

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 JONATHAN COCKS

I, Jonathan Cocks, upon penalty of perjury, declare as follows:

1. The statements in this declaration are based on my personal knowledge and experience.
2. Currently, I am a practicing certified public accountant who was initially licensed in 1981. My career has included work periods in public accounting, industry and with an employee benefit plan. My public accounting experience includes auditing publicly traded and privately held companies. I have also worked with publicly and privately held companies in a variety of roles including as an accounting manager, controller and chief financial officer.
3. The Groom Law Group (“Groom”) engaged me in 2011 to assist it and the Supplemental Trust Committee (the “SBC”) for the International Truck and Engine Corp. Retiree Supplemental Trust (the “Supplemental Trust”) with what is now the subject of this litigation. My first assignment included determining why the Supplemental Trust had not received any profit sharing subsequent to 2001 and estimating what amount of profit sharing, if any, was due to the Supplemental Trust. After reviewing and analyzing an extensive quantity of documents produced by Navistar and other information, I reported my findings and estimated amounts due to the Supplemental Trust to Groom and the SBC during the third quarter of 2013. Among

other things, my findings included a description of potential issues which I believed required additional review and investigation.

4. Beginning in the fourth quarter of 2013 and continuing into 2019 I completed a variety of assignments. I assisted Groom with its preparation of various pleadings, responses, letters, and document and other discovery requests. The document and discovery requests included, among other things, requests related to the potential issues including acquired or internally created companies, dividends Navistar received from domestic or international affiliates, the Medicare subsidies, intercorporate transfers of certain entities, identified during my initial assignment. I also reviewed or analyzed additional documents and information including schedules of qualifying profits received during the period, certain Navistar filings with the U.S. Securities and Exchange Commission and Navistar's responses to various questions or requests. I prepared an extensive analysis of the entities Navistar owned, formed or acquired before and after the effective date of the Shy agreement as well as periodically prepared or updated various other analyses or schedules including dividends received which I believed should be included in Navistar's schedules of Qualifying Profits.
5. During 2019 and continuing into 2020 I reviewed an extensive quantity of documents produced during discovery and other information. Using this information, I analyzed the creation and organization, along with the business purpose, of the more significant entities Navistar purchased, created or organized subsequent to the effective date of the Shy agreement. I also analyzed various material business decisions, transactions or policies to determine their business purpose, their significance in the creation or organization of various business entities or how they impacted the calculations of Qualifying Profits. These analyses included, among other things, findings about dividends received from affiliated entities, the Medicare subsidies,

and certain intercompany corporate ownership transfers. Using this information, I assisted Groom with their preparation of various submissions to the Arbitrator. I also calculated Qualifying Profits and any Profit Sharing due for 2004 through 2014 along with Lost Earnings and Statutory Interest Due through various dates in 2020, which was also part of the SBC's submission to the Arbitrator.

6. Following the Arbitrator's receipt of the parties' submissions, I collaborated with the Arbitrator and Navistar's selected accountants to identify and resolve the numeric differences in each party's respective submissions. During this process, additional errors in Navistar's calculations of Qualifying Profits were identified and corrected. Simultaneously, Navistar provided the SBC with their renditions of Qualifying Hours. Following my analysis of each rendition, I made recommendations to Groom and the SBC regarding Qualifying Hours. Throughout this period, I provided information, analyses or recommendations to Groom which was incorporated into the SBC's responses to various questions or requests made by either the Arbitrator or Navistar.
7. The Arbitrator released the Final Award in February 2021. The Final Award was preceded by a Semi-Final Award in December 2020 and a Preliminary Award in September 2020. Following the release of the Preliminary and Semi-Final Awards, I determined the entity classification and other differences between the Awards and the SBC's positions. I provided Groom and the SBC with updated schedules or analyses that included these differences. I also worked with Navistar's selected accountants to resolve differences between certain entities the Arbitrator classified, which the SBC did not request to be classified. Following the release of the Final Award I reviewed and analyzed Navistar's updated Calculations of Qualifying Profits and profit sharing due for the 2015 through 2020 Plan Years using Navistar's understanding

