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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

IN RE: GERMAN AUTOMOTIVE
MANUFACTURERS ANTITRUST
LITIGATION
(ALL ACTIONS)

CASE NO. 3:17-md-02796-CRB

**PRETRIAL ORDER NO. 5: PROTOCOL
FOR WORK PERFORMED AND
EXPENSES INCURRED**

In Pretrial Order No. 3 [Dkt. 223], the Court appointed Plaintiffs’ Co-Lead Counsel (“Co-Lead Counsel”), the Plaintiffs’ Steering Committee (“PSC”), and a Chair of the PSC. Pursuant to that Order, the Court now wishes to set specific guidelines and rules for work performed and expenses and costs incurred in this MDL. Nothing in this Order shall be interpreted to affect any proceedings other than those involving the authorities, duties, responsibilities, guidelines, and rules of and for Plaintiffs’ counsel, as discussed herein.

Mr. Simon has been appointed Co-Lead Counsel for indirect purchaser plaintiffs (“IPPs”). Mr. Burns has been appointed Co-Lead Counsel for direct purchaser plaintiffs (“DPPs”). The Court also appointed Mr. Simon as Chair of the PSC. In order to avoid any potential conflict between the indirect purchasers and the direct purchasers, each respective group will prepare their own time and expense reports which will be provided to the Co-Lead Counsel responsible for that group. However, the procedures described herein also cover issues of common interest to both the indirect purchasers and the direct purchasers, both of whom are expected to cooperate and

1 coordinate their efforts to promote the just and efficient conduct of this MDL.

2 **I. ADOPTION OF CASE MANAGEMENT PROTOCOLS FOR WORK**
3 **PERFORMED**

4 The Court hereby adopts the following guidelines for the management of case staffing,
5 timekeeping, cost reimbursement, and related issues. The recovery of attorneys' fees and expense
6 reimbursements will be limited to "Participating Counsel." Participating Counsel shall be defined
7 as Co-Lead Counsel and members of the Plaintiffs' Steering Committee (along with attorneys and
8 staff of their respective firms), or any other counsel authorized by Co-Lead Counsel to perform
9 work that may be considered of value to the MDL, provided said authorized counsel consents and
10 agrees to be bound by this Order and the PSC's compensation structure. That compensation
11 structure, set forth in this Order, shall be implemented by the Chair of the PSC. The application of
12 that structure to Participating Counsel for the indirect purchasers and the direct purchasers shall be
13 the responsibility of the Co-Lead Counsel appointed to represent those plaintiff groups. Co-Lead
14 Counsel shall also have the responsibility and discretion to allocate any Court awarded attorneys'
15 fees and expenses to Participating Counsel in their respective plaintiff groups subject to the
16 Court's authority over the same.

17 If, and to the extent that any portion of this MDL is certified as a class action under Fed. R.
18 Civ. P. 23 for purposes of resolution and/or trial, any award of fees and expenses, including for
19 common interest work, will be consistent with the standards and procedures of Rule 23, including
20 Rule 23(h). Any award of fees and/or expenses shall be approved by the Court.

21 In addition, Participating Counsel shall be eligible to receive attorneys' fees and
22 reimbursement of expenses only if the time expended and expenses incurred, and activity in
23 question were (a) beneficial to the prosecution of the MDL; (b) authorized by Co-Lead Counsel;
24 (c) timely submitted; (d) reasonable; and (e) non-duplicative. Co-Lead Counsel shall have the
25 primary responsibility and discretion to determine the extent to which these factors have been met
26 by any Participating Counsel seeking fees, subject to the Court's approval.

27 Participating Counsel, as defined above, shall agree to the terms and conditions herein,
28 including submitting to the Court's jurisdiction and agreeing that the Court has plenary authority

1 during the MDL regarding the award of attorneys' fees and expense reimbursements in this matter.

