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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	CASE NO. 12-MD-02311 HON. MARIANNE O. BATTANI
In Re: OCCUPANT SAFETY SYSTEMS CASES	
THIS RELATES TO: ALL DIRECT PURCHASER ACTIONS	12-cv-00601-MOB-MKM

INTERIM LEAD AND LIAISON COUNSELS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND RIMBURSEMENT OF LITIGATION COSTS AND EXPENSES

Interim Lead and Liaison Counsel hereby move the Court, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), for an award of attorneys' fees of 28.5% of the $43.6 million Autoliv and TRW settlements funds, and reimbursement of out-of-pocket litigation costs and expenses. In support of this motion, the undersigned rely upon the accompanying memorandum of law and the exhibits attached thereto.

Dated: June 4, 2015

Respectfully submitted,

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STATEMENT OF ISSUES PRESENTED

1. Should the attorneys for the direct purchasers of Occupant Safety Systems who have obtained $43.6 million in class settlements with the Autoliv and TRW Defendants be awarded 28.5% of the settlement funds for attorneys' fees?

2. Should the attorneys for the direct purchasers of Occupant Safety Systems be reimbursed for their out-of-pocket costs and expenses in pursuing the claims in this case?

CONTROLLING AND MOST APPROPRIATE AUTHORITIES

Blum v. Stenson,
465 U.S. 886 (1984)..8

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980)..7

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Rawlings v. Prudential-Bache Properties, Inc.,
9 F.3d 513 (6th Cir. 1993) 2, 8, 9, 10

I. INTRODUCTION AND SUMMARY OF GROUNDS SUPPORTING THE REQUESTED AWARD

Interim Lead and Liaison Counsel[1] for the direct purchasers of Occupant Safety Systems[2] ("Plaintiffs' Counsel") respectfully submit this Memorandum in support of their Motion for An Award of Attorneys' Fees and Reimbursement of Litigation Costs and Expenses, seeking compensation for their successful litigation efforts to date in obtaining a total of $43.6 million in settlements from the Autoliv and TRW Defendants.

From that $43.6 million Plaintiffs' Counsel respectfully request an award of attorneys' fees of $12,426,000 million, which represents 28.5% of the Autoliv and TRW settlement funds.[3] Plaintiffs' Counsel submit that the requested award is fair to the Autoliv and TRW Settlement Classes (the "Class") and Plaintiffs' Counsel, and reasonable under well-established precedent in this Circuit concerning awards of attorneys' fees in common fund class action litigation. The principal grounds supporting the request are as follows:

1. Under Sixth Circuit law, the district court has the discretion to consider a motion for an award of attorneys' fees under one of two established methods, either the "percentage of the fund method" or the "lodestar-multiplier method." The clear trend in the law over the last several decades has been to utilize the percentage of the fund method, and Plaintiffs' Counsel believe that it is the

[1] This motion is submitted by Interim Lead and Liaison Counsel appointed by the Court, both on their own behalf and on behalf of additional law firms that worked on certain aspects of the case at Interim Lead Counsel's request and under their direction.
[2] "Occupant Safety Systems," are defined as seat belts, airbags, steering wheels or steering systems, safety electronic systems, and related parts and components.
[3] The TRW settlement agreement provides that the $8 million settlement amount can be reduced by a maximum of $2.25 million depending on the number of requests for exclusion from the TRW Settlement Class. The deadline to request exclusion from the TRW Settlement Class is June 24. If the full reduction of $2.25 million were to be taken, the total settlement funds would be $41.35 million, and the fee requested would be correspondingly reduced to $11,784,750.

most appropriate method for the Court to use in this case. *See Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993).

2. Through the efforts of Plaintiffs' Counsel, a substantial cash settlement fund of $43.6 million has been obtained for the benefit of the Class. Plaintiffs' Counsel have pursued the litigation vigorously; succeeded in motion practice; reviewed, analyzed and coded documents provided by the settling Defendants; obtained cooperation from certain Defendants; and negotiated beneficial settlements during the nearly three years of litigation since the direct purchaser cases were filed. Plaintiffs' Counsel have substantially advanced the litigation, and have strived to avoid duplication of efforts among the Plaintiffs' lawyers and to work efficiently and cooperatively with defense counsel and the Court.

3. The percentage award requested is well within the range of fee awards made by courts in this and other Circuits. *See, e.g., In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (33⅓%). It is less than the 30% cap set forth in the TRW Notice provided to the Settlement Class members, and is less than the percentage awards that numerous courts have made in similar antitrust class actions. While Plaintiffs' Counsel believe a fee of one-third (33⅓%) would be justified under the case law, we chose to place a cap of 30% on the fees to be requested.

4. Whether analyzed as a "cross-check" on the percentage of the fund method, or separately, the requested fee is also appropriate under the lodestar method. In the time period from the inception of the case through April 30, 2015, under the direction of Interim Lead Counsel, the law firms representing the Plaintiffs and the Settlement Classes have expended 9,373.50 hours on this litigation. As set forth in the Declarations of Plaintiffs' Counsel attached hereto as Exhibits 1 through 15, the "lodestar" value of these services (calculated by multiplying the hours worked by the

hourly rates historically charged by counsel) is $5,035,853.55. Accordingly, the requested fee represents a "multiplier" of approximately 2.47 times the lodestar, which is less than the multipliers approved in numerous cases. *See, e.g., In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767-68 (S.D. Ohio 2007) (approving multiplier of 6, and observing that "[m]ost courts agree that the typical lodestar multiplier" on a large class action "ranges from 1.3 to 4.5"); *Prandin,* 2015 WL 1396473, at *4 (3.01 multiplier). Further, the lodestar here is conservative, in that it excludes the time that is continuing to be spent prosecuting the case since April 30, 2015.

