

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 EDWARD SCALLET

I, Edward Scallet, 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 an attorney specializing in employee benefits. I am a former Assistant Counsel for Litigation at the Plan Benefits Security Division in the Office of the Solicitor at the U.S. Department of Labor. I was a partner at Thompson & Mitchell and LeBoeuf, Lamb, Greene & McRae before I joined Groom Law Group as a Principal in 2000. I resigned from Groom in 2016 to continue my practice as EascoLaw, PLLC.
3. In 2011, I began to represent the SBC with respect to its profit-sharing dispute with Navistar. I began to represent the SBC with respect to the Medicare Part D subsidies dispute with Navistar in 2016. Along with Sarah Adams from Groom, I have been the counsel of record for the SBC in the litigation of these disputes since their inception. I was the principal attorney for the SBC with respect to the settlement of the disputes.
4. I am very familiar with the 1993 Settlement that is embodied in the *Shy* Agreement.
5. The 1993 Settlement resolved a lawsuit challenging Navistar's decision to reduce the health and life insurance benefits provided to most of Navistar's retirees at the time and their

spouses and eligible dependents, as well as the promises of retiree benefits Navistar had made to its then-active employees and their spouses and eligible dependents. Navistar believed that it could not stay in business unless it reduced its estimated \$2.6 billion of liability for these benefits. The 1993 Settlement made a series of changes to the retiree health and life insurance benefits. *Id.* The *Shy* Agreement primarily consists of documents effectuating the new rights and obligations in the new Base Plan and Supplemental Plan.

6. The new Base Plan guaranteed that the then-current and certain future retirees and their spouses and eligible dependents would receive the major medical and basic life insurance benefits enumerated in the *Shy* Agreement. Navistar agreed to make contributions to the Base Plan that were sufficient to provide those benefits, and the participants and beneficiaries in the Base Plan were required to make monthly contributions to be eligible to receive the Base Plan benefits. These changes reduced Navistar's liability for the retiree benefits to approximately \$1 billion.
7. The Supplemental Plan was created to provide as much of the remaining \$1.6 billion of pre-*Shy* Agreement retiree medical and life benefits as possible. Unlike the Base Plan, the benefits provided by the Supplemental Plan are neither fixed nor guaranteed. The provisions for funding the Supplemental Plan also differ from those in the Base Plan. Initial funding for the Supplemental Plan came from stock contributed by Navistar in 1993, but the only source of new contributions after 1993 was Navistar's contingent obligation to make profit-sharing payments.
8. Navistar made a total of \$286 million in profit-sharing contributions from 1994 through 2000. Navistar, however, calculated that it owed no profit-sharing from 2001 through 2010. In 2012, the SBC initiated proceedings in this case concerning the lack of profit-sharing

payments. In 2015, the Sixth Circuit Court of Appeals ruled that the dispute had to be resolved by an arbitrator selected from among the five largest accounting firms in the US. In 2016, the arbitration of the SBC's dispute with Navistar over past profit-sharing payments from 2001-2014 began with the accounting firm of CliftonLarsonAllen LLP ("CLA") serving as the arbitrator. The SBC has also disputed Navistar's interpretation of the Profit-Sharing Cessation Date, which has a material impact on future profit-sharing.

9. After approximately four years of discovery in the arbitration, and the consideration of several motions, the parties submitted briefs regarding the merits of their arguments to arbitrator Martin Laffer, a Principal of CLA, between February and April 2020. Between May and August 2020, CLA requested and received additional documentation from both parties, heard argument from Navistar and the SBC on multiple contested issues, and had numerous meetings with the accountants on both sides.
10. On February 4, 2021, CLA issued a final award concluding that Navistar owed the Supplemental Trust past profit-sharing of \$159 million plus \$80 million in prejudgment interest. The SBC filed a motion in the *Shy* Court seeking to confirm the arbitration award, and Navistar filed a motion seeking to overturn it. The motions have been stayed because of the settlement negotiations.
11. In 2020, Navistar and the SBC agreed to postpone the arbitration of their disputes concerning profit-sharing payments for years following 2014 pending the decision of the arbitrator.
12. The *Shy* Agreement provides that each year Navistar and the actuary for the *Shy* Plan must calculate the participants' monthly contribution rate for the upcoming year. The contribution calculation formula in the *Shy* Agreement is based, in part, on the total claims and administrative expenses of the Base Plan in the prior year. Beginning in 2012, the Base Plan

received payments from the federal government generated by the purchase of prescription drugs by the participants in the Base Plan. Navistar, as Plan Administrator, did not reduce the Base Plan's costs by the amount of Medicare Part D prescription drug subsidies the Base Plan received when it calculated the applicable participant premium rate.

13. The SBC believes that Navistar's past and future calculations of the participant contribution rate should reflect the net cost of the prescription drugs; that is, the cost of the drugs after the receipt of the Medicare Part D subsidies. Using this method, the Base Plan's costs that are used in the calculation of the monthly contribution rate would be lower, which would in turn lower the level of required participant contributions. The SBC believes that the failure to reflect the receipt of the Medicare Part D subsidies in the calculation of the participant contribution rate causes the participants and the Supplemental Trust to pay more of the Base Plan's costs – and Navistar to pay less – than was intended in the *Shy* Agreement. Navistar disputes these allegations.

14. In 2016, two *Shy* Plan participants who were SBC members, Wayne Krzysiak and Michael LaCour, filed *Krzysiak* seeking relief under ERISA to resolve the Medicare Subsidies Dispute (the *Krzysiak* Plaintiffs). The *Krzysiak* Plaintiffs sought to require Navistar to pay back into the Base Plan the participants' share of the Medicare Part D subsidies that had not been reflected in the calculation of the participant rates since 2012, and to require Navistar to offset the Base Plan costs by the amount of the Medicare Part D subsidies in the calculation of the participant contribution rate in future years. The SBC paid the fees and expenses of the *Krzysiak* Plaintiffs in support of the litigation.