2 Each of the Co-Lead Counsel will be responsible for collecting monthly time and expense
3 submissions from Participating Counsel for their respective plaintiff group, auditing such
4 submissions for compliance with the directives set forth in this Order, and informing Participating
5 Counsel when their submissions do not comply with the directives set forth in this Order. Co-Lead
6 Counsel's auditing responsibility notwithstanding, the ultimate determination of what is
7 compensable work, and the extent or rate at which it is be compensable, is within the purview of
8 this Court.

9 In the event that Participating Counsel are unsure if the action they are about to undertake
10 is compensable hereunder, they shall ask the appropriate Co-Lead Counsel in advance for
11 authority to do such work. Work done without the authority of Co-Lead Counsel shall not be
12 submitted to the Court for approval, and will not be compensable.

13 **A. Compensable Work**

14 Compensable work is defined as work authorized by Co-Lead Counsel which is in the
15 common interest of the plaintiff groups in the MDL and/or in the interest of either of the
16 respective plaintiff groups. In determining whether work meets this standard, the Court will rely
17 on the procedures set forth in this Order, the advice of Co-Lead Counsel on the type and quality of
18 the work performed by Participating Counsel, and the Court's judgment regarding how work
19 performed contributed to the outcome of the MDL. It is anticipated that much of the work
20 performed will be done for the common interest of the MDL, but there will also be work
21 performed that is specifically related to only the indirect purchaser or direct purchaser portion of
22 the MDL. Co-Lead Counsel will be expected to prosecute this case efficiently and to monitor
23 attorney billing and expenses in order to minimize duplicative and unnecessary work. Co-Lead
24 Counsel shall balance this need for efficiency with the need to maintain quality and thoroughness
25 in prosecuting this MDL.

26 In order to give Participating Counsel guidance about what may not be compensable work
27 in the eyes of the Court, the following are some examples:

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1. **Pleadings and Briefs**: Factual and legal research and preparation of class action complaints, motions to dismiss, class certification, *Daubert*, and summary judgment will be deemed compensable. Although several attorneys may work on a brief, expert reports and/or other complex filings, they should only do so based on a specific assignment from Co-Lead Counsel. Mere review of other attorneys' work without being specifically asked to work on an assignment may not be compensable
2. **Depositions**: Overstaffing depositions with attorneys that are not primarily responsible for taking or defending the deposition is frowned upon. Although there is no hard and fast rule about how many attorneys are needed to prepare and take a deposition, the number of attorneys who attend should be commensurate with the difficulty and importance of the deposition. Unnecessary attendance by counsel may not be compensated in any fee application pursuant to Rule 23
3. **Periodic MDL Status Conferences**: The Court intends to hold periodic status conferences to ensure that the MDL moves forward efficiently and that legal issues are resolved with guidance from or formal rulings by the Court. Individual attorneys are free to attend any status conference held in open court to stay up to date on the status of the litigation, but except for Co-Lead Counsel and members of the Plaintiffs' Steering Committee or their designees, attending and listening to such conferences is not compensable unless specifically authorized by a Co-Lead Counsel.
4. **Emails and Correspondence**: Emails are another area where only those attorneys essential to the issue which is the subject of the email may be compensated for their time in reviewing an email. Emails often go to more than those who are working on a particular matter, and time spent reviewing emails on which the attorney is not the writer nor the recipient may be scrutinized.

1 5. **Review of Court Filings and Orders:** Counsel, especially Participating
2 Counsel, have a duty to keep themselves advised of the progress of the case;
3 especially to the extent that a particular matter uniquely affects their client.
4 However, an attorney who chooses to review pleadings and attend court
5 hearings, even though they are not assigned responsibility for the matters
6 being briefed or heard, are hereby advised that their time spent on such
7 matters may not be compensable.

8 It is not the intent of the Court to micro-manage the work of counsel. However, these
9 examples, amongst other areas not specifically set forth, can be fertile grounds for unnecessary
10 and duplicative work. The Court will rely on the efficacy of the procedures set forth herein and
11 the enforcement of same by Co-Lead Counsel to assure that the work done is meaningful and adds
12 value. Participating Counsel, and all other counsel, are subject to their time being eliminated or
13 reduced by either Co-Lead Counsel and/or the Court if this Order is not followed.

