EXHIBIT A

ZF Meritor LLC and Meritor Transmission Corporation v. Eaton Corporation

Civ. No. 06-623-SLR

PRELIMINARY JURY INSTRUCTIONS – DAMAGES PHASE

JURY INSTRUCTION NO. 1

INTRODUCTION

Now that you have been sworn in, I have the following preliminary instructions for guidance on your role as jurors in this case.[1]

This is a lawsuit arising under the federal antitrust laws known as the Sherman Act and the Clayton Act. The lawsuit was filed in 2006 by two related companies -- ZF Meritor LLC (which I will refer to as "ZF Meritor") and Meritor Transmission Corporation (which I will refer to as "Meritor"). I will refer to both of them together as "Plaintiffs." Plaintiffs sued the Defendant company named Eaton Corporation, which I will refer to as "Eaton."[2]

Plaintiffs and Eaton manufactured and sold heavy duty truck transmissions in North America.[3] Prior to Meritor entering the market, Eaton was, and remained at all applicable times, the dominant supplier of heavy duty truck transmissions in North America.[4] These heavy duty transmissions are purchased by four truck manufacturers that will be referred to throughout trial as "OEMs" (which stands for "Original Equipment Manufacturers").[5] The four OEMs are the

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[1] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 13.

[2] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 13, edited slightly.

[3] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 13, edited slightly.

[4] New.

[5] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 13, edited slightly; Final Pretrial Order (D.I. 367) at 3.

only direct purchasers of heavy duty truck transmissions, with the ultimate consumers being the truck buyers.[6]

Eaton entered into long-term agreements or contracts, called "LTAs," with each of the OEMs. These LTAs were of an extended duration, and contained provisions such as high market share commitments, which required each of the OEMs to purchase nearly all of its heavy duty truck transmissions from Eaton in order to obtain rebates and avoid risk of contract cancellation. The LTAs also contained requirements that Eaton's transmissions be published as the standard/preferred supplier, and in some cases the exclusive offering, in the OEM's product catalogs, called databooks.[7]

Plaintiffs brought this lawsuit against Eaton, alleging that it had violated three antitrust laws.[8] The purpose of the antitrust laws is to preserve free and unfettered competition in the marketplace. The antitrust laws rest on the central premise that competition produces the best allocation of our economic resources, the lowest prices, the highest quality, and the greatest material progress.[9] In bringing this lawsuit, Plaintiffs alleged that Eaton had monopoly power in the North American market for heavy duty truck transmissions and that Eaton used that power, through its LTAs with the OEMs and other conduct, to prevent Plaintiffs from competing for business, causing injuries to Plaintiffs. Plaintiffs also asserted that Eaton, individually and also in concert with the OEMs, engaged in anticompetitive conduct to acquire and maintain monopoly power in the market and to impede competition.[10]

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[6] New.

[7] New.

[8] New.

[9] Final Jury Instructions from Liability Trial (D.I. 214) at 19.

[10] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 13, edited slightly.

The trial of this case has been split into two parts, with a different jury for each part. This is the second part – the damages phase. After the first trial (the liability phase), the first jury decided in favor of both Plaintiffs. It found that the relevant market was heavy duty truck transmissions in North America, and that Eaton had monopoly power in that market. It further found that Eaton broke three antitrust laws, and that each of Eaton's violations of law caused both Plaintiffs antitrust injuries.[11] Specifically, the first jury found that:

-- Eaton willfully acquired or maintained monopoly power in the relevant market by engaging in anticompetitive acts or practices, in violation of Section 2 of the Sherman Act.[12] Anticompetitive acts are acts, other than competition on the merits, which have the effect of preventing or excluding competition or frustrating the efforts of other companies to compete for customers within the relevant market.[13] The first jury also found that:

-- A contract(s), combination, or conspiracy existed between Eaton and the OEMs that unreasonably restrained trade or foreclosed competition in a substantial portion of the relevant market, in violation of Section 1 of the Sherman Act;[14] and that:

-- Eaton's contracts with the OEMs constituted de facto exclusive dealing contracts, and Eaton entered into a sufficient number of such contracts so as to substantially lessen competition or tend to create a monopoly in the heavy duty truck transmissions market in North America, in violation of Section 3 of the Clayton Act.[15]

The first jury also found that, with respect to each of these violations of law, the competitive harms associated with Eaton's unlawful conduct outweighed any competitive

[11] New.

