

EXHIBIT

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

ART SHY, et al.

Plaintiffs,

vs.

NAVISTAR INTERNATIONAL
CORPORATION, et al.

Defendants.

Case No. 3:92-CV-00333

District Judge Walter H. Rice

DECLARATION OF DONN VIOLA

I, Donn Viola, subject to the penalty of perjury, declare as follows:

1. The statements in this declaration are based on my personal knowledge and experience.
2. I am a graduate Mechanical Engineer from Lehigh University and subsequently completed the Stanford Executive Program. My working carrier began as a production supervisor working for General Motors where I progressed through several management levels, all in Manufacturing organizations. I joined Volkswagen of America as a Plant Manager and advanced to VP of Manufacturing. Later I worked for Mack Trucks beginning as the Executive VP of Manufacturing and ultimately became the Chief Operating Officer and a Director . All of these jobs were with companies that were represented by the United Auto Workers. Subsequent to my retirement, I have been a Director of five manufacturing companies both Private and Public.
3. I joined the Supplemental Benefit Trust as one of two Independent Trustees in 2004. Several years later I was asked to Chair the Committee. The SBC consists of five Trustees, two Independent, one retiree of Navistar represented by the UAW, one non represented retiree of Navistar and one Trustee who is a UAW International appointee. In addition, we have Support Professionals including our Actuary, our Investment Advisor, our Legal

Counsel and our Administration Services provider. The primary responsibilities include coordinating the activities of development of our Benefits Program and Asset Investments as well as approval of cost expenditures. Helping to coordinate our disputes on behalf of our constituents as fiduciaries has been an added responsibility which we believe will be reduced significantly as result of this Settlement.

4. The SBC selects the type of supplemental benefits to provide under the Supplemental Plan. The Plan has offered dental, vision, hearing, and accidental death and dismemberment benefits since 1999. Since 2001 it has improved the term life insurance benefits of the participants affected by the life insurance cutbacks in the 1993 *Shy* Settlement.
5. The Supplemental Plan has also reduced certain out-of-pocket costs incurred by the *Shy* Plan participants such as the prescription drug co-payments required of the *Shy* Plan participants. Since 1996, the Supplemental Plan has bought down the participant contributions calculated under the *Shy* Agreement to make the monthly premiums actually paid by the *Shy* Plan participants more affordable.
6. The Supplemental Plan has periodically reimbursed *Shy* Plan participants for all or a portion of the Medicare Part B premiums they paid in the prior year.
7. Segal Co. has been the Supplemental Plan's actuary since the inception of the plan. Each year, Segal prepares an actuarial report detailing the Supplemental Plan's expenditures and estimating the present value of the cost of offering the supplemental benefits for the remainder of the lives of the current and potential *Shy* Plan participants.
8. The SBC sets the investment policy of the Supplemental Trust and monitors the investment performance of the Supplemental Trust. The SBC receives regular reports from Morgan Stanley, its principal investment advisor, and Comerica, the Trustee of the Supplemental Trust, on the assets and investments of the Supplemental Trust. The average annual investment earnings rate over the lifetime of the Supplemental Trust is just over 7%.
9. The SBC uses the information from Segal, Comerica, and Morgan Stanley to determine the supplemental benefits to provide to the *Shy* Plan participants. While the SBC has the authority

and responsibility to reduce the supplemental benefits, if necessary, its practice has been to offer a level of benefits that can be supported by the current assets. In the case of the benefits historically provided by the Supplemental Plan, the SBC makes that determination on the assumption those benefits will be offered for the lifetime of every current and future *Shy* Plan participant. The reimbursements of the Medicare Part B premiums made by the Supplemental Plan in the past two years were one-time cash payments financed in large part by the profit-sharing received in 2019-2020 with no expectation that they would be made every year for the lifetime of the current and future participants. The SBC has never made a decision about the level of benefits based on the possibility that it would receive any profit-sharing payment in the future.

10. The Supplemental Trust received profit-sharing payments of \$286 million from 1993-2000. Except for a small payment in 2006, subsequently reversed by Navistar, the Supplemental Trust received no profit-sharing payments until 2019 and 2020 when it received a total of approximately \$48 million.
11. In 2012, the SBC authorized litigation against Navistar concerning the failure to make profit-sharing payments. The SBC has been represented by Groom Law Group, Chartered, and EascoLaw, PLLC in its dispute with Navistar.
12. In 2016, the SBC agreed to finance the *Krzysiak* lawsuit challenging Navistar's failure to properly account for Medicare Part D subsidies when it calculated the participants' monthly contribution rate. Buying down the participants' contributions has historically been the Supplemental Plan's largest annual expense. Since 2013, the Supplemental Plan had made up for the loss of the Medicare Part D subsidies from its own assets by buying down the

monthly contributions.

13. The SBC has received regular briefings from its counsel on the *Krzysiak* case and I am very familiar with the issues involved in the litigation.

