

[ORAL ARGUMENT SCHEDULED OCTOBER 27, 2017]  
Nos. 17-5142, 17-5164

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES DEPARTMENT OF THE TREASURY,

Petitioner-Appellant,

v.

DENNIS BLACK; CHARLES CUNNINGHAM; KENNETH HOLLIS; DELPHI  
SALARIED RETIREES ASSOCIATION,

Respondents-Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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JOINT APPENDIX, VOLUME 3 of 3

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To: Kristina Archeval & Dana Cann  
Pension Benefit Guaranty Corporation

From: Phillip Siegel  
Compass Advisers

Date: February 13, 2009

Subject: Official Committee of Unsecured Creditors' Meeting on February 12, 2009

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### **Introduction**

Dana Cann, John Menke and Wayne Owen of the PBGC, David Burns and Nidhi Chadda of Greenhill & Company and Phil Siegel and Audrey Duboc of Compass Advisers, LLP ("Compass") attended the Joint Meeting of the Delphi Statutory Committees held at the offices of Skadden, Arps, Slate, Meagher & Flom ("Skadden") in New York on February 12, 2009. The two participating committees were the Official Committee of Unsecured Creditors ("UCC" or the "Committee") and the Official Equity Committee ("Equity Committee").

### **Meeting with the Unsecured Creditors Committee**

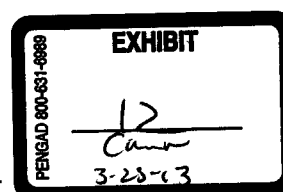
- UCC meeting commenced with Jeffries reporting on the Amended Accommodation Agreement which is a subject of a February 5, 2009 report from Compass Advisers to PBGC
- A discussion ensued regarding Delphi's obligations to GM to be met by February 17, 2009
  - Under TARP, GM believes it will not be able to accept any additional pension obligations from Delphi and is now stating it doesn't even want to comply with the second 414(L) transfer previously agreed
  - Robert Rosenberg stated that there is no longer any value available to unsecured creditors and costs incurred by the estate as of now are not really the UCC's money and any recoveries would be coming out of the Term C DIP lenders recovery

### *Litigation Update from Warner Stevens*

- Jack Butler's deposition made Delphi's argument regarding the interest calculations clear that Delphi believes there was agreement between the parties regarding the methodology
- Unfortunately, John Sheehan subsequently stated there were differences of opinion regarding the amortization of the original issue discount and acknowledged this resulted in a disagreement about the interest rate cap calculations between Delphi and Appaloosa
- The likely outcome will be a settlement, however, the amount may prove disappointing

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### **Joint Committee Meeting with the Debtors**

- Delphi representatives began the meeting by noting the Company has made significant cuts in human capital and employee OPEB benefits including cancellation of health care to all retirees and their families
  - After incorporating all savings initiatives, Total Enterprise Value (“TEV”) will be at or below post petition obligations
- Delphi lobbied Congress on February 3 and February 4, 2009 in an attempt to get financial assistance and subsequently met with Treasury representatives on February 11 and are scheduled to meet again on February 13, presumably about pension options

### *Business and Financial Update*

- Delphi’s December 2008 net results were considerably lower than December 2007 numbers due to the continuing economic recession and automotive industry meltdown amounting to year-over-year declines of over 100%
- Year-to-date sales declined by 44% (\$709 million) compared to the prior period
- Operating income for December 2008 increased by \$352 million from the prior year to (\$520) million primarily due to a net change in restructuring expenses aided by GM contributions
- Base case projections have liquidity at \$108 million compared to a DIP covenant requirement of \$100 million at March 31, 2009, an unacceptable margin for error. Delphi has been in negotiations with GM for additional support in order to raise additional liquidity

### *Liquidity Review*

- On or prior to February 17, 2009, Delphi must deliver a report to JPMorgan (as the administrative agent for the DIP), which must contain the following:
  - A proposal by Delphi for GM to purchase four or more of the domestic plants owned by Delphi or its subsidiaries
  - Delphi’s related overall plan to emerge from chapter 11
- Under the Accommodation Agreement Amendment, on or prior to February 20, 2009, Delphi must deliver a second report to JPMorgan (as the administrative agent for the DIP), that must contain a budget business plan reflective of the February 17 Report
- If the Debtors do not meet these milestones, the Debtors would be required to use \$117 million of cash collateral to pay down Tranche A and Tranche B DIP Loans



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- Delphi's most recent 13-week Cash Flow Forecast as filed with JPMorgan projected non-compliance with liquidity covenant at the end of March
- GM Support Amendment will provide adequate liquidity until the last week in April
- The following is a schedule of Delphi's forecast borrowing base

**Borrowing Base Availability and Facility Usage**

(\$ in millions)

	<b>Jan-09</b>	<b>Feb-09</b>	<b>Mar-09</b>	<b>Apr-09</b>	<b>May-09</b>	<b>Jun-09</b>
A/R	325.0	445.0	503.0	491.0	527.0	516.0
Inventory	383.0	396.0	396.0	396.0	438.0	409.0
Fixed Assets	300.0	318.0	318.0	315.0	315.0	315.0
Cash Collateral	412.0	257.0	198.0	198.0	117.0	117.0
<b>Total</b>	<b>\$1,420.0</b>	<b>\$1,416.0</b>	<b>\$1,415.0</b>	<b>\$1,400.0</b>	<b>\$1,397.0</b>	<b>\$1,357.0</b>
Less: carve out <sup>(1)</sup>	82.0	82.0	81.0	82.0	82.0	82.0
<b>DIP Facility Usage</b>	<b>\$1,338.0</b>	<b>\$1,334.0</b>	<b>\$1,334.0</b>	<b>\$1,318.0</b>	<b>\$1,315.0</b>	<b>\$1,275.0</b>

Note: Extracted from the Joint Meeting of the Delphi Statutory Committees Presentation February 12, 2009

(1) Compass adjusted the carve out down by \$10 million to arrive at the DIP facility usage balance

- On January 20, 2009, Delphi entered into agreements with GM to further amend certain provisions of the GM-Delphi Agreement and to amend the Partial Temporary Accelerated Payment Agreement
  - Contemplates possible future amendments to the GM Arrangement that may increase GM's total commitment from \$300 million to \$350 million by February 27, 2009, and to \$450 million by March 24, 2009
- Delphi realizes it has to continue to maintain sufficient liquidity in each region taking into account the current global automotive production decline
- US liquidity Forecast updated February 9, 2009 provides a Base Case Cash Flow and liquidity outlook:
  - Assumes GM accelerates additional \$50 million of payables in February (beyond \$50 million currently accelerates)
    - ◆ Additional Borrowing Base Cash Collateral is applied to pay down DIP
  - Maintains \$100 million of available liquidity through the week ending April 3, 2009
- US liquidity projections improve with GM Agreement increase available draws \$150 million to \$450 million, providing an improved cash flow and liquidity outlook:
  - Maintains \$100 million of available liquidity through the end of May
  - As increase is not until end of February, Delphi must still manage liquidity carefully through low points for cycle

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- The following table demonstrates the differences between the Base Case and GM Increase case regarding Delphi's US liquidity and resulting cash balances

**US Cash Flow Liquidity Component Changes Per GM Increase Case**

(\$ in millions)	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Total Change
Base Case GM A/R Acceleration	50.0	50.0	100.0	100.0	0.0	0.0	
GM Increase Case A/R Acceleration	50.0	(50.0)	100.0	100.0	100.0	0.0	
Net Change	0.0	(100.0)	0.0	0.0	100.0	0.0	0.0
Base Case GM Draws	145.0	45.0	30.0	75.0	5.0	0.0	
GM Increase Case GM Draws	145.0	235.0	(5.0)	35.0	(35.0)	75.0	
Net Change	0.0	190.0	(35.0)	(40.0)	(40.0)	75.0	150.0
Base Case borrowing base cash collateral change	0.0	109.0	59.0	0.0	(32.0)	0.0	
GM Increase Case borrowing base cash collateral change	0.0	46.0	89.0	40.0	23.0	0.0	
Net Change	0.0	(63.0)	30.0	40.0	55.0	0.0	62.0
Base Case additional borrowing base cash collateral change	(89.0)	(28.0)	117.0	0.0	0.0	0.0	
GM Increase Case add'l borrowing base cash collateral change	89.0	28.0	0.0	0.0	41.0	23.0	
Net Change	178.0	56.0	(117.0)	0.0	41.0	23.0	181.0
Base Case revolver/ term loan paydown	(131.0)	(25.0)	(117.0)	0.0	0.0	0.0	
GM Increase Case revolver/ term loan paydown	(131.0)	(25.0)	0.0	0.0	0.0	0.0	
Net Change	0.0	0.0	117.0	0.0	0.0	0.0	117.0
<b>GM Increase Case Ending Cash</b>	<b>83.0</b>	<b>54.0</b>	<b>49.0</b>	<b>49.0</b>	<b>49.0</b>	<b>31.0</b>	

Note: Figures extracted from the Joint Meeting of the Delphi Statutory Committees Presentation February 12, 2009

- Europe continues to face near term liquidity pressure
  - Reduced accounts receivable balances have resulted in a reduction of debt levels of approximately (\$300) million from targeted levels at January 30, 2009
  - While management is aggressively pursuing actions to close this gap, the shortfall of cash is currently not an issue due to the low economic activity (emphasis is Delphi's)

**European Cash Flow and Liquidity**

(\$ in millions)	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09
Ending Cash	\$232	\$269	\$357	\$228	\$221	\$291
Fav / (Unfav) to Min. Cash	(\$68)	(\$31)	\$57	(\$72)	(\$79)	(\$9)

- Shortfall from minimum cash requirements believed okay in current auto market slump

Note: Extracted from the Joint Meeting of the Delphi Statutory Committees Presentation February 12, 2009

*GM Negotiation Update*

- Delphi proposes transferring four US plant sites to GM, leaving Delphi with only two US sites (believed to be Vandalia and part of Warren Packard) and has presented a detailed proposal to GM. The sites subject to transfer produce solely or mostly GM parts, and obligations to produce parts for other customers will be transferred to Delphi's Mexican facilities
- Delphi has also set fourth a comprehensive list of key terms under discussion with GM; among them is a resolution of the status of the SRP and HRP in coordination with the US government, including the PBGC and US Treasury

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*Emergence Update*

- Delphi now believes it needs \$2.3 billion in emergence funding to be attained as follows:
  - \$1.5 billion secured from a combination of a sale of UAW Keep Sites to GM, a settlement of Plan Investor litigation and/or Government support which will be used to pay down
    - ◆ A and B Term DIP (\$0.7 billion)
    - ◆ Administration/transaction costs (\$0.2 billion), and
    - ◆ Provide post-emergence cash (\$0.6 billion)
  - Plus, an unfunded global revolving credit facility of \$0.8 billion
- Cash funding to be used to pay down:
- DIP Term C is equitized (\$2.7 billion)
- Delphi transfers liability from hourly and salaried pensions plans to GM
- The current timetable for filing a POR and disclosure statement by February 27, 2009, is dependent on:
  - Agreements with GM and A and B Term DIP lenders
  - Pensions transferred to GM or terminated, and
  - Funding
- Jack Butler expressed a view that GM's real deadline is March 31, 2009
- The plan currently incorporates the following high level assumptions
  - Sale of US UAW sites
  - Transfer of global Steering per MRA
  - Sale of idled US Plants (excludes Anaheim and Milwaukee)
  - 414(L) transfer of hourly and salary pension plans assumed
  - Packard solution – plant consolidation
    - ◆ \$50 million severance funded by GM
    - ◆ \$35 million product relocation funded by GM
    - ◆ \$25 million VEBA funding – provided by GM
    - ◆ Labor subsidy to \$19/hour (\$12 million/ year)
  - Mexico solutions assume \$40 million severance funding
  - GM assumes all liabilities of transferred operations
  - Transaction and separation costs borne by GM

*Real Estate Sale*

- The Debtors are selling a vacant parcel of real property of approximately 21.7 acres in Anaheim, California
  - Bircher Anaheim Magnolia Avenue, LLC executed an Agreement to purchase the property for \$20 million
  - The Debtors filed a motion on February 4, 2009, seeking Bankruptcy Court approval of bidding procedures with respect to the proposed sale; the motion will be heard at the February 24, 2009 omnibus hearing

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*Significant Business Transactions Update*

- Suspension and Brake business:
  - Tempo Industry Ltd., a Hong-Kong-based-family owned company with other investments in the automotive sector, made an offer to purchase the combined Suspension and Brake business
  - The primary terms of the Tempo offer are as follows:
    - ♦ Preliminary purchase price of \$80 million for business assets excluding cash, accounts receivable and accounts payable of approximately \$15 million
    - ♦ Deposit of \$20 million due at signing
  - Tempo would agree to support certain capital expenditure requirements of the Brakes business by funding \$7 million between signing and closing, which would be repayable by Delphi if the business is sold to another bidder
  - The Debtors are targeting signing the agreement on February 13, 2009 and closing during the second quarter of 2009, however this timing is extremely aggressive
- Steering divestiture next steps:
  - Debtors have been unable to close the transaction with Platinum Equity, an affiliate of Steering Solution, because Platinum requires a modified supply agreement with GM
  - Debtors are discussing alternatives with GM, including the possibility that the site is transferred back to GM

*Plan Investor Litigation Update*

- On January 13, 2009, the Court approved the amended Joint Case Management Plan
  - The amended Joint Case Management Plan extended the deadline for the completion of fact discovery to February 7, 2009, and established a trial ready date of May 7, 2009
- Since the previous update, an additional 20 depositions have taken place, bringing the total number of depositions to 69
- The parties are currently pursuing expert discovery

**Reconvening with the Unsecured Creditors Committee**

Isaac Lee from Moelis & Company walked the UCC through their review of the various due diligence sessions that began the week of January 16, 2009 and their resulting value, recovery and debt capacity estimates

- The following table describes light vehicle sales and production volumes since 2004

**Light Vehicle Sales and Production (millions)**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009E</u>
US Light Vehicle Sales	16.8	16.9	16.5	16.2	10.4	10.3
North America Light Vehicle Production	15.8	15.8	15.3	15.2	12.7	9.8

Note: Table extracted from the Moelis & Company Presentation to the official Committee of Unsecured Creditors February 11, 20

- The following selected multiples indicate how suppliers and aftermarket companies are trading relatively low due to the current economic environment

**Comparable Companies Selected Multiples**

	Total Debt/ EBITDA	TEV/ EBITDA 2008
<b>Suppliers</b>		
Mean	2.2x	3.3x
Median	2.3x	3.3x
<b>Aftermarket</b>		
Mean	2.1x	5.6x
Median	1.0x	5.2x

Note: Table extracted from the Moelis & Company Presentation to the official Committee of Unsecured Creditors February 11, 2009

- Considering the fact that a significant portion of the debt in these categories is currently trading at a 50% discount, it is not easy to argue that even these low multiples are out of line with current values
- The following table estimates total enterprise value using the net sales proceeds based on an analysis sale of each of the divisions and provides a rough estimate of recoveries to general unsecured creditors

**Illustrative Sale Proceeds**

(\$ in millions)

<b>Illustrative Estimated Net Sale Proceeds:</b>	\$3.5bn	\$3.8bn	\$4.2bn	\$4.5bn	\$4.8bn	\$5.1bn	\$5.5bn
Total Illustrative Estimated Net Sale Proceeds	\$3,500	\$3,825	\$4,150	\$4,475	\$4,800	\$5,125	\$5,450
Add: Other Estimated JV Ventures	260	260	260	260	260	260	260
Net Sale Proceeds <sup>(1)(2)</sup>	3,760	4,085	4,410	4,735	5,060	5,385	5,710
Less: DIP Balance <sup>(3)</sup>	(3,620)	(3,620)	(3,620)	(3,620)	(3,620)	(3,620)	(3,620)
Less: Administrative and Priority Claims	(211)	(211)	(211)	(211)	(211)	(211)	(211)
Less: GM Liquidity Support Administrative Claim <sup>(4)</sup>	(650)	(650)	(650)	(650)	(650)	(650)	(650)
<b>Proceeds Avail to Satisfy GM's \$2.055bn Admin Claim</b>	<b>(\$721)</b>	<b>(\$396)</b>	<b>(\$71)</b>	<b>\$254</b>	<b>\$579</b>	<b>\$904</b>	<b>\$1,229</b>

**Estimated Recoveries <sup>(5)</sup>:**

**GUCs**

Recovery (\$)	-	-	-	\$127	\$290	\$300	\$300
Par - \$3,177 (%)	0.0%	0.0%	0.0%	4.0%	9.1%	9.4%	9.4%

**GM**

Recovery	-	-	-	\$127	\$290	\$604	\$929
Recovery (Assuming \$2.055bn Claim) (%)	0.0%	0.0%	0.0%	6.2%	14.1%	29.4%	45.2%

- (1) Illustrative Net Sale Proceeds based on a range of preliminary valuation multiples ascribed to each of the core divisions  
 (2) Based on value for JVs not included in Packard and Thermal transaction. Estimated JV proceeds by the Debtors  
 (3) Based on total DIP facility balance as of 03/31/2009  
 (4) Assumes maximum draw of GM's liquidity support pursuant to the Accommodation Agreement  
 (5) Pursuant to October 2008 Plan of Reorganization assumes UCC and GM share 50/50 up to the first \$600 million of GM's Administrative Claims and then GM receives remaining amount up to its \$2.055 billion administrative claim

Note: Table extracted from the Moelis & Company Presentation to the official Committee of Unsecured Creditors February 11, 2009

- The following table indicates a likely range to estimate Delphi's debt capacity
  - Assuming Delphi achieves its 2009 and 2010 EBITDARP projections of \$426 million and \$1.4 billion, respectively the debt capacity will be dependent on how much EBITDARP can be achieved
    - ◆ Assumes annual capital expenditures of \$500 million and weighted average cost of debt of 12%

**2009 Debt Capacity Analysis**

(\$ in millions)

Representative EBITDARP	\$400	\$650	\$900	\$1,150	\$1,400
<b>Leverage Ratio</b>					
2.50x	\$1,000	\$1,625	\$2,250	\$2,875	\$3,500
3.00x	\$1,200	\$1,950	\$2,700	\$3,450	\$4,200
<b>Interest Coverage Ratio</b>					
2.50x	\$1,000	\$1,625	\$2,250	\$2,875	\$3,500
2.75x	\$1,100	\$1,788	\$2,475	\$3,163	\$3,850
<b>Free Cash Flow Coverage <sup>(1)</sup></b>					
1.50x	\$600	\$975	\$1,350	\$1,725	\$2,100
1.75x	\$700	\$1,138	\$1,575	\$2,013	\$2,450

(1) Free cash flow coverage ratio defined as EBITDAR less capital expenditure divided by interest expense

Note: Table extracted from the Moelis & Company Presentation to the official Committee of Unsecured Creditors February 11, 2009

**Compass Comments**

- Greenhill will comment separately regarding their due diligence of Delphi's projections, however, from a review of Mesriow's analysis and comments they appear aggressive with central savings estimates incorporated in an overlay and yet to be identified by the divisions
- The consensual plan framework contains aggressive funding expectations from GM, Plan Investors and potentially the Government, along with an acknowledgement of Term C DIP lenders discomfort of accepting equity while the Company has meager cash financing
- Warner Stevens reservations about John Sheehan's deposition raises a serious question regarding how much may be forthcoming in teams of a settlement with the Plan Investors
- PBGC should continue their full court press to convince GM and Government officials that the 414(L) transfer is in everyone's best interest
  - GM doesn't need two classes of employees and should provide pensions to all retirees
  - PBGC can help GM with waivers if equity markets don't turn around in the next two years providing an adequate return on their pension assets



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

APR 17 2009

**Confidential Memorandum**

To: Andrea E. Schneider  
Chair, Trusteeship Working Group

From: Joseph House *RDB*  
Director, Department of Insurance Supervision & Compliance

Kristina Archeval *RDB*  
Manager, Corporate Finance & Restructuring Group

Dana Cann *cdc*  
Financial Analyst, Corporate Finance & Restructuring Group

Cindy Travia *NTR*  
Senior Actuary, Department of Insurance Supervision & Compliance

Subject: Delphi Corp. ("Delphi" or the "Company")

Introduction

We request that the Trusteeship Working Group concur with DISC's recommendation that PBGC initiate termination of the Delphi Retirement Program for Salaried Employees (the "SRP") and the Delphi Hourly-Rate Plan (the "HRP") (collectively, the "Plans").

Delphi has been operating in Chapter 11 since October 8, 2005. On April 2, 2009, Delphi announced that an agreement had been reached among itself, its debtor-in-possession ("DIP") lenders, General Motors Corporation ("GM") and the U.S. Department of Treasury ("Treasury") to allow a period of time for the relevant parties to negotiate a global solution to the Delphi situation, including GM's role in it. According to Delphi's 8-K filed with the SEC on April 2, 2009, Delphi has until April 17, 2009, to deliver to the DIP lenders a detailed term sheet (the "Term Sheet"), which has been agreed to by both GM and Treasury. The Term Sheet is to set forth the terms of a global resolution of matters relating to GM's contribution to the resolution of Delphi's Chapter 11 cases. Failure to deliver a term sheet triggers a \$117 million repayment obligation to the DIP lenders on April 20, 2009. Failure to deliver a term sheet and failure to repay the \$117 million repayment obligation are each events of default under the DIP credit agreements and subsequent amended accommodation agreements. These agreements provide a five-business-day grace period, meaning that the accommodation period under which Delphi is

**Delphi Salaried AR000029**

continuing to use its DIP borrowings may terminate on April 24, 2009. According to OCC, such a termination enables the DIP lenders to exercise all their remedies in the DIP credit agreements, including foreclosure on their collateral. Those agreements expressly provide that those remedies can be exercised without further notice to or order from the Bankruptcy Court. Among the collateral pledged to the DIP lenders is 100% of the stock in Delphi's foreign subsidiaries – stock currently owned by Delphi Automotive Systems Holding, Inc. (“DASHI”), a debtor entity. The foreign subsidiaries remain outside of bankruptcy, and, according to the attached report from Greenhill & Company, Inc. (“Greenhill”), PBGC's outside financial advisor, comprise substantially all of the value of the Delphi controlled group. As such, PBGC must initiate a termination and set a date of plan termination (“DOPT”) prior to April 24, 2009, or risk a controlled group break-up, whereby substantially all value available for PBGC recoveries leaves the controlled group.

Delphi's current position is that it cannot keep the Plans. The company's most recent bankruptcy emergence assumptions show Delphi transferring both Plans to GM upon emergence<sup>1</sup>. Delphi has further stated that the Plans must either be transferred to GM (with support from Treasury) or be terminated and trustee'd by the PBGC<sup>2</sup>.

DISC has concluded that PBGC's possible long-run loss with respect to the Plans may reasonably be expected to increase unreasonably if the Plans are not terminated prior to April 24, 2009. Therefore, DISC recommends PBGC-initiated termination of the Plans in accordance with ERISA § 4042(a)(4).

DISC has also concluded that the Plans will be unable to pay benefits when due, given Delphi's statements that it cannot now maintain the Plans, combined with the Plans' substantial underfunding and the possibility that the Plans will be effectively abandoned if the DIP lenders foreclose on their collateral. Therefore, DISC recommends PBGC-initiated termination of the Plans in accordance with ERISA § 4042(a)(2).

In addition, the SRP has not met the minimum funding standard required under § 412 of the IRS Code<sup>3</sup>. Therefore, DISC recommends PBGC-initiated termination of the SRP in accordance with ERISA § 4042(a)(1).

### Background

Delphi is one of the largest automotive parts suppliers in the world. The Company generated approximately \$18 billion in revenue in 2008 (down from \$22 billion in 2007)<sup>4</sup>, primarily through five operating divisions: Electronics and Safety, Powertrain Systems, Electrical/Electronic Architecture, Thermal Systems, and Automotive Holdings Group (“AHG”). With the exception of AHG, which Delphi is winding down, each of these divisions is

<sup>1</sup> See pages 5 and 9 of “Key Emergence Issues dated March 20, 2009.

<sup>2</sup> See p. 9 of “Key Emergence Issues” dated March 20, 2009, which indicates two possible paths for the Plans—assumption by GM or termination and trusteeship by PBGC.

<sup>3</sup> See 412(n) Lien Calculation as of January 15, 2009, prepared by DISC actuaries.

<sup>4</sup> See p. 14 of 2008 10-K.



considered “core.” As of December 31, 2008, Delphi employed approximately 147,000 people globally, including 19,000 in the U.S. Of these U.S. workers, approximately 8,800 were represented by the UAW, 1,300 were represented by the IUE-CWA, and 300 were represented by the USW<sup>5</sup>.

### The Bankruptcy Filings

On October 8, 2005, Delphi, along with certain of its U.S. subsidiaries, filed voluntary Chapter 11 petitions in the Southern District of New York<sup>6</sup>. Delphi’s foreign subsidiaries were not included in the bankruptcy filings, and continue to operate outside of bankruptcy.

At the time, Delphi cited the following factors that led to the bankruptcy filings:

- High cost structure: Delphi, which was spun-off from GM in 1999, operated under collective bargaining agreements that were similar to those of GM. Delphi’s wages and benefits for its U.S. workers were significantly higher than its competitors.
- Weak demand from GM: GM represented approximately half of Delphi’s consolidated sales. Revenues from GM fell by 18% in the first six months of 2005 due to poor demand for GM’s cars and trucks.
- High raw material costs: Beginning in 2004, the costs of raw materials—especially steel and petroleum-based resin products—spiked higher.
- High legacy costs: Like GM, Delphi has significant retiree health and pension costs. ERISA minimum contributions in 2006 were expected to be in excess of \$1 billion.

In January 2008, the bankruptcy court confirmed Delphi’s First Amended Plan of Reorganization (the “First Amended POR”), which would have allowed Delphi to transfer \$1.5 billion in net pension liabilities to GM, and emerge with the rest of its pension plans ongoing. On April 4, 2008, however, a group of investors withdrew its \$2.55 billion equity commitment to fund the First Amended POR. As a result, Delphi could not execute the First Amended POR.

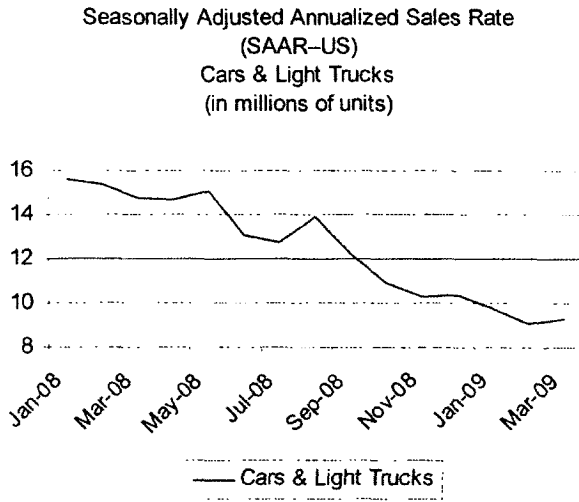
In September 2008, Delphi announced new agreements with GM that would allow for, among other things, a transfer of substantially all of the HRP to GM. On September 29, 2008, the first tranche of the 414(I) transfer (slightly more than \$2 billion of net liabilities) was transferred to GM’s Hourly Plan. The second 414(I) transfer was to occur upon Delphi’s emergence from Chapter 11. Among the forms of consideration GM was to receive as a result of accepting the 414(I) Hourly transfer was preferred securities in reorganized Delphi valued at \$2 billion.

Sales of cars and light trucks in the U.S. fell significantly in 2008, from a seasonally-adjusted annualized rate (“SAAR”) of 15.6 million units in January to 13.9 million units in August. Beginning in September 2008, however, the decrease in sales accelerated to less than 10 million units during the first quarter of 2009.

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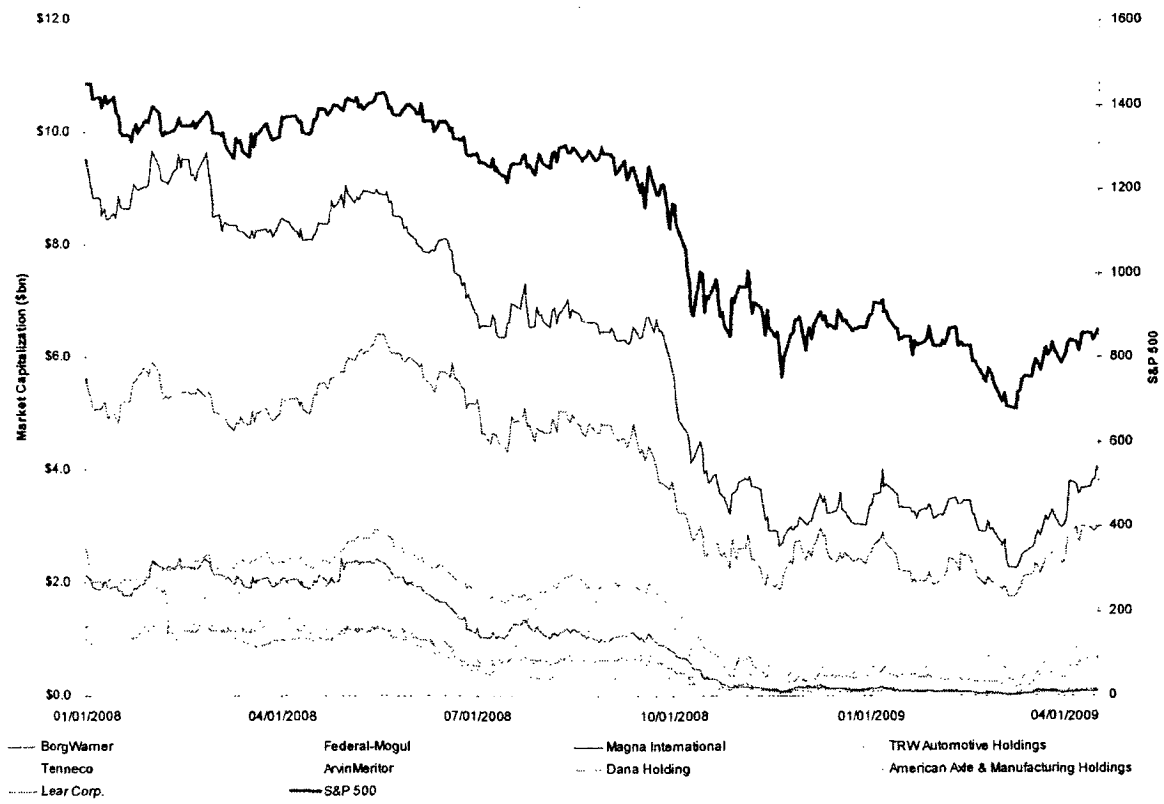
<sup>5</sup> See p. 12 of 2008 10-K.

<sup>6</sup> See October 8, 2005, press release.



Source: Automotive News

With the significant decrease in car sales, the equity values of Delphi's non-bankrupt competitors collapsed with the broader market beginning on or around October 1, 2008.



The significant decrease in automotive valuations since September 2008 has made it increasingly difficult for Delphi to raise the necessary capital it needs to exit Chapter 11<sup>7</sup>.

Current Situation—Liquidity Crisis and Treasury Involvement

Delphi's post-petition DIP facilities—including its \$1.1 billion first priority revolving facility, \$500 million first priority term loan, and \$2.75 billion second priority term loan—expired on December 31, 2008. These facilities are secured by substantially all the assets of the debtor entities, including 100% of the stock held by DASHI on Delphi's non-debtor foreign subsidiaries. Since the expiration of the DIP facilities, Delphi has been operating under various accommodation agreements<sup>8</sup>, which allow the Company continued use of its post-petition financing. As described earlier, the termination of the accommodation period (and the potential foreclosure on the DIP lenders collateral) is looming on April 24, 2009, assuming an acceptable resolution by and among GM, Treasury and the DIP lenders has not been reached by then.

According to Treasury, the parties are in discussions, and negotiations are expected to commence on April 17, 2009<sup>9</sup>. Treasury's interest in the negotiations is GM's role in the resolution, as GM requires ongoing support in the form of existing and prospective loans from Treasury. Because Delphi is still GM's largest supplier, Treasury is trying to weigh the benefits of additional GM investments in Delphi against the risks if the supply of parts from Delphi is interrupted.

One element of the Delphi negotiations is a pension solution. As described earlier, Delphi contends it cannot emerge with the Plans ongoing. Delphi has proposed that GM assume the SRP and the remainder of the HRP. GM contends it cannot afford the Plans, and that covenants in the Treasury loan agreement prevent GM from taking on new pension liabilities.

Based on discussions with Treasury, GM assumption of the HRP is still a possibility. If a Treasury resolution is reached that includes assumption of either of the Plans, PBGC can hold the notice of determination ("NOD"), if it has not yet been issued, or rescind the NOD, pending GM assumption.

Pension Information

The Plans are defined benefit plans, and both are now frozen. The HRP was frozen as of November 2008<sup>10</sup>, while the SRP was frozen as of September 2008<sup>11</sup>. Delphi is the Plans' sponsor and administrator. The HRP and SRP were spun-off in 1999 from the GM Hourly and Salaried Plans, respectively.

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<sup>7</sup> For Delphi's latest emergence funding strategies, see p. 41 of "Joint Meeting of the Delphi Statutory Committees" presentation dated March 12, 2009.

<sup>8</sup> See 8-K filed April 2, 2003, Supplemental Second Amendment to Accommodation Agreement.

<sup>9</sup> Oral conversation on April 16, 2009, with Matt Feldman, who is a member of the Auto Taskforce at Treasury.

<sup>10</sup> See Pension Information Profile prepared by DISC actuaries.

<sup>11</sup> See Pension Information Profile prepared by DISC actuaries.

The following table summarizes key information concerning the Plans. The assets and liabilities assume a date of Plan termination (“DOPT”) of January 31, 2009 and an interest factor of 6.0% for the first 20 years<sup>12</sup>.

**Pension Funding Summary--Delphi Corp.**  
 (estimates based on a hypothetical termination date of January 31, 2009)

(\$ in millions)	Assets	Benefit Liabilities	Unfunded Benefit Liabilities	BL Funded Percent	Guaranteed Liabilities	Unfunded Guaranteed Liabilities	Participants			
							Active	Deferred Vested	Retirees	Total
HRP	3,882.6	7,894.1	4,011.5	47.9%	7,473.0	3,790.4	11,872	5,148	27,577	44,597
SRP	2,328.3	5,042.5	2,716.2	46.1%	4,504.3	2,178.0	10,206	2,585	7,412	20,203
<b>Total the Plans</b>	<b>\$6,008.9</b>	<b>\$12,736.6</b>	<b>\$6,727.7</b>	<b>47.2%</b>	<b>\$11,977.3</b>	<b>\$5,968.4</b>	<b>22,078</b>	<b>7,733</b>	<b>34,989</b>	<b>64,800</b>

Notes:

- PBGC estimates based on hypothetical termination date of 1/31/09
- PBGC valuation discount rates are those for January 2009 — 6.02% first 20 years, 5.48% thereafter
- Assets used were the actual assets as of 1/31/2009
- Unfunded Guaranteed Liabilities are rough estimates and do not reflect application of PBGC’s guarantee limitations or Section 4044 asset allocations.

In addition to the Plans, certain of Delphi’s U.S. subsidiaries sponsor four smaller defined benefit pension plans (the “Subsidiary Plans”) covering 2,200 participants with aggregate UBL of \$54 million as of January 31, 2009. The Subsidiary Plans are not recommended for termination at this time because the resolution of the Subsidiary Plans has not yet been addressed by Delphi or Treasury, and because the incremental recovery from terminating the Subsidiary Plans would not be meaningful relative to the HRP and SRP.

Upon Delphi’s Chapter 11 filing, the Company chose to only pay the “normal cost” portion of its ERISA minimum contributions. During 2008, facing a languishing bankruptcy, limited access to capital markets, and a looming DIP expiration, the Company took extra measures to conserve its cash, including not making any pension contributions, including “normal cost.”

However, with respect to the HRP, as a result of a combination of events, including expired minimum funding waivers and the first tranche (effective September 29, 2008) of the 414(I) transfer of the HRP to the GM Hourly Plan, there are no liens. Statutory liens (412(n) and 430(k)) have arisen only on the SRP and three Subsidiary Plans (\$ in millions)<sup>13</sup>:

Pension Plan	Lien Amount
SRP	\$ 165.5
Subsidiary Plans	\$ 9.2
<b>Total Liens</b>	<b>\$ 174.7</b>

Delphi missed additional contributions on April 15, 2009. The Forms 200 for these missed contributions are not due until April 25, 2009. Once received, DISC will calculate new lien amounts, and OCC will perfect new liens against Delphi’s non-debtor controlled group members.

<sup>12</sup> See Pension Information Profile prepared by DISC actuaries.

<sup>13</sup> See 412(n) Lien Calculation as of January 15, 2009.

Controlled Group

Delphi is a global company with operations in dozens of countries<sup>14</sup>. The U.S. entities are substantially all operating under Chapter 11 protection, while the foreign-based controlled group members are substantially all operating outside of Chapter 11 protection. PBGC has perfected statutory liens for missed minimum contributions against the non-debtor entities.

DISC, in conjunction with its outside financial advisors, has performed a preliminary controlled group analysis. As noted below (see Financial Analysis—Long-Run Loss), nearly all the value of the consolidated enterprise (debtor and non-debtor) is concentrated in the foreign, non-debtor controlled group members.

A corporate organization chart, providing the ownership structure, is attached to this memo as an exhibit<sup>15</sup>.

Financial Analysis

The following table includes select financial operating results for Delphi, which includes its consolidated debtor and non-debtor subsidiaries.

**Select Financial Operating Statistics—Consolidated**

(\$ in millions)	2006	2007	2008
Revenues			
GM & Affiliates	\$ 9,344	\$ 8,301	\$ 5,525
Other Customers	13,393	13,982	12,535
Total Net Sales	22,737	22,283	18,060
Operating Income (Loss)	(4,542)	(1,945)	(1,481)
Net Income (Loss)	(5,464)	(3,065)	3,037

Source: 2008 10-K

The table depicts a number of operating trends:

- Delphi’s decreased reliance on revenues from GM, accelerated by GM’s continued lost market share and the particularly poor sales results in the U.S. in 2008.
- Significant operating losses in each of the past three years, each of which Delphi (U.S.) spent in bankruptcy.
- In 2008, net income is attributable to a \$5.3 billion gain from the September 2008 operating settlement with GM, where GM agreed to take, among other things, Delphi Retiree Healthcare Liabilities and the first tranche of the HRP 414(I).
- In 2006, the significantly larger operating and net losses were attributable to costs associated with attrition programs designed to reduce headcounts of U.S. hourly workers.

<sup>14</sup> See p. 3 of 2008 10-K.

<sup>15</sup> See Corporate organization chart dated June 30, 2008.

**Long-Run Loss Analysis—Valuation<sup>16</sup>**

PBGC’s financial advisor, Greenhill, prepared a valuation report on Delphi, based on information provided by the Company, including detailed trial balances and the latest business plan (“RPOR January 2009”). Greenhill also participated in substantial due diligence sessions with the Company’s management regarding the operations and the RPOR January 2009 business plan.

The Greenhill report provides implied enterprise values for Delphi based on four data points:

1. 2008 Actual EBITDA
2. 2009 Projected EBITDA
3. 2010 Projected EBITDA
4. Precedent Transactions over the Past 12 Months

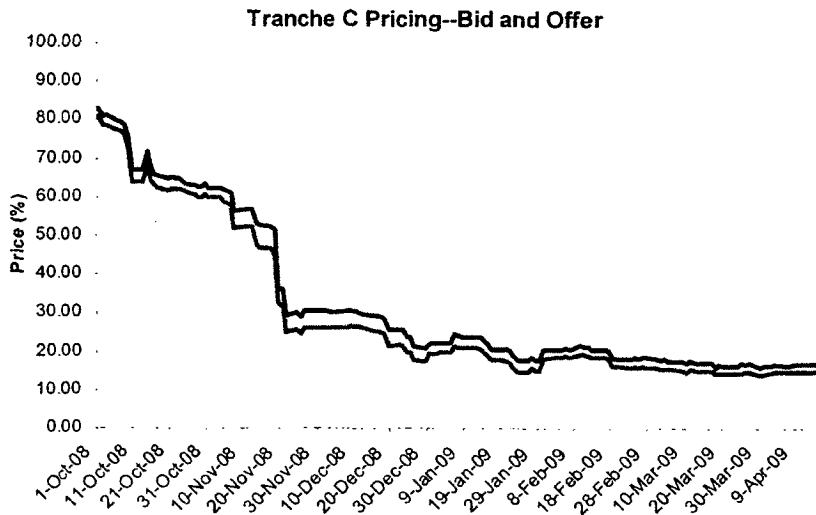
The table below provides a summary of the valuation ranges Greenhill computed based on each of the data points, and provides a conservative quantification of PBGC’s economic loss should the value attributable to the non-debtor foreign controlled group members (rest of world or “ROW” in the table) leave the controlled group through a DIP foreclosure.

Data Point	Consolidated Range of Values (\$ in millions)			Value Attributable to ROW	Conservative Range of PBGC Long- Run Loss
	Low	Mid	High		
2008 Actual EBITDAR	\$ 561	\$ 659	\$ 756	100%	\$ 561
2009 Projected EBITDAR	\$ 1,188	\$ 1,386	\$ 1,584	100%	\$ 1,188
2010 Projected EBITDAR	\$ 2,123	\$ 2,831	\$ 3,538	64%	\$ 1,358
Precedent Transaction Analysis	\$ 1,134	\$ 1,409	\$ 1,683	100%	\$ 1,134

According to Greenhill’s analysis, most (if not all) of Delphi’s value is attributable to non-debtor entities. Creditors of the Delphi estate do not have claims against the assets of the overseas entities. While the collateral for the DIP loans includes 100% of the stock of Delphi’s first-tier foreign subsidiaries, the claims associated with this collateral are arguably junior to the claims PBGC would have to the *assets* of the non-debtor controlled group members through PBGC’s ability through ERISA to recover from all controlled group members on a joint and several basis.

The range of values in Greenhill’s analysis is supported by the market, where each tranche of the DIP facilities is trading for less than 100 cents on the dollar. The \$2.75 billion Tranche C term loan, for instance, with collateral junior in priority to the Tranche A and B (with approximately \$800 million outstanding), has been trading for less than 20 cents since February 2009, indicating that the market believes this debt will only recover about \$500 million of the face amount.

<sup>16</sup> See detailed valuation report dated April 16, 2009, prepared by Greenhill.  
 Page 8 of 10



Delphi’s emergence objectives include providing recoveries to the Tranche C in currency other than cash (i.e. new common stock)<sup>17</sup>, indicating that some component of the DIP lenders, even in a consensual plan of reorganization, will own substantially all of the equity in a reorganized Delphi where the pension plans have either been transferred to GM or terminated and trusted by the PBGC.

ERISA § 4042

The Plans are underfunded on a termination basis. The magnitude of underfunding is significant, and the funded ratio (assets-to-benefit liabilities) is poor (48% and 46% for the HRP and SRP, respectively). The only meaningful recovery for the Plans is against the value of the non-debtor foreign controlled group members. The looming deadline of April 24, 2009, in the latest DIP accommodation agreement presents a significant risk to PBGC’s recoveries, since the DIP lenders, in addition to having security interests in substantially all the debtors’ hard assets in the U.S., also have, as collateral, 100% of the stock of the first-tier foreign subsidiaries. DISC and OCC are concerned that a foreclosure may constitute a controlled group break-up if the DIP lenders take title to the stock or transfer title to a third party. According to Greenhill, PBGC’s financial advisor, most (if not all) of Delphi’s value is concentrated in the non-debtor controlled group members. Therefore, DISC recommends PBGC seek to terminate the Plans under ERISA § 4042(a)(4).

As discussed above, Delphi has stated that it will not be able to maintain the SRP and HRP under any circumstances. Moreover, if the DIP lenders foreclose, and Delphi is effectively liquidated, the Plans risk abandonment. Therefore, DISC recommends PBGC seek to terminate the SRP under ERISA § 4042(a)(2).

<sup>17</sup> See p. 45 of “Joint Meeting of the Delphi Statutory Committees” presentation dated March 12, 2009.

In addition, by missing its \$61 million catch-up contribution due on June 15, 2008, Delphi failed to meet the minimum-funding standard for the 2005 plan year with respect to the SRP. Therefore, DISC recommends PBGC seek to terminate the SRP under ERISA § 4042(a)(1).

DISC believes that terminating the Plans prior to the April 24, 2009, deadline in the DIP accommodation agreement will allow PBGC to maximize its recoveries in the case. Therefore, DISC recommends that PBGC seek to terminate the Plans on or before April 23, 2009.

*Date of Plan Termination*

DISC recommends a DOPT as soon as practicable upon issuance of the Notice of Determination (“NOD”) and, if possible, concurrent with publication of the NOD in order to extinguish participants’ reasonable expectations that the Plans will continue. A DOPT no later than April 23, 2009, would minimize the unreasonable risk of long-term loss with respect to the Plans that PBGC faces from the looming DIP lender foreclosure.



Confidential – Material Non-Public Information  
 DIP Steering Committee – Agent-Level Information

## Major Amended GSA/MRA Issues

Original GM Position	Original Delphi Position	Current Status: Resolution/Open Issues
<b>Intellectual Property</b>		
GM to own IP and grant license to Delphi	Delphi to own IP and grant license to GM	<b>Resolved:</b> Delphi to own IP and grant GM license to GM with rights to sublicense selected IP for GM products  <b>Open Issues:</b> (i) Ability of GM to use Delphi IP on parts not built in UAW Sites and (ii) sunset date for ROLR (which applies before GM can sublicense IP to Delphi competitor)
GM not to assume pension liability unless terms of Amended MRA met	GM to assume HRP and SRP	<b>Open Issue:</b> Pension unresolved (see slide 9 below)
<b>Salaried Employees</b>		
GM to have sole discretion on who to hire and does not pay severance	GM to have sole discretion on who to hire but must pay severance to those not hired	<b>Resolved:</b> -GM has sole discretion on who to hire and will not pay severance -Severance costs to be addressed through purchase price.

Delphi Salaried AR000039

Confidential – Material Non-Public Information  
DIP Steering Committee – Agent-Level Information

# Pension

## Hourly and Salaried Pension Plans: Likely Outcomes

Preferred

### GM

**Consensual Agreement  
By GM To Assume  
Delphi's Hourly And  
Salaried Pension  
Assets And Liabilities**

### PBGC

**Negotiated Termination\***

- Resolution of GM benefit guaranty
- Resolution of GM follow-on plan issues
- Release of PBGC asserted liens on non-U.S. assets

\* Note: Delphi-initiated "distressed termination" assumed not feasible due to timing issues

Delphi Salaried AR000040

①  
②  
③  
④

3

3 13

412(n) Lien Calculation as of January 15, 2009

Delphi Retirement Program for Salaried Employees  
 After contributions reallocated to plan year beginning 10/1/2006.  
 Valuation Interest Rate = 8.5%

Date	Description	Unpaid Required Payment Amounts	8.50% Interest to 01/15/09	Unpaid Required Payments with Interest
1/11/07	Contribution to Plan	(\$31,827,000)	(\$5,682,435)	(\$37,509,435)
1/15/07	1st Quarterly Contribution for 2006 Plan Year	\$64,142,000	\$11,384,445	\$75,526,445
4/12/07	Contribution to Plan	(\$32,282,000)	(\$4,997,672)	(\$37,279,672)
4/15/07	2nd Quarterly Contribution for 2006 Plan Year	\$64,142,000	\$9,880,362	\$74,022,362
7/11/07	Contribution to Plan	(\$30,225,000)	(\$3,984,116)	(\$34,209,116)
7/15/07	3rd Quarterly Contribution for 2006 Plan Year	\$64,142,000	\$8,390,020	\$72,532,020
10/11/07	Contribution to Plan	(\$30,643,000)	(\$3,333,340)	(\$33,976,340)
10/15/07	4th Quarterly Contribution for 2006 Plan Year	\$64,142,000	\$6,913,801	\$71,055,801
1/14/08	Contribution to Plan	(\$27,114,000)	(\$2,317,843)	(\$29,431,843)
1/15/08	1st Quarterly Contribution for 2007 Plan Year	\$11,680,000	\$995,633	\$12,675,633
4/14/08	Contribution to Plan	(\$27,978,000)	(\$1,780,249)	(\$29,758,249)
4/15/08	2nd Quarterly Contribution for 2007 Plan Year	\$11,680,000	\$740,426	\$12,420,426
5/16/08	Contribution to Plan	(\$50,000,000)	(\$2,802,507)	(\$52,802,507)
6/15/08	Final Contribution for 2006 Plan Year	\$61,072,280	\$2,992,102	\$64,064,382
7/15/08	3rd Quarterly Contribution for 2007 Plan Year	\$11,680,000	\$490,357	\$12,170,357
10/15/08	4th Quarterly Contribution for 2007 Plan Year	\$11,680,000	\$242,658	\$11,922,658
1/15/09	1st Quarterly Contribution for 2008 Plan Year	\$14,081,000	\$0	\$14,081,000
		\$148,372,280	\$17,131,642	\$165,503,922

Calculation assumes no contributions are made after May 16, 2008.

Determine Amount of Lien

(A) Total unpaid contributions with interest		\$165,503,922
(B) Estimated Unfunded Benefit Liabilities		\$2,296,800,000
(C) Total Lien Amount (lesser of A or B)		\$165,503,922
(D) Balance of prior liens	<u>Date Filed</u> 10/15/08	<u>Orig Amount</u> \$245,896,897
		<u>Balance</u> \$251,006,527
(E) New Lien Amount		\$0

Susan Donahy 2/6/09  
 Susan P. Donahy, EA

Cynthia Trevia 2/6/09  
 Cynthia Trevia, ASA, EA

Delphi Salaried AR000041

**430(k) Lien Calculation as of 1/15/2009**

Plan Name: ASEC Manufacturing Retirement program  
 Control Group Name: Delphi  
 EIN/PN: 731474201/002  
 Date of Lien Calculation: 01/15/2009  
 Plan Year: 1/1  
 First Missed Payment: 04/15/2007  
 UBL Amount: \$10,000,000  
 Date Completed by User: 02/06/2009

**A. Summary of Unpaid Contributions with Interest**

Date	Applicable Plan Year	Amount	Interest to 01/15/2009	Total as of 01/15/2009
<i>Required</i>				
04/15/2007	2007	\$ 563,414	\$ 84,159	\$ 647,573
07/15/2007	2007	\$ 563,414	\$ 71,486	\$ 634,900
09/15/2007	2006	\$ -	\$ -	\$ -
10/15/2007	2007	\$ 563,414	\$ 58,926	\$ 622,340
01/15/2008	2007	\$ 563,414	\$ 46,614	\$ 610,028
04/15/2008	2008	\$ 63,200	\$ 5,263	\$ 68,463
07/15/2008	2008	\$ 63,200	\$ 3,474	\$ 66,674
09/15/2008	2007	\$ 472,992	\$ 12,700	\$ 485,692
10/15/2008	2008	\$ 63,200	\$ 1,714	\$ 64,914
01/15/2009	2008	\$ 63,200	\$ -	\$ 63,200
<i>Paid</i>				
04/12/2007	2007	\$ (330,000)	\$ (49,540)	\$ (379,540)
07/11/2007	2007	\$ (330,000)	\$ (42,194)	\$ (372,194)
10/11/2007	2007	\$ (330,000)	\$ (34,831)	\$ (364,831)
01/17/2008	2007	\$ (330,000)	\$ (27,147)	\$ (357,147)
<b>Total Unpaid Contributions with Interest</b>				<b>\$ 1,790,072</b>

**B. Total Lien Amount as of 01/15/09 [Lesser of (A) or UBL Amount] \$ 1,790,072**

**C. Prior Perfected Liens with Interest**

Date	Amount Filed	Interest to 01/15/2009	Total as of 01/15/2009
<b>Total Balance of Prior Liens \$ 0</b>			

**D. New Lien Amount as of 01/15/09 [B-C; not<\$0] \$ 1,790,072**

**E. User Comments**

Required contribution amounts and actual payment information provided by plan's actuary.  
 9/15/2008 required amount determined by PBGC.

*Susan P. Donahey* 02/06/2009  
 Completed by Susan P. Donahey, EA Date  
*Cynthia Travia* 2/6/09  
 Reviewed by Cynthia Travia, ASA, EA Date

**430(k) Lien Calculation as of 1/15/2009**

Plan Name: Packard-Hughes Interconnect Bargaining Retirement Plan  
 Control Group Name: Delphi  
 EIN/PN: 330595219/002  
 Date of Lien Calculation: 01/15/2009  
 Plan Year: 1/1  
 First Missed Payment: 04/15/2007  
 UBL Amount: \$10,000,000  
 Date Completed by User: 02/09/2009

**A. Summary of Unpaid Contributions with Interest**

Date	Applicable Plan Year	Amount	Interest to 01/15/2009	Total as of 01/15/2009
<i>Required</i>				
04/15/2007	2007	\$ 269,365	\$ 41,493	\$ 310,858
07/15/2007	2007	\$ 269,365	\$ 35,234	\$ 304,599
09/15/2007	2006	\$ -	\$ -	\$ -
10/15/2007	2007	\$ 269,365	\$ 29,035	\$ 298,400
01/15/2008	2007	\$ 269,365	\$ 22,961	\$ 292,326
04/15/2008	2008	\$ 239,505	\$ 19,609	\$ 259,114
07/15/2008	2008	\$ 239,505	\$ 12,949	\$ 252,454
09/15/2008	2007	\$ 280,914	\$ 7,765	\$ 288,679
10/15/2008	2008	\$ 239,505	\$ 6,389	\$ 245,894
01/15/2009	2008	\$ 239,505	\$ -	\$ 239,505
<i>Paid</i>				
10/11/2007	2007	\$ (6,235)	\$ (678)	\$ (6,913)
01/14/2008	2007	\$ (84,431)	\$ (7,218)	\$ (91,649)
04/14/2008	2007	\$ (81,428)	\$ (5,181)	\$ (86,609)
07/14/2008	2007	\$ (82,585)	\$ (3,486)	\$ (86,071)
<b>Total Unpaid Contributions with Interest</b>				<b>\$ 2,220,587</b>

**B. Total Lien Amount as of 01/15/09 [Lesser of (A) or UBL Amount] \$ 2,220,587**

**C. Prior Perfected Liens with Interest**

Date	Amount Filed	Interest to 01/15/2009	Total as of 01/15/2009
07/15/2007	\$ 1,671,232	\$ 173,355	\$ 1,844,587
<b>Total Balance of Prior Liens</b>			<b>\$ 1,844,587</b>

**D. New Lien Amount as of 01/15/09 [B-C; not<\$0] \$ 376,000**

**E. User Comments**

*Susan P. Bonahey*  
 Completed by Susan P. Bonahey, EA

02/09/2009  
 Date

*Cynthia Travia*  
 Reviewed by Cynthia Travia, ASA, EA

2/5/09  
 Date

**430(k) Lien Calculation as of 1/15/2009**

Plan Name: Packard-Hughes Interconnect Non-Bargaining Retirement Plan  
 Control Group Name: Delphi  
 EIN/PN: 33-0595219/001  
 Date of Lien Calculation: 01/15/2009  
 Plan Year: 1/1  
 First Missed Payment: 04/15/2007  
 UBL Amount: \$10,000,000  
 Date Completed by User: 02/09/2009

**A. Summary of Unpaid Contributions with Interest**

Date	Applicable Plan Year	Amount	Interest to 01/15/2009	Total as of 01/15/2009
<b>Required</b>				
04/15/2007	2007	\$ 758,102	\$ 116,777	\$ 874,879
07/15/2007	2007	\$ 758,102	\$ 99,163	\$ 857,265
09/15/2007	2006	\$ -	\$ -	\$ -
10/15/2007	2007	\$ 758,102	\$ 81,715	\$ 839,817
01/15/2008	2007	\$ 758,102	\$ 64,623	\$ 822,725
04/15/2008	2008	\$ 459,379	\$ 37,915	\$ 497,294
07/15/2008	2008	\$ 459,379	\$ 25,034	\$ 484,413
09/15/2008	2007	\$ 779,245	\$ 21,541	\$ 800,786
10/15/2008	2008	\$ 459,379	\$ 12,351	\$ 471,730
01/15/2009	2008	\$ 459,379	\$ -	\$ 459,379
<b>Paid</b>				
10/11/2007	2007	\$ (146,398)	\$ (15,925)	\$ (162,323)
01/14/2008	2007	\$ (251,243)	\$ (21,478)	\$ (272,721)
04/14/2008	2007	\$ (218,161)	\$ (13,882)	\$ (232,043)
07/14/2008	2007	\$ (221,261)	\$ (9,341)	\$ (230,602)
<b>Total Unpaid Contributions with Interest</b>				<b>\$ 5,210,599</b>

**B. Total Lien Amount as of 01/15/09 [Lesser of (A) or UBL Amount]** \$ 5,210,599

**C. Prior Perfected Liens with Interest**

Date	Amount Filed	Interest to 01/15/2009	Total as of 01/15/2009
07/15/2006	\$ 1,294,045	\$ 257,006	\$ 1,551,051
10/15/2006	\$ 644,152	\$ 112,219	\$ 756,371
01/15/2007	\$ 692,072	\$ 104,028	\$ 796,100
07/15/2007	\$ 1,829,015	\$ 191,511	\$ 2,020,526
<b>Total Balance of Prior Liens</b>			<b>\$ 5,124,048</b>

**D. New Lien Amount as of 01/15/09 [B-C; not<\$0]** \$ 86,551

**E. User Comments**

*Susan P. Donahay*  
 Completed by Susan P. Donahay, EA

02/09/2009  
 Date

*Cynthia Travia*  
 Reviewed by Cynthia Travia, ASA, EA

2/9/09  
 Date

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Delphi's organizational structure and management reporting support the management of these core product lines. Our current product offerings are organized in the following five operating segments: Electronics and Safety, Powertrain Systems, Electrical/Electronic Architecture, Thermal Systems, as well as the Automotive Holdings Group. Our operating segment product offerings and principal competitors as of December 31, 2008 are described below. Refer to Note 22. Segment Reporting to the consolidated financial statements and Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations in this Annual Report for additional financial information regarding each operating sector. In addition to these five operating segments, we have product sales in the automotive aftermarket, including diesel and original equipment service, consumer electronics and the medical device industry which are reported in the Corporate and Other segment and we have steering and halfshaft product sales and interiors and closures product sales which are reported in discontinued operations.

Below is a summary of financial information related to each of our segments followed by a description of our segment product offerings and principal competitors.

