# EXHIBIT 17

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF OHIO**
**WESTERN DIVISION (DAYTON)**

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| ART SHY, et al.<br>Plaintiffs,<br>vs.<br><br>NAVISTAR INTERNATIONAL CORPORATION, et al.<br>Defendants. | Case No. 3:92-CV-00333<br><br>District Judge Walter H. Rice |

**DECLARATION OF NATASHA S. FEDDER, ESQ. IN SUPPORT OF CLASS REPRESENTATIVES' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF AMENDMENTS TO THE SUPPLEMENTAL BENEFIT PROGRAM**

I, Natasha S. Fedder, Esq. declare:

1. I am an attorney and Counsel with the law firm Scale LLP ("Scale").

2. The Court has appointed Markovits, Stock & DeMarco, LLC ("MSD") as Class Counsel. MSD has retained Scale to advise on issues arising under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") in connection with the Class Settlement Agreement. Scale is being paid hourly fees and expenses by MSD. I am the primary attorney at Scale consulting with MSD.

3. I have personal knowledge of all the matters stated herein and, if called as a witness, I could competently testify thereto.

4. I submit this Declaration in support of the Class Representatives' Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Amendments to the Supplemental Benefit Program (the "Motion").

**Introduction**

5. The Class Settlement Agreement is related to the Profit Sharing Settlement Agreement and the Krzysiak Action Settlement Agreement,[1] which would resolve disputes that have arisen under the Shy Settlement Agreement (the "Shy Agreement").

[1] These Settlement Agreements are attached as Exhibits to the Motion.

6. MSD asked me to review the Class Settlement Agreement and the related Profit Sharing and Krzysiak Action Settlement Agreements from an ERISA perspective. I have done so, and am of the opinion that the settlements do not violate ERISA's so-called "prohibited transaction" rules. To the extent there is an open question as to whether any of the settlements would be a "prohibited transaction," any concern is, in my opinion, alleviated because they satisfy the relevant conditions for an exemption the U.S. Department of Labor (the "Department") granted specifically to exempt such settlements from ERISA's prohibited transaction restrictions.

7. Furthermore, I support the position of the Class Representatives and Class Counsel that the release by the Class Members of their potential claims, including potential ERISA claims, is fair and in the best interest of the Class Members for the reasons set forth below and in the Memorandum in Support of the Motion (the "Memorandum"), as to which I have provided review and comment from an ERISA perspective.

**The Shy Plan**

8. The Shy Agreement created the Navistar International Transportation Corp. ("Navistar") Retiree Health Benefit and Life Insurance Plan (the "Shy Plan").

9. The Shy Plan consists of the Retiree Health Benefit Program and the Retiree Life Insurance Program (together, the "Base Plan") and the Navistar International Transportation Corp. Retiree Supplemental Benefit Program (the "Supplemental Benefit Program"). *See* Doc. No. 12-1 at 37.

10. Navistar established the Retiree Health Benefit Trust (the "Health Benefit Trust") to implement the Base Plan. *See* Doc. No. 12-1 at 69.

11. Navistar established the Supplemental Benefit Trust to implement the Supplemental Benefit Program (the "Supplemental Benefit Trust"). *See* Doc. No. 12-1 at 132.

12. Pursuant to Section 7.1 of the Supplemental Benefit Program, Navistar is obligated to make certain contributions under the Supplemental Benefit Trust Profit Sharing Plan, attached to the Supplemental Benefit Program as Appendix B-6 (the "Profit Sharing Plan"). *See* Doc. No. 12-1 at 122; Doc. No. 12-2 at 87.

**The Shy Plan Fiduciaries**

13. Navistar is the Plan Administrator and Named Fiduciary of the Base Plan, subject to the review authority of the Health Benefit Program Committee. *See* Doc. No. 12-1 at 38-39.

