVE PARTS ANTITRUST
LITIGATION

In Re: INSTRUMENT PANEL CLUSTERS

THIS RELATES TO:
ALL DIRECT PURCHASER ACTIONS

CASE NO. 12-MD-02311
HON. MARIANNE O. BATTANI

2:12-cv-00201-MOB-MKM

**DIRECT PURCHASER PLAINTIFF'S MOTION FOR
APPROVAL OF PROPOSED PLAN FOR DISTRIBUTION OF
THE NIPPON SEIKI AND YAZAKI SETTLEMENT FUNDS**

Direct Purchaser Plaintiff hereby moves the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of the proposed plan for distribution of the Nippon Seiki and Yazaki Settlement Fund resulting from settlements between Direct Purchaser Plaintiff and Defendants Nippon Seiki Co. Ltd, N.S. International Ltd., and New Sabina Industries, Inc. (collectively, "Nippon Seiki") and Defendants Yazaki Corporation and Yazaki North America, Inc. (collectively, "Yazaki"). In support of this motion, Plaintiff relies upon the accompanying memorandum of law, which is incorporated by reference herein.

DATED: September 13, 2018

Respectfully submitted,

/s/David H. Fink

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**MEMORANDUM IN SUPPORT OF DIRECT PURCHASER
PLAINTIFF'S MOTION FOR APPROVAL OF PROPOSED PLAN FOR
DISTRIBUTION OF THE NIPPON SEIKI AND YAZAKI SETTLEMENT FUNDS**

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4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, §12.35 (4th ed. 2002) 8, 9

STATEMENT OF ISSUES PRESENTED

1. Whether the Court should approve the proposed plan for distribution of the Nippon Seiki and Yazaki Settlement Fund.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

In re Packaged Ice Antitrust Litig.,

No. 08-MDL-01952, 2011 WL 6209188 (E.D. Mich. Dec. 13, 2011)

In re Ikon Office Solutions, Inc., Sec. Litig., 194 F.R.D. 166 (E.D. Pa. 2000)

INTRODUCTION

Direct Purchaser Plaintiff (“Plaintiff”), on behalf of Settlement Classes composed of direct purchasers of Instrument Panel Clusters in the United States, reached settlements with Defendants Nippon Seiki Co. Ltd, N.S. International Ltd., and New Sabina Industries, Inc. (collectively, “Nippon Seiki”) and Defendants Yazaki Corporation and Yazaki North America, Inc. (collectively, “Yazaki”) (the Nippon Seiki and Yazaki Defendants are collectively, the “Settling Defendants”). Under the terms of the proposed settlements, the Settling Defendants will pay a total of \$7,750,000 (“Nippon Seiki and Yazaki Settlement Fund”).¹

Previously, the Court entered orders granting final approval to both the Nippon Seiki and Yazaki settlements (2:12-cv-00201, Doc. Nos. 108 and 197). Thus, the sole issue presented by this motion is whether to approve the proposed plan of distribution of the Nippon Seiki and Yazaki Settlement Fund.² For the reasons set forth herein, Plaintiff respectfully submits that the proposed plan for distribution of the Settlement Fund is fair, reasonable and adequate, and should be approved by the Court. Submitted herewith is a proposed Order Approving Proposed Plan for Distribution of Settlement Funds.

I. BACKGROUND

On February 8, 2012, Plaintiff filed a class action lawsuit against Yazaki on behalf of a class of direct purchasers of Instrument Panel Clusters, alleging that Yazaki engaged in a continuing conspiracy to rig bids and fix, raise, maintain, or stabilize prices at supra-competitive

¹ Pursuant to the agreement of the parties, the amount of the Yazaki settlement was reduced from \$7,700,000 to \$2,500,000 due to valid and timely requests for exclusion by members of the Yazaki Settlement Class.

² A separate motion for an award of attorneys’ fees and reimbursement of litigation costs and expenses, and an incentive award to the Class Representative is being filed today with the Court.

levels for Instrument Panel Clusters sold in the United States. Plaintiff further alleged that the proposed class paid artificially inflated prices for Instrument Panel Clusters and suffered antitrust injury to their business or property in violation of the federal antitrust laws.

On January 15, 2013, Plaintiff filed a Consolidated Class Action Complaint, which named Nippon Seiki and Denso as additional defendants. (2:12-cv-00201, Doc. No. 48). Defendants moved to dismiss the Consolidated Class Action Complaint on March 26, 2013, which motion was denied by the Court on April 30, 2013. (2:12-cv-00201, Doc. Nos. 61 and 86). On February 25, 2015, after obtaining leave of court, Plaintiff filed the Second Consolidated Class Action Complaint, which added the Continental Defendants.³

Plaintiff reached a \$5,250,000 settlement with the Nippon Seiki Defendants on April 3, 2014. The Court preliminarily approved the Nippon Seiki settlement on May 16, 2014 and provisionally certified a Direct Purchaser Nippon Seiki Settlement Class defined as follows:

All persons or entities (but excluding Defendants, their officers, directors and employees, as well as Defendants' parents, predecessors, successors, subsidiaries, and affiliates) who purchased Instrument Panel Clusters in the United States, its territories and possessions, directly from any Defendant, including Settling Defendants, or from any of their parents, predecessors, successors, subsidiaries, or affiliates, during the period from January 2001 up to and including May 16, 2014.

2:12-cv-00201, Doc. No. 91.⁴ On December 4, 2014, the Court granted final approval of the Nippon Seiki settlement. (2:12-cv-00201, Doc. No. 108).

³ The Denso and Continental Defendants have been dismissed from this action. 2:12-cv-00201, Doc. No. 203 Thus, resolution of the instant motion and the motion for attorneys' fees, litigation expenses and an incentive award will bring this litigation to an end.