	<u>Electronics and Safety</u>	<u>Powertrain Systems</u>	<u>Electrical/ Electronic Architecture</u>	<u>Thermal Systems</u>	<u>Automotive Holdings Group</u>	<u>Corporate and Other</u>	<u>Total</u>
	(in millions)						
<b>2008:</b>							
Net sales	\$ 4,048	\$ 4,470	\$ 5,649	\$ 2,121	\$ 1,348	\$ 424	\$ 18,060
Operating (loss) income	\$ (654)	\$ (130)	\$ (361)	\$ 18	\$ (68)	\$ (286)	\$ (1,481)
OIBDAR	\$ (70)	\$ 120	\$ 96	\$ 39	\$ 44	\$ 40	\$ 269
<b>2007:</b>							
Net sales	\$ 5,035	\$ 5,663	\$ 5,968	\$ 2,412	\$ 2,946	\$ 259	\$ 22,283
Operating income (loss)	\$ 63	\$ (276)	\$ (36)	\$ (29)	\$ (393)	\$ (1,274)	\$ (1,945)
OIBDAR	\$ 439	\$ 125	\$ 329	\$ 84	\$ 73	\$ (319)	\$ 731
<b>2006:</b>							
Net sales	\$ 5,093	\$ 5,565	\$ 5,365	\$ 2,607	\$ 3,638	\$ 469	\$ 22,737
Operating income (loss)	\$ 188	\$ (128)	\$ (110)	\$ (170)	\$ (488)	\$ (3,834)	\$ (4,542)
OIBDAR	\$ 489	\$ 234	\$ 154	\$ (6)	\$ (121)	\$ (864)	\$ (114)

Corporate and Other, which includes the Product and Service Solutions business which is comprised of independent aftermarket, diesel aftermarket, original equipment service, consumer electronics and medical systems, in addition to the expenses of corporate administration, other expenses and income of a non-operating or strategic nature, and the elimination of inter-segment transactions.

Management believes segment operating income before depreciation, amortization, transformation and rationalization charges and discontinued operations ("OIBDAR") is a meaningful measure of performance and it is used by management and our Board of Directors to analyze Company and stand-alone segment operating performance. Segment OIBDAR should not be used as a substitute for results prepared in accordance with U.S. GAAP and should not be considered as an alternative to operating income, which is the most directly comparable financial measure to OIBDAR that is in accordance with U.S. GAAP. Segment OIBDAR, as determined and measured by Delphi, should also not be compared to similarly titled measures reported by other companies. Refer to Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Results of Operations by Segment in this Annual Report for further details, including a reconciliation to U.S. GAAP operating income (loss).

**Continuing Operations**

**Electronics and Safety.** This segment offers a wide range of electronic and safety equipment in the areas of controls, security, entertainment, communications, safety systems and power electronics.

- Controls and security products primarily consist of body computers, security systems, displays and mechatronics (interior switches, integrated center panel, gear shift sensors).

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meaningful protection for Delphi's products and technical innovations. Similarly, while our trademarks are important to identify Delphi's position in the industry, and we have obtained certain licenses to use intellectual property owned by others, we do not believe that any of these are individually material to our business. We are actively pursuing marketing opportunities to commercialize and license our technology to both automotive and non-automotive industries. This leveraging activity is expected to further enhance the value of our intellectual property portfolio.

**Materials**

The principal raw materials we use to manufacture our products include aluminum, copper, resins, and steel. We have not experienced any significant shortages of raw materials and normally do not carry inventories of such raw materials in excess of those reasonably required to meet our production and shipping schedules.

For the past three years, we were challenged by commodity cost increases, most notably copper, aluminum, petroleum-based resin products, steel and steel scrap, and fuel charges. We are continually seeking to manage these and other material related cost pressures using a combination of strategies, including working with our suppliers to mitigate costs, seeking alternative product designs and material specifications, combining our purchase requirements with our customers and/or suppliers, changing suppliers, hedging of certain commodities and other means. In the case of copper, which primarily affects the Electrical/Electronic Architecture segment, contract escalation clauses have enabled us to pass on some of the price increases to our customers and thereby partially offset the impact of increased commodity costs on operating income for the related products. However, despite our efforts, surcharges and other cost increases, particularly when necessary to ensure the continued financial viability of a key supplier, had the effect of reducing our earnings. We anticipate that an increase in the number of financially volatile key suppliers is likely to continue into the future. We will continue and increase our efforts to pass market-driven commodity cost increases to our customers in an effort to mitigate all or some of the adverse earnings impacts incurred on quoted customer programs. At the end of the third quarter and throughout the fourth quarter of 2008, and into early 2009, the market price of certain commodities, including copper and oil prices, declined significantly and may foreshadow lower cost petroleum-based resin products and lower fuel charges in the future; however prices remain extremely volatile, complicating hedging strategies and other efforts to plan and manage such costs. Our overall success in passing commodity cost increases on to our customers has been limited. As contracts with our customers expire, we will seek to renegotiate terms in order to recover the actual commodity costs we are incurring.

**Employees-Union Representation**

As of December 31, 2008, we employed approximately 146,600 people (18,900 in the U.S., and 127,700 outside of the U.S.); approximately 32,700 salaried employees and approximately 113,900 hourly employees. On a comparable basis, as of December 31, 2007, we employed approximately 169,500 people (28,400 in the U.S., and 141,100 outside of the U.S.); approximately 36,100 salaried employees and approximately 133,400 hourly employees. Our unionized employees are represented worldwide by approximately 50 unions, including the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"), the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers-Communication Workers of America ("IUE-CWA"), the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union and its Local Union 87L (together, the "USW"), and Confederacion De Trabajadores Mexicanos ("CTM"). As of December 31, 2008 and 2007, approximately 8,800 and 14,200 hourly employees were represented by the UAW, approximately 1,300 and 2,000 by the IUE-CWA and approximately 300 and 500 by the USW and other unions, respectively.

In 2006, the Court entered orders authorizing Delphi to enter into an attrition program and supplemental attrition program with GM and the UAW (the "UAW Attrition Programs"), which offered, among other things, certain eligible Delphi U.S. hourly employees represented by the UAW normal and early voluntary retirements and incentives. Also in 2006, Delphi, GM, and the IUE-CWA reached agreement on the terms of a special attrition program which mirrored in all material respects the UAW Attrition Programs (the "IUE-CWA Special



**DELPHI**

Envision Tomorrow's Technology

**news release**

**CONTACT:** Delphi – Media Contacts  
Claudia Baucus – 248-813-2942  
Lindsey Williams – 248-813-2528  
Brad Jackson – 248-813-6873

**Delphi Corporation Files Voluntary Chapter 11 Business  
Reorganization Cases to Execute Transformation Plan  
And Address Legacy Issues and High-Cost Structure in the U.S.**

*Non-U.S. Subsidiaries Are Not Included in U.S. Filing and  
Are Not Subject to Court Supervision or Chapter 11 Process*

*Existing Global Management Team  
to Continue to Operate U.S. Businesses as Debtors-in-Possession  
and Non-U.S. Subsidiaries in the Ordinary Course of Business*

*Global Operations and Shipments to Customers  
Expected to Continue Without Interruption*

*Aggregate USD \$4.5 Billion Financing Includes Commitment for  
USD \$2 Billion in Debtor-in-Possession Financing and  
Adequate Protection Package for USD \$2.5 Billion Prepetition Facilities*

*DIP Financing and Cash on Hand of USD \$1.6 Billion  
Available to Support Delphi's Worldwide Operations*

**TROY, Mich. -- October 8, 2005** – Delphi Corporation (NYSE:DPH) today announced that in order to preserve the value of the company and complete its transformation plan designed to resolve Delphi's existing legacy issues and the resulting high cost of U.S. operations, Delphi and 38 of its domestic U.S. subsidiaries filed voluntary petitions for business reorganization under chapter 11 of the U.S. Bankruptcy Code on Saturday in New York City. Delphi's non-U.S. subsidiaries were not included in the filing, will continue their business operations without supervision from the U.S. courts and will not be subject to the chapter 11 requirements of the U.S. Bankruptcy Code. Delphi's global management team will continue to manage both the U.S. and



global businesses. Delphi expects to complete its U.S.-based restructuring and emerge from chapter 11 business reorganization in early to mid-2007.

“Our global operations, both U.S. and non-U.S., will continue without interruption,” said Robert S. “Steve” Miller, Delphi’s chairman and CEO. “Our customers all over the world can be assured that we will continue to meet their scheduling, delivery and production needs in a timely manner. Throughout this reorganization of our U.S. businesses and beyond, we will be intensely focused on continuing to provide all of our customers with leading-edge technology, product development, superior engineering, outstanding quality products and services, and world-class customer support.”

Delphi plans to finance its global operations going forward with USD \$4.5 billion in debt facilities plus additional committed and uncommitted financing lines and/or securitization facilities in Asia, Europe and the Americas. The financing includes USD \$2.5 billion borrowed from prepetition revolver and term loan facilities and a commitment for up to USD \$2 billion in senior secured debtor-in-possession (DIP) financing from a group of lenders led by JPMorgan Chase Bank and Citigroup Global Markets, Inc. The company plans to obtain approval of an adequate protection package for the benefit of its prepetition lenders as part of the Company’s overall financing activities.

The proceeds of the DIP financing together with cash generated from daily operations and cash on hand will be used to fund post-petition operating expenses, including its supplier obligations and employee wages, salaries and benefits. The overall liquidity available to Delphi (including more than USD \$1 billion on hand outside the U.S., which Delphi does not plan to repatriate to fund U.S. operations) will support its global operations outside the U.S. and help ensure the continued adequacy of working capital throughout its global business units.

“We took this action because we are determined to achieve competitiveness for Delphi’s core U.S. operations, and the key to accomplishing that goal is reducing these costs as soon as possible,” said Miller. “We simply cannot afford to continue to be

encumbered by high legacy issues and burdensome restrictions under current labor agreements that impair our ability to compete. We must also realign our global product portfolio and manufacturing footprint to preserve our core businesses. This will require a substantial segment of our U.S. manufacturing operations to be divested, consolidated or wound-down through the chapter 11 process. We believe the chapter 11 process will provide the flexibility to address our legacy issues and allow us to take advantage of the fundamental strength of our businesses.”

Miller said that Delphi has been engaged in constructive discussions with representatives of its major unions, but was unable to complete the necessary modifications to its collective bargaining agreements without assistance from General Motors Corporation or intervention of the U.S. courts. “Having been unable to resolve our U.S. legacy issues out of court,” Miller said, “we determined it was in Delphi’s best interest to address the U.S. cost-structure issues through the chapter 11 process *now* while our liquidity position is strong. We will be making a further proposal this month to each of our unions to transform our labor agreements to a competitive labor cost structure and to address non-profitable and non-strategic U.S. operations. In addition, we expect to address pension plans and health and retiree benefits to align them with competitive benchmarks in the industry and our transformation plan.”

Delphi noted that its non-U.S. subsidiaries are generally competitive, cash flow positive and experiencing high growth opportunities. “One of our primary goals is to preserve and continue the strategic growth in non-U.S. operations while we address our U.S. cost structure issues through the chapter 11 process,” said Miller.

Delphi filed more than 40 “first-day” motions along with its voluntary petitions covering Delphi’s employees and business operations, post-petition DIP financing, continuing supplier relations, customer practices, certain executory contracts, taxes and related matters, utilities, retention of professionals and case administration matters. The company said it expects that the Bankruptcy Court will hold hearings on the first-day

motions following the Columbus Day holiday observed in the U.S. and, in the interim, will approve bridge orders granting interim relief with respect to employees and business operations, continuing vendor relations and customer practices pending the Court's consideration of first-day hearings. Delphi will issue a further press release this weekend regarding the Bankruptcy Court's consideration of Delphi's request for the entry of interim bridge orders and providing further information about its chapter 11 reorganization cases including the date, time and location of the hearing on Delphi's first day motions.

Among other matters, the relief anticipated from the Bankruptcy Court this weekend and at the first day hearings next week would permit the company to continue to pay wages, salaries and current benefits of U.S. hourly and salaried employees and certain retiree benefits without disruption and in the same manner as before the filing. Similar relief for employees in Delphi's subsidiaries outside the U.S. is not required because they will continue to be paid in the ordinary course of business without court supervision.

"The Board of Directors, the senior management team and I greatly appreciate the loyalty and support of our employees," said Miller. "Their dedication and hard work are critical to our success and integral to the future of Delphi."

Delphi also noted that the execution of its transformation plan through the chapter 11 process may give rise to the incurrence of additional prepetition claims as collective bargaining agreements, executory contracts, retiree health benefits and pension plans, and other liabilities of the company are addressed and resolved to maximize stakeholder value going forward. There is no assurance as to what values, if any, will be ascribed in the chapter 11 cases as to the value of Delphi's existing common stock and/or any other equity securities. Accordingly, the company urges that the appropriate caution be exercised with respect to existing and future investments in any of these securities as the value and prospects are highly speculative.

More information on Delphi's U.S. restructuring, including access to Court documents and other general information about the chapter 11 cases, is available at [www.delphidocket.com](http://www.delphidocket.com). Delphi has also set up two separate toll-free information lines: one for specific supplier inquiries, 866-688-8679 or 248-813-2601, and another for employees, customers, shareholders and other interested parties, 866-688-8740 or 248-813-2602.

For more information about Delphi and its operating subsidiaries, visit Delphi's Media Room at [www.delphi.com/media/](http://www.delphi.com/media/).

This press release as well as other statements made by Delphi may contain forward-looking statements within the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, that reflect, when made, the Company's current views with respect to current events and financial performance. Such forward looking statements are and will be, as the case may be, subject to many risks, uncertainties and factors relating to the Company's operations and business environment which may cause the actual results of the Company to be materially different from any future results, express or implied, by such forward-looking statements. Factors that could cause actual results to differ materially from these forward-looking statements include, but are not limited to, the following: the ability of the Company to continue as a going concern; the ability of the Company to operate pursuant to the terms of the DIP facility; the Company's ability to obtain court approval with respect to motions in the chapter 11 proceeding prosecuted by it from time to time; the ability of the Company to develop, prosecute, confirm and consummate one or more plans of reorganization with respect to the chapter 11 cases; risks associated with third parties seeking and obtaining court approval to terminate or shorten the exclusivity period for the Company to propose and confirm one or more plans of reorganization, for the appointment of a chapter 11 trustee or to convert the cases to chapter 7 cases; the ability of the Company to obtain and maintain normal terms with vendors and service providers; the Company's ability to maintain contracts that are critical to its operations; the potential adverse impact of the chapter 11 cases on the Company's liquidity or results of operations; the ability of the Company to fund and execute its business plan; the ability of the Company to attract, motivate and/or retain key executives and associates; and the ability of the Company to attract and retain customers. Other risk factors are listed from time to time in the Company's SEC reports, including, but not limited to the quarterly report on Form 10-Q for the quarter ended June 30, 2005. Delphi disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

Similarly, these and other factors, including the terms of any reorganization plan ultimately confirmed, can affect the value of the Company's various pre-petition liabilities, common stock and/or other equity securities. No assurance can be given as to what values, if any, will be ascribed in the bankruptcy proceedings to each of these constituencies. Accordingly, the Company urges that the appropriate caution be exercised with respect to existing and future investments in any of these liabilities and/or securities.

###

Confidential – Material Non-Public Information

## 2009 Emergence Update – Strategic Overview – Objectives

### De-lever Emergence Balance Sheet



- Secure \$1.5 billion of emergence funding through sale of UAW Keep Sites to GM, Settlement of Plan Investor Litigation, and/or Government Support. Emergence funding used to: repay DIP A/B (\$0.7 billion), plus:
  - Pay Admin/Transaction Costs (\$0.2 billion)
  - Provide Post-emergence cash (\$0.6 billion)
- DIP C is receives consideration other than cash (\$2.7 billion)
- Delphi terminates salaried OPEB (\$1.1 billion)
- Delphi transfers liability for hourly and salaried pension plans to GM in cooperation with U.S. Treasury Department (\$5.1 billion)
- *Note:* ELSA would increase emergence funding by an incremental \$0.5 billion to support hedging obligations, additional post-emergence cash, and anticipated final terms and conditions of amendments to the GSA and MRA

### Sufficient Post- Emergence Liquidity



- Confirmed Business Plan based upon reasonable assumptions, including as to global production volumes and commodity prices, that generates positive cash flow in each period
- \$2 billion in post-emergence liquidity, including at least \$700 million of operating cash on balance sheet, \$0.6 billion of excess cash on balance sheet and an unfunded global revolving credit facility (\$0.8 billion)

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Exhibit 99(a)

**SUPPLEMENTAL SECOND AMENDMENT TO ACCOMMODATION AGREEMENT AND SECOND AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT, TERM LOAN AND GUARANTY AGREEMENT** (this "Amendment") dated as of April 3, 2009, and effective as of the Effective Date (as hereinafter defined), among DELPHI CORPORATION, a Delaware corporation (the "Borrower"), a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code, and the subsidiaries of the Borrower signatory hereto (each a "Guarantor" and collectively the "Guarantors"), each of which Guarantors is a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., as administrative agent for the Lenders (in such capacity, the "Administrative Agent").

**WITNESSETH:**

**WHEREAS**, the Borrower, the Guarantors, the Lenders (or in the case of the Accommodation Agreement, certain Lenders), the Administrative Agent and Citicorp USA, Inc., as Syndication Agent, are parties to (a) that certain Amended and Restated Revolving Credit, Term Loan and Guaranty Agreement, dated as of May 9, 2008 (as the same has been and may be further amended, modified or supplemented from time to time, the "Credit Agreement") and (b) that certain Accommodation Agreement, dated as of December 12, 2008 (as the same has been amended on January 30, 2009 pursuant to the First Amendment thereto and on February 24, 2009 pursuant to the Supplemental Amendment thereto, and may be further amended, modified or supplemented from time to time, the "Accommodation Agreement"); unless otherwise specifically defined herein, each term used herein that is defined in the Accommodation Agreement has the meaning assigned to such term in the Accommodation Agreement;

**WHEREAS**, in recognition of the United States Treasury's desire for additional time to agree upon a timetable by which it will review and consider the Borrower's position in the automotive sector and various alternatives with respect to the Borrower's emergence from chapter 11, the Borrower and the Guarantors desire to modify the Accommodation Agreement as provided herein;

**WHEREAS**, the Borrower, the Guarantors and certain Participant Lenders entered into the Second Amendment to the Accommodation Agreement (the "Second Amendment"), effective as of March 31, 2009;

**WHEREAS**, on April 2, 2009, the Bankruptcy Court approved the Second Amendment, subject to certain further modifications to the terms set forth in the Second Amendment, and subject to requisite approval from the Lenders of such modifications;

**WHEREAS**, the Required First Priority Participant Lenders and the Required Total Participant Lenders have agreed, subject to the terms and conditions hereinafter set forth, to modify the Accommodation Agreement (including to modify the terms of the Second Amendment to reflect the modifications approved by the Bankruptcy Court on April 2, 2009) in response to the Borrower's request as set forth below;

**WHEREAS**, the Required Lenders have agreed, subject to the terms and conditions hereinafter set forth, to modify the Credit Agreement in response to the Borrower's request as set forth below;

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NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto hereby agree as follows:

I. **Amendments to Accommodation Agreement.** The Accommodation Agreement is hereby amended as follows:

(a) Section 1(b) of the Accommodation Agreement is hereby amended by adding the following definitions in alphabetical order to said Section 1(b):  
"Excess Cash Amount" shall mean, at any time, the amount of Borrowing Base Cash Collateral that the Borrower would otherwise be permitted to withdraw at such time from the Borrowing Base Cash Collateral Accounts pursuant to Section 3(e)(iii) without giving effect to clause (3) thereof.

"GM Transaction Termsheet" shall mean a detailed term sheet setting forth the terms of a global resolution of matters relating to GM's contribution to the resolution of the Borrower's Chapter 11 Cases, including, without limitation, all material transactions between the Borrower and GM relevant to such resolution.

"GM Transaction Termsheet Condition" shall be satisfied, if and only if, on or prior to April 17, 2009, the Borrower shall have (i) delivered to the Administrative Agent a GM Transaction Termsheet and (ii) certified in writing that such GM Transaction Termsheet has been agreed to among the Borrower, GM and the United States Treasury.

"Minimum Borrowing Base Cash Collateral Account Balance" shall mean \$160,000,000 through and including April 18, 2009 and \$140,000,000 from and after April 19, 2009; provided that the Minimum Borrowing Base Cash Collateral Account Balance shall mean \$47,000,000 from and after the date, if any, on which the Required First Priority Participant Lenders and the Required Total Participant Lenders shall have delivered to the Borrower a Satisfactory Termsheet Notice.

"OPEB Settlement Agreement" shall mean the agreement entered into among the Borrower, the Guarantors, the Delphi Salaried Retirees' Association (the "Association"), and the Committee of Eligible Salaried Retirees (the "Retirees' Committee") resolving the Association's and the Retirees' Committee's appeals of the Provisional Salaried OPEB Termination Order (Docket No. 16380) and the Final OPEB Termination Order (Docket No. 16448).



“Satisfactory Termsheet Notice” shall mean one or more notifications from the Required First Priority Participant Lenders and the Required Total Participant Lenders (or a notification from the Administrative Agent on behalf of the Required First Priority Participant Lenders and the Required Total Participant Lenders) to the Borrower within three (3) Business Days after satisfaction of the GM Transaction Termsheet Condition that the GM Transaction Termsheet is satisfactory.

“Supplemental Second Amendment to the Accommodation Agreement” shall mean the Supplemental Second Amendment to the Accommodation Agreement, dated as of April 3, 2009.

(b) Section 1(b) of the Accommodation Agreement is hereby further amended by (x) deleting the word “or” at the end of clause (ii) of the definition of “Accommodation Default”, (y) replacing the period at the end of clause (iii) of such definition with “;” and (z) adding clauses (iv) through (v) to such definition to read as follows:

“(iv) the Administrative Agent shall have notified the Borrower in writing, within 10 Business Days after the filing with the Bankruptcy Court of a new Reorganization Plan or modifications to the Existing Reorganization Plan, that such new Reorganization Plan or modifications to the Existing Reorganization Plan is not satisfactory to the Required Lenders or the Required Total Participant Lenders; or

(v) the Borrower shall have (x) proceeded with the hearing before the Bankruptcy Court on the Borrower’s Motion for Order Under 11 U.S.C. § 363 and Fed. R. Bankr. P. 6004 Authorizing and Approving Option Exercise Agreement with General Motors Corporation (Docket #16410) or (y) sold the steering business of the Global Entities, in either case without the prior written consent of the Required First Priority Participant Lenders and the Required Total Participant Lenders.”

(c) The definition of “Accommodation Period” in Section 1(b) of the Accommodation Agreement is hereby amended by (w) deleting the proviso to clause (i), (x) deleting “and” at the end of clause (iii), (y) renumbering clause (iv) as clause (v) and (z) inserting the following clause (iv) after clause (iii):

“(iv) April 25, 2009, unless the Required First Priority Participant Lenders and the Required Total Participant Lenders shall have delivered to the Borrower a Satisfactory Termsheet Notification on or prior to April 24, 2009; and”

(d) Section 1(b) of the Accommodation Agreement is hereby further amended by deleting clause (ii) of the definition of “Borrower Liquidity Availability” and replacing it with the following: “(ii) the Excess Cash Amount at such time”.

(e) Section 1(b) of the Accommodation Agreement is hereby further amended by deleting the definition of "GM-Delphi Agreement Amendment Second Condition".

(f) The definition of "Minimum Liquidity Amount" in Section 1(b) of the Accommodation Agreement is hereby amended and restated in its entirety to read as follows:

""Minimum Liquidity Amount" shall mean \$25,000,000."

(g) Section 1(b) of the Accommodation Agreement is hereby further amended by inserting the following proviso at the end of the definition of "Satisfactory Reorganization Plan":

"; provided that, in no event shall a Reorganization Plan or modifications to the Existing Reorganization Plan become a Satisfactory Reorganization Plan until such ten (10) Business Day Period shall have expired without such a notification having been delivered".

(h) Section 2(b) of the Accommodation Agreement is hereby amended by replacing both references to "Accommodation Agreement" in the second sentence with "Accommodation Period".

(i) Section 3(e)(ii) of the Accommodation Agreement is hereby amended by adding at the end of the last sentence the following: "and the Required Total Participant Lenders".

(j) Section 3(e)(iii) of the Accommodation Agreement is hereby amended by (x) inserting, after the phrase "other than a Specified Default" in clause (2) of the first proviso, the following: "during the Accommodation Period", (y) replacing "and" with "," immediately prior to "(2)" and (z) adding, immediately prior to "and provided, further", the following: "and (3)(x) there shall be not less than the Minimum Borrowing Base Cash Collateral Account Balance remaining in the Borrowing Base Cash Collateral Accounts and (y) the Borrower shall have certified in writing to the Administrative Agent that funds are not otherwise available to pay current ordinary course of business operating expenses of the Borrower and its Subsidiaries (and for purposes hereof payments pursuant to the OPEB Settlement Agreement up to \$10,000,000 in the aggregate for all such payments are deemed to be current ordinary course of business operating expenses)".

(k) Section 3(e)(iv) of the Accommodation Agreement is hereby amended by (x) deleting the entire Section 3(e)(iv)(A), (y) deleting "and (B)" (for the avoidance of doubt not deleting the text following "and (B)"), and (z) inserting, after the phrase "other than a Specified Default" in clause (2), the following: "during the Accommodation Period".

(l) Section 3(e) is hereby amended by adding subsection (v) as follows:

"For the avoidance of doubt, the provisions of Sections 3(e)(iii) and (iv) and this Section 3(e)(v) shall continue to apply notwithstanding the termination of the Accommodation Period (and such sections shall not be amended, supplemented, waived or otherwise modified without the consent of the Required First Priority Participant Lenders and the Required Total Participant Lenders), and the Borrower shall not have access to the amounts on deposit in the Borrowing Base Cash Collateral Accounts and the Incremental Borrowing Base Cash Collateral Accounts except as provided in Sections 3(e)(iii) and (iv)."

(m) Section 3(m) of the Accommodation Agreement is hereby amended by amending and restating such subsection in its entirety to read as follows: "The Borrower shall apply the aggregate amount held in all Incremental Borrowing Base Cash Collateral Accounts to the repayment of Obligations in accordance with Section 2.19(b) of the Credit Agreement:

(i) on April 20, 2009 unless, on or prior to April 17, 2009, the GM Transaction Termsheet Condition shall be satisfied, or

(ii) if such amount has not been previously applied to the repayment of Obligations pursuant to this Section 3(m), within one Business Day after the occurrence of the Automatic Accommodation Termination Default set forth in paragraph 5 of Schedule 1 hereof, or

(iii) if such amount has not been previously applied to the repayment of Obligations pursuant to this Section 3(m), within one Business Day after the Administrative Agent shall have notified the Borrower in writing, within 10 Business Days after the filing with the Bankruptcy Court of a new Reorganization Plan or modifications to the Existing Reorganization Plan, that such new Reorganization Plan or modifications to the Existing Reorganization Plan is not satisfactory to the Required Lenders or the Required Total Participant Lenders."

(n) Section 3(n)(i) of the Accommodation Agreement is hereby amended by deleting the phrase "with third parties in connection with the formulation of the Borrower's emergence capital structure" and replacing it with the following: "between the Borrower and/or its advisors with third parties in connection with the Borrower's emergence from Chapter 11 and/or material transactions or arrangements between the Borrower and GM and/or the Borrower and the United States Treasury".

(o) Schedule 1 of the Accommodation Agreement is hereby amended by adding the following paragraphs:

"4. The GM Transaction Termsheet Condition shall have failed to be satisfied on or prior to April 17, 2009.

5. The Required First Priority Participant Lenders or the Required Total Participant Lenders (or the Administrative Agent on behalf of the Required First Priority Participant Lenders or the Required Total Participant Lenders) shall have either (i) notified the Borrower within three (3) Business Days after delivery of the GM Transaction Termsheet that the GM Transaction Termsheet is not satisfactory or (ii) failed to deliver to the Borrower a Satisfactory Termsheet Notice within three (3) Business Days after delivery of the GM Transaction Termsheet."

(p) The second sentence of Section 3(g) of the Accommodation Agreement is hereby amended by inserting "in respect of interest accrued on or after April 1, 2009" immediately after "Tranche C Lenders".

**2. Amendments to the Credit Agreement.**

(a) The parties hereto hereby agree that upon their execution and delivery of this Amendment and subject to the other terms and conditions set forth herein, including the terms and conditions set forth in Section 4 hereof with respect to the effectiveness of this Amendment, (i) the Credit Agreement shall be amended as set forth herein and shall be binding upon all parties thereto, subject to the terms hereof and (ii) each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Agreement" and each other similar reference contained in the Credit Agreement shall, after the Effective Date, refer to such agreements as amended by this Amendment.

(b) Section 2.31 of the Credit Agreement is hereby amended by (w) inserting the phrase "(a) Except as set forth in clause (b) below of this Section 2.31, the" before the first sentence, (x) inserting the phrase "Except as set forth in clause (b) below of this Section 2.31, the" before the third sentence, (y) deleting "The" in the first and third sentences, and (z) inserting the following clause (b) at the end of Section 2.31 of the Credit Agreement:

"(b) On or prior to April 6, 2009, the Borrower shall apply the aggregate amount held in all Segregated Tranche C Interest Accounts to the repayment of Obligations in accordance with Section 2.19(b). For the avoidance of doubt, such application by the Borrower shall not affect (i) the Borrower's obligation to pay, and each Tranche C Lender's right to receive, interest on such Tranche C Lender's portion of the Tranche C Loans pursuant to Sections 2.08 and 2.09 hereunder (including unpaid interest accrued prior to such application), (ii) any Lender's right under this Section 2.31 with respect to any future funds deposited into any Segregated Tranche C Interest Account after April 6, 2009 and (iii) the Borrower's obligation to deposit funds into the Segregated

Tranche C Interest Accounts from time to time in accordance with the provisions of the Accommodation Agreement.”

3. **Representation and Warranty.** The Borrower and the Guarantors hereby represent and warrant that (i) all representations and warranties in the Accommodation Agreement, the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the Effective Date except to the extent such representations and warranties expressly relate to an earlier date and (ii) after giving effect to the amendment set forth in Sections 1(f) and (m) above as if such amendment had been in effect on March 24, 2009, no Event of Default (other than a Specified Default) has occurred and is continuing on the date hereof.

4. **Conditions to Effectiveness.** This Amendment shall become effective on the date (the “Effective Date”) on which each of the following shall have occurred and the Administrative Agent shall have received evidence reasonably satisfactory to it of such occurrence:

(i) this Amendment shall have been executed by the Borrower, the Guarantors, the Required First Priority Participant Lenders, the Required Total Participant Lenders and the Required Lenders; and

(ii) immediately prior to the effectiveness of this Amendment, but after giving effect to the amendment set forth in Sections 1(f) and (m) above as if such amendment had been in effect on March 24, 2009, no Event of Default (other than a Specified Default) shall have occurred and be continuing.

5. **Conditions Subsequent.** This Amendment shall automatically be null and void and of no further force and effect on April 7, 2009 (the “First Termination Date”), unless prior to such date (i) the Bankruptcy Court shall have entered one or more orders reasonably satisfactory in form and substance to the Administrative Agent authorizing (A) this Amendment (it being understood and agreed by the parties hereto that such approval is not required for this Amendment to become effective, but will be sought by the Borrower solely for the avoidance of doubt), which authorization may be on an interim or a final basis, (B) the payment by the Borrower to the Administrative Agent of all fees referred to herein or in that certain Fee Letter (the “Fee Letter”) dated as of March 31, 2009, (C) the payment by the Borrower to any Lenders of all fees referred to in any separate side letters (the “Expense Side Letters”) and (D) the payment by the Borrower of the Amendment Fees (as defined below), and (ii) the Borrower shall have paid (A) to the Administrative Agent all fees referred to herein or in the Fee Letter, (B) to each Participant Lender that has executed and delivered a signature page hereto to the Administrative Agent no later than 5:00 p.m. (New York City time) on April 3, 2009, an amendment fee in an amount equal to 25 basis points of the Tranche A Total Commitment Usage, Tranche B Loans and Tranche C Loans of each such Participant Lender as of the Effective Date (the “Amendment Fees”), (C) all invoiced expenses (including the fees and expenses of counsel to the Administrative Agent) of the Administrative Agent incurred in connection with the preparation, negotiation and execution of this Amendment and other matters relating to the Loan Documents in accordance with Section 10.05 of the Credit Agreement and (D) all invoiced expenses of the Lenders payable pursuant to any Expense Side Letters. Furthermore, this Amendment shall automatically be null and void and of no further force and effect on April 25, 2009 (the “Second Termination Date”), unless prior to such date (i) the order

or orders referred to in clause (l) of the immediately preceding sentence shall have been entered on a final basis (with only such changes to the interim order as are reasonably satisfactory in form and substance to the Administrative Agent), and (ii) the Borrower shall have paid (x) all invoiced expenses (including the fees and expenses of counsel to the Administrative Agent) of the Administrative Agent incurred in connection with the preparation, negotiation and execution of this Amendment and other matters relating to the Loan Documents in accordance with Section 10.05 of the Credit Agreement and (y) all invoiced expenses of the Lenders payable pursuant to any Expense Side Letters.

6. **Release.** To the fullest extent permitted by applicable law, in consideration of the Agents' and the execution of this Amendment by the Participant Lenders that executed and delivered this Amendment (together with any such Participant Lender's successors and assigns, the "Amendment Participant Lenders"), the Borrower and the Guarantors each, on behalf of itself and each of its successors and assigns (including, without limitation, any receiver or trustee, collectively, the "Releasors"), does hereby forever release, discharge and acquit the Agents, each Amendment Participant Lender and each of their respective parents, subsidiaries and affiliate corporations or partnerships, and their respective officers, directors, partners, trustees, shareholders, agents, attorneys and employees, and their respective successors, heirs and assigns, in the case of each of the foregoing solely in their capacities as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, rights, responsibilities, disputes, causes of action (whether at law or equity), indebtedness and obligations (collectively, "Claims"), of every type, kind, nature, description or character, and irrespective of how, why or by reason of what facts, whether such Claims have heretofore arisen, are now existing or hereafter arise, or which could, might, or may be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length, which in any way arise out of, are connected with or in any way relate to actions or omissions which occurred on or prior to the date hereof with respect to the Obligations, this Amendment, the Accommodation Agreement, the Credit Agreement or any other Loan Document. This Section 6 shall survive (i) the expiration or termination of the Accommodation Period, of the Accommodation Agreement and of this Amendment (including due to the occurrence of the First Termination Date or the Second Termination Date) and (ii) the termination of the Credit Agreement, the payment in full of all Obligations and the termination of all Commitments.

7. **Miscellaneous.**

(a) The Amendment Participant Lenders hereby waive any defaults (including any Automatic Accommodation Termination Defaults or Accommodation Defaults) or Events of Default that may have occurred as a result of the failure of the Borrower to (i) apply the aggregate amount held in all Incremental Borrowing Base Cash Collateral Accounts to the repayment of Obligations pursuant to Section 3(m)(i) of the Accommodation Agreement and (ii) maintain Borrower Liquidity Availability in an amount greater than the Minimum Liquidity Amount pursuant to Section 3(d) of the Accommodation Agreement, in each case as in effect immediately prior to giving effect to the amendments to the Accommodation Agreement set forth in Section 1 of this Amendment and Section 1 of the Second Amendment.

(b) Except to the extent hereby amended, each Loan Party hereby affirms that the terms of the other Loan Documents (i) secure, and shall continue to secure, and (ii)

guarantee, and shall continue to guarantee, in each case, the Obligations (as defined in the Credit Agreement) and acknowledges and agrees that each Loan Document is, and shall continue to be, in full force and effect and is hereby ratified and affirmed in all respects.

(c) The Borrower agrees that its obligations set forth in Section 10.05 of the Credit Agreement shall extend to the preparation, execution and delivery of this Amendment, including the reasonable fees and disbursements of special counsel to the Administrative Agent and the Arrangers.

(d) No Person other than the parties hereto and any other Lender, and, in the case of Section 6 hereof, the Releasees, shall have any rights hereunder or be entitled to rely on this Amendment, and all third-party beneficiary rights (other than the rights of the Releasees under Section 6 hereof and any other Lender) are hereby expressly disclaimed.

(e) The parties hereto hereby agree that Section 8 of the Credit Agreement shall apply to this Amendment and each other Loan Document and all actions taken or not taken by the Administrative Agent or any Lender contemplated hereby.

(f) Nothing in this Amendment shall be deemed, asserted or construed to impair or prejudice the rights of the Administrative Agent and the Lenders to appear and be heard on any issue, or to object to any relief sought, in the Bankruptcy Court, except to the extent that such actions would constitute a breach of the Administrative Agent's or any Participant Lender's obligations under the Accommodation Agreement.

(g) Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

(h) Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Amendment.

(i) This Amendment may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. A facsimile or .pdf copy of a counterpart signature page shall serve as the functional equivalent of a manually executed copy for all purposes.

(j) THIS AMENDMENT SHALL IN ALL RESPECTS BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

(k) EACH OF THE BORROWER, THE GUARANTORS, THE AGENTS AND EACH LENDER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AMENDMENT.  
[SIGNATURE PAGES TO FOLLOW]

**Delphi Corporation**

Pension Information Profile

	Delphi Hourly-Rate Employees Pension Plan 383430473/003	Delphi Retirement Program for Salaried Employees 383430473/001	ASEC Manufacturing Retirement Program 731474201/002	Delphi Mechatronic Systems Retirement Program 383589834/001	Packard-Hughes Interconnect Bargaining Retirement Plan 330595219/002	Packard-Hughes Interconnect Non-Bargaining Retirement Plan 330595219/001	Total of Underfunded Plans
EIN/PN							
Plan Frozen?	30-Nov-08	30-Sep-08	01-Oct-07	30-Sep-08	No	30-Sep-08	
Plan Terminated?	No	No	No	No	No	No	
Cash Balance Plan?	No	No	No	No	No	No	
<b>Part I -- Actuarial Information</b>							
Date of Bankruptcy Filing	08-Oct-05	08-Oct-05	08-Oct-05	08-Oct-05	08-Oct-05	08-Oct-05	08-Oct-05
PBGC Valuation Date	31-Jan-09	31-Jan-09	31-Jan-09	31-Jan-09	31-Jan-09	31-Jan-09	31-Jan-09
PBGC Interest Factors							
First 20 Years	6.02%	6.02%	6.02%	6.02%	6.02%	6.02%	6.02%
Thereafter	5.48%	5.48%	5.48%	5.48%	5.48%	5.48%	5.48%
Date Calculation Completed by DISC Actuaries	03-Mar-09	03-Apr-09	03-Mar-09	03-Mar-09	03-Mar-09	03-Mar-09	03-Mar-09
<b>Part II -- Underfunding Details (in millions)</b>							
Assets as of January 31, 2009 Projected to January 31, 2009	\$3,682.6	\$2,326.3	\$16.2	\$5.5	\$4.4	\$15.0	\$6,050.0
Estimated Unfunded Guaranteed Liability - UGL							
Retired	\$7,010.5	\$2,521.7	\$16.0	\$0.7	\$11.5	\$17.8	\$9,578.2
Terminated Vested	\$111.1	\$151.1	\$13.8	\$2.4	\$2.3	\$15.1	\$295.8
Active	\$279.8	\$1,789.9	\$0.0	\$4.1	\$0.8	\$5.8	\$2,080.4
Expenses	<u>\$71.6</u>	<u>\$41.6</u>	<u>\$0.4</u>	<u>\$0.0</u>	<u>\$0.2</u>	<u>\$0.5</u>	<u>\$114.3</u>
Total	\$7,473.0	\$4,504.3	\$30.2	\$7.2	\$14.8	\$39.2	\$12,068.7
UGL	<b>\$3,790.4</b>	<b>\$2,178.0</b>	<b>\$14.0</b>	<b>\$1.7</b>	<b>\$10.4</b>	<b>\$24.2</b>	<b>\$6,018.7</b>
Funded GL Ratio [Assets/Guaranteed Liabilities]	49%	52%	58%	76%	30%	38%	50%
Estimated Unfunded Benefit Liability - UBL							
Retired	\$7,010.5	\$2,521.7	\$16.0	\$0.7	\$11.5	\$17.8	\$9,578.2
Terminated Vested	\$138.5	\$160.7	\$13.8	\$2.4	\$2.3	\$15.1	\$332.8
Active	\$471.3	\$2,313.5	\$0.0	\$4.8	\$1.9	\$8.4	\$2,799.9
Expenses	<u>\$73.8</u>	<u>\$46.6</u>	<u>\$0.4</u>	<u>\$0.0</u>	<u>\$0.2</u>	<u>\$0.6</u>	<u>\$121.6</u>
Total	\$7,694.1	\$5,042.5	\$30.2	\$7.9	\$15.9	\$41.9	\$12,832.5
UBL	<b>\$4,011.5</b>	<b>\$2,716.2</b>	<b>\$14.0</b>	<b>\$2.4</b>	<b>\$11.5</b>	<b>\$26.9</b>	<b>\$6,782.5</b>
Funded BL Ratio [Assets/Benefit Liabilities]	48%	46%	58%	70%	28%	36%	47%
<b>Part III -- Number of Participants at Plan Valuation Date</b>							
Retired	27,577	7,412	108	5	80	231	35,413
Terminated Vested	5,148	2,585	425	62	70	1,007	9,297
Active	<u>11,872</u>	<u>10,206</u>	<u>0</u>	<u>81</u>	<u>15</u>	<u>145</u>	<u>22,319</u>
Total	44,597	20,203	533	148	165	1,383	67,029
<b>Part IV -- Unpaid Minimum Required Contributions (in dollars)</b>							
Unpaid Minimum Required Contributions have not been calculated.							

Delphi Salaried AR000062

①  
②  
③



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Table of Contents

**PART I  
DELPHI CORPORATION**

**ITEM 1. BUSINESS**

As further described below, Delphi Corporation (referred to as “Delphi,” the “Company,” “we,” or “our”) and certain of its United States (“U.S.”) subsidiaries filed voluntary petitions for reorganization relief under chapter 11 of the U.S. Bankruptcy Code (“Bankruptcy Code”) in the U.S. Bankruptcy Court for the Southern District of New York (the “Court”) and are currently operating as “debtors-in-possession” under the jurisdiction of the Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Court. Delphi’s non-U.S. subsidiaries were not included in the filings, continue their business operations without supervision from the Court and are not subject to the requirements of the Bankruptcy Code.

**Overview.** Delphi is a leading global supplier of mobile electronics and transportation systems, including powertrain, safety, thermal, controls and security systems, electrical/electronic architecture, and in-car entertainment technologies, engineered to meet and exceed the rigorous standards of the automotive industry. Delphi was incorporated in 1998 in contemplation of its separation from General Motors Corporation (“GM”) in 1999 (the “Separation”). Technology developed and products manufactured by Delphi are changing the way drivers interact with their vehicles. Delphi is a leader in the breadth and depth of technology to help make cars and trucks smarter, safer and better. The Company supplies products to nearly every major global automotive original equipment manufacturer.

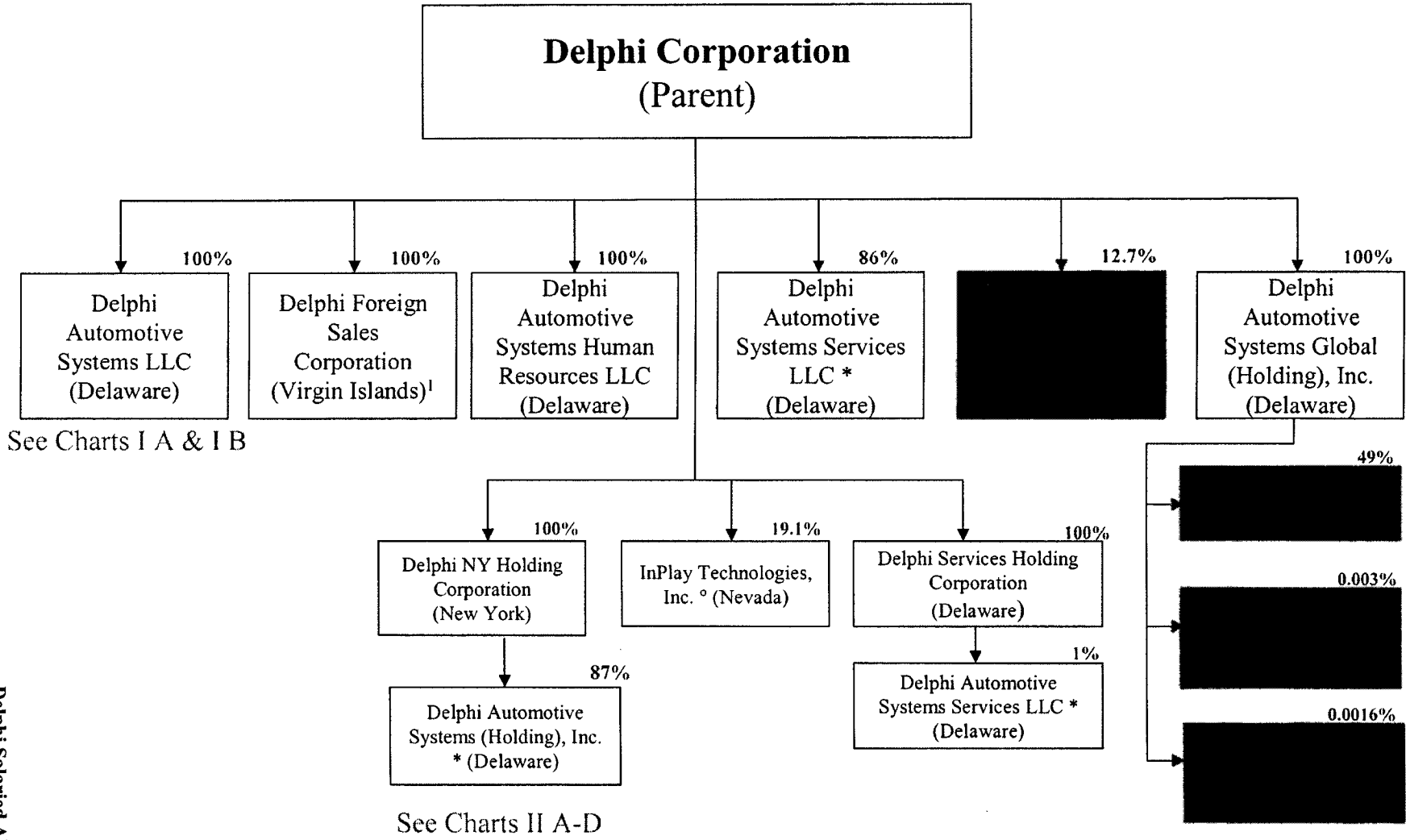
We have extensive technical expertise in a broad range of product lines and strong systems integration skills, which enable us to provide comprehensive, systems-based solutions to vehicle manufacturers (“VMs”). We have established an expansive global presence, with a network of manufacturing sites, technical centers, sales offices and joint ventures located in major regions of the world. We operate our business along the following reporting operating segments that are grouped on the basis of similar product, market and operating factors:

- Electronics and Safety, which includes audio, entertainment and communications, safety systems, body controls and security systems, displays, mechatronics and power electronics, as well as advanced development of software and silicon.
- Powertrain Systems, which includes extensive systems integration expertise in gasoline, diesel and fuel handling and full end-to-end systems including fuel injection, combustion, electronics controls, exhaust handling, and test and validation capabilities.
- Electrical/Electronic Architecture, which includes complete electrical architecture and component products.
- Thermal Systems, which includes Heating, Ventilating and Air Conditioning (“HVAC”) systems, components for multiple transportation and other adjacent markets, and powertrain cooling and related technologies.
- Automotive Holdings Group, which includes non-core product lines and plant sites that do not fit Delphi’s future strategic framework.
- Corporate and Other, which includes the Product and Service Solutions business, which is comprised of independent aftermarket, diesel aftermarket, original equipment service, consumer electronics and medical systems, in addition to the expenses of corporate administration, other expenses and income of a non-operating or strategic nature, and the elimination of inter-segment transactions.

We also have non-core steering and halfshaft product lines and interiors and closures product lines that are reported in discontinued operations for accounting purposes. Previously, the steering and halfshaft product line was a separate operating segment and the interiors and closures product line was part of our Automotive Holdings Group segment. Refer to Note 5. Discontinued Operations to the consolidated financial statements for more information.

Foreign entities for sale  
 Foreign entities not owned by DASHI  
 Non-Debtor / Debtor transactions<sup>2</sup>

Delphi Proprietary



See Charts I A & I B

See Charts II A-D

Delphi Sarried AR000064

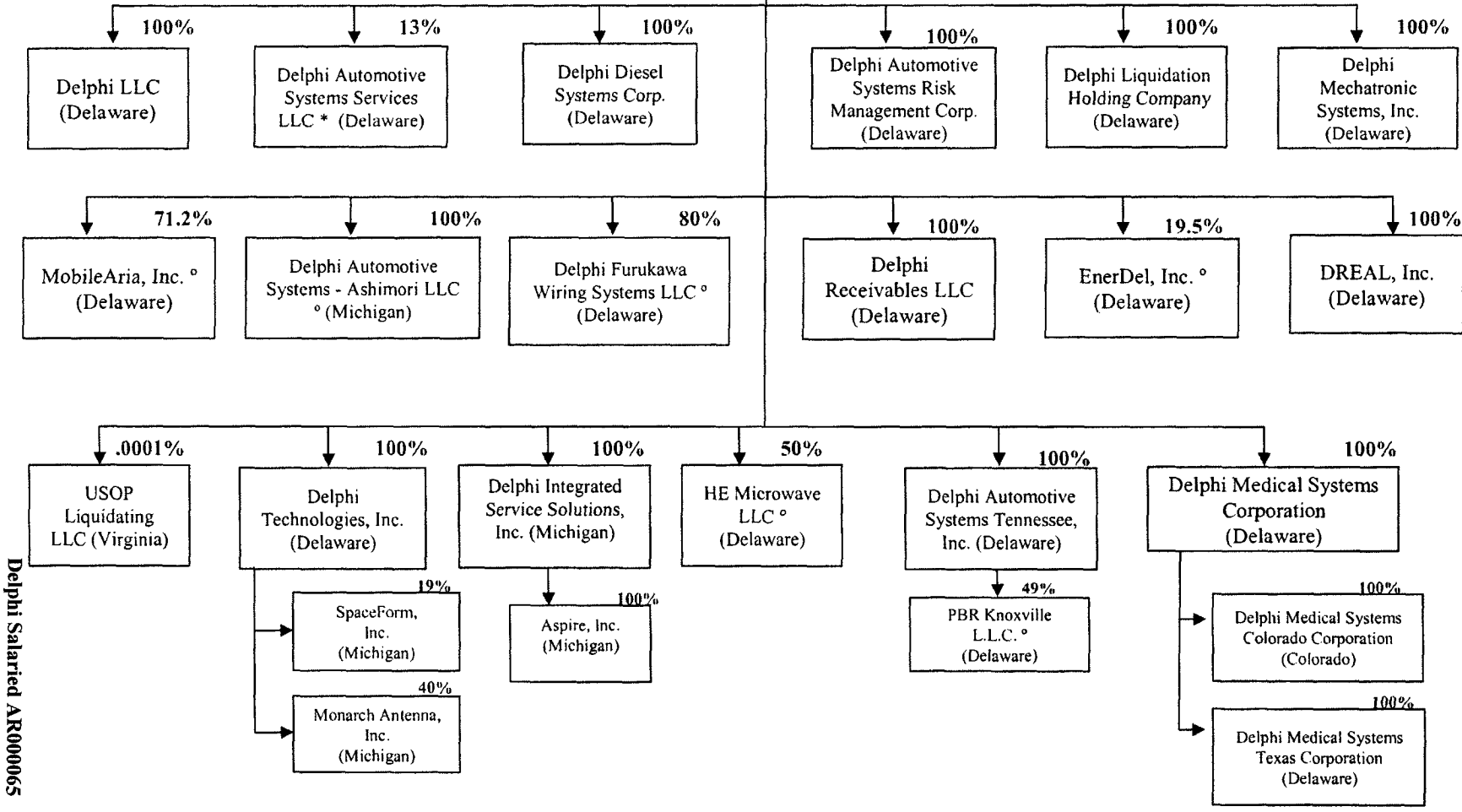
\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture  
<sup>1</sup> Assumed US  
<sup>2</sup> Each transaction is numbered to correspond to the transaction analysis and identify the foreign party

Delphi Proprietary

**Chart I A**

North America, with  
No Overseas Subsidiaries

**Delphi Automotive Systems LLC  
(Parent)**



Delphi Salaried AR000065

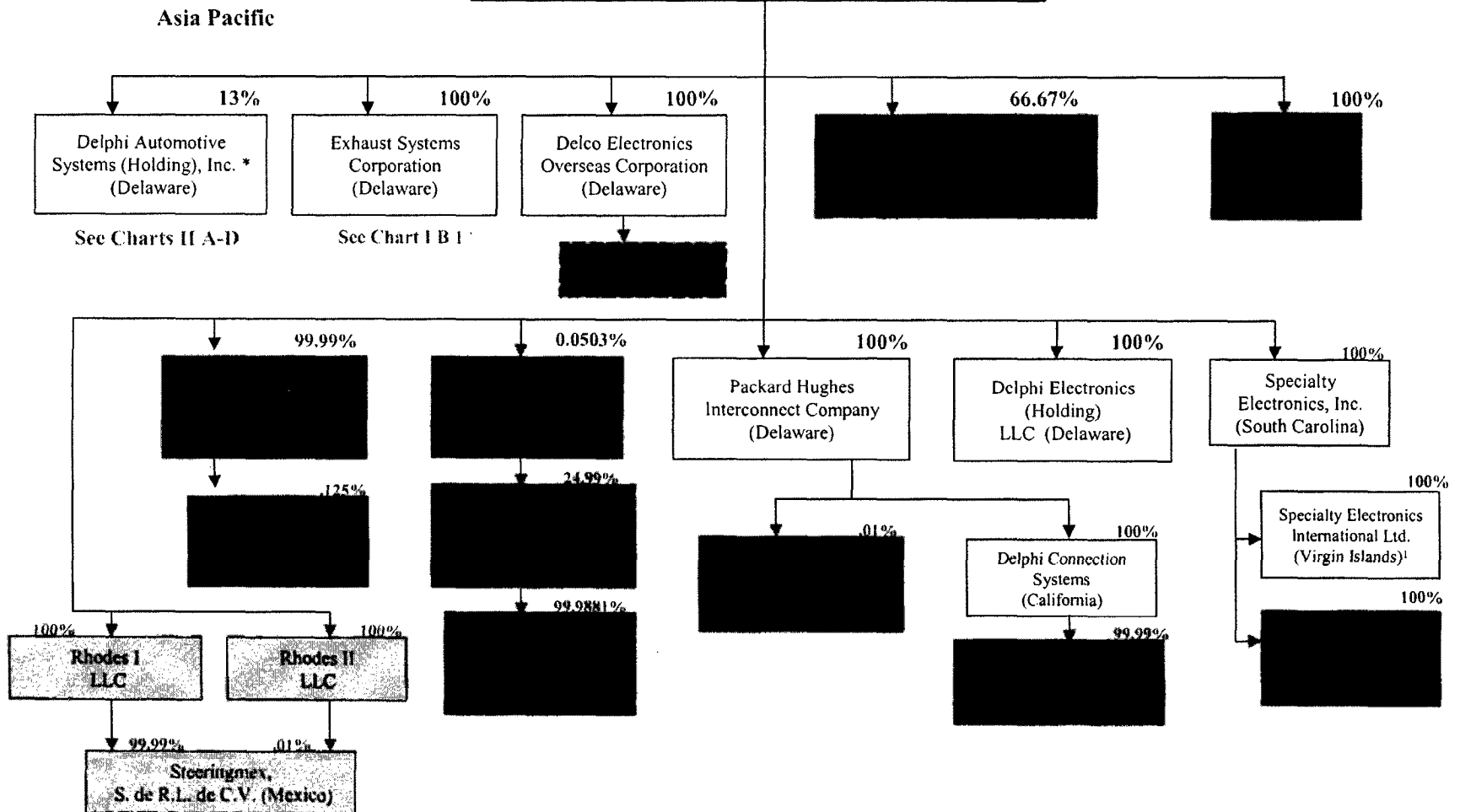
\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

Delphi Proprietary

Chart I B

Mexico, South America, Europe, UK,  
 N. America with overseas subsidiaries,  
 Asia Pacific

**Delphi Automotive Systems LLC  
 (Parent)**



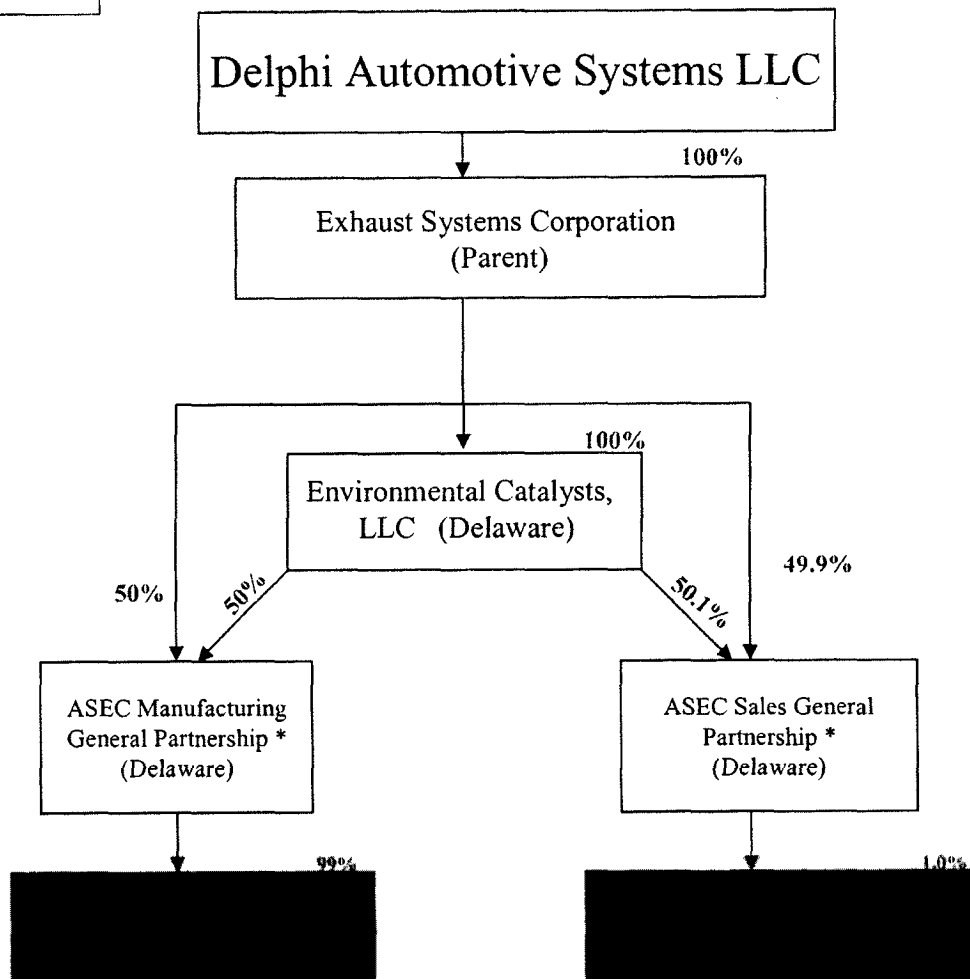
Delphi Salarted AR000066

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture  
<sup>1</sup> Assumed US