14. The Supplemental Benefit Committee (the "SBC") is the Program Administrator and Named Fiduciary of the Supplemental Benefit Program. *See* Doc. No. 12-1 at 119.

**The Profit Sharing Dispute**

15. The SBC has raised disputes under the Profit Sharing Plan regarding the calculation of Navistar's profit sharing contributions for certain years. Those disputes were arbitrated. The arbitrator—Clifton Larson Allen ("CLA"), one of the five largest accounting firms in the U.S.—concluded that Navistar's calculation should be adjusted in certain respects and that Navistar owed past due profit sharing contributions and pre-award interest totaling $239 million. Navistar and the SBC also disagree regarding whether the "Profit Sharing Cessation Date" as defined in Section 7.2 of the Supplemental Benefit Program has occurred.

**The Medicare Part D Subsidies Dispute**

16. For the past five years, Navistar and the SBC have been involved in a dispute concerning subsidies paid to the Base Plan under the Medicare Part D prescription drug program. Navistar and the SBC disagree about how the subsidies affect the calculation of the participant contributions.

17. On October 21, 2016, Plaintiffs Wayne Krzysiak and Michael LaCour (the "Krzysiak Plaintiffs") filed a complaint in this Court against Navistar in a civil action captioned *Krzysiak, et al. v. Navistar International Corporation, et al.*, S.D. Ohio Case No. 3:16-CV-00443-WHR (the "Krzysiak Action"). The Krzysiak Plaintiffs assert that Navistar is improperly failing to account for Medicare Part D subsidies as a reduction in the cost of prescription drugs for purposes of calculating participant contributions. The Krzysiak Action remains pending before this Court.

18. The SBC sponsored the Krzysiak Action by paying associated fees and expenses from the Supplemental Benefit Trust.

**The Settlement Releases and Consideration**

19. The SBC and Navistar have now agreed to a settlement of their Profit Sharing Dispute (the "Profit Sharing Settlement"), which includes a release of the SBC's claims relating to the Medicare Part D Subsidies Dispute. Navistar and the Krzysiak Plaintiffs have now agreed to a settlement of their Medicare Part D Subsidies Dispute (the "Krzysiak Action Settlement"). Both settlements are contingent on the agreement of the Class Members to release their claims relating to the Profit Sharing Dispute and the Medicare Part D Subsidies Dispute.

20. The SBC is releasing its claims relating to the Profit Sharing Dispute and the Medicare Part D Subsidies Dispute in its capacity as a fiduciary to the Supplemental Benefit Program. As such, it is releasing claims that it has or may have brought as a fiduciary on behalf of the Supplemental Benefit Program.

21. The Krzysiak Plaintiffs are releasing their claims relating to the Medicare Part D Subsidies Dispute in their capacity as individuals. They are not releasing claims belonging to either the Shy Plan or any Shy Plan fiduciary.

22. The Class Members are releasing their claims relating to the Profit Sharing Dispute and the Medicare Part D Subsidies Dispute in their capacity as individuals. They are not releasing claims belonging to either the Shy Plan or any Shy Plan fiduciary.

23. The settlements provide for the payment of $556 million in cash (plus interest) to satisfy all past, present, and future profit sharing obligations of Navistar under the Shy Agreement. Navistar will make those cash payments to the Supplemental Benefit Trust.

24. The settlements further provide for the payment of $20 million in cash to resolve the Medicare Part D Subsidies Dispute. Navistar will pay $3 million of that amount to the Supplemental Benefit Trust, and $17 million to Subaccount A of the Health Benefit Trust, where the $17 million will be earmarked for the payment of future participant contributions. Additionally, Navistar has committed to offset the Medicare Part D subsidies from the calculation of the participant contribution rate in the future. The definition of "Total Actual Drug Cost" in Appendix A-6 of the Shy Plan will be amended to implement that commitment, which is currently estimated at a value of $118 million.