14. The SBC commenced negotiations with Navistar concerning a resolution of the profit-sharing and subsidies disputes in January 2021. The SBC relied on the lawyers that had been representing the SBC throughout its disputes with the Company (Groom Law Group, Chartered; and EascoLaw, PLLC), its longtime benefits consultants and actuaries (Segal Co.) and its accounting expert throughout the Profit-Sharing Disputes (Jonathan Cocks).

15. When it became apparent that Navistar was interested in making an immediate cash payment in exchange for its obligation to make future contributions to the Supplemental Trust, the SBC retained Duff & Phelps, an international financial advisory firm, to help the SBC determine the value of the potential future profit-sharing and to assist on the structuring of any possible settlement.

16. Navistar and the SBC exchanged offers and demands on May 5, June 22, July 12, July 16, and August 6, 2021. During that time, the five members of the SBC participated in at least ten meetings concerning the settlement process where we received information and analysis from our advisors. The SBC deputized myself and Wayne Krzysiak to work more closely with the SBC's advisors and I attended many more meetings concerning the settlements.

17. I also met personally with Persio Lisboa, Navistar's then-CEO, and spoke and emailed with him as part of the negotiations.

18. One of the principal motivations for a settlement was the death rate for the participant population. Because the SBC does not increase the supplemental benefits until it has cash on

hand to support them, every day that passes without a profit-sharing payment or the reduction in the contribution rate that would result from a change in how the subsidies are handled is another 3-4 people will never enjoy the supplemental benefits to which they were entitled. An immediate cash payment would allow the Supplemental Plan to reach the largest number of people as quickly as possible.

19. Notwithstanding the human cost of any delay in the resolution of the profit-sharing and subsidies disputes, the SBC's goal in the settlement negotiations was to get fair value for the claims.
20. The SBC insisted from the beginning that it receive full value for the past profit-sharing claim. The SBC has been advised by Mr. Cocks and its counsel that the profit-sharing settlement complies with that demand.
21. The *Krzysiak* settlement reimburses the Supplemental Trust for the fees and expenses it incurred in the prosecution of that lawsuit. To the best of my knowledge, the \$3 million in the settlement for that purpose is a reasonable estimate of the fees and expenses.
22. The payment of \$17 million to the Base Plan earmarked for the payment of future participant contributions would resolve the claim in *Krzysiak* for alleged losses of the Base Plan caused by the Company's calculation of the contribution rate from 2013 through 2021. I am aware that that represents less than 33 percent of the potential recovery on this claim. But the risk that the case could be dismissed, the value of the future relief achieved in the *Krzysiak* settlement, and the total value of the settlements should also be considered.
23. The profit-sharing settlement allocates \$264 million of the total cash payments in exchange for future contributions. The SBC's experts provided a wide range in the present value of

future profit-sharing based on projections of the Company's financial performance that were made available in connection with the Traton merger. The SBC was willing to accept a payment that was on the low end of that range in large part because it provided an opportunity to implement a large increase in the supplemental benefits immediately. But its advisors also identified numerous factors that created significant concerns about the amount of future profit-sharing the Supplemental Trust could expect to receive, many of which were driven by Navistar becoming a subsidiary of the Traton.

24. Segal Co. created a model for evaluating the total consideration in any settlement offer in terms of the level of benefits that the Supplemental Trust could provide for the lifetime of the participants if the SBC accepted Navistar's proposal. Segal Co. provided advice to the SBC on the reasonableness of the assumptions underlying the model.

25. The SBC's advisors calculate that the total value of the settlements is \$742 million (plus interest). The SBC intends to use that consideration solely to fund additional supplemental benefits. The SBC believes that that consideration plus the existing assets in the Supplemental Trust would allow the Supplemental Plan to provide the following benefits for the lifetime of all current and future *Shy* Plan participants:

- The current drug, dental, vision, hearing and supplemental life insurance benefits;
- Zero-dollar deductibles for Medicare-age participants and the reduction of the out-of-pocket maximum for pre-Medicare participants to \$400;
- A fixed participant premium rate of \$5 per month; and,
- Reimbursement of the base Medicare Part B premium (approximately \$1800 per participant per year at the current premium rate).

26. The initial modeling by Segal indicates that this can be a recurring annual benefit covering

all or virtually all of the annual standard Medicare Part B Premiums, but the Supplemental Benefit Committee will continue to monitor the costs and investments to determine the actual amount that can be reimbursed each year.

27. One benefit of the settlements is that the Supplemental Trust assets will not have to be used for additional litigation expenses.
28. In the end, the SBC concluded that the settlements of the disputes and the exchange of cash for future contributions were fair, reasonable, and adequate, and in the best interests of the *Shy* Plan participants.
29. If the settlement is approved, the SBC will maintain records of it for at least six years.
30. The fees and expenses of the SBC's lawyers are reviewed by the SBC and have been paid by the Supplemental Trust out of its current assets.

Executed this 22nd day of December, 2021 in Sarasota, FL.

/s/ Donn Viola