

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>IN RE NEW MOTOR VEHICLES</b>	]	
<b>CANADIAN EXPORT ANTITRUST</b>	]	<b>MDL DOCKET No. 1532</b>
<b>LITIGATION</b>	]	

**ORDER ON COSTS**

The Clerk has taxed costs against the plaintiffs in the amount of \$261,974.60. Order on Bill of Costs (\$88,541.93) (Docket Item 1088); Order on Bill of Costs (\$76,533.86) (Docket Item 1089); Order on Bill of Costs (\$96,898.81) (Docket Item 1090). The plaintiffs seek review under Federal Rule of Civil Procedure 54(d)(1). Fed. R. Civ. P. 54(d)(1) (“On motion served within the next 7 days, the court may review the clerk’s action.”).

According to Rule 54, costs “should be allowed to the prevailing party.” Id. The First Circuit has made clear that “[t]here is a background presumption favoring cost recovery for prevailing parties” and that if a court denies costs (as the plaintiffs request here), it “must offer an explanation for doing so” unless the reason is obvious. B. Fernandez & Hnos, Inc. v. Kellogg USA, Inc., 516 F.3d 18, 28 (1st Cir. 2008) (citation omitted). The First Circuit has also said that when a case “presented a close question that required considered balancing,” that factor justifies a denial of costs. Id. I find that to be the situation in this case. Although these defendants prevailed ultimately, “[t]he closeness of a case is judged not by whether one party clearly prevails over another, but by the refinement of perception required to recognize, sift through

and organize relevant evidence, and by the difficult of discerning the law of the case.” White & White, Inc. v. American Hospital Supply Corp., 786 F.2d 728, 732-33 (6th Cir. 1986).

This was a difficult antitrust case. The class action questions were exceedingly difficult, as recognized by me and the Court of Appeals. I found enough evidence to deny summary judgment as to the conspiracy charge, but ultimately found not enough to prove causation by the method of proof the plaintiffs chose in seeking to preserve their claim for class treatment. As White & White recognized, “we do not belittle the difficult process a trial court oversees in distilling complex antitrust allegations to their legal and factual essence for review by an appellate court.” Id. at 733.

For those reasons, I conclude that the parties should bear their own costs and **VACATE** the Clerk’s taxation of costs.

**SO ORDERED.**

**DATED THIS 16TH DAY OF APRIL, 2010**

/s/D. Brock Hornby  
**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CIVIL DOCKET CASE #: 2:03-MD-1532-DBH**

**LIAISON COUNSEL**

**For Plaintiffs**

Todd A. Seaver  
Berman DeValerio  
425 California Street, Suite 2100  
San Francisco, CA 94104  
(415) 433-3200  
email: [tseaver@bermandevalerio.com](mailto:tseaver@bermandevalerio.com)

**For Defendants**

William J. Kayatta, Jr.  
Clifford H. Ruprecht  
Pierce Atwood LLP  
One Monument Square  
Portland, ME 04101-4033  
(207) 791-1100  
email: [wkayatta@pierceatwood.com](mailto:wkayatta@pierceatwood.com)  
email: [cruprecht@pierceatwood.com](mailto:cruprecht@pierceatwood.com)

**PLAINTIFFS' EXECUTIVE COMMITTEE**

**Chair**

Joseph J. Tabacco, Jr.  
Berman DeValerio  
425 California Street, Suite 2100  
San Francisco, CA 94104  
(415) 433-3200  
email: [jtabacco@bermandevalerio.com](mailto:jtabacco@bermandevalerio.com)

C. Oliver Burt III  
Berman DeValerio  
Esperante Building  
222 Lakeview Drive, Suite 900  
West Palm Beach, FL 33401  
(561) 835-9400  
email: [cburt@bermanesq.com](mailto:cburt@bermanesq.com)

**Vice-Chair**

Michael M. Buchman  
J. Douglas Richards  
Pomerantz, Haudek, Block, Grossman & Gross  
100 Park Avenue, 26th floor  
New York, NY 10017  
(212) 661-1000  
email: [mbuchman@pomlaw.com](mailto:mbuchman@pomlaw.com)  
email: [drichards@pomlaw.com](mailto:drichards@pomlaw.com)