5. The Autoliv and TRW Settlement Classes consist of sophisticated business entities, ranging from parts suppliers to the world's major motor vehicle manufacturers. As of the date of the filing of this motion, no Settlement Class member has objected to the requested fee, which the TRW Notice stated would not exceed 30% of the settlement funds. The deadline for mailing objections is June 24, and Interim Lead Counsel will notify the Court if any objections are received after the Motion is filed.

* * * *

In the remainder of this memorandum, Interim Lead Counsel describe the background of the case (which is also set forth in more detail in the memorandum in support of the motion for final approval of the TRW settlement, also filed on June 4) and the work that Plaintiffs' Counsel have done; the Sixth Circuit precedent concerning attorneys' fee awards; the law supporting use of the percentage of the fund method; the cases supporting percentage awards equal to or greater than the percentage requested here; the appropriateness of the requested fee under a lodestar "cross-check"; and the application to this case of the various factors identified by the Sixth Circuit in evaluating fee petitions. Plaintiffs' Counsel also discuss the appropriateness of approving their request for reimbursement of litigation expenses of $145,044.44.

II. BACKGROUND

Starting in July 2012, Plaintiffs filed direct purchaser antitrust class action lawsuits against the Defendants[4] on behalf of a class of direct purchasers of "Occupant Safety Systems." On August 7, 2012, the Court appointed the undersigned law firms Interim Lead and Liaison Counsel for the direct purchasers. The direct purchaser actions were consolidated and coordinated for pretrial purposes on January 15, 2013. Plaintiffs then filed a Consolidated Amended Class Action Complaint on July 3, 2013, and a Second Consolidated Amended Class Action Complaint on February 28, 2014 (the "Complaint").[5] Plaintiffs allege that the Defendants agreed to fix, maintain, or stabilize prices, rig bids, and allocate the supply of Occupant Safety Systems, in violation of the federal antitrust laws. Plaintiffs further allege that the conspiracy increased the price direct purchasers paid above a competitive level.

Defendants filed a collective Rule 12(b)(6) motion to dismiss the Complaint. TRW Automotive Holdings Corporation also filed a separate motion to dismiss. The Court denied both motions. *In re Automotive Parts Antitrust Litig.,* 2014 WL 4272784 (E.D. Mich. Aug. 29, 2014) and *In re Automotive Parts Antitrust Litig.,* 2014 WL 4272774 (E.D. Mich. Aug. 29, 2014). Defendants then answered the Complaint, denying Plaintiffs' allegations and asserting defenses.

III. THE SETTLEMENT TERMS AND CLASS NOTICE

After intense and lengthy negotiations, Plaintiffs reached a $40 million settlement with the Autoliv Defendants, which amount was eventually reduced to $35.6 million per the Autoliv settlement agreement as the result of certain Autoliv Settlement Class members requesting exclusion

[4] The Autoliv Defendants, the TRW Defendants, the Takata Defendants and the Tokai Rika Defendants.

[5] Plaintiffs filed their Second Consolidated Amended Complaint in order to extend the class period and to reflect guilty pleas and criminal charges that were filed subsequent to the filing of the Complaint. The parties stipulated that Defendants could supplement their motions or merely reincorporate their previously-filed motions. Defendants did not file any supplemental pleadings.

from the Autoliv Settlement Class. On July 9, 2014, the Court preliminarily approved the Autoliv settlement and authorized dissemination of notice, which was disseminated by mail and publication. The Court held a final approval hearing on December 3, 2014. The Court granted final approval to the Autoliv settlement on January 7, 2015.

Also following protracted settlement negotiations, Plaintiffs reached a settlement with the TRW Defendants. On April 9, 2015, the Court provisionally certified a TRW Settlement Class, preliminarily approved the TRW settlement, and authorized dissemination of notice to the TRW Settlement Class.[6]

On April 30, 2015, the "Notice of Proposed Settlement of Direct Purchaser Class Action With TRW Defendants and Hearing on Settlement Approval and Request for Attorneys' Fees and Payment of Litigation Costs and Expenses, and Claim Form" (the "TRW Notice") was mailed to all TRW Settlement Class members identified by Defendants and Toyoda Gosei Co., Ltd. Additional notice to the members of the TRW Settlement Class was provided by way of a "Summary Notice of Proposed Settlement of Direct Purchaser Class Action with TRW Defendants and Hearing on Settlement Approval and Request for Attorneys' Fees and Payment of Litigation Costs and Expenses" that was published in *Automotive News* and in the national edition of *The Wall Street Journal*. In addition, copies of the TRW and Autoliv Notices are posted on-line at www.autopartsantitrustlitigation.com.[7]

Plaintiffs' Counsel in their memoranda filed in support of preliminary and final approval of the Autoliv and TRW settlements have set forth the terms of the agreements and explained why the

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[6] TRW's counsel complied with the Class Action Fairness Act of 2005 by providing the requisite notice to the appropriate federal and state officials.

