

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

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<b>In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION</b>	:	Case No. 12-md-02311 Honorable Marianne O. Battani
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<b>In Re: OCCUPANT SAFETY SYSTEMS CASES</b>	:	
	:	
<b>THIS DOCUMENT RELATES TO: ALL DIRECT PURCHASER ACTIONS</b>	:	2:12-cv-00601-MOB-MKM 2:16-cv-10002-MOB-MKM
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**O R D E R**

AND NOW, upon consideration of Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees, Litigation Costs and Expenses, and Incentive Awards for the Class Representatives (the "Motion"), the Memorandum in support thereof, and the declarations and exhibits attached thereto, and following a hearing on the Motion, it is hereby ORDERED that the Motion is GRANTED:

1. The Court has considered the relevant case law and authority and finds that awards of attorneys' fees and reimbursement of litigation costs and expenses to the Direct Purchaser Plaintiffs and their counsel are appropriate under Fed. R. Civ. P. 23(h) and Fed. R. Civ. P. 54(d)(2).
2. The Court engages in a two-part analysis when assessing the reasonableness of a petition seeking an award of attorneys' fees. *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 760 (S.D. Ohio 2007). The Court first determines the method of calculating the attorneys' fees: it applies either the percentage of the fund approach or the lodestar method. *Id.*; *Van Horn v. Nationwide Prop. and Cas. Inc. Co.*, 436 Fed. Appx. 496, 498 (6th Cir. 2011).

3. The Court has the discretion to select the appropriate method for calculating attorneys' fees "in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them." *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6<sup>th</sup> Cir. 1993). In common fund cases, the award of attorneys' fees need only "be reasonable under the circumstances." *Id.*, 9 F.3d at 516. The Court has also analyzed and weighed the six factors described in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974).

4. The Court will award fees to Direct Purchaser Plaintiffs' counsel using the percentage-of-the-fund approach. This 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. *Rawlings*, 9 F.3d at 515; *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, No. 10-cv-14360, 2015 WL 1498888, at\* 15 (E.D. Mich. March 31, 2015); *In re Packaged Ice Antitrust Litig.*, 08-MDL-01952, 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); *Cardinal*, 528 F. Supp. 2d at 762 (the Sixth Circuit has "explicitly approved the percentage approach in common fund cases."); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, \*1 (E.D. Tenn. Jun. 30, 2014). The total amount of the settlement funds before the Court is \$ 18,250,000.

5. The requirements of Fed. R. Civ. P. 23(h)(1) have been satisfied. Notice of the relief requested in the motion before the Court was mailed to 1,342 potential class members. In addition, a summary notice was published in *The Wall Street Journal* and *Automotive News*. Further, the notice is posted on the website dedicated to this litigation. There were no objections.

6. The Court grants the Direct Purchaser Plaintiffs' request for reimbursement of litigation expenses in the amount of \$27,348.84.

7. Counsel for the Direct Purchaser Plaintiffs request a fee award of 30% of the settlement funds. The 30% fee requested is within the range of fee awards made by courts in this Circuit. *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (awarding one-third of the fund); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at \*19; *Skelaxin*, 2014 WL 2946459, at \*1; *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at \*8 (E.D. Tenn. May 17, 2013); *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010); *Bessey v. Packer and Plainwell, Inc.*, No. 4:06-CV-95, 2007 WL 3173972, at \*4 (W.D. Mich. 2007); *Delphi*, 248 F.R.D. at 502-03; *In re National Century Financial Enterprises, Inc. Investment Litig.*, 2009 WL 1473975 (S.D. Ohio May 27, 2009); *Kogan v. AIMCO Fox Chase, L.P.*, 193 F.R.D. 496, 503 (E.D. Mich. 2000).

8. The Court has considered the six *Ramey* factors in weighing a fee award to counsel for the Direct Purchaser Plaintiff: (1) the value of the benefits rendered to the class; (2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (3) whether the services were undertaken on a contingent fee basis; (4) the value of the services on an hourly basis [the lodestar cross-check]; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel on both sides. 508 F.2d at 1194-97.