[12] Liability Trial Verdict Form (D.I. 216) at 3; Final Pretrial Order (D.I. 367) at 4.

[13] Final Jury Instructions from Liability Trial (D.I. 214) at 36.

[14] Liability Trial Verdict Form (D.I. 216) at 2; Final Pretrial Order (D.I. 367) at 4.

[15] Liability Trial Verdict Form (D.I. 216) at 4; Final Pretrial Order (D.I. 367) at 4.

benefits articulated by Eaton. And that jury found that each of Eaton's violations caused Plaintiffs to suffer antitrust injuries to its business or property at any time since March 28, 2002.[16]

These findings are conclusive. They are binding on this jury. You are not to reconsider them.[17] The verdict form from the liability phase trial, as well as the instructions I gave that jury for completing that form, are part of the record in the damages phase trial.[18] They will be available to you during your deliberations at the close of evidence.[19]

Your job as the damages phase jury is to enforce the antitrust laws, in light of the verdict from the liability phase.[20] In this case, you have one thing to decide and one thing only, according to these instructions and the instructions that I will give you at the end of the trial.[21] You must decide the dollar amount of damages which Plaintiffs suffered as a result of Eaton's illegal conduct.[22]

JURY INSTRUCTION NO. 2

DUTY OF JURY

It will be your duty to decide what the facts are, based solely on the evidence as presented at trial. You, and you alone, are the judges of the facts. You will have to apply those facts to the

[16] Liability Verdict Form (D.I. 216) at 2-5.

[17] Final Pretrial Order (D.I. 367) at 9; Transcript of Final Pretrial Conference at 4-5.

[18] *Id.*

[19] New.

[20] New.

[21] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 14, edited slightly.

[22] New.

law as I will instruct you at the close of evidence. You must follow that law whether you agree with it or not.[23]

You are the judges of the facts. I will decide which rules of law apply to this case. Nothing I say or do during the course of the trial is intended to indicate what your verdict should be.[24]

With respect to the evidence, the evidence from which you will find the facts will consist of the testimony of witnesses and documents and other things admitted into evidence.[25] Some of the documents and testimony that were admitted as evidence in the liability phase trial will also be used as evidence during this damages phase trial. Evidence from the liability phase trial is entitled to the same consideration and is to be judged, insofar as possible, in the same way as evidence being admitted for the first time during this damages phase trial.[26] In addition, the evidence may include certain facts as agreed to by the parties or as I instruct you.[27]

In the course of the case, you may hear previously taken deposition testimony. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath and swears to tell the truth, and lawyers from each party may ask questions. A court reporter is present and records the questions and answers. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify at trial.[28]

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[23] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 17.

[24] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 17.

[25] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 17.

[26] New – modeled off of Preliminary Jury Instructions from Liability Trial (D.I. 229) re: deposition testimony at 17.

[27] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 17.

[28] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 17.

You may also hear testimony taken from the first part of the trial – the liability phase trial. That testimony was taken during the first trial, the witness was placed under oath and swore to tell the truth, and the lawyers from each party were able to ask questions. A court reporter was present and recorded the questions and answers. Testimony from the liability phase trial is entitled to the same consideration, and is to be judged, insofar as possible, in the same way as if the witness had been present to testify in this trial.[29]

In judging the facts, it will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness' testimony to accept or reject.[30]

In the course of the trial, you will also hear from expert witnesses. When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – that person is called an expert witness -- is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it and how much weight to give that testimony.[31]

Another point on evidence: Because pre-trial fact discovery in this case basically ended in early 2009, and in light of other legal reasons, you may not see or hear much or any evidence about events over the last few years. This is a matter of legal procedure, and you are to draw no inference, positive or negative, about any such matters not included in the evidence.[32]

Certain things are not evidence. Statements, arguments and questions by lawyers are not evidence, although the lawyers may refer to evidence in connection with their opening and

[29] New – modeled off of Preliminary Jury Instructions from Liability Trial (D.I. 229) re: deposition testimony at 17.

[30] Preliminary Jury Instructions from Liability Trial at 19.

