

# **EXHIBIT**

# **10**

**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 W. B. MARKOVITS IN SUPORT OF CLASS  
REPRESENTATIVES’ UNOPPOSED MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL  
OF AMENDMENTS TO THE SUPPLEMENTAL BENEFIT PROGRAM**

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. I received my Juris Doctorate degree from Harvard Law School in 1981 and have practiced complex civil litigation, including class action litigation, for over 40 years. I am a member in good standing with the Ohio Supreme Court and have never been the subject of any disciplinary proceedings.

3. I have significant experience as lead counsel in class action cases. I was a lead counsel in *In re Fannie Mae Securities Litigation*, Case No. 04-cv-1439, United States District Court, District of Columbia, resulting in a court-approved \$133 million settlement in 2014. I was a lead counsel in *Williams v. Duke Energy*, Case No. 1:08-cv-0046, United States District Court, Southern District of Ohio, resulting in a court-approved \$80.875 million settlement in 2016. My firm is also lead counsel in

two cases that are similar in duration to this one: *Day v. NLO* and *Bowling v. Pfizer*. Each of those cases are more than 30 years old, involve class action settlements that were achieved in the early- to mid-1990s, and remain pending here in the Southern District of Ohio. Although *Day* and *Bowling* each have been overseen by various District Court Judges (Speigel, Beckwith, and Weber), they are now before Judge Timothy S. Black. Through the continued representation of the plaintiffs and classes in *Day* and *Bowling*, we have learned the unique considerations that accompany a further aging class of plaintiffs and have encountered the substitution of class representations when the previous class representatives either passed away or were no longer to continue serving the class. In *Bowling* our firm, on behalf of the plaintiffs, moved Judge Black in 2015 to modify the terms of the settlement agreement to make direct cash distribution to the international class of plaintiffs because we believed placing the majority of the remaining settlement funds in the class members' hands was best for the class. We believe these experiences and roles as class counsel make us very capable of representing the Class's best interests in this matter. A copy of the biographical information for our firm is attached to this declaration as Exhibit A.

4. As recently appointed Class Counsel in this matter I, along with my partner Terry Coates, have overseen my firm's daily work on this case and am intimately aware of my firm's representation of Class Representatives and the Class in this matter. Leading up to and following MSD's appointment as Class Counsel, we have devoted an intensive effort to review and understand the proposed settlement as set forth in an October 22, 2021 letter of intent, and have participated in finalizing the proposed Class Action Settlement Agreement.

5. We have engaged Scale LLP, and in particular Scale attorney Natasha Fedder, to provide expertise with regard to ERISA issues inherent in the proposed Settlement.

6. We have worked extensively with Class Representatives Carl Potts, Richard Zounes

and Miller Rodgers, as well as proposed Class Representatives Robert Bergmann and Fred Cortright, to educate them regarding the proposed Settlement so that they could make an informed decision regarding whether to support it as proposed. Terry Coates has had many phone calls with the Class Representatives and proposed Class Representatives and has provided them documents material to the proposed Settlement. He has traveled to meet some of the Class Representatives in person in Chicago, indicating our commitment to working with the Class Representatives to protect the Class's interests. In addition, we have set up conferences where the Class Representatives and proposed Class Representatives have been provided detailed information regarding the benefits and detriments of the proposed Settlement from Ms. Fedder, Mr. Scallet, and Mr. Wohl. These longer group sessions took place on November 30, December 16, and December 20, 2021 and spanned many hours.

7. Class Representatives have shown not only a willingness but an eagerness to fulfill their role. They understand that role and that they are representing the interests of the Class Members. Their efforts to date reflect that understanding. We have been extremely pleased with their level of engagement as Class Representatives and appreciate their willingness to dutifully review the proposed Class Action Settlement with a keen eye for whether it is a fair deal for themselves and their fellow members of the proposed settlement class. We are aware of no conflict between the Class Representatives and the current or proposed class.

8. We have participated in weekly group phone calls with Navistar's general counsel, Navistar's outside counsel, counsel for the UAW, and counsel for the Supplemental Benefit Committee. We, on behalf of the Class, were permitted to provide input to the terms of the Settlement Agreement. All sides negotiated zealously for their respective client's positions resulting in the Settlement Agreement and supporting documents that are now being submitted to this Court for preliminary approval.

9. Finally, we have been in frequent contact with Natasha Fedder, the ERISA expert our firm retained to assist in reviewing the proposed Settlement on behalf of the Class. MSD has borne the costs of Ms. Fedder's services throughout her review of the Class Action Settlement Agreement. We are in a position to make a recommendation regarding Settlement only after frequent communications with Ms. Fedder, the SBC's attorney Ted Scallet, and Messrs. Bergmann, Cortright, Potts, Rodgers, and Zounes.

10. Our review indicates that the proposed Settlement in this case is the result of extensive arm's length negotiations. There is no evidence of collusion. To the contrary, there is evidence of hard fought and contentious litigation, followed by lengthy and contentious negotiation, resulting ultimately in the proposed Settlement.

11. We have familiarized ourselves with the history of the litigation as well as the proposed Settlement. Based upon our review, and our experience, we believe the Settlement of this case is fair, reasonable and adequate, and provides an outstanding benefit to putative Class Members, particularly taking into account what the putative Class Members will receive under the Class Action Settlement compared to the risks and delay of continued litigation.

12. The proposed Notice Plan satisfies Rule 23(h)(1), as it notifies Class Members that Class Counsel's fees and expenses, up to a cap of \$750,000, will be paid by Navistar. This amount does not detract from any possible payments to Class Members inasmuch as it was negotiated subsequent to the material financial terms that are incorporated into the Class Action Settlement Agreement.

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

Executed this 22<sup>nd</sup> day of December, 2021, in Cincinnati, Ohio.

/s/ W. B. Markovits