[7] The Notice of the Autoliv settlement (dated August 29, 2014) stated that Plaintiffs' Counsel would be seeking at a future date an award of attorneys' fees from the settlement funds, reimbursement of expenses, and incentive awards to the Class representatives for their service to the direct purchasers.

settlements are fair, reasonable and adequate. The Court found the Autoliv settlement to be fair and approved it earlier this year. The Court has preliminarily approved the TRW settlement, and has set the final approval hearing for July 14, 2015. Together, the benefits of the two settlements are $43.6 million in cash, as well as valuable non-cash consideration in the form of cooperation in prosecuting the case against the remaining Defendants.

In accordance with Fed. R. Civ. P. 23(h)(1), page 9 of the TRW Notice, titled "Request for Attorneys' Fees and Expenses," informs Settlement Class members that Plaintiffs' Counsel will seek an award of attorneys' fees not to exceed 30% of the settlement funds, and reimbursement of litigation expenses, and that the fee and expense request would be filed by June 4, 2015. The TRW Notice, as required by Rule 23(b)(2), also sets forth the procedure and deadline for any objection to either of the requests. The deadline to object is June 24, 2015. As of the date of this memorandum, no objection to either request has been filed or received by Interim Lead Counsel. If any objections are received, Interim Lead Counsel will address them in a supplemental submission to the Court.

IV. THE ATTORNEYS' FEE REQUEST IS REASONABLE UNDER APPLICABLE LAW

Fed. R. Civ. P. 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and non-taxable costs that are authorized … by law." As discussed above, the requirements of Rule 23(h)(1) and (2) have been met: notice of the attorneys' fees request has been provided to the Settlement Class members and they have an opportunity to object. What remains is for the Court to determine what constitutes a reasonable attorneys' fee authorized by law under the facts and circumstances of this case. Plaintiffs' Counsel respectfully suggest that the Court award attorneys' fees of $12,426,000, which is 28.5% of the settlement funds, which they believe is fair to the Settlement Class members and to them, and reasonable under the applicable law.

A. The Percentage Of The Recovery Method Is The Preferred Method In The Sixth Circuit And Should Be Used In This Case

The Supreme Court has held that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also In re Delphi Corp. Sec., Derivative & ERISA Litig.,* 248 F.R.D. 483, 502 (E.D. Mich. 2008).

Courts have used two methods to calculate reasonable attorneys' fees in common fund cases. *See Report of the Third Circuit Task Force*, "Court Awarded Attorney Fees," 108 F.R.D. 237 (1986). One approach is the percentage of the fund method, pursuant to which the court awards a percentage of the fund created by the attorneys' efforts as their reasonable fee. It is consistent with traditional contingent fee arrangements in personal injury and other non-class litigation. The other approach, the lodestar method, multiplies the number of hours the attorneys have expended by their hourly rates to create a "lodestar" figure, which may be adjusted upwards or downwards by the court to account for factors such as the challenges presented by the case, the quality of work performed, and the risk of nonpayment.

Prior to 1973, most courts relied on the percentage of the fund method in awarding counsel a reasonable fee. As the First Circuit has observed, "it is the lodestar method, not the POF [percentage of the fund] method, that breaks from precedent. Traditionally, counsel fees in common fund cases were computed as a percentage of the fund, subject, of course, to considerations of reasonableness." *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995). "It was not until the mid-1970s that judicial infatuation with the lodestar method started to spread." *Id.*

Many courts – including courts in the Sixth Circuit – have returned to the percentage of recovery method. This trend began with the Supreme Court's decision in *Blum v. Stenson*, 465 U.S.

886 (1984), which dealt with fee awards in class actions. The Supreme Court observed that in calculating attorneys' fees under the common fund doctrine, "a reasonable fee is based on a percentage of the fund bestowed on the class." *Id.* at 900 n. 16.

In 1985, the Third Circuit Task Force Report joined the rising chorus of courts and commentators criticizing reliance on the lodestar approach in common fund cases. The Task Force concluded that in common fund cases, courts should *not* employ the lodestar method, but instead should award fees on a simplified, percentage of the fund basis. Third Circuit Task Force Report, 108 F.R.D. at 237, 255; *Manual for Complex Litigation* (Third) § 24.12, at 189 (West 1995) ("In practice, the lodestar method proved difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation to reach a predetermined result.") The Supreme Court has favorably cited the Third Circuit Task Force Report. *See Evans v. Jeff D.*, 475 U.S. 717, 736 n. 28 (1986). A second Third Circuit Task Force on Selection of Class Counsel, convened in 2001, reaffirmed the 1985 Task Force's conclusion endorsing use of the percentage of the fund method. One of the conclusions (and recommendations) of the 2001 Task Force is: "A percentage fee, tailored to the realities of the particular case, remains superior to any other means of determining a reasonable fee for class counsel." *Third Circuit Task Force on Selection of Class Counsel*, 208 F.R.D. 340, 355 (2002).

The Sixth Circuit has expressly approved use of the percentage of the fund, but still permits district courts to use either method to calculate a reasonable fee. *Rawlings*, 9 F.3d at 515-17 (discussing percentage-of-fund and lodestar approaches and declaring: "we require only that awards of attorney's fees by federal courts in common fund cases be reasonable under the circumstances."); *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *16 (E.D. Mich. Dec. 13, 2011); *Delphi*, 248 F.R.D. at 502; *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 percentage-of-the-fund method is the proper method to compensate Class Counsel" because "the lodestar method is cumbersome; the percentage-of-the-fund approach more accurately reflects the result achieved; and the percentage-of-the-fund approach has the virtue of reducing the incentive for plaintiffs' attorneys to over-litigate or 'churn' cases.") (citations omitted).