14 **B. Timekeeping Protocols**

15 All time must be accurately and contemporaneously maintained. Participating Counsel
16 shall keep contemporaneous billing records of the time spent in connection with work performed,
17 indicating with specificity the hours (in tenth-of-an-hour increments) and billing rate, along with a
18 description of the particular activity (such as “conducted deposition of John Doe”).

19 Each time entry must be categorized using one of the categories in the attached **Exhibit A**.
20 In general, when possible, a more specific category should be used in place of a more general
21 category. Under no circumstances should a submitting firm make up new categories for use in its
22 submission.

23 The acceptable categories follow, and the examples contained therein are for guidance.
24 They are not exclusive of the work that may be performed in each category:

- 25 1. **Investigation/Factual Research:** This includes such matters as
26 interviewing witnesses, developing facts from internet research, consulting
27 with industry participants including clients, and preparing memos relating
28 to the same.
2. **Attorney Meetings/Strategy:** This includes planning meetings where

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counsel coordinate their efforts, meetings to prepare for arguments and depositions, meetings within the respective firms, and meetings of Co-Lead Counsel and the PSC.

3. **Attorney Communications:** Communicating with plaintiffs’ and/or defendants’ counsel regarding matters pertinent to the case.
4. **Client Communications:** This includes status reports to the clients, answering their questions, keeping them advised of the progress of the case and strategy decisions, and preparations for document discovery and depositions.
5. **Case Management:** This includes scheduling, administrative matters, assignments, and managing personnel and resources working on the case as well as meet and confers for case management conferences and preparation of statements therefor.
6. **Legal Research:** This includes research into legal matters associated with pleadings, discovery and issues that may come up in hearings.
7. **Pleadings/Motions:** This includes work on and motions related to the operative complaints, class certification and summary judgment, and should be work by those primarily responsible for researching and briefing these matters.
8. **Written Discovery/Plaintiffs’ Document Production:** This includes drafting and responding to written discovery, as well as work related to preservation of and production of Plaintiffs’ documents.
9. **Court Appearances:** This includes appearances at status conferences, motion hearings, and other pre-trial hearings for those attorneys primarily responsible preparing for and arguing such matters.
10. **Depositions (Prepare/Take/Defend):** This includes development of deposition outlines, gathering and review of exhibits, appearances at depositions for the purposes of being the first chair in taking or defending the deposition, or helping support the first chair.
11. **Document Review Tier 1:** This includes document review by less senior attorneys through an established document review platform. This usually involves making the initial cut of documents and is subject to the hourly rate cap described below.
12. **Document Review Tier 2:** This includes review of the work of the Tier 1 document reviewers to determine the quality and efficiency of their work as well as to make a further cut of documents. This work is usually done by more senior attorneys who are coding documents for a specific use in the case.

- 1 **13. Experts/Consultants:** This includes working with the testifying experts as
2 well as the staff working up their reports. It typically involves a deep dive
3 into the econometrics being used, review of the reports, preparation for
4 testimony, as well as review of the reports of defense experts and taking
5 their depositions.
- 6 **14. Settlement/Mediation:** This includes preparation of mediation statements,
7 participation in settlement negotiations, and documenting the settlements.
- 8 **15. Trial Preparation:** This includes meet and confers leading up to the
9 preparation of a joint pre-trial statement as well as getting the case ready for
10 trial. This involves all substantive matters required to be submitted with the
11 joint pre-trial statement in this District, such as motions in limine, jury
12 instructions, trial exhibits, presentations, and video excerpts, as well as
13 garnering the evidence to be presented at trial.
- 14 **16. Trial:** This includes all aspects of a trial.
- 15 **17. Appeals:** This includes any type of appeal that may come up in the context
16 of the case, and would primarily involve appellate brief writers and those
17 making appellate arguments.