**ERISA's Prohibited Transaction Rules and PTE 2003-39**

25. ERISA categorically prohibits certain transactions between a plan and a party in interest. *See* ERISA § 406(a), 29 U.S.C. § 1106(a). ERISA defines "party in interest" to include "any fiduciary" to a plan and "an employer any of whose employees are covered by such plan." ERISA § 3(14)(A), (C), 29 U.S.C. § 1002(14)(A), (C). ERISA's prohibited transaction restrictions are, however, subject to certain exemptions.

26. In the early 2000s, the Department responded to "concerns raised by the pension community regarding the impact of ERISA's prohibited transaction provisions on the settlement of litigation by employee benefit plans with parties in interest" by granting Prohibited Transaction Exemption ("PTE") 2003-39. 68 Fed. Reg. 75632. PTE 2003-39 provides: "[T]he

restrictions of sections 406(a) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the [Internal Revenue] Code . . . shall not apply to . . . *The release by the plan or a plan fiduciary of a legal or equitable claim against a party in interest in exchange for consideration, given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's or the fiduciary's claim*" if the relevant conditions set forth in the exemption are met. 75 Fed. Reg. 33836 (emphasis added). The exemption applies to settlement of actual or threatened litigation. *See id.* at 33830.

27. Importantly, "the fact that a transaction is subject to" PTE 2003-39 "is not dispositive of whether the transaction is in fact a prohibited transaction." 68 Fed. Reg. 75639, 75633. Rather, the Department granted the exemption "in response to uncertainty expressed on the part of plan fiduciaries charged with the responsibility under ERISA for determining whether it is in the interests of a plan's participants and beneficiaries to enter into a settlement agreement with a party in interest." *Id.* at 75633.

28. In my opinion, the releases the Class Members and the Krzysiak Plaintiffs are giving in connection with the Class Settlement and the Krzysiak Action Settlement are not subject to PTE 2003-39 because the Class Members and the Krzysiak Plaintiffs are giving their respective releases in their capacity as individuals. There is thus no release by a plan or a plan fiduciary that would implicate PTE 2003-39 in the first place.

29. In my opinion, the releases the SBC is giving in connection with the Profit Sharing Settlement Agreement are subject to PTE 2003-39 because the SBC (a fiduciary to the Supplemental Benefit Program, which is a component of the Shy Plan) released claims against Navistar (a party in interest either by virtue of its status as a fiduciary to the Base Plan, which is a component of the Shy Plan, or as an employer of Shy Plan participants) in exchange for consideration given by Navistar (a $556 million cash payment, plus interest) in complete settlement of both the SBC's claims relating to the Profit Sharing Dispute and the SBC's claims relating to the Medicare Part D Subsidies Dispute.

30. Although, in my opinion, the Profit Sharing Settlement is subject to PTE 2003-39 insofar as it involves a release by a plan fiduciary (the SBC) in settlement of claims against a party in interest (Navistar) in exchange for consideration from the party in interest, it remains an open question whether the settlement is a prohibited transaction. *See* 68 Fed. Reg. 75633. Regardless, any prohibited transaction-related concern is, in my opinion, alleviated because the

settlement satisfies all of PTE 2003-39's relevant conditions. *See* 75 Fed. Reg. 33836-33837 (setting forth conditions). More specifically:

*There is a genuine controversy involving the plan.*

a. EascoLaw PLLC ("EascoLaw"), outside counsel to the SBC, has determined and advised the SBC that the claims it has released are genuine controversies involving the Supplemental Benefit Program. *See* Declaration of Edward Scallet ("Scallet Decl.") ¶ 27. EascoLaw has no relationship to any of the parties involved in the released claims other than the SBC in its capacity as a fiduciary to the Supplemental Benefit Program. *See* Scallet Decl. ¶ 33.[2]

*The settlement was authorized by the SBC, an independent fiduciary.*

b. The SBC has the authority to bring and release claims on behalf of the Supplemental Benefit Program.