The percentage of the fund approach has likewise been endorsed in the First, Second, Third, Seventh, Eighth, Ninth, Tenth, Eleventh, and District of Columbia Circuits.[8] As the Sixth Circuit has observed, "[t]he percentage of the fund method has a number of advantages: it is easy to calculate; it establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation." *Rawlings*, 9 F.3d at 516.

The lodestar method, on the other hand, "has been criticized for being too time-consuming of scarce judicial resources," as it requires that courts "pore over time sheets, arrive at a reasonable hourly rate, and consider numerous factors in deciding whether to award a multiplier." *Id.* at 516-17. Moreover, "[w]ith the emphasis it places on the number of hours expended by counsel rather than the results obtained, it also provides incentives for overbilling and the avoidance of early settlement." *Id.* at 517; *see also Manual for Complex Litigation* (Third) § 24.12 at 189 (West 1995).

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[8] *In re Thirteen Appeals,* 56 F.3d at 307; *Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 50 (2d Cir. 2000); *In re General Motors Corp., Pick-Up Truck Fuel Tank Prods. Liab. Litig.,* 55 F.3d 768, 821 (3d Cir. 1995); *Matter of Continental Illinois Sec.Litig.,* 962 F.2d 566, 567 (7th Cir. 1992) (as amended on denial of motions for rehearing and clarification); *Johnston v. Comerica Mortg. Corp.,* 83 F.3d 241, 244-46 (8th Cir. 1996); *Six (6) Mexican Workers v. Arizona Citrus Growers,* 904 F.2d 1301, 1311 (9th Cir. 1990); *Brown v. Phillips Petroleum Co.,* 838 F.2d 451, 456 (10th Cir. 1988); *Swedish Hosp. Corp. v. Shalala,* 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condominium Ass'n, Inc. v. Dunkle,* 946 F.2d 768 (11th Cir. 1991).

Thus, there has been a "'trend towards adoption of a percentage-of-the-fund method in [common fund] cases.'" *Delphi*, 248 F.R.D. at 502 (quoting *Rawlings*, 9 F.3d at 516-517).

B. The Requested Fee Constitutes A Fair and Reasonable Percentage Of The Settlement Fund

Plaintiffs' Counsel have requested a fee of $12,426,000, which is 28.5% of the $43.6 million settlement fund created as a result of their efforts. In addition, Plaintiffs' Counsel request reimbursement of litigation costs and expenses, as detailed in Section VI *infra*. Extensive precedent exists to support the requested fee, as discussed more fully below. First, surveys of class action fee awards nationally place the average award in the 30% to 33⅓% range. Second, numerous fee awards in antitrust class actions involving similar allegations of price fixing and market allocation, and similar settlement amounts, have been in the 30% to 33⅓% range. Third, even in so-called "megafund cases," where the recoveries are $100 million or more, fee awards of 30% and greater have been granted. In short, the requested fee is consistent with a long line of precedent and is well supported.[9]

[9] There is ample precedent for application of the selected percentage to the settlement fund before the separate award of litigation costs and expenses from the fund. *See, e.g.*, *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *17; *In re Foundry Resins Antitrust Litig.,* Case No. 2:04-md-1638 (S.D. Ohio Mar. 31, 2008) (Exhibit 16); *Delphi*, 248 F.R.D. at 505 (attorneys' fees awarded on gross settlement fund); *In re Cardizem CD Antitrust Litig.,* 218 F.R.D. 508, 531-535 (E.D. Mich. 2003) (awarding costs in addition to percentage of the fund fee); *In re ATI Tech., Inc. Sec. Litig.*, 2003 WL 1962400, at *6 (E.D. Pa. 2003) (awarding fee of 30% of gross settlement fund plus $51,318.87 in costs). The reason for calculating attorneys' fees based on the gross amount of the settlement fund, including that portion of the fund that goes to pay litigation costs, is straightforward: the costs for which Plaintiffs' Counsel seek reimbursement were incurred for the benefit of the Class to secure the settlement fund. Because the litigation costs were incurred in pursuit of the settlement fund itself, and were necessary to its creation, the recovery of those costs pursuant to the settlement is a benefit to the Settlement Classes that should be counted in valuing the settlement fund for the purpose of calculating attorneys' fees.

1. Extensive Surveys Of Class Action Fee Awards Support The Requested Award

A study of class action attorneys' fees, which examined 289 class action settlements of up to $50 million, determined that the average attorneys' fee award was 31.7%. *See In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (citing study by Professor John C. Coffee, Jr., of Columbia University Law School). Courts in this Circuit have made similar observations. *E.g., Thacker v. Chesapeake Appalachia, L.L.C.,* 695 F. Supp. 2d, 521, 528 (E.D. Ky. 2010). The leading treatise on class action litigation has put the average fee at one third. *See* Alba Conte & Herbert Newberg, *Newberg on Class Actions* (4th ed. 2002), §14:6 at 551 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Bessey v. Packerland Plainwell, Inc*., 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).