18 **C. Time Records and Hourly Rates**

19 **1. Recording Requirements**

20 All Participating Counsel shall record and maintain daily, contemporaneous time records
21 for all work performed, including work by attorneys and paralegals. Counsel shall bill in tenth of
22 an hour increments, and shall maintain records in such a way that each billed activity is recorded.
23 Counsel will not be reimbursed for any item of time nor expense not described in sufficient detail
24 to determine the nature and purpose of the service or expense.

25 **2. Hourly Rates**

26 Customary billing rates shall be used in the monthly time reports submitted to Co-Lead
27 Counsel. Use of these rates does not guarantee their payment. Billing rates should be the then-
28 current billing rates, and if those change, that needs to be reflected in the relevant report. The
29 Court reserves the discretion to determine appropriate rates as the circumstances may warrant.
30 The hourly rate for Tier 1 document reviewers will be capped at \$350 per hour. The hourly rate
31 for review of foreign language documents may be billed at \$400 per hour.

1 **3. Document Review**

2 Document review can be the most challenging area of a case to keep control over time and
3 expenses. Co-Lead Counsel will put out for bid any vendor services and strive to get the best
4 services for the best price without sacrificing quality. Co-Lead Counsel are encouraged to
5 consider the use of technology assisted review (“TAR”) and/or predictive coding to prioritize
6 and/or categorize documents produced by Defendants and/or third parties to obtain efficiencies
7 and enhance the quality of any systematic document review.

8 In general, once a document database is established on an electronic platform, searches
9 may be used to create a universe of documents to be reviewed by the Tier 1 document reviewers.
10 A remote document review system will be used to avoid unnecessary travel expenses and
11 procedures will be put in place to monitor how much time is spent reviewing documents and to
12 monitor the efficiency and quality of the review.

13 Depending on the volume of documents produced, it is possible that a large number of
14 document reviewers will be needed. Where it proves economically advantageous to the putative
15 classes, Co-Lead Counsel may employ contract attorneys to perform efficient and focused
16 document review. Those attorneys would be subject to the procedures set forth herein.

17 **D. Expense Protocol**

18 **1. Shared Expenses**

19 “Shared Expenses” are costs and expenses that will be paid out of a litigation fund
20 administered by Co-Lead Counsel (“Litigation Fund”).

21 Each PSC member, and Participating Counsel, shall contribute to such a fund at times and
22 in amounts sufficient to cover plaintiffs’ expenses for the prosecution of this MDL. The timing
23 and amount of each assessment will be determined by Co-Lead Counsel, in consultation with the
24 PSC and its Chair. Each assessment will be paid within 30 days as instructed by Co-Lead
25 Counsel. Failure to pay assessments will be grounds for removal from the appointments made in
26 previous Court Orders, and otherwise as Participating Counsel. Shared Expenses are incurred for
27 the common interest of the plaintiff groups in this MDL. All Shared Expenses must be approved
28 by Co-Lead Counsel prior to payment.

1 All costs and expenses that meet the requirements of a Shared Expense and fall under the
2 following categories shall qualify for submission and payment directly from a Shared Expense
3 Litigation Fund established by Co-Lead Counsel, as well as for reimbursement from any
4 settlements or satisfaction of judgment as appropriate.

- 5 • Court, filing, and service expenses related to common issues, e.g. a Joint
6 Status Report;
- 7 • Court reporter and interpreter expenses for depositions;
- 8 • Document (both electronic and hard copy) depository creation and hosting,
9 operation, staffing, equipment, and administration including outside third-
10 party vendor expenses associated therewith;
- 11 • Document review platform expenses;
- 12 • Co-Lead Counsel or PSC extraordinary administration expenses, subject to
13 the prohibition described below regarding office overhead and profit
14 margins within a firm. (e.g., expenses for equipment, technology, courier
15 services, long distance, telecopier, electronic service, photocopy and
16 printing, secretarial/temporary staff, meetings and conference calls);
- 17 • Legal, tax, and accountant fees relating to a Litigation Fund or settlement
18 funds;
- 19 • Expert witness and consultant fees and expenses for experts whose opinions
20 and testimony would be for the common interest of all plaintiffs as agreed
21 by Co-Lead counsel.
- 22 • Printing, copying, coding, and scanning related to the above;
- 23 • Research by outside third-party vendors/consultants/attorneys for common
24 issues;
- 25 • Translation expenses;
- 26 • Bank or financial institution charges relating to a Litigation Fund and/or
27 settlement fund;
- 28 • Investigative services; and