[31] Preliminary Jury Instructions from Liability Trial at 18.

[32] New.

closing statements. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe testimony or exhibits being offered into evidence are not admissible under the Rules of Evidence. You should not be influenced by a lawyer's objection or by my ruling on the objection. If I sustain or uphold the objection, and find the matter is not admissible, you should ignore the question or other item of evidence. If I overrule an objection and allow the matter in evidence, you should consider the testimony or other item of evidence as you would any evidence. If I instruct you during the trial that some item of evidence is admitted for a limited purpose, you must follow that instruction and consider the evidence for that purpose only. I will instruct you further during the trial if this happens.[33]

Now, a few words about your conduct as jurors. You should not reach any conclusions as to the issues presented until all the evidence is in and you have been given your final instructions. You may write questions down and give them to my courtroom deputy. She will give the questions to me and I will pass them along to the attorneys, who may or may not try to incorporate your questions into their examinations.[34]

Finally, you must only consider the evidence presented in the courtroom. Anything you see or hear outside the courtroom is not evidence and must be disregarded. Do not read or listen to anything touching on this case, or on the antitrust laws generally, that is not admitted into evidence, except as I allow. By that I mean, if there may be a newspaper or internet article or radio or television report relating to this case or the antitrust laws, do not read the article or watch or listen to the report. In addition, do not try to do any independent research or investigation on your own, or speak to anyone other than as I specifically allow, on matters

[33] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 18.

[34] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 19.

relating to this case or to the antitrust laws in general, including on the telephone, in person, on the internet or through social media.[35]

The proceedings during the trial will be transcribed by court reporters; however, it is not the practice of this Court to make the trial transcripts available to jurors. You must rely on your own recollection of what testimony was presented and how credible that testimony was.[36]

If you wish, you may take notes to help you remember what witnesses said. My courtroom deputy will arrange for pens, pencils and paper for you after the attorneys complete their opening statements. If you do take notes, please keep them to yourself until the end of the trial when you and your fellow jurors go to the jury room to decide the case. Here are some other specific points to keep in mind about note-taking. First, note-taking is permitted, but it is not required. You are not required to take notes. How many notes you want to take, if any, is entirely up to you. Second, please make sure that note-taking does not distract you from your tasks as jurors. You must listen to all the testimony of each witness. You also need to decide whether and how much to believe each witness. That will require you to watch the appearance, behavior, and manner of each witness while he or she is testifying. You cannot write down everything that is said, and there is always a fear that a juror will focus so much on note-taking that he or she will miss the opportunity to make important observations. Third, your notes are memory aids; they are not evidence. Notes are not a record or written transcript of the trial. Whether or not you take notes, you will need to rely on your own memory of what was said. Notes are only to assist your memory; you should not be overly influenced by notes.[37]

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[35] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 19, edited slightly.

[36] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 20.

[37] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 21.

Now – and this does not have to do with note-taking – please wear your juror identification tags every day so that the parties can avoid engaging you in conversation, thereby bringing your impartiality into question. Once the trial has begun, the attorneys will have three opportunities to talk to you. The first opportunity is the opening statement. During the opening statements, the attorneys will introduce their respective stories to you. As I've already instructed, what the lawyers say is not evidence,[38] but, because evidence has already been admitted in the liability phase, the lawyers may show or tell you about evidence in their opening statements.[39] It will be up to you to determine whether the evidence – including the testimony of the witnesses and the admitted documents – supports what the lawyers say in their opening statements. The second opportunity that the lawyers have to talk to you is during transition statements. Lawyers are permitted to make transition statements whenever they call a witness to the stand, to introduce the witness and to briefly explain the relevance of the witness' anticipated testimony. Finally, after all the evidence is in, the lawyers will offer closing arguments to summarize and interpret the evidence for you and to tie the evidence to their story. I will then give you instructions on the law and describe for you the damages matters you must resolve. You will then retire to the jury room to deliberate on your verdict.[40]

[38] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 21.

[39] New.

[40] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 22.

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As described in Plaintiffs' accompanying Statement, under the circumstances here Plaintiffs contend that a burden of proof instruction belongs in the final jury instructions, not the preliminary jury instructions. However, in light of Eaton's inclusion of a burden of proof instruction in its proposal, Plaintiffs have included their proposal for such an instruction in the event that the Court decides that a burden of proof instruction is appropriate in the preliminary jury instructions.

ALTERNATE BURDEN OF PROOF INSTRUCTION

JURY INSTRUCTION NO. 3
BURDEN OF PROOF

You may calculate the amount of damages Plaintiffs have suffered from Eaton's unlawful conduct as a matter of just and reasonable inference from Eaton's wrongful actions and their injury to Plaintiffs, which already have been established and from evidence of the decline in Plaintiffs' profits and/or values compared to what they would have been had Eaton's antitrust violations not occurred. Defendant Eaton bears the risk of any uncertainty created by its own antitrust violations.[41] You are entitled to make a just and reasonable estimate of Plaintiffs' damages based on relevant data.[42] If Plaintiffs provide a basis for a just and reasonable inference upon which their lost profits and/or values can be calculated, they have sustained their burden of proof.[43] At that point, it is Eaton's burden to prove that some or all of Plaintiffs' damages are attributable to causes other than Eaton's antitrust violations, and that damages therefore should be less and by how much.[44]

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[41] *Texaco, Inc. v. Hasbrouck*, 496 U.S. 543, 572-573 (1990); *J. Truett Payne Co., Inc. v. Chrysler Motors Corp.*, 451 U.S. 557, 565-67 (1981); *Zenith Radio Corp., v. Hazeltine Research, Inc.*, 395 U.S. 100, 123-125 (1969); *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 265 (1946).

[42] *Id.*

[43] *W. Geophysical Co. of Am., Inc. v. Bolt Assocs., Inc.*, 584 F.2d 1164, 1174 (2d Cir. 1978).

[44] *Id.*

This is a civil case. Each side's burden of proof is governed by a standard called a preponderance of the evidence.[45] That means that the side with the burden of proof has to produce evidence which, when considered in light of all of the facts, leads you to believe that what that side asserts is more likely true than not.[46] To put it differently, if you were to put the evidence of both sides on opposite sides of a scale, the evidence supporting the position of the side with the burden of proof would have to make the scales tip somewhat on its side.[47]

Besides being a civil case, this is an antitrust case. A defendant's violations of the antitrust laws often creates a situation in which it is hard to determine the precise amount of damages suffered by the plaintiff.[48] Plaintiffs' right to be fairly compensated should not be reduced by any difficulty you may have in determining the precise amount of the recovery. You may calculate the amount of damages as a matter of just and reasonable inference from the evidence presented during the trial.[49] In antitrust cases, once liability has been determined, as it has been here, there is a relaxed standard of proof in calculating the amount of damages.[50] You are permitted to make reasonable estimates in calculating the amount of damages;[51] Plaintiffs are given some latitude in calculating damages, so long as their theory is not wholly speculative.[52]

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[45] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 15, edited slightly.

[46] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 15, edited slightly.

[47] Preliminary Jury Instructions from Liability Trial (D.I. 229) at 15, edited slightly.

[48] *Texaco, Inc. v. Hasbrouck*, 496 U.S. 543, 572-573 (1990); *J. Truett Payne Co., Inc. v. Chrysler Motors Corp.*, 451 U.S. 557, 565-67 (1981); *Zenith Radio Corp., v. Hazeltine Research, Inc.*, 395 U.S. 100, 123-125 (1969); *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 265 (1946).

[49] *Id.*

[50] *Bonjorno v. Kaiser Aluminum & Chemical Corp.*, 752 F.2d 802, 813 (3d Cir. 1985).

[51] *Texaco, Inc. v. Hasbrouck*, 496 U.S. 543, 572-573 (1990); *J. Truett Payne Co., Inc. v. Chrysler Motors Corp.*, 451 U.S. 557, 565-67 (1981); *Zenith Radio Corp., v. Hazeltine Research, Inc.*, 395 U.S. 100, 123-125 (1969); *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 265 (1946); *Bonjorno v. Kaiser Aluminum & Chemical Corp.*, 752 F.2d 802, 813 (3d Cir. 1985).

[52] *Id.*

Those of you who are familiar with criminal cases will have heard the term proof beyond a reasonable doubt. That burden does not apply in a civil case and you should therefore put it out of your mind in considering whether or not a party has met its burden of proof.