



U.S. Department of Justice

Antitrust Division

New York Field Office

26 Federal Plaza 212-335-8036
Room 3630
New York, New York 10278-0004 FAX 212-335-8023

January 29, 2016

Via ECF

The Honorable James Orenstein
U.S. Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Filed Under Seal

Re: In re Parking Heaters Antitrust Litigation
No. 15-MC-940 (JG) (JO)

Dear Judge Orenstein:

We represent the United States, which is investigating price-fixing in the parking heater industry in violation of the Sherman Act. That investigation has resulted in several prosecutions, including a guilty plea by Espar, Inc. (U.S. v. Espar, Inc., No. 1:15-cr-00028-JG (EDNY)), and, more recently, indictments of three individuals – Frank Haeusler, Volker Hohensee, and Harald Sailer – who have been charged as members of the same price-fixing conspiracy (U.S. v. Haeusler et al., No. 5:15-cr-20784-JCO-APP (E.D. Mich.)). As Your Honor is aware, the subject matter of the government’s investigation overlaps substantially with that of the civil actions consolidated in In re Parking Heaters Antitrust Litigation (“the civil actions”). We appreciate the opportunity to submit this letter to Your Honor to address our concerns regarding the Proposed Case Management Order (“CMO”) submitted in the civil actions. Because this letter reveals non-public details about the United States’ investigation and prosecutions, we have submitted it under seal, and we appreciate the Court keeping this letter *in camera*.

While the United States has no objection to early document production beginning in the civil actions, we believe that a minor change to the parties’ proposed CMO is required to avoid potential prejudice to our ongoing investigation and prosecutions.

The first paragraph of the proposed CMO states that the defendants “shall produce to Plaintiffs documents for the period October 1, 2007 to December 31, 2014 relating to the above-

captioned matter as **agreed to by the Parties**” (our emphasis). [REDACTED]

We object to any discovery in the civil actions that [REDACTED]

[REDACTED] The fact that such production presumably would be covered under the Protective Order in this matter does not erase this concern. [REDACTED]

[REDACTED] a large group – all the parties, their counsel, and the many individuals and organizations that will be entitled to see produced materials under the terms of the Protective Order, including experts, witnesses, and current and former employees of Espar and Webasto.

[REDACTED]

We believe that this concern can be resolved by making minor changes to paragraph 1 of the proposed CMO. Rather than agreeing to production of [REDACTED], the parties could agree to production of certain listed categories of documents, [REDACTED] for example, all communications between Espar and Webasto, all documents relating to pricing of parking heaters, or all documents identified by certain relevant custodians or search terms. While we understand that collecting and producing documents in enumerated categories entails more time and effort [REDACTED] it should be no more burdensome than typical discovery in a civil case.

We have spoken to counsel for the plaintiffs and defendants and explained our concerns, to the extent possible given the confidential nature of our investigation. The parties have told us that they would try to assuage our concerns by using a euphemism for [REDACTED] in the CMO instead of explicitly identifying it as such – which is why paragraph 1 of the CMO identifies the documents to be produced in vague terms, “as agreed to by the Parties.” We told the parties that

was not sufficient. Whether or not the CMO or any other written document [REDACTED]
[REDACTED] then our concern remains. Our concern is one
of substance, not form.

We appreciate the opportunity to be heard. Please contact us if you have questions or wish to hear further from us on this issue.

Sincerely,



Carrie A. Syme
Trial Attorney
Antitrust Division, NY Office
U.S. Department of Justice
(212) 335-8036
carrie.syme@usdoj.gov

[REDACTED]
[REDACTED] Although that does not cure the precise problem addressed in this
letter, we very much appreciate the parties' cooperation in this regard.