June 30, 2008

Delphi Proprietary

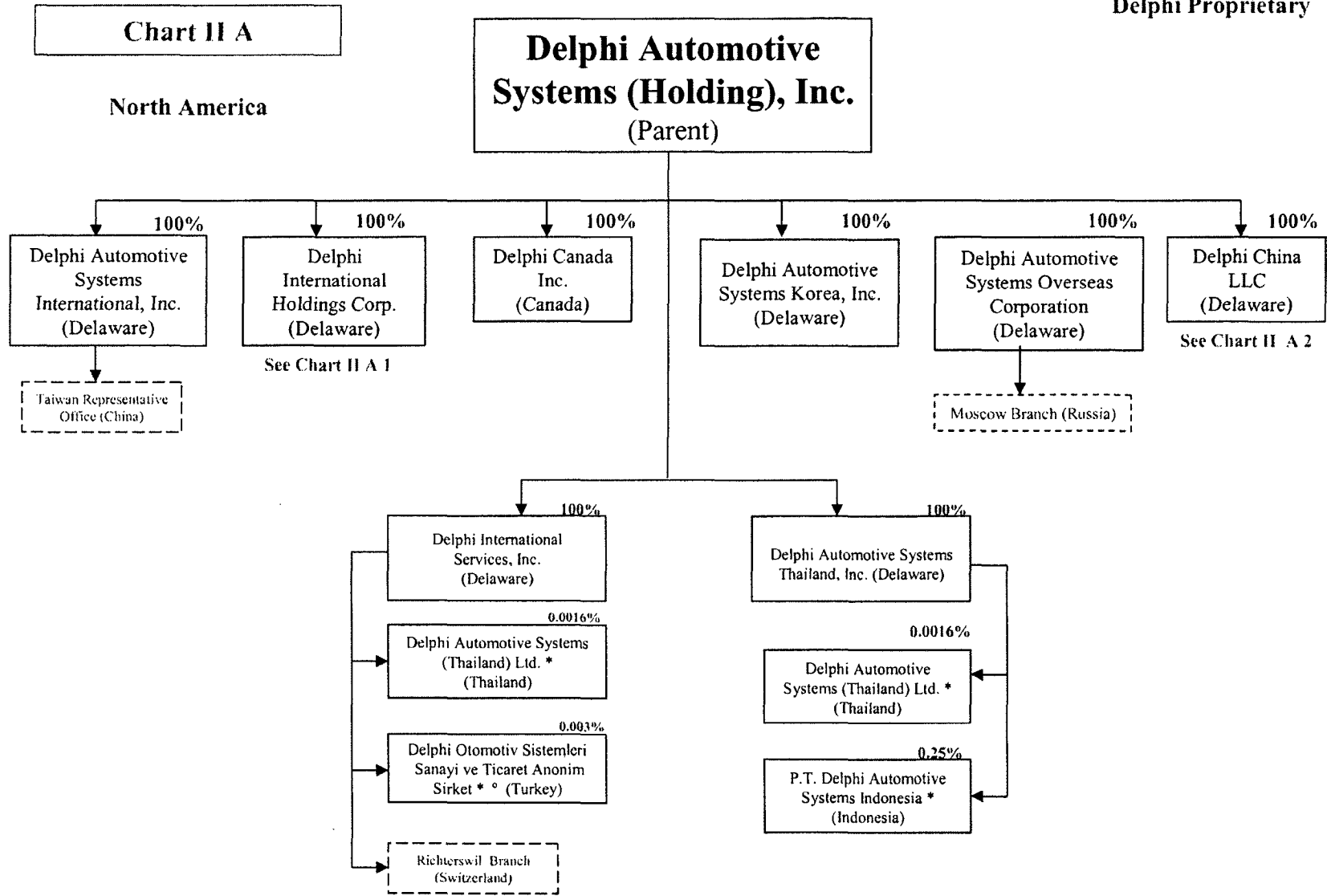
Chart I B 1



Delphi Salaried AR000067

\* Indicates Owned by more than one Delphi company  
° Indicates Joint Venture

Delphi Proprietary



Delphi Salaried AR000068

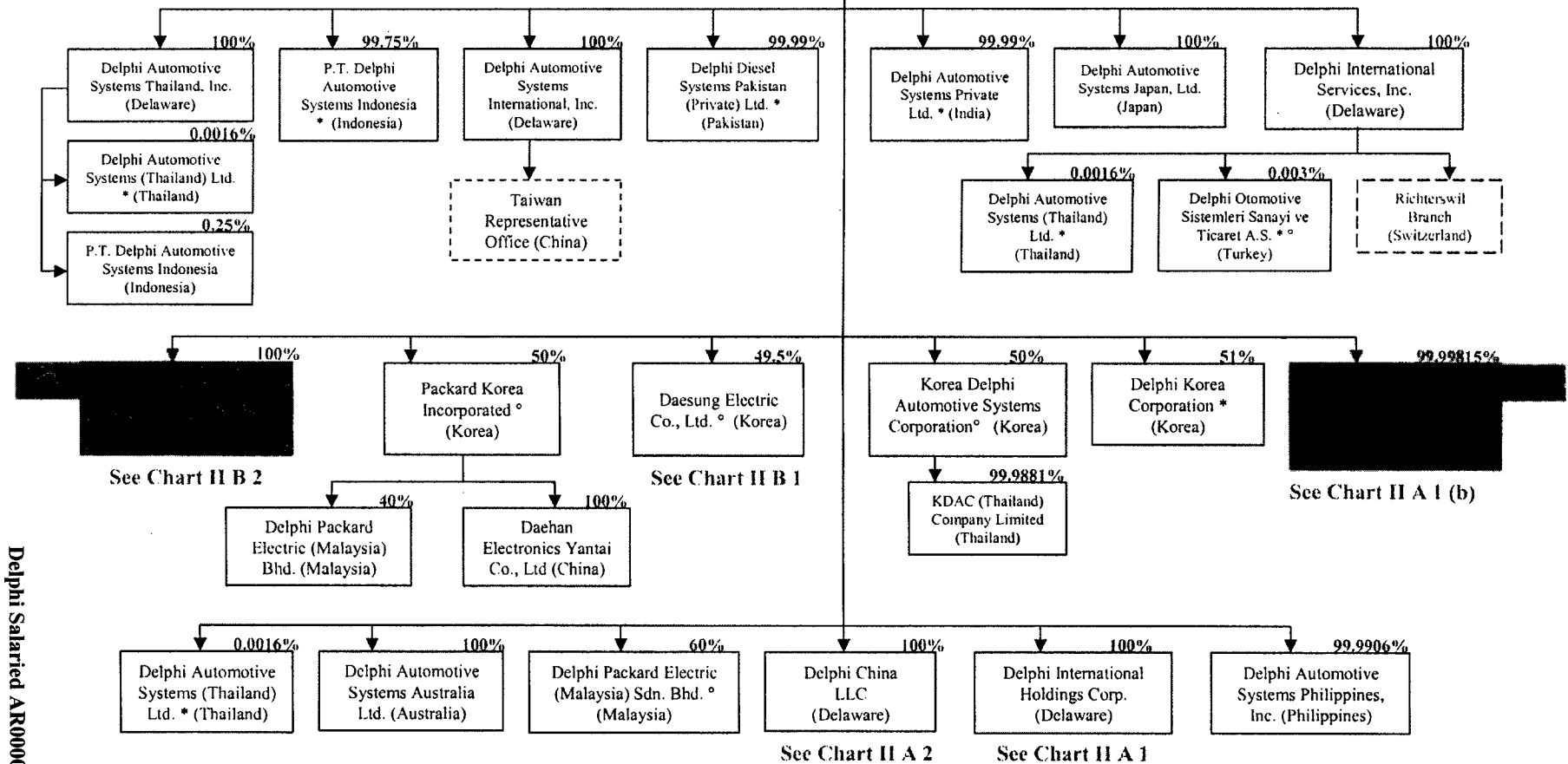
\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

Delphi Proprietary

Chart II B

Asia & Pacific

**Delphi Automotive Systems  
(Holding), Inc.  
(Parent)**



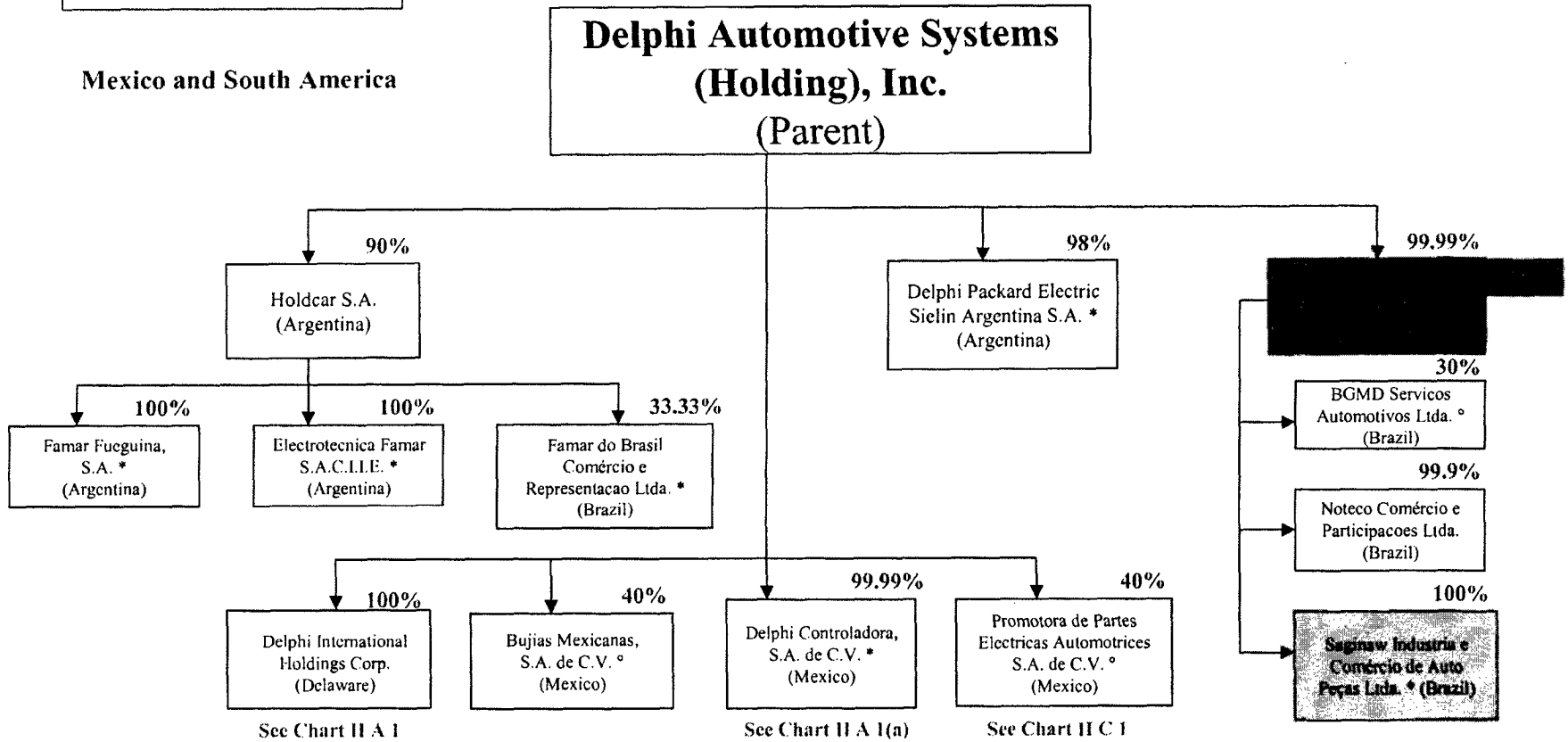
Delphi Sarinied AR000069

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

Delphi Proprietary

Chart II C

Mexico and South America



Delphi Salaried AR0000070

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

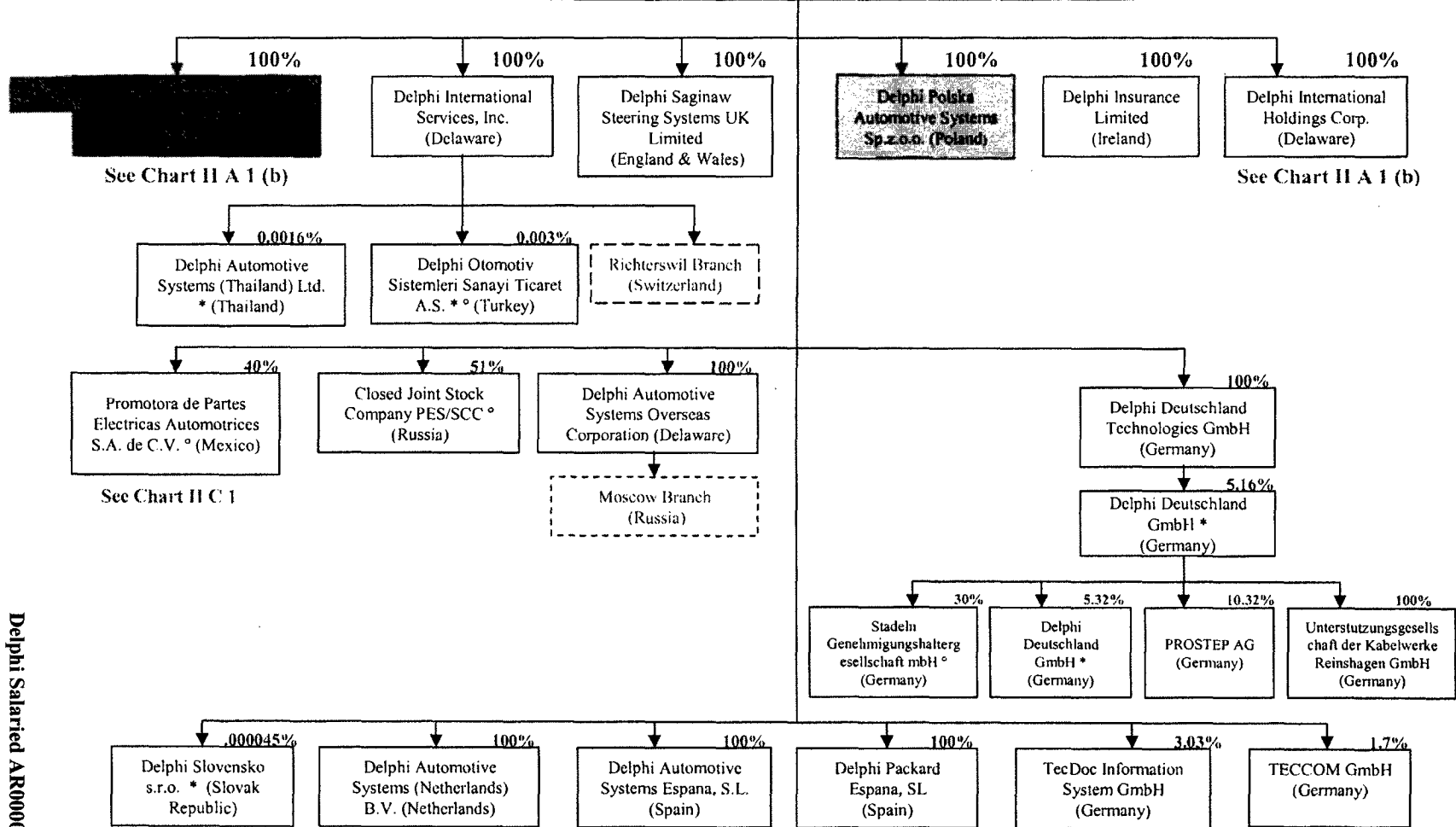


Delphi Proprietary

Chart II D

**Delphi Automotive Systems  
(Holding), Inc. (Parent)**

Europe



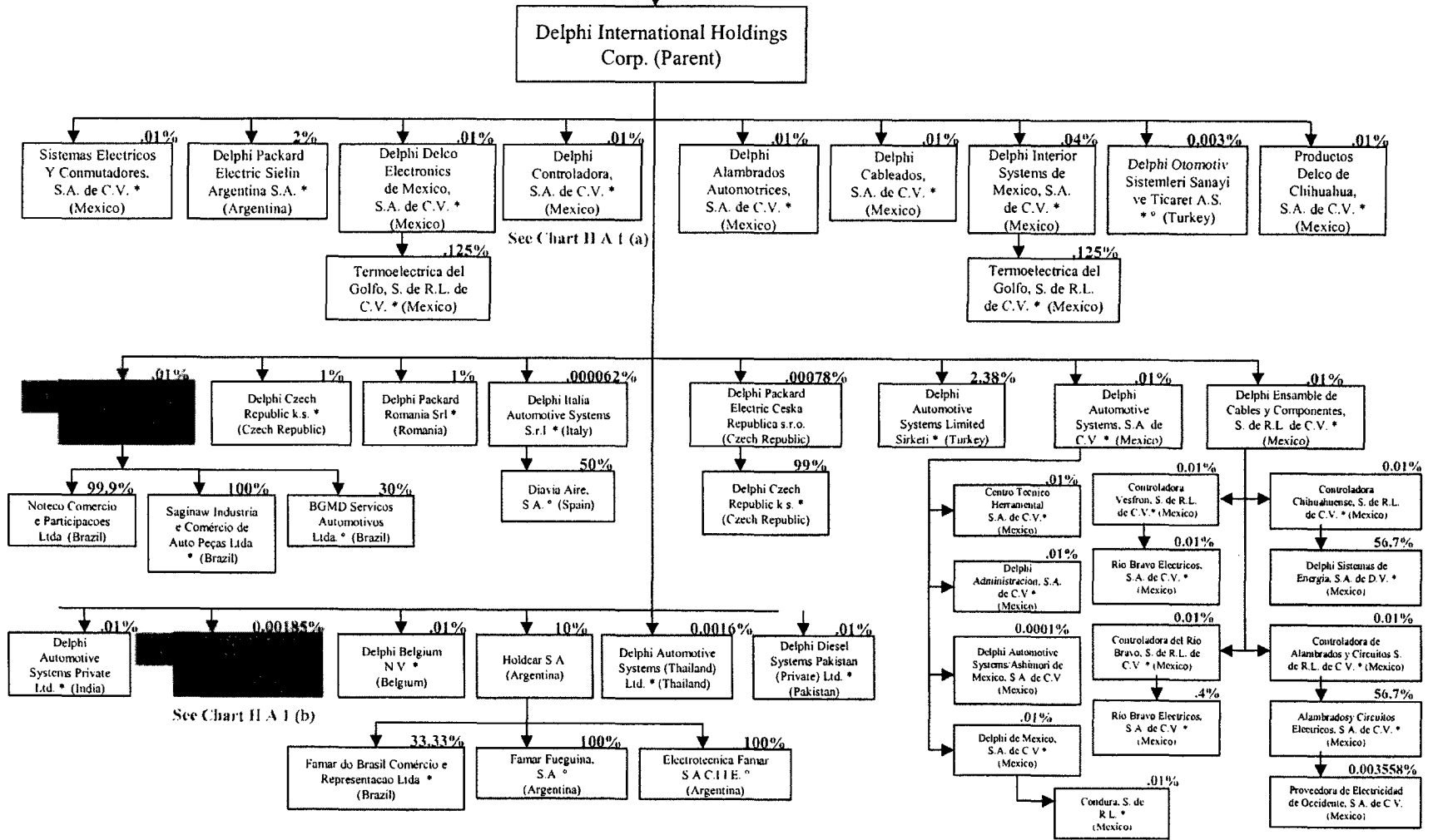
Delphi Salaried AR000071

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

Delphi Proprietary

Chart II A 1

**Delphi Automotive Systems (Holding), Inc.**



Delphi Salaried AR000072

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

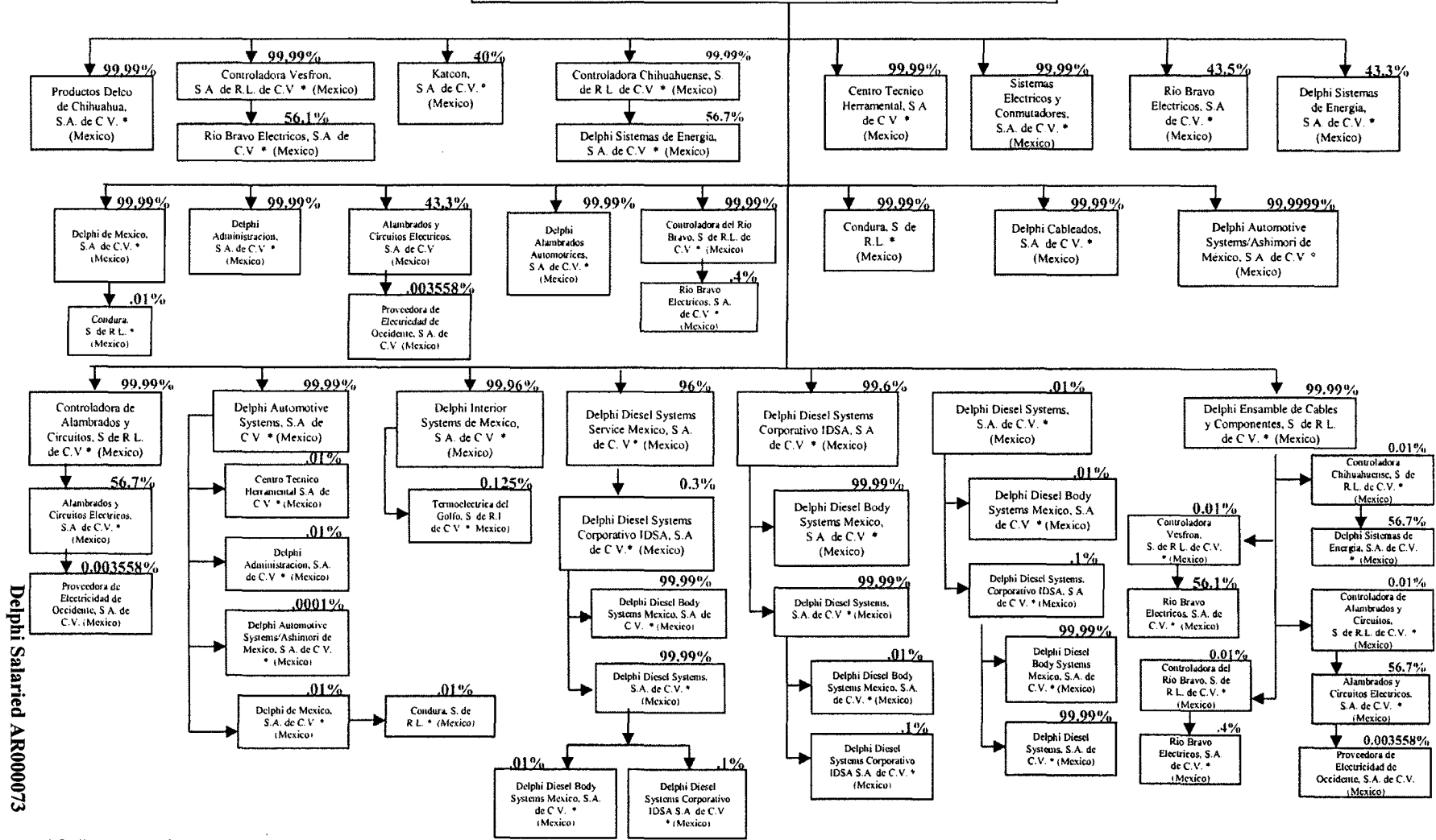
June 30, 2008

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Delphi Proprietary

Chart II A 1 (a)

**Delphi Controladora, S.A. de C.V.**



Delphi Salaried AR000073

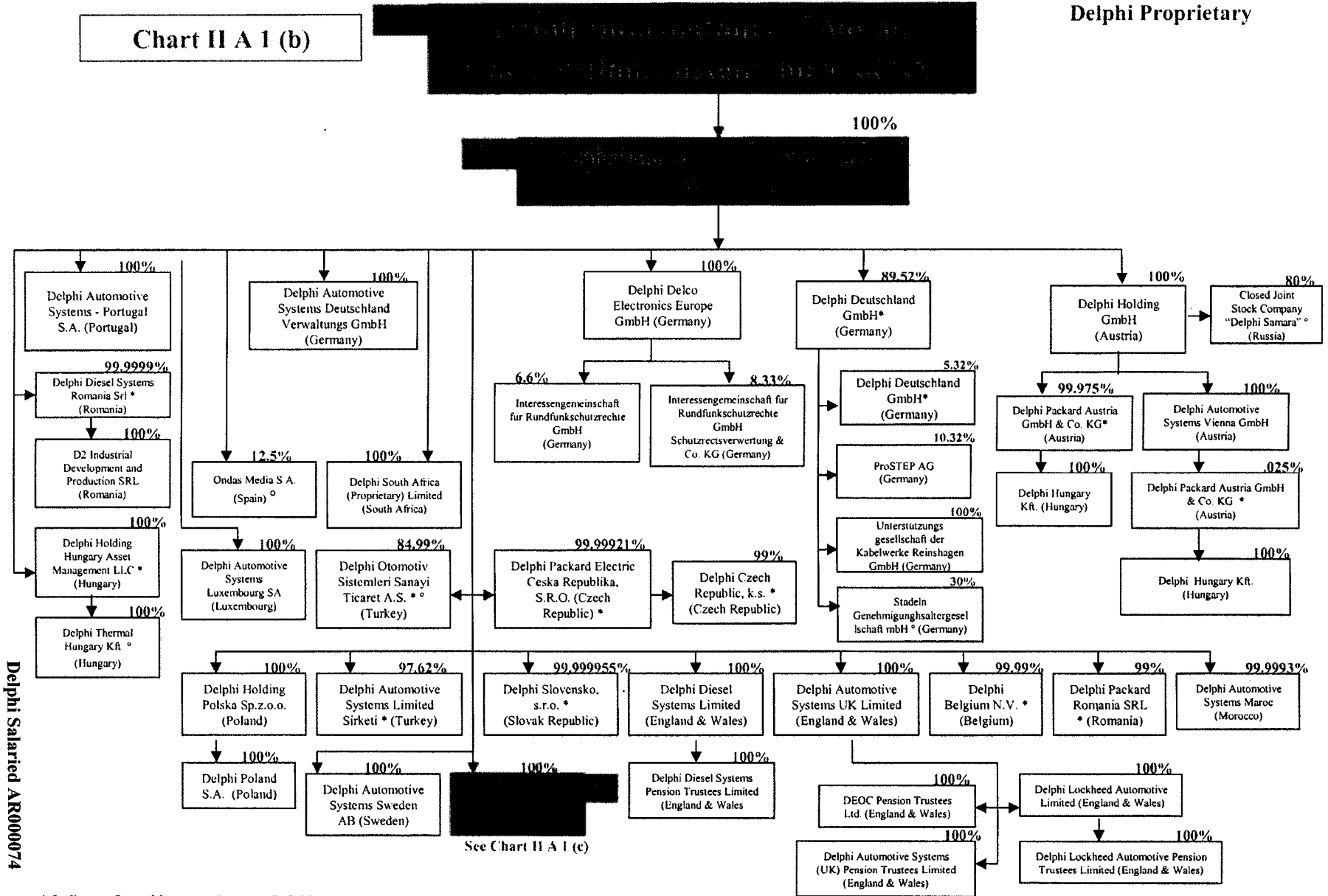
\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

June 30, 2008

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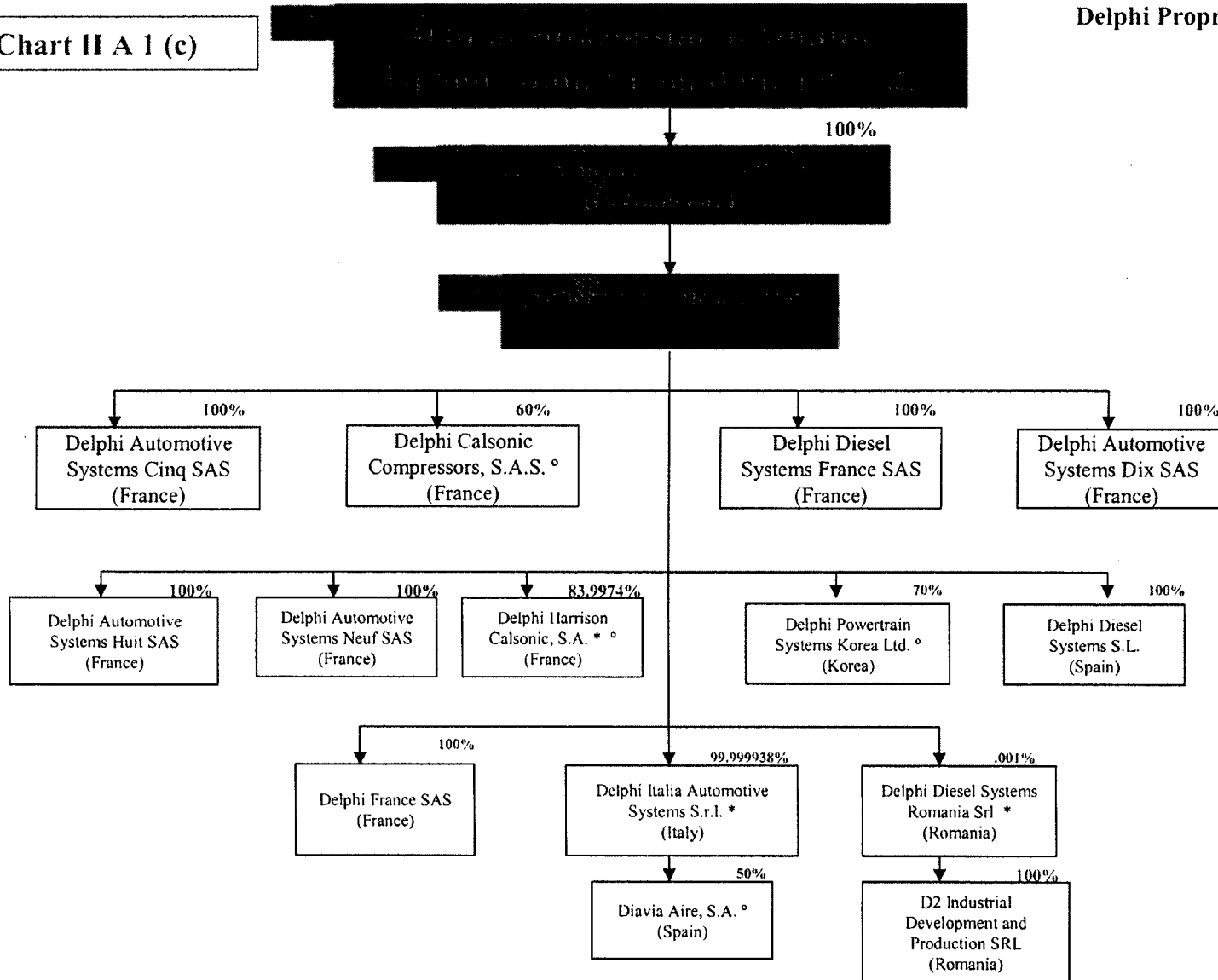
Delphi Proprietary

Chart II A 1 (b)



Delphi Proprietary

Chart II A 1 (c)



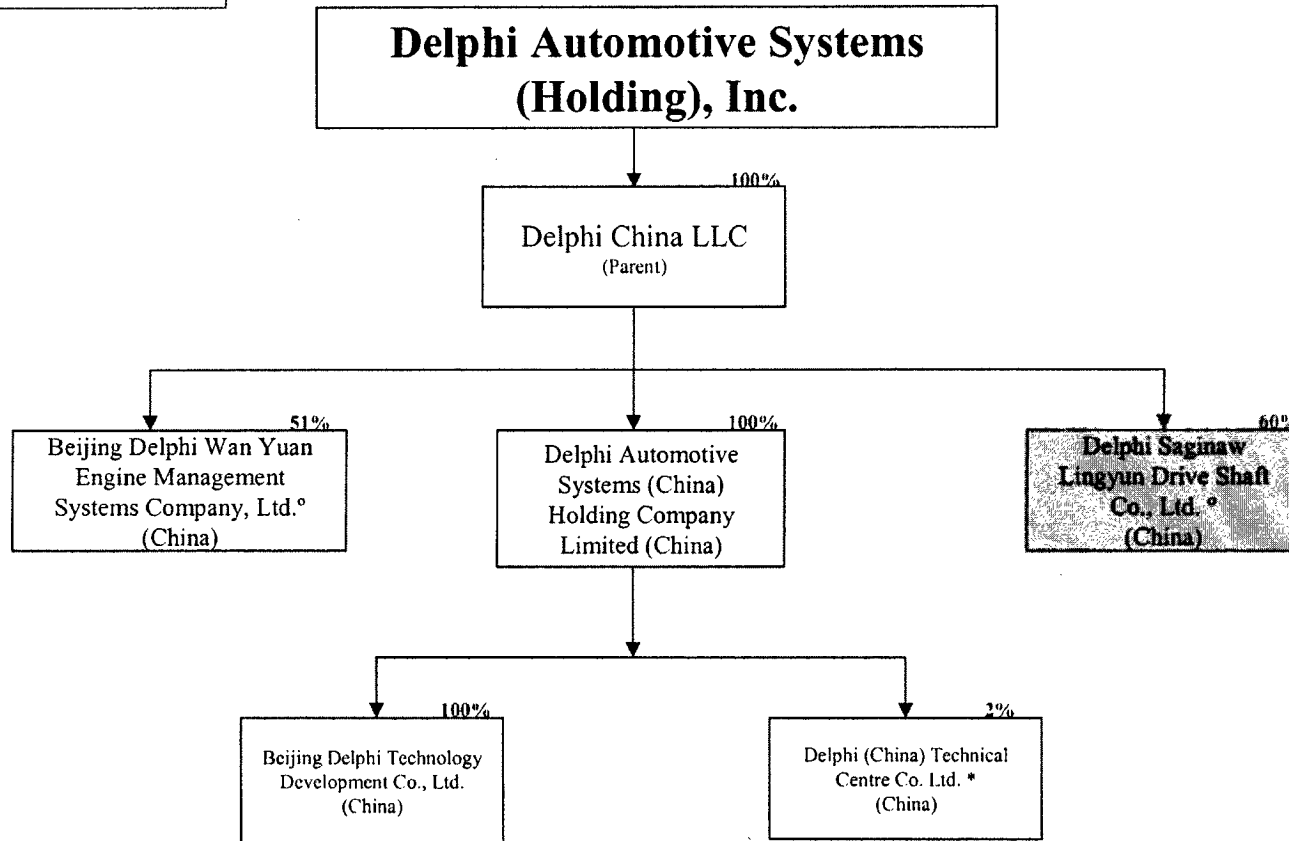
Delphi Salaried AR000075

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

June 30, 2008

Delphi Proprietary

Chart II A 2

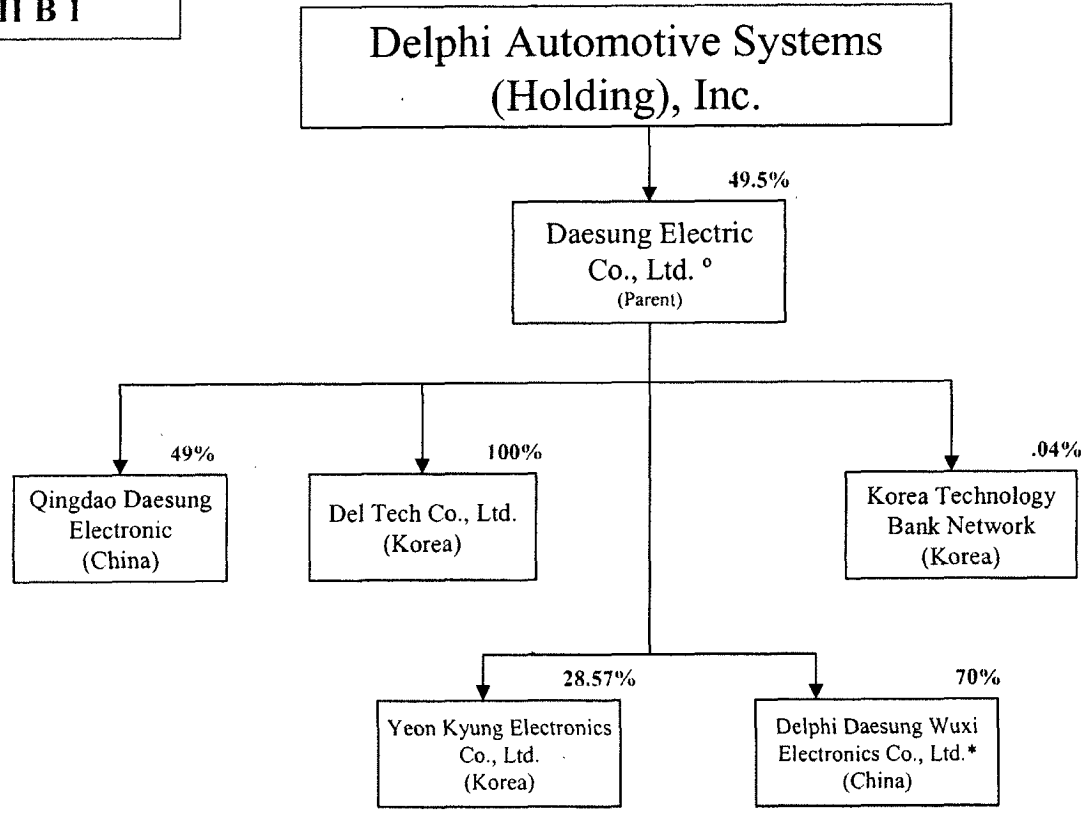


Delphi Sarlited AR000076

\* Indicates Owned by more than one Delphi company  
° Indicates Joint Venture

Delphi Proprietary

Chart II B I

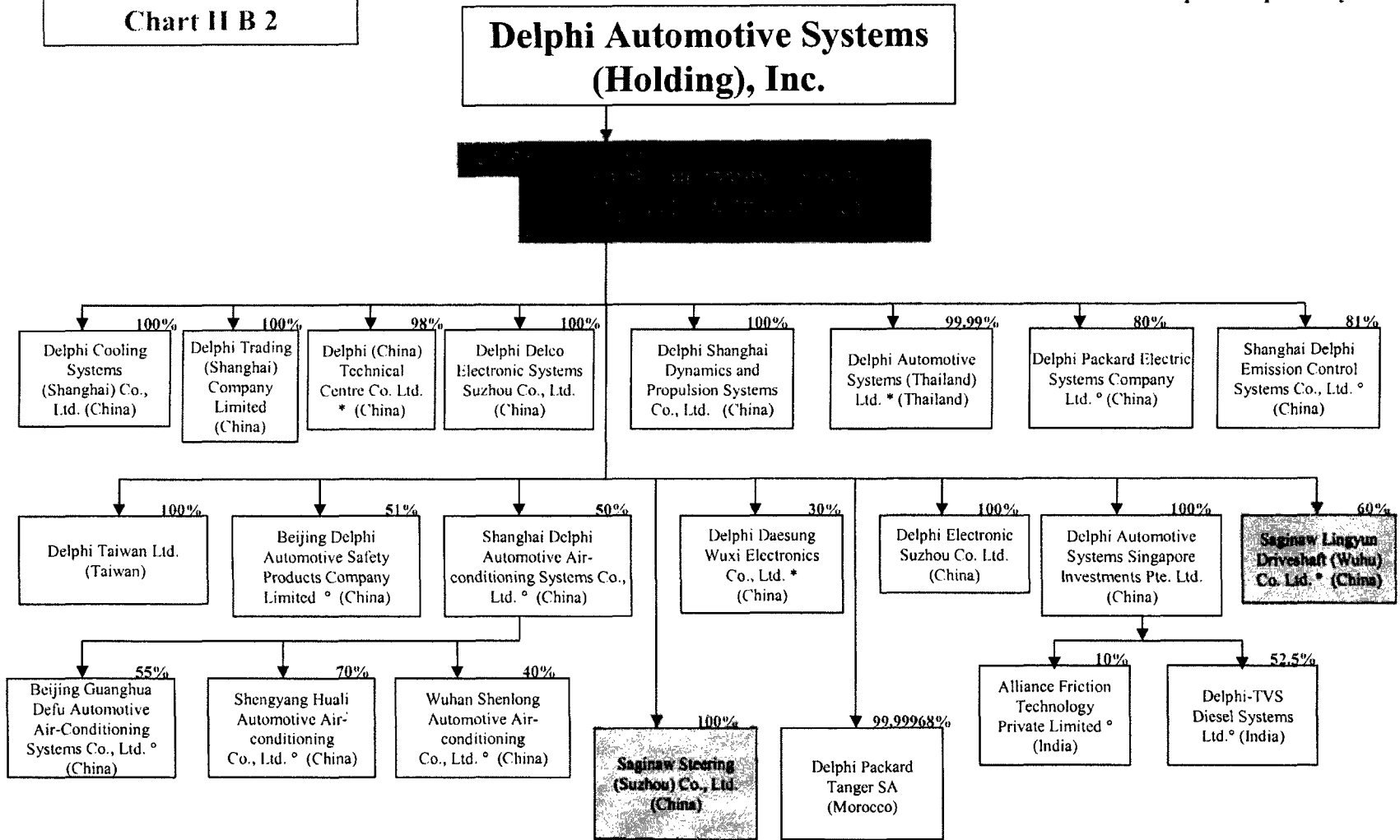


Delphi Salaried AR000077

\* Indicates Owned by more than one Delphi company  
° Indicates Joint Venture

Delphi Proprietary

Chart II B 2



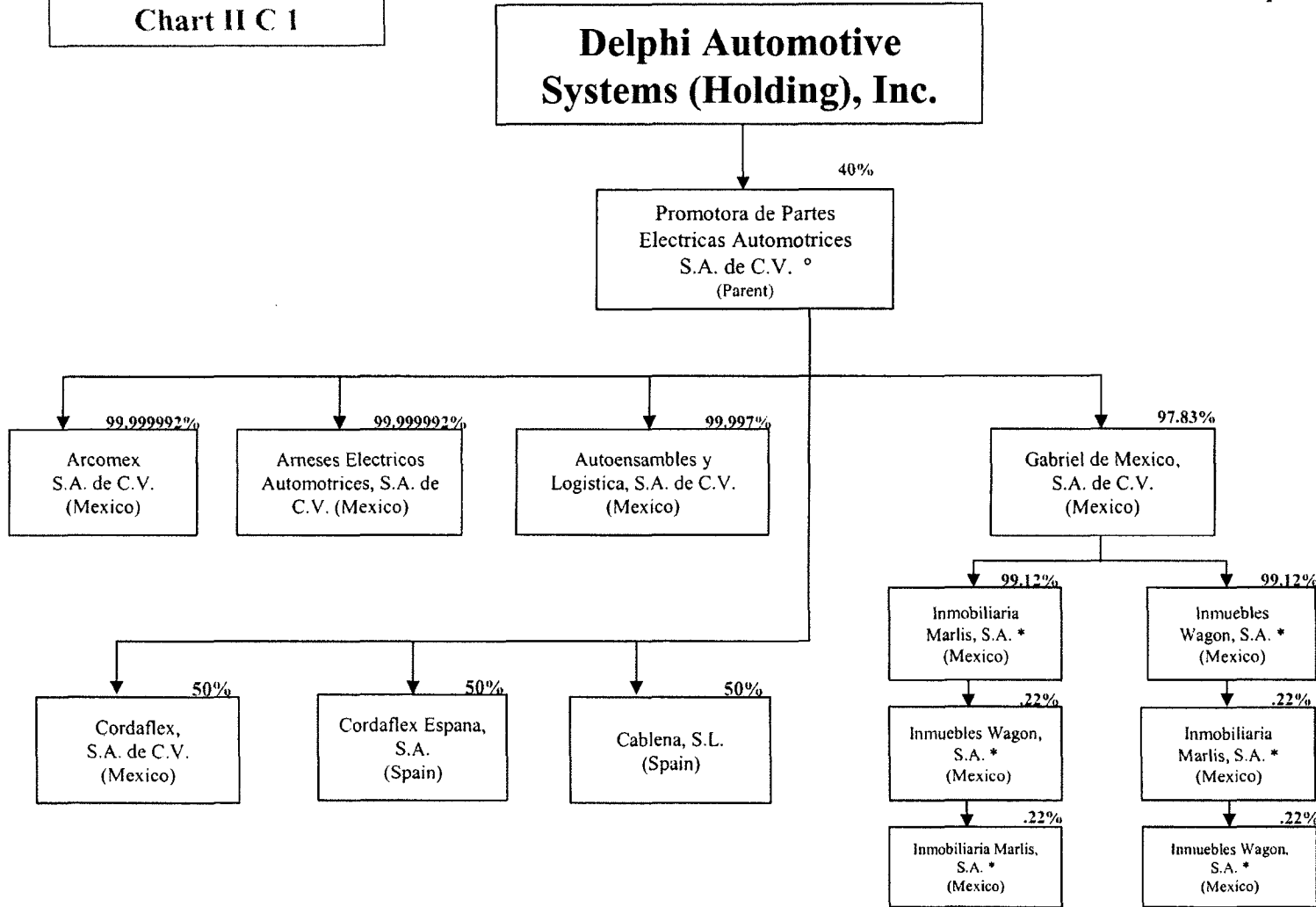
Delphi Salaried AR000078

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture



Delphi Proprietary

Chart II C 1



Delphi Sarafied AR000079

\* Indicates Owned by more than one Delphi company  
 ° Indicates Joint Venture

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Presentation to Pension Benefit Guaranty Corporation

# Discussion Materials

April 16, 2009

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Delphi Salaried AR0000080

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Delphi Salaried AR000081

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## Executive Summary

# Executive Summary

**In connection with its Delphi-related work for the PBGC, Greenhill has evaluated the relative value of Delphi and its foreign businesses**

- As a follow-up to our meeting on March 10, 2009, Greenhill has focused on further refining the valuation range for consolidated Delphi (“the Company”) and its foreign operations, with a focus on estimating the relative value of Delphi’s foreign businesses
  - We continue to rely on the interim January 2009 RPOR for Delphi’s projected revenue and EBITDAR since the updated business plan is not yet available
- To develop its views on value, Greenhill has:
  - Reviewed the financial performance of Delphi
  - Reviewed the financial projections prepared by the management of Delphi
  - Discussed with the management of Delphi both past and projected future financial performance
  - Participated in extensive due diligence meetings covering operational, financial, legal and tax issues impacting the Company
- Greenhill has conducted a variety of analyses to determine the standalone valuation of Delphi
- As a starting point, we first analyzed the broader auto supplier space to develop a set of comparables that met the following criteria:
  - Product diversification similar to Delphi
  - Geographic revenue mix with strong presence in both Europe and North America
  - Classified as a Tier I supplier
  - Currently trades on one of the major U.S. or foreign exchanges
- 9 companies meet the above criteria, all of which are U.S. – based, with the exception of 1 Canadian firm
- Given the distressed trading valuations across this sector, Greenhill has applied the following methodology to better reflect the observed enterprise value of each comparable company
  - For those companies with debt trading substantially below par, we have relied on the market value of debt as opposed to book value of debt as a better proxy for overall observed valuation
  - For the purposes of this presentation, we have assumed that all cash on the balance sheets of comparables represents excess cash. This assumption remains subject to further review

Delphi Salaried AR000082

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Delphi Salaried AR000084

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Valuation Summary

## Valuation Methodology

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**Greenhill relied primarily on the comparable company analysis to estimate the value of Delphi as a whole as well as its foreign businesses**

- Comparable company analysis
  - ▶ Greenhill identified comparable companies to Delphi and applied their market multiples to 2008, 2009E and 2010E metrics to calculate a standalone valuation of the Company and the foreign subsidiaries
  
- Precedent transaction analysis
  - ▶ Greenhill reviewed a range of industry transactions and applied these multiples on a LTM basis to derive a change-of-control valuation of the Company and the foreign subsidiaries
  
- Discounted cash flow analysis
  - ▶ Greenhill did not rely on a discounted cash flow approach due to the lack of reasonably current long-term projections for the Company

Delphi Salaried AR000085

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Valuation Summary

# Overview of Delphi's Comparables

## Comparison Across Businesses

(\$ in millions, except per share data)

Company	2008 Sales	2008 EBITDAR	EBITDAR Margin	Calendarized to Dec-31 Year-End					Comments
				% Revenue by Geography	N.A.	S.A.	Europe	Asia	
 <b>BorgWarner</b>	\$5,263.9	\$587.7	11.2%	28% <sup>(1)</sup>	0%	57%	5% <sup>(2)</sup>	9%	<ul style="list-style-type: none"> <li>▪ Supplier of powertrain applications to OEMs</li> <li>▪ Strong European presence</li> </ul>
 <b>FEDERAL MOGUL</b>	6,865.6	691.4	10.1%	44%	0%	46%	0%	10%	<ul style="list-style-type: none"> <li>▪ Supplier of powertrain, safety and other automotive components</li> <li>▪ Strong presence in North America and Europe</li> <li>▪ Geographic revenue mix in line with Delphi</li> </ul>
 <b>TRW Automotive</b>	14,995.0	1,055.0	7.0%	30%	0%	56%	9%	5%	<ul style="list-style-type: none"> <li>▪ Diversified automotive parts supplier, with a focus on safety-related products</li> <li>▪ Strong European presence</li> <li>▪ 70% of revenue is derived outside of North America</li> </ul>
 <b>MAGNA</b>	23,704.0	1,487.0	6.3%	59%	0%	38%	0%	3%	<ul style="list-style-type: none"> <li>▪ Diversified Canadian automotive parts supplier with GM and Chrysler as its largest customers</li> </ul>
 <b>LEAR CORPORATION</b>	13,570.5	718.1	5.3%	36%	0%	19% <sup>(3)</sup>	0%	46% <sup>(4)</sup>	<ul style="list-style-type: none"> <li>▪ Automotive seating and electrical systems supplier</li> <li>▪ Significant operations outside of North America</li> </ul>
 <b>TENNECO</b>	5,916.0	374.0	6.3%	44%	0%	47%	9%	0%	<ul style="list-style-type: none"> <li>▪ Supplier of ride control and emissions products</li> <li>▪ Geographic revenue mix in line with that of Delphi</li> <li>▪ Revenue split about equally between North America and Europe</li> </ul>
 <b>DANA</b>	8,095.0	236.0	2.9%	48%	14%	30%	8%	0%	<ul style="list-style-type: none"> <li>▪ Has similar business mix and geographic exposure as Delphi</li> </ul>
 <b>ArvinMeritor</b> <sup>(5)</sup>	6,874.0	308.0	4.5%	41%	0%	38%	21% <sup>(6)</sup>	0%	<ul style="list-style-type: none"> <li>▪ Primary business in line with Delphi's Powertrain segment</li> <li>▪ Geographic revenue mix in line with Delphi</li> </ul>
 <b>DELPHI</b>	20,933.0	378.0	1.8%	44%	6%	38%	12%	0%	<ul style="list-style-type: none"> <li>▪ Supplier of substantially all of GM's axle requirements</li> </ul>

Notes:

- (1) Represents United States
  - (2) Represents South Korea
  - (3) Represents Germany
  - (4) Other includes South America, Asia, Africa and Europe excluding Germany. Further breakdown not available per filings
  - (5) Revenue breakdown for geography as of FYE 9/30/08. Sales and EBITDAR shown LTM as of 12/31/08
  - (6) Represents Asia and Other
  - (7) Company filing combines Mexico and South America as a combined operation
  - (8) Company filing classifies European and Other as a combined operation
- Source: Delphi Overview Presentation Materials for Stakeholders, Delphi data room files. Company filings, CapitalIQ

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Greenhill










Valuation Summary

Overview of Delphi's Comparables

Relative Trading Performance

(\$ in millions, except per share data)

Calendarized to Dec-31 Year-End; Prices as of Apr-13-09

Company	Share Price 4/13/09	Equity Value	Enterprise Value	Book Value of Net Debt	Market Value of Net Debt	BV EV / EBITDAR			MV EV <sup>(1)</sup> / EBITDAR		
						2008	2009E	2010E	2008	2009E	2010E
 <b>BorgWarner</b>	\$25.75	\$2,982.5	\$3,727.7	\$713.7	\$646.3	6.3x	9.3x	6.3x	6.2x	9.2x	6.2x
 <b>FEDERAL MOGUL</b>	10.15	1,009.0	3,035.5	1,981.5	654.7	4.4x	5.3x	4.8x	2.5x	3.0x	2.7x
 <b>Ford Automotive</b>	6.49	658.4	2,951.4	2,156.0	122.6	2.8x	17.1x	4.8x	0.9x	5.3x	1.5x
 <b>MAGNA</b>	32.83	3,697.1	2,149.1	(1,548.0)	(1,603.0)	1.4x	5.9x	2.4x	1.4x	5.7x	2.3x
 <b>LEAR CORPORATION</b>	1.10	85.3	2,069.0	1,934.7	(703.1)	2.9x	7.6x	3.4x	n.m.	n.m.	n.m.
 <b>TENNECO</b>	2.50	117.3	1,473.3	1,325.0	461.8	3.9x	4.3x	3.6x	1.6x	1.8x	1.5x
 <b>DANA</b>	0.72	72.0	1,424.0 <sup>(2)</sup>	474.0	(466.8)	6.0x	15.8x	8.1x	n.m. <sup>(3)</sup>	n.m. <sup>(3)</sup>	n.m. <sup>(3)</sup>
 <b>ArvinMeritor</b>	1.15	85.1	1,356.1	1,215.0	295.7	4.4x	12.0x	8.2x	1.4x	3.9x	2.6x
	1.58	87.7	951.7	864.0	6.7	13.3x	4.9x	3.3x	1.3x	0.5x	0.3x
<b>Median</b>						<b>4.4x</b>	<b>7.6x</b>	<b>4.8x</b>	<b>1.4x</b>	<b>3.9x</b>	<b>2.3x</b>
<b>Mean</b>						<b>5.1x</b>	<b>9.1x</b>	<b>5.0x</b>	<b>2.2x</b>	<b>4.2x</b>	<b>2.4x</b>

Delphi Salaried AR000088

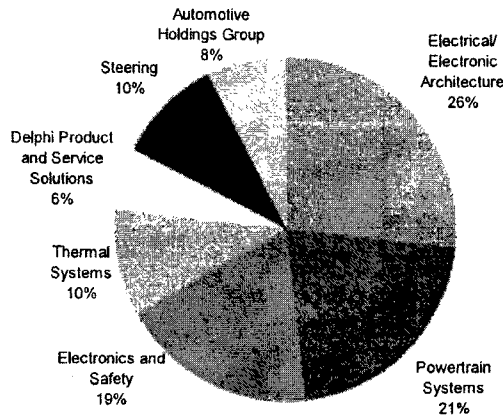
Note:  
 Includes only JPM and Deutsche Bank estimates to maintain consistency in methodology of calculating adjusted EBITDA (Federal-Mogul is not covered by either company. Estimates represent IBES consensus estimates. Dana Holding is not covered by Deutsche Bank.)  
 (1) Market value enterprise value represents market value of debt and equity less cash plus book value of minority interests and preferred stock  
 (2) Includes \$771mm of preferred stock  
 (3) Accounts for shares of Series A Preferred having an aggregate liquidation preference of not more than \$125mm  
 Source: JPMorgan and Deutsche Bank estimates, Company filings, FactSet IBES consensus estimates

**Valuation Summary**

**Delphi Corporation**

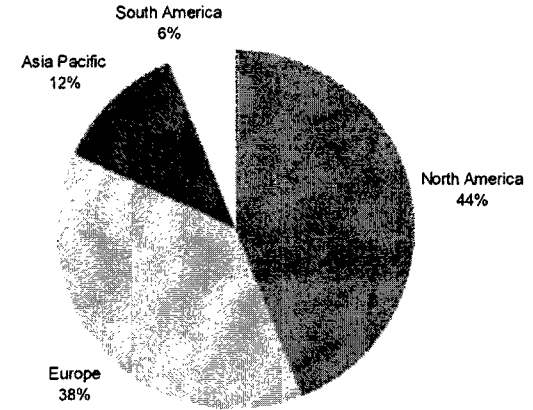
Delphi is a global supplier of transportation components, with almost half of its business from powertrain systems and vehicle electronics

**Revenue by Product<sup>(1)</sup>**



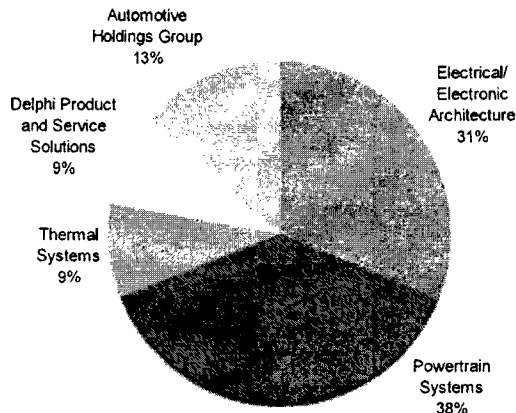
**FY 2008 Total: \$20,933mm**

**Revenue by Geographic Region<sup>(1)</sup>**



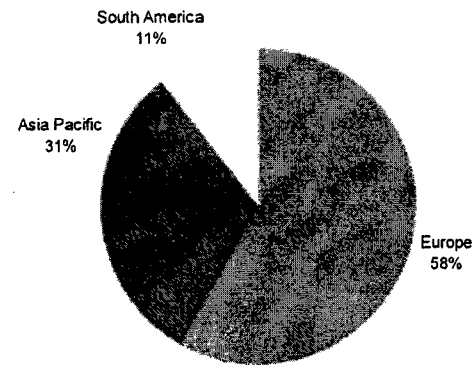
**FY 2008 Total: \$20,933mm**

**OIBDAR by Product<sup>(1) (2)</sup>**



**FY 2008 Total: \$378mm**

**OIBDAR by Geographic Region<sup>(1) (3)</sup>**



**FY 2008 Total: \$378mm**

Notes:  
 (1) Represents LTM revenue as of 12/31/08; revenue contribution excludes eliminations  
 (2) Steering and Electronics and Safety excluded from chart due to \$3mm and \$14mm in OIBDAR loss, respectively  
 (3) North America excluded from chart due to \$679mm OIBDAR loss  
 Source: Delphi Overview Presentation Materials for Stakeholders, Delphi data room files