**EXECUTIVE COMMITTEE MEMBERS**

Bernard Persky Hollis L. Salzman Labaton Sucharow & Rudoff LLP 100 Park Avenue, 12th floor New York, NY 10017 (212) 907-0700	Robert J. LaRocca William E. Hoese Kohn, Swift & Graf, P.C. One South Broad Street Philadelphia, PA 19107 (215) 238-1700
Patrick E. Cafferty Jennifer Winter Sprengel Cafferty Faucher LLP 30 North LaSalle Street Chicago, IL 60602 (312) 782-4880	Samuel D. Heins David Woodward Heins, Mills & Olsen, P.L.C. 3550 IDS Center 80 South Eighth Street Minneapolis, MN 55402 (612) 338-4605
Richard W. Cohen Lowey, Dannenberg Bemporad & Selinger, P.C. White Plains Plaza One North Broadway White Plains, NY 10601 (914) 997-0500	Robert S. Frank Harvey & Frank P.O. Box 126 Portland, ME 04112 (207) 775-1300

**DEFENDANTS' COUNSEL**

**American Honda Motor Company, Inc.**

**Honda Canada Inc.**

Robert A. Van Nest  
Ragesh Tangri  
Rachael Meny  
Daniel Purcell  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
(415) 391-5400

David B. McConnell  
Perkins Thompson, P.A.  
P.O. Box 426  
Portland, ME 04112-0426  
(207) 774-2635

**Canadian Automobile Dealers Association**

Daniel Loeb  
Thomas McConnell  
Elisabeth M. Stein  
Fried, Frank, Harris, Shriver & Jacobson, LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
(202) 639-7000

**Chrysler LLC**  
**Chrysler Motors LLC**  
**Chrysler Canada, Inc.**  
**Mercedes-Benz USA, LLC**

Steven A. Newborn  
James C. Egan, Jr.  
Kirsten A. Lockhart  
Carrie M. Anderson  
Weil Gotshal & Manges  
1300 I Street, NW, Suite 900  
Washington, DC 20005  
(202) 682-7000

William J. Kayatta, Jr.  
Clifford H. Ruprecht  
Pierce Atwood LLP  
One Monument Square  
Portland, ME 04101-4033  
(207) 791-1100

**Ford Motor Company**  
**Ford Motor Company of Canada, Ltd.**

Margaret M. Zwisler  
William R. Sherman  
Gregory S. Seador  
Charles R. Price  
Latham & Watkins LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004-1304  
(202) 637-2200

**General Motors Corporation**  
**General Motors of Canada, Ltd.**

**Saab Cars USA, Inc.**  
**Saturn Corporation**  
**GMAC LLC**

Richard C. Godfrey, P.C.  
David J. Zott, P.C.  
Daniel E. Laytin  
Kirkland & Ellis LLP  
200 E. Randolph Street  
Chicago, IL 60601  
(312) 861-2000

**National Automobile Dealers Association**

Glenn A. Mitchell  
David U. Fierst  
Stein, Mitchell & Mezines LLP  
1100 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036  
(202) 737-7777

Bruce C. Gerrity  
PretiFlaherty  
P.O. Box 1058  
Augusta, ME 0433-1058  
(207) 623-5167

**Nissan North America, Inc.**

Peter Sullivan  
Joshua Lipton  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
(212) 351-4000

Daniel L. Goldberg  
Daniel S. Savrin  
Bingham McCutchen, LLP  
One Federal Street  
Boston, MA 02110-1726  
(617) 951-8000

Harold J. Friedman  
Laurence Leavitt  
Friedman, Gaythwaite, Wolf & Leavitt  
Six City Center, Suite 400  
Portland, ME 04112-4726  
(207) 761-0900

**Toyota Motor Sales U.S.A., Inc.**

Michael R. Lazerwitz  
Lee F. Berger  
Cleary, Gottlieb, Steen & Hamilton LLP  
2000 Pennsylvania Avenue, NW  
Washington, DC 20006  
(202) 974-1500

James T. Kilbreth  
Verrill Dana LLP  
P.O. Box 586  
Portland, ME 04112-0586  
(207) 774-4000