

**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

**SUPPLEMENTAL DECLARATION OF W. B. MARKOVITS IN SUPORT OF CLASS
REPRESENTATIVES' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND ATTORNEY FEES AND EXPENSES**

I, W.B. Markovits, state as follows:

1. I am a partner in the law firm of Markovits, Stock & DeMarco, LLC (“MSD”), appointed to represent the Class Representatives, Miller Rodgers, Carl Potts, and Richard Zounes (“Class Representatives”) and the proposed Class.

2. All statements in Doc. 598-11, Declaration of W.B. Markovits, are incorporated by reference.

NOTICE PLAN AND CLASS MEMBERS

3. Class Counsel worked closely with Navistar to develop and implement the notice program preliminarily approved by the Court.

4. As Class Counsel, I received direct calls from some Class Members with questions about the Settlement, primarily asking whether the Settlement will negatively affect their current benefits. After explaining the Settlement to the Class Members, the overall reaction has been positive.

5. While there have been some Class Members who have raised questions with the

Parties and the Court, there have been no objections to the Settlement to date. Class Counsel continue to believe the Settlement is fair, reasonable and in the best interest of the Class.

OTHER RULE 23(e) FACTORS

6. As discussed in the Motion and Memorandum, there are no agreements required to be identified under Rule 23(e)(3) besides those already identified and attached to the preliminary approval motion (Doc. 598).

ATTORNEY FEES AND EXPENSES

7. Class Counsel and Navistar entered into an agreement with Navistar for attorney fees and expenses. This agreement provides that Navistar will pay Class Counsel’s fees and expenses, subject to the agreed upon hourly rates that are consistent with fees submitted by Class Counsel in other nationwide class actions and a \$750,000 cap on fees and expenses proposed by Navistar. Navistar would owe these amounts regardless of whether, following Class Counsel’s review, Class Counsel supported, did not support, or sought to modify the Settlement. The payment of fees and expenses does not diminish in any respect the benefits afforded the Class and the agreement regarding attorney fees and expenses was negotiated after the Letter of Intent had preliminarily determined the settlement relief to be afforded the Class. Class Counsel agreed to front all expenses, and to wait until final approval for payment. As of March 9, 2022, Class Counsel’s fee lodestar is \$334,199.00. Additionally, Class Counsel has to date expended, without reimbursement, \$58,617.65 in expenses, primarily for the retention of ERISA consultant Natasha Fedder.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of March, 2022, in Cincinnati, Ohio.

/s/ W. B. Markovits _____
W.B. Markovits