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**Valuation Summary**

**Precedent Auto Supplier M&A Transactions**

Last Three Years

To Be Updated

*(\$ in millions)*

Date Announced	Target	Acquirer	Transaction Value	Implied EV/EBITDA
31-Jul-08	Amtek India Ltd.	Amtek Auto Ltd.	[\$404]	[2.7x]
23-Apr-08	Bosch Corp. (40.3% Remaining Stake)	Robert Bosch GmbH	[\$1,016]	[6.6x]
17-Mar-08	Beru (17.8% Remaining Stake)	BorgWarner Germany GmbH	[\$206]	[8.4x]
18-Jun-07	Federal-Mogul (43% Stake)	Carl C. Icahn	[\$775]	[9.4x]
15-Jan-07	Koninklijke Nedschroef Holding	Gilde Investment Management and Parcom Ventures	[\$363]	[6.0x]
13-Nov-06	Spectra Premium Industries	Fonds de Solidarité, Desjardins Capital Régional et Coopératif, Camada Group and Management	[\$115]	[6.6x]
18-Oct-06	Pacifica Group	Robert Bosch GMBH	[\$441]	[6.2x]
18-Oct-06	Componenta Doktas Dokumculuk Ticaret ve Sanayi (54.96% Stake)	Componenta Corp.	[\$159]	[10.7x]
31-Aug-06	Metaldyne Corp.	Asahi Tec Corporation	[\$1,189]	[8.6x]
Mean				[7.0x]
Median				[7.6x]

Delphi Salaried AR0000093

Greenhill

Note: Includes deal with a transaction value greater than \$100mm  
 Source: CapitalIQ

**Valuation Summary**

**Delphi Consolidated Valuation**

Precedent Transaction – LTM Multiples

To Be Updated

Based on precedent transactions, a multiple range of 3.0x to 6.0x is applied to Delphi's LTM EBITDAR of \$378 million and to its foreign business EBITDAR of \$561 million

**Implied Total Delphi Valuation - LTM EBITDAR Multiples**

<i>(US\$ in millions)</i>	<b>Low</b>	<b>Mid-point</b>	<b>High</b>
2008 EBITDAR Multiple Range	3.0x	4.5x	6.0x
2008 EBITDAR	\$378	\$378	\$378
<b>Implied Total Delphi Enterprise Value</b>	<b>\$1,134</b>	<b>\$1,701</b>	<b>\$2,268</b>

**Implied Foreign Valuation - LTM EBITDAR Multiples**

<i>(US\$ in millions)</i>	<b>Low</b>	<b>Mid-point</b>	<b>High</b>
2008 EBITDAR Multiple Range	3.0x	4.5x	6.0x
2008 EBITDAR	\$561	\$561	\$561
<b>Implied Rest of World Enterprise Value</b>	<b>\$1,683</b>	<b>\$2,525</b>	<b>\$3,366</b>

Delphi Salaried AR0000094



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Comparable Company Analysis

Comparable Company Trading Statistics

(\$ in millions, except per share data)

Company	Share Price 4/13/09	52-Wk High	Discount to 52-Wk High	Equity Value	Enterprise Value <sup>(1)</sup>		BV EV / EBITDA			MV EV / EBITDA			Long Term Growth
					Book Value	Market Value	2008	2009E	2010E	2008	2009E	2010E	
BorgWarner	\$25.75	\$55.28	(53.4%)	\$2,982.5	\$3,727.7	\$3,660.3	6.3x	9.3x	6.3x	6.2x	9.2x	6.2x	20.0%
Federal-Mogul	10.15	21.00	(51.7%)	1,009.0	3,035.5	1,708.6	4.4x	5.3x	4.8x	2.5x	3.0x	2.7x	n.a.
TRW Automotive	6.49	29.20	(77.8%)	658.4	2,951.4	918.0	2.8x	17.1x	4.8x	0.9x	5.3x	1.5x	n.a.
Magna International	32.83	79.02	(58.5%)	3,697.1	2,149.1	2,094.1	1.4x	5.9x	2.4x	1.4x	5.7x	2.3x	12.8%
Lear	1.10	31.50	(96.5%)	85.3	2,069.0	(568.8)	2.9x	7.6x	3.4x	n.m.	n.m.	n.m.	10.0%
Tenneco	2.50	27.57	(90.9%)	117.3	1,473.3	610.0	3.9x	4.3x	3.6x	1.6x	1.8x	1.5x	10.0%
Dana	0.72	12.25	(94.1%)	72.0	1,424.0	(162.8)	6.0x	15.8x	8.1x	n.m.	n.m.	n.m.	n.a.
ArvinMeritor	1.15	17.00	(93.2%)	85.1	1,356.1	436.7	4.4x	12.0x	8.2x	1.4x	3.9x	2.6x	12.0%
American Axle	1.58	22.75	(93.1%)	87.7	951.7	94.4	13.3x	4.9x	3.3x	1.3x	0.5x	0.3x	8.0%

Median							4.4x	7.6x	4.8x	1.4x	3.9x	2.3x	11.0%
Mean							5.1x	9.1x	5.0x	2.2x	4.2x	2.4x	12.1%

Delphi Salaried AR0000096

Note:  
 Includes only JPM and Deutsche Bank estimates to maintain consistency in methodology of calculating adjusted EBITDA (Federal-Mogul is not covered by either company. Estimates represent IBES consensus estimates)  
 EPS are projected to be negative for most of the comps. Therefore, P/E multiples are not meaningful  
 (1) Market value enterprise value represents market value of debt and equity less cash plus book value of minority interests and preferred stock  
 Source: JPMorgan and Deutsche Bank estimates, Company filings, FactSet IBES consensus estimates

Greenhill



Comparable Company Analysis

Comparable Company Operating Statistics

(\$ in millions)

Calendarized to Dec-31 Year-End; Prices as of Apr-13-09

Company	Equity Value	Enterprise Value <sup>(1)</sup>		Revenue Growth		EBITDA Growth		EBITDA Margin		Debt LTM EBITDA
		Book Value	Market Value	2009E	2010E	2009E	2010E	2009E	2010E	
BorgWarner	\$2,982.5	\$3,727.7	\$3,660.3	(21.3%)	17.1%	(31.9%)	48.8%	9.7%	12.3%	2.0x
Federal-Mogul	1,009.0	3,035.5	1,708.6	(20.1%)	5.8%	(15.4%)	10.5%	10.5%	11.0%	4.2x
TRW Automotive	658.4	2,951.4	918.0	(28.3%)	11.0%	n.m.	n.m.	1.6%	5.2%	3.6x
Magna International	3,697.1	2,149.1	2,094.1	(26.6%)	9.2%	(73.9%)	n.m.	2.1%	4.7%	0.8x
Lear	85.3	2,069.0	(568.8)	(25.5%)	16.2%	(62.0%)	n.m.	2.7%	5.2%	0.0x
Tenneco	117.3	1,473.3	610.0	(12.5%)	4.2%	(2.7%)	19.5%	6.6%	7.5%	3.9x
Dana	72.0	1,424.0	(162.8)	(29.9%)	3.5%	(61.9%)	n.m.	1.6%	3.0%	5.3x
ArvinMeritor	85.1	1,356.1	436.7	(30.0%)	19.7%	(61.3%)	46.1%	2.5%	3.1%	4.2x
American Axle	87.7	951.7	94.4	(13.3%)	22.1%	n.m.	49.4%	10.6%	12.9%	15.9x
<b>Median</b>				<b>(25.5%)</b>	<b>11.0%</b>	<b>(61.3%)</b>	<b>46.1%</b>	<b>2.7%</b>	<b>5.2%</b>	<b>3.9x</b>
<b>Mean</b>				<b>(23.0%)</b>	<b>12.1%</b>	<b>(44.2%)</b>	<b>34.9%</b>	<b>5.3%</b>	<b>7.2%</b>	<b>4.4x</b>

Note:  
 Includes only JPM and Deutsche Bank estimates to maintain consistency in methodology of calculating adjusted EBITDA (Federal-Mogul is not covered by either company. Estimates represent IBES consensus estimates)  
 EPS are projected to be negative for most of the comps. Therefore, P/E multiples are not meaningful  
 (1) Market value enterprise value represents market value of debt and equity less cash plus book value of minority interests and preferred stock  
 Source: JPMorgan and Deutsche Bank estimates, Company filings, FactSet IBES consensus estimates

Delphi Salaried AR000097

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**Comparable Company Analysis**

**BorgWarner, Inc.**

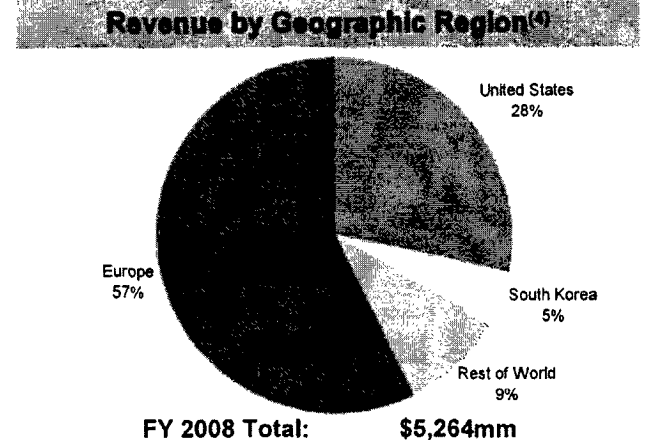
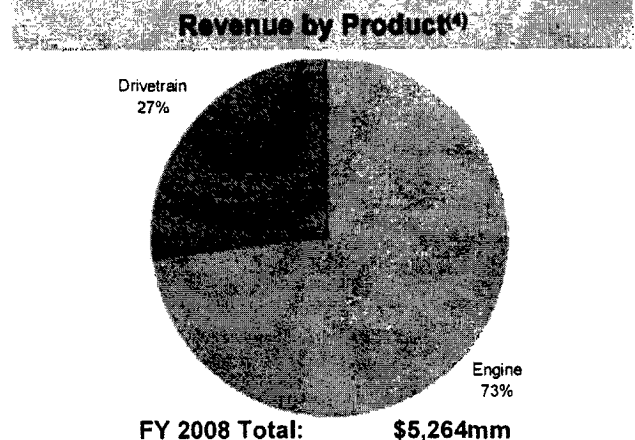
**BorgWarner primarily provides products for powertrain applications across Europe**

- Company Overview**
- BorgWarner, Inc. ("BorgWarner", the "Company") is a global supplier of highly engineered automotive systems and components, primarily for powertrain applications for OEMs of light-vehicles
  - The Company operates manufacturing facilities serving customers in the Americas, Europe and Asia
  - BorgWarner, Inc. operates in 2 segments:
    - Engine: develops products to manage engines for fuel efficiency, reduced emissions and enhanced performance
    - Drivetrain: produces clutching and control systems
  - BorgWarner's largest customer was Volkswagen, representing 19% of total 2008 sales
  - The Company is headquartered in Auburn Hills, Michigan and was incorporated in 1987

**Capital Structure**

(\$ in millions)

	Book Value 12/31/2008	Current Price	Market Value
<b>Loans</b>			
Bank Borrowings and Other	\$268.4 <sup>(1)</sup>	100% <sup>(2)</sup>	\$268.4
Term Loans due through 2015	66.0	100% <sup>(2)</sup>	66.0
<b>Total Loans</b>	<b>\$334.4</b>		<b>\$334.4</b>
<b>Notes and Other</b>			
5.75% Senior Notes due 2016	\$149.2	80%	\$119.7
8.00% Senior Notes due 2019	133.9	88%	118.0
7.125% Senior Notes due 2029	119.2	89%	106.2
3.50% Convertible Notes due 2012	373.8	109% <sup>(3)</sup>	408.3
Impact of Derivatives on Debt	43.6	n.a.	n.a.
<b>Total Notes and Other</b>	<b>\$819.7</b>		<b>\$752.3</b>
<b>Total Debt</b>	<b>\$1,154.1</b>		<b>\$1,086.7</b>
Cash <sup>(3)</sup>	440.4		440.4
<b>Net Debt</b>	<b>\$713.7</b>		<b>\$646.3</b>
<b>Market Capitalization</b>			<b>\$2,982.5</b>



Notes:  
 (1) Assumes 6.5% Notes due February 2009 were retired using funds from the revolving credit facility  
 (2) Assumes non-priced credit facility trades at at par  
 (3) On 4/9/09, BorgWarner completed the issuance of \$374mm of 3.5% Convertible Notes for estimated proceeds of \$362mm, \$25mm of which was used on hedge and warrant transactions. 12/31/08 cash has been adjusted by \$337mm accordingly  
 (4) Represents LTM revenue by product and by geography as of 12/31/08. Revenue contribution excludes intersegment eliminations  
 Source: Company filings, Bloomberg, Markit, CapitalIQ

Delphi Salaried AR0000098

Greenhill

**Comparable Company Analysis**

**Federal-Mogul Corporation**

**Federal-Mogul is a leading supplier of technology in vehicle and industrial products, primarily focused on North America and Europe**

**Company Overview**

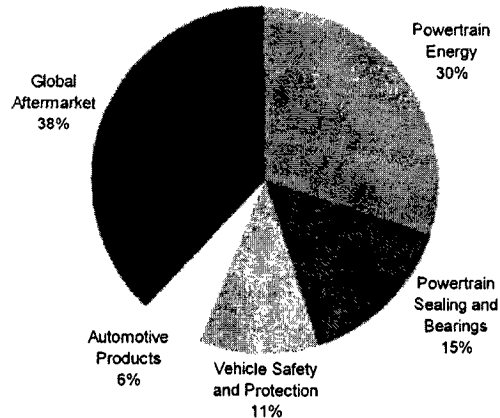
- Federal-Mogul Corporation ("Federal-Mogul", the "Company") is a leading global supplier of vehicular and industrial fuel economy, alternative energy, environment and safety systems products
- The Company serves automotive, light commercial, heavy-duty, industrial, agricultural, aerospace, marine, rail and off-road vehicle OEMs, as well as the worldwide aftermarket
- The Company operates through 6 segments; Powertrain Energy, Powertrain Sealing and Bearings, Vehicle Safety and Protection, Automotive Products, Global Aftermarket and Corporate
- The Company filed for bankruptcy on October 1, 2001 and emerged from bankruptcy on December 27, 2007
- Federal-Mogul Corporation is headquartered in Southfield, Michigan

**Capital Structure**

(\$ in millions)

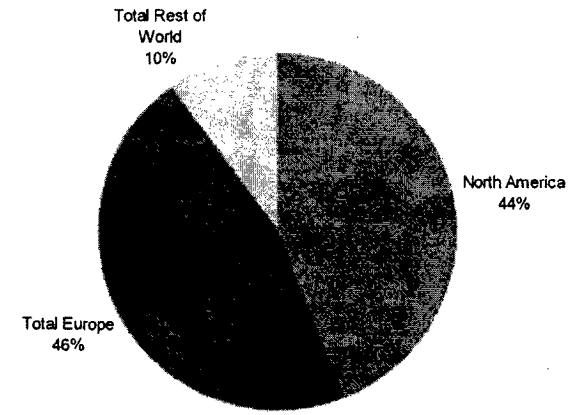
	Book Value Liquidity	Debt Value	Market Value
<b>Loans</b>			
Tranche B Term Loan	\$1,940.4	51%	\$994.5
Tranche C Term Loan	990.0	51%	507.4
Debt Discount	(\$140.8)	n.a.	n.a.
<b>Total Loans</b>	<b>\$2,789.6</b>		<b>\$1,501.8</b>
<b>Other Debt</b>	<b>\$80.1</b>	51% <sup>(1)</sup>	<b>\$41.1</b>
<b>Total Debt</b>	<b>\$2,869.7</b>		<b>\$1,542.9</b>
Cash	888.2		888.2
<b>Net Debt</b>	<b>\$1,981.5</b>		<b>\$654.7</b>
<b>Market Capitalization</b>			<b>\$1,009.0</b>

**Revenue by Product<sup>(2)</sup>**



**FY 2008 Total: \$6,866mm**

**Revenue by Geographic Region<sup>(2)</sup>**



**FY 2008 Total: \$6,866mm**

Notes:  
 (1) Assumes Other Debt trades at average price of Term Loans  
 (2) Represents LTM revenue as of 12/31/08  
 Source: Company filings, Bloomberg, Markit, CapitalIQ

Delphi Salaried AR0000099

Greenhill

**Comparable Company Analysis**

**TRW Automotive Holdings Corporation**

TRW Automotive is one of the world's largest and most diversified suppliers of automotive systems to global OEMs and related aftermarkets

**Company Overview**

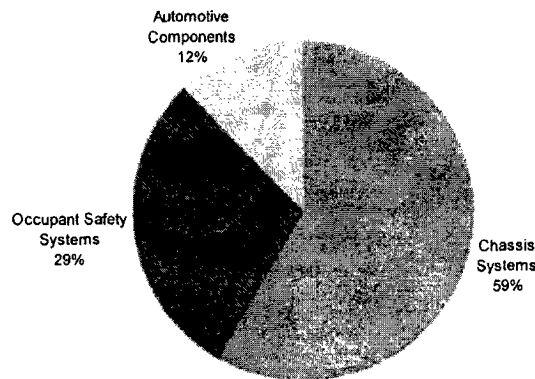
- TRW Automotive Holdings Corporation ("TRW", the "Company") is a global supplier of automotive systems, with a focus on safety-related products
- The Company operates in 3 segments:
  - Chassis Systems: Steering, braking, linkage and suspension products
  - Occupant Safety Systems: Air bags, seat belts, safety electronics, steering wheels and security electronic systems
  - Automotive Components: Engine valves, body controls and engineered fasteners and components
- As of December 31, 2008, the Company had approximately 65,200 employees operating in 26 countries
- Chrysler, Ford and GM are some of TRW's largest customers
- The Company was founded in 1904 and is based in Livonia, Michigan

**Capital Structure**

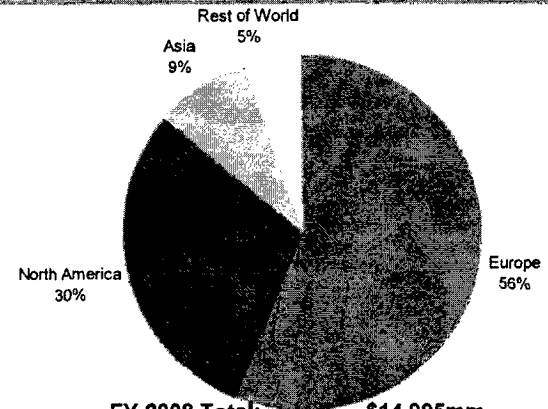
(\$ in millions)

	Book Value 12/31/2008	Current Price	Market Value
<b>Loans</b>			
Term Loan A	\$593.0	45%	\$265.4
Term Loan B	500.0	56%	281.9
Revolver	1,100.0 <sup>(1)</sup>	60%	660.0
<b>Total Loans</b>	<b>\$2,193.0</b>		<b>\$1,207.2</b>
<b>Notes and Other</b>			
7% Senior Notes due 2014	\$500.0	41%	\$206.9
6 3/8% Senior Notes due 2014	371.0	25%	92.8
7.25% Senior Notes due 2017	600.0	40%	242.3
Capital Leases	47.0	n.a. <sup>(2)</sup>	n.a.
Other Borrowings	45.0	36% <sup>(2)</sup>	16.0
Short-Term Debt	66.0	36% <sup>(2)</sup>	23.5
<b>Total Notes and Other</b>	<b>\$1,629.0</b>		<b>\$681.4</b>
<b>Total Debt</b>	<b>\$3,822.0</b>		<b>\$1,788.6</b>
Cash and ST Investments	1,666.0 <sup>(1)</sup>		1,666.0
<b>Net Debt</b>	<b>\$2,156.0</b>		<b>\$122.6</b>
<b>Market Capitalization</b>			<b>\$658.4</b>

**Revenue by Product<sup>(3)</sup>**



**Revenue by Geographic Region<sup>(3)</sup>**



Notes: **FY 2008 Total: \$14,995mm**  
 (1) TRW outstanding Revolver balance increased from \$200mm at 12/31/08 to \$1.1bn on 2/13/09. Assumes Revolver and cash both increased by \$900mm  
 (2) Assumes other borrowings and short-term debt trade at the average price of TRW's Senior Notes  
 (3) Represents LTM revenue by product and by geography as of 12/31/08  
 Source: Company filings, Bloomberg, Markit, CapitalIQ

Delphi Salaried AR000100

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**Comparable Company Analysis**

**Magna International Inc.**

**Magna International provides technologically advanced systems and components primarily to car and light truck OEMs in North America and Europe**

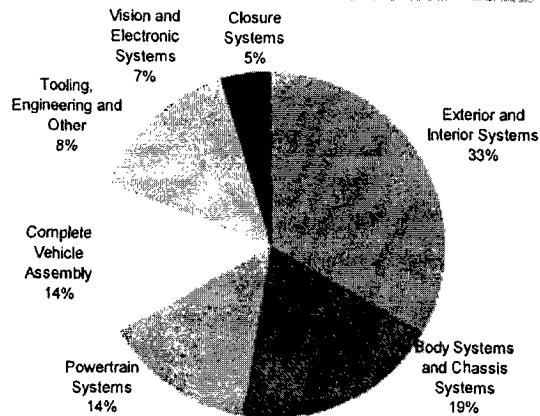
**Company Overview**

- Magna International ("Magna", the "Company") is a global automotive supplier focused on providing technologically advanced automotive systems, assemblies, modules and components and engineering and assembling complete vehicles, primarily for sale to OEMs of cars and light trucks
- Key products include automotive interior systems, seating systems, closure systems, body and chassis systems, vision systems, electronic systems, exterior systems, powertrain systems, roof systems as well as complete vehicle engineering and assembly
- As of December 31, 2008, the Company had 240 manufacturing divisions and 86 product development, engineering and sales centers in 25 countries
- GM and Chrysler are the Company's largest North American customers
- The Company was founded in 1957 and is based in Ontario, Canada

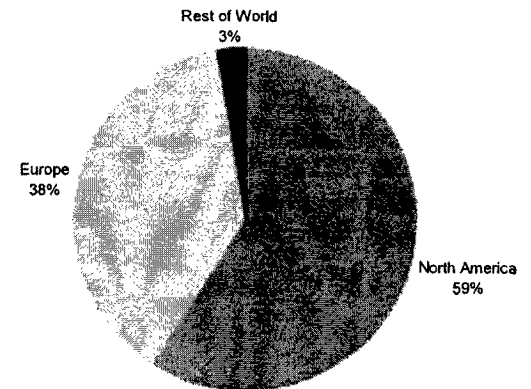
**Capital Structure**

(\$ in millions)	Book Value 12/31/2008	Current Price	Market Value
<b>Loans</b>			
Bank Debt	\$909.0	100% <sup>(1)</sup>	\$909.0
Government Loans	25.0	100% <sup>(1)</sup>	25.0
<b>Total Loans</b>	<b>\$934.0</b>		<b>\$934.0</b>
<b>Notes and Other</b>			
7.08% Subordinated Debentures (EUR denominated)	\$139.0	80% <sup>(1)</sup>	\$111.2
6.5% Convertible Debentures (CAD denominated)	83.0	80% <sup>(1)</sup>	66.4
Other	53.0	80% <sup>(1)</sup>	42.4
<b>Total Notes and Other</b>	<b>\$275.0</b>		<b>\$220.0</b>
<b>Total Debt</b>	<b>\$1,209.0</b>		<b>\$1,154.0</b>
Cash	2,757.0		2,757.0
<b>Net Debt</b>	<b>(\$1,548.0)</b>		<b>(\$1,603.0)</b>
<b>Market Capitalization</b>			<b>\$3,697.1</b>

**Revenue by Product<sup>(2)</sup>**



**Revenue by Geographic Region<sup>(2)</sup>**



Note: **FY 2008 Total: \$23,704mm**

(1) Assumes non-priced bank debt trades at par and notes and other trade at 80%

(2) Represents LTM revenue as of 12/31/08; Geographic breakdown excludes revenue from Complete Vehicle Assembly and Tooling, Engineering and Other

Source: Company filings, Bloomberg, Markit, CapitalIQ

**FY 2008 Total: \$23,704mm**

Delphi Salaried AR000101

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**Comparable Company Analysis**

**Lear Corporation**

Lear is a global Tier 1 supplier with a #2 market share in automotive seat systems

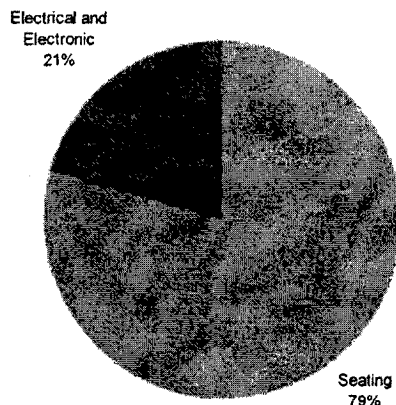
**Company Overview**

- Lear Corporation ("Lear", the "Company") is a global Tier I supplier of automotive seat systems, electrical distribution systems and electronic products
- As of December 31, 2008, the Company had 210 facilities, including 169 manufacturing facilities and assembly sites, 32 administrative/technical support facilities, 6 advanced technology centers and 3 distribution centers, in 36 countries
- The Company believes that, on a market share basis, it has the #2 position in automotive seats and #3 and #4 positions in North American and European electrical distribution systems, respectively
- The Company is headquartered in Southfield, Michigan and was incorporated in 1987

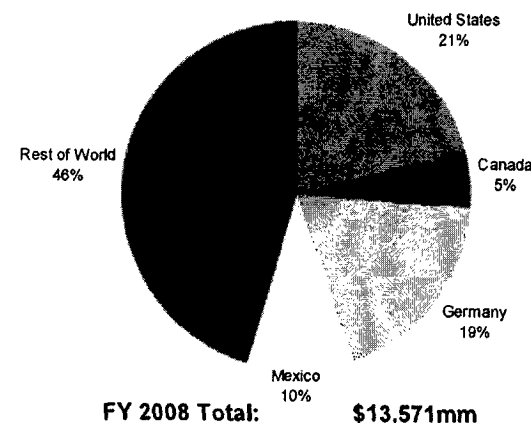
**Capital Structure**

	Book Value 12/31/2008	Current Price	Market Value
<i>(\$ in millions)</i>			
<b>Loans</b>			
Revolver	\$1,192.0	22%	\$262.2
Term Loan	965.0	37%	366.5
WC Lines of Credit	42.5	22% <sup>(1)</sup>	9.4
<b>Total Loans</b>	<b>\$2,219.5</b>		<b>\$638.1</b>
<b>Notes and Other</b>			
8.50% Senior Notes due 2013	\$298.0	19%	\$55.5
8.75% Senior Notes due 2016	589.3	18%	107.5
5.75% Senior Notes due 2014	399.5	21%	83.9
Zero Coupon Convertible Notes	0.8	19% <sup>(2)</sup>	0.2
Other	19.7	19% <sup>(2)</sup>	3.8
<b>Total Notes and Other</b>	<b>\$1,307.3</b>		<b>\$250.9</b>
<b>Total Debt</b>	<b>\$3,526.8</b>		<b>\$889.0</b>
Cash and ST Investments	1,592.1		1,592.1
<b>Net Debt</b>	<b>\$1,934.7</b>		<b>(\$703.1)</b>
<b>Market Capitalization</b>			<b>\$85.3</b>

**Revenue by Product<sup>(3)</sup>**



**Revenue by Geographic Region<sup>(3)</sup>**



Notes **FY 2008 Total: \$13,571mm**  
 (1) Assumes WC Lines of Credit trade at the same price as the Revolver  
 (2) Assumes non-priced debt trades at average price of Senior Notes  
 (3) Represents LTM revenue by product and by geography as of 12/31/08  
 Source: Company filings, Bloomberg, Markit, CapitalIQ

Delphi Salaried AR000102

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**Comparable Company Analysis**

**Tenneco Inc.**

Tenneco is one of the world's largest producers of automotive emission control and ride control products and systems, serving both OEMs and the aftermarket worldwide

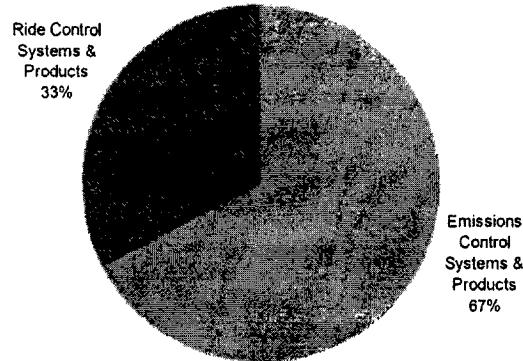
**Company Overview**

- Tenneco Inc. ("Tenneco", the "Company") is the largest global producer of automotive emission control and ride control products and systems
- As of December 31, 2008, Tenneco Inc. had approximately 21,000 employees at the following facilities:
  - Walker Brand: Operates 11 and 41 manufacturing facilities in and outside the U.S. respectively, and 5 engineering and technical facilities worldwide
  - Monroe Brand: Operates 8 and 23 manufacturing facilities in and outside the U.S. respectively, 7 engineering and technical facilities worldwide and shares 2 other such facilities with Walker
- Tenneco serves major OEMs, including GM, Chrysler and Ford
- The Company is incorporated in 1996 and is headquartered in Lake Forest, Illinois

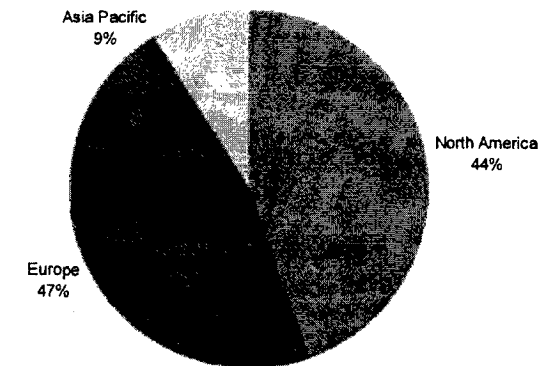
**Capital Structure**

	Book Value (\$ in millions)	Current Pay	Market Value
<b>Loans</b>			
Revolver	\$239.0	63%	\$150.6
Senior Term Loans due 2012	150.0	50%	75.0
<b>Total Loans</b>	<b>\$389.0</b>		<b>\$225.6</b>
<b>Notes and Other</b>			
10 1/4% Senior Secured Notes due 2013	\$250.0	55%	\$137.5
8.625% Senior Sub Notes due 2014	500.0	25%	126.9
8 1/8% Senior Notes due 2015	250.0	30%	75.0
Debentures due 2012-25	1.0	37% <sup>(1)</sup>	0.4
Notes due 09 - 17	17.0	37% <sup>(1)</sup>	6.3
Notes Payable	44.0	37% <sup>(1)</sup>	16.2
<b>Total Notes and Other</b>	<b>\$1,062.0</b>		<b>\$362.2</b>
<b>Total Debt</b>	<b>\$1,451.0</b>		<b>\$587.8</b>
Cash	126.0		126.0
<b>Net Debt</b>	<b>\$1,325.0</b>		<b>\$461.8</b>
<b>Market Capitalization</b>			<b>\$117.3</b>

**Revenue by Product<sup>(2)</sup>**



**Revenue by Geographic Region<sup>(2)</sup>**



Notes: **FY 2008 Total: \$5,916mm**  
 (1) Assumes non-priced debt trades at average of Senior Notes  
 (2) Represents LTM revenue by product and by geography as of 12/31/08  
 Source: Company filings, Bloomberg, Markit, CapitalIQ

Delphi Salaried AR000103

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**Comparable Company Analysis**

**Dana Holding Corporation**

Dana Holding is a diversified supplier serving the light vehicle, commercial and off-highway markets

The Company emerged from bankruptcy on January 31, 2008

**Company Overview**

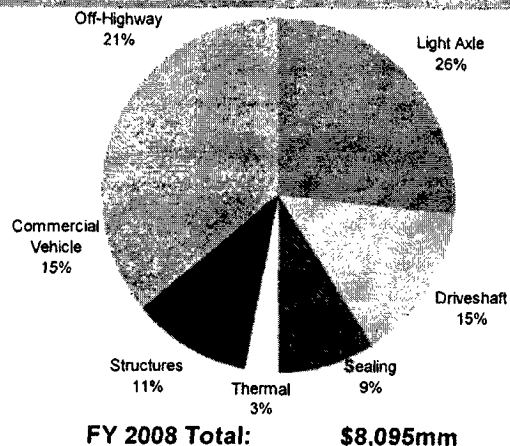
- Dana Holding Corporation ("Dana", the "Company") is a leading supplier of axle, driveshaft, structural, sealing and thermal management products for global vehicle manufacturers
- As of December 31, 2008, the Company employed approximately 29,000 people in 26 countries and operated 113 major facilities throughout the world
- The Company operates through 5 product-based and 2 market-based segments, with Ford, GM and Toyota among its largest customers
- Dana and its 42 wholly-owned subsidiaries filed for Chapter 11 Bankruptcy on March 3, 2006
  - Dana Holding Corporation emerged from bankruptcy on January 31, 2008
- The Company is headquartered in Toledo, Ohio

**Capital Structure**

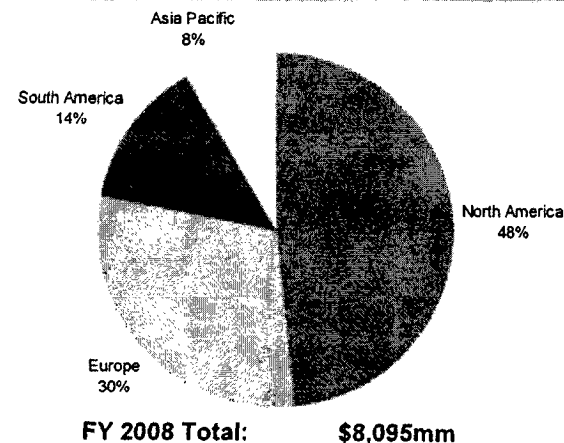
(\$ in millions)

	Book Value 12/31/2008	Current Price	Market Value
<b>Loans</b>			
Term Loan	\$1,266.0	25%	\$310.2
Discount on Term Loan	(\$87.0)	n.a.	n.a.
<b>Total Loans</b>	<b>\$1,179.0</b>		<b>\$310.2</b>
<b>Notes and Other</b>			
5.92% Nonrecourse Notes	\$6.0	n.a.	n.a.
Other	66.0	n.a.	n.a.
<b>Total Notes and Other</b>	<b>\$72.0</b>		<b>\$0.0</b>
<b>Total Debt</b>	<b>\$1,251.0</b>		<b>\$310.2</b>
Cash	777.0		777.0
<b>Net Debt</b>	<b>\$474.0</b>		<b>(\$466.8)</b>
<b>Market Capitalization</b>			<b>\$72.0</b>

**Revenue by Product<sup>(1)</sup>**



**Revenue by Geographic Region<sup>(1)</sup>**



Notes:  
 (1) Represents revenue for 12 months ended 12/31/08  
 Source: Company filings, Bloomberg, Markit, CapitalIQ

Delphi Salaried AR000104

Greenhill



**Comparable Company Analysis**

**ArvinMeritor, Inc.**

**ArvinMeritor is a global supplier of modules and components, primarily serving commercial truck OEMs**

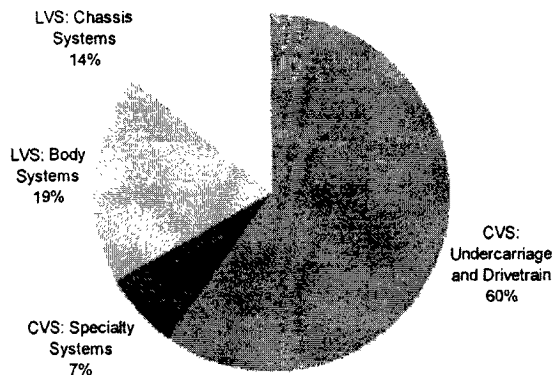
**Company Overview**

- ArvinMeritor, Inc. ("ArvinMeritor", the "Company") is a global supplier of a broad range of integrated systems, modules and components serving commercial truck, light vehicle, trailer and specialty original equipment manufacturers and certain aftermarket
- As of September 30, 2008, the Company operated 82 manufacturing facilities in 22 countries around the world
- The Company operates in 2 segments:
  - Commercial Vehicle Systems ("CVS"): Drivetrain and ride control products for medium and heavy-duty trucks
  - Light Vehicle Systems ("LVS"): Body systems, chassis and wheels for passenger vehicles
- The Company's largest customer is Volvo, which represented 14% of total sales in 2008
- ArvinMeritor was incorporated in Indiana in 2000 in connection with the merger of Meritor Automotive, Inc. and Arvin Industries, Inc.

**Capital Structure**

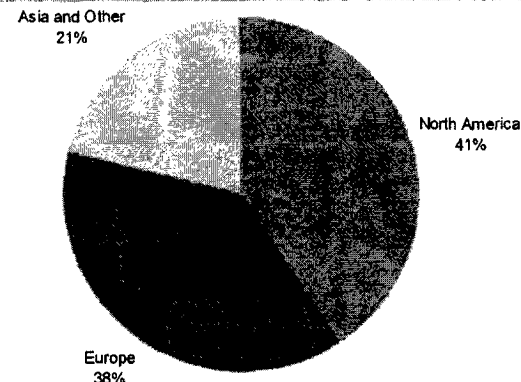
	Book Value 12/31/2008	Capital Price	Market Value
<i>(\$ in millions)</i>			
<b>Loans</b>			
Revolving Credit Facility	\$103.0	50%	\$51.5
Lines of Credit and Other	45.0	50% <sup>(1)</sup>	22.5
<b>Total Loans</b>	<b>\$148.0</b>		<b>\$74.0</b>
<b>Notes and Other</b>			
Accounts Receivable Securitization	\$93.0	50% <sup>(1)</sup>	\$46.5
8 3/4% Notes due 2012	276.0	32%	87.1
8 1/8% Notes due 2015	251.0	28%	70.3
4 5/8% Convertible Notes due 2026	300.0	21%	61.5
4.0% Convertible Notes due 2027	200.0	19%	37.3
Unamortized Gain on Swap Unwind	28.0	n.a.	n.a.
<b>Total Notes and Other</b>	<b>\$1,148.0</b>		<b>\$302.7</b>
<b>Total Debt</b>	<b>\$1,296.0</b>		<b>\$376.7</b>
Cash <sup>(2)</sup>	81.0		81.0
<b>Net Debt</b>	<b>\$1,215.0</b>		<b>\$295.7</b>
<b>Market Capitalization</b>			<b>\$85.1</b>

**Revenue by Product<sup>(3)</sup>**



**FY 2008 Total: \$7,167mm**

**Revenue by Geographic Region<sup>(3)</sup>**



**FY 2008 Total: \$7,167mm**

Notes:  
 (1) Assumes secured debt is priced in line with the Revolving Credit Facility  
 (2) Assumes 7 1/8% Notes were repaid using funds from the previously established trust and 6.8% Notes were repaid using cash on hand  
 (3) Represents LTM revenue as of FYE 9/30/08  
 Source: Company filings, Bloomberg, Markit, CapitalIQ

Delphi Salaried AR000105

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**Comparable Company Analysis**

**American Axle & Manufacturing Holdings, Inc.**

American Axle is a principal supplier of driveline components to GM

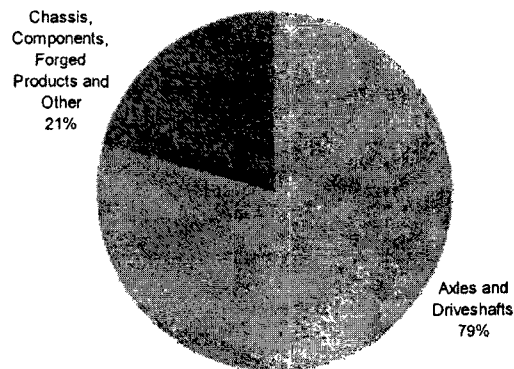
**Company Overview**

- American Axle & Manufacturing Holdings, Inc. ("American Axle", the "Company") is the principal supplier of driveline components to General Motors Corporation ("GM") for its rear-wheel drive light trucks and SUVs manufactured in North America
- The Company supplies substantially all of GM's rear axle and front four-wheel drive and all-wheel drive axle requirements for these vehicle platforms, with sales to GM representing 74% of 2008 sales
- The Company was formed out of GM in 1994 and is headquartered in Detroit, Michigan

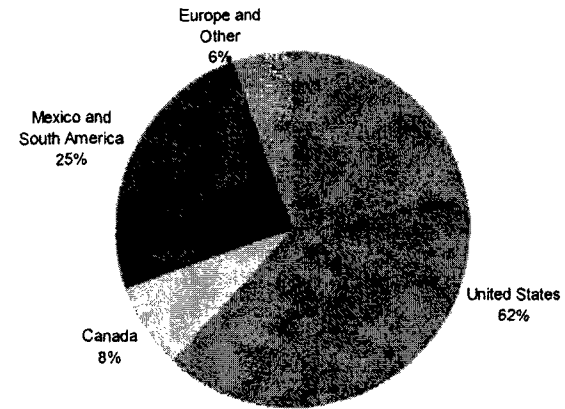
**Capital Structure**

	Balance Sheet Value 12/31/08	Percent of Total	Market Value
<i>(\$ in millions)</i>			
<b>Loans</b>			
Revolver	\$295.0	26%	\$76.7
Term Loan due 2012	250.0	31%	77.0
Foreign Credit Facilities	36.9	41% <sup>(1)</sup>	15.1
<b>Total Loans</b>	<b>\$581.9</b>		<b>\$168.8</b>
<b>Notes and Other</b>			
7.875% Notes	\$300.0	20%	\$60.0
5.25% Notes	249.8	22%	53.7
2% Convertible Notes	0.4	21% <sup>(2)</sup>	0.1
Capital Lease Obligations	7.8	n.a.	n.a.
<b>Total Notes and Other</b>	<b>\$558.0</b>		<b>\$113.8</b>
<b>Total Debt</b>	<b>\$1,139.9</b>		<b>\$282.6</b>
Cash and ST Investments	275.9		275.9
<b>Net Debt</b>	<b>\$864.0</b>		<b>\$6.7</b>
<b>Market Capitalization</b>			<b>\$87.7</b>

**Revenue by Product<sup>(3)</sup>**



**Revenue by Geographic Region<sup>(3)</sup>**



Notes: **FY 2008 Total: \$2,109mm** **FY 2008 Total: \$2,109mm**

(1) Assumes Foreign Credit Facilities are priced at the average bid of CCC+ rate bonds per S&P LCD as of 4/3/09

(2) Assumes convertible notes trades at the average of the 7.875% and 5.25% Notes

(3) Represents LTM revenue as of 12/31/08

Source: Company filings, Bloomberg, Market, CapitalIQ, S&P LCD

Delphi Salaried AR000106

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## Table of Contents

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1. Executive Summary
2. Valuation Summary

### Appendix

- A. Overview of Delphi's Comparables
- B. Summary of 2008 Trial Balances**

Delphi Salaried AR000107

**Delphi Salaried AR000108-11  
Removed**

**Summary of 2008 Trial Balances**

**Non-Debtor Valuation by Entity**  
**Estimated Net Asset Value**

Using net PPE as a proxy reinforces the view that a significant majority of Delphi's value resides in foreign entities

The combined collateral value potentially subject to foreign liens is currently estimated at \$2.4 billion

**Western Europe**

(\$ in millions)

Country	Estimated Net Asset Value (NAV) <sup>(1)</sup>
France	
UK	
Germany	
Spain	
Portugal	
Austria	
Luxembourg	
Italy	
Belgium	
Sweden	
Netherlands	
Ireland	
<b>Total Western Europe</b>	<b>REDACTED</b>

**Eastern Europe**

(\$ in millions)

Country	Estimated Net Asset Value (NAV) <sup>(1)</sup>
Poland	
Hungary	
Romania	
Turkey	
Czech Republic	
Slovak Republic	
Russia	
<b>Total Eastern Europe</b>	<b>REDACTED</b>

**Australia / Asia**

(\$ in millions)

Country	Estimated Net Asset Value (NAV) <sup>(1)</sup>
China	
Korea	
Singapore	
India	
Australia	
Malaysia	
Japan	
Thailand	
Indonesia	
Taiwan	
Pakistan	
<b>Total Australia / Asia</b>	<b>REDACTED</b>

**Americas**

(\$ in millions)

Country	Estimated Net Asset Value (NAV) <sup>(1)</sup>
Mexico	
Brazil	
Argentina	
Canada	
<b>Total Americas</b>	<b>REDACTED</b>

**Africa**

(\$ in millions)

Country	Estimated Net Asset Value (NAV) <sup>(1)</sup>
Morocco	
South Africa	
<b>Total Africa</b>	<b>REDACTED</b>

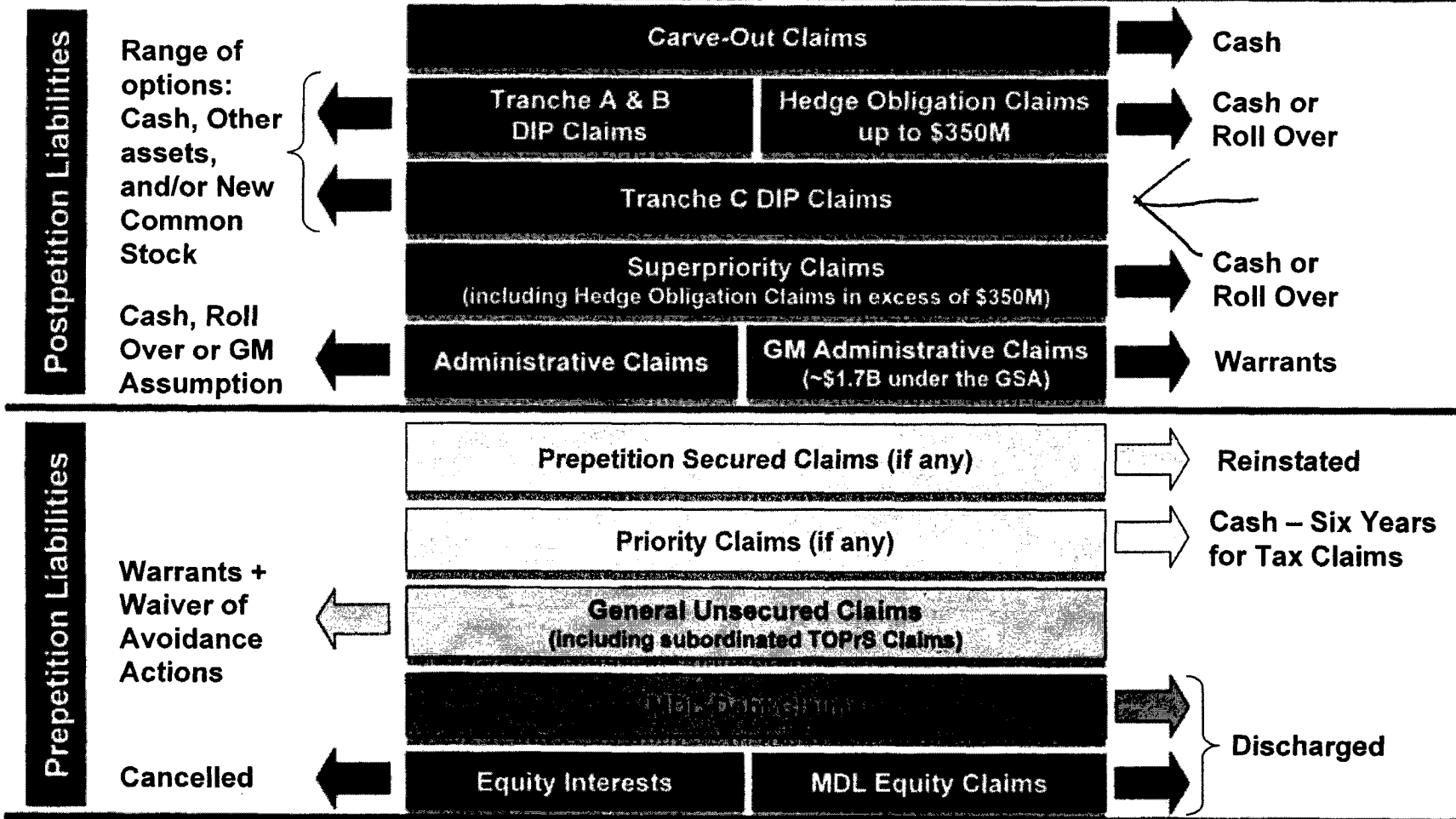
Note:  
 (1) Assume Net Asset Value reflects 100% of net PPE  
 Source: Delphi filings and company trial balances posted in the data room

Delphi-AR-000112

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# 2009 Emergence Update – Summary Of Distributions Under Consensual Plan Framework



Delphi Salaried AR000113

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DENNIS BLACK, ET AL.,

Case No. 09-13616

Plaintiffs,

SENIOR UNITED STATES DISTRICT  
JUDGE

v.

ARTHUR J. TARNOW

PENSION BENEFIT GUARANTY  
CORPORATION, ET AL.,

UNITED STATES MAGISTRATE JUDGE  
MONA K. MAJZOUB

Defendants.

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**ORDER SUSTAINING PLAINTIFFS' OBJECTIONS [172] TO MAGISTRATE JUDGE'S  
SCHEDULING ORDER, GRANTING PLAINTIFF'S MOTION FOR ADOPTION OF  
SCHEDULING ORDER [152], ADMINISTRATIVELY TERMINATING PBGC'S  
MOTION FOR PROTECTIVE ORDER [178], ADMINISTRATIVELY TERMINATING  
PLAINTIFFS' MOTION TO COMPEL DISCOVERY [179], AND ENTERING  
SCHEDULING ORDER**

Now before the Court is the Magistrate Judge's Order [169] denying Plaintiffs' Motion for Adoption of Scheduling Order.

On April 11, 2011, Plaintiffs filed objections [172] to the order. Defendant PBGC filed a response [173] to the objections on April 25, 2011 and Plaintiffs filed a reply [174] on May 2, 2011.

**I. Plaintiffs' Objections**

**A. Standard of Review**

The standard of review set forth in F.R.C.P. 72(a) governs this nondispositive matter. Pursuant to that rule, "The district judge in the case must consider timely objections and modify or set aside any part of the [Magistrate Judge's] order that is clearly erroneous or is contrary to law."

**B. Analysis**

Upon review of the record, this Court makes the following findings:

By denying Plaintiff's Motion for Adoption of Scheduling Order, the Magistrate Judge erred.

On December 22, 2009, at a hearing held on Plaintiffs' Motion for Preliminary Injunction [7], this Court questioned counsel regarding what Plaintiffs would be required to show if it were assumed that they were correct that they were entitled to a hearing prior to the termination of the Salaried Plan. The Court ultimately ordered the parties to submit supplemental briefing addressing the termination of the Plan.

On September 24, 2010, the Court held a hearing on various motions in this matter, including PBGC's Motion to Dismiss Counts 1 through 3 of the Second Amended Complaint [23] and PBGC's Motion for Summary Judgment on Count 4 [45]. The Court again questioned counsel as to what would be shown at a hearing to terminate the Plan that Plaintiffs asserted was required. The Court denied PBGC's dispositive motions without prejudice and specifically permitted discovery to proceed as to Plaintiffs' complaint. The Court did not address the full scope of discovery that would be permitted.

Plaintiffs then filed their Motion for Adoption of Scheduling Order [152] seeking to set a schedule for conducting discovery on Counts 1 through 4. PBGC opposed the motion, arguing that discovery should not be permitted. On March 28, 2011, the Magistrate Judge entered an order [169] concluding that this "is an action for review on an administrative record" and denying discovery as to Counts 1 through 3. The only discovery permitted related to Count 4 and whether any deficiencies existed in the administrative record. Defendants were permitted to object to this discovery.

In the instant objections, Plaintiffs assert that the Magistrate Judge erred in not allowing discovery on Counts 1 through 3 of the complaint. Plaintiffs also maintain that the Magistrate Judge improperly concluded that this is an action for review on an administrative record.



The Court finds that the Magistrate Judge erred in concluding that discovery is not permitted on Counts 1 through 3 of the complaint since the Court previously concluded on September 24, 2010 that this case may proceed to discovery.<sup>1</sup> The Court did not limit that discovery to only certain counts of the complaint.

The Court further concludes that the Magistrate Judge erred in finding that this is an action for review on an administrative record, as the parties have disputed whether this action only concerns the administrative record and this Court has never concluded that it will only focus on the administrative record in considering Plaintiffs' complaint.

As Plaintiffs correctly point out, the Sixth Circuit has concluded that “[t]he scope of discovery under the Federal Rules of Civil Procedure is traditionally quite broad.” *See Lewis v. ACB Bus. Servs., Inc.*, 135 F.3d 389, 402 (6th Cir. 1998). Fed. R. Civ. P. 26 states, “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Since “discovery itself is designed to help define and clarify the issue,” the limits set forth in *Rule 26* must be ‘construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.’” *Conti v. Am. Axle & Mfg., Inc.*, 326 Fed. Appx. 900, 904 (6th Cir. 2009) (unpublished) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

In terms of addressing the scope of discovery for purposes of entering a scheduling order—The Court’s initial focus, keeping the above case law in mind, is on Count 4 and whether

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<sup>1</sup> Following the hearing, neither party filed a motion asking the Court to reconsider its ruling.

termination of the Salaried Plan would have been appropriate in July 2009<sup>2</sup> if, as Plaintiffs contend, Defendants were required under 29 U.S.C. §1342(c) to file before this court “for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund.” Plaintiffs maintain in their objections that addressing this question may allow the Court to avoid constitutional and statutory questions raised within the Second Amended Complaint in an exercise of judicial restraint. The Court agrees. Such a finding by the Court that termination was proper under 29 U.S.C. §1342(c) would moot the remainder of the complaint pertaining to the PBGC, as it would be irrelevant whether ERISA and the Due Process Clause require that a hearing be held under 29 U.S.C. §1342(c) before termination of a plan (since with or without a hearing, termination would have been proper). Certainly, this matter, which the Court will address, “bear[s] on” the case issues. *Oppenheimer*, 437 U.S. at 351; *see also Conti*, 326 Fed. Appx. at 904. Proceeding in this manner is also an appropriate application of judicial restraint.<sup>3</sup> *See Firestone v. Galbreath*, 976 F.2d 279, 285-286 (6th Cir. 1992) (court, quoting Supreme Court precedent, notes, “If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality... unless such adjudication is unavoidable. Deciding constitutional issues only after considering and rejecting every nonconstitutional ground for the decision is a fundamental rule of judicial restraint”) (citations

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<sup>2</sup> The Plan termination date, as per the agreement reached between PBGC and the plan administrator, was July 31, 2009.

<sup>3</sup> Of course, the PBGC may still prevail in this lawsuit even if the evidence demonstrates that termination would not have been proper after a hearing under 28 U.S.C. §1342(c), as the Court would consider at that time the relevant statutory and constitutional questions; these questions could ultimately be decided in the PBGC’s favor.

and internal quotation marks omitted).

In addressing termination in Count 4 under 28 U.S.C. §1342 and assuming that a hearing was required before termination, this Court, pursuant to *In re UAL Corp.*, 468 F.3d 444 (7th Cir. 2006), will conduct a *de novo* review of the PBGC's decision to terminate the Plan. Such a review is not characterized as an APA review limited to the administrative record, with the agency's decision receiving deference. As the Court concluded in *UAL*:

Deference is appropriate when agencies wield delegated interpretive or adjudicatory power— the former usually demonstrated by rulemaking and the latter by administrative adjudication (which also may yield rules in common-law fashion). The PBGC did not use either rulemaking or adjudication to decide that United's plan should be wrapped up at the end of 2004. Its decision was made unilaterally and was not self-executing. The only authority that the PBGC has under §1342 is to ask a court for relief. That implies an independent judicial role. When making its decision a court must respect any regulations issued after notice-and-comment rulemaking, but the PBGC has not promulgated any rules pertinent to this subject. Nor has it issued the sort of interpretive guidelines that deserve the court's respectful consideration even though they lack the power to control. All the PBGC had done is commence litigation, and its position is no more entitled to control than is the view of the Antitrust Division when the Department files suit under the Sherman Act. As the plaintiff, a federal agency bears the same burden of persuasion.

Nothing in 29 U.S.C. §1342(c), which describes the judicial function after the PBGC files an action seeking termination, suggests that the court must defer to the agency's view.

*See UAL Corp.*, 468 F.3d at 449-450 (citations omitted).<sup>4</sup>

Once again, a finding by the Court in the PBGC's favor on Count 4 after this review would render moot the remainder of the complaint pertaining to the PBGC. In the event that the Court finds that termination of the plan was not supported by the factors set forth in 28 U.S.C.

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<sup>4</sup> The Court of course recognizes that unlike in *UAL*, the PBGC did not move here for a court decree seeking termination; rather, the PBGC and the plan administrator reached an agreement to terminate the plan. However, the same principles enunciated in *UAL* apply to the review the Court is conducting here. Defendant has not offered the Court any Supreme Court or Sixth Circuit case that has addressed the specific issue considered in *UAL*. The Court finds the Seventh Circuit's analysis of the issue persuasive.

§1342(c), the Court will consider the remaining issues raised in the complaint.

## **II. Defendant's Motion for a Protective Order [178] and Plaintiffs' Motion to Compel Discovery [179]**

Also pending before the Court are Defendant's Motion for a Protective Order [178] and Plaintiffs' Motion to Compel Discovery [179]. These motions were filed following the Magistrate Judge's order denying Plaintiffs' Motion for Adoption of Scheduling Order. Plaintiffs' objections have now been sustained and the Motion for Adoption of Scheduling Order has been granted. Therefore, the issues raised in the motion may now be mooted based on the Court's ruling.

The Court concludes that these motions should be deemed administratively terminated and closed without prejudice. If necessary, the parties may file discovery motions at some later date that account for the instant ruling.

## **III. Conclusion**

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs' Objections [172] to the Magistrate Judge's Scheduling Order and Order Denying Plaintiffs' Motion for Adoption of Scheduling Order are **SUSTAINED**. As the Court previously ruled, this case will proceed to discovery.

**IT IS HEREBY ORDERED** that Plaintiffs' Motion for Adoption of Scheduling Order [152] is **GRANTED**.

**IT IS HEREBY ORDERED** that Defendant's Motion for a Protective Order [178] and Plaintiffs' Motion to Compel Discovery [179] are **HEREBY ORDERED** administratively terminated by this Court. The Motions shall be closed without prejudice. The parties may file, if necessary, discovery motions at a later date that account for the Court's ruling in this order.

**IT IS FURTHER ORDERED** that these proceedings as to Plaintiffs and the PBGC will

continue as follows:

1. Plaintiffs and Defendant PBGC shall serve the initial disclosures which are required by Fed. R. Civ. P. 26(a)(1) by September 16, 2011.
2. All discovery related to claims 1-4 shall be served in time to be completed by April 30, 2012.
3. All discovery motions related to claims 1-4 shall be filed by March 30, 2012.
4. Plaintiffs and the PBGC shall exchange names of all witnesses, lay and expert, by February 29, 2012.
5. Each party shall be entitled to serve a maximum of 25 interrogatories upon another party, with responses thereto required to be served in accordance with the Federal Rules of Civil Procedure.
6. Plaintiffs and the PBGC shall each be allowed 10 depositions on claims 1-4 without leave of the Court.
7. All dispositive motions related to claims 1-4 shall be filed no later than May 31, 2012. These motions, consistent with the above discussion in this order, must address under Count 4 whether termination of the Salaried Plan would have been appropriate in July 2009 if, as Plaintiffs contend, Defendants were required under 29 U.S.C. §1342(c) to file before this court “for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund.”