⁴ For purposes of the Nippon Seiki Settlement Class Definition, the following are Defendants: Yazaki Corporation; Yazaki North America Inc.; Nippon Seiki Co. Ltd.; N.S. International Ltd; New Sabina Industries, Inc.; Denso Corporation; and Denso International America, Inc.

Plaintiff reached a \$2,500,000 settlement with the Yazaki Defendant on December 27, 2016. On March 21, 2017, the Court preliminarily approved the proposed Yazaki settlement and provisionally certified a Direct Purchaser Yazaki Settlement Class, defined as follows:

All direct purchasers of motor vehicle Instrument Panel Clusters in the United States directly from any of the Defendants (or their controlled subsidiaries, affiliates or joint ventures) from January 1, 1998 through December 27, 2016.

2:12-cv-00201, Doc. No. 170.⁵ On March 13, 2018, the Court granted final approval of the Yazaki settlement. (2:12-cv-00201, Doc. No. 197).

By Order dated July 27, 2018, the Court authorized dissemination of notice of the proposed plan of distribution of the Nippon Seiki and Yazaki Settlement Fund to members of the Nippon Seiki and Yazaki Settlement Classes. (2:12-cv-00201, Doc. No. 208) (“Notice Order”). Pursuant to the Notice Order, on August 16, 2018, 361 copies of the Notice were mailed, postage prepaid, to all potential members of the Nippon Seiki and Yazaki Settlement Classes identified by Defendants. A Summary Notice of the proposed plan of distribution and the hearing regarding same (the “Summary Notice”) was published in the national edition of *The Wall Street Journal* and in *Automotive News* on August 27, 2018. In addition, a copy of the Notice was (and remains) posted on-line at www.autopartsantitrustlitigation.com. Pursuant to the Notice Order, any objection by any member of the Nippon Seiki and Yazaki Settlement Classes must be filed with the Clerk of the Court and postmarked no later than October 5, 2018 (and must otherwise comply with the requirements set forth in the Notice).

⁵ For purposes of the Yazaki Settlement Class definition, the Defendants are: Yazaki Corporation; Yazaki North America, Inc.; Continental Automotive Electronics LLC; Continental Automotive Korea Ltd.; Continental Automotive Systems, Inc.; Denso Corporation; Denso International America, Inc.; Nippon Seiki Co., Ltd.; N.S. International Ltd.; and New Sabina Industries, Inc. (2:12-cv-00201, Doc. No. 170).

II. THE PROPOSED PLAN FOR DISTRIBUTION OF THE NIPPON SEIKI AND YAZAKI 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. *In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2011 WL 6209188, at *15 (E.D. Mich. Dec. 13, 2011). *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). As a general rule, a plan of allocation that reimburses class members based on the type and extent of their injuries is a reasonable one. *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000); *Smith v. MCI Telecoms Corp.*, No. Civ. A. 87-2110-EEO, 1993 WL 142006, at *2 (D. Kan. April 28, 1993); 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, §12.35, at 350 (4th ed. 2002) ("*Newberg*") (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 potential members of the Nippon Seiki and Yazaki Settlement Classes on August 16, 2018 describes the plan recommended by Settlement Class Counsel for the distribution of the Nippon Seiki and Yazaki Settlement Fund to Settlement Class members who file timely and proper claim forms. The proposed distribution plan provides for the Nippon Seiki

and Yazaki 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 settlement administration costs and expenses, and an incentive payment to the Class Representative. (Notice, Exhibit A at 3).

This Court, and numerous others, have approved similar pro-rata distribution plans, including in connection with the prior settlement fund distribution in this litigation. (2:12-cv-00601-MOB-MKM, Doc. No. 129). *See 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. March 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.⁶

⁶ Settlement Class members may share in the distribution of the of the Nippon Seiki and Yazaki Settlement Fund by completing and timely submitting the Claim Form included with the Notice. Any Claim Form submitted electronically must be submitted on or before November 28, 2018. Any Claim Form submitted via mail must be postmarked on or before November 28, 2018. (Notice, Exhibit A at 2).

III. NOTICE TO THE CLASS OF THE PROPOSED PLAN FOR DISTRIBUTION COMPLIED WITH THE COURT'S ORDER AUTHORIZING DISSEMINATION OF NOTICE

The Court has the authority to require that notice be given to class members about any step to be taken in a class action. Fed. R. Civ. P. 23(d)(1)(B). Consistent with this authority, on July 27, 2018, the Court issued the Notice Order, which directed Settlement Class Counsel to disseminate notice of the proposed plan of distribution of the Nippon Seiki and Yazaki Settlement Fund to members of the Nippon Seiki and Yazaki Settlement Classes. (2:12-cv-00201, Doc. No. 208). As discussed below, Settlement Class Counsel fully complied with the Notice Order.

On August 16, 2018, 361 copies of the Notice were mailed, postage prepaid, to all potential members of the Nippon Seiki and Yazaki Settlement Classes identified by Defendants, and on August 27, 2018, the Summary Notice was published in the national edition of *The Wall Street Journal* and in *Automotive News* on August 27, 2018. Additionally, a copy of the Notice was (and remains) posted on-line at www.autopartsantitrustlitigation.com. Pursuant to the Notice Order, and as set forth in the Notice and Summary Notice, Settlement Class members are required to file objections to the plan for distribution, if any, with the Clerk of the Court and postmarked no later than October 5, 2018. To date, no objections have been filed, but Settlement Class Counsel will advise the Court if any objections are subsequently filed.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the proposed plan for distribution of the Nippon Seiki and Yazaki Settlement Fund.

DATED: September 13, 2018

Respectfully submitted,

/s/David H. Fink

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2018, I electronically filed the foregoing paper 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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