Fee awards in the neighborhood of one third or above in connection with class action settlements have become routine. *See, e.g., In re Combustion, Inc*., 968 F. Supp. 1116, 1133, 1142 (W.D. La. 1997) (awarding fee of 36% of $127 million recovery and noting that "50 percent of the fund is the upper limit on a reasonable fee award from a common fund . . . . [D]istrict courts in the Fifth Circuit have awarded percentages of approximately one-third contingency fee"); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (fee of 36% of $3.5 million recovery); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 (3d Cir. 2001) (noting that one district court had estimated the range to be 19% to 45%, while another had fixed it at 20% to 33.33%); *Waters v. Intern. Precious Metals Corp.,* 190 F.3d 1291, 1292-94 (11th Cir. 1999) (fee of 33.3% of $40 million recovery); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. 2001) (awarding fee of approximately one third of $359 million antitrust recovery, which is "within the

fifteen to forty-five percent range established in other cases."); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (Awarding fee of 45% of $7.3 million settlement fund and noting: "[t]here have been several [antitrust] cases where courts have awarded more than 40% of the settlement fund for fees and expenses").

2. Recent Awards In Similar Antitrust Cases Support The Requested Fee In This Case

District courts in the Sixth Circuit (and elsewhere) have recently awarded 30% or more of settlement funds as reasonable attorneys' fees. For example, in *Prandin, supra,* the court awarded one-third of a $19 million settlement fund. In *Skelaxin*, 2014 WL 2946459, at *1, the court awarded one-third of a $73 million settlement fund, finding that a "counsel fee of one-third is fair and reasonable and fully justified" and "within the range of fees ordinarily awarded." In *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *8 (E.D. Tenn. May 17, 2013), the court found that a one-third fee from settlements totaling $158.6 million was reasonable. Other examples are *In re Polyurethane Foam Antitrust Litig.,* 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015), where plaintiffs' counsel were awarded 30% of a $148.7 million settlement fund, *In re Refrigerant Compressors Antitrust Litig.,* MDL No. 2:09-md-02042 (E.D. Mich. June 16, 2014) (Exhibit 17), where the court awarded 30% of a $30 million settlement fund as attorneys' fees, *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan,* 2015 WL 1498888, at *16 (E.D. Mich. March 31, 2015) (30% of $29.99 million settlement fund); and *In re Foundry Resins Antitrust Litig.,* Case No. 2:04-md-1638 (S.D. Ohio Mar. 31, 2008) (attorneys' fees of one-third of a settlement fund of $14.1 million awarded) (Exhibit 16). Additional decisions in antitrust, securities and other areas in which

fees of 30% or more of the settlement funds were awarded abound, and are collected in footnote 10.[10] Plaintiffs' Counsel's request here is fully supported by the decisions in these (and other) cases.

3. Even In So-Called "Mega Fund" Cases, Courts Award Fees Of 30% And Above

Fee awards in cases resulting in settlements of $100 million or more – so-called "mega fund" cases – provide further support to Plaintiffs' Counsel's application. It is sometimes argued that as the amount of the recovery increases, the percentage of the fee should decrease, to prevent windfalls to counsel. Regardless, there are numerous instances in which fees of 30% or more have been awarded in such cases. *See, e.g., Polyurethane Foam, supra* (30%); *Standard Iron Works, supra* (one-third); *In re Neurontin Antitrust Litig.,* C.A. No. 02-1830 (D.N.J. Aug. 6, 2014) (one-third of $190,416,438 million settlement) (Exhibit 19); *In re Titanium Dioxide Antitrust Litig.*, 2013 WL

[10] *See, e.g., In re Plasma-Derivative Protein Therapies Antitrust Litig.*, 1:09-cv-07666 (N.D. Ill. Jan.22, 2014) (awarding one-third interim fee from initial settlement in multi-defendant case) (Exhibit 18); *Standard Iron Works v. Arcelormittal,* 2014 WL 77815572, at *1 (N.D. Ill. Oct. 22, 2014) (attorneys' fee award of one-third of $163.9 million settlement); *In re Fasteners Antitrust Litig.*, 2014 WL 296954, *7 (E.D. Pa. Jan. 27, 2014) ("Co–Lead Counsel's request for one third of the settlement fund is consistent with other direct purchaser antitrust actions."); *Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012) (awarding one-third fee from $90 million settlement fund); *In re Ready-Mixed Concrete Antitrust Litig.*, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (approving one-third fee); *Williams v. Sprint/United Mgmt. Co,* 2007 WL 2694029, at *6 (D. Kan., Sept. 11, 2007) (awarding fees equal to 35% of $57 million common fund); *Lewis v. Wal-Mart Stores, Inc.,* 2006 WL 3505851, at *1 (N.D. Okla., Dec. 4, 2006) (awarding one-third of the settlement fund and noting that a "one-third [fee] is relatively standard in lawsuits that settle before trial."); *New England Health Care Employees Pension Fund v. Fruit of the Loom, Inc.,* 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("[A] one-third fee from a common fund case has been found to be typical by several courts.") (citations omitted), *aff'd*, 534 F.3d 508 (6th Cir. 2008); *In re AremisSoft Corp., Sec. Litig.,* 210 F.R.D. 109, 134 (D.N.J. 2002) ("Scores of cases exist where fees were awarded in the one-third to one-half of the settlement fund.") (citations omitted); *Klein v. PDG Remediation, Inc.,* 1999 WL 38179, at *4 (S.D.N.Y., Jan. 28, 1999) ("33% of the settlement fund…is within the range of reasonable attorney fees awarded in the Second Circuit"); *Moore v. United States,* 63 Fed. CI. 781, 787 (2005) ("one-third is a typical recovery"); *In re FAO Inc. Sec. Litig.*, 2005 WL 3801469, at * 2 (E.D. Pa., May 20, 2005) (awarding fees of 30% and 33%); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *5 (E.D. Pa., Dec. 1, 2004) (awarding a 33% fee and noting that "[t]he requested percentage is in line with percentages awarded in other cases"); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433-44 (E.D. Pa. 2001) (awarding one-third of a $48 million settlement fund).