#09-13616

Black et al v. Pension Benefit Guaranty Corporation

**SO ORDERED.**

Dated: September 1, 2011

s/Arthur J. Tarnow  
Arthur J. Tarnow  
Senior United States District Judge

I certify that a copy of the foregoing document was sent to parties of record on September 1, 2011 by U.S./electronic mail.

s/Michael Williams  
Relief Case Manager for the  
Honorable Arthur J. Tarnow

**From:** Walter Borst, GM  
**To:** Wilson, Harry;  
**cc:** Markowitz, David; Fred Fromm, GM; Feldman, Matthew;  
Rick Westenberg, GM; Malik, Sadiq; Niharika Ramdev, GM  
**Subject:** Re: PBGC - Delphi Plans  
**Date:** Tuesday, June 02, 2009 10:15:27 PM

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Good. Is there a time that works for Matt and you late tomorrow afternoon or early evening?

Regards, Walter

----- Original Message -----

**From:** [Harry.Wilson@do.treas.gov]  
**Sent:** 06/02/2009 09:34 PM AST  
**To:** Walter Borst  
**Cc:** <David.Markowitz@do.treas.gov>; Fred Fromm; <Matthew.Feldman@do.treas.gov>; Rick Westenberg; <Sadiq.Malik@do.treas.gov>; Niharika Ramdev  
**Subject:** Re: PBGC - Delphi Plans

Perfect, thx

----- Original Message -----

**From:** walter.borst@gm.com <walter.borst@gm.com>  
**To:** Wilson, Harry  
**Cc:** Markowitz, David; Fred Fromm, GM; Feldman, Matthew; Rick Westenberg, GM; Malik, Sadiq; Niharika Ramdev, GM  
**Sent:** Tue Jun 02 21:14:01 2009  
**Subject:** RE: PBGC - Delphi Plans

Harry,

Why don't you have the PBGC start with me. I will put together a team at GM from my Delphi and Pension groups. We will then pass on to Niharika to make sure it's properly folded into the forecast/budget.

I'd like to have a discussion with Matt and you in advance though so that I can better understand where you've left it with them and what you think from the UST perspective is expected from GM...and what isn't. We think

we understand the Salaried side but want to understand the Hourly options better.

Regards, Walter

<Harry.Wilson@do.treas.gov>  
06/02/2009 07:22 PM

To  
<Matthew.Feldman@do.treas.gov>, Rick Westenberg, GM  
cc  
<walter.borst@gm.com>, Fred Fromm, GM, <Sadiq.Malik@do.treas.gov>, <David.Markowitz@do.treas.gov>  
Subject  
RE: PBGC - Delphi Plans

Guys, who's the right person for the PBGC to call? After the call, I'd love for someone at GM to walk David and Sadiq (cc'ed here) through the deal so that we can make sure it's modeled correctly in the forecast/budget.

-----Original Message-----

From: Feldman, Matthew  
Sent: Tuesday, June 02, 2009 7:13 PM  
To: Rick Westenberg, GM  
Cc: Wilson, Harry; Walter Borst, GM; Fred Fromm, GM  
Subject: Re: PBGC - Delphi Plans

I've told the PBGC to speak directly to you guys. I will ask them to do so again.

----- Original Message -----

From: Rick Westenberg, GM  
To: Feldman, Matthew  
Cc: Wilson, Harry; Walter Borst, GM; Fred Fromm, GM



Sent: Tue Jun 02 19:00:29 2009  
Subject: PBGC - Delphi Plans

Matt,

We were looking to understand the details of the settlement with the PBGC regarding Delphi's hourly and salaried plans. Has it been finalized? Could you please provide an overview for how the hourly and salaried plans will be treated/addressed? Would it be appropriate/helpful to have GM involved in any discussions?

Thanks,  
Rick

Hearing Date And Time: July 1, 2009 at 10:00 a.m.

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Attorneys for Delphi Corporation, et al.,  
Debtors and Debtors-in-Possession

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Toll Free: (800) 718-5305  
International: (248) 813-2698

Delphi Legal Information Website:  
<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Debtors.	:	
-----	X	

DECLARATION OF JOHN D. SHEEHAN IN SUPPORT  
OF PLATINUM EXPENSE REIMBURSEMENT MOTION

I, John D. Sheehan, declare as follows:

1. I am the Vice President and Chief Financial Officer of Delphi Corporation ("Delphi"). In addition, I am a member of the Delphi Strategy Board, Delphi's top policy-making group. I joined Delphi in July 2002 as its Chief Accounting Officer and Controller, and held those positions through July 2006. In March 2005, I was named acting Chief Financial Officer. As such, my responsibilities included oversight of Delphi's treasury, tax, mergers and acquisitions, internal and external reporting, internal control, budgeting, forecasting, and financial planning and analysis. I was named Vice President and Chief Restructuring Officer effective October 2005, and continued in that capacity until October 3, 2008, when I was named Chief Financial Officer. Before I joined Delphi, I was a partner at KPMG LLP, where I worked for 20 years on a number of assignments in the United States, England, and Germany.

2. Since the Debtors filed their voluntary petitions for reorganization relief with this Court, I have been involved to some degree in virtually all of the significant decisions made by Delphi in connection with all aspects of Delphi's transformation plan and these chapter 11 cases. Except as otherwise indicated, all facts and opinions set forth in this declaration are based upon my personal knowledge and experience, my review of relevant documents, my involvement in and knowledge of the Debtors' businesses, and knowledge obtained from Delphi employees reporting to me and upon whom I rely in the regular course of performing my duties. I submit this declaration in support of the Platinum Expense Reimbursement Motion.

3. On June 1, 2009, Delphi entered into the Master Disposition Agreement with affiliates of General Motors Corporation ("GM") and Platinum Equity,

LLC ("Platinum"). The MDA will facilitate a global resolution of Delphi's chapter 11 cases through the purchase by Platinum of substantially all of Delphi's global businesses, the purchase by GM of four U.S. manufacturing facilities (the "Keep Sites") and the Delphi global steering division, and the assumption by Platinum and GM of liabilities associated with the businesses and facilities they are purchasing. The MDA transaction is the product of many months of extensive discussions among Delphi and its stakeholders, including its DIP lenders, GM, the Automotive Task Force of the U.S. Treasury Department, the Creditors' Committee, and potential third-party investors, including Platinum and other investors who have expressed an interest in Delphi both before and after Delphi's plan investors refused to close their investment under Delphi's confirmed plan of reorganization (the "Confirmed Plan").

4. The MDA does not provide Platinum with either a break-up fee or expense reimbursement in the event the transaction is not consummated because the parties contemplated a private sale to Platinum, either in connection with Delphi's proposed modifications to the Confirmed Plan or pursuant to a section 363 sale if the proposed modifications are not approved. Although Delphi's motion in support of its proposed plan modifications contemplated that Delphi in the exercise of its fiduciary duties could consider any alternative transactions that were proposed prior to consummation of an emergence transaction, the plan modification procedures order incorporated into Exhibit N formal procedures for Delphi and potential bidders to follow in making and evaluating offers of alternative transactions.

5. As was discussed with the Court during the hearing to approve the plan modification procedures, Platinum is now exposed to the risk inherent in the process

ordered by the Court. Thus, Delphi is seeking authority to provide for reimbursement of Platinum's expenses in the event that Delphi accepts and consummates an Alternative Transaction under the procedures. The purpose of this declaration is to describe the breadth and history of Platinum's relationship with Delphi, the transparent process that Delphi engaged in leading up to the MDA, and my views regarding the amount of the Platinum expense reimbursement.

Breadth And History Of Platinum's Relationship With Delphi

6. Platinum first became involved with Delphi as early as the spring of 2006 in connection with Platinum's interest in purchasing Delphi's global steering division, but also developed an interest in investing in reorganized Delphi. Although Platinum was at that time significantly engaged in discussions regarding the purchase of Delphi's global steering division, it also executed an NDA in February 2007 related to this broader interest. Pursuant to the NDA, I provided to Platinum Delphi's business plan and other due diligence materials. In April 2007 Platinum submitted to me a written expression of interest in investing in reorganized Delphi, including an Equity Commitment Term Sheet. At a meeting later that spring, Rod O'Neal and I informed representatives of Platinum that Delphi was not prepared to explore an investment transaction with Platinum at that time because other parties-in-interest had an agreement to invest in reorganized Delphi.

7. After the transaction with our plan investors failed to close, Platinum again approached Delphi with an interest in participating in our restructuring. From September 2008 to January 2009, Platinum engaged in substantive and intensive due diligence with Delphi, both at the corporate headquarters and with each of our global

operating divisions. While Platinum was still seeking to consummate the purchase of Delphi's global steering division, it was also very engaged in attempting to lead a comprehensive Delphi emergence transaction. Platinum committed substantial internal resources and engaged multiple financial and operational diligence firms to support its efforts, including multiple teams that met with Delphi in every region of the world.

8. In January 2009, I arranged for Platinum to meet with the lead DIP lender from the Tranche C Collective. I believed that putting them in contact with each other could help enable Delphi to complete an emergence transaction.

9. In the second half of January 2009, Rod O'Neal and I decided that it would no longer be productive to continue discussions and due diligence with Platinum because of the level of progress achieved at that time in discussions with GM and our DIP lenders on reaching an agreement for Delphi to emerge from chapter 11. My belief at that time was that the DIP lenders understood the liquidity requirements of Delphi post-emergence, were prepared to take equity of Delphi in exchange for their debt, and would be supportive owners of the business. When circumstances changed in April 2009, however, Platinum authorized me to express Platinum's interest to the Auto Task Force and came back to the table.

10. Over the past three years Platinum has dedicated a team of professionals to forge strong relationships in the automotive industry, not just with Delphi but also with the OEMs (particular GM and Ford), the UAW, and other suppliers. Platinum personnel spent weeks at a time learning the industry, the management teams and the issues. All of this knowledge was brought to bear as Platinum negotiated an agreement for a Delphi emergence transaction. Furthermore, I believe this knowledge

will benefit Delphi post-emergence as we meet our commitments to our customers, suppliers, and employees. The automotive industry has evolved and changed during the past year in ways that were previously unthinkable, and I believe that Platinum has assembled the necessary financial and operational skills to lead Delphi in the future.

Emergence Transaction Process Leading To Executing MDA With Platinum

11. Since April 2008 when the plan investors refused to close on their investment transaction under Delphi's confirmed plan of reorganization, GM has provided significant incremental liquidity necessary for Delphi to continue operating. Although Delphi's DIP lenders are no longer providing incremental liquidity to Delphi, they also supported Delphi by allowing Delphi to maintain access to certain proceeds of Delphi's existing DIP facility. Thus, in addition to the Creditors' Committee and the Equity Committee (until it was recently disbanded), the DIP lenders and GM have closely monitored Delphi's efforts to effectuate an emergence transaction throughout this time period.

12. Immediately after the plan investors walked away from their obligations, Delphi initiated a process to stabilize its liquidity situation and develop an updated business plan. As a result of the Confirmed Plan not being consummated, most of GM's obligations to Delphi under the original Global Settlement Agreement (the "GSA") and Master Restructuring Agreement ("MRA") did not become effective. Accordingly, GM helped Delphi stabilize its liquidity by entering into an agreement with Delphi as of May 9, 2008 (the "GM Arrangement") to provide for up to \$650 million in GM advances to cover amounts that would have been paid or reimbursed by GM if the original GSA and MRA had become effective. During the months of April through June

2008, Delphi also developed an updated business plan based upon its delayed emergence and the state of the automotive industry at that time.

13. Based on Delphi's updated business plan, GM indicated in June 2008 that it was not prepared to provide Delphi the level of incremental financial support that would be necessary to support an internally funded plan of reorganization without external equity financing. Delphi then began a thorough review of strategic alternatives, including completing a chapter 11 plan of reorganization, the sale of the Company in whole or in part, or liquidating under chapter 11 or chapter 7, among other potential strategic alternatives. As part of this review, Delphi's financial advisor Rothschild prepared a strategic analysis of the value Delphi's bankruptcy estates might receive through a partial sale of Delphi's business units. This process culminated in presentations and discussions at two meetings of Delphi's board of directors on July 15 and August 20, 2008. Delphi ultimately determined that it would achieve greater value for stakeholders through completing a reorganization of the company in chapter 11. Delphi reviewed these strategic alternatives and conclusions with its stakeholders.

14. As a result of the review of strategic alternatives, Delphi continued to pursue negotiated modifications to the original GSA and MRA as well as modifications to its Confirmed Plan that would support emergence from chapter 11. Delphi and GM entered into amendments to the GSA and MRA under which most of GM's obligations became immediately effective as of September 29, 2008. As a result, the advances under the GM Arrangement were set off against amounts to be paid by GM under the amended GSA and MRA, and GM's \$650 million commitment terminated.



15. GM continued to support Delphi's liquidity needs by entering into the First Amendment to the GM Arrangement, effective as of October 6, 2008, by which GM made an additional \$300 million in advances available to Delphi through December 31, 2008. This commitment supported Delphi's funding needs through the planned emergence under proposed modifications to Delphi's Confirmed Plan that were filed on October 3, 2008.

16. In conjunction with the plan modifications filed publicly on October 3, 2008, a member of the Creditors' Committee attempted to achieve a creditor-supported rights offering and Delphi held discussions with potential third-party investors, but such discussions were not fruitful.

17. Unfortunately, market conditions deteriorated significantly in the wake of the failure of Lehman Brothers in September 2008, thereby limiting Delphi's ability to access the credit markets to support its emergence under the proposed plan modifications. In addition, following the stock market collapse in October 2008, the automotive industry suffered historic declines in volume and there was market speculation about GM's financial health and the consequences of a potential GM chapter 11 filing. When it became clear in the face of these events that Delphi could not emerge from chapter 11 by December 31, 2008, GM entered into a Second Amendment to the GM Arrangement as of December 3, 2008, to extend the availability of the \$300 million commitment from December 31, 2008 to June 30, 2009. At the same time, GM provided an additional \$300 million in liquidity by agreeing to temporarily accelerate certain accounts payable to Delphi during the second quarter of 2009 (the "Pull-Forward

Agreement").<sup>1</sup> Although the DIP lenders would not agree to extend the maturity date on Delphi's DIP facility beyond December 31, 2008, the requisite percentage of DIP lenders also provided support to Delphi by agreeing not to exercise remedies under the DIP facility until June 30, 2009, subject to the terms and conditions of the Accommodation Agreement effective as of December 3, 2008.

18. Starting in late November 2008 and continuing through the month of December, certain of the Tranche C DIP lenders, including Silver Point, Anchorage, Monarch, and Carlson (the "Tranche C Collective"), as well as financial advisors to the DIP lenders and the Tranche C Collective (e.g., Alvarez & Marsal, Blackstone, and Storm Consulting), conducted significant operational due diligence on Delphi's businesses. This due diligence included on-site due diligence at Delphi's corporate headquarters in Troy, Michigan, as well as in Delphi's divisions, including in Kokomo, Indiana and Warren, Ohio. At that point I believed the Tranche C Collective had an expectation that they would be the owners of Delphi going forward.

19. In December 2008 the Bush Administration decided to make funds from the Troubled Asset Relief Program available to GM and Chrysler. In late December 2008 and over the year-end holidays, Delphi was focused on how to further amend the MRA in light of the historic changes to the auto industry in the fourth quarter of 2008. At this time, Delphi was considering selling the Keep Sites to generate cash to pay off the Tranche A and Tranche B DIP Lenders. In turn, Delphi hoped to pay the Tranche C DIP lenders in equity in reorganized Delphi rather than in cash, and to secure funding in the

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<sup>1</sup> GM and Delphi subsequently amended the Pull-Forward Agreement to further accelerate some of the trade payments to the first quarter of 2009, and entered into a Third Amendment to the GM Arrangement to provide GM the option to covert certain of the accelerated trade payments to advances under the GM Arrangement.

capital markets, including from DIP lenders, to fund Delphi going forward. In the early part of January 2009, the discussions with GM focused primarily on the four Keep Sites, production volumes anticipated in 2009, and the resulting effects on Delphi's business plan and liquidity requirements.

20. Over the December 2008 holiday period Rod O'Neal and I engaged in discussions with members of the Tranche C Collective regarding prospective executive incentive compensation programs and met at their request with an individual they had identified to us to be a potential future member of Delphi's board of directors. Each of these events, together with the significant diligence conducted during the month of December, reinforced my view that the Tranche C lenders were preparing to be (and were prepared to be) Delphi's future owners.

21. During the first half of January 2009, Delphi's DIP lenders organized an unofficial steering committee (the "DIP Steering Committee") consisting of certain Tranche A, Tranche B, and Tranche C lenders. One of the Tranche C lenders on the DIP Steering Committee was our largest DIP lender at the time and was the organizer and leader of the Tranche C Collective.

22. On January 15, 2009, Delphi had its first real negotiating session with GM since GM became eligible for TARP funds. AlixPartners, a new financial advisor to GM, took the lead and made it clear that GM was no longer in a position to provide incremental liquidity to Delphi in the absence of a definitive agreement for a comprehensive solution to GM's relationship with Delphi. We informed the DIP Steering Committee of the information conveyed during this meeting.

23. To support our newly formed DIP Steering Committee as well as GM's advisors' desire to engage in a new round of due diligence of Delphi, Delphi established a data room on January 18, 2009. In addition to GM and our DIP lenders, I wanted to ensure that Delphi's other stakeholders, including the statutory committees, were kept apprised so that they would be very involved in and supportive of Delphi's actions. Generally, whenever we had a session with GM, Delphi would advise the DIP Steering Committee of the materials reviewed, matters discussed, and positions expressed by the parties. In addition, the statutory committees, the DIP Steering Committee, the DIP lenders' advisors (e.g., Alvarez & Marsal, Blackstone, O'Horizons, and Storm Consulting), and the PBGC all had access to the data room and the opportunity to request and receive diligence sessions. During this time the Tranche C Collective members had already completed substantial business due diligence. During January and February, the principal areas of focus in due diligence were Delphi's business plan, liquidity projections, and negotiations with GM.

24. Delphi formally met with our DIP Steering Committee ten times between January 14 and March 26, 2009, including meetings with members of Delphi's treasury, strategic planning, restructuring, and legal staffs. During these meetings, Delphi provided the DIP Steering Committee with substantive information about Delphi's business plan, global liquidity, negotiations with GM, and other subjects. The meetings included significant discussions among the parties on the state of the auto industry and resolution of Delphi's chapter 11 cases. In addition, we consulted with the DIP Steering Committee on strategies to sell the Keep Sites to GM to generate proceeds to pay off DIP

loans, and informed them of the incremental funding needed to operate Delphi's businesses.

25. In late February 2009 Delphi provided to the DIP Agent for distribution to all of the DIP lenders who had agreed to receive non-public information about Delphi (the "Private-Side Lenders") detailed information on the Company's business plan. The information included a "three statement" business plan as well as substantive information on details of the business plan by division and by geographic region. Further, in early March Delphi provided to the DIP Agent for distribution to Private-Side Lenders an emergence liquidity sensitivity analysis (the "ELSA"). The ELSA, which was the product of a joint work effort with the DIP lenders' financial advisors, provided a detailed analysis of Delphi's required emergence liquidity based upon a downside business planning scenario. Each of these documents, which have been available to all Private-Side Lenders for months, provided our DIP lenders with significant information on Delphi's business plan and post-emergence liquidity needs.

26. In the meantime, Delphi had been negotiating with GM regarding a term sheet reflecting amendments to the MRA as well as an agreement for GM to purchase Delphi's global steering division. By the end of February 2009, GM and Delphi had agreed to enter into the Steering Option Exercise Agreement and had otherwise virtually completed the negotiations over the MRA amendments, including agreements in principle regarding transfer of the four UAW Keep Sites, ongoing commercial arrangements, and treatment of intellectual property and tooling. We kept the DIP Steering Committee fully apprised of our discussions with GM. During this time, I or

Keith Stipp, Executive Director – Restructuring for Delphi, spoke with members of the DIP Steering Committee on nearly a daily basis, including on weekends.

27. Given the progress toward a comprehensive resolution, in late February and early March 2009, GM agreed to provide \$150 million of additional interim financing pursuant to the Fourth and Fifth Amendments to the GM Arrangement.

28. During this time it had become apparent that any external funding for Delphi's reorganization would likely come with substantial government involvement and assistance. For that reason, during the month of February 2009 I spent about 30 percent of my time in Washington, D.C., often with Rod O'Neal, to meet senators and congressmen and relate to them the Delphi story. We also wanted to make sure that the Treasury Department was aware of the size of Delphi and its importance to GM and other automobile manufacturers. Treasury's Auto Task Force was formed in late February, and we met with the Auto Task Force in early March to describe Delphi's situation, including its importance to the global automotive industry and to GM in particular.

29. The Auto Task Force intervened in these cases on March 23, 2009, when it objected to GM's entry into the previously negotiated Fourth and Fifth Amendments to the GM Arrangement on the grounds that it needed more time to review the transactions and Delphi's liquidity needs.

30. On March 25, 2009, I, Keith Stipp, and John Arle from Delphi, and Rick Westenberg from GM, met in Washington, D.C. with Harry Wilson and Matthew Feldman of the Auto Task Force. At the meeting, we discussed Delphi's short-term liquidity needs and the previously negotiated agreements with GM, and generally told

them Delphi's story. On April 3, 2009, Delphi delivered a substantial set of written materials to the Auto Task Force regarding Delphi's business plan and liquidity.

31. On Sunday, April 5, 2009, Harry Wilson convened a conference call with me and other representatives of Delphi. He indicated the preliminary view of the Auto Task Force that it was not prepared to provide emergence funding for Delphi's exit from chapter 11. Instead, he informed us, the Auto Task Force was only prepared to acquire, at a fair price, certain Delphi assets including but not limited to the four UAW Keep Sites and Delphi's global steering division as supply protection for GM.

32. Throughout the month of March as Delphi had reviewed its liquidity requirements under the ELSA with its DIP lenders, Delphi had made clear that Delphi would require post-emergence liquidity to have a feasible business plan. Later in the day on April 5, I informed the DIP Steering Committee of the call with the Auto Task Force.

33. The DIP Steering Committee requested a meeting in New York for the following day. We met at the offices of Davis Polk with J.P. Morgan and the head of the Tranche C Collective representing the DIP lenders, as well as Alvarez & Marsal, Blackstone, and Willkie, Farr & Gallagher, counsel to the Tranche C Collective. At that meeting, I was informed by counsel for the DIP Agent that, based on their discussions with all lenders, the lenders were not prepared to provide interim or emergence funding.

34. Counsel for the DIP Agent also informed us that in the lenders' view Delphi's only alternative was to pursue a self-financed liquidation. They envisioned Delphi selling assets (manufacturing facilities, business lines, or divisions) to secure operating liquidity and then using the proceeds to fund operations and, to the extent

additional proceeds were available, to pay down the DIP. Under this scenario Delphi would then move on to sell additional assets.

35. I was concerned that such an approach would yield little or no value for our DIP lenders. First, I believed that Delphi would not receive significant new business from customers once those customers became aware that Delphi would be selling off business lines and, therefore, Delphi's enterprise value would rapidly deteriorate. Second, suppliers' concerns regarding a possible Delphi liquidation could lead them to seek to shorten or accelerate payment terms, thereby requiring Delphi to procure additional liquidity to fund operations. Third, based on Delphi's experience selling businesses into the depressed auto market, I was concerned that buyers might only be willing to accept liabilities but not pay any significant cash proceeds for the acquired businesses. Fourth, given Delphi's short-term need to stabilize liquidity, I was concerned with the amount of time that would be required to effect such sales.<sup>2</sup>

36. In addition to the value destruction which I believed would result from the liquidation approach suggested by the DIP lenders, the fact that no incremental DIP financing or emergence capital was available from my broad syndicate of lenders led me to conclude that there would be no market transaction available from third parties.

37. Shortly after receiving this message from the DIP lenders, Steve Miller and Rod O'Neal had dinner with the CEO of another automotive supplier who had previously expressed interest in investing in all or part of Delphi. In addition, given Platinum's prior and consistent interest, we had been keeping Platinum apprised of

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<sup>2</sup> Delphi has not hesitated to explore divestitures that are in line with its transformation goals. During these chapter 11 cases Delphi has divested to a diverse group of buyers more than 20 businesses or portions of businesses, representing between \$3 and \$4 billion in annual revenue (exclusive of operations being sold to GM, restructuring of ownership positions, and minor divestitures by joint ventures).



developments. I informed Platinum of these events and Platinum asked us to make the Auto Task Force aware of their interest. I called Harry Wilson to inform him of this.

38. On Monday and Tuesday, April 13 and 14, 2009, the DIP Agent and the DIP lenders' advisors (and, on April 14, a member of the Tranche C Collective) met with the Auto Task Force. In these meetings the DIP lenders presented an analysis of the cost to GM if Delphi were unwilling or unable to provide supply to GM should the DIP lenders exercise certain remedies resulting in a shutdown of Delphi. The analysis was the product of a detailed operational and financial analysis performed by third party consultants for the DIP lenders that previously held senior management positions in GM's purchasing organization. The analysis asserted that it would take GM years and tens of billions of dollars to fully re-source Delphi's products because Delphi is a sole source provider of many components for every vehicle GM produces.

39. A fundamental change to the landscape of these cases occurred in mid-April when GM, with the support of the Auto Task Force, agreed to support a comprehensive resolution of the Delphi chapter 11 cases. On April 18, 2009, GM provided a comprehensive proposal directly to Delphi's DIP lenders. Importantly, the proposal provided for payment in full of the Tranche A and Tranche B DIP lenders, and offered the Tranche C lenders a recovery of approximately 3% in cash and a 67% economic interest in the equity of a newly capitalized Delphi. The proposal made clear that GM was prepared to fund the company pre- and post-emergence. This proposal made by GM provided the same basic transaction structure that GM and Platinum ultimately negotiated in connection with the MDA transaction. Delphi received a copy of the proposal the next day, April 19, 2009, and provided written comments to the DIP

lenders later that day. Importantly, the Delphi comments on the GM proposal recommended that the DIP lenders focus on the financing and corporate governance aspects of the proposal.

40. Rather than following Delphi's recommendations, on the night of April 19, 2009, the DIP Steering Committee countered with a separate proposal. Instead of choosing to engage the transaction structure put forward by the Auto Task Force, the DIP lenders put forth a response that encompassed a completely different structure. It provided for a total recovery for the Tranche C lenders of at least \$750 million in cash, \$625 million in debt, and of 51% of the equity of new Delphi. This response chilled discussions with GM and the Auto Task Force and effectively ended their dialogue with the DIP lenders. GM and the Auto Task Force withdrew the prior offer and began looking for a different solution in lieu of partnering with the DIP lenders.<sup>3</sup>

41. During this time, the DIP lenders were fully informed that Platinum and another bidder were engaged in due diligence working towards a transaction with Delphi and GM that was supported by the Auto Task Force. I kept the DIP Steering Committee members apprised of the status of the parties' due diligence. Despite this awareness, at no time did the DIP lenders tell me that they had changed their position articulated on April 6 that none of them was prepared to put new money into Delphi.

42. In early May 2009, Delphi completed and distributed to stakeholders its hypothetical liquidation analysis. GM and the Auto Task Force had been of the view that the Tranche C lenders were not entitled to a recovery because the value

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<sup>3</sup> The DIP Lenders made a second counter offer on April 28, 2009, in which they generally conformed to the transaction structure that had been proposed in the April 18, 2009 GM proposal, but they left the economic terms blank.

of Delphi's assets would be lost without GM's injection of new money. Delphi asked its advisors at FTI to prepare a liquidation analysis in part to demonstrate to GM and the Auto Task Force that Delphi's Tranche C lenders would likely receive some recovery even in a liquidation scenario. The mid-point of the range of recoveries showed that the Tranche C lenders would receive approximately a 20% recovery in liquidation. Delphi then advocated that the Tranche C DIP lenders needed to receive a recovery at least in that range in a comprehensive transaction.

43. On May 5, 2009, counsel for the Auto Task Force sent a letter to Delphi disclosing that negotiations were ongoing with two potential buyers and setting a May 18, 2009, target for completion of negotiations. Notwithstanding that timeframe, the letter also indicated that the Auto Task Force would not object to providing additional time for the DIP lenders to market Delphi's assets if the DIP lenders were willing to fund Delphi's operations during the additional time.<sup>4</sup>

44. On May 12, 2009, Delphi convened a series of meetings with stakeholders in Skadden's Washington, D.C. offices. Delphi met with the DIP lenders in the morning and then with GM and the Auto Task Force in the afternoon. Delphi delivered to the Auto Task Force a statement of the objectives we understood the Auto Task Force wanted to achieve in a Delphi transaction. In addition, we set out Delphi's objectives and the elements of a Debtors-sponsored emergence transaction. In the meeting with the Auto Task Force, Delphi and its advisors sought to support and convey the DIP lenders' positions to the Auto Task Force.

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<sup>4</sup> In connection with their agreement to extend certain milestones under the Accommodation Agreement, certain DIP Lenders sought Delphi's agreement to a marketing process with the DIP Steering Committee. Although I did execute the marketing letter on May 7, 2009, the Tranche C Collective did not follow through on the alternative marketing process.

45. The transaction objectives that Delphi put forth were to (i) maximize business enterprise value and related recoveries for Delphi's stakeholders; (ii) maximize feasibility and speed of execution (including provision of sufficient interim liquidity); (iii) protect franchise value by ensuring continuity of supply for Delphi's customers, preserving Delphi's supplier tiers, and preserving Delphi's human capital (to the extent possible under the circumstances); and (iv) provide the opportunity to consummate a modified plan of reorganization in order to achieve a comprehensive resolution of Delphi's chapter 11 cases and achieve Delphi's transformation objectives (to the extent possible under the circumstances).

46. In addition, Delphi put forth the following outline of the required elements for a Debtors-sponsored emergence transaction:

1. Resolution of Stakeholder Recoveries (assuming non-consensual)

- DIP Tranche A/B (full recovery; paid in cash)
- Hedge Obligations (full recovery; roll over on a secured basis)
- DIP Tranche C (evaluate HLA recoveries (including stakeholder feedback), market valuation and trading history and foreclosure risk data points)
- Administrative claims (assumption/payment in ordinary course)
- General Unsecured Creditors (warrant structure)
- Validate the value of new equity if used as portion of currency to be distributed

2. Resolution of Delphi-General Motors Commercial Discussions (see attachments)

- Reaffirm General Motors' commitment to Delphi portfolio
- Plant ownership: UAW keep sites / Other US plants / Mexico plants
- Protection of supply: access agreements, IP rights and tooling ownership
- Understand GSA/MRA modifications and validate corresponding changes to RPOR, ELSA and related financial information provided to the US Treasury Auto Task Force, Delphi stakeholders and prospective acquirers

3. Resolution of Defined Benefit Pension Plans

- Implement 414(l) transactions for HRP (second step) and SRP

- Confirm consistent treatment of General Motors' pensioners (whether retired from Delphi or General Motors)
- Alternatively, resolve PBGC ROW liens if pensions are terminated by PBGC

4. Resolution of Emergence Funding

- Select mutually acceptable third-party acquirer
- Finalize structure and amount of US Treasury funding

5. Resolution of Human Capital Issues

- Agree on plan structure to maximize job preservation
- Confirm intended treatment of confirmed plan provisions affecting human capital (including Articles VII and XI)
- Confirm treatment of salaried severance program

6. Transaction Implementation

- Resolve approach to consummation: plan modifications vs. Section 363 sale (or combination of both approaches)
- Adopt DIP Facility "collective action" mechanics
- Develop contingency plans for interim funding to emergence (including consideration of any potential DIP Lenders' objection(s))
- Resolve disposition of avoidance actions
- Resolve allocation of potential Plan Investor litigation settlement proceeds

47. The next day, May 13, Bill Shaw from Rothschild and I met with the lead member of the Tranche C Collective. I expressed my view that to achieve a consensual resolution the DIP lenders needed to understand that traditional negotiation of starting high and then gradually making concessions would not work in these circumstances. I suggested that the goal should be to identify the correct recovery and agree to it quickly. I requested them to authorize Bill Shaw and me to present a proposal to GM and the Auto Task Force for a 25% recovery made up of 10% in cash, 10% in a note, and 5% based on a recovery in the plan investor litigation. Nevertheless, the Tranche C lender delivered a letter to me making adjustments to Delphi's liquidation analysis and showing a mid-point recovery of 45%. The letter also indicated that the

Tranche C lender was conducting its own liquidation analysis that would show 45% to be the low-end of the range of recovery, rather than the mid-point.

48. From May 18 forward, GM and the Auto Task Force negotiated directly with the bidders who were seeking to partner with them. Delphi was kept apprised of the discussions and negotiations. I also kept the DIP lenders apprised.

49. The Court appointed Judge Cecelia Morris to serve as a judicial mediator for Delphi and its stakeholders to attempt to reach a consensual, comprehensive resolution. Delphi, the DIP lenders, GM, the Auto Task Force, the Creditors' Committee, the PBGC, and the UAW participated in approximately twenty hours of mediation beginning on May 26, 2009. Unfortunately, this process did not result in a consensual resolution. On the night of Friday, May 29, the DIP lenders delivered a proposal seeking a 10% cash recovery and two-thirds of the equity in new Delphi.

50. Meanwhile, GM and the Auto Task Force continued negotiations with the two bidders. I understand that the other potential bidder withdrew from consideration because it was unwilling to support a plan of reorganization structure or to assume substantial administrative liabilities. Therefore, GM, the Auto Task Force, and Delphi completed negotiations with Platinum for entry into the Master Disposition Agreement dated June 1, 2009.

51. On May 26, 2009, Delphi received a letter from another potential bidder. Although we worked with this bidder's advisors over the next couple of days to sign an NDA required for due diligence, given the timing of the need to complete a transaction that bidder decided not to proceed. That bidder has not reengaged in the process under the Exhibit N procedures.

Business Judgment Regarding Platinum Expense Reimbursement

52. Delphi entered into the MDA transaction with Platinum on a private sale basis, rather than incorporating bidding procedures, in part because Delphi has, in my opinion, been fully marketed to potential investors over the years that it has been in chapter 11. I have interacted with and provided Delphi's financial and business information to a multitude of potential investors. Accordingly, I believed that any interested parties were likely aware of and monitoring Delphi's situation. Moreover, Delphi was faced with significant liquidity issues. From the time the amendments to the GSA and MRA in September 2008 until Delphi filed its proposed supplemental plan modifications on June 1, 2009, GM provided \$600 million in additional liquidity to fund Delphi's operations. And in connection with the supplemental plan modifications, GM has agreed to provide an additional \$250 million in interim financing to support Delphi's operations through emergence from chapter 11. I considered it unlikely that an alternative transaction would emerge that would solve for Delphi's liquidity needs.

53. Although Delphi appreciates the DIP lenders' support under the Accommodation Agreement, the DIP lenders have not contributed incremental liquidity to support Delphi's operations during this time. Indeed, although the DIP lenders made approximately \$85 million in borrowing base collateral available to Delphi to fund operations, the Debtors have paid them more than \$500 million in principal repayments, interest, and fees as the price for the Accommodation Agreement and subsequent amendments. Thus, much of the interim funding provided by GM has effectively been used to pay down the DIP loan. More recently, the requisite DIP lenders have granted increasingly short extensions of the milestones in the Accommodation Agreement.

Pursuant to the Third Accommodation Agreement Amendment, the timeframe in which to deliver a Term Sheet was extended to May 21, 2009. Further, the Accommodation Period would have terminated on June 2, 2009 if the requisite DIP lenders did not affirmatively notify Delphi on or prior to June 1, 2009 that the Term Sheet was satisfactory. Five subsequent amendments each extended the June 2, 2009 termination date by a matter of a few days at a time, to June 9, June 13, June 20, and June 24, and June 27, respectively.

54. Since January 2009 (and in the case of the Auto Task Force, since March 2009), GM has consistently stated that it was not prepared to provide further pre- or post-emergence liquidity to Delphi without a full and final global resolution to Delphi's bankruptcy cases. Faced with the DIP lenders' refusal to provide liquidity to Delphi, and buoyed by the Auto Task Force's acknowledgment and support for GM's business judgment, Delphi negotiated a transaction that provides \$250 million in interim funding, billions in emergence capital, and a comprehensive resolution to Delphi's chapter 11 cases. Delphi persuaded GM and the Auto Task Force to proceed with a plan of reorganization, with the 363 sale only as a back-up alternative. The transaction with Platinum also allows Delphi to continue to operate and allows non-GM suppliers and customers to have confidence due to corporate governance control being placed in a non-GM third party.

55. Delphi expressed the view – and continues to believe – that a reorganization plan is superior to an asset sale because it provides a comprehensive resolution to these cases. Delphi has already substantially completed its restructuring. But for exit financing, the Debtors have been ready to emerge from chapter 11 for 14



months. The Modified Plan provides for the payment of all administrative claims. These administrative expenses are largely for the suppliers, customers, and employees who have provided the environment that has allowed Delphi to continue to operate day-to-day over the past 14 months. These expenses are necessary to preservation of value that otherwise would be pennies on liquidation basis.<sup>5</sup>

56. I am aware that certain DIP lenders now claim to potentially want to contribute new money to Delphi's emergence or to participate in a transaction outside the Exhibit N bidding process. Up to this point most of my interactions with the DIP Steering Committee were with the DIP Agent and with the leader of the Tranche C Collective. Very recently another DIP lender did come forward and increase significantly its investment in the DIP (the "New DIP Lender"), making the New DIP Lender Delphi's largest DIP lender today. Whereas the leader of the Tranche C Collective is an original, par holder of the DIP, the New DIP Lender purchased most of its Tranche C holdings as a distressed, speculative investment. Indeed, based upon information received from the DIP Agent, the New DIP Lender purchased more than two-thirds of the nominal amount of its holdings on or after June 1, 2009.<sup>6</sup>

57. Thus there has been an enormous amount of trading in the Tranche C DIP loan, most prominently reflecting the New DIP Lender's purchases and the leader of the Tranche C Collective's sales. Quite simply, the New DIP Lender is a willing speculator who bought into the DIP Loan at distressed levels and with a different agenda than the leader of the Tranche C Collective.

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<sup>5</sup> It is not true that Delphi prefers a plan of reorganization in order to enrich management. Under the MDA, change of control agreements terminate and are not replaced. Similarly, the \$18mm emergence cash bucket under the Confirmed Plan is eliminated.

<sup>6</sup> As of June 19, 2009, the three-month average of the midpoint trading price for Delphi's Tranche C DIP loan was \$.20.

58. I believe it is reasonable to obligate a winning bidder to reimburse Platinum's expenses given the implementation of the supplemental procedures. Platinum provided the path to a full and final global resolution to Delphi's bankruptcy cases, as required by GM, such that Delphi has been able to secure access to liquidity from GM to operate its businesses. The foregoing represents value that Platinum has brought to the estates and for which it should be reimbursed in the event Delphi consummates an alternate transaction. The amount is reasonable up to the \$30 million cap in connection with the overall transaction, and was proposed and accepted in good faith.

59. Platinum represented to me that as of May 31, 2009, it has third-party expenses of approximately \$20 million that are related to its overall due diligence in connection with a Delphi transaction.<sup>7</sup> Platinum hired a number of consultants including Marakon Associates, PricewaterhouseCoopers, Answerport, Inc., and the law firms of Schulte Roth & Zabel LLP, Kirkland & Ellis LLP, and Foley & Lardner LLP, to assist them in their diligence efforts and negotiations. In addition, as of May 31, 2009, Platinum has approximately \$17 million of internal costs related to Delphi.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on June 25, 2009.

/s/ John D. Sheehan

JOHN D. SHEEHAN

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<sup>7</sup> This amount includes, without limitation, out-of-pocket expenses incurred in connection with Platinum's consideration of the purchase of Delphi's steering division.

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Chapter 11  
4 Case No. 04-44481 (RDD)  
5 Jointly Administered  
6

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7 In re: )  
8 DELPHI CORPORATION, et al )  
9 Debtors. )  
10 )

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12  
13 H I G H L Y C O N F I D E N T I A L  
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16 DEPOSITION OF MATTHEW FELDMAN  
17 Washington, D.C.  
18 July 21, 2009  
19  
20  
21

22 Reported by:  
23 MARY ANN PAYONK, RDR-CRR  
24 JOB NO. 23898  
25

Page 2

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4  
5 July 21, 2009  
6 10:00 a.m.  
7  
8 Deposition of MATTHEW FELDMAN, held at  
9 the law offices of Latham & Watkins, 555 11th  
10 Street, N.W., Washington, D.C., pursuant to  
11 Notice before Mary Ann Payonk, a Certified  
12 Realtime Reporter and notary public of the  
13 District of Columbia.  
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14 Washington, D.C. 20220  
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16 ALSO PRESENT:  
17 Ms. Kathleen Ho  
18  
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Page 8

1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. It is Mr. Schwartz from the  
3 U.S. Attorney's Office.  
4 Q. Does he represent you personally?  
5 A. I don't know the answer to that.  
6 MR. MALIONEK: Do you know the  
7 answer to that, Matt?  
8 MR. SCHWARTZ: Mr. Feldman isn't  
9 here personally. He's here as a  
10 representative of the Treasury  
11 Department.  
12 MR. MALIONEK: You represent  
13 Treasury in this?  
14 MR. SCHWARTZ: United States of  
15 America.  
16 Q. Have you ever testified before,  
17 Mr. Feldman?  
18 A. Yes.  
19 Q. In deposition?  
20 A. Yes.  
21 Q. How many times?  
22 A. This will be my fourth time.  
23 Q. Have you ever taken a deposition?  
24 A. Yes.  
25 Q. How many times?  
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Page 7

1 M. Feldman - HIGHLY CONFIDENTIAL  
2 M A T T H E W F E L D M A N,  
3 called as a witness, having been duly  
4 sworn, was examined and testified as  
5 follows:  
6 EXAMINATION  
7 BY MR. MALIONEK:  
8 Q. Good morning.  
9 A. Good morning.  
10 Q. My name is Robert MalioneK. I'm  
11 from Latham & Watkins. We represent the  
12 committee of unsecured creditors in this  
13 proceeding.  
14 Can you state your home address,  
15 please.  
16 MR. SCHWARTZ: No. He's a  
17 Treasury witness. You can state a  
18 Treasury address.  
19 Q. State your work address.  
20 A. 1500 Pennsylvania Avenue,  
21 Washington, D.C.  
22 Q. Are you represented by counsel here  
23 today?  
24 A. I am.  
25 Q. Okay. Who is your counsel?  
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Page 9

1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Probably a dozen.  
3 Q. Quick ground rules. Let's just try  
4 not to talk over each other so that the court  
5 reporter can make a clean record. Is that  
6 fair?  
7 A. Yes.  
8 Q. I'm not going to ask you about  
9 privileged conversations. I don't want to go  
10 into that. Okay? I'll ask you about other  
11 conversations. I'll ask you about positions,  
12 statements, communications, but I'm not going  
13 to ask you about privileged communications  
14 between Treasury and its counsel. Okay?  
15 A. Okay.  
16 MR. SCHWARTZ: I assume that also  
17 encompasses the government's  
18 deliberative process privilege and  
19 internal Treasury communications.  
20 MR. MALIONEK: It depends on the  
21 question.  
22 (Feldman Exhibit 1 was marked for  
23 identification.)  
24 BY MR. MALIONEK:  
25 Q. You've been handed what's been  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 marked as Feldman Exhibit 1. Can you take a  
3 look at that, please. Tell me if you recognize  
4 it.  
5 A. Yes.  
6 Q. Okay. A few pages into the  
7 document, this is a subpoena for the testimony  
8 of a representative of Treasury; is that right?  
9 A. That's what it appears to be.  
10 Q. Okay. And then if you turn a few  
11 pages into the subpoena, I think it's page 3 of  
12 the subpoena itself, there's a list of  
13 deposition subject matters. Do you see that?  
14 A. I do.  
15 Q. Are you prepared here today to  
16 testify with respect to each of those subject  
17 matters?  
18 A. I believe that I am.  
19 Q. Okay. What did you do to prepare  
20 for this deposition, if anything?  
21 A. I refreshed my memory with respect  
22 to documents related to the Delphi cases. I  
23 spoke to my colleagues at Treasury who had been  
24 involved in Delphi, including Mr. Wilson,  
25 Mr. Bloom, and Mr. Ratner. I met with my  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 testimony with respect to each of the subject  
3 matters that's listed in the subpoena that I  
4 gave you to the best of your ability?  
5 A. Yes.  
6 Q. Can you recall any particular  
7 items, events, memories as you said that  
8 Mr. Wilson had in your depo prep meetings with  
9 him?  
10 A. I'm sorry. I don't understand the  
11 question.  
12 Q. Do you recall anything specific  
13 that you discussed with Mr. Wilson about his  
14 memories? You said you met with him regarding  
15 his memories of certain events that related to  
16 this issue.  
17 A. Yes.  
18 Q. Okay. What are those?  
19 A. I discussed with Mr. Wilson and  
20 asked him to recall his memories regarding --  
21 let me look at the list -- the Beijing e-Town  
22 term sheet as well as a number of conversations  
23 and meetings that he and I attended together,  
24 as well as a small number that he participated  
25 in without me.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 counsel.  
3 Q. Anything else?  
4 A. I don't believe so.  
5 Q. Did you have any conversations with  
6 Mr. Wilson, Mr. Bloom, Mr. Ratner without  
7 counsel present regarding this deposition?  
8 A. I did.  
9 Q. How many? How many conversations  
10 did you have?  
11 A. Approximately ten in total.  
12 Q. Okay. Can you tell me generally  
13 what you discussed?  
14 A. We discussed their memories of  
15 specific meetings and phone conversations and,  
16 in particular, those in which I was not  
17 present.  
18 Q. Did you meet with each of them  
19 separately, Wilson, Bloom, Ratner?  
20 A. Yes.  
21 Q. How many times each?  
22 A. I met with Mr. Bloom and Mr. Ratner  
23 one time each. I met with Mr. Wilson many  
24 times, you know, eight times, approximately.  
25 Q. Do you feel you're prepared to give  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Okay. Other than Beijing e-Town,  
3 do you remember any other subject matters that  
4 you talked about with Mr. Wilson regarding  
5 meetings that he had attended without you?  
6 A. There was no subject matter that he  
7 and I were not involved in together. There may  
8 have been specific meetings where I attended  
9 without him or he attended without me.  
10 The one that comes most to mind is  
11 there was a meeting at Carl Icon's offices on I  
12 believe May 1st; whatever that Friday was, that  
13 I only attended the first hour of, and the  
14 meeting went on for three or four more hours.  
15 That was a meeting that he had  
16 memories of that I did not. And the only other  
17 circumstance was there was a two-day mediation  
18 conducted by Judge Morris that he attended and  
19 I did not.  
20 Q. All right. I want to make sure I  
21 understand your answer. Was it generally the  
22 case that as events were unfolding related to  
23 the Delphi bankruptcy and Treasury's role in  
24 that, you and Mr. Wilson would have real-time  
25 discussions related to those issues?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 MR. SCHWARTZ: Object to the  
3 form.  
4 A. Correct.  
5 Q. Did you have any role in producing  
6 documents responsive to this subpoena?  
7 A. I did.  
8 Q. Did you review any documents before  
9 they were produced?  
10 A. I did not.  
11 Q. Okay. You reviewed documents after  
12 they were produced by Treasury?  
13 A. I did.  
14 Q. Do you remember any particular  
15 documents that you reviewed as you were  
16 preparing for your deposition?  
17 A. I reviewed most, if not all, of the  
18 e-mails that were produced. I reviewed copies  
19 of documents that had been filed with the  
20 bankruptcy court, the Plan of Reorganization,  
21 the transaction documents. Those are the ones  
22 I remember best.  
23 Q. Had you seen all those before?  
24 A. I believe that I had. If not all  
25 of them, nearly all of them.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 discussions with GM or any representatives of  
3 GM or their counsel?  
4 A. I'm sorry. Regarding this  
5 deposition?  
6 Q. Yes.  
7 A. No.  
8 Q. How about with Platinum or any of  
9 its advisors, lawyers?  
10 A. No.  
11 Q. Anyone else, other than you  
12 mentioned Wilson, Bloom, Ratner, counsel, that  
13 you met with in preparation for your depo?  
14 A. One of my colleagues, Paul  
15 Nathanson, attended one of the prep sessions,  
16 but I didn't meet with him separately.  
17 Q. Where'd you go to college?  
18 A. I went to Tufts University.  
19 Q. When did you graduate?  
20 A. 1985.  
21 Q. Law school?  
22 A. I attended NYU Law School.  
23 Q. When did you graduate?  
24 A. 1988.  
25 Q. Any other degrees?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. The bankruptcy filings?  
3 A. Yes.  
4 Q. The --  
5 A. I'm sorry. Was that a question,  
6 the bankruptcy filings?  
7 Q. Yes.  
8 A. I'm sorry. What's the question?  
9 Q. Bankruptcy filings one of the  
10 things that you had reviewed before?  
11 A. I had, yes.  
12 Q. Okay. The e-mails?  
13 A. My e-mails, obviously, and anything  
14 I was copied on I had seen before.  
15 Q. So there were some e-mails that you  
16 reviewed that you had not seen before. Did  
17 those -- in reviewing them to prepare for your  
18 deposition, did any of those refresh any  
19 recollections that you had about issues or  
20 meetings or discussions that you had with  
21 Mr. Wilson or others?  
22 A. They were consistent with my  
23 memories and certainly refreshed my memories.  
24 Q. Okay. As you were preparing for  
25 your deposition, did you have any meetings or  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. No.  
3 Q. Can you give me a brief employment  
4 history after law school?  
5 A. From 1988 until the beginning of  
6 1991, I was an associate at a law firm Lane &  
7 Altman. And from 1991 through March of 2009, I  
8 was an attorney at Willkie, Farr & Gallagher  
9 LLP.  
10 Q. And after March '09?  
11 A. In March '09 I took a position with  
12 the Treasury Department and have been employed  
13 there since.  
14 Q. What's your position with Treasury?  
15 A. I am an attorney under the general  
16 counsel's -- in the general counsel's office.  
17 I don't actually know what my position is.  
18 Q. Are you affiliated with the --  
19 Treasury's Auto Task Force?  
20 A. I'm a member of the auto team at  
21 Treasury, which has been charged with assisting  
22 the Auto Task Force.  
23 Q. Who do you report to?  
24 A. I report to George Madison, the  
25 general counsel of the Treasury or the proposed  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 general counsel of the Treasury.  
3 Q. You report to him directly?  
4 A. I do.  
5 Q. Okay. Anyone report to you  
6 directly?  
7 A. I don't believe so.  
8 Q. What is Harry Wilson's position?  
9 A. He's on the Auto Team. I don't  
10 know what his -- his title or position is  
11 within the Treasury Department.  
12 Q. In the hierarchy, are you above,  
13 below Harry, or parallel, or neither?  
14 MR. SCHWARTZ: Obviously never  
15 worked for the government.  
16 A. I think -- well, I would say, and I  
17 believe he would say, that we are partners  
18 within the Auto Team.  
19 Q. What's his position? Do you know?  
20 A. No.  
21 Q. Describe your day-to-day  
22 responsibilities with the Auto Team.  
23 A. I am the only lawyer who's a member  
24 of the Auto Team, so I have responsibilities  
25 across all of the various companies that we  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 going on in this country for autos.  
3 And so, you know, our mandate is  
4 not to save every supplier, but to provide some  
5 liquidity to the system so that those suppliers  
6 that are strong enough to survive can survive,  
7 and those suppliers that may not be strong  
8 enough to survive, you know, can, you know,  
9 move forward with a reorganization or  
10 liquidation in an orderly manner.  
11 Q. And why provide any -- from  
12 Treasury's perspective, why provide any support  
13 to the suppliers?  
14 A. Because without suppliers, the OEM  
15 would collapse.  
16 Q. And OEMs, can you define it for the  
17 record?  
18 A. Original equipment manufacturers,  
19 primarily the automakers, Chrysler, General  
20 Motors, Ford, Honda, Toyota, Daimler, and, you  
21 know, another half a dozen I'm just not  
22 thinking of at the moment.  
23 Q. Is Delphi one of the suppliers  
24 without which OEMs would collapse?  
25 A. Delphi is an important supplier to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 have been involved in, including Chrysler  
3 Corporation, General Motors, GMAC, Chrysler  
4 Financial, and Delphi. Those have been the  
5 companies that we have been most involved in.  
6 On a day-to-day basis, I'm involved  
7 in meetings and phone calls both with the  
8 companies as well as with members of Congress  
9 and the administration to try to implement the  
10 President's policy, which is to effect a  
11 commercial restructuring of the U.S.-based OEMs  
12 and support to the extent possible the supply  
13 community in the -- of the autos.  
14 Q. When you say support to the extent  
15 possible the supply community of the autos,  
16 what do you mean?  
17 A. I think the President has been  
18 pretty clear in his public statements that it  
19 is not possible for the U.S. government to  
20 simply write checks to support the entire Auto  
21 industry, that the Treasury and the Auto Team  
22 should act in a commercially responsible  
23 manner, which may in some cases mean that  
24 certain suppliers may not be successful in  
25 restructuring, given the new sales paradigm  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 General Motors. I don't believe that Delphi's  
3 demise would cause the collapse of any OEMs but  
4 certainly not -- if it were going to cause a  
5 collapse, the only one at risk would be General  
6 Motors.  
7 Q. Would you agree that if Delphi  
8 collapses, that would have a devastating impact  
9 on General Motors?  
10 MR. SCHWARTZ: Objection.  
11 A. No, I wouldn't agree with that.  
12 Q. You don't agree with that?  
13 A. No.  
14 Q. Would you say that the parts that  
15 Delphi supplies to General Motors could be  
16 replaced easily by GM?  
17 A. I don't know what you mean by  
18 easily.  
19 Q. Could they be replaced without  
20 undue burden on General Motors without  
21 impacting its ability to continue as a going  
22 concern?  
23 MR. SCHWARTZ: Object to the  
24 form.  
25 A. Some parts could be relatively  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 easily replaced, and some parts would be more  
3 difficult to replace.  
4 Q. How difficult?  
5 A. Again, I'm not sure I understand  
6 the question. Are you talking about money or  
7 are you talking about time or are you talking  
8 about -- I'm just not sure I understand the  
9 question.  
10 Q. Any way you want to look at it from  
11 your perspective on the Auto Team.  
12 A. We think it would take several  
13 months to replace Delphi's production for  
14 General Motors.  
15 Q. What impact would that have on  
16 General Motors from Treasury's perspective to  
17 have a several-month delay in getting some  
18 parts that it needs to manufacture autos?  
19 A. Well, today it would have almost no  
20 impact on General Motors.  
21 Q. What about without the proposed  
22 deal that's put forth before the bankruptcy  
23 court in Delphi?  
24 A. I'm sorry. I just don't understand  
25 the question.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 critical to GM's success going forward?  
3 MR. SCHWARTZ: Object to the  
4 form.  
5 A. No, I wouldn't.  
6 Q. Why not?  
7 A. GM needs parts. Delphi can provide  
8 them or others can provide them, but Delphi is  
9 no more critical to GM than Lear or any other  
10 supplier is critical to GM or critical to Ford  
11 or critical to Chrysler. Every supplier is  
12 important to the OEMs.  
13 Q. If Delphi were to collapse, where  
14 else would GM get the parts that you referred  
15 to before that would be more difficult to get  
16 than others?  
17 A. GM would have to -- if Delphi  
18 collapsed and there was no one to operate  
19 Delphi out of the collapse, GM would have to  
20 resource those parts from other suppliers.  
21 Q. Who? Do you know?  
22 A. Which part?  
23 Q. Any part.  
24 A. Delphi provides more than 3,000  
25 parts to General Motors.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Let me back up. You said today it  
3 would have almost no impact on General Motors.  
4 What do you mean by that?  
5 A. General Motors has excessive  
6 inventory in the market today. General Motors  
7 is not up and running today. Its factories are  
8 shut down. It's not buying anything from  
9 Delphi or other suppliers, or buying very  
10 little from Delphi or other suppliers today.  
11 Q. Is it the goal of Treasury to try  
12 to get General Motors back up and running?  
13 A. I think it's the goal of General  
14 Motors to get back up and running.  
15 Q. Is it not the policy of the  
16 Treasury to have -- to ensure GM's long-term  
17 viability?  
18 A. It's not the policy of the Treasury  
19 to ensure GM's long-term viability. The  
20 Treasury was brought in and the Auto Team was  
21 brought in to try to effect a restructuring of  
22 General Motors, both balance sheet and  
23 operations, and that is essentially complete at  
24 this point.  
25 Q. Would you say that Delphi is  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. You had said that -- I don't want  
3 to interrupt you. Sorry.  
4 A. It's difficult to answer the  
5 question without talking about at least the  
6 category of parts.  
7 Q. The categories you used were that  
8 parts would be more easily obtainable for GM  
9 than others, some would be harder to obtain,  
10 some would take several months to obtain. Do  
11 you recall saying that?  
12 A. I do.  
13 Q. The ones that would be harder to  
14 obtain, that would take several months to  
15 obtain, where else would GM go to get those  
16 parts?  
17 A. Well, the most difficult part to  
18 replace would be the steering. Assuming that  
19 nobody was operating the Saginaw steering  
20 facility, which is hard to imagine, but if you  
21 want to make that your hypothetical, that's  
22 fine.  
23 General Motors would have to go to  
24 Bosch or, you know, perhaps American Axle and  
25 try to replace the steering contract with those  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 parties.  
3 Q. Has GM ever done that before?  
4 A. I don't know.  
5 Q. Ever?  
6 A. I don't know.  
7 MR. SCHWARTZ: With respect to  
8 steering?  
9 Q. What was your role -- just a couple  
10 questions on this. What was your role in the  
11 Chrysler bankruptcy?  
12 A. I was involved in helping create  
13 the structure, helping to negotiate the terms  
14 of the transaction with Fiat, and generally  
15 overseeing the bankruptcy process from the  
16 government's perspective.  
17 Q. What is the U.S. Treasury's  
18 investment in General Motors today, if you  
19 could describe that?  
20 A. We have lent General Motors -- I'm  
21 sorry. Strike that.  
22 The Treasury has made an investment  
23 of approximately \$50 billion, of which  
24 \$8 billion is in the -- approximately  
25 \$8 billion is in the form of a loan and  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Motors must comply with in connection with that  
3 loan.  
4 Q. Is it Treasury's position that it  
5 can consent or object to the use of GM of  
6 its -- any of its money as financing for  
7 Delphi?  
8 A. Yes.  
9 Q. What? Consent? Object?  
10 A. Under the terms of the loan that  
11 existed prior to General Motors filing for  
12 bankruptcy, any transaction that General Motors  
13 wanted to undertake in excess of \$100 million  
14 or expected to be in excess of \$100 million  
15 required the consent of the Treasury.  
16 Q. And is there any similar type of  
17 provision after GM filing for bankruptcy?  
18 MR. SCHWARTZ: Do you mean in the  
19 postposition financing?  
20 MR. MALIONEK: I'm just using the  
21 answer that he gave in coming up with  
22 that.  
23 MR. SCHWARTZ: He said under the  
24 prepetition loan agreement, so he's  
25 referring to a document.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 approximately \$42 billion has been converted  
3 into equity of General Motors, representing  
4 approximately 60 percent of the equity of  
5 General Motors.  
6 Q. Does U.S. Treasury have some  
7 control over GM's finances?  
8 MR. SCHWARTZ: Object to the  
9 form.  
10 A. Again, I'm not sure what you mean  
11 by control.  
12 Q. Do you have an understanding what  
13 the word "control" means?  
14 A. I have lots of understandings of  
15 what the word "control" means.  
16 Q. Using the understanding that you  
17 have, to what extent does GM have any control  
18 over -- does Treasury have any control over  
19 GM's finances?  
20 MR. SCHWARTZ: Object to the  
21 form.  
22 A. General Motors -- I'm sorry.  
23 Strike that.  
24 The Treasury is a lender to General  
25 Motors, and there are covenants that General  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 MR. MALIONEK: He said under the  
3 terms of the loan that existed prior to  
4 GM's filing for bankruptcy. And I said  
5 after that.  
6 A. There are two periods of time after  
7 that. Do you mean during the DIP, or do you  
8 mean now, postemergence?  
9 Q. Now.  
10 A. There are covenants that would  
11 require General Motors to obtain Treasury's  
12 consent again with respect to certain  
13 transactions. There's no longer a \$100 million  
14 limit. The Delphi investment would be one in  
15 which they would need Treasury's consent.  
16 (Feldman Exhibit 2 was marked for  
17 identification.)  
18 BY MR. MALIONEK:  
19 Q. You've been handed what's been  
20 marked Exhibit 2. Do you recognize this  
21 document?  
22 A. I do.  
23 Q. Can you describe it for the record?  
24 A. It's a letter from John Rapisardi  
25 from Cadwalader to Jeff Tanenbaum, who  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 represents General Motors in connection with  
3 the Delphi matter.  
4 Q. What is Cadwalader's role with  
5 respect to Treasury?  
6 A. Cadwalader is special counsel to  
7 Treasury in connection with various bankruptcy  
8 matters.  
9 Q. And Mr. Tanenbaum of Weil Gotshal,  
10 do you know who he represents?  
11 A. I believe he represents General  
12 Motors.  
13 Q. Okay. In this letter,  
14 Mr. Rapisardi says that "I informed you,  
15 Mr. Tanenbaum" -- it's on the second line. Do  
16 you see that?  
17 A. I do.  
18 Q. "I informed you of the U.S.  
19 Treasury's objection to the increase in GM's  
20 Tranche B commitments under the GM arrangements  
21 from 300 to 450 million." Do you see that?  
22 A. I do.  
23 Q. So was that U.S. Treasury objecting  
24 to use of GM funding to support Delphi?  
25 A. No.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 overall solution for Delphi was expected to be,  
3 that sort of thing.  
4 Q. Did you start talking to anybody  
5 else at that time in order to learn more about  
6 the background of the Delphi bankruptcy?  
7 A. Within a short period of time, we  
8 were -- we were contacted by a number of  
9 participants in the Delphi bankruptcy.  
10 Q. Who? Can you tell me?  
11 A. Based on my memory, I think Delphi  
12 reached out to us both through counsel as well  
13 as through John Sheehan, and the DIP lenders  
14 reached out to us through Don Bernstein as well  
15 as through the agent, J.P. Morgan.  
16 I also believe within a short  
17 period of time that Silver Point Capital, one  
18 of the DIP lenders, also reached out to us.  
19 Q. Can you describe for me generally  
20 what involvement Treasury had or has had with  
21 respect to the Delphi bankruptcy?  
22 A. As a lender to General Motors, and  
23 given our mandate to restructure General  
24 Motors, we have assisted General Motors in  
25 their thinking and actions in connection with  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Okay. Can you describe for me what  
3 that objection was, then?  
4 A. I think it was an objection to  
5 increasing the commitment from 300 to  
6 \$450 million before Treasury had an opportunity  
7 to review the transaction and the cash flows.  
8 Q. Do you know why Treasury made that  
9 objection?  
10 A. Yes.  
11 Q. Why?  
12 A. Because we had just begun to hit  
13 the ground on March 23rd and didn't understand  
14 what the background was on this transaction,  
15 what was going to be required going forward.  
16 Just simply didn't have enough information at  
17 that time.  
18 Q. Okay. What steps did Treasury take  
19 to try to get more information, if any?  
20 A. We began talking to General Motors  
21 immediately in understanding the background,  
22 trying to understand the background of the  
23 Delphi case, what the reason for the increase  
24 was, how much money had been spent, how much  
25 money was anticipated to be spent, what the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 the Delphi bankruptcy.  
3 Q. What do you mean by that, assisted  
4 GM in its thinking?  
5 A. Obviously, GM is a major player in  
6 the Delphi bankruptcy, and we were able to  
7 think through with them and help them think  
8 through what the best resolution was from their  
9 perspective.  
10 Q. How often did Treasury meet with or  
11 discuss with GM its various options with  
12 respect to the Delphi bankruptcy?  
13 A. During what time period?  
14 Q. During the time that you have been  
15 with the task force, the Auto Team.  
16 A. There were times when we spoke to  
17 them every day, and there were times when we  
18 spoke to them a couple times a week about it.  
19 Q. How many times during the same  
20 period did Treasury meet with or have  
21 discussions with Delphi regarding the Delphi  
22 bankruptcy?  
23 A. I -- I don't know.  
24 Q. More than 30?  
25 A. No.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. More than --  
3 MR. SCHWARTZ: When you talk  
4 about Treasury, you're talking about  
5 Treasury officials as opposed to their  
6 counsel?  
7 MR. MALIONEK: Talking about  
8 Treasury.  
9 MR. SCHWARTZ: Well, Treasury  
10 officials as opposed to their counsel?  
11 MR. MALIONEK: I'm talking about  
12 Treasury. If he understands, he  
13 understands. If he doesn't, he doesn't.  
14 We can work through it.  
15 Q. More than 20?  
16 A. My answers relate to Treasury  
17 officials. I have no idea how many times  
18 counsel would have spoken to or met with their  
19 counterparts.  
20 Q. Okay.  
21 A. Was more than 20 the question?  
22 Q. Yes.  
23 A. Probably not.  
24 Q. More than ten?  
25 A. Probably.