9. The settlement funds total \$18,250,000.00. The settlements in the Direct Purchaser Occupant Safety Systems case confer a substantial cash benefit on the members of the Settlement Classes and the value of the settlements is immediate and readily quantifiable.

10. Direct Purchaser Plaintiffs' Counsel vigorously and effectively pursued the Direct Purchasers' claims. These efforts included factual investigation, drafting complaints, reviewing and analyzing documents, interviewing a Defendant's employees, Defendant and Plaintiff discovery, negotiating the terms of the settlements, and preparing the settlement documents.

11. The settlement amounts constitute a “common fund.” It has long been recognized that attorneys who recover a common fund for others are entitled to reasonable attorneys’ fees from that fund.

12. The results achieved provide a clear benefit to the Settlement Classes: an immediate and certain payment of \$18,250,000.00 plus accrued interest, less attorneys’ fees, litigation costs and expenses, incentive awards to the class representatives, and notice and claims administration costs.

13. Direct Purchaser Plaintiffs’ Counsel are operating on a contingency basis and bore a significant risk of non-payment in pursing these claims.

14. Antitrust actions are inherently complex. The legal and factual issues are complicated and highly uncertain in outcome. This case is no exception.

15. In the absence of these settlements, Direct Purchaser Plaintiffs would have been facing continued litigation against three Defendants, instead of one. Indeed, the settling Defendants have agreed to cooperate with Direct Purchaser Plaintiffs’ Counsel in connection with Direct Purchaser Plaintiffs’ claim in the Takata Bankruptcy.

16. As the Court has previously found, Interim Lead and Liaison Counsel are qualified to litigate class action antitrust claims, and they have performed their duties skillfully.

17. The reaction of the class members was favorable. The Settlement Classes are composed of sophisticated direct purchasers of Occupant Safety Systems, including parts suppliers, and manufacturers of motor vehicles. The absence of objections is an indication that an attorneys’ fee of 30% is reasonable.

18. As of July 31, 2018, Direct Purchaser Plaintiff's Counsel had devoted \$8,697,966.49 in professional time at their historical billing rates to pursuing this case for the Direct Purchasers.

19. The Court finds that Direct Purchaser Plaintiff's Counsel performed their tasks diligently, efficiently, and reasonably, and that their billing rates and lodestar are appropriate.

20. The Court conducted a lodestar "cross-check" with respect to the attorneys' fee award. The fee requested, when combined with fees already awarded in earlier Occupant Safety Systems settlements, represents a multiplier of approximately 1.84 on the lodestar. The Court finds that a 1.84 multiplier is further evidence of the reasonableness of the fee request. *See 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.").

21. After considering the appropriate factors, the Court finds that attorneys' fees of 30% are reasonable. However, the Court finds it is appropriate to deduct litigation costs and expenses before applying the 30% to the remainder of the settlement funds. The Court therefore awards attorneys' fees to counsel for the Direct Purchaser Plaintiffs in the amount of 30% of the settlement funds after costs and expenses are deducted. Specifically, the Court awards a fee of \$5,466,795.35 which is 30% of the \$18,250,000.00 settlement funds after deducting the Court's award of reimbursement of costs and expenses of \$27,348.84.

22. The Court finds that the class representatives are deserving of incentive awards in view of the time and effort they have expended and the burden and inconvenience they incurred in furtherance of these cases and hereby awards each of the following class representative plaintiffs an incentive award of \$30,000.00: Beam's Industries, Inc., Findlay Industries, Inc., and NM Holdings Co., LLC.

23. Interim Lead Counsel are authorized to allocate among Direct Purchaser Plaintiffs' Counsel the attorneys' fees and reimbursed litigation costs and expenses in accordance with each firm's contribution to the prosecution of the case.

IT IS SO ORDERED.

Date: October 18, 2018

s/Marianne O. Battani  
MARIANNE O. BATTANI  
United States District Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on October 18, 2018.

s/ Kay Doaks  
Case Manager