6577029, at *1 (D. Md. Dec. 13, 2013) (one-third fee from $163.5 million fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (noting that "in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees" and awarding one-third fee from $150 million fund); *In re Linerboard Antitrust Litig.,* 2004 WL 1221350 (E.D. Pa., June 2, 2004) (30% of $202 million awarded); *In re OSB Antitrust Litig.,* Master File No. 06-826 (E.D. Pa.) (fee of one-third of $120 million in settlement funds) (Exhibit 20); *Ikon Office Solutions, Inc. Sec. Litig*,, 194 F.R.D 166 (E.D. Pa. 2000) (fee of 30% of settlement of $109 million). The fees awarded in these mega fund cases lend further support to the reasonableness of Plaintiffs' Counsel's attorneys' fee request.

C. Consideration Of The Factors Identified By The Sixth Circuit Supports The Requested Fees

Once the Court has selected a method for awarding attorneys' fees, it is to consider six factors that the Sixth Circuit has identified to guide courts in weighing a fee award in a common fund case: 1) the value of the benefit rendered to the class; 2) the value of the services on an hourly basis; 3) whether the services were undertaken on a contingent fee basis; 4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; 5) the complexity of the litigation; and 6) the professional skill and standing of counsel involved on both sides. *E.g., Bowling v. Pfizer, Inc.,*102 F.3d 777, 780 (6th Cir. 1996). When applied to the facts of this case, these factors indicate that the fee requested constitutes fair and reasonable compensation for Plaintiffs' Counsel's efforts.

1. Plaintiffs' Counsel Secured A Valuable Benefit For The Class

The result achieved for the class is the principal consideration. *E.g., Delphi,* 248 F.R.D. at 503. Here, as more fully discussed in the memoranda filed in support of final approval of the Autoliv and TRW settlements, Plaintiffs' Counsel have achieved excellent recoveries. The recovery

for the Settlement Class members is in cash available for distribution, and not in coupons, future discounts or injunctive relief, which can be difficult to quantify. A claim form for Settlement Class members to use to obtain their *pro-rata* share of the settlement funds was mailed to them with the TRW Notice. The settlement fund of $43.6 million represents more than twice the $19.6 million in criminal fines imposed on the Autoliv and TRW Defendants in the United States. Further, the Takata and Tokai Rika Defendants remain in the case, and another Defendant may be added. The non-settling Defendants remain responsible for all damages caused by the alleged antitrust conspiracy, less the amounts paid in settlement.

2. A Lodestar Crosscheck Confirms That The Requested Fee Is Reasonable

Some courts have considered the lodestar as a "cross-check" on the reasonableness of the fee calculated as a percentage of the fund. *See Cardinal,* 528 F. Supp. 2d at 764; *In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *18. Use of a lodestar cross-check is, however, optional, and, because it is only a check, the court is not required to engage in detailed scrutiny of time records. *Cardinal*, 528 F. Supp. 2d at 767. Here, the amount of time Plaintiffs' Counsel had to expend makes clear that the fee requested is well "aligned with the amount of work the attorneys contributed" to the recovery, and does not constitute a "windfall." *See id.*

To calculate a reasonable fee under the lodestar method, a court must first determine the base amount of the fee by multiplying the number of hours counsel reasonably expended on the case by their reasonable hourly rate. *See Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). In addition to Interim Lead and Liaison Counsel, a number of other law firms have performed tasks at the request of Interim Lead Counsel in the period from the inception of the case through April 30, 2015. The single largest task performed by these other firms has been the review, analysis and coding of documents.

Interim Lead Counsel have drawn upon the talents and experience of the various firms to both vigorously and efficiently prosecute the case on behalf of the direct purchasers. In addition to assisting in the document review project, firms were requested to perform discrete research or drafting assignments. At all times, the involvement of these firms was handled with an eye toward efficiency, and avoiding duplication.

As the Declarations submitted by the various law firms indicate,[11] Plaintiffs' Counsel have expended 9373.50 hours up to April 30, 2015. Applying the historical rates charged by counsel to the hours expended yields a "lodestar" of $5,035,853.55.[12] In calculating the lodestar, Interim Lead Counsel placed a cap of $350 per hour on time spent on the document review and coding work.

Defendants are represented by able counsel who mounted, and in the case of the Takata and Tokai Rika Defendants, continue to mount, a vigorous defense. The efforts of defense counsel in this case have made it necessary for Plaintiffs' Counsel to expend considerable effort and ingenuity in prosecuting this litigation.

If the Court were to award the requested fee, Plaintiffs' Counsel would be receiving a reasonable multiplier of approximately 2.47 on their lodestar. Multipliers vary, but in the Sixth Circuit they have been as high as 6. *Cardinal*, 528 F. Supp. 2d at 767-68 (rejecting multiplier of 7.89, but 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."). In *Prandin,* 2015 WL 1396473, at *4, the fee award constituted a 3.01 multiplier.