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 with respect to the Delphi bankruptcy?  
3 A. We articulated certain principles  
4 that we thought General Motors should focus on.  
5 I think they agreed with us. And that was to  
6 come up with a transaction that guaranteed  
7 sanctity of supply to General Motors, that was  
8 a speedy resolution to the Delphi bankruptcy  
9 that required the least amount of investment by  
10 General Motors possible.  
11 Q. And why was it important to  
12 Treasury to ensure a -- the supply to GM?  
13 A. Because given everything that GM  
14 had going on in its own restructuring, there  
15 was not a strong desire to have to divert  
16 management attention to resourcing the Delphi  
17 products that Delphi's provided.  
18 Q. And why have a -- why, using the  
19 same set of questions, why was it important to  
20 Treasury to have a speedy resolution to the  
21 Delphi bankruptcy?  
22 A. Well, because one way or another,  
23 General Motors needs to get on with its  
24 business. If Delphi could be a part of it  
25 going forward, that's fine. If Delphi was

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. So maybe between 10, 20?  
3 A. Roughly 15 sounds right, feels  
4 right.  
5 Q. In the period that you've been with  
6 the Auto Team, you started, what, in late  
7 March, early April?  
8 A. One clarification from the prior  
9 answer. That includes both meetings and  
10 telephone calls.  
11 Q. Uh-huh.  
12 A. My official start date was  
13 April 1st, but by the third week of March, I  
14 was at Treasury, beginning to get up to speed.  
15 Q. And about how many times do you  
16 think Treasury had, meetings, phone calls,  
17 etc., with GM with respect to the Delphi  
18 bankruptcy? Looking for an overall number.  
19 MR. SCHWARTZ: If you can't  
20 estimate it, don't guess.  
21 A. Maybe 70 times.  
22 Q. What was Treasury's goal, if you  
23 could describe it, in that term? And tell me,  
24 if you understand, what was Treasury's goal in  
25 assisting GM with its thinking, as you had,

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 going to liquidate, that's also fine.  
3 But there was a desire for it to  
4 reach a conclusion sooner rather than later and  
5 not linger for three more years in bankruptcy.  
6 Q. And why was it important for  
7 Treasury to see that General Motors had the  
8 least amount of investment possible in Delphi?  
9 A. General Motors had already invested  
10 and funded Delphi with literally billions of  
11 dollars during Delphi's Chapter 11. It had  
12 spent that money and not gotten anywhere in the  
13 case.  
14 The case was completely mired in a  
15 morass in March, AND so the view was Delphi  
16 needed to reach conclusion, but General Motors'  
17 investment ought to be an appropriate amount,  
18 which the view was that ought to be as little  
19 as is reasonably possible to get Delphi out of  
20 bankruptcy and that no money should be funded  
21 to Delphi absent an overall solution to  
22 Delphi's Chapter 11 case.  
23 Q. The -- what do you mean by "an  
24 overall solution"?  
25 A. Path to either a sale or a

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 confirmed plan.  
3 Q. So was it Treasury's position that  
4 as of the time that the Auto Task -- the Auto  
5 Team was getting involved in the Delphi  
6 bankruptcy, that GM should not expend any more  
7 money to support a Delphi without that kind of  
8 an overall solution in place?  
9 A. That was one of the principles that  
10 we discussed with General Motors and General  
11 Motors articulated to Delphi.  
12 Q. Were you aware that Delphi had a  
13 confirmed Plan of Reorganization prior to, you  
14 know, the spring of 2009?  
15 A. Was I aware prior to the spring or  
16 was --  
17 Q. No. Were you aware that it was in  
18 place prior to then?  
19 A. At what time was I aware?  
20 Q. Are you aware of that now?  
21 A. Yes.  
22 Q. And at some point, that plan fell  
23 apart, right?  
24 A. Yeah, my understanding is they  
25 could not go effective. They could not  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And you've been shown what's been  
3 marked as Exhibit 3. This is an e-mail that  
4 says at the top from John Sheehan to a group of  
5 folks dated April 5. And it says, "This  
6 morning," in the beginning, "This morning, we  
7 held a telephone conference call with Harry  
8 Wilson from U.S. Treasury at his request."  
9 Do you see that?  
10 A. Yes.  
11 Q. Is that about the time of the  
12 meeting that you were just describing?  
13 A. Yes.  
14 Q. And it says that "Harry opened the  
15 discussion with the following points: UST" --  
16 I assume that's U.S. Treasury -- "does not see  
17 any great options for Delphi."  
18 Do you see that?  
19 A. Yes.  
20 Q. Was that Treasury's position at the  
21 time?  
22 A. Yes.  
23 Q. And then the second bullet, "U.S.  
24 Treasury will not permit GM to put additional  
25 capital into Delphi absent a global solution  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 consummate that plan.  
3 Q. And is it your understanding that  
4 at that point Delphi needed some liquidity  
5 support in order to get through even a  
6 short-term period through its bankruptcy?  
7 A. My understanding is Delphi said  
8 they needed liquidity support, yes.  
9 Q. Told you that?  
10 A. Yes.  
11 Q. Did you tell -- who told you that?  
12 Do you remember?  
13 A. Yeah. John Sheehan and Mr. --  
14 Mr. Tripp.  
15 MR. SCHWARTZ: Stipp.  
16 A. Stipp. I apologize.  
17 Q. When? Do you remember?  
18 A. It was a meeting we had with them  
19 in early April. I don't remember the exact  
20 date, but sometime in the first week of April.  
21 MR. SCHWARTZ: 2009?  
22 A. I'm sorry. 2009.  
23 (Feldman Exhibit 3 was marked for  
24 identification.)  
25 BY MR. MALIONEK:  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 for Delphi."  
3 Do you see that?  
4 A. Yes.  
5 Q. Is that what you were just  
6 referencing a few minutes ago?  
7 A. That's correct.  
8 Q. So that was Treasury's position as  
9 explained to Mr. Sheehan and others at Delphi  
10 at the time?  
11 A. That's correct.  
12 Q. Did Mr. Sheehan push back at the  
13 time on Treasury as to pressing the need for  
14 the -- for extra liquidity support or support  
15 from General Motors or Treasury?  
16 A. Certainly.  
17 Q. What did he say?  
18 A. Sheehan was looking for liquidity  
19 anyplace he could get it, and he was, you know,  
20 very much of the view that General Motors ought  
21 to be part of that liquidity solution for  
22 Delphi, and he stated as much in many different  
23 ways.  
24 Q. Did Treasury tell him no, we're not  
25 going to do that without a global solution?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. We told him that and General Motors  
3 told him that.  
4 Q. Did you offer any types of global  
5 solutions to Mr. Sheehan at the time?  
6 A. At what time?  
7 Q. The time of the meeting that we  
8 were just talking about, April 5.  
9 A. I think at that time we told him we  
10 were just beginning to do our diligence on  
11 Delphi, and we needed more time.  
12 Q. It goes on in this e-mail to talk  
13 about a range of options that Treasury sees,  
14 either a regular way emergence -- it's the  
15 third bullet point, number 1 -- or a series of  
16 asset sales. It says that "Treasury's  
17 preferred route is option 1. That's not  
18 realistic, and therefore U.S. Treasury sees  
19 option 2 as the only option available."  
20 Do you see that?  
21 A. I do.  
22 Q. Were those all things that Treasury  
23 relayed to Mr. Sheehan and Delphi at the time?  
24 A. Yeah. I think -- I think more was  
25 relayed to him, but those are -- that's a  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Did you tell him that you didn't  
3 believe that that was the case?  
4 A. We told him it was not a productive  
5 way to begin and end every conversation.  
6 Q. Why?  
7 A. Because it's true about every  
8 supplier with every OEM.  
9 Q. No more so with Delphi than any  
10 other supplier with respect to GM?  
11 A. Again, it depends on how you define  
12 it. There were certain lines of General motors  
13 that Delphi was and is very critical to, but  
14 that's no different than Dana with Ford or  
15 American Axle with General Motors.  
16 So the answer is in that industry,  
17 every supplier is a critical supplier. Every  
18 supplier can shut down an OEM or lines of an  
19 OEM and Delphi's in no more unique position  
20 regarding that than any other supplier.  
21 Q. So Mr. Sheehan was trying to, I  
22 guess, exert leverage over GM; is that a fair  
23 characterization?  
24 MR. SCHWARTZ: Objection.  
25 A. I think Mr. Sheehan was trying to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 subset of things we discussed with him.  
3 Q. Was it Treasury's position at the  
4 time that an asset sale would be in the best  
5 interests of GM at the time?  
6 A. I -- no. I think our view was that  
7 the best opportunity for both General Motors  
8 and Delphi was for there to be existing  
9 financing, but we just didn't see who was going  
10 to be a source for that existing financing.  
11 Q. You didn't think that was a viable  
12 option?  
13 A. Sheehan thought the only potential  
14 provider of that liquidity was U.S. Treasury  
15 directly to Delphi through TARP funds, and we  
16 explained to him that that was not possible.  
17 Q. Did Mr. Sheehan explain or say that  
18 it -- I guess or push back with the idea that  
19 if Delphi fails, it would be -- it would cause  
20 harm to General Motors?  
21 A. Obnoxiously so.  
22 Q. What do you mean?  
23 A. He began and ended every  
24 conversation with that until we told him to  
25 stop.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 find liquidity for his company in any place he  
3 could find it.  
4 Q. And to try to support his argument,  
5 he harped on the fact obnoxiously that GM  
6 was -- Delphi was critical as a supplier to GM;  
7 right?  
8 A. And more generally, he argued that  
9 Delphi was critical to the industry as a whole  
10 and that if Delphi failed, the whole industry  
11 would get sucked down into the vortex.  
12 Q. Now, you knew at the time that  
13 Delphi, of course, needed liquidity and was  
14 looking for liquidity, I think you said any  
15 source that it could get?  
16 A. I don't know that it needed it. I  
17 know that it was looking for it.  
18 Q. Did Treasury try to on behalf of  
19 U.S. taxpayers and the investment that the  
20 U.S. government has in GM, try to exert  
21 leverage over Delphi?  
22 MR. SCHWARTZ: Objection.  
23 A. No. I think we told Sheehan, as we  
24 told everybody, General Motors was not going to  
25 be a source of liquidity absent an overall  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 solution to Delphi.  
3 Q. Did you tell Mr. Sheehan or Delphi  
4 that U.S. Treasury was not going to allow --  
5 was not going to provide or allow GM to provide  
6 any financing unless Treasury was happy with  
7 the end deal?  
8 A. Any financing above 100 million.  
9 Obviously, under 100 million we didn't have any  
10 say, and we didn't have any ability to be asked  
11 for our consent or to stop it or to do anything  
12 else.  
13 So yes, over 100 million we said as  
14 a lender to General Motors, we're not prepared  
15 to consent to a transaction absent a clear path  
16 to emergence.  
17 Q. And Treasury's approval?  
18 A. I think I said our consent, which  
19 is what was required under the loan support  
20 agreement which we had with General Motors.  
21 Q. And your consent was dependent on a  
22 clear path to emergence?  
23 A. That's correct.  
24 Q. In Treasury's view?  
25 A. You could say it's in Treasury's  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 was to obtain any kind of recovery?  
3 MR. SCHWARTZ: Prior to the  
4 spring of 2008.  
5 MR. FRIEDMAN: The committee was  
6 going to get recovery?  
7 MR. MALIONEK: Right.  
8 SPEAKER: The committee.  
9 MR. MALIONEK: The unsecured  
10 creditors represented by the committee.  
11 A. I believe -- I believe that I know  
12 that the confirmed plan provided some  
13 distribution to unsecured creditors.  
14 Q. Now, it wasn't Treasury's goal in  
15 its involvement in the Delphi bankruptcy over  
16 the last few months to try to ensure that any  
17 of the creditors got a particular kind of  
18 recovery, was it?  
19 A. Treasury's role was solely with  
20 respect to General Motors.  
21 Q. And solely to ensure that General  
22 Motors got the best deal that it could get?  
23 A. To go back to the principles that  
24 we articulated, sanctity of supply; speed of  
25 emergence; minimization of costs; no funding  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 view. I think it's -- I think it was an  
3 objectively clear path to emergence. I don't  
4 think it's just our view.  
5 Q. When you say "objectively clear,"  
6 what do you mean?  
7 A. There needed to be signed  
8 documents, there needed to be a court process,  
9 whether it was through a plan or a 363 sale  
10 that had -- that had a mechanism for the  
11 company to come out of bankruptcy.  
12 Q. Now, in -- you understand that  
13 Delphi, the debtors in the bankruptcy case,  
14 have certain fiduciary duties?  
15 A. Sure, I understand that.  
16 Q. To various constituencies?  
17 A. Sure, I understand that.  
18 Q. Including the creditors?  
19 A. Among others, sure.  
20 Q. And unsecured creditors?  
21 A. I agree.  
22 Q. In the confirmed Plan of  
23 Reorganization that we discussed earlier that  
24 was in place prior to the spring of 2009, do  
25 you know if the Unsecured Creditors Committee  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 until there was a clear path to emergence.  
3 Those were our principles and goals.  
4 Q. All to support GM's interests?  
5 A. That's -- that's correct.  
6 Q. Okay. You weren't taking on any  
7 fiduciary duties to the creditors at Delphi?  
8 A. Correct.  
9 Q. You didn't think that you owed the  
10 Unsecured Creditors Committee any duty to try  
11 to make sure that it got any recovery for the  
12 unsecured creditors?  
13 A. I'm sorry. I don't understand the  
14 question.  
15 Q. You weren't trying to maximize the  
16 recovery to the unsecured creditors for Delphi?  
17 A. Who is the --  
18 Q. Treasury.  
19 A. I apologize. Who was the "you" in  
20 that sentence?  
21 Q. Treasury.  
22 A. I'm sorry. Can you repeat the  
23 question? I lost it.  
24 Q. Treasury has not, in its  
25 involvement in the Delphi bankruptcy over the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 last few months, been trying to ensure the  
3 maximum amount of recovery for the unsecured  
4 creditors of Delphi, has it?  
5 A. It has not.  
6 Q. Or any other Delphi creditors?  
7 A. Other than General Motors?  
8 Q. Correct.  
9 A. No, it has not.  
10 MR. MALIONEK: Can we take a  
11 five-minute break?  
12 (A recess was taken from 11:00 a.m.  
13 through 11:09 a.m.)  
14 (Feldman Exhibit 4 was marked for  
15 identification.)  
16 BY MR. MALIONEK:  
17 Q. You've been shown what's been  
18 marked Exhibit 4. Do you recognize this  
19 document?  
20 A. Yes.  
21 Q. This is an e-mail chain from  
22 April 16 between you, John Sheehan, and others,  
23 correct?  
24 A. That's correct.  
25 Q. And at the very bottom, which is  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I think it was to discuss whether  
3 there could be an agreement between the DIP  
4 lenders and General Motors around a financing  
5 for Delphi, that's correct.  
6 Q. But you didn't think it was  
7 productive to have Delphi there?  
8 A. I thought it was too early in the  
9 process.  
10 Q. Were you having any -- were you or  
11 Treasury having any other discussions with  
12 Delphi around this time?  
13 A. We were.  
14 Q. Okay. What other discussions were  
15 those?  
16 A. We were -- we at Treasury were in  
17 the midst of diligencing Delphi and, more  
18 particularly, the Delphi facilities that  
19 General Motors was perhaps going to acquire as  
20 part of an overall solution for Delphi.  
21 Q. And what discussions were you  
22 having with Delphi, if any, you personally,  
23 now, with respect to that issue?  
24 A. Which issue? The diligence issue?  
25 Q. Yes.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 what starts the e-mail chain, an e-mail from  
3 Mr. Sheehan of Delphi to you talks about a  
4 meeting between Delphi's DIP lenders and  
5 Treasury. You see that?  
6 A. Yes.  
7 Q. Okay. And Mr. Sheehan is asking to  
8 attend the meeting; correct?  
9 A. That's correct.  
10 Q. And you tell him no; right?  
11 A. You can characterize it that way.  
12 Q. Could you characterize it as yes?  
13 A. I told him I think it was  
14 premature.  
15 Q. Why was it premature? Why did you  
16 tell him that?  
17 A. Because, as I say in the e-mail,  
18 John was concerned about being at the meeting  
19 so that if there was a deal to execute on, they  
20 could provide input to that execution.  
21 I think my suggestion was it was --  
22 we were not at that point yet, so there was no  
23 need, no reason, no benefit for him to attend.  
24 Q. Was this -- this was to discuss  
25 financing options for Delphi, correct?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I was on a number of phone calls  
3 with Delphi regarding how the information would  
4 flow, who was entitled to see the information  
5 from the -- that Delphi was producing.  
6 Q. Did you discuss issues of  
7 confidentiality?  
8 A. We discussed issues of  
9 confidentiality. We discussed Delphi's  
10 reluctance to allow General Motors purchasing  
11 to see that information, those sorts of things.  
12 Q. Did you think that Delphi's  
13 position with respect to GM purchasing, seeing  
14 that kind of confidential information, the  
15 diligence that you were referring to, did you  
16 think that position was inappropriate?  
17 A. No.  
18 Q. At the top of this e-mail chain  
19 Mr. Sheehan responds to you and says, "Can I  
20 call you for just five minutes?" And you  
21 respond with your phone number.  
22 Did you guys have a conversation  
23 that day?  
24 A. I don't recall.  
25 Q. Did Delphi actually attend this  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 meeting with Treasury and the DIP lenders'  
3 representatives?  
4 A. I don't know for sure whether the  
5 meeting actually took place. It certainly  
6 didn't take place in New York, which I think is  
7 referenced somewhere in the e-mail, which is  
8 making me question whether the meeting ever --  
9 ever occurred.  
10 (Feldman Exhibit 5 was marked for  
11 identification.)  
12 BY MR. MALIONEK:  
13 Q. You've been shown what's been  
14 marked Feldman Exhibit 5. Do you recognize  
15 this document?  
16 A. Yes.  
17 Q. Okay. If you look at the bottom,  
18 there's an e-mail chain between Jeff Tanenbaum  
19 and you with respect to Delphi and a meeting on  
20 April 17. See that?  
21 A. Yes.  
22 Q. And you respond -- this is at the  
23 bottom of page 1, top of page 2 -- saying that  
24 "I would encourage people not to travel, so we  
25 could have a phone call."  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I do.  
3 Q. Okay. And you list representatives  
4 from Treasury, you and Harry Wilson; right?  
5 A. I see that.  
6 Q. DIP lenders' representatives, some  
7 folks from GM, and then under Delphi you write  
8 "no one." Do you see that?  
9 A. I do.  
10 Q. And so does that refresh your  
11 recollection that nobody from Delphi was  
12 invited to participate in this meeting?  
13 A. Yeah, it refreshes my recollection.  
14 Q. And no one from Delphi was invited  
15 to participate; right?  
16 A. I think that's correct.  
17 Q. Whose decision was it not to invite  
18 Delphi?  
19 A. I think it was Treasury's decision  
20 not to invite Delphi.  
21 (Feldman Exhibit 6 was marked for  
22 identification.)  
23 BY MR. MALIONEK:  
24 Q. You've been shown Exhibit Number 6.  
25 Do you recognize this document?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Does that refresh your recollection  
3 as to whether there actually was a phone call  
4 as opposed to a meeting on the 17th with  
5 respect to the DIP lenders?  
6 A. I'm sorry. Where are you directing  
7 me in the exhibit?  
8 Q. Bottom of page 1, top of page 2.  
9 There's an e-mail from you to Jeff Tanenbaum  
10 dated April 16 at 2:19 p.m. Do you see that?  
11 A. From Jeff to me?  
12 Q. Go to the bottom of page 1.  
13 A. Oh, now I see it. I'm sorry.  
14 Q. That's okay. It says "I would" --  
15 you say, "I would encourage people not to  
16 travel. I think it's unnecessary."  
17 A. I see that, yes.  
18 Q. Does this refresh your recollection  
19 as to whether this was a call, not a meeting?  
20 A. Yes.  
21 Q. Okay. You list the expected  
22 attendees. Now, this goes into the top of page  
23 2.  
24 A. Uh-huh.  
25 Q. Do you see that?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. Okay. Can you describe it for the  
4 record?  
5 A. It's an e-mail from Harry Wilson to  
6 a number of people on the General Motors team.  
7 Q. And if you start down in the middle  
8 of page 2, there's an e-mail from Rick  
9 Westenberg at GM to Harry Wilson, Matt Feldman,  
10 and others attaching a draft term sheet. Do  
11 you see that?  
12 A. Yes.  
13 Q. And that's dated April 17. Do you  
14 recall what term sheet that refers to?  
15 A. Yes.  
16 Q. What term sheet?  
17 A. There was a term sheet that General  
18 Motors was preparing to present to the Delphi  
19 DIP lenders to try to create a deal around a  
20 path towards emergence for Delphi, a deal  
21 between General Motors and the DIP lenders on  
22 how an exit might work.  
23 Q. And this draft term sheet was not  
24 sent to Delphi; correct?  
25 A. When?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. On this e-mail chain starting on  
3 page 2.  
4 A. That's correct.  
5 Q. Okay. Why was this draft not sent  
6 to Delphi?  
7 A. First of all, this was an internal  
8 draft between -- not first of all. This was an  
9 internal draft term sheet between General  
10 Motors and its lender, U.S. Treasury.  
11 Q. So Delphi wasn't yet appropriate,  
12 from Treasury's perspective, to include Delphi  
13 in a review of this draft?  
14 A. It would be our position it wasn't  
15 appropriate to share it with anyone other than  
16 General Motors and its lenders at that point.  
17 Q. And if you look at the bottom of  
18 page 1, the e-mail from Harry Wilson, there's a  
19 statement here that "We are totally fine with  
20 one distribution list, U.S. Treasury plus  
21 advisors, GM plus advisors."  
22 Do you see that?  
23 A. Yes.  
24 Q. Was that the general practice with  
25 Treasury and GM, to exchange information during  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I believe it refers to a cover  
3 letter related to the term sheet that was  
4 distributed. You know, I forgot if it was on  
5 that date or the next day, but around the 17th  
6 or 18th of April.  
7 Q. Why was Treasury giving its opinion  
8 that there should be a cover letter to what is  
9 a GM proposal?  
10 A. I think, as I said early on,  
11 Treasury viewed its role and views its role as  
12 providing strategic assistance to General  
13 Motors in connection with the Delphi matter as  
14 part of our willingness to allow GM to provide  
15 financing to Delphi.  
16 Q. Did Treasury tell GM that it needed  
17 to do certain things with respect to its  
18 proposal with Delphi?  
19 MR. SCHWARTZ: Objection.  
20 A. If by "tell" you mean mandate or  
21 demand, the answer is no.  
22 Q. Treasury never demanded or mandated  
23 that GM take any particular position with  
24 respect to Delphi?  
25 A. I think it would be fair to say  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 this period in preparation for its discussions  
3 with Delphi, but not to -- but to have a -- let  
4 me start that over.  
5 Was it the general practice of  
6 Treasury and GM at the time to have an internal  
7 e-mail distribution list for most discussions  
8 related to the Delphi plan?  
9 MR. SCHWARTZ: Object to the  
10 form.  
11 A. You did say at that time? Yes.  
12 Q. And generally not to include Delphi  
13 in those discussions?  
14 A. We did not include anyone in  
15 discussions between ourselves and General  
16 Motors around what General Motors' strategy  
17 would be, that's correct.  
18 Q. And also in Harry Wilson's e-mail,  
19 the second paragraph, this is his e-mail to  
20 various folks at General Motors and advisors,  
21 he says that as -- one of his comments is "We  
22 should have a cover letter."  
23 Do you know if that refers to a  
24 cover letter of the proposal that's sent from  
25 GM to Delphi?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 that General Motors has always been free to do  
3 what it wants to do, but it understands  
4 ultimately it would need to get consent from  
5 its lender.  
6 Q. And did you ever tell GM we would  
7 withhold consent if you didn't do, you know,  
8 some particular thing that we think you should?  
9 A. No.  
10 Q. Or words to that effect?  
11 A. No.  
12 (Feldman Exhibit 7 was marked for  
13 identification.)  
14 BY MR. MALIONEK:  
15 Q. You've been shown what's been  
16 marked Exhibit 7. Do you recognize this  
17 document?  
18 A. Yes.  
19 Q. All right. Can you describe this  
20 for the record?  
21 A. It's an e-mail from approximately  
22 April 18 and 19. It's actually a chain of  
23 e-mails involving Weil Gotshal, Don Bernstein,  
24 myself. I think that's it.  
25 Q. And if you look at the e-mail  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 chain -- or excuse me, the e-mail that starts  
3 at the bottom of page 3, Don Bernstein, do you  
4 see that reference? At the bottom of the third  
5 page.  
6 A. I'm sorry. It's from Don?  
7 Q. From Don.  
8 A. To Jeff Tanenbaum?  
9 Q. To Jeff Tanenbaum. Do you see  
10 that?  
11 A. The e-mail starts, "We just got  
12 off?"  
13 Q. "We just got off our initial call,"  
14 correct.  
15 A. Yes, I see it.  
16 Q. Who is Don Bernstein?  
17 A. Don is counsel to the DIP lender  
18 agent, DIP lenders' agent.  
19 Q. And what Don is saying to Jeff, if  
20 you look at the third paragraph, among other  
21 things, he says, "We expect to need Delphi's  
22 input on a number of points, so we are  
23 providing Delphi with your draft term sheet to  
24 obtain their input."  
25 Do you know what term sheet he's  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. He says, "The issue is moot because  
4 the term sheet has already gone over." Do you  
5 see that?  
6 A. I do.  
7 Q. Now, we had discussed earlier that  
8 Treasury's position at the time was that it  
9 wasn't appropriate to be sharing these draft  
10 term sheets with Delphi. What was Treasury's  
11 position at this point with respect to sharing  
12 the draft term sheet?  
13 A. At which point? Prior to seeing  
14 this e-mail? Knowing that it had already gone,  
15 or reaction to the e-mail?  
16 Q. Reaction to the e-mail.  
17 A. Look at -- wasn't the end of the  
18 world, but we were of the view that it was not  
19 going to be beneficial to involve Delphi at  
20 what was then a very early stage of discussions  
21 with the DIP lenders.  
22 Q. You didn't want the term sheet --  
23 Treasury did not want the term sheet sent at  
24 this point?  
25 A. We did not think it would be  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 referring to?  
3 A. Yeah. I believe he is referring to  
4 the term sheet dated, again, April 18, 17,  
5 something like that, from General -- created by  
6 General Motors.  
7 Q. Okay. And if you look at the  
8 e-mail response from Jeff Tanenbaum sent to you  
9 and Harry Wilson and others -- now, this is on  
10 the middle of page 3. Do you see that? "The  
11 latest from the DIP lenders," it starts.  
12 A. Page 3? Yes.  
13 Q. All right. Thanks. It's a little  
14 confusing to follow through the e-mail chain,  
15 but I appreciate you following along.  
16 A. I agree with that.  
17 Q. He says, "The latest from the DIP  
18 lenders." And he goes on. He says, "Do we  
19 care that Delphi receives our term sheet?"  
20 Do you see that?  
21 A. I do.  
22 Q. The next e-mail, or next e-mail  
23 from Jeff Tanenbaum here, so now it's on page  
24 2, says that he just got off the phone with  
25 Don. Do you see that?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 beneficial to getting a deal done.  
3 Q. Okay. And your e-mail response at  
4 the top of page 2 here, bottom of page 1, top  
5 of page 2, do you see that?  
6 A. Bottom of page 1, top of page 2?  
7 Q. Starts "The early sharing."  
8 A. Yeah, I see it.  
9 Q. So your response was "The early  
10 sharing was unfortunate." Was that about the  
11 sharing of information with Delphi?  
12 A. It was about providing the term  
13 sheet to Delphi at this early stage.  
14 Q. And you thought it was unfortunate?  
15 A. Yes.  
16 Q. And why?  
17 A. I think, as I said, until there was  
18 a deal on economics between the DIP lenders and  
19 General Motors to get into the weeds of  
20 implementation and IP and all the other points  
21 that are raised in the other e-mails, just  
22 seemed premature to me and would divert the  
23 parties from the main thrust of what we were  
24 trying to accomplish, which was an overall  
25 economic deal between General Motors and the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 DIP lenders.  
3 Q. And Treasury wanted to wait for the  
4 right time to share that -- the contours of  
5 that deal with Delphi; is that fair?  
6 A. I think we wanted to be -- to know  
7 that we were at least within spitting distance,  
8 for lack of a better way of saying it, of each  
9 other before it made sense to make a bilateral  
10 discussion a tri- or quadrilateral discussion.  
11 Q. Okay. You go on to say in your  
12 e-mail, "It speaks volumes about the challenges  
13 here." What did you mean by that?  
14 A. There were a lot of parties to the  
15 Delphi case. Everybody wants to play their  
16 role, and trying to control the process was  
17 going to be difficult and is difficult.  
18 Q. When you say trying to control the  
19 process would be difficult, what do you mean?  
20 A. Again, in my experience, having two  
21 parties agree to something is a lot easier than  
22 getting three, four, and five parties to agree  
23 to something. And if you can get two parties  
24 to agree to something, then typically you can  
25 bring the others onboard with whatever modest  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 into that deal.  
3 But to the extent that they're  
4 going to be at the table, they have their own  
5 issues that they are going to espouse, and that  
6 was inconsistent with the strategy that we were  
7 trying to follow at that time.  
8 Q. I want to make sure that I  
9 understand. You said the idea that Delphi is  
10 not a critical piece goes out the window.  
11 A. Uh-huh.  
12 Q. Were you trying to espouse the idea  
13 that Delphi was not a critical piece?  
14 A. GM's position, which Treasury  
15 supported to the DIP lenders, was that it was  
16 not critical to get Delphi on as -- at the  
17 moment we had a bilateral agreement. It was  
18 more important to get the bilateral agreement  
19 first and then bring Delphi into the tent.  
20 Obviously, the DIP lenders'  
21 decision to share and to get feedback from  
22 Delphi made it clear that that was not going to  
23 be able to be pursued, that they did not share  
24 that view.  
25 Q. And when you say it goes out the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 changes you need to make to the deal.  
3 If you have five people in the  
4 room, each espousing their own important issue,  
5 people never get to a deal.  
6 Q. Okay.  
7 A. And that was the challenge I was  
8 concerned about.  
9 Q. When you say "trying to control the  
10 process," you were trying to control the  
11 process, who was trying to control the process?  
12 A. I think we and General Motors were  
13 trying to control the process.  
14 Q. Treasury and General Motors?  
15 A. That's -- General Motors was trying  
16 to control the process, and we supported  
17 General Motors' position that a bilateral deal  
18 made sense first.  
19 Q. You say "The idea that Delphi is  
20 not a critical piece goes out the window."  
21 What did you mean by that?  
22 A. Again, from a process perspective,  
23 what we were trying to get to was let's get an  
24 economic deal between the DIP lenders and  
25 General Motors, and then we can fold Delphi  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 window, what you mean is now Delphi is going to  
3 be a critical part of this?  
4 A. Now Delphi's at the table, and  
5 we're going to have to somehow figure out how  
6 to try to get a trilateral agreement in place.  
7 Q. And that was unfortunate from  
8 Treasury's and GM's perspective?  
9 A. I think it cost the deal a month,  
10 to be candid.  
11 Q. It would have been better, from  
12 Treasury's perspective, to continue to wait to  
13 share the contours of a term sheet until it was  
14 a month later perhaps?  
15 A. No, not at all. And by the way,  
16 this was General Motors' position which  
17 Treasury supported, which was that it would be  
18 better to wait until we were at least in the  
19 same ZIP code, "we" being General Motors and  
20 the DIP lenders, with each other before  
21 bringing Delphi into the mix.  
22 If we could have gotten to -- if  
23 General Motors could have gotten to the same  
24 ZIP code in the next 48 hours with the DIP  
25 lenders, then it might have been able to bring  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Delphi in at that point, but it was -- it was  
3 not to be.  
4 Q. Okay. So at that point, you said  
5 that Delphi now was at the table. To what  
6 extent was Delphi at the table starting now?  
7 A. My recollection is within a day or  
8 two, we got a -- I think the term sheet was two  
9 or three pages. We got a four or five-page  
10 interlineation from Skadden about all the  
11 problems with the term sheet and the deal.  
12 Q. And what was Treasury's reaction to  
13 that?  
14 A. It was irrelevant at that point,  
15 because it was clear that economically we were  
16 100 miles apart from the DIP lenders. And  
17 again, consistent with what I've said earlier,  
18 we felt that was the most important first piece  
19 of the puzzle, not how the IP moves around the  
20 Delphi chain.  
21 Q. And just to be clear, Skadden is  
22 representing Delphi in this?  
23 A. That's correct.  
24 Q. So Delphi's position at that point  
25 with respect to the term sheet was irrelevant  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 that?  
3 A. I do.  
4 Q. "We need to be very careful about  
5 future e-mail traffic going forward." And he  
6 goes on to talk about the fact there's no  
7 privilege between GM and contributory  
8 negligence. You see all that?  
9 A. I do.  
10 Q. Do you know what he's referring to  
11 there?  
12 A. I assume he's referring to the fact  
13 that e-mails like this will be discoverable  
14 subsequently, since there's no privilege  
15 between Treasury and General Motors.  
16 Q. Did you have any discussion beyond  
17 this e-mail chain with Jeff Tanenbaum about  
18 that issue?  
19 A. No.  
20 Q. Did you take any action to try to  
21 be careful about future e-mail traffic going  
22 forward?  
23 A. Based on Jeff Tanenbaum's e-mail?  
24 Q. No.  
25 A. Generally?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 in Treasury's view?  
3 A. Well, irrelevant may be too harsh.  
4 It was untimely at that point.  
5 Q. When would it have been timely?  
6 A. If there was an actual deal we were  
7 negotiating around.  
8 Q. So the draft term sheet was not an  
9 actual deal?  
10 A. As it turned out, we got a term  
11 sheet back from the DIP lenders the next day  
12 that suggested that General Motors and the DIP  
13 lenders remained very, very far apart on  
14 economics.  
15 (Feldman Exhibit 8 was marked for  
16 identification.)  
17 BY MR. MALIONEK:  
18 Q. Before we turn to 8, I'm sorry, if  
19 you go back to 7, I had a couple of other  
20 questions on that.  
21 A. After the e-mail from you to Jeff  
22 Tanenbaum and others saying that the early  
23 sharing of information was unfortunate, Jeff  
24 Tanenbaum has a response to you that says in  
25 all caps "An important point now." You see  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Generally, just did you?  
3 A. Generally, I'm -- I'm always  
4 concerned, although I think recent evidence  
5 would suggest I need to be more concerned about  
6 things I type in e-mails.  
7 Q. So you tried to be careful in the  
8 e-mail chains that you had going from you, from  
9 Treasury over to GM or its advisors?  
10 A. I -- I think my answer was that  
11 I'm -- I try to always be careful about what I  
12 say in e-mails.  
13 Q. Did you try to be any more careful  
14 knowing that there was no privilege between  
15 Treasury and GM?  
16 A. No.  
17 Q. All right. Now, please, if you  
18 could turn to the next exhibit. All right,  
19 you've been shown what's been marked as  
20 Exhibit 8. Do you recognize this?  
21 A. I do.  
22 Q. This is an April 30 e-mail from  
23 Jack Butler, again who represents Delphi, the  
24 debtors, to John Rapisardi, who we talked about  
25 earlier, and others, talking about a chambers  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 conference that day and going on to say -- he  
3 says in his first -- his second paragraph that  
4 starts, "Well, Delphi understands."  
5 Do you see that?  
6 A. I do.  
7 Q. Third line he says, "The fact is  
8 there have been no substantive discussions  
9 between the Auto Task Force and Delphi and its  
10 stakeholders since U.S. Treasury acted to block  
11 150 million in additional liquidity."  
12 Do you see that?  
13 A. I do.  
14 Q. Do you agree that there had been no  
15 substantive discussions between the Auto Team  
16 and Delphi as he describes here?  
17 A. No.  
18 Q. You think there had been  
19 substantive discussions?  
20 A. Yes.  
21 Q. What substantive discussions do you  
22 recall?  
23 A. Two things. One, as I think I said  
24 very early in the deposition, I also had  
25 responsibility for Chrysler, which Harry did  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 restructuring would look like.  
3 So there was some groundwork being  
4 laid and some discussions taking place during  
5 this time over the possibility that perhaps a  
6 third party could come in here and provide  
7 liquidity -- I'm sorry -- could provide exit  
8 funding and/or purchase the assets.  
9 Q. And were there -- you talked about  
10 discussions that Treasury was having with  
11 General Motors. Was Treasury also having  
12 discussions with Delphi at that point about  
13 those issues?  
14 A. Yes.  
15 Q. How many conversations did you have  
16 at that point?  
17 A. Clearly, things were less active  
18 during the ten days from April 20 to April 30.  
19 There were probably, you know, no more than  
20 three or four conversations during that time  
21 period.  
22 Q. Between Treasury and Delphi?  
23 A. And Delphi, correct.  
24 Q. You had talked about issues with  
25 respect to your prior employers, you and Harry  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 not. And given the date of this e-mail,  
3 April 30, happened to have been the date that  
4 Chrysler filed for bankruptcy. So there was a  
5 period of time in the week or ten days  
6 preceding the Chrysler bankruptcy where I  
7 receded a little bit from the Delphi matters.  
8 But my understanding of what was  
9 taking place during that time -- I'm sorry.  
10 And one other point. There was also a point in  
11 time where Harry and I were being given sort of  
12 updated instructions as Treasury became more  
13 cognizant of our prior employers, and so there  
14 was a period of time that was largely during  
15 this period of time when most of the  
16 conversations that we were having, instead of  
17 being with Delphi's lenders, began to be just  
18 with General Motors and just with Delphi.  
19 And we were talking and Harry was  
20 talking to John Sheehan at this time about a  
21 solution for Delphi that would include a third  
22 party, since it seemed clear based on the  
23 April 17, 18, 19 exchanges of e-mails that the  
24 DIP lenders and General Motors were very, very  
25 far apart on the economics of what a  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Wilson; is that right?  
3 A. That's correct.  
4 Q. Can you explain those issues to me?  
5 A. Yeah. My prior employer was  
6 Willkie Farr, which represented -- I've  
7 forgotten what they called themselves, but a  
8 group of C Tranche lenders. And Harry's prior  
9 employment -- my employment by Willkie was  
10 immediately before joining the task force.  
11 Harry had a period of time where he  
12 was investing on his own, but his prior  
13 employer was Silver Point Capital, which is a  
14 DIP lender. And in working for the government,  
15 there are ethical constraints in terms of  
16 having interaction with your former employers.  
17 Q. Was there a conflict of interest,  
18 then, that you and Harry Wilson each had with  
19 respect to the DIP lenders or their counsel?  
20 A. Not a conflict of interest, but  
21 there are rules of what you're allowed and not  
22 allowed to do as a government employer that we  
23 were getting more direction on and more clarity  
24 on during this time period.  
25 Q. Ethical rules?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Correct.  
3 Q. In this e-mail that we were just  
4 looking at from Jack Butler, in the  
5 second-to-last paragraph that starts  
6 "Accordingly, Delphi respectfully requests," do  
7 you see that?  
8 A. Yes.  
9 Q. He asks for a meeting with the Auto  
10 Task Force coming up on Friday, that would be  
11 May 1st, in New York. You see that?  
12 A. Yes.  
13 Q. Was there such a meeting?  
14 A. No.  
15 Q. Why not?  
16 A. We had already scheduled an all-day  
17 meeting on May 1st at Weil Gotshal's offices  
18 with General Motors on both General Motors'  
19 bankruptcy as well as a discussion around  
20 Delphi.  
21 And then there was an evening  
22 meeting that night in Carl Icon's offices,  
23 which happened to be in the same building,  
24 regarding Federal-Mogul's interest in acquiring  
25 Delphi. So the day was already scheduled from  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Sunday. I just don't recall whether Jack  
3 participated in it.  
4 Q. Your e-mail response to Jack  
5 Butler, if you look above that on page 2 --  
6 A. Uh-huh.  
7 Q. You follow me?  
8 A. Yes.  
9 Q. You say we -- "Jack, we spent about  
10 four hours this weekend talking to Rod." Do  
11 you know who that's a reference to?  
12 A. Yes.  
13 Q. Who?  
14 A. Rod O'Neal, the chairman of the  
15 board of Delphi.  
16 Q. Okay. You go on and say in that  
17 e-mail, "In order to stay coordinated, we'd  
18 like to stick to the agreed-upon path." What  
19 were you referring to there?  
20 A. We had agreed with Rod and with  
21 John -- well, take a step back. We had met on  
22 Friday night with Federal-Mogul. This was the  
23 first meeting with a third party who was  
24 interested. It was the second meeting with  
25 Federal-Mogul, is my recollection. They were  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 8 a.m. until midnight.  
3 Q. So Jack Butler asked for a meeting  
4 on May 1st, and that didn't happen?  
5 A. It did not happen on May 1st,  
6 that's correct.  
7 (Feldman Exhibit 9 was marked for  
8 identification.)  
9 BY MR. MALIONEK:  
10 Q. And you've been shown Exhibit 9.  
11 Do you recognize this document?  
12 A. Yes.  
13 Q. This is an e-mail chain on May 3  
14 between Jack Butler, you, and others regarding  
15 Delphi. And if you go to the first e-mail,  
16 which starts on page 2, bottom of page 2, from  
17 Jack Butler to you and others, he asks for a  
18 phone call that day, May 3rd, to follow up on  
19 discussions.  
20 Do you see that?  
21 A. Yes.  
22 Q. And did that phone call happen?  
23 A. I don't believe there was -- well,  
24 let me think about that. Strike that. Sorry.  
25 There was a phone call on that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 clearly interested in coming in and trying to  
3 buy or be a -- trying to buy Delphi's assets.  
4 We had talked and updated -- GM and  
5 we had talked and updated Delphi's management  
6 team about that. We and GM had talked to the  
7 management team about the things they would  
8 need to do to allow diligence sessions to  
9 occur. And we and GM had talked to the  
10 management team about how they felt about a  
11 third-party transaction and what was important  
12 to them.  
13 And there was a -- there were a  
14 series of phone calls over the weekend on  
15 Saturday. I remember Saturday night until 1 or  
16 2 in the morning and then a follow-up call  
17 Sunday morning. I don't recall whether we  
18 spoke Sunday morning with them, but I know we  
19 spoke to them Sunday night again regarding  
20 these various issues.  
21 So the fact that Jack was sending  
22 me an e-mail I think suggested he was probably  
23 not in the loop with his client.  
24 Q. Do you recall any of the detail of  
25 the discussions with the Delphi management team  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 over that weekend with respect to the  
3 Federal-Mogul deal or the Federal-Mogul  
4 expression of interest, I'll call it?  
5 A. Some of them, yes.  
6 Q. Can you describe those for me?  
7 A. Yeah. One of them regarded  
8 Federal-Mogul's desire to acquire the assets in  
9 a 363 sale, which had been an issue for Delphi.  
10 One of them was concerns that the management  
11 team expressed about, you know, their own  
12 futures as potential employees of a  
13 Federal-Mogul-led company.  
14 And, you know, one of them was  
15 concerns they had about a diligence -- allowing  
16 Federal-Mogul, who in some sense is a  
17 competitor, come in and do diligence.  
18 Q. Did you have any discussions at  
19 that point about -- with the Delphi management  
20 team about the terms of any kind of asset sale?  
21 A. I don't recall.  
22 Q. With Federal-Mogul.  
23 A. Yeah, yeah. I don't recall.  
24 Q. Do you recall if any terms were  
25 developed at that point as opposed to just an  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. This is a GM e-mail that refers to  
4 a call with Harry Wilson on April 5 and certain  
5 issues that Harry Wilson raised, including what  
6 he sees as an ultimate solution for Delphi,  
7 which is to have GM purchase the key plants of  
8 Delphi at a fair price.  
9 Do you see that?  
10 A. Yes.  
11 Q. I know we're going back in time now  
12 to April 5, but was that Treasury's thinking at  
13 the time as to an ultimate solution for Delphi?  
14 A. Yes.  
15 Q. If you look at number 3, it says  
16 here, "Harry indicated that for negotiations  
17 with the DIP, we need to be able to have a  
18 credible threat of allowing Delphi to shut down  
19 and GM going down also."  
20 Do you see that?  
21 A. Yes.  
22 Q. Do you know what that refers to?  
23 A. Yes.  
24 Q. What?  
25 A. We needed to understand whether --  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 expression of interest?  
3 A. General Motors and Treasury had  
4 clearly had discussions with Icon on Friday  
5 night regarding, you know, what the terms might  
6 look like. I believe we'd shared it with  
7 Federal-Mogul -- I'm sorry -- with Delphi at  
8 that point, but I just don't recall for sure.  
9 Q. "At that point" meaning when?  
10 A. The weekend of May 2 and 3.  
11 (Feldman Exhibit 10 was marked for  
12 identification.)  
13 BY MR. MALIONEK:  
14 Q. Mr. Feldman, you've been shown  
15 what's been marked as Exhibit 10. Do you  
16 recognize this document?  
17 A. No.  
18 Q. Were you in the Auto Team at this  
19 point? This is April 5, 2009.  
20 A. Yes.  
21 Q. Did you have any discussions with  
22 Harry Wilson about the issues that you see  
23 described here?  
24 A. Yes.  
25 Q. At that point?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 we at Treasury needed to understand whether  
3 General Motors could sustain its business if  
4 Delphi were to convert to Chapter 7, to stop  
5 shipping to General Motors, to take actions  
6 that would not allow General Motors to be  
7 supplied by Delphi.  
8 Q. Did Treasury have a view as to  
9 whether GM could sustain its business?  
10 A. On April 5?  
11 Q. Correct.  
12 A. We had a view, which was that we  
13 could provide unlimited capital to General  
14 Motors at zero cost of capital, and that if  
15 need be, we would do that, but that what we  
16 didn't understand was and needed help from  
17 General Motors is to how that would play out in  
18 terms of General Motors' business.  
19 Q. Did Treasury have at that point a  
20 credible threat of allowing Delphi to shut  
21 down?  
22 A. Yes.  
23 Q. Was it Treasury's view at that  
24 point that it could -- it could use a threat in  
25 a credible way with the DIP lenders that GM --  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 excuse me -- that Delphi could shut down?  
3 A. I'm not comfortable with the word  
4 "threat." What our position was was that we  
5 have zero cost of capital, unlimited funds, and  
6 that, if necessary, we would continue to fund  
7 General Motors even if Delphi never shipped  
8 another part to General Motors.  
9 Q. Did Treasury consider as a  
10 reasonable possibility that it would allow  
11 Delphi to shut down?  
12 A. Yes.  
13 Q. Okay. At what point in time?  
14 A. At every point in time.  
15 Q. Is that still Treasury's position  
16 at this point now?  
17 A. Well, we'd like to see the deals  
18 that are on the table or the deal that's on the  
19 table get done, but if at the end of the day  
20 Delphi is unable to operate, Treasury is  
21 prepared for that.  
22 Q. Treasury is prepared to have Delphi  
23 shut down?  
24 A. That's -- it's obviously not our  
25 first choice, but as I said to you before,  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 things we suggested they ought to take into  
3 consideration from a timing perspective was  
4 their own restructuring, but to the extent that  
5 Delphi's cash was going to run out at some  
6 point and Delphi was going to potentially shut  
7 down, Delphi's potential shut down.  
8 Q. I'm sorry. You said "Delphi was  
9 going to potentially shut down, Delphi's  
10 potential shut down." I'm just reading from  
11 the record. Can you explain what you mean?  
12 A. Yes.  
13 Q. Okay.  
14 A. As you've said, Delphi had limited  
15 liquidity back in April of 2009. At some  
16 point, unless either General Motors or the DIP  
17 lenders provided incremental additional  
18 liquidity, Delphi would have to cease  
19 operating.  
20 We suggested to General Motors that  
21 as they determined when they would take their  
22 summer shutdown this year, that they take into  
23 consideration not just their own potential  
24 Chapter 11 case and restructuring, but that  
25 they also consider when Delphi might have to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 every vendor is in some sense a critical vendor  
3 to some OEM, and you just cannot allow yourself  
4 in this industry to look at one vendor as being  
5 more critical or less critical in terms of how  
6 you approach the OEM.  
7 Q. You said you're not comfortable  
8 with the word "threat." That's the word that's  
9 described here in this GM e-mail about what  
10 Harry Wilson indicated. Did anyone at  
11 Treasury, including Harry Wilson, use the word  
12 we need to have a credible threat -- threat on  
13 this issue?  
14 A. I -- I was not in every single  
15 conversation or phone call, so I can't say  
16 unequivocally no, but I would find it to be  
17 very unusual for that word to have been used.  
18 Q. It goes on to say not just a  
19 credible threat of allowing Delphi to shut  
20 down, but it says GM going down also. Do you  
21 know what that refers to?  
22 A. Yes.  
23 Q. What?  
24 A. General Motors was planning its  
25 summer shutdown at that point, and one of the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 stop operating itself because it would run out  
3 of cash, and therefore, they would no longer be  
4 supplied by Delphi.  
5 Q. Okay. This point 3 goes on to say,  
6 "If the DIP lenders believe GM is not prepared  
7 to allow this to happen, the negotiation  
8 dynamics totally change."  
9 Do you see that?  
10 A. I see it.  
11 Q. Was it Treasury's view that GM was  
12 prepared to allow this to happen, a shutdown of  
13 Delphi?  
14 MR. SCHWARTZ: Object to the  
15 form.  
16 A. I don't know that we had a view as  
17 to what GM was allowed -- was going to allow or  
18 not allow.  
19 Q. Did you have any discussions with  
20 GM about that, what GM's view was on that?  
21 A. In April?  
22 Q. Yes.  
23 A. I don't recall discussions in early  
24 April with General Motors about a Delphi  
25 shutdown other than a desire for them to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 understand better what the impact would be and  
3 the implications of it to their operations.  
4 Q. Do you recall ever having -- you  
5 don't remember it from early April. Do you  
6 have any recollection of having discussions  
7 with GM about a potential Delphi shutdown and  
8 the impact on GM then?  
9 A. Later in April or early May, yes,  
10 I -- we had conversations about that.  
11 Q. Who were involved in those  
12 discussions?  
13 A. I was involved, Harry was involved,  
14 Rick Westenberg was involved, Walter Borst was  
15 involved, Bo Anderson was involved. Several  
16 lawyers from Weil Gotshal were involved. I can  
17 recall a conversation where Ray Young was  
18 involved. There could have been others from  
19 General Motors.  
20 Q. Many conversations between Treasury  
21 and GM about this?  
22 A. Several conversations about it.  
23 Q. Can you describe the conversations  
24 with me, these ones that you're describing now?  
25 A. Yeah. We had asked General Motors  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 the Delphi plants have almost no value to a  
3 third party, and so following a conversion to  
4 Chapter 7, a trustee would seek to sell those  
5 plants, and it's likely that General Motors  
6 would be the buyer for the critical plants,  
7 which would cause them to be shut down for 60  
8 or 90 days.  
9 Q. And if that did not happen -- I  
10 know that was GM's view of what was the more  
11 likely scenario. But if that did not happen,  
12 GM's view was that it would take between a week  
13 and up to a year to replace some of the parts  
14 that Delphi supplied?  
15 A. That was -- that was my -- that's  
16 my memory of it, that's correct.  
17 Q. Would GM need to shut down during  
18 that -- during any of that time?  
19 A. GM would need to shut down certain  
20 lines for all of that time.  
21 Q. Which lines? Do you know?  
22 A. The most -- the longest lead time  
23 would be the trucks, the heavy trucks.  
24 Q. So the production of trucks would  
25 need to shut down for up to a year --  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 to come back to us with their view of what a  
3 Delphi shutdown would mean to General Motors'  
4 business and operations. There was an analysis  
5 that General Motors did about how long they  
6 could operate if Delphi were to stop supplying  
7 them, how they would replace Delphi, what  
8 the -- in the real world would be likely to  
9 happen. There were a series of conversations  
10 about that.  
11 Q. What did GM tell you that it's view  
12 was with respect to a Delphi shutdown and the  
13 impact on GM?  
14 A. If GM had to resource every Delphi  
15 part, the, you know, shortest period to  
16 resource would be like a week, but some of the  
17 more complicated parts could take up to a year.  
18 But both -- but General Motors did not believe  
19 that that would be the likely way that this  
20 would play out if Delphi were to shut down or  
21 the case were to be converted to a Chapter 7.  
22 Q. GM did not believe that this would  
23 be the likely way it would play out? Did they  
24 say what way they thought was likely?  
25 A. Yeah. General Motors believed that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Correct.  
3 Q. -- if Delphi shut down?  
4 A. And GM was not able to buy those  
5 plants from a Chapter 7 trustee.  
6 Q. If a Chapter 7 liquidation  
7 occurred?  
8 A. Let me take a step back. If GM had  
9 to resource all of the parts that are currently  
10 supplied by Delphi, they might have to shut  
11 down their manufacturing of heavy trucks for up  
12 to a year.  
13 Q. This e-mail goes on to say in that  
14 same point number 3 that there's an assignment  
15 from Harry Wilson -- or I'm sorry. "There's an  
16 assignment from Ray Young. We all need to stay  
17 on message regarding being willing to go dark,"  
18 quote-unquote, "go dark if the DIP lenders call  
19 the loans. Harry does not believe the DIP  
20 lenders in reality would do this."  
21 Do you see that?  
22 A. I see it.  
23 Q. Do you know what that is referring  
24 to, we need to stay on message on this point?  
25 A. No.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Did you ever hear Harry Wilson talk  
3 about stay on message about willing to go dark?  
4 A. No.  
5 Q. Did Treasury ever indicate to  
6 anyone that GM and Delphi were willing to --  
7 let me strike that.  
8 Do you remember Harry Wilson or  
9 Treasury saying to anyone that GM or Delphi  
10 would be willing to go dark if the DIP lenders  
11 call the loans?  
12 A. I'm sorry. I don't understand the  
13 question. Can you repeat it?  
14 Q. Yeah. Let me try again. I'm  
15 sorry.  
16 Do you remember Harry Wilson or  
17 Treasury ever saying anything along the lines  
18 of being willing to go dark if the DIP lenders  
19 call the loans?  
20 A. No.  
21 (Exhibit No. 11 was marked.)  
22 BY MR. MALIONEK:  
23 Q. Do you recognize Exhibit 11?  
24 A. No.  
25 Q. Do you know who Dan Krasner is?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Why do you say "absolutely not"?  
3 A. There's a suggestion that we were  
4 being more than supportive of General Motors  
5 and interacting with General Motors as a lender  
6 and as a future equity holder, and that's --  
7 that suggestion does not appear to me to be  
8 true.  
9 Q. It goes on to say, "Ironically,  
10 Harry Wilson is a former partner of Silver  
11 Point." You had referenced that earlier;  
12 right?  
13 A. Yeah. I don't know what Harry's  
14 status was at Silver Point, but he was employed  
15 by Silver Point.  
16 Q. And it says, "Harry Wilson is out  
17 to fuck his old employer." Do you see that?  
18 A. Yeah.  
19 Q. Did you ever hear any statement  
20 from Platinum along those lines?  
21 A. Never.  
22 Q. Did you ever hear anybody talk  
23 about Harry Wilson being out to get Silver  
24 Point as part of this?  
25 A. Never.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I do.  
3 Q. Who is he?  
4 A. He's an employee of Platinum  
5 Equity.  
6 Q. Here's an e-mail from Dan Krasner  
7 to Johnny Lopez. Do you know who he is?  
8 A. I do.  
9 Q. Who is he?  
10 A. Another employee of Platinum  
11 Equity.  
12 Q. He says in this e-mail he spoke to  
13 Sheehan, and here's the story, and it goes into  
14 several different points. Point 3 says, "The  
15 Delphi negotiations are now being run by the  
16 U.S. Treasury, a guy named Harry Wilson."  
17 Do you see that?  
18 A. I see it.  
19 Q. Do you think that was a true  
20 statement?  
21 A. No.  
22 Q. You don't think that U.S. Treasury  
23 or Harry Wilson were running the Delphi  
24 negotiations?  
25 A. Absolutely not.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. That's just not a true statement?  
3 A. In my opinion, it's not a true  
4 statement.  
5 Q. When did Treasury's involvement  
6 with Platinum first arise?  
7 A. You know, I don't recall the exact  
8 date, but I -- I would guess it was kind of the  
9 very end of April or very beginning of May.  
10 Q. And do you remember how Treasury  
11 first became involved with Platinum?  
12 A. My memory is that John Sheehan did  
13 the introduction and suggested Platinum reach  
14 out to Treasury.  
15 (Feldman Exhibit 12 was marked for  
16 identification.)  
17 BY MR. MALIONEK:  
18 Q. Do you recognize Exhibit 12?  
19 A. Yes.  
20 Q. Can you describe it for the record?  
21 A. It's two e-mails, one from John  
22 Sheehan to Johnny Lopez, and a second from  
23 Johnny Lopez to Harry Wilson.  
24 Q. And this is April 21st?  
25 A. Correct.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. The top e-mail from Lopez to Wilson  
3 introduces himself, says he's founding partner  
4 with Platinum and asks for a meeting with him.  
5 Do you know if there was a meeting  
6 as described here between Platinum and  
7 Treasury?  
8 A. There was.  
9 Q. When did that take place?  
10 A. I believe it was Thursday afternoon  
11 on April 23.  
12 Q. And who participated in that?  
13 A. I was there, Harry was there for  
14 Treasury. I don't recall whether anybody else  
15 from Treasury attended. For Platinum it was  
16 Johnny Lopez, Dan Krasner. And there was a  
17 third person. I just don't recall who it was.  
18 Q. And what was the purpose of the  
19 meeting?  
20 A. It was an introductory meeting  
21 where Platinum introduced themselves to us,  
22 gave us their history with Delphi, and  
23 indicated that they were interested in taking a  
24 look at being an acquirer or plan sponsor for  
25 Delphi.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 to them, consistent with our principles, that  
3 speed of transaction was very, very important,  
4 and so we urged them to connect with Delphi  
5 directly and do whatever diligence they thought  
6 they needed to be able to put a proposal  
7 forward.  
8 Q. What was the next time you recall  
9 Treasury having a discussion or meeting with  
10 Platinum?  
11 A. There wasn't a lot of meetings with  
12 Platinum, but we did speak to them relatively  
13 regularly over the phone. I don't recall  
14 whether we spoke to them that last week of  
15 April or not, but certainly by the beginning of  
16 May we either met with or had a call with them,  
17 and they at some point put forward a proposal.  
18 I don't recall the exact date in early May.  
19 Q. And Platinum put that proposal  
20 forward to who?  
21 A. To at least General Motors. I -- I  
22 don't know whether they put it forward to  
23 Delphi or to the DIP lenders or to the  
24 creditors committee or to anyone else in the  
25 Delphi case.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Was Delphi invited to that meeting?  
3 A. No, I don't believe so.  
4 Q. Why not?  
5 A. Platinum requested the meeting.  
6 They didn't indicate they wanted anyone else  
7 there. We at Treasury meet with lots and lots  
8 of different people involved in the auto  
9 industry, and so we told them to come on in.  
10 Q. And what do you recall being the  
11 result of that meeting?  
12 A. I think we -- we urged Platinum  
13 to -- I think there were really three things.  
14 One, we urged Platinum to get us more  
15 information about who they were. Neither one  
16 of us had a lot of background or experience  
17 with Platinum.  
18 Two, we urged them to connect with  
19 General Motors as quickly as possible, because  
20 our view was that if General Motors wasn't  
21 comfortable with Platinum playing a role in  
22 Delphi, then we were not going to be  
23 comfortable with Platinum playing a role in  
24 Delphi.  
25 And three, you know, we indicated  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And at that point, did Platinum  
3 make a proposal not just to GM, but to  
4 Treasury?  
5 A. There was no proposals to make to  
6 Treasury. Their proposals were to General  
7 Motors.  
8 Q. During this time that -- following  
9 that initial discussion with Platinum and as it  
10 was preparing its term sheet or proposal, were  
11 there discussions between Treasury and Delphi  
12 about Platinum's involvement?  
13 A. Yes.  
14 Q. How many times?  
15 A. At least once, maybe twice.  
16 Q. Were you involved?  
17 A. In at least one conversation I was  
18 involved, yes.  
19 Q. And who was involved from Delphi?  
20 A. It was a call we had with John  
21 Sheehan and Harry and I. I don't remember if  
22 anyone else was on the phone. And Rick  
23 Westenberg. I don't remember if anybody was on  
24 the phone from Delphi beyond that. Maybe Keith  
25 Stipp. I just don't recall for sure.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And what was discussed at that  
3 meeting?  
4 A. We told them that we had met with  
5 Platinum Equity, that we doing some diligence  
6 on Platinum Equity, that General Motors was  
7 doing its own diligence on Platinum Equity, and  
8 we asked Delphi what their experience with  
9 Platinum Equity was and whether they thought  
10 Platinum Equity might be eligible to be a plan  
11 sponsor or a purchaser of assets.  
12 Q. Before actually receiving a -- or  
13 seeing a proposal, first proposal from  
14 Platinum, were there any general terms  
15 discussed?  
16 A. The only -- no, there were no  
17 general terms. The discussion was around what  
18 we viewed as the important principles for  
19 General Motors, speed of the transaction,  
20 minimized General Motors' investment, create a  
21 clear path for emergence, but there was not an  
22 economic discussion with Platinum at that  
23 point.  
24 The one thing I would add is that  
25 Platinum, and I don't recall whether it was at  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 may have disagreed with the precise amount, but  
3 I think they recognized it was going to take,  
4 you know, at least around \$2 billion to -- of  
5 funding to make Delphi break even  
6 postemergence.  
7 (Feldman Exhibit 13 was marked for  
8 identification.)  
9 BY MR. MALIONEK:  
10 Q. Do you recognize Exhibit 13?  
11 A. Yes.  
12 Q. Can you describe it for the record?  
13 A. It's an e-mail from Harry to Rick  
14 Westenbergs attaching the draft Platinum term  
15 sheet that Platinum had provided. The e-mail's  
16 dated May 4.  
17 Q. And it starts -- the e-mail chain  
18 starts at the bottom of the first page, a May 3  
19 e-mail from Dan Krasner to you, Harry Wilson,  
20 and a couple others; right?  
21 A. Yes.  
22 Q. Was this the -- Platinum's proposal  
23 on Delphi?  
24 A. The initial proposal, yes.  
25 Q. This is the initial proposal?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 that first meeting, but very quickly came to us  
3 with a view that it would take 2 to \$3 billion  
4 of funding to make Delphi become economically  
5 break-even postemergence.  
6 Q. 2 to 3 billion of funding from  
7 whom?  
8 A. Well, obviously, they were looking  
9 for some of it to come from General Motors, and  
10 they were prepared to provide some of it.  
11 Q. And you say that Platinum had told  
12 you this very quickly. They came to you and  
13 told you this. Put this in perspective of what  
14 the initial meeting was.  
15 A. The 23rd.  
16 Q. The 23rd?  
17 A. They may have told us that at the  
18 23rd. I don't recall. Or if not, it would  
19 have been within a week.  
20 Q. Did you share those terms or  
21 general principles with Delphi when you  
22 discussed it with them?  
23 A. Yes.  
24 Q. And what was Delphi's reaction?  
25 A. I don't think they disagreed. They  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. That's correct.  
3 Q. Okay. And is there any -- did they  
4 send it to anybody from GM in that initial  
5 e-mail that you see?  
6 A. Not according to the e-mail.  
7 Q. You had said before there's no  
8 proposal to make to Treasury. There was a  
9 proposal to make to GM. Do you know why this  
10 was sent to Treasury?  
11 A. You'd have to ask Platinum.  
12 Q. So the answer's no, you don't know  
13 why?  
14 A. I don't know why.  
15 Q. You have no idea why they would  
16 send to it Treasury?  
17 MR. SCHWARTZ: Objection.  
18 A. I don't know why.  
19 Q. And Harry Wilson asks Platinum in  
20 response, "Can we have your permission to share  
21 this with GM?" You see that?  
22 A. Yes.  
23 Q. And did Treasury actually send it  
24 to GM?  
25 A. I don't recall.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Do you remember at some point  
3 discussing it with GM?  
4 A. I think, as it says in the e-mail,  
5 they met with us when Platinum presented this  
6 proposal.  
7 Q. I'm sorry. The "they" is GM?  
8 A. Correct.  
9 Q. So there was a meeting. Do you  
10 know when the meeting was to discuss the  
11 proposal? Was it on May 4?  
12 A. It would have been May 4 or May 5.  
13 Q. Was there anybody from Delphi at  
14 that meeting?  
15 A. I don't believe so.  
16 Q. Okay. Why not?  
17 A. Because this was a proposal being  
18 made -- well, to take a step back, you know,  
19 our view continues to be that it is beneficial  
20 to have some bilateral agreement before you try  
21 to bring more parties into the mix.  
22 And this was the most important  
23 part of what any third party could bring to the  
24 table from General Motors' perspective was  
25 sanctity of supply, and so to the extent they  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Delphi?  
3 A. I don't know.  
4 Q. Did Treasury send it to Delphi?  
5 A. I don't recall.  
6 Q. And do you know if GM sent it to  
7 Delphi?  
8 A. I don't know.  
9 Q. Do you have any reason to believe  
10 that it was?  
11 A. Well, certainly Delphi ultimately  
12 saw proposals from Platinum Equity. Whether it  
13 was this one or a subsequent version, I don't  
14 know.  
15 MR. MALIONEK: All right. Why  
16 don't we take a five-minute break?  
17 (A recess was taken from 12:16 p.m.  
18 through 12:25 p.m.)  
19 (Feldman Exhibit 14 was marked for  
20 identification.)  
21 BY MR. MALIONEK:  
22 Q. Do you recognize this document?  
23 Exhibit 14 is Bates stamped DPHUCCPM100553 to  
24 4. And the question was, do you recognize this  
25 document?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 were seeking money from General Motors, which  
3 this proposal clearly does, as did the  
4 Federal-Mogul proposal, then they had to work  
5 through their issues with General Motors first  
6 or there was no getting out of the starting  
7 gate, because we were their only source of  
8 funding, "we" being General Motors.  
9 Q. So Treasury's position as to both  
10 the Federal-Mogul proposal and the Platinum  
11 proposal was that these should be made and  
12 discussed with GM and Treasury first without  
13 Delphi; is that right?  
14 A. No, that's not correct. Our  
15 position with respect to Federal-Mogul and  
16 Platinum was if you want funding from General  
17 Motors, which has to be approved by Treasury,  
18 then we think it makes sense to start your  
19 negotiation with General Motors.  
20 Q. And did both of the initial  
21 proposals from Federal-Mogul and Platinum seek  
22 funding from Treasury and GM?  
23 A. Yes.  
24 Q. So was this proposal here that's  
25 attached to this May 3 e-mail, was that sent to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. This is a May 5 letter from  
4 Cadwalader to Skadden on behalf of Delphi;  
5 correct?  
6 A. Yes.  
7 Q. And does this lay out the position  
8 of U.S. Treasury at that point with respect to  
9 the Delphi bankruptcy and a time frame for a  
10 global resolution?  
11 A. It does.  
12 Q. It says in the second paragraph  
13 that starts, "Despite our differences, we can  
14 all agree that time is of the essence."  
15 Do you see that?  
16 A. I do.  
17 Q. Four lines down, "During the past  
18 two weeks, Treasury and GM have received and  
19 begun negotiating proposals we received from  
20 two interested parties."  
21 Are those Federal-Mogul and  
22 Platinum?  
23 A. Yes.  
24 Q. It says -- it goes on to say,  
25 "Treasury has informed both that May 18 is the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 target to finalize an asset purchase agreement  
3 with Delphi."  
4 Why does it say here that Treasury  
5 has informed them that that is the target? Is  
6 that a target that Treasury set?  
7 A. No. The date coincided with  
8 Delphi's cash flows, suggesting that they would  
9 run out of money on or about the 18th and the  
10 lender's accommodation agreement, which expired  
11 on May 18.  
12 Q. Okay. Did Treasury discuss the  
13 May 18 target date with Delphi before sending  
14 out this letter?  
15 A. I believe so, yes.  
16 Q. And Delphi agreed?  
17 A. I -- I don't recall whether Delphi  
18 agreed. Delphi agreed that the combination  
19 agreement would expire and that they would lack  
20 liquidity.  
21 Q. Okay. And the timetable that's  
22 described here, that a 363 sale would be  
23 targeted for mid-June, all that, again, is that  
24 keyed off of when Delphi expected to run out of  
25 liquidity?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 asset purchase agreement on or before May 18.  
3 Q. It was Treasury's position at this  
4 point that it would not offer Delphi any extra  
5 liquidity unless that was actually a signed,  
6 executed deal by May 18?  
7 A. That had been the position of  
8 General Motors and Treasury from the beginning  
9 of our involvement in the transaction at the  
10 end of March.  
11 Q. So when you say at some points in  
12 your testimony Treasury won't provide  
13 additional funding or allow additional funding  
14 without a clear path, for example, do you mean  
15 a signed deal?  
16 A. Signed as a purchase agreement, a  
17 form of Plan of Reorganization filed with the  
18 court that's supported by General Motors, some  
19 mechanism to allow Delphi or its assets to  
20 emerge.  
21 Q. What kind of mechanism do you mean?  
22 You say some mechanism. Other than a signed  
23 deal?  
24 A. It could -- again, it could have  
25 been -- take a step back. In this case, there  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. No. I think, as I said to you  
3 early on, one of our principles was that  
4 General Motors was not going to provide funding  
5 for Delphi absent a clear path towards  
6 emergence. We believed that if we were able to  
7 sign definitive agreements on May 18, that  
8 would allow General Motors to provide funding  
9 to Delphi. And the -- the anticipated time  
10 line was based on how long we believed a 363  
11 sale should take for the Delphi case.  
12 Q. You go on to say that "We recognize  
13 this time frame is aggressive. However,  
14 because Treasury is not prepared to offer  
15 Delphi additional liquidity without a signed  
16 deal nor prepared to allow GM to fund Delphi  
17 without such a definitive deal, an expedited  
18 sale process is Delphi's only realistic hope of  
19 exiting Chapter 11."  
20 Do you see that?  
21 A. I do.  
22 Q. When you say "a signed deal," what  
23 do you mean?  
24 A. I think, as I said in my prior  
25 answer, we were expecting there to be a signed  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 are two proposals being negotiated, each of  
3 which contemplates a 363 sale. That's one  
4 option. If we had reached an agreement -- if  
5 General Motors had reached an agreement with  
6 the DIP lenders, perhaps that agreement could  
7 have been effected through revisions to the  
8 Plan of Reorganization.  
9 So a newly filed Plan of  
10 Reorganization that had the support of General  
11 Motors and the DIP lenders would have been  
12 another mechanism.  
13 Q. On the next page, last paragraph,  
14 it says here that "Treasury's involvement in  
15 Delphi's bankruptcy case is rooted in GM's  
16 exposure to Delphi."  
17 Do you know what that means?  
18 A. Yes.  
19 Q. What?  
20 A. Delphi, as we've said, is an  
21 important supplier to GM.  
22 Q. It goes on in that paragraph to  
23 say, "However, Treasury has been consistent in  
24 its position that it will not allow GM to fund  
25 Delphi until a resolution that is acceptable to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Treasury and GM is reached."  
3 Is that just another way of saying  
4 what you've been saying here, that Treasury  
5 won't provide any more funding to Delphi or  
6 allow any more funding to Delphi unless  
7 Treasury okays a deal?  
8 A. It's another way of saying that  
9 until there's a clear path, we would not allow  
10 GM to provide more funding to Delphi, yes.  
11 Q. A clear path that Treasury  
12 approves?  
13 A. A clear path that is acceptable to  
14 General Motors and that Treasury consents to,  
15 yes.  
16 Q. Okay.  
17 (Feldman Exhibit 15 was marked for  
18 identification.)  
19 BY MR. MALIONEK:  
20 Q. Do you recognize this Exhibit 15  
21 Bates numbered GMMDAE41301 to 3?  
22 A. Yes.  
23 Q. Can you describe it for the record?  
24 A. It is an e-mail between Oren Haker  
25 and Jeff Tanenbaum on or about May 9.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. That was Treasury -- Treasury was  
4 not prepared to meet with stakeholders at that  
5 point?  
6 A. No, no. What I said was we were  
7 prepared to meet with Delphi and ultimately  
8 with the creditors committee in D.C. We were  
9 not prepared to have a multilateral  
10 negotiation.  
11 Q. Not with all stakeholders, but with  
12 Delphi at that point?  
13 A. Yes.  
14 Q. Okay. So it says "Matt has  
15 expressed willingness." You had expressed  
16 willingness to meet with Jack alone on Tuesday;  
17 is that right?  
18 A. We were willing to meet with  
19 Delphi. "Jack alone" refers to Skadden and  
20 Delphi's principals.  
21 Q. Why was Treasury not prepared --  
22 why were you not prepared to meet with Delphi's  
23 constituents at that point?  
24 A. Well, first of all, we were  
25 ethically prohibited, "we" being Harry and  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And Jeff Tanenbaum's May 9 e-mail  
3 at the bottom refers to a potential meeting  
4 with Delphi and other constituents in D.C. for  
5 the following week, on Monday and Tuesday of  
6 the following week. Do you see that?  
7 A. Yes.  
8 Q. Do you know what that's referring  
9 to?  
10 A. I believe that Skadden and Jack  
11 Butler had requested that all of the parties  
12 get together and meet to try to reach a  
13 resolution for the case.  
14 Q. And what was Treasury's position as  
15 to whether such a meeting should take place at  
16 that time?  
17 A. We were willing to meet.  
18 Q. And it's Oren -- is it Haker?  
19 A. Yes.  
20 Q. -- Haker has an e-mail in response  
21 to Jeff Tanenbaum, saying, "We've made it very  
22 clear to Jack that Treasury's not prepared for  
23 negotiations with stakeholders next Monday or  
24 Tuesday in D.C."  
25 Is that an accurate statement?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 myself, were ethically prohibited from meeting  
3 with the DIP lenders.  
4 And to the extent that Jack was  
5 going to invite Federal-Mogul or Platinum  
6 Equity into a meeting, we didn't think that  
7 made a whole lot of sense at that point. We  
8 did not think it made a lot of sense to meet  
9 with the creditors committee, but ultimately,  
10 we were persuaded to do so.  
11 Q. When did that meeting with the  
12 creditors committee take place?  
13 A. It was the advisors to the  
14 creditors committee, and I -- I don't actually  
15 recall whether it was Monday or Tuesday of that  
16 week, although I think it was Tuesday.  
17 Q. Okay. You say "the advisors." Who  
18 in particular?  
19 A. Latham and Watkins was there, Bob  
20 Rosenberg, and there was a financial advisor  
21 from I think Houlihan, but it's hard to  
22 remember.  
23 Q. So you met, you personally met with  
24 Bob Rosenberg and others from the UCC?  
25 A. Yes. Other -- again, I don't think  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 there were any principals there, it was just  
3 advisors.  
4 Q. Advisors?  
5 A. Yeah, I was in the meeting.  
6 Q. How long did that meeting take  
7 place?  
8 A. Forty-five minutes to an hour.  
9 Q. Was it just you and the UCC  
10 advisors?  
11 A. No. Delphi was in the meeting and  
12 Delphi's advisors as well.  
13 Q. Was UCC in the meeting for the  
14 entire 45 minutes?  
15 A. In our meeting with the creditors  
16 committee, they were in for the entire time.  
17 We had a subsequent meeting with the company.  
18 Q. Okay. And what was -- were there  
19 any meetings that Treasury had with the UCC or  
20 their advisors prior to this?  
21 A. No, I don't believe so.  
22 Q. What was discussed at this meeting?  
23 A. Bob Rosenberg articulated his view  
24 of the claims that the creditors committee  
25 could, would, might assert against General  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 afterwards but we thought, you know, if that  
3 could be folded into a transaction in the right  
4 amount at the right value level, that made  
5 sense.  
6 Q. Why did it make sense?  
7 A. Because it's always better to have  
8 more people supportive rather than less people  
9 supportive.  
10 Q. In a bankruptcy restructure?  
11 A. Correct. And I think in any  
12 transaction, but particularly in a bankruptcy.  
13 Q. When was the next time that  
14 Treasury had any meetings or discussions with  
15 the UCC or advisors?  
16 A. I don't believe we've had any  
17 meetings or discussions since that time, with  
18 one caveat, which was that we all participated  
19 in the mediation with Judge Morris. I don't  
20 believe there were any direct discussions at  
21 that time, but everybody was collectively in  
22 the same place.  
23 Q. And that was May 26?  
24 A. I think the last couple days of  
25 May. I don't recall the exact dates.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Motors from General Motors' behavior in the  
3 fall of 2008.  
4 Q. Anything else discussed?  
5 A. There was a discussion around what  
6 Bob thought would be necessary to bring the  
7 creditors committee on board for any, you know,  
8 modifications to the plan or 363 transactions.  
9 Q. Do you remember any of the  
10 specifics related to that?  
11 A. Yes.  
12 Q. What?  
13 A. Bob indicated that he thought a tip  
14 for the creditors was appropriate and that what  
15 he was looking for was -- I think his words  
16 were "schmuck insurance," but he did not  
17 clearly define what that was other than to say  
18 that he thought it would be appropriate for the  
19 creditors to receive, you know, warrants or  
20 other contingent value rights in connection  
21 with any transaction or plan.  
22 Q. And what was your reaction?  
23 A. I don't recall whether we told Bob  
24 this directly during his portion of the meeting  
25 or whether we communicated to it Delphi  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. But you don't recall any  
3 discussions between Treasury and the UCC or its  
4 advisors during that mediation?  
5 A. I -- I do not believe there were  
6 any direct negotiations between Treasury or the  
7 advisors.  
8 Q. Do you remember what was -- strike  
9 that.  
10 (Feldman Exhibit 16 was marked for  
11 identification.)  
12 BY MR. MALIONEK:  
13 Q. Do you recall the first time that  
14 the Platinum proposal was provided to Delphi?  
15 A. The exact date?  
16 Q. Correct.  
17 A. No.  
18 Q. All right. You've been shown  
19 what's been marked as Exhibit 16. Do you  
20 recognize that?  
21 A. Yes.  
22 Q. Can you describe that for the  
23 record?  
24 A. Yeah. It's an e-mail exchange --  
25 an e-mail from Johnny Lopez at Platinum to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 myself and to Harry and then a forwarding of  
3 that e-mail to General Motors, to Rick  
4 Westenberg and Walter Borst.  
5 Q. This is a May 14 e-mail, May 13 to  
6 May 14 e-mail exchange. The May 13 e-mail from  
7 Platinum to you and others says, "We're  
8 providing a 363 asset purchase agreement to  
9 Delphi today."  
10 You see that?  
11 A. Yes.  
12 Q. Do you know if any kind of proposal  
13 or proposed agreement was sent to Delphi with  
14 respect to the Platinum deal before then?  
15 A. In what form? In the form of an  
16 asset purchase agreement?  
17 Q. Any form. Any type of draft  
18 proposal.  
19 A. I don't recall for sure.  
20 Q. What discussions -- after this  
21 point, May 14, what discussions do you recall  
22 having with Delphi with respect to the Platinum  
23 proposal?  
24 A. You know, leading up to this point  
25 in time, the discussions with Delphi really  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 was clearly General Motors' preference that  
3 Platinum -- I'm sorry -- that Federal-Mogul be  
4 the acquirer.  
5 Q. Did Treasury have a preference?  
6 A. Our preference was whatever General  
7 Motors' preference was.  
8 Q. And why was Federal-Mogul the  
9 preferred acquirer?  
10 A. There were characteristics that  
11 Federal-Mogul had which made them better, and  
12 there were characteristics that Platinum Equity  
13 had that raised issues with us.  
14 Federal-Mogul was already --  
15 Federal-Mogul was already a supplier to General  
16 Motors, and they were considered a very good  
17 supplier. Federal-Mogul had recently emerged  
18 from its own Chapter 11 case, and they were  
19 therefore very de-levered and a very strong  
20 company from a balance sheet perspective.  
21 And, you know, those of us in the  
22 distress world who have a history with Carl  
23 Icon knows that Carl was rarely willing to make  
24 an investment and lose on that investment. So  
25 to the extent he was willing to put in, you  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 centered on two things: One, sort of General  
3 Motors' preference that Federal-Mogul be the  
4 acquirer or the stalking horse acquirer, and  
5 two, that General Motors consider a 363 sale as  
6 opposed to a plan, which Delphi was very much  
7 in favor of, meaning Delphi was very much in  
8 favor of a plan.  
9 At some time right around here, it  
10 became evident to General Motors, to Treasury,  
11 and I think to Delphi that Federal-Mogul was  
12 going to present more challenges to getting to  
13 the finish line, and we began to take -- we  
14 collectively, meaning Delphi, General Motors  
15 and Treasury, began to take Platinum Equity's  
16 proposal more seriously.  
17 So my memory of discussions  
18 following this were that we really all needed  
19 to spend time seeing if we could get Platinum  
20 Equity to the finish line.  
21 Q. You said there was a preference  
22 that Federal-Mogul would be the acquirer.  
23 Whose preference?  
24 A. Clearly, General Motors'  
25 preference. I believe Delphi shared it, but it  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 know, half a billion dollars of his own money,  
3 we thought he would work very hard to make that  
4 successful.  
5 In contrast, Platinum Equity was a  
6 private equity firm that had come, you know,  
7 highly recommended, but they had a history with  
8 Delphi where they tried to buy Delphi's  
9 steering business and ultimately pulled out.  
10 They did not have a lot of  
11 investments in the auto supply space. This  
12 would be by an order of magnitude or two or  
13 three the largest investment they had ever  
14 made, and Delphi was and is a very troubled  
15 company that still required some operational  
16 turnaround.  
17 And Federal-Mogul has a track  
18 record and its management team has a track  
19 record of successfully turning around  
20 Federal-Mogul, and we had concerns about  
21 whether Platinum Equity could rise to the  
22 challenge.  
23 Q. Did Treasury or GM, to your  
24 knowledge, communicate those views to Delphi?  
25 A. Yes.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And is it your memory that Delphi  
3 also shared those views about Federal-Mogul  
4 versus Platinum?  
5 A. At least in part, Delphi clearly  
6 shared those views, because they were the ones  
7 to express the greater concern with Platinum  
8 Equity based on their prior experience in  
9 trying to sell the steering business to  
10 Platinum Equity. Whether they shared every  
11 view or not, I don't know.  
12 Q. Do you recall when the  
13 Federal-Mogul proposal was first shared with  
14 Delphi?  
15 A. I don't.  
16 Q. Was it before or after the Platinum  
17 proposal was shared with Delphi, if you recall?  
18 A. My memory is that we met with Icon  
19 on May 1st. We had extensive conversations  
20 with Delphi about that meeting over the  
21 weekend, on the 2nd and 3rd.  
22 I suspect but don't recall  
23 specifically whether we shared any written  
24 proposals with Delphi at that time, but we  
25 certainly shared the substance of the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Okay.  
3 A. I don't recall whether there was a  
4 written term sheet at that time. I just don't  
5 recall.  
6 Q. You've been handed what's been  
7 marked as Exhibit 17. Do you recognize this?  
8 A. Yes.  
9 Q. Okay. What is it, for the record?  
10 A. An e-mail from Ronald Landen at  
11 Weil Gotshal to people at Skadden and Delphi.  
12 Q. And copying you and others; right?  
13 A. That's correct.  
14 Q. This is dated May 17, and it  
15 attaches what's called an indicative term sheet  
16 related to a joint proposal among GM,  
17 Federal-Mogul, and Icon Enterprises with  
18 support from Treasury; is that right?  
19 A. That's what it says, yes.  
20 Q. And this is a term sheet related to  
21 the Federal-Mogul proposal; right?  
22 A. Yes, although if you notice, this  
23 has as a party to it, Icon Enterprises. The  
24 original proposal was just a Federal-Mogul  
25 proposal, so this is, you know, a subsequent  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Federal-Mogul proposal and I think, if I recall  
3 correctly, the first Delphi.  
4 I'm sorry. The first Platinum  
5 Equity proposal didn't come in until, you know,  
6 the 4th or 5th -- I'm sorry, the 4th. So it is  
7 my memory that we shared the Federal-Mogul  
8 proposal with Delphi before we even received  
9 the first Platinum proposal.  
10 Q. Which you think was around -- so it  
11 was before May 4 or 5, you think?  
12 A. Correct. I know we shared the  
13 substance of the proposal over the weekend of  
14 May 2 and 3. I just don't recall whether there  
15 was a document to share and whether that itself  
16 got shared. But I know the details of the  
17 proposal were clearly shared during that  
18 weekend.  
19 (Feldman Exhibit 17 was marked for  
20 identification.)  
21 BY MR. MALIONEK:  
22 Q. The details of the proposal were  
23 shared during that weekend at least orally, you  
24 think?  
25 A. Correct.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 draft or subsequent proposal. This is not the  
3 first.  
4 Q. This relates to, in essence, a  
5 changed deal or a modified deal from what was  
6 discussed in early May as you were talking  
7 about?  
8 A. That's correct.  
9 Q. Do you know if there was any term  
10 sheet related to a GM Federal-Mogul Icon  
11 proposal that was sent to Delphi before this?  
12 A. I just don't recall.  
13 Q. Okay. This is sent on May 17, and  
14 there's a reference in the -- at the bottom of  
15 the first page in Weil Gotshal sending this to  
16 Skadden saying, "Please confirm no later than  
17 May 20 that Delphi is willing to proceed with  
18 this proposal."  
19 Do you see that?  
20 A. Yes.  
21 Q. So Weil Gotshal was giving Delphi  
22 three days to respond whether it agreed to this  
23 proposal or not? Does that sound reasonable to  
24 you?  
25 MR. SCHWARTZ: Objection.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I don't think that's what that  
3 means, but -- so I'm not sure I can answer the  
4 second question.  
5 Q. What do you think that means?  
6 A. I think what -- I think what it  
7 means is that they have three days to say  
8 whether they're willing to negotiate around  
9 this deal. That's what it says to me, is  
10 willing to proceed with the proposal.  
11 Q. And what was the deal?  
12 A. The deal was that Icon Enterprise  
13 would make an investment along with a loan from  
14 General Motors into a -- an entity to acquire  
15 the assets of Delphi through a 363 sale.  
16 Q. What assets of Delphi?  
17 A. Substantially all of the assets of  
18 Delphi other than those specifically left  
19 behind. And obviously, there are -- you know,  
20 there's a whole list of, I don't know, seven or  
21 eight open items that still needed to be  
22 discussed and negotiated.  
23 Q. And the term sheet itself on the  
24 first page talks about what assets would be  
25 purchased. You see those references in the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Whether they're willing to  
3 negotiate around it? Yeah, I think three days  
4 is plenty of time to decide whether you're  
5 going to negotiate something.  
6 Q. And did -- is there anything in  
7 here that would outline for Delphi exactly what  
8 assets would be acquired?  
9 A. No, not in this term sheet.  
10 Q. Okay. Do you remember Delphi's  
11 response to this?  
12 A. I don't remember Delphi's response..  
13 I remember Jack Butler's response.  
14 Q. And what was that?  
15 A. I think he viewed it as a  
16 take-it-or-leave-it proposal, which, you know,  
17 as I've said, I think he misread it,  
18 misunderstood it.  
19 Q. Did you not think it was a  
20 take-it-or-leave-it?  
21 A. No.  
22 Q. Had Treasury been involved in  
23 reviewing drafts of this proposal before it was  
24 sent?  
25 A. The e-mail? No, we didn't review  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 first page?  
3 A. Yes.  
4 Q. It talks about certain assets  
5 except as those set forth in Exhibit A.  
6 There's another listing of particular assets  
7 referenced in Exhibit B and then on the next  
8 page, more assets referenced in Exhibit C. You  
9 see those?  
10 A. I see the references, yeah.  
11 Q. Okay. And for those on the phone,  
12 I'm sorry, the Bates is GMMDAE 28116 through  
13 28128.  
14 Those attachments that -- the  
15 Exhibits A, B, and C, they're not attached to  
16 this proposal; right?  
17 A. I don't see it.  
18 Q. So was Delphi expected to respond,  
19 as you say, as to whether it was willing to  
20 negotiate around this proposal without seeing  
21 the exhibits?  
22 MR. SCHWARTZ: Objection.  
23 A. Yes.  
24 Q. In three days?  
25 MR. SCHWARTZ: Objection.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 drafts of the e-mail.  
3 Q. And what about the term sheet?  
4 A. Yes, we had seen drafts of the term  
5 sheet.  
6 Q. Was Treasury involved in  
7 negotiations with Federal-Mogul and Icon and GM  
8 regarding the terms of the term sheet?  
9 A. Yes.  
10 Q. And also involved in negotiations  
11 regarding the assets that would be outlined in  
12 Exhibits A, B and C?  
13 A. At a high level, yes.  
14 Q. Were the actual final list of  
15 assets that would be acquired under this  
16 proposal determined as of the time this  
17 proposal was sent on May 17?  
18 A. I assume not, because they weren't  
19 attached. I think if they had been determined,  
20 they would have been attached.  
21 Q. At some point the Federal-Mogul  
22 proposal dropped off the table somewhat in the  
23 negotiation spreadsheet; is that fair?  
24 A. Yes.  
25 Q. When was that? Do you remember?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Later in the month of May.  
3 Q. Was it around the time of the  
4 mediation?  
5 A. Yes. I don't recall whether it was  
6 immediately before or immediately after, but it  
7 was in that week.  
8 Q. Sometime around -- the mediation  
9 was -- started May 26, so around that time  
10 frame, I think you had talked about it earlier,  
11 there was a decision to focus more on Platinum;  
12 is that right?  
13 A. It evolved to that, but yes.  
14 Q. Now, earlier Treasury's position  
15 was there needed to be a signed deal by May 18.  
16 Remember we talked about that? Yes?  
17 A. Yes.  
18 Q. Okay. And there was no signed deal  
19 by May 18?  
20 A. That's correct.  
21 Q. Do you recall why?  
22 A. Well, nobody got to the finish line  
23 by May 18 is obviously the most important  
24 reason.  
25 Q. As of the time of the mediation on  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 This is, for the record, Bates PLAT1471. The  
3 question was, do you recognize it?  
4 A. No.  
5 Q. This is a May 26 e-mail among  
6 members of Platinum Equity that's discussing a  
7 meeting with GM and Delphi lawyers. There's a  
8 reference in there, in the second paragraph,  
9 that says, "This morning, May 26, the lead  
10 counsel for Delphi told me the following:  
11 Harry Wilson is making the final decision."  
12 Do you have any understanding what  
13 that's referring to?  
14 A. No.  
15 Q. Did Treasury indicate that it would  
16 make a final decision as to a particular Delphi  
17 deal around this time that would involve  
18 Treasury financing or Treasury approval of  
19 financial?  
20 A. No. I guess two things. One, we  
21 always at Treasury thought the best strategy  
22 was to keep more rather than less parties  
23 interested in the deal. But if you go back in  
24 time, the company wound up filing its modified  
25 plan and 363 papers I think on June 1st, which  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 May 26, what was Treasury's position as to how  
3 soon a deal had to get done for Delphi?  
4 A. I think our position has always  
5 been the same, which is if Delphi wanted  
6 funding from General Motors, there needed to be  
7 a signed deal that could lead to emergence from  
8 Chapter 11.  
9 If Delphi had other sources of  
10 funding from the DIP lenders, from some third  
11 party, you know, the timing was up to them.  
12 Q. What was Treasury's involvement or  
13 role during the mediation?  
14 MR. SCHWARTZ: Objection.  
15 A. We were compelled to attend the  
16 mediation by Judge Morris, and we acted as  
17 lender to and advisor to General Motors.  
18 Q. Would you say that Treasury was  
19 actively involved in discussions regarding a  
20 Delphi resolution during the mediation?  
21 A. With Judge Morris, we were active.  
22 (Feldman Exhibit 18 was marked for  
23 identification.)  
24 BY MR. MALIONEK:  
25 Q. Now, do you recognize Exhibit 18?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 was approximately five or six days after this  
3 e-mail. So we were clearly coming to the end  
4 of the line.  
5 But I don't have any knowledge of  
6 us making any final decisions on anything. We  
7 were happy to -- frankly, if both Platinum and  
8 Federal-Mogul were, you know, at the table and  
9 in the auction, we would not have -- you know,  
10 we would not have said we're going to fund one  
11 or not the other. I mean, if the deals met our  
12 principles, we were prepared to fund anybody.  
13 Q. Did Treasury -- you mentioned the  
14 papers that Delphi filed as of June 1st with  
15 respect to the Platinum deal; right?  
16 A. Correct.  
17 Q. Did Treasury give a final approval  
18 to the proposal laid out in those papers?  
19 A. Final approval to who?  
20 Q. To GM.  
21 A. GM sought our consent to that deal  
22 and we approved it.  
23 Q. Can you tell me, describe for me  
24 the final discussions leading up to Treasury's  
25 approval of that plan, discussions with GM and  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Delphi?  
3 A. I don't think we had any specific  
4 discussions with Delphi in the day or two  
5 before things got filed other than, you know,  
6 lawyers communicating comments. General Motors  
7 made a presentation to Treasury. We reviewed  
8 it internally, came to a conclusion, and  
9 communicated that conclusion to General Motors.  
10 (Feldman Exhibit 19 was marked for  
11 identification.)  
12 BY MR. MALIONEK:  
13 Q. Do you recognize this e-mail? This  
14 is Bates DPHUCCPM179461.  
15 A. No.  
16 Q. This is an e-mail exchange on  
17 May 26 between Keith Stipp and John Sheehan.  
18 There's a reference towards the top that says  
19 "may not be necessary."  
20 Do you see that?  
21 A. I see it, yes, sir.  
22 Q. Says "Harry is seeking to eliminate  
23 both PE and FDML from the deal." Do you see  
24 that?  
25 A. I see it, yes.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 about it, if that's appropriate, for a  
3 second.  
4 MR. MALIONEK: We can, but there  
5 have been exhibits, documents, you know,  
6 and so on that have been disclosed  
7 relating to all of the communications  
8 during the mediation.  
9 MR. SCHWARTZ: I understand, but  
10 it's offers that were conveyed by other  
11 parties other than us. And I'm not sure  
12 it's for us to disclose.  
13 MR. MALIONEK: Well, if anybody  
14 wants to make an objection, they can.  
15 Are you going to -- you're not going to  
16 instruct the witness not to answer, are  
17 you?  
18 MR. SCHWARTZ: It's not my  
19 privilege to assert.  
20 MR. MALIONEK: All right, then.  
21 MR. MANCINO: What's the topic of  
22 the question, please?  
23 MR. MALIONEK: The discussions  
24 regarding, as the witness has said, a  
25 potential standalone deal during the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Do you know what that would be  
3 referring to?  
4 A. Again, if you go back to -- no, I  
5 actually don't.  
6 Q. At some point in the final days of  
7 the negotiations before the June 1st plan was  
8 filed, did Treasury take a position that a --  
9 potentially a different deal could be worked  
10 out that would not involve Platinum or  
11 Federal-Mogul?  
12 A. There were negotiations at the  
13 mediation between General Motors and the DIP  
14 lenders that Treasury supported around a  
15 standalone deal. I don't recall whether the  
16 mediation started on the 26th or whether it was  
17 immediately after that. I just -- I don't  
18 remember the exact dates as I sit here.  
19 Q. Can you describe the standalone  
20 deal proposal at all?  
21 A. You want me to disclose what  
22 happened at the mediation? Is that the  
23 question?  
24 Q. Right.  
25 MR. SCHWARTZ: We should talk  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 mediation.  
3 MR. SCHWARTZ: These are  
4 proposals that went from GM, I guess, to  
5 the DIP lenders during the mediation.  
6 MR. MALIONEK: As described in  
7 this exhibit.  
8 MR. MANCINO: Pursuant to the  
9 judge's order, I believe are both  
10 confidential and ought not to be  
11 discovered. And I think here we are  
12 talking about communications within the  
13 mediation process. Right?  
14 MR. MALIONEK: Right, I mean, as  
15 referenced in Exhibit 19, which was  
16 already produced to all the parties.  
17 MR. MANCINO: What, Exhibit 19?  
18 I don't see disclosing anything that --  
19 MR. MALIONEK: Harry is seeking  
20 to eliminate both PE and Federal-Mogul  
21 from the deal.  
22 MR. SCHWARTZ: Yeah, this is an  
23 exhibit to which we're not a party. We  
24 didn't produce it. If a party receiving  
25 an offer from another party in the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 context of a mediation is telling us  
3 that we shouldn't disclose this  
4 material, I think that's what Judge  
5 Drain's mediation order says, and I'm  
6 not comfortable with us disclosing the  
7 contents of offers traded during the  
8 mediation.  
9 If you want to examine on what  
10 the document says, to the extent he  
11 knows about it, he can answer, but of  
12 course he was not -- no one from  
13 Treasury was involved in this document.  
14 But he won't disclose offers that were  
15 made during the mediation.  
16 MR. MALIONEK: The witness has  
17 said during the mediation there was a  
18 discussion of a standalone deal. Put  
19 this document aside.  
20 MR. SCHWARTZ: Well, which is  
21 different from asking the terms of the  
22 proposal.  
23 MR. MALIONEK: And now I'm asking  
24 him to talk generally about the details  
25 of that.