- 1 • Any assessment paid by Participating Counsel, or by a non-Participating
2 Counsel firm from whom an assessment was requested by Co-Lead
3 Counsel.

4 To the extent that a settlement fund and/or satisfaction of judgment fund is created for the
5 common interest of the indirect or direct purchaser plaintiff groups, the above-described Shared
6 Expenses which are advanced throughout the litigation may be reimbursed from said funds after
7 approval by the Court.

8 Co-Lead Counsel can request as much detail as is necessary to validate the legitimacy of
9 expenses incurred.

10 In addition to Shared Expenses as defined above, IPPs and DPPs will each bear expenses
11 that inure to the benefit solely of their respective classes, e.g. certain experts. Consistent with the
12 guidelines described above, Mr. Simon shall administer an IPP Shared Expenses Litigation Fund
13 for IPP class members, and Mr. Burns shall administer a DPP Shared Expenses Litigation Fund
14 for DPP class members.

15 **2. Non-Shared Expenses**

16 Each Participating Counsel may incur expenses that are not Shared Expenses as defined
17 above. Participating Counsel may submit those expenses to the appropriate Co-Lead Counsel for
18 reimbursement. The inclusion of any such expenses shall be at the sole discretion of such Co-
19 Lead Counsel subject to the authority of the Court set forth above. Only reasonable non-Shared
20 Expenses will be approved for submission. A firm's office overhead and the inclusion of a profit
21 margin on the actual cost of administrative tasks (e.g. adding a percentage amount to actual costs
22 of copying) shall not be reimbursable. Again, Co-Lead Counsel can request as much detail as
23 necessary to validate the legitimacy of these expenses.

24 **3. Travel Limitations**

25 Counsel for plaintiffs shall only seek reimbursement for refundable, changeable, and
26 convenient coach-class airfare, or its equivalent, for travel on routine domestic flights. For
27 international travel or transcontinental flights with a total duration exceeding four hours,
28 reasonable business class fares may be approved at the discretion of Co-Lead Counsel. Counsel

1 are welcome to travel by any means they choose, but may only seek reimbursement in accordance
2 with these guidelines.

3 Counsel will likewise make reasonable arrangements for lodging and shall seek
4 reimbursement only for reasonable accommodations, not to exceed \$450 per night plus tax unless
5 a comparable rate is not reasonably available. The per diem meal expenses will not exceed \$120.
6 Automobile rentals must be reasonable for the date and location of the rental.

7 **4. Non-Travel Limitations**

8 The following are reimbursable to the extent they reflect the actual out-of-pocket expense
9 incurred by Participating Counsel: long-distance, conference, and cellular telephone charges;
10 shipping, overnight, courier, or delivery expenses, postage, fax, photocopies, computerized legal
11 research (Lexis, Westlaw). All expenses should be broken out individually, documented, and
12 contain an explanation of the basis for the expense in sufficient detail to determine if the expense
13 is properly reimbursable.

14 **E. Protocols for Submission of Time and Expenses**

15 **1. Format**

16 Co-Lead Counsel shall maintain all time submissions in a sortable and searchable format.
17 All of the time and expense submissions must be provided by submitting counsel in the format
18 contained in the attached **Exhibit A**. Participating Counsel must report in the format set forth in
19 that exhibit and failure to provide the requested reports in the proper format or timely manner is
20 reason to exclude the time and expenses from consideration for payment or reimbursement.