i. The Supplemental Benefit Program grants the SBC broad powers and duties as Program Administrator and Named Fiduciary. *See* Doc. No. 12-1 at 119-120 (setting forth the SBC's powers and duties).

ii. This Court has found that the SBC has "express and clear authority to administer and enforce the Supplemental [Benefit] Program," which includes Navistar's obligation to "contribute . . . a portion of its future profits to the [Supplemental Benefit Trust]." *Shy v. Navistar Int'l Corp.*, 291 F.R.D. 128, at *136, *132 (Feb. 6, 2013) (Rice, J.).

iii. The Supplemental Benefit Program authorizes the SBC to resolve disputes regarding any actuarial determinations made under the Profit Sharing Plan. *See* Doc. No. 12-1 at 123-124 (describing dispute resolution process).

c. Acting within the scope of its fiduciary authority, the SBC authorized the

[2] The Department has confirmed, "the independent fiduciary's . . . outside counsel, could provide the appropriate advice concerning the existence of a genuine controversy." 68 Fed. Reg. 75634.

releases it gave in connection with the Profit Sharing Settlement. The SBC as the "authorizing fiduciary" has no relationship to, or interest in, any of the parties involved in the released claims, other than the Supplemental Benefit Program, that might affect the exercise of the SBC's best judgment as a fiduciary. *See* Scallet Decl. ¶ 33. To wit:

i. The SBC's conduct is not at issue in either the Profit Sharing Dispute or the Medicare Part D Subsidies Dispute.[3]

ii. The SBC participated actively in the negotiation of both the Profit Sharing Settlement and the settlements that resolved the Medicare Part D Subsidies Dispute, including retaining and consulting with experts in connection with the Profit Sharing Dispute and Settlement. *See* Scallet Decl. ¶¶ 16-21; Declaration of Donn Viola ("Viola Decl.") ¶¶ 14-20. Prior to this point, the SBC engaged with the complex and novel issues in the underlying disputes and advocated zealously for the Supplemental Benefit Program for the better part of a decade.[4] *See* Scallet Decl. ¶¶ 3, 8-15; Viola Decl. ¶¶ 11-13.

iii. Navistar does not have authority to appoint the members of the

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[3] *See* 68 Fed. Reg. 75638 ("*The Department intends a flexible standard for fiduciary independence* . . . the plan's current trustee or investment manager, *assuming that fiduciary's conduct is not at issue*, may be an appropriate party to make the decision on behalf of the plan as to whether to settle the litigation.") (emphasis added); *see also id.* at 75635 ("*In most cases*, the plan will be able to use *a current fiduciary* who is not a party to the action and who is not so closely allied with a party (other than the plan) *as to create a conflict of interest*.") (emphasis added).

[4] *See* 68 Fed. Reg. 75634 (describing that the Department included "the requirement that the independent fiduciary 'negotiate' the settlement" in its proposed version of PTE 2003-39, but eliminated it from the final exemption in response to comments); *id.* at 75635 (noting that an authorizing fiduciary "may wish to retain outside experts to assist the fiduciary in determining whether or not to settle litigation"); *see also* 75 Fed. Reg. 33835 (acknowledging a comment that certain settlement-related issues "would be mitigated if the authorizing fiduciary is retained well in advance of a settlement in order to raise plan-related concerns before the settlement is finalized.").

SBC.[5]

d. For the reasons set forth in the foregoing paragraphs, and in light of PTE 2003-39's recognition that the authorizing fiduciary may be a current, unconflicted plan fiduciary, it is my opinion that it would be an unnecessary formality to require further review of the Profit Sharing Settlement by an independent fiduciary other than the SBC (*i.e.*, an institutional independent fiduciary).

*There is no extension of credit by the plan.*

e. The Profit Sharing Settlement does not provide for any extension of credit by the Supplemental Benefit Program to Navistar. Therefore, the conditions in PTE 2003-39 relating to extensions of credit do not apply.