of the classification guidance provided by the Arbitrator in the Final Award. I also calculated Qualifying Profits and profit sharing due for the same period using the SBC's understanding of the Arbitrator's classification scheme. After identifying the significant differences between Navistar's and the SBC's interpretations, I worked with one of Navistar's accountants to either resolve or reconcile these differences. While a complete agreement was not achieved, I determined the difference was not material and recommended the SBC not pursue the issue further. I ultimately concluded the Supplemental Trust is due \$292 million, which includes \$53 million for the 2015 through 2020 Plan Years, from Navistar plus additional interest as set forth in the Final Award.

8. While different methods to calculate profit-sharing following Navistar's acquisition by Traton were considered, the SBC determined it first needed to understand the value of Navistar's remaining profit-sharing obligation. They engaged Duff & Phelps, who are valuation experts, to provide it with guidance regarding the estimated value of profit-sharing under different scenarios. I worked with and provided information to the Duff & Phelps team as well as explained how Qualifying Profits and Hours were calculated along with the relationship between the two concepts, which Duff & Phelps used to develop a model for estimating future profit-sharing. Using information obtained from Navistar's and Traton's proxy statements and other sources, Duff & Phelps used their model to provide the SBC with estimated future profit-sharing, the estimated Profit-Sharing Cessation date using the actuaries' assumptions, and the present value of the remaining profit-sharing due using different scenarios.
9. In conjunction with the SBC's evaluation of profit sharing due for the 2015 through 2020 Plan Years, the SBC also considered alternative Qualifying Profits calculation methods and other potential consequences following the completion of Navistar's agreed-upon acquisition by

Traton. I advised the SBC of following factors which I believe created significant uncertainty regarding the amount and timely collectability of future profit-sharing:

- a. When applicable information was publicly available, I provided the SBC with my analysis of the impact the COVID-19 Pandemic was having on Navistar, which included the potential short-and long-term consequences Navistar might experience.
- b. The timing and amount of future profit-sharing payments is dependent on Navistar's future financial results, both of which are impossible to predict with any certainty.
- c. Although the *Shy* Agreement includes a provision for calculating profit-sharing if another company acquires Navistar, I believe this provision is open to interpretation that could result in future disputes.
- d. The acquisition by Traton will likely lead to some reorganization of Navistar's current operations that could make the arbitration award less relevant to the calculation of future profit-sharing.
- e. In the normal course of business, Traton's strategic and operating decisions could result in an overall increase in its global profits. However, these decisions could negatively impact the profits attributable other business units including Navistar's operations, which would reduce any profit-sharing.
- f. The acquisition makes it difficult for the SBC to monitor future profit-sharing since publicly available financial information exclusively about the Navistar's operations is no longer available.

10. As the discussions between the SBC and Navistar regarding settlement options continued, Duff & Phelps' model was incorporated into a new model developed by the SBC's actuaries. This new model provided the SBC and its professionals with the total estimated dollar amounts the

Supplemental Trust required to provide its beneficiaries with various benefit combinations during the beneficiaries' remaining lifetime. The professionals used this model to provide the SBC with a range of settlement options as well as evaluate Navistar's settlement offers. Most importantly, the validity of the model's results added credibility to the SBC's settlement demands.

11. Based on my understanding of the unique factors affecting how profit-sharing is derived from Navistar's financial results, the potential impact of Navistar's acquisition by Traton on future profit-sharing, and my work alongside the SBC's other experts during the settlement process, I believe the SBC's decision to accept \$264 million allocated to future profit-sharing as part of an overall settlement that provides a total value of \$742 million plus interest is in the best interests of the class members and *Shy* Participants.

Executed this 22nd day of December, 2021 in Fairview, Texas

/s/ Jonathan Cocks
Jonathan Cocks