21 Consistent with the other provisions herein, Co-Lead Counsel for IPPs and DPPs will
22 respectively ensure that the record of time entries from Participating Counsel from each group
23 reflects whether work was performed: (i) for the common interest of all plaintiffs, or (ii) solely for
24 IPPs or DPPs.

25 **2. Deadlines**

26 All Participating Counsel shall submit a copy of all billing and expenses to Co-Lead
27 Counsel responsible for the case they are in for review no later than two weeks following the last
28 day of each month. Although counsel should endeavor to submit all Shared Expenses in a certain

1 month in the submission made the following month, the realities of third-party billing and credit
2 card statement schedules may make such quick expense submission difficult in some
3 circumstances. Thus submissions of “supplemental” common benefit expense reports will be
4 permitted for those expenses incurred during the previous six months that – because of
5 circumstances outside the submitting counsel’s control – could not have been submitted by the
6 deadline. Any Shared Expenses submitted more than six month in arrears may not be considered
7 or included in any compilation of Shared Expense calculation and may be disallowed, except for
8 good cause shown and with the approval of the appropriate Co-Lead Counsel.

9 Co-Lead Counsel will collect all billing records and expenses monthly, and conduct a
10 quarterly review of time records and expenses to ensure that they are reasonable. Co-Lead
11 Counsel shall take particular care to ensure that duplicative work is not being performed, and shall
12 adhere to the procedures set forth herein. Co-Lead Counsel shall have the power to discount or
13 eliminate non-compliant or unnecessarily duplicative bills, and shall not submit those time records
14 to the Court nor seek reimbursement for unnecessary expenses.

15 Co-Lead Counsel may consider using a third-party vendor to collect time and expense
16 reports, if that will not add unnecessary expenses to the case.

17 **IT IS SO ORDERED.**

18 DATED: January 30, 2018

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21 Judge Charles R. Breyer

In re: GERMAN AUTOMOTIVE MANUFACTURERS ANTITRUST LITIGATION
TIME REPORT

FIRM NAME:
REPORTING PERIOD:

Categories:

- | | | |
|--------------------------------------|---|-----------------------------|
| (1) Investigation / Factual Research | (7) Pleadings / Motions | (13) Experts / Consultants |
| (2) Attorney Meetings / Strategy | (8) Written Discovery / Plaintiff's Document Production | (14) Settlement / Mediation |
| (3) Attorney Communications | (9) Court Appearances | (15) Trial Preparation |
| (4) Client Communications | (10) Depositions (Prepare / Take / Defend) | (16) Trial |
| (5) Case Management | (11) Document Review Tier 1 | (17) Appeals |
| (6) Legal Research | (12) Document Review Tier 2 | |

Status:

- (P) Partner
(A) Associate
(LC) Law Clerk
(PL) Paralegal

NAME	STATUS	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	Current Hours	Hourly Rate	Current Lodestar	Cumulative Hours	Cumulative Lodestar
															0.00		\$ -		
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ATTORNEY TOTALS															0.00		\$ -	0.00	\$ -
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NON-ATTORNEY TOTALS															0.00		\$ -	0.00	\$ -
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TOTALS		0.00						0.00	0.00		0.00	0.00	0.00						

In re GERMAN AUTOMOTIVE MANUFACTURERS ANTITRUST LITIGATION

Firm Name:

Reporting Period:

DESCRIPTION	CURRENT TOTAL	CUMULATIVE TOTAL
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Case Assessment		
Copying (in house)		
Copying (vendor)		
Court Costs/Filing Fees		
Court Reporter/Transcripts		
Computer Research		
Delivery/Courier		
Expert Witness Fees		
Facsimile		
Interpreter Fees		
Investigator Fees		
Mailing/Postage		
Printing/Binding		
Service of Process		
Telephone		
Travel: Airfare		
Travel: Car rental/taxi/parking		
Travel: Lodging		
Travel: Meals		
Trial Exhibits		
Vendor (specify)		
Witness Fees		
Miscellaneous (specify) Cost		
Fund Deposit		

Vendor/Misc. Notes (if applicable):

TOTALS: \$0.00