*The transaction is not described in Prohibited Transaction Exemption 76-1.*

f. The Profit Sharing Settlement does not involve delinquent contributions to multiemployer or multiple employer collectively bargained plans.

*All terms of the settlement are specifically described in a written settlement agreement or consent decree.*

g. All terms of the Profit Sharing Settlement are described in a written settlement agreement that is attached as an Exhibit to the Motion.

*The plan is receiving no assets other than cash in exchange for the releases by the SBC.*

h. Navistar has not provided non-cash assets in exchange for the releases it has received from the SBC under the Profit Sharing Settlement. Therefore, the conditions in PTE 2003-39 relating to non-cash consideration do not apply.

*The independent fiduciary has given a written acknowledgment.*

i. The SBC as authorizing fiduciary has acknowledged in writing that it is a fiduciary with respect to the settlement of claims on behalf of the

[5] *See* Doc. No. 12-1 at 8-9 ("[T]he Supplemental Benefit Committee . . . shall consist of five members, including two UAW appointees and three other appointees, one of whom shall preside as chairperson. The initial members of such committee shall be approved by the Court."); Doc. No. 12-1 at 118-119 (describing the formation of the SBC, and the procedures for filling subsequent vacancies).

Supplemental Benefit Program. *See* Scallet Decl. ¶ 33.

*Record retention requirements are met.*

j. The chair-person of the SBC has submitted a declaration in support of the Motion in which he asserts that the SBC will maintain the records necessary for the persons described in PTE 2003-39 to determine whether the conditions of PTE 2003-39 have been met, and will make those records unconditionally available at their customary location for examination during normal business hours by those persons. *See* Viola Decl. ¶ 29.

31. PTE 2003-39 additionally requires that the Profit Sharing Settlement satisfy the following conditions:

a. The settlement terms, including the scope of the release of claims; the amount of cash and the value of any non-cash assets received by the plan; and the amount of any attorney's fee award or any other sums to be paid from the recovery, are reasonable in light of the plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.

b. The terms and conditions of the transaction are no less favorable to the plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

c. The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

32. For the reasons set forth at length in the Memorandum, it is my opinion that the Profit Sharing Settlement, and specifically the releases the SBC is giving in connection with that settlement,[6] is reasonable and no less favorable to the Supplemental Benefit Program than comparable arms-length terms and conditions that would have been agreed to by unrelated

[6] Regarding the Medicare Part D Subsidies Dispute, there is significant litigation risk associated with any potential substantive claims the SBC could bring with respect to the subsidies. *See Shy v. Navistar Int'l Corp.*, 2017 U.S. Dist. LEXIS 71552, at *32-*33 (May 10, 2017) (Rice, J.).

parties under similar circumstances.[7] For the same reasons, it is my opinion that the Profit Sharing Settlement is not "part of a broader overall agreement, arrangement or understanding designed to benefit" Navistar. *See* 68 Fed. Reg. 75638.

**The Medicare Part D Subsidies Release**

33. It is my understanding that, under the Class Settlement and the Krzysiak Action Settlement, the Class Members and the Krzysiak Plaintiffs are releasing Navistar from their potential Medicare Part D subsidies claims in exchange for the following consideration: (1) a cash payment of $3 million to the Supplemental Benefit Trust; (2) a cash payment of $17 million to Subaccount A of the Health Benefit Trust, where the $17 million will be earmarked for the payment of future participant contributions; and (3) an amendment to the definition of "Total Actual Drug Cost" in Appendix A-6 of the Shy Plan that will implement Navistar's commitment to offset the Medicare Part D subsidies from the calculation of the participant contribution rate in the future.

34. This release covers ERISA claims. For that reason, I reviewed select briefing and Court orders from the Krzysiak Action to develop an understanding of the ERISA claims the Krzysiak Plaintiffs brought and the associated litigation risk. I also reviewed the value of the consideration given in exchange for the release vis-à-vis the value of the underlying claims.