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 think we ought to abide by the judge's  
3 mediation order.  
4 MR. MALIONEK: That's fine.  
5 MR. MANCINO: There may be other  
6 instances in which there were  
7 discussions outside of the mediation.  
8 MR. MALIONEK: That's what I'll  
9 ask, and let me just ask that question.  
10 BY MR. MALIONEK:  
11 Q. Outside the context of the  
12 mediation, do you recall in the final days  
13 before the June 1st plan was filed any  
14 discussion of a potential standalone deal that  
15 wouldn't involve Platinum or Federal-Mogul?  
16 A. Not that I recall.  
17 Q. Okay. That's fine. I'm not going  
18 to go into it any more.  
19 (Feldman Exhibit 20 was marked for  
20 identification.)  
21 BY MR. MALIONEK:  
22 Q. Do you recognize Exhibit 20? This  
23 is Bates stamped GMMDAE178 through 180.  
24 A. Yes.  
25 Q. All right. This is a May 28, 2009,

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 MR. SCHWARTZ: Right. I think  
3 that's not appropriate. We should move  
4 on.  
5 MR. MALIONEK: You say it's not  
6 appropriate. Are you instructing him  
7 not to answer?  
8 MR. SCHWARTZ: Well, again, I  
9 heard someone who was a party to that  
10 discussion who received the offer say  
11 that they're invoking the protections of  
12 Judge Drain's order.  
13 MR. MALIONEK: Who is that?  
14 MR. SCHWARTZ: I heard --  
15 MR. MANCINO: That's me, I  
16 believe.  
17 MR. MALIONEK: Are you saying  
18 don't go into this?  
19 MR. MANCINO: Yeah.  
20 MR. SCHWARTZ: Yeah.  
21 MR. MALIONEK: That's fine, then.  
22 I won't go into that. I didn't hear you  
23 say that.  
24 MR. MANCINO: No, in the context  
25 of discussions within the mediation, I

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 e-mail from Harry Wilson to folks at GM and you  
3 and others. And he says in the top paragraph,  
4 as he's addressing this to the team, "I believe  
5 we're finally near the end," related to the  
6 Delphi negotiations; correct?  
7 A. I believe so, yes.  
8 Q. All right. He said he was thinking  
9 through the next 24 to 48 hours and he had a  
10 few thoughts. On Delphi, towards the bottom of  
11 page 1, he has as his second bullet "Weil, Matt  
12 and Harry to press Skadden to communicate to a  
13 363 in the event the lenders don't agree to  
14 best and final offer."  
15 Do you understand what that's  
16 referring to?  
17 A. Yes.  
18 Q. Okay. Can you describe that?  
19 A. Yeah. Skadden's position and  
20 Delphi's position had been that the only way  
21 for Delphi to move forward was with a Plan of  
22 Reorganization. That was one of the main  
23 reasons that Federal-Mogul dropped out of the  
24 running, because they weren't prepared to  
25 acquire the assets through a plan, and we were