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[11] Exhibits 1 through 15.

[12] The United States Supreme Court has held that the use of current rates, as opposed to historical rates, is appropriate to compensate counsel for inflation and the delay in receipt of the funds. *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 716 (1987). Plaintiffs' Counsel have nevertheless submitted their lodestar information at their lower historical rates, rather than at their current (higher) rates.

The hours expended on this case, while substantial, are reasonable, and reflect the challenging nature of the lawsuit and a commitment to achieving a successful result. Effort was made to avoid unnecessary duplication or repetition of tasks. Given the excellent result achieved, the complexity of the claims and defenses, the real risk of non-recovery, the formidable defense teams, the delay in receipt of payment, and the substantial experience and skill of Plaintiffs' Counsel, the requested multiplier on the lodestar and the resulting fee is reasonable compensation for Plaintiffs' Counsel's work.

3. The Requested Fee Is Fair and Reasonable Given The Real Risk That Plaintiffs' Counsel Could Have Received No Compensation For Their Efforts If The Litigation Had Not Been Successful

It is common in contingent fee cases for attorneys representing the class to receive fees in excess of their normal hourly rates. The rationale for this is straightforward: "Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981), *overruled on other grounds*, *Int'l Woodworkers of Am. AFL-CIO and its Local No. 5-376 v. Champion Intern. Corp*., 790 F.2d 1174 (5th Cir. 1986). "If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *Behrens v. Wometco Enters., Inc*., 118 F.R.D. 534, 548 (S.D. Fla. 1988). *See In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *19 (risk of non-payment a factor supporting the requested fee). All Plaintiffs' Counsel proceeded on a contingent fee basis and advanced funds and time associated with the litigation, risking not receiving payment for the value of their time and reimbursement of out-of-pocket cost and expenses if they were unsuccessful. While it is true there were criminal prosecutions of Autoliv and TRW, the guilty pleas were not nearly as broad as the

claims in the civil case, and Plaintiffs' Counsel were not assured of recovering anything in the case. The fines imposed on Autoliv and TRW total $19.6 million. Nevertheless, Plaintiffs' Counsel were able to obtain $43.6 million in settlements for the Class. Plaintiffs' Counsel have invested thousands of hours of their time and have advanced tens of thousands of dollars in costs and expenses to represent direct purchasers in this case, despite the possibility of recovering nothing (or much less than their lodestars) for their efforts. *See Delphi,* 248 F.R.D. at 503-54. Yet, the fee Plaintiffs' Counsel are seeking represents only a modest multiplier on what they would have charged on an hourly rate basis. This suggests that the requested fee is an excellent value.

The contingency factor "stands as a proxy for the risk that attorneys will not recover compensation for the work they put into a case." *Cardinal*, 528 F. Supp. 2d at 766. Indeed, "'some courts consider the risk of non-recovery as the most important factor in fee determination.'" *Kritzer v. Safelite Solutions, LLC*, 2012 WL 1945144, at *9 (S.D. Ohio May 30, 2012) (quoting *Cardinal,* 528 F. Supp. 2d at 766). "[W]ithin the set of colorable legal claims, a higher risk of loss does argue for a higher fee." *In re Trans Union Corp. Privacy Litig.*, 629 F. 3d 741, 746 (7th Cir. 2011). The very substantial risk undertaken by Plaintiffs' Counsel serves as another factor to support the requested attorneys' fees.

4. Society Has An Important Stake In This Lawsuit And An Award Of Reasonable Attorneys' Fees To Class Counsel

It is well established that there is a "need in making fee awards to encourage attorneys to bring class actions to vindicate public policy (e.g., the antitrust laws) as well as the specific rights of private individuals." *In re Folding Carton Antitrust Litig.*, 84 F.R.D. 245, 260 (N.D. Ill. 1979). Courts in the Sixth Circuit weigh "society's stake in rewarding attorneys who [win favorable outcomes in antitrust class actions] in order to maintain an incentive to others . . . Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar

counsels in favor of a generous fee . . . Society also benefits from the prosecution and settlement of private antitrust litigation." *In re Cardizem*, 218 F.R.D. at 534 (internal quotation marks omitted). *Accord, Delphi,* 248 F.R.D. at 504.

Here, in the criminal cases the Department of Justice did not seek restitution from either Autoliv or TRW. The substantial recovery Plaintiffs' Counsel have achieved makes clear to participants in the motor vehicle parts industry, and other lines of business, that collusion among sellers will be the subject of vigorous private civil litigation, and may be expected to help deter the repetition of such conduct in the future. Society as a whole – to the extent that an economy composed of competitive markets is superior to one in which free competition is stifled by collusion – stands to benefit from the work Plaintiffs' Counsel have performed.

5. The Complexity Of This Case Supports The Requested Fee

It certainly comes as no surprise to the Court that "[a]ntitrust class actions are inherently complex . . . ." *In re Cardizem*, 218 F.R.D. at 533. S*ee also In re Packaged Ice Antitrust Litig.,* 2011 WL 6209188, at *19; *In re Linerboard Antitrust Litig.,* 292 F.Supp.2d 631, 639 (E.D. Pa. 2003)("An antitrust class action is arguably the most complex action to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.") (citations and internal quotation marks omitted). This case is no exception, as Plaintiffs' Counsel have been required to, *inter alia*, investigate the market, draft complaints, brief and argue motions to dismiss, undertake document review, and negotiate valuable initial settlements with Autoliv and TRW. The case against the remaining Defendants continues. In addition, many of the documents are in Japanese and German, and a large number of the witnesses will be native Japanese and German speakers, adding additional complexity to the case.