35. The Krzysiak Action Complaint brings claims against Navistar for breach of ERISA fiduciary duties and violations of ERISA's prohibited transaction rules, and for equitable relief under ERISA. *See* Krzysiak Action, Doc. No. 1 ¶¶ 44-70. The upshot of these claims is that, by failing to take the receipt of Medicare Part D prescription drug subsidies into account when it calculated participant contributions, Navistar kept the full amount of those subsidies for itself, and thus failed to act solely in the interest of the Base Plan participants. The Complaint seeks damages to make the Base Plan whole for the losses resulting from the alleged conduct, as well as restoration of any associated profits. *See id.* at 13-14. It also seeks injunctive relief, asking the Court to enjoin Navistar from future violations of ERISA with respect to the treatment of the Medicare Part D subsidies. *Id.* at 13.

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[7] Notably, as the Memorandum describes, Class Counsel's fees and expenses will not be paid from settlement proceeds. The settlements discussed herein thus do not present an "instance where an attorney's fee award or any other sums to be paid from the recovery has the potential to reduce the plan's overall recovery" such that "the authorizing fiduciary should take appropriate steps to review the proposed fees." 75 Fed. Reg. 33833.

36. There is litigation risk associated with the Krzysiak Action, in large part because the claims may be time-barred under ERISA's statute of limitations. The parties submitted extensive post-trial briefing on that issue, which I have reviewed. *See* Krzysiak Action, Doc. Nos. 74, 76, 77.

37. In theory, the release also covers potential claims for out-of-pocket losses—*i.e.*, had Navistar taken the receipt of Medicare Part D prescription drug subsidies into account when it calculated participant contributions, the SBC would have bought down the participant contributions even further such that the participants would have paid even lower premiums. Assuming, for the sake of argument, that the SBC's buy-down is a "benefit," any such "benefit" claim would first need to be made under the Shy Plan's claims procedures. Once those procedures had been exhausted, the claim could be brought in federal court, where it would face associated litigation risk—for example, a court could find that the SBC's buy-down is not a "benefit" within the meaning of ERISA, among other reasons because the benefits provided under the Supplemental Benefit Program are neither fixed nor guaranteed. In addition, the SBC's buy-down made up for the lost Medicare Part D subsidies in full, thereby undercutting the merits and diminishing the value of any claim that a Class Member suffered an out-of-pocket loss from Navistar's alleged actions.

38. It is my understanding that the $3 million recovery would fully reimburse the Supplemental Benefit Trust for the fees and expenses incurred in support of the *Krzysiak* Action.

39. It is my understanding that the $17 million recovery represents somewhat less than 33 percent of the potential recovery on the Krzysiak Action claim for alleged losses of the Base Plan caused by Navistar's calculation of the contribution rate from 2013 through 2021.

40. It is my understanding that Navistar's commitment to offset the Medicare Part D subsidies from the calculation of the participant contribution rate in the future is currently estimated at a value of $118 million. It is my further understanding that the amendment to the definition of "Total Actual Drug Cost" that will implement this commitment secures the prospective relief sought in the Krzysiak Action.

41. Based on my understanding of the ERISA claims the Krzysiak Plaintiffs brought in the Krzysiak Action, claims for out-of-pocket losses that may, in theory, be available to the Class Members, the associated litigation risk, the scope of the release under the Class and Krzysiak Action Settlements, and the value of the consideration given in exchange for the release

vis-à-vis the value of the underlying claims, I support the position of the Class Representatives and Class Counsel that the release by the Class Members of their potential Medicare Part D subsidies claims is fair and in the best interest of the Class Members for the reasons set forth in the foregoing paragraphs and in the Memorandum.

