

First, the Court finds that the settlement is not the product of fraud or collusion. This case was litigated for nearly seven years and up to the verge of a class action trial. Further, the settlement negotiations were presided over by the Hon. Charles E. Atwell (Ret.) formerly of the Circuit Court of Jackson County, Missouri. This factor weighs in favor of final approval.

Second, the Court finds that the complexity, expense, and likely duration of the litigation weigh in favor of final approval. As noted above, this case has been litigated for nearly seven years. Absent settlement, there can be little doubt that a class action trial and subsequent appeal would have occurred. This factor weighs in favor of final approval.

Third, the advanced stage of proceedings and significant discovery weigh in favor of approval. Class Counsel attests that millions of pages of documents have been exchanged in the litigation and the parties have conducted more than 20 depositions in this case. And as noted above, this case was settled only on the verge of trial. This factor weighs in favor of final approval.

Fourth, the probability of Plaintiff's success on the merits weighs in favor of final approval. This case was set for a three-week jury trial in April 2022. There is inherent risk to any plaintiff's claims in a jury trial. This factor weighs in favor of final approval.

Fifth, the range of possible recovery weighs in favor of final approval. This settlement potentially affords complete or nearly complete relief to class members in that it provides a cash fund for reimbursement of previously removed undamaged 4-inch ET Plus devices that are claimed and approved, a cash fund to pay for the cost of identifying the 4-inch ET Plus devices that are currently on class members' roads, the products and cash to remove and replace the undamaged 4-inch ET Plus devices that are currently on class members' roads that are claimed and approved, and the funds to pay for Class Counsel's fees and expenses and the cost to administer the settlement

over the next six years. Class counsel has estimated that the settlement could provide \$56,000,000 of value in cash and products. This factor weighs in favor of final approval.

Sixth, the opinions of absent class members, Class Counsel, and Plaintiff Jackson County weigh in favor of final approval. After a comprehensive notice program that provided individual notice to each potential class member, there were no objections to the settlement. The lack of any class member opposition to the settlement weighs strongly in favor of final approval. Further, Class Counsel have decades of experience prosecuting product liability and complex claims like this case throughout the country and they support the settlement as does Plaintiff Jackson County. This factor weighs in favor of final approval.

Based on the foregoing, the grants final approval of the settlement under Rule 52.08(e).

2. Class Certification. The Court previously certified and declined to decertify the following class:

All Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis, and the State of Missouri's transportation authority, that have or had ET-Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways they own and maintain.

See Findings of Fact, Conclusions of Law, and Order of Class Certification dated December 6, 2017; *see also* Order Denying Trinity's Motion to Decertify Class dated November 19, 2021.

Thus, maintaining the class action for purposes of settlement under Rule 52.08(e) is appropriate.

3. **Class Counsel and Representatives.** The Court confirms its earlier appointment of Patrick J. Stueve, Bradley T. Wilders, and Alexander T. Ricke of Stueve Siegel Hanson LLP as Class Counsel under Rule 52.08 to act on behalf of the certified class with respect to settlement. The Court likewise confirms its earlier appointment of Plaintiff Jackson County, Missouri to act as Class Representative for purposes of settlement.

4. **Class Notice Plan and Claims Process.** The notice plan described in the Settlement Agreement and performed by the Settlement Administrator provided individual notice of the settlement to each class member and constituted the best notice practicable under the circumstances under Rule 52.08(c). With respect to the Claim Notice, Claim Form, and claims process, the Court directs the Settlement Administrator to issue those documents and carry out the claims process as required by the Settlement Agreement. Subject to Class Counsel's approval, the Settlement Administrator is directed to format the Claim Notice and Claim Form to accommodate the submission of claims as necessary.

5. **Settlement Administrator.** Analytics Consulting LLC is hereby appointed as the Settlement Administrator to implement the settlement and claims process as outlined in the Settlement Agreement.

6. **Service Award.** The Court finds that the \$50,000 service award to Jackson County is reasonable. The Court approves the requested \$50,000 service award.

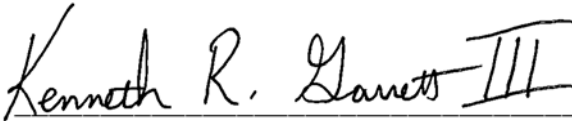
7. **Attorneys' Fees, Expenses, and Costs.** Under both the lodestar method and the percentage of the benefit method of calculating attorneys' fees, the Court finds that the agreed-upon aggregate award of attorneys' fees and costs in the amount of \$11,400,000 is reasonable. With respect to the lodestar method, Class Counsel documented a lodestar of \$9,726,814.50 based on 14,688.6 hours at a blended hourly rate of \$662. The hours are reasonable given the complex

nature of the case and the nearly seven years of litigation with a settlement reached less than two months before trial. Likewise, Class Counsel's blended rate of \$662 per hour is reasonable based on the skill, experience, and reputation of counsel. Given the contingent risk in this complex case, the preclusion of other employment due to the commitment of resources to this case, and the favorable results achieved for the class, the 1.07 multiplier on Class Counsel's lodestar is reasonable. Viewed as a percentage of the benefit, the requested attorneys' fees equate to approximately 18.5% of the value that Class Counsel estimates the settlement could provide, which is on the low end of percentage fee awards Missouri. The Court likewise finds that the request for reimbursement of expenses is reasonable and that the expenses are of the type and character reasonably necessary for the prosecution of a complex case like this. The Court approves Class Counsel's request for an aggregate award of \$11,400,000 in attorneys' fees and expenses.

8. Judgment. Pursuant to Rule 52.08(e), the Court approves the Settlement Agreement in its entirety. The Court enters judgment on Plaintiff's Petition consistent with the terms of the Settlement Agreement and dismisses this matter with prejudice except that the Court retains exclusive and continuing jurisdiction over the claims and issues in this litigation and specifically over all aspects related to the Settlement Agreement.

IT IS SO ORDERED.

Dated: August 30, 2022


Kenneth R. Garrett III
Circuit Judge, Division 2
Circuit Court of Jackson County, Missouri