6. Skill And Experience Of Counsel

The skill and experience of counsel on both sides of the "v" is a factor courts may consider in determining a reasonable fee award. *E.g, Polyurethane Foam,* 2015 WL 1639269 at * 7; *In re Packaged Ice Antitrust Litig.,* 2011 WL 6219188, at *19. The Court, in appointing Kohn, Swift & Graf, P.C., Preti, Flaherty, Believeau & Pachios, L.L.P., Freed, Kanner, London & Millen, L.L.C., Spector, Roseman, Kodroff & Willis, P.C., and Fink + Associates Law as Interim Lead and Liaison Counsel (and later as Class Counsel for the Autoliv and TRW Settlement Classes), recognized that they have the requisite skill and experience in class action and antitrust litigation to serve effectively in these roles. *See* Fed.R.Civ. P. 23(g). In assessing this factor, courts also may look to the qualifications of the defense counsel opposing the class. Here, the quality of defense counsel from Dykema Gossett P.L.L.C., Kerr, Russell and Weber, P.L.C., Alston & Bird L.L.P., Williams & Connolly, Butzel Long and Baker & Miller P.L.L.C. is top notch. All of the firms representing Defendants have earned excellent reputations and have extensive resources at their disposal.

In the final analysis though, as a district court in Florida has observed, "[t]he quality of work performed in a case that settles before trial is best measured by the benefit obtained." *Behrens*, 118 F.R.D. at 547-48. As explained *supra*, a very substantial cash benefit was obtained for the Settlement Classes in this case, which provides the principal basis for awarding the attorneys' fees sought by Plaintiffs' Counsel.

V. THE COURT SHOULD AUTHORIZE INTERIM LEAD COUNSEL TO DETERMINE FEE ALLOCATIONS

Plaintiffs' Counsel have worked collectively on this litigation under the supervision of Interim Lead Counsel appointed by the Court. Courts generally approve joint fee applications that request a single aggregate fee award with allocations to specific firms to be determined by the lead counsel, who know the most about the work done by each firm and the relative contribution each

firm has made to the success of the litigation.[13] Interim Lead Counsel have directed this case from its inception and are the attorneys "better able to describe the weight and merit of each [counsel's] contribution." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *17-*18 (citation omitted, alteration in original); *see also In re Copley Pharm., Inc. Albuterol Prods. Liab. Litig.*, 50 F.Supp.2d 1141, 1148 (D. Wy. 1999), *aff'd*, 232 F.3d 900 (10th Cir. 2000). From an efficiency standpoint, leaving the allocation to Interim Lead Counsel makes good sense, because it relieves the Court of the "difficult task of assessing counsels' relative contributions." *In re Prudential Ins. Co. Amer. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 329 n. 96 (3d Cir. 1998); *see also In re Cendant Corp. Sec. Litig.*, 404 F.3d 173 (3d Cir. 2005) (lead counsel given substantial authority to allocate fees awarded by Court).

Plaintiffs' Counsel therefore request that the Court approve the aggregate amount of the fees requested, with the specific allocation of the fee among firms to be performed by Interim Lead Counsel. *See Polyurethane Foam, supra.* To the extent that there are disputes that cannot be resolved by counsel, however, the Court retains the jurisdiction necessary to decide them. *See In re Automotive Refinishing Paint Antitrust Litig.,* 2008 WL 63269, at *8 (E.D. Pa. Jan. 3, 2008) (co-lead counsel to allocate fees, but the court retained jurisdiction to address any disputes).

VI. LITIGATION EXPENSES

Plaintiffs' Counsel respectfully request reimbursement of litigation costs and expenses in the amount of $145,044.44. These expenses have been incurred by the law firms separately from the funds approved by the Court in connection with the Autoliv settlement that may be used to defray

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[13] *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (noting "the accepted practice of allowing counsel to apportion fees amongst themselves"); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 357 (N.D. Ga. 1993) ("Ideally, allocation is a private matter to be handled among class counsel.").

litigation expenses.[14] As the court stated in *In re Cardizem*, "class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel, and other litigation-related expenses." 218 F.R.D. at 535. The expenses incurred by each law firm are set forth in Exhibit B to the Declarations of counsel attached hereto as Exhibits 1 through 15. These expenses were reasonable and necessary to pursue the case and to obtain the substantial settlements reached in this litigation.

VII. CONCLUSION

For the foregoing reasons, Interim Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Costs and Expenses should be granted. A proposed order is submitted with this memorandum as Exhibit 21 and is submitted separately via ECF utility.

DATED: June 4, 2015

Respectfully submitted,

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[14]The Court has authorized Plaintiffs' Counsel to utilize up to $1 million to defray litigation expenses in this case, including expenditures for experts, depositions, and document reproduction and review. Plaintiffs' Counsel have not used any of the $1 million, and are seeking reimbursement of out-of-pocket expenses incurred in pursuing this case for direct purchasers of Occupant Safety Systems.

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