**The Profit Sharing Release**

42. It is my understanding that, under the Class Settlement, the Class Members are releasing Navistar from their potential profit sharing claims in exchange for consideration in the form of a $556 million cash payment (plus interest) to the Supplemental Benefit Trust. This will resolve the Profit Sharing Dispute and eliminate Navistar's obligation to make profit sharing or other contributions to the Supplemental Benefit Trust in the future.

43. I considered whether this release covers ERISA claims. To that end, I reviewed the Amended Complaint the SBC filed in this case in 2012 concerning the lack of profit sharing payments, in which it asserted claims for breach of contract and violation of ERISA. *See generally* Doc. No. 439 (Amended Complaint for Breach of Settlement Agreement and Violation of ERISA). The ERISA claim sought relief under Section 502(a)(3) of ERISA on the theory that Navistar had failed to act in accordance with the terms of the Profit Sharing Plan and the Supplemental Benefit Trust in its calculation of profit sharing payments. *See id.* ¶¶ 4, 62-65. In 2015, the Sixth Circuit Court of Appeals ruled that the SBC's claims were subject to arbitration under Section 8 of the Profit Sharing Plan, characterizing the controversy as a "contract-interpretation dispute involving corporate structure." *Shy v. Navistar Int'l Corp.*, 781 F.3d 820, 822, 831 (6th Cir. 2015).

44. Although ERISA empowers plan participants to bring claims under Section 502(a)(3) such that,[8] in theory, the Class Members could be releasing ERISA claims like the one the SBC initiated, any such claims would bear associated litigation risk. This includes the risk that they would be time-barred, likewise subject to arbitration, and/or vulnerable to an estoppel or preclusion-based attack in light of the existing arbitration award.

[8] ERISA Section 502(a)(3) provides: "A civil action may be brought—*by a participant, beneficiary*, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]" 29 U.S.C. § 1132(a)(3) (emphasis added).

45. Assuming, for the sake of argument, that the profit sharing release the Class Members are giving in connection with the Class Settlement covers ERISA claims, I reviewed the value of the consideration given in exchange for the release vis-à-vis the value of the underlying claims.

46. As far as past profit sharing claims, the arbitration award that CLA issued in February of this year concluded that Navistar owed the Supplemental Benefit Trust past profit sharing of $159 million plus $80 million in prejudgment interest. It is my understanding that the Profit Sharing Settlement provides for Navistar to pay a total of $292 million plus interest relating to past profit sharing, which represents the full value of the arbitration award in addition to the SBC's calculation of the profit sharing owed by Navistar for years post-arbitration.

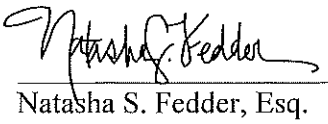
47. As far as future profit sharing claims, it is my understanding that the SBC retained Duff & Phelps to help determine the estimated value of the potential future profit sharing. I am familiar with Duff & Phelps. It is my further understanding that the Profit Sharing Settlement allocates $264 million of the total cash payments in exchange for future contributions, and that this payment was within the wide range of the present value of future profit sharing the SBC's experts provided based on projections of the Company's financial performance that were made available in connection with the Traton merger, albeit at the low end of that range. I am familiar with valuation concepts, based largely on my experience with employee stock ownership plan ("ESOP") litigation. That experience includes working with valuation litigation experts and other valuation professionals, including ones affiliated with Duff & Phelps.

48. Based on my understanding of the Profit Sharing Dispute, the ERISA claims that may, in theory, be available to the Class Members, the associated litigation risk, the scope of the release under the Class Action Settlement, the value of the consideration given in exchange for the release vis-à-vis the value of the past and future profit sharing claims, and my familiarity with both valuation concepts and Duff & Phelps, I support the position of the Class Representatives and Class Counsel that the release by the Class Members of their potential profit sharing claims is fair and in the best interest of the Class Members for the reasons set forth in the foregoing paragraphs and in the Memorandum.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 21, 2021 in Los Angeles, California

Respectfully submitted,



Natasha S. Fedder, Esq.