

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

| | | |
|--|---|-----------------------|
| SHEET METAL WORKERS LOCAL 32 |) | No. 3:09-cv-02083-RNC |
| PENSION FUND, Individually and on Behalf |) | (Consolidated) |
| of All Others Similarly Situated, |) | |
| |) | <u>CLASS ACTION</u> |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| TEREX CORPORATION, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

DECLARATION OF DANIEL VILLARRUEL ON BEHALF OF SHEET METAL WORKERS LOCAL 32 PENSION FUND IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND AN AWARD TO LEAD PLAINTIFFS AND ADDITIONAL PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

I, Daniel Villarruel, declare as follows:

1. I am the Business Manager/Financial Secretary and Treasurer of the Board of Trustees of the Sheet Metal Workers Local 32 Pension Fund (the "Fund"), which is one of the Court-appointed lead plaintiffs in the above-captioned case (the "Litigation").

2. The Fund is an employee pension benefit plan organized under Federal law, specifically §302 of the LMRA and ERISA. The Fund has a governing board of trustees, which is composed of an equal number of labor and management representatives. The purpose of the Fund is to provide retirement benefits to members working for employers who have a collective bargaining agreement with SMART Local Union 32. The asset value of the Fund as of July 1, 2018, was approximately \$53 million, and there are more than 700 members covered.

3. I respectfully submit this declaration in support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, an Award of Attorneys' Fees and Expenses, and an Award to the Fund pursuant to 15 U.S.C. §78u-4(a)(4) in the amount of \$2,500 for its time incurred in representing the Class. I have personal knowledge of the statements herein, and, if called as a witness, could and would testify competently thereto.

4. The Fund understands that the Private Securities Litigation Reform Act of 1995 was intended to encourage institutional investors with large losses to manage and direct securities fraud class actions. In seeking appointment as lead plaintiff in February 2010 (*see* ECF No. 19), the Fund understood its duty to serve the interests of Class Members by supervising the management and prosecution of the Litigation. We vigorously prosecuted this case on behalf of the Class for nearly 10 years. Ultimately, we agreed to settle the case only after balancing the risks of a trial and appeal, if we prevailed, against the immediate benefit of a \$10,000,000 recovery that resulted from a mediator's proposal.

5. Following appointment as lead plaintiff, the Fund was kept fully informed regarding case developments and procedural matters over the course of the Litigation, including engagement with Lead Counsel Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) concerning the litigation strategy in connection with the investigation, the motion to dismiss, and the negotiations leading to the mediator’s proposal which resulted in the Settlement. In its capacity as Lead Plaintiff, the Fund and the Fund’s counsel: (a) engaged in meetings and correspondence with Robbins Geller; (b) reviewed pleadings and briefs; (c) reviewed detailed correspondence concerning the status of the Litigation; (d) identified and provided relevant information concerning the Fund’s investments in Terex stock; (e) consulted with Robbins Geller regarding litigation and settlement strategy; and (f) was informed about the settlement negotiations and the mediator’s proposal that resulted in the settlement of this Litigation.

6. Had the Litigation proceeded, the Fund was prepared to work closely with Robbins Geller to prepare for and provide deposition testimony on behalf of the Fund and Class Members in connection with class certification.

7. Over the course of many years, the Fund stayed informed regarding the status of the Litigation and received regular updates from Robbins Geller.

8. The Fund has evaluated the significant risks and uncertainties of continuing litigation, including the possibility of a nominal recovery or even no recovery at all, and has authorized Robbins Geller to settle this Litigation for \$10,000,000. The Fund is conscious of the possibility of losing at trial and that, even if it were to prevail, the defendants likely would appeal, rendering any ultimate recovery for Class Members still years away. The Fund believes this Settlement is fair and reasonable, represents a very good recovery, and is in the best interests of Class Members.

9. While the Fund recognizes that any determination of attorneys' fees and expenses is left to the Court, the Fund believes that Robbins Geller's request for attorneys' fees of 31% of the Settlement Fund and expenses not to exceed \$225,000, plus interest on both amounts, is fair and reasonable, as this Settlement would not have been possible without Robbins Geller's diligent and aggressive prosecutorial efforts.

10. The Fund has expended time on this Litigation over the course of nine years, which would otherwise have been focused on daily business activities of the Fund. Based upon the length of time involved in its service as Lead Plaintiff in this Litigation, the Fund believes that an award of \$2,500 is reasonable and appropriate for the time it incurred in representing the Class.

11. The Fund respectfully requests that the Court grant final approval of the Settlement, approve Robbins Geller's motion for an award of attorneys' fees and expenses, and award the Fund \$2,500 for its time expended in representing the Class in this Litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 11th day of June, 2019, in North Miami Beach.


Daniel Villarruel