15. New developments in January 2021 caused the SBC to begin discussions to resolve their ongoing disputes. CLA had issued a decision on the merits of the arbitration in December

prior to the issuance of a final award including damages, and it appeared likely that a merger of Navistar into Traton SE would proceed.

16. The parties then engaged in eight months of negotiations.
17. Navistar, the *Krzysiak* Plaintiffs, 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 they received information and analysis from their advisors. The *Krzysiak* Plaintiffs also participated in numerous meetings.
18. On August 11, 2021, Navistar, the SBC and the *Krzysiak* Plaintiffs agreed to a term sheet outlining potential settlements of the Profit-Sharing and Medicare Subsidies Dispute, as well as the terms of an exchange of the Supplemental Trust's right to receive future profit-sharing for an immediate cash payment that would be implemented by an amendment to the Supplemental Plan. The term sheet also referred to an agreement by Navistar to recommend that the HBPC approve the HBPC Resolution. The SBC estimates that the value of the consideration provided by Navistar in the term sheets is \$700 million.
19. As part of the settlement negotiations, Navistar and the UAW agreed to facilitate the passage of a resolution by the Health Benefit Program Committee to release money from the Base Plan VEBA for the payment of the participants' monthly premiums. The SBC values that provision at \$48 million.
20. On October 22, 2021, Navistar, the SBC, the *Krzysiak* Plaintiffs, and the UAW entered into a Letter of Intent. Following a due diligence review of the proposed settlement terms, the UAW agreed in the LOI to support approval of a class action settlement that incorporated the proposed Profit-Sharing and *Krzysiak* Settlements.

21. On December 22, the SBC and Navistar entered into the Profit-Sharing Settlement, and the *Krzysiak* Plaintiffs and Navistar entered into the *Krzysiak* Settlement.
22. Pursuant to the Profit-Sharing Settlement, Navistar will pay \$556 million (plus interest) to the Supplemental Trust to resolve the Profit-Sharing Dispute and in exchange for the amendment of the Supplemental Plan to eliminate Navistar's obligation to make profit-sharing or other contributions to the Supplemental Trust in the future. Navistar agreed to pay \$100 million in pre-settlement approval payments with the remainder (plus interest) due three business days following the effective date of the Class Action Settlement.
23. Pursuant to the *Krzysiak* Settlement, Navistar committed to share the benefit of future Medicare Part D subsidies (currently estimated at a value of \$118 million) so as to reduce *Shy* Plan participant premiums. Navistar also agreed to pay \$17 million to the Base Plan that is earmarked for the payment of future participant contributions to resolve the claims for damages relating to the 2012 through 2021 contribution rates. Finally, Navistar agreed to pay \$3 million to the Supplemental Trust in exchange for the reimbursement of the SBC's litigation expenses incurred in support of *Krzysiak*, and a release by the SBC of its claims relating to the Medicare Part D subsidies that is memorialized in the Profit-Sharing Settlement. The agreement with respect to the contribution rate would be effective January 1, 2022; the two cash payments would be made three business days after the effective date of the Class Settlement Agreement.
24. The total value of the consideration set forth in the settlements and the related HBPC Resolution is an estimated \$742 million plus interest.
25. The parties agreed in the Class Settlement to support two principal changes to the various plan documents comprising the *Shy* Agreement. The first would implement t Navistar's commitment in the *Krzysiak* Settlement with respect to the Medicare Part D Subsidies by

amending the definition of “Total Actual Drug Costs” in Appendix A-6 of the *Shy* Agreement. In addition, the Class Representatives agreed to seek approval of the SBC’s amendment of the Supplemental Plan to exchange Navistar’s obligation to make profit-sharing and post-PSCD contributions to the Supplemental Trust for an immediate cash payment so that the Class Members would receive “appropriate notice” prior to the Court’s approval, as provided in Section 9.1(c) of the Supplemental Plan.

26. The proposed settlements would not change the benefits provided to the Class Members by the Base Plan, or the operation and administration of the Base Plan. The only effect of the settlements on the Base Plan would be to reduce the participant’ premiums and increase Navistar’s contributions to the Base Plan in the future.
27. There was a genuine controversy between the SBC and Navistar with respect to the litigation of the profit-sharing and Medicare Part D disputes.
28. The negotiations with Navistar were serious, informed and at arm’s length.
29. The settlements will be of extraordinary benefit to the settlement class.
30. The Medicare Part D subsidies settlement is reasonable based on the risk that the case could be dismissed, the value of the future relief achieved in the settlement of the dispute, and the total value of the settlements.
31. The proposed class is defined by objective criteria: current participation or eligibility for future participation in the *Shy* benefits.
32. 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.

33. The SBC acted in its capacity as a fiduciary to the Supplemental Plan when it entered into and authorized these settlements and had no relationship to or interest in Navistar that affected the exercise of its independent fiduciary judgment in doing so.
34. The SBC is in the process of updating the current Summary Plan Description for the Supplemental Plan (the “SPD”) and the Supplemental Trust Agreement to reflect the settlements and changes in the law and in the operation of the Supplemental Plan since 1993. Although the 1993 versions of these documents are part of the *Shy* Agreement, changes to those documents have not historically been filed with the Court because the changes have not affected the substantive rights of the *Shy* Plan participants. Nevertheless, the SBC intends to file the updated SPD and Supplemental Trust Agreement with the Court prior to sending notice to the Class Members and those documents will be made available for them to review prior to the approval of the Class Settlement Agreement

Executed this 22nd day of December, 2021 in Washington, DC

/s/ Edward Scallet
Edward Scallet