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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 pressing to have the company, Delphi, go down a  
3 dual path.  
4 Q. When you say "we were pressing," GM  
5 and Treasury?  
6 A. Correct.  
7 Q. So what did you do to pressure --  
8 I'm sorry, to press Skadden to commit to a 363?  
9 A. Me personally?  
10 Q. Treasury.  
11 A. I don't think we did anything  
12 following this e-mail.  
13 Q. Did GM do anything, to your  
14 knowledge?  
15 A. I'm sure that Weil had  
16 conversations with Skadden about it.  
17 Q. And do you know -- do you  
18 understand what those negotiations or  
19 discussions entailed with Delphi?  
20 A. Between Weil and Skadden?  
21 Q. Correct.  
22 A. No.  
23 Q. No, that wasn't explained to you or  
24 discussed with you?  
25 A. On May 28, General Motors was  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Do you know the extent to which  
3 Delphi pushed back on this issue of whether to  
4 accept the 363 as part of it?  
5 A. During that time period?  
6 Q. Right.  
7 A. No, I don't know.  
8 Q. Before that time period?  
9 A. Yeah, before that time period, Jack  
10 had been very adamant that he thought a plan  
11 was preferable and made more sense for Delphi  
12 and its constituents and was pretty dug in on  
13 that.  
14 Q. And that a 363 sale would not make  
15 as much sense?  
16 A. 363 sale would not accomplish the  
17 things he wanted to accomplish for his board,  
18 for his management team, and for his case.  
19 Q. Which was what?  
20 A. Among other things, releases.  
21 Q. In these final discussions leading  
22 up to the June 1st filing, do you recall this  
23 issue of releases being discussed?  
24 A. From the 28th to the 1st, in that  
25 time frame?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 filing for bankruptcy in four days. I was  
3 spending 23 hours on General Motors and 10  
4 minutes a day on Delphi. I didn't follow up  
5 with Weil on what they were talking to Jack  
6 about.  
7 Q. During that time leading up to  
8 June 1st, those last few days, understanding  
9 that you were busy on other things, were  
10 there -- did you know anything about the  
11 negotiations with Delphi over whether there  
12 would be a 363 sale alternative as part of the  
13 plan?  
14 A. I would get an e-mail -- I would  
15 read e-mail updates from my counsel as to where  
16 things stood, yes.  
17 Q. Okay. And what did you understand  
18 from those updates that Delphi's position was?  
19 A. Delphi wanted to complete a  
20 transaction through a plan, and I think  
21 ultimately they agreed to an alternative  
22 structure of the 363 sale if the plan was  
23 unable to accomplish the transaction because of  
24 the rights of the DIP lenders under their  
25 various documents.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Yes.  
3 A. No.  
4 Q. When do you recall the issue of  
5 releases first coming up?  
6 A. Probably back in if not March,  
7 certainly early April.  
8 Q. Who raised it?  
9 A. Delphi.  
10 Q. And what specifically did they  
11 want? What kind of releases?  
12 A. Jack wanted releases under the plan  
13 for his board and management team as part of,  
14 you know, as part of a plan process.  
15 Q. Was Treasury involved in any  
16 discussions related to that issue?  
17 A. No.  
18 Q. As part of the final negotiations  
19 leading to the June 1st filing, did Delphi make  
20 any demands or requests of anything -- of any  
21 other terms to be put into the plan beyond the  
22 issue of releases?  
23 MR. SCHWARTZ: Demands of whom?  
24 MR. MALIONEK: Anyone.  
25 A. I -- again, I don't know.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. At that point in those final  
3 negotiations, do you know if Mr. Sheehan or  
4 others at Delphi were continuing to make the  
5 argument that if Delphi goes under, it would  
6 cause problems for GM?  
7 A. They never stopped making that  
8 argument, so without actually knowing, would  
9 I -- I feel relatively confident saying I'm  
10 sure they continued to make that argument.  
11 (Feldman Exhibit 21 was marked for  
12 identification.)  
13 BY MR. MALIONEK:  
14 Q. Do you recognize this Exhibit 21,  
15 Bates stamped GMMDAE9681 through 84?  
16 A. Yes.  
17 Q. Okay. Can you describe it?  
18 A. It starts as an e-mail to Jeff  
19 Tanenbaum from Jack Butler, and conversation  
20 concludes with an e-mail from Harry Wilson to  
21 some parties at Weil, including Jeff and Rick  
22 Westenberg from GM.  
23 Q. And the initial e-mail from Jeff  
24 Tanenbaum to Jack Butler is discussing the need  
25 for a response from Delphi regarding the 363  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Delphi, not just GM and Treasury. And it looks  
3 like he's floating an idea. I don't know that  
4 I would say it's a position, but it's certainly  
5 a suggestion.  
6 Q. Do you know if that's actually what  
7 was done?  
8 A. I believe that's what was done,  
9 yes.  
10 Q. And it was Treasury's idea?  
11 A. Unless there's another e-mail  
12 showing someone else suggesting it first, it  
13 looks like we were the first to suggest it.  
14 MR. MALIONEK: Okay. All right.  
15 Should we stop now and take our lunch  
16 break?  
17 MR. SCHWARTZ: That's fine. This  
18 is a good place to stop.  
19 (A luncheon recess was taken from  
20 1:21 p.m. through 2:27 p.m.)  
21  
22  
23  
24  
25  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 issue; right?  
3 A. That's what it appears to be, yes.  
4 Q. And the e-mail above that from Jack  
5 Butler back to Jeff Tanenbaum indicates that  
6 Delphi is prepared to accept that provision;  
7 correct?  
8 A. Jack indicates Delphi's prepared to  
9 accept a provision. Whether it's exactly what  
10 GM wanted or not, I can't tell from the e-mail.  
11 Q. Okay. Now, if you go to the first  
12 e-mail here from Harry Wilson to Jeff Tanenbaum  
13 and others at Weil and GM, he says, "I think we  
14 jointly, company, GM, Treasury, should tell  
15 lenders that they will get X under a plan and  
16 something less than X in a 363."  
17 Do you see that?  
18 A. Yes, I see it.  
19 Q. Was that Treasury's position at the  
20 point -- at that point? Is that -- that's what  
21 GM and Treasury together should tell lenders?  
22 MR. SCHWARTZ: Object to the  
23 form.  
24 A. First of all, I think Harry's  
25 referencing that should be GM, Treasury, and  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 - AFTERNOON SESSION -  
3  
4 EXAMINATION  
5 BY MS. KENNEDY:  
6 Q. Hi, Mr. Feldman. I'm Elizabeth  
7 Kennedy. I'm an attorney representing the  
8 IUE-CWA today. If at any time you have any  
9 questions or don't understand a question that  
10 I've asked, please ask me to repeat it. I'll  
11 be happy to.  
12 So, Mr. Feldman, are you aware that  
13 the IUE-CWA represents workers that had worked  
14 at Delphi?  
15 A. Yes.  
16 Q. And has, pursuant to collective  
17 bargaining agreement -- represents them and has  
18 collective bargaining agreements between the  
19 IUE-CWA and Delphi?  
20 A. Yes.  
21 Q. Are you aware of the IUE-CWA  
22 Delphi/GM implementation agreement that was  
23 reached in September of 2008?  
24 A. Yes, I'm aware of its existence,  
25 yes.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 (Feldman Exhibit 22 was marked for  
3 identification.)  
4 BY MS. KENNEDY:  
5 Q. And are you aware that -- please  
6 take your time to review, particularly the  
7 first pages of this. Are you aware that in  
8 1999, the IUE-CWA and GM entered into a benefit  
9 guarantee?  
10 A. I'm aware that they did, or I've  
11 been told that they did.  
12 Q. Okay. And then that that benefit  
13 guarantee was triggered in 2007?  
14 A. I'm sorry, I don't know what you  
15 mean by "triggered."  
16 Q. That the understanding  
17 reflecting -- if you look at 5 in the top  
18 paragraph, the guarantee that had been entered  
19 between IUE, GM, and Delphi regarding the  
20 benefits that had occurred to its members was  
21 triggered in the August 5, 2007, restructuring  
22 memorandum of understanding.  
23 A. I am -- I guess I am now aware of  
24 it.  
25 Q. Were you aware of the 414L transfer  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And when did you start speaking,  
3 you or -- were there other people in Treasury  
4 that were also involved in the pension issues?  
5 Or would you consider yourself the lead  
6 facilitator on the issue of pensions?  
7 A. With respect to the autos, I have  
8 been the lead person at Treasury on the pension  
9 issues.  
10 Q. Okay. And when did you start  
11 speaking -- when did pensions start coming up  
12 as a topic you were discussing with either GM  
13 or the PBGC?  
14 A. Because I've been speaking to the  
15 PBGC about the Chrysler case and the General  
16 Motors case, the conversation regarding the  
17 Delphi pensions with the PBGC was probably  
18 first raised in maybe April of 2009.  
19 With General Motors, I probably  
20 didn't begin to discuss the Delphi pension  
21 issues with them until, you know, the middle of  
22 May or even the last half of May of 2009.  
23 Q. Okay. And are you aware of the  
24 number of IUE-CWA members that have been left  
25 behind at Delphi with a pension that we're  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 of part of the Delphi pension obligations to GM  
3 in September of last year?  
4 A. Yeah, I -- just to be clear, I'm  
5 not an expert on benefits and collective  
6 bargaining agreements and union issues, but I  
7 was aware that there had been a transfer in  
8 September of '08, yes.  
9 Q. Let's talk about what -- were you  
10 involved in discussions regarding Delphi's  
11 pensions?  
12 A. In discussions with whom?  
13 Q. In discussions with Delphi and with  
14 GM about Delphi's pensions.  
15 A. I have been involved in discussions  
16 with General Motors about Delphi's pensions.  
17 I've not had substantive discussions -- I don't  
18 believe as I sit here that I can recall any  
19 substantive discussions with Delphi about it.  
20 Q. How would you characterize your  
21 role in those discussions with GM and with the  
22 PBGC?  
23 A. I've acted as sort of facilitator  
24 and intermediary between the PBGC and General  
25 Motors regarding Delphi's pensions.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 currently unaware what's going to happen with?  
3 A. I've seen numbers, but I don't  
4 recall what it is. But my memory is it's  
5 something like 60,000, but I don't recall the  
6 exact number.  
7 Q. 60,000 would probably be the total.  
8 I will refresh your recollection.  
9 (Feldman Exhibit 23 was marked for  
10 identification.)  
11 BY MS. KENNEDY:  
12 Q. This is -- and for the people on  
13 the phone, this is now DPHIUECWA tons of zeros  
14 371 through 372. And it's the hourly employees  
15 by union with the traditional Delphi pension  
16 plan showing that, on the second page -- it's  
17 row 7 -- continues to be the IUE, that there  
18 are approximately 8900 total IUE workers left  
19 in Delphi and only 733 that actually  
20 transferred over through the 414 transfer.  
21 Does that sound -- have you seen anything like  
22 this?  
23 A. I have. You know, I probably have  
24 paid more attention to the aggregates as you  
25 can see, you know, it's a much bigger number so  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 I had not in my own mind separated out the IUE,  
3 but I do see that number, yes.  
4 Q. In this document, which we'll mark  
5 24, this is a -- the May 20 update for the DIP  
6 lenders steering committee. And it's -- in  
7 which they talk about various --  
8 (Feldman Exhibit 24 was marked for  
9 identification.)  
10 BY MS. KENNEDY:  
11 Q. So I'm specifically looking at page  
12 5. Now, have you seen this document before?  
13 A. No.  
14 Q. When you started discussing  
15 pensions with GM or with the PBGE specifically  
16 the Delphi IUE hourly retirement plan -- when I  
17 say "pension," I'm going to be generally  
18 referring to the IUE hourly retirement plan  
19 unless otherwise qualified. Were these the  
20 likely outcomes that you were discussing when  
21 you started discussing pensions in April?  
22 MR. SCHWARTZ: Object to the  
23 form.  
24 A. In my initial discussions with the  
25 PBGC, they centered around trying to reach an  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 the hourly plans. That was clearly the  
3 direction things were still going in the middle  
4 of May of '09.  
5 Q. And that was the outcome you were  
6 attempting to facilitate. That's what I mean  
7 by that was Treasury's position you were --  
8 A. That's -- that's correct, that's  
9 correct.  
10 Q. Okay. So then to go through these,  
11 on page 6, it says, "Throughout May, Delphi had  
12 a series of meetings with its primary  
13 stakeholders and other third parties. On  
14 May 4, Delphi and GM met with U.S. Treasury in  
15 Washington, D.C." Were you part of that  
16 meeting?  
17 A. Yes.  
18 Q. And do you recall the issue of the  
19 hourly pension plan being raised?  
20 A. I don't recall specifically.  
21 Q. Okay. And then on the next page,  
22 it also indicates on May 12, that Delphi met  
23 with representatives of the Treasury and spoke  
24 again on May 13 and 14.  
25 Do you recall what the position of  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 agreement where the salaried Delphi plans would  
3 be terminated and General Motors would assume  
4 the hourly pension plans.  
5 Those were the -- that was the  
6 thrust of the discussions with the PBGC and  
7 with General Motors to the extent I had  
8 discussions with General Motors about it in  
9 April and then in May with General Motors.  
10 Q. So at this point you were still --  
11 what you see referred to as the Delphi  
12 Preferred, that the GM would assume the Delphi  
13 hourly was the position that Treasury was  
14 supporting?  
15 MR. SCHWARTZ: What's "at this  
16 point"?  
17 MS. KENNEDY: At this point of  
18 the May 20 emergence update for DIP  
19 lender steering committee document.  
20 A. Again, to say Treasury was  
21 supporting it suggests a role that I don't  
22 think we were playing. But we were trying to  
23 facilitate an agreement where the salaried plan  
24 would get terminated and taken over by the PBGC  
25 and General Motors would assume liability for  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 the Treasury regarding the pensions at that  
3 point was, "that point" being May 13, 14?  
4 A. Yeah, I think at that point, we  
5 were still hoping to reach a resolution between  
6 the PBGC and General Motors where the salary  
7 plan would get terminated but the hourly plans  
8 would -- salary plans would get terminated and  
9 the hourly plans would get assumed by General  
10 Motors.  
11 Q. And why was that your position?  
12 A. Well, again, I don't know that it  
13 was our position. I think we were trying to  
14 facilitate a resolution.  
15 Q. Why was that the outcome you were  
16 supporting?  
17 A. We thought that trying to -- strike  
18 that.  
19 We thought there was a reasonable  
20 argument for General Motors, particularly on  
21 the UAW side, that since most of the likely  
22 outcomes would have some of the UAW plans  
23 coming back to General Motors, that it would be  
24 problematic for General Motors to sort of push  
25 the termination of the hourly plan related to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 the UAW.  
3 We were not as focused on the IEU  
4 [sic] or other -- IUE or other of what I'll  
5 call the splinter unions, but we had concerns  
6 about the UAW role in coming back into the  
7 fold.  
8 When the plans got transferred to  
9 Delphi in '99, the hourly plan was a fully  
10 funded plan at that point. We didn't think it  
11 made sense for General Motors to take that plan  
12 back under its umbrella. And the hourly plans  
13 were not fully funded at that time, so we  
14 thought it was a little bit after different  
15 circumstance.  
16 Q. And was the fact that these plans  
17 had been subject to collective bargaining  
18 agreements a factor at all in segregating what  
19 you thought the outcome for the salary plan  
20 should be versus the outcome for the hourly  
21 plan?  
22 A. Well, obviously from a process  
23 perspective, the fact that they were subject to  
24 collective bargaining. The fact that they were  
25 subject -- obviously from a process  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Could you speak up, please? And also,  
3 if you could read the Bates numbers on  
4 the document.  
5 MS. KENNEDY: 25 is  
6 DPHUCCPM00025687 through 88.  
7 MS. MEHLSACK: Thank you.  
8 MS. KENNEDY: And what will be  
9 marked as 26 is DPHUCCPM00141579.  
10 BY MS. KENNEDY:  
11 Q. So let's go to 26 first actually,  
12 if you don't mind, since that's chronologically  
13 earlier:  
14 On May 28, Jack wrote you an e-mail  
15 saying that Harry -- whom I assume is Harry  
16 Wilson?  
17 A. I assume so.  
18 Q. -- said to reach out to you on the  
19 PBGC settlement issues and indicates who the  
20 PBGC representation at the mediation was,  
21 representative at the mediation.  
22 You'd been in touch with the PBGC,  
23 though, prior to May 28 on the Delphi pension  
24 plan issues?  
25 A. Yes.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 perspective, the fact that they were subject to  
3 collective bargaining meant you had less  
4 flexibility in terms of what -- how to achieve  
5 an outcome, but I'm not sure that had a real --  
6 that played a real role in the decision-making.  
7 Q. Less flexibility in what sense?  
8 A. Well, in the sense that the  
9 company, if Delphi wanted to try to terminate  
10 the plans, they would have to go through a core  
11 process that not only would impact their -- you  
12 know, the pension plan, but might impact the  
13 collective bargaining agreements themselves.  
14 So it just is a more complicated process to  
15 deal with collectively bargained pensions.  
16 Q. And --  
17 (Feldman Exhibit 25 was marked for  
18 identification.)  
19 MS. KENNEDY: So this is an  
20 e-mail from Jack Butler to yourself  
21 inquiring as to -- and I'll show you  
22 both of these at the same time.  
23 (Feldman Exhibit 26 was marked for  
24 identification.)  
25 MS. MEHLSACK: This is Barbara.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And so at May 28, what -- if you  
3 recall, what was the progress on the -- on  
4 resolving the pension plan issues?  
5 A. I think on May 28, if General  
6 Motors had been willing to take the hourly  
7 plans, there was a general agreement with the  
8 PBGC that they would -- that the salaried plan  
9 would get terminated. Exactly how that would  
10 happen had not really been worked out, but that  
11 the salary plan would get terminated, the PBGC  
12 would have a \$30 million administrative claim  
13 to be paid consummation of a plan or closing of  
14 a transaction. In exchange, they would release  
15 their liens -- PBGC would release its liens on  
16 the foreign assets, and it would have an  
17 unsecured claim at that point undefined as to  
18 order of magnitude.  
19 Q. So at that point, it was still  
20 undefined?  
21 A. Correct.  
22 Q. And who at GM were you facilitating  
23 contact with regarding the taking on of the  
24 Delphi pensions or not?  
25 A. You know, most of the conversations  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 were with Walter Borst, although from time to  
3 time I would talk to Rick Westenberg about it  
4 as well.  
5 Q. How would you characterize your  
6 conversations in May? You said if they had  
7 been willing to take on the hourly plan.  
8 A. You know, the -- again, the issue  
9 is that towards the end of May, effectively all  
10 of General Motors' time was taken up with their  
11 own Chapter 11 preparations. So one of the  
12 unfortunate things is we did not have a lot of  
13 substantive conversations -- "we" being  
14 Treasury and General Motors -- in that last  
15 week prior to General Motors' filing about  
16 General Motors' position vis-a-vis the Delphi  
17 hourly plan.  
18 And we didn't have a lot of  
19 conversations immediately after the filing. It  
20 probably took until the end of first week of  
21 June before we sort of picked that ball up  
22 again and began discussing it in earnest.  
23 So I don't know that I can  
24 characterize discussions. In general, at that  
25 point, no one from General Motors said to me,  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 what the status of the hourly plan was. And  
3 you'll see in that second -- well, the second  
4 full paragraph that apparently that conclusion  
5 came into question over that period. And then  
6 he points out again, "So you'll see that during  
7 this weekend's drafting session, this  
8 conclusion has come into question?"  
9 A. Yeah.  
10 Q. Is that -- by May 31, had it come  
11 into question? Had GM indicated something to  
12 you that raised a question in your mind as to  
13 whether they would be able to take on the HRP?  
14 A. Not to me they had not at that  
15 point. They had not.  
16 When I saw this e-mail, which was  
17 Sunday the 31st, I was in Weil's offices all  
18 day and all night that night and I tried to get  
19 time with Walter Borst, but we did not connect  
20 that day.  
21 And it probably was Wednesday,  
22 June 3 or something like that that was the  
23 first time I had a discussion with General  
24 Motors where they indicated that they had real  
25 concerns about taking on the hourly plan.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 gee, taking the hourly plan would be a problem  
3 or what the problem might be.  
4 So towards the end of May, I was of  
5 the view that there was going to be a  
6 transaction around termination of the salary  
7 plan, not the hourly plan with, you know,  
8 claims and lien releases consistent with what I  
9 just said.  
10 Q. So to clarify, you had not heard  
11 from GM at that time that they weren't going to  
12 take on the hourly plan and, to your  
13 understanding, in that those were the contours  
14 of the deal you thought you were facilitating,  
15 your impression was that they were going to  
16 take on the hourly plan?  
17 A. Well, I don't think I said the last  
18 part. That's the critical piece. I had not  
19 heard from them that they could not, would not  
20 take it on. But in fairness to General Motors,  
21 I had not heard from them a deal where they  
22 would take the hourly plan on was acceptable to  
23 them.  
24 Q. Okay. And then on Sunday, May 31,  
25 which is Exhibit 25, Jack is asking you again  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And --  
3 A. Later that week, whether it was  
4 Wednesday or Thursday, I don't recall exactly.  
5 Q. And what were those concerns?  
6 A. The concern was that they had not  
7 built into their business plan sufficient  
8 funding to take on the hourly plans, and they  
9 were concerned about the impact of that on  
10 their own reorganization.  
11 Q. So to be clear, they had not built  
12 into their business plans for the new GM going  
13 forward?  
14 A. That's correct.  
15 Q. And is perhaps that something that  
16 was part of -- you mentioned earlier that you  
17 wish you had been able to talk to them either  
18 the week prior to their filing or immediately  
19 after and that you hadn't gotten to address it  
20 until the first full week of June. Do you feel  
21 like --  
22 MR. SCHWARTZ: Object to the  
23 form.  
24 BY MS. KENNEDY:  
25 Q. So when they first told you that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 they might not be able to take it on, do you  
3 feel that delay in fact impacted their ability  
4 to adopt the HRP?  
5 A. I don't know if the delay impacted  
6 it. I was concerned about it because I sort of  
7 pride myself on transparency and telling people  
8 what I know when I know it, and I felt like it  
9 would have been more appropriate to talk to  
10 Delphi and its counsel about this before the  
11 June 1st plan filing. That's what upset me and  
12 concerned me at that time.  
13 Q. Okay. In this May 31 e-mail when  
14 Jack writes "This is a labor MOU question since  
15 the HRP is collectively bargained," what did  
16 you understand him to mean by that?  
17 A. I mean, "MOU" I assume meant  
18 memorandum of understanding. What he meant by  
19 that sentence, I have no idea.  
20 Q. Okay. And how did you respond to  
21 this message, if you did?  
22 A. Again, I didn't respond to Jack at  
23 that time. I talked to General Motors a few  
24 days later about it, got their sense of where  
25 they were at, spoke to people over the course  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 kind of a liability. It sort of centered  
3 around that discussion in terms of what General  
4 Motors' business -- new General Motors would  
5 look like going forward.  
6 Q. Because the way GM had explained it  
7 to you, they hadn't built in this -- what I  
8 believe is approximately a 3 billion-dollar  
9 liability, but whatever the -- the underfunding  
10 of the HRP. And so suddenly to now take it on  
11 without having built it into their emerging  
12 business plan you thought might throw a wrench  
13 in the works?  
14 A. Yeah. There was a concern about  
15 that, and frankly, there was a concern about --  
16 concern about a lot of different employee  
17 benefit issues related to General Motors more  
18 generally, not just the Delphi piece. I mean,  
19 General Motors itself has enormous legacy  
20 liability. That was part of what the  
21 bankruptcy was trying to address. So the fact  
22 that there was a relatively large piece that  
23 had not been thought about, had not been  
24 addressed, had not really been discussed, was  
25 troubling to people.  
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2 of the next week within Treasury about it.  
3 Ultimately spoke to the PBGC about it, and then  
4 probably after that went back to Delphi, which  
5 probably was 10 days or two weeks later.  
6 Q. And how would you characterize your  
7 conversations within Treasury when you heard  
8 that GM was now talking about not taking on the  
9 Delphi HRP?  
10 A. People were concerned about it and  
11 wanted to understand, you know, why they had  
12 that position, what it would mean to the  
13 business, what it would mean to the company.  
14 Q. What it would mean to the Delphi  
15 business?  
16 A. No, to the General Motors business.  
17 Q. To not take on the HRP?  
18 A. Or to take it on.  
19 Q. And what kind of concerns were  
20 people voicing?  
21 A. Obviously, as a future lender, then  
22 current lender to General Motors Treasury was  
23 concerned about where this liability was within  
24 the General Motors business plan, whether  
25 General Motors' cash flows could handle this  
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2 Q. We share those troubles.  
3 As General Motors DIP lender,  
4 though, would it have been possible for  
5 Treasury to step in with the necessary funds?  
6 I mean, they were giving you their emerging  
7 business plan and you were helping to fund that  
8 emerging business.  
9 MR. SCHWARTZ: Object to the  
10 form.  
11 A. Obviously, if you assume Treasury  
12 has unlimited money, Treasury could have solved  
13 every liability in General Motors. In theory,  
14 that's correct.  
15 Q. Okay. So when you -- how would you  
16 characterize your conversations with the PBGC  
17 when you went back to them on or around  
18 somewhere after May 31, beginning of June with  
19 this new understanding that GM would not be  
20 taking on or had significant concerns about  
21 taking on the Delphi HRP?  
22 A. Just to be clear, I think I also  
23 said that it probably took a week to two weeks  
24 within Treasury and talking to General Motors  
25 before I actually went to the PBGC. It was  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 probably not until the end of the third week or  
3 even the fourth week of June before I spoke to  
4 the PBGC about it.  
5 PBGC was upset, surprised, but not  
6 surprised. They have a healthy mistrust of  
7 General Motors. They were -- you know, they  
8 were basically unhappy about it.  
9 Q. Did they push you to try to resolve  
10 the issue in a different fashion?  
11 A. Not in these words, but they asked  
12 us whether we would force General Motors to  
13 take the plan on.  
14 Q. And how would you be able to force  
15 General Motors to take the plan on?  
16 A. That's what we said.  
17 Q. Okay. Did you go back to General  
18 Motors to attempt to force them to take the  
19 plan on?  
20 A. There were a series of discussions  
21 about whether they could afford it, what would  
22 be the impact to their business of not  
23 affording it, what would be the impact of  
24 leaving behind the hourly pension plan, given  
25 the number of, you know, union workers that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 number that they had built into their plan.  
3 And so their position had -- was  
4 that they had assumed the plan would get  
5 terminated but that they would honor the top-up  
6 guarantee with respect to the UAW, and that  
7 that was something that, in their bargaining  
8 with the UAW around the General Motors  
9 bankruptcy and the new UAW agreement, that they  
10 had agreed to bring that across to new General  
11 Motors and that they were prepared to honor  
12 that obligation.  
13 Q. So, in fact, they had given thought  
14 to the termination of the hourly retirement  
15 plan but as it pertained to the hourly workers  
16 represented by the UAW?  
17 A. You know, I don't want to disagree  
18 with what you said. The truth is I have no  
19 idea whether they had given thought to it and  
20 brought this agreement across purposely,  
21 whether the UAW had said, hey, if in the  
22 future, therefore we want to you bring this  
23 agreement across and we want that protection, I  
24 don't know where the -- you know, that's sort  
25 of a chicken-and-an-egg question, and I don't  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 they employ.  
3 So there were a whole host of  
4 conversations with General Motors about it, and  
5 General Motors was pretty dug in that they did  
6 not want to, you know, bring the Delphi hourly  
7 plan or salary plan, you know, sort of back to  
8 General Motors, given that they had spun Delphi  
9 off in '99.  
10 Q. Did the -- did the memorandum of  
11 understanding and the triggering of the benefit  
12 guarantee come up during these conversations at  
13 all?  
14 A. There was a discussion about the  
15 benefit guarantee. There were a lot of  
16 discussions about the benefit guarantee both  
17 with General Motors and then separately with  
18 PBGC.  
19 Q. And how would you characterize the  
20 conversations first with GM and then with the  
21 PBGC?  
22 A. You know, with GM, GM had taken the  
23 position that with respect to the top -- what I  
24 call the top-up guarantee or benefit guarantee  
25 with respect to the UAW, that that was the  
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2 know where that came out, because we at  
3 Treasury were not focused on that during the  
4 bargaining between General Motors and the UAW,  
5 because frankly, as I said earlier, we had  
6 assumed at that point that they were going to  
7 take on the hourly plan at Delphi.  
8 Q. But, in effect, when they  
9 characterized to you in these discussions about  
10 what are the consequences of what we've now  
11 decided will be the termination of the -- or  
12 the -- or not taking on the HRP, don't worry  
13 about its effect on our business because we  
14 have built this into the UAW agreement?  
15 A. I don't know that they said, "Don't  
16 worry about this effect on our agreement."  
17 They said we have -- we have a contractual  
18 obligation to the UAW to pay the benefits  
19 guarantee, and that is an obligation of new  
20 General Motors, and we're prepared to honor it.  
21 Q. Okay. And how would you  
22 characterize your conversations with the PBGC  
23 about how the benefit guarantee and the  
24 triggering affected your conversations?  
25 A. You know, the PBGC does not like  
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2 benefit guarantees. They have a real issue  
3 with whether they're appropriate, in what  
4 context they're appropriate, you know, kind of  
5 how they work. And so from the PBGC's  
6 perspective, they basically said, look it, we  
7 don't -- we don't want to be involved in any  
8 benefit guarantees. That's not our role.  
9 That's not our mandate. We will talk about,  
10 you know, what options we have, what options  
11 Delphi has in terms of taking the -- you know,  
12 assuming the pensions and not seeing them get  
13 terminated.  
14 PBGC recognized they can't force  
15 General Motors to take those pension plans if  
16 General Motors is not going to or not willing  
17 to, and so the PBGC was much more focused on  
18 their own relationship with Delphi and the  
19 Delphi pension plans.  
20 Q. Okay. If you could just look at 24  
21 for a second. This is, again, not a document  
22 that you've seen before?  
23 A. Correct. I've not seen this  
24 before.  
25 Q. Okay. But in several different  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 that.  
3 Q. Do you know why that was the case?  
4 A. I have no idea.  
5 Q. And therefore, Treasury probably  
6 didn't have a position as to whether it should  
7 or shouldn't go forward?  
8 A. It -- yeah, I mean, by the time the  
9 Auto Team became involved in these companies,  
10 it was already March of 2009. My understanding  
11 is this all took place in the fall of '08.  
12 Q. The first transfer took place in  
13 the fall, September 29 of '08, but then the  
14 second transfer did not occur?  
15 A. I understand it didn't occur, but  
16 we never had a view or took a position or  
17 frankly went back and understood why or why it  
18 didn't occur.  
19 Q. Okay.  
20 (Feldman Exhibit 27 was marked for  
21 identification.)  
22 BY MS. KENNEDY:  
23 Q. This e-mail was sent from GM's  
24 counsel, and then I noticed it was -- note it  
25 was sent to at least one at Cadwalader. And  
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2 sections -- you'll see on page 2, which is the  
3 second page, the key emergence issues to  
4 resolve. We talked a lot about funding this  
5 morning, but pension is one of the top three  
6 things to resolve for Delphi's emergence. Is  
7 that --  
8 A. I see it.  
9 Q. Agree with that characterization?  
10 But in -- at the end of May or  
11 at -- on May 20, that wasn't something that had  
12 risen to -- that had actually really been  
13 spelled out and discussed between the parties,  
14 between Delphi, Treasury, and GM, how to handle  
15 these pensions?  
16 A. Again, I think on May 20, it was at  
17 least Treasury's expectation and I think  
18 probably Delphi's expectation that the path  
19 forward would result in the termination of the  
20 salary plan and General Motors assuming the  
21 hourly plan.  
22 Q. Did Treasury have a position --  
23 you're aware that the second 414 transfer did  
24 not go forward?  
25 A. In nontechnical terms, I'm aware of  
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2 this appears to be -- it attaches handwritten  
3 notes from Weil. Have you seen this markup of  
4 the supplement to the first amended disclosure  
5 statement before?  
6 A. I have not.  
7 Q. You'll notice -- for the benefit of  
8 the people on the phone, this is  
9 DPHUCCPM00005801 to 5812. And I believe for  
10 the people on the phone, 3807 is out of order,  
11 FYI. Bates 5804 --  
12 A. 5804?  
13 Q. Yeah.  
14 A. Okay.  
15 Q. You'll see that it is crossed out  
16 by hand that "Delphi's hourly pension plan will  
17 be transferred to GM" and written in "Delphi's  
18 hourly pension plan will be addressed by GM."  
19 But this you had not seen -- when was the first  
20 time you saw a markup that changed "transferred  
21 to GM" to "addressed by GM"?  
22 A. I don't know when I saw the first  
23 markup. As I think I indicated earlier, the  
24 first time I heard about it from General Motors  
25 was later this week, meaning this was dated  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 June 1st at 2:09 a.m., and as I said, I had  
3 seen Jack's e-mail from the prior day, from  
4 that Sunday. This was sort of the same day,  
5 since we were all still awake, but from the  
6 prior day. And I did not have a chance to  
7 catch up with Walter Borst until later this  
8 week.  
9 Q. I guess I'm focused on the phrase  
10 "addressed by," and wherever you had seen that  
11 come up.  
12 Was your impression that -- because  
13 the plan documents also say "addressed," "will  
14 be addressed by GM" -- was there a period of  
15 time between hearing that it would be addressed  
16 by and then understanding that they, in fact,  
17 would not take it on where "addressed by"  
18 was -- they still didn't know what they were  
19 doing with it?  
20 MR. SCHWARTZ: Object to the  
21 form.  
22 A. Not for me. For me, it was -- it  
23 went from my thinking that they were going to  
24 assume the obligations under the hourly plan to  
25 they had not built it into their business plan  
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2 those payments would be made.  
3 We wanted to understand how many  
4 employees we were talking about, where they  
5 were located, how many were retired, how many  
6 were between 62 and 65, how many were past the  
7 age of 65. So there was a fair amount of work  
8 we wanted to do to understand whether this made  
9 sense for General Motors in its business, what  
10 the impact would be.  
11 Q. And what was your conclusion at the  
12 end of those assessments?  
13 A. You know, ultimately this was a  
14 3 billion-dollar liability that General Motors  
15 could not afford. That was the conclusion.  
16 We understood it was going to be  
17 very painful for current and former employees.  
18 We understood that there were people who never  
19 set foot in a Delphi factory. They worked  
20 their entire careers for General Motors and  
21 then had their pensions transferred and that,  
22 you know, this was going to be extremely  
23 unpleasant. We understood all that.  
24 We weren't happy about it, but at  
25 the end of the day, our mandate from the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 and they were looking for alternatives. But  
3 that was a euphemism for "we'd like to see the  
4 plans terminated."  
5 Q. So, in fact, even at -- you're  
6 saying let's say the end of the first week of  
7 June was when you had this point clarified for  
8 you in your discussions with GM, you understood  
9 and, in fact, it was pretty clear that they  
10 intended not to take the plans on and therefore  
11 accepted that the plans would be terminated?  
12 A. Well, again, that was their  
13 position, but, you know, there was work that we  
14 wanted to do at Treasury to understand what the  
15 rationale was, whether they really had not put  
16 the numbers in, what the impact of the numbers  
17 would be, and that sort of thing.  
18 Q. What kind of work did you do at  
19 Treasury to understand it?  
20 A. You know, we went back to their  
21 business plan, we had a number of conversations  
22 with them, we asked their pension people to  
23 explain to us what the timing of payments would  
24 be for the underfunding. We wanted to compare  
25 that if they honored the top-up guarantee when  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 President is to try to act in a commercially  
3 reasonable manner vis-a-vis the OEMs, and this  
4 is what made the most sense commercially for  
5 General Motors.  
6 Q. And was there a time during your  
7 calculations of looking at the -- their  
8 business plans, etc., where you thought that  
9 actually their numbers would support taking on  
10 the hourly retirement plan?  
11 A. No.  
12 Q. Did you try to look at alternatives  
13 to the way that the plan had been structured  
14 where they could take on some of it, or was it  
15 an all-or-nothing choice?  
16 A. We didn't specifically exclude any  
17 solutions, but at the end of the day, you know,  
18 at the end of the day, General Motors made a  
19 determination and at Treasury we did not see a  
20 justification or a rationale to, you know, to  
21 try to force a different commercial result on  
22 them because their -- as painful as it is to  
23 say, their analysis, their economic analysis is  
24 correct. It's \$3 billion less in liabilities.  
25 Q. Okay. So -- this is a presentation  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 that was --  
3 (Feldman Exhibit 28 was marked for  
4 identification.)  
5 Q. Okay. So this is, for those on the  
6 phone, DPHUCCPM00137193 to 137275. And it is a  
7 presentation for the meeting of the Official  
8 Committee of Unsecured Creditors. This is  
9 where -- I direct your attention to page 31,  
10 where you'll see the handwritten markup has now  
11 made its way into the creditors' committee  
12 notes. And on the second paragraph on the  
13 right-hand column it says, "Upon consummation  
14 of the modified plan, the remaining assets and  
15 liabilities of Delphi's hourly pension plan  
16 will no longer be the responsibility of the  
17 debtors and will be addressed by GM."  
18 So this now is -- you see that?  
19 A. I do.  
20 Q. This now is June 25. If according  
21 to your reckoning -- well, had Treasury run  
22 through its calculations and come to the point  
23 where it supported GM's position on not taking  
24 the HRP?  
25 A. The answer is yes. And this was  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 though this 3 billion-dollar Delphi  
3 liability -- you had reason to believe that  
4 Delphi understood that it would be resolved in  
5 a particular way, you guys hadn't gone back to  
6 talk to them about it, or their  
7 representatives?  
8 A. I wish I knew what day of the week  
9 this was. That week was both conversations  
10 with first the PBGC -- probably had spoken --  
11 as I think about it, probably had spoken --  
12 again, I wish -- let me have a calendar. 25th  
13 of June. It's easier for me. I could probably  
14 walk you through the timetable pretty clearly.  
15 MR. FRIEDMAN: 25th of June was  
16 a --  
17 MR. SCHWARTZ: Thursday.  
18 MR. MALIONEK: Oh, yeah,  
19 June 30th.  
20 A. Okay. Right around this time --  
21 right around this time, I had -- I had spoken  
22 to the PBGC a day or two before this, and I  
23 probably spoke to them a second time right  
24 around this date.  
25 And, you know, they came back to me  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 right around the time that I was talking to the  
3 PBGC, or started talking to the PBGC about the  
4 fact that General Motors was not prepared to  
5 take on the hourly plan.  
6 Q. So about June 25 is when you recall  
7 you first approached the PBGC with the bad  
8 news?  
9 A. With the news was right around this  
10 date, maybe a day or two before, maybe that  
11 day, maybe a day after. I don't recall the  
12 exact date, but right around that time.  
13 Q. Okay. Given that at least -- that  
14 so many of the major players at that point --  
15 GM, Treasury, PBGC -- understood that "will be  
16 addressed by" really meant "was going to be  
17 terminated," is there to your knowledge a  
18 reason why this euphemism is still in place,  
19 being used to describe the resolution of the  
20 plan?  
21 A. Well, the only thing I'll say is I  
22 had not had any conversations, and I don't  
23 think anyone had any conversations with Skadden  
24 or Delphi at this point in time.  
25 Q. So you think that as of June 25,  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 after the first meeting and said, look it,  
3 we're really unhappy, but we would be prepared  
4 under certain circumstances to be cooperative.  
5 I said, okay, I need to let Delphi  
6 know where people's heads are at and what  
7 they're thinking.  
8 So within a day or two after  
9 this -- in fact, I think it was either that  
10 Friday the 26th or the Monday, whatever that  
11 Monday was, the 29th, I had a conference call  
12 with Delphi, with General Motors and updated  
13 them on what was happening with the -- what the  
14 expectation was in terms of what was going to  
15 happen with the hourly plan.  
16 That led to more discussions with  
17 the PBGC leading up to the end of June, and in  
18 fact one thing that happened at that -- in that  
19 week was that the PBGC came back and said, you  
20 know, this is not going to be a settlement  
21 around a 30 or 40 million-dollar payment on  
22 behalf of the hourly plan. We think we're  
23 entitled to a very substantial payment in  
24 connection with any agreements to terminate the  
25 hourly plan. So that then led to a multiweek  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 negotiation with the PBGC over what that would  
3 look like.  
4 But it was right in this time  
5 period that the PBGC came back and said, you  
6 know, they would be prepared to be cooperative,  
7 not force the company to go through an 1113,  
8 1114 process if it didn't have to. And we also  
9 informed Delphi at that time what people's, you  
10 know, current thinking was.  
11 Q. Are you still in talks in -- you're  
12 still in settlement negotiations with the PBGC?  
13 A. I haven't had any involvement in  
14 the last week.  
15 Q. Have you come to -- have you signed  
16 a settlement with the PBGC?  
17 A. First of all, Treasury wouldn't  
18 sign a settlement with the PBGC. My  
19 understanding is that they're -- I'm sorry, my  
20 understanding is they're in the very late  
21 stages of negotiating a deal with the PBGC.  
22 Q. And are you currently aware of what  
23 those terms of that settlement might be  
24 financially?  
25 A. Yes.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 to us, can we --  
3 MS. KENNEDY: Do you withdraw  
4 your objection to discussing the terms  
5 of the --  
6 MR. SCHWARTZ: We'll take it on a  
7 question-by-question basis. Someone  
8 produced this document to you, so you  
9 can question on it.  
10 BY MS. KENNEDY:  
11 Q. I'm particularly interested in --  
12 and for the benefit of the people on the phone,  
13 this is DPHIUECWO, bunch of zeroes, 78 to 88.  
14 And I'm directing, Mr. Feldman, your attention  
15 to Bates stamp 80.  
16 So it says, "Whereas the Delphi  
17 hourly-rate employees pension plan has been  
18 resolved in accordance with the settlement  
19 agreement attached hereto as Exhibit C." And  
20 it's, sadly, not attached.  
21 But this is -- prior to this, you  
22 had told the PBGC that GM would not be taking  
23 on the HRP. So this is to your understanding  
24 the settlement that they were working on with  
25 the knowledge that GM was terminating the HRP?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And what would those terms be?  
3 MR. SCHWARTZ: I don't know if  
4 it's appropriate for him to testify  
5 about developing settlements.  
6 MS. KENNEDY: Are you making a  
7 privilege --  
8 MR. SCHWARTZ: I mean, again,  
9 we're not party to those discussions  
10 either, but we I assume obtained the  
11 material pursuant to Rule 408 and other  
12 applicable protections. So I think you  
13 would have to get the consent of the  
14 parties to that settlement before we  
15 disclose those discussions.  
16 MS. KENNEDY: Okay. Well, let's  
17 do this, then.  
18 (Feldman Exhibit 29 was marked for  
19 identification.)  
20 BY MS. KENNEDY:  
21 Q. This is a July 10 working draft of  
22 the settlement agreement of the PBGC. Have you  
23 seen this before?  
24 A. I'm sure I have.  
25 Q. Given that this has been disclosed  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 MR. SCHWARTZ: Object to the  
3 form.  
4 A. Again, I don't think it's up to GM  
5 to terminate the HRP, but that GM was not going  
6 to assume the obligation, that's correct.  
7 Q. Okay. Have you seen drafts of  
8 settlement agreements later than July 10, dated  
9 more recently in time?  
10 A. Yes.  
11 Q. What's the most recent draft that  
12 you've seen?  
13 A. I don't know that it was dated  
14 yesterday, but I saw one yesterday.  
15 Q. And are you familiar with the fact  
16 that the PBGC filed a statement in response to  
17 debtors' supplement to the plan modification  
18 approval motion?  
19 A. I -- I am aware that they filed a  
20 statement, yes.  
21 Q. Okay.  
22 (Feldman Exhibit 30 was marked for  
23 identification.)  
24 BY MS. KENNEDY:  
25 Q. Now, this is back in June 9. One  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 of the things, if you turn to page 2, that  
3 they --  
4 A. Do you want to tell everybody the  
5 Bates?  
6 Q. I sure will. DPHIUEWCA00001301 to  
7 1306.  
8 So page 2 of their statement makes  
9 the point that the plan ambiguously describes  
10 the disposition of Delphi's hourly pension  
11 plan.  
12 A. I see that.  
13 Q. Because they were still using the  
14 phrase -- and it's quoted on page 3 -- that "GM  
15 will address the hourly plan's liabilities"?  
16 A. I see that.  
17 Q. In your opinion, does the phrase  
18 "GM will address the hourly plan's liabilities"  
19 give enough information for people to  
20 understand the true content of the plan?  
21 MR. SCHWARTZ: Objection.  
22 A. I think only the judge can tell me  
23 that.  
24 Q. Only the judge can tell you your  
25 opinion?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 to, what GM will be paying out of operating  
3 funds directly to the hourly plan participants?  
4 A. I do.  
5 Q. What's that?  
6 A. Any top-up guarantee payments,  
7 benefit guarantee payments.  
8 Q. Okay. But the next sentence says,  
9 "And we should assume the hourly plan is being  
10 terminated."  
11 So when you say -- so can you tell  
12 me who they would be paying the top-up  
13 guarantee payments to, to whom they would be  
14 paying it?  
15 A. Yeah, I mean, the discussions at  
16 that time were that if the hourly plan was  
17 terminated, General Motors would still have a  
18 contractual obligation to the UAW to pay top-up  
19 guarantee payments. The PBGC did not want any  
20 involvement in top-up guarantees and top-up  
21 guarantee payments. I think I referenced  
22 earlier they don't like them, they don't think  
23 they should exist.  
24 It was important to Treasury and to  
25 the PBGC that General Motors not use its own  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I guess if you're asking my  
3 opinion, I -- I -- it's just hard to answer the  
4 question in the context of one sentence.  
5 Q. And it's hard to judge the plan on  
6 the context of the words "the plan will be  
7 addressed"?  
8 MR. SCHWARTZ: Objection.  
9 A. It is hard in the context of "will  
10 be addressed."  
11 Q. On July 5 --  
12 (Feldman Exhibit 31 was marked for  
13 identification.)  
14 BY MS. KENNEDY:  
15 Q. On July 5, this is the second  
16 e-mail down in the chain, counsel from  
17 Cadwalader was arranging a call that they were  
18 hoping to have you on.  
19 A. Yes.  
20 Q. And this is the first place that  
21 you'll see he writes, "We should assume GM will  
22 pay out of operating funds and that it will  
23 make the payments directly to the hourly plan  
24 participants and not through the PBGC."  
25 Do you know what they're referring  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 pension plan to fund top-up guarantee payments  
3 but, rather, that come out of corporate funds  
4 earnings, if you will.  
5 And so this is referencing that  
6 General Motors, to the extent they are legally  
7 obligated to pay benefit guarantee payments or  
8 top-up guarantee payments, they will do it out  
9 of their operating funds directly to the plan  
10 participants and not make the payment over to  
11 the PBGC to then fund to the plan participants.  
12 Q. And when you say "to the extent  
13 they're legally obligated to pay the top-up  
14 guarantee benefits," you mean because new GM  
15 has chosen to take on that obligation?  
16 A. To the extent new GM has assumed  
17 that guarantee, those guarantee payments to UAW  
18 or other unions, then that's what I'm referring  
19 to.  
20 Q. Okay. Did you have specific  
21 discussions with GM about the fact that any of  
22 these top-up payments going to hourly plan  
23 participants would only be UAW members and not  
24 members of other unions?  
25 A. At what time?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Forward from when you heard they  
3 were terminating the plan, they were not taking  
4 on the hourly plan assumption for all of the  
5 workers that were part of the hourly plan.  
6 A. Within the last few weeks, I've had  
7 conversations with General Motors about which  
8 unions they intend to honor the top-up  
9 guarantee to, and I know that others at  
10 Treasury and the White House have had  
11 conversations with them.  
12 Q. How would you characterize those  
13 conversations?  
14 A. How would I characterize those  
15 conversations? Businesslike.  
16 Q. Okay. With whom out at Treasury or  
17 at the White House has GM had a conversation  
18 about honoring their top-up guarantee?  
19 A. Steve Ratner has spoken to Fritz  
20 Henderson about it. Brian Deese from the White  
21 House and I have spoken to Frank Jaworski about  
22 it at General Motors.  
23 Q. And when were those conversations?  
24 A. There have been multiple  
25 conversations in the last two to three weeks.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 legally obligated to pay and the amount those  
3 beneficiaries would otherwise receive had the  
4 plan not been terminated.  
5 My understanding is there may be  
6 one or more agreements between the union that  
7 you represent and General Motors and perhaps  
8 between the United Steelworkers and General  
9 Motors that has similar provisions.  
10 Q. Just so we're absolutely clear, not  
11 to interrupt you, you're speaking of General  
12 Motors. Are you speaking of new GM, old GM,  
13 doesn't matter?  
14 A. No, I was purposely ambiguous  
15 because in the case of UAW, I think it is with  
16 new General Motors. In the case of the other  
17 two unions right now, my understanding is the  
18 agreement has been left at old General Motors.  
19 Q. And you understand that that is one  
20 topic that is part of the continuing bargaining  
21 that is currently going on between the unions  
22 and various parties at Treasury and the White  
23 House?  
24 A. It's not going on between --  
25 Treasury and the White House are not involved  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And when was the most recent  
3 conversation?  
4 A. I spoke to Frank Jaworski last  
5 night about this.  
6 Q. And what are the contents of that  
7 conversation?  
8 A. My understanding is that there's a  
9 bargaining session going on between the  
10 splinter unions and General Motors about a  
11 variety of issues, including this issue.  
12 Q. Including the assumption of any  
13 kind of payment of old Delphi hourly plan  
14 obligations?  
15 A. No, including the top-up guarantee.  
16 Q. Well, when you say "the top-up  
17 guarantee," explain to me what you mean.  
18 A. My understanding is there is a --  
19 there is an agreement between General Motors  
20 and I think it's just -- well, there may be  
21 more than one agreement. There's an agreement  
22 between General Motors and the UAW that if the  
23 Delphi hourly plan were terminated, General  
24 Motors would guarantee the payment to the  
25 beneficiaries between the amount the PBGC is  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 in the bargaining. It's between General Motors  
3 and the unions.  
4 Q. You referred earlier to discussions  
5 with Steve Deese -- Ratner and Deese and those  
6 conversations I was referring back to.  
7 A. That's correct. But our  
8 conversations with General Motors are just  
9 about things like whether they're going to have  
10 bargaining sessions.  
11 Q. Okay.  
12 A. When they're going to have  
13 bargaining sessions, who might be attending the  
14 bargaining sessions.  
15 Q. Got it.  
16 A. They're more in that nature.  
17 Q. Okay. Now, when -- going back, so  
18 on July 5, we see this Exhibit 31 where  
19 Cadwalader communicates "we should assume the  
20 hourly plan is being terminated."  
21 (Feldman Exhibit 32 was marked for  
22 identification.)  
23 BY MS. KENNEDY:  
24 Q. On 31 for a second, "We should  
25 assume the plan is being terminated." That was  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 not just an assumption at that point but  
3 essentially an established, understood fact  
4 for -- as far as you were concerned?  
5 A. No, I don't think that's a fair  
6 characterization. I think it's clear General  
7 Motors wasn't going to take on the plan. You  
8 know, whether Delphi could have convinced  
9 Platinum or the DIP lenders or, you know,  
10 someone else to come in here and buy Delphi  
11 and, you know, take on the plan, I guess in  
12 theory was still an open point. It was clear  
13 General Motors was not going to take on the  
14 plan.  
15 Q. Okay. Fair enough. So then 32,  
16 which is Bates DPHIUECWA00001276 to 1278,  
17 the -- you received the last message, and on  
18 the first page, so the third message down came  
19 out from GM's counsel; and you were copied?  
20 Feel free to peruse the whole thing.  
21 A. Okay.  
22 Q. Okay. So you'll see that on  
23 July 6, Weil communicated that GM has now  
24 spoken to the UAW regarding the PBGC  
25 settlement.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 communicating the dispositions of the HRP to  
3 the unions?  
4 MR. SCHWARTZ: Objection.  
5 A. Just to address the first part of  
6 the question first, there were certainly still  
7 scenarios in the beginning of July where it  
8 would have been possible that General Motors or  
9 someone else would have wound up having to take  
10 the hourly plan.  
11 It didn't play out that way, and I  
12 think the, you know, overwhelming likelihood at  
13 that time was it wouldn't play out that way,  
14 but I don't think on July 6 it was a completely  
15 foregone conclusion.  
16 So I'll say it this time and I  
17 won't say it again, but that was clearly my  
18 view at that time, that the second part of the  
19 question, I now have forgotten, I'm sorry.  
20 Q. No problem at all.  
21 What are the scenarios in which the  
22 hourly plan would have been taken on by GM even  
23 up to the beginning of July?  
24 A. If I understand, if there could not  
25 have been a consensual resolution with the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Were you aware of any  
3 communications to the IUE or any of the -- or  
4 any of the unions in June regarding the  
5 treatment of the hourly retirement plan?  
6 A. No.  
7 Q. Were you aware that the unions had  
8 not been contacted?  
9 I can speak only for the IUE, but  
10 were you aware that the IUE had not been  
11 contacted in June regarding the hourly  
12 retirement plan's disposition?  
13 A. The Delphi hourly plan, you mean?  
14 Q. Correct.  
15 A. I wasn't aware of it or unaware of  
16 it. I didn't -- I didn't think about it at  
17 that time.  
18 Q. Okay. So then you received this  
19 e-mail on July 6 saying GM has now spoken to  
20 the UAW regarding the PBGC settlement. At that  
21 point, in the first week in July, when while a  
22 DIP lender could have ridden to the rescue, it  
23 had certainly been decided that GM was not  
24 assuming the obligation for the HRP, were you  
25 involved in any discussions regarding  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 PBGC, and it would have taken 3 months to  
3 terminate the pension plan, would have had --  
4 you would have had to weigh that delay in  
5 Delphi emergence against whatever economic  
6 benefits you had against -- in not taking on  
7 the liability.  
8 So I think there was a range of  
9 possibilities that could have happened at that  
10 time. They didn't, and General Motors' strong  
11 bias was not to take on the hourly plan. But I  
12 just don't think it was a foregone conclusion  
13 in the first week of July that that was how  
14 this was going to play out.  
15 Q. Okay. The second part of the  
16 question was about though it may not have been  
17 a foregone conclusion, it was certainly what  
18 people expected to happen, was that GM would  
19 not take on this plan.  
20 A. It was the path people were  
21 beginning to walk down, yes.  
22 Q. And had been walking down since a  
23 month prior. You learned about it in the  
24 beginning of June?  
25 A. At least exploring and then walking  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 down, yes.  
3 Q. The -- when were you first aware  
4 that people were talking -- that -- when did  
5 you have conversations about telling the unions  
6 that this was the likely resolution of their  
7 hourly retirement plans?  
8 A. I -- I think on July 5, the call  
9 that was referenced in the prior e-mail, I  
10 raised with General Motors the need for them to  
11 make sure that they had a communication plan in  
12 place with their unions.  
13 Q. And -- so you're saying that you  
14 raised that to them. Did GM raise that to you  
15 at all?  
16 A. GM said we understand we need to  
17 talk to them, and I said -- my memory is I  
18 said, well, now seems like the right time.  
19 Q. And is your memory that you brought  
20 up the need to explain what was going to happen  
21 to their pensions to the unions?  
22 A. Yes.  
23 Q. And do you know when GM then did  
24 speak to the unions and when Delphi would have  
25 spoken to the unions?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 identification.)  
3 MS. KENNEDY: 33 is  
4 DPHIUEWCA00001223 to 1224. And 34 is  
5 DPHUCCPM0019674 to 196768.  
6 BY MS. KENNEDY:  
7 Q. So we were talking about  
8 communicating the resolution of the plans to  
9 the unions, and specifically to the IUE.  
10 Exhibit 33 shows on the first page, the second  
11 e-mail down, an e-mail again from Cadwalader to  
12 you on July 7. Do you see the sentence  
13 starting "regarding"?  
14 A. Yes.  
15 Q. Did you discuss whether announcing  
16 the termination of the plans in advance of the  
17 auction and sale hearing is a wise idea on your  
18 call?  
19 A. Yes.  
20 Q. What did you think when you got  
21 this e-mail about when to announce these plans?  
22 A. To take a step back, this e-mail  
23 was prompted by a call I made to Oren asking  
24 him to send it. I had had a conversation with  
25 the PBGC where they wanted to very much control  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. I only know about the conversations  
3 with the UAW based on, you know, this e-mail.  
4 Q. So after your call on July 5, did  
5 you hear back other than this e-mail about any  
6 conversations that GM or Delphi had with their  
7 unions?  
8 A. Other than the UAW, no, I did not.  
9 Q. Okay. So nothing specific with the  
10 IUE?  
11 A. Correct.  
12 Q. So you never got the question that  
13 was posed from Skadden to Robert Lemons in  
14 this -- I suppose the third line down, or the  
15 third e-mail down, "Do you think it makes sense  
16 for GM to also speak with the IUE, USW, and  
17 possibly even the splinter unions"?  
18 A. I -- I did not -- there was no  
19 follow-up with me on that question.  
20 Q. Okay.  
21 (Feldman Exhibit 33 was marked for  
22 identification.)  
23 (A recess was taken from 3:40 p.m. through  
24 3:40 p.m.)  
25 (Feldman Exhibit 34 was marked for  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 the way this call would take place and asked  
3 Treasury to play that controlling role.  
4 Q. "The way this call"? You're saying  
5 the call that he's talking about on this  
6 e-mail, "this morning's call"?  
7 A. Yeah, the call that we're  
8 anticipating having.  
9 Q. What was PBGC worried about?  
10 A. They did not want to have sort of a  
11 group negotiation over the -- what they would  
12 get out of the termination in terms of claims  
13 and lien releases and the like. They wanted to  
14 make sure people were onboard with how it was  
15 going to be staged, how the announcement would  
16 take place, and they were concerned about, you  
17 know, having a large call with a lot of people  
18 on it sort of degenerating into places they  
19 didn't really want it to go.  
20 Q. Where were they afraid it would go,  
21 if you know?  
22 A. I don't know.  
23 Q. And do you know -- well, did you  
24 think that the announcement of the termination  
25 of the plans should happen in advance of the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 auction and sale hearing?  
3 A. No, I definitely didn't, because  
4 again, at least my hope was that maybe somebody  
5 would show up here to buy Delphi who would be  
6 willing to do it without terminating the plan.  
7 Why should we -- you know, why should we assume  
8 that there's no buyer here who would keep the  
9 hourly plan in place? And why should we create  
10 an opportunity for a buyer to not have the  
11 hourly plan in place? So we very much wanted  
12 to delay any announcements to see whether  
13 somebody might show up that would be willing to  
14 do this deal with the plans in place.  
15 Q. Did you balance that with the --  
16 against the need for the unions to know what  
17 was going to be happening with their plans?  
18 A. It's not an obvious decision, if  
19 that's the question, which -- which is the  
20 right thing do. But at that time, you know, we  
21 were still hoping and hearing that maybe there  
22 were people interested and coming forward. And  
23 if someone had been willing to come forward and  
24 take the plans on that had previously announced  
25 a willingness by the PBGC to terminate them,  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. It's more fun that way. The -- no,  
3 my understanding of what you said about how the  
4 PBGC wanted to stage-manage the -- this phone  
5 call because you didn't want word going out to  
6 the marketplace about maybe the Delphi hourly  
7 plan's going to be terminated anyway so you can  
8 step in and buy it, and we don't want to tell  
9 people actually there's a problem there, that's  
10 what I meant GM had told the UAW something was  
11 going on with the possible termination of their  
12 plans, but you wanted to keep it from others.  
13 MR. SCHWARTZ: Objection.  
14 A. But not necessarily keep it from  
15 the IUE or the USW. I -- again, I won't  
16 focused on whether General Motors had talked to  
17 the splinter unions. I'm not sure why they  
18 didn't. You'd have to ask them. I certainly  
19 would not have objected had they said we're  
20 also going to call the IUE and the USW.  
21 Q. So from this e-mail it looks like  
22 this call was just between PBGC, Delphi and GM.  
23 Right?  
24 A. PBGC, Delphi, GM, Treasury, and a  
25 lot of lawyers and financial advisors  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 you know, no one would take them on. And we  
3 didn't want to send that signal to the  
4 marketplace.  
5 Q. But you felt like that was a real  
6 possibility?  
7 A. At that time, yes.  
8 Q. Okay. At this time -- yeah, at  
9 this time, GM had already spoken to UAW,  
10 though, about the PBGC settlement, so some of  
11 the unions had been contacted?  
12 A. GM had spoken to the UAW about the  
13 possibility that the plan would be terminated,  
14 that is right.  
15 Q. But you still felt like it was the  
16 right choice to not communicate that to the  
17 other unions?  
18 A. No, I -- I think I said that I  
19 wasn't sure whether it had been communicated to  
20 the other unions, and I didn't follow up, which  
21 is true.  
22 Q. I'm not trying to trip you up.  
23 The --  
24 A. You can try to trip me up. That's  
25 okay.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 ultimately.  
3 Q. Okay, okay. That was much more of  
4 a multiparty call.  
5 A. Yeah.  
6 Q. Okay. What did happen on that  
7 morning call, focusing on how did Delphi, GM,  
8 PBGC communicate the terms of the settlement to  
9 the public?  
10 A. I think what became clear during  
11 that call was that while there was sort of a  
12 skeleton of, you know, what might happen here,  
13 there was still a lot of work to be done before  
14 anyone would actually be willing to say that  
15 there was a -- going to be a consensual  
16 termination and PBGC settlement and whatever  
17 General Motors was going to play in terms of  
18 top-up guarantees. So I think what we  
19 discovered on that call was just how far we had  
20 to go to actually put something in place. I  
21 think the fact that it's still not in place  
22 today is, if nothing else, indicative of how  
23 far we had to go.  
24 Q. I'm sorry, I was just handed one  
25 copy of this. Here, if you want to look at 34,  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 this is a note that includes a letter from  
3 Senator Schumer dated July 6. Have you seen --  
4 it went to Fritz Henderson. Have you seen this  
5 at all?  
6 A. The letter, yes. Yeah, I've seen  
7 it.  
8 Q. So when did you see it?  
9 A. Probably on July 6.  
10 Q. And you'll see on the 196767 page  
11 that Senator Schumer indicates in July that he  
12 was pleased to learn that as part of your  
13 restructuring agreement -- this is to new GM,  
14 to Fritz Henderson -- restructuring agreement  
15 with the Treasury Department, you will assume  
16 the pension obligations of Delphi's hourly  
17 workers.  
18 A. I see it.  
19 Q. So the news that GM had for five  
20 weeks been contemplating not doing that had not  
21 made it out to the senator?  
22 A. Apparently not.  
23 MS. KENNEDY: I'm sorry, this is  
24 another working draft of the settlement  
25 agreement with the PBGC that was  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 what your understanding -- again, as you  
3 skimmed it, can you tell me what your  
4 understanding of that paragraph is regarding  
5 the truing up of various benefits? You also  
6 see it refers to the 414 transfers. And  
7 obviously, take your time to read it.  
8 MR. SCHWARTZ: Well, I mean, this  
9 paragraph refers to another settlement  
10 agreement, which I take it you don't  
11 have.  
12 MS. KENNEDY: Unless someone  
13 would like to bring it in the room to  
14 me.  
15 MR. SCHWARTZ: So you're not  
16 asking him what's in that contemplated  
17 settlement agreement?  
18 MS. KENNEDY: No, I'm not asking  
19 him what's in that contemplated  
20 settlement agreement.  
21 THE WITNESS: I'm sorry, what was  
22 the question? Do you want to see it?  
23 MS. KENNEDY: Yeah. Thank you.  
24 Q. Yeah, well, when they say "Delphi  
25 and GM have approved and agreed to transfers of  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 apparently just produced to us. So I'm  
3 just looking at it for a moment to see  
4 if there's anything I want to question  
5 on.  
6 I think what we'll do is we have  
7 one copy of this. We will have further  
8 copies made this afternoon. Why don't  
9 we just mark this copy so we have the  
10 official copy, then I'm going to just  
11 ask you if you've seen it before and  
12 what that particular paragraph means,  
13 keeping in mind I don't have a copy in  
14 front of me.  
15 (Feldman Exhibit 35 was marked for  
16 identification.)  
17 BY MS. KENNEDY:  
18 Q. So can you tell me -- that's a  
19 July 19 now working draft of the PBGC  
20 settlement?  
21 A. That's what it appears to be.  
22 Q. Have you seen that before?  
23 A. I believe I have.  
24 Q. There's a paragraph in bold on the  
25 page Bates number ending 147. Can you tell me  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 certain pension assets and accrued benefit  
3 liabilities to true up the final pension assets  
4 and accrued benefit liabilities pursuant to the  
5 414L transfers," do you understand that to be  
6 referring to things they have done in the past,  
7 or forward-looking parts of their settlement  
8 agreement?  
9 A. I have no idea.  
10 Q. That's fine. So this isn't -- you  
11 haven't gone over this copy such that you  
12 understand what they're talking about in this  
13 paragraph?  
14 A. I have not.  
15 Q. Without having -- okay.  
16 MS. KENNEDY: Thank you very  
17 much, Mr. Feldman.  
18 A. Thank you.  
19 (Discussion held off the record.)  
20 EXAMINATION  
21 BY MR. MANCINO:  
22 Q. Good afternoon, Mr. Feldman.  
23 You're part of the Auto Team. Is that how you  
24 described it?  
25 A. Yes.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. How is that different from the Auto  
3 Task Force?  
4 A. The Auto Task Force was appointed  
5 by President Obama back in January of 2009 and  
6 is comprised of cabinet-level secretaries.  
7 Q. And the Auto Team is there to  
8 support the Auto Task Force?  
9 A. Yes.  
10 Q. Okay. I want to go back to the  
11 discussion you had previously about the  
12 Federal-Mogul proposal. You mentioned that --  
13 and I'm paraphrasing -- the management team  
14 expressed some concerns about their own futures  
15 as potential employees of a Federal-Mogul-led  
16 company. Do you recall that testimony?  
17 A. Yes.  
18 Q. What concerns did they express?  
19 A. Well, Federal-Mogul as a strategic  
20 buyer of Delphi likely would not have needed  
21 most of the management team; and therefore, it  
22 is likely that some or all the members of  
23 senior management would have been terminated,  
24 and I think that was a concern for Delphi's  
25 management team.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 meaning General Motors and the DIP lenders,  
3 were so far apart on value that the  
4 negotiation/discussions never really bore  
5 fruit.  
6 Q. But you thought that the fact that  
7 Delphi was brought into the table -- to the  
8 table prematurely cost the deal a month? Is  
9 that right?  
10 A. I think I said I thought it  
11 would -- it would cost the deal a month, yes.  
12 Q. Okay. And what did you mean by  
13 "cost the deal a month"?  
14 A. I thought it could delay things  
15 materially for up to a month if we had too many  
16 parties trying to negotiate around the same  
17 deal.  
18 Q. Okay. Turning now to Platinum, you  
19 mentioned that Delphi had expressed some  
20 concerns about Platinum. What concerns did  
21 they have with respect to Platinum as a  
22 potential acquisition partner as those were  
23 conveyed to you?  
24 A. I don't know if I said Delphi had  
25 concerns. I think General Motors had concerns.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. Was that a concern that was  
3 expressed to you by anyone at Delphi? Or on  
4 behalf of Delphi?  
5 A. It was communicated to me and to  
6 Treasury by Federal-Mogul's senior management  
7 based on their diligence and discussions with  
8 Delphi's senior management.  
9 Q. Okay. I want to go back also to  
10 the discussion -- I believe it centered around  
11 Exhibit 7. And you were telling us how you  
12 wanted to be within spitting distance before  
13 turning a bilateral process into a trilateral  
14 process. Do you remember that?  
15 A. I do.  
16 Q. And when you mentioned a bilateral  
17 process, you meant discussions that were going  
18 on between General Motors and whom?  
19 A. The -- the DIP lenders.  
20 Q. Okay. But at some point, perhaps  
21 prematurely from your perspective, those  
22 bilateral discussions became trilateral  
23 discussions?  
24 A. As I think I testified before, it  
25 quickly became irrelevant, because the parties,  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Delphi may have shared them.  
3 But they had to do with the size of  
4 the transaction being larger than anything  
5 Delphi had done before, the fact that -- I'm  
6 sorry, larger than any Platinum had done  
7 before; the fact that Delphi required a  
8 significant operational turnaround following  
9 any closing, and that that was going to be a  
10 challenge for Platinum, or we were concerned  
11 about it being a challenge for Platinum.  
12 And we were just concerned about,  
13 and I think Delphi was concerned about whether  
14 Platinum had the resources to do an acquisition  
15 of this type.  
16 Q. And Platinum had been involved as a  
17 possible purchaser of Delphi's steering  
18 business; is that correct?  
19 A. That's correct. And that  
20 transaction was not consummated, which I know  
21 gave Delphi's management pause and concern.  
22 Q. Okay. Do you know or have you  
23 heard why that transaction was not consummated  
24 with Platinum concerning the steering business?  
25 A. You know, I knew at one time, and  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 I -- I don't recall specifically why. I knew  
3 it had to do with a falling SARS rate, or I  
4 believe it had to do with a falling SARS rate,  
5 and sort of the profitability of the business,  
6 but I don't recall specifically why it didn't  
7 close then.  
8 Q. Okay. And for the record, what is  
9 a SARS rate?  
10 A. I've forgotten what the acronym  
11 stands for, but essentially SARS is the annual  
12 car sales rate, rate of -- the rate that all of  
13 the OEMs sell cars at.  
14 Q. Okay.  
15 A. Still may not have articulated it  
16 right.  
17 Q. If I could take you back to the  
18 early discussion that you had concerning  
19 Delphi's importance or not as a supplier to  
20 General Motors -- and again, not quoting, not  
21 trying to quote what you said, but just trying  
22 to bring us into a context here where I can ask  
23 some follow-up questions -- I think you  
24 expressed the view that if Delphi shut down and  
25 stopped supplying parts to General Motors,  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 was expressed to you by General Motors?  
3 A. Yes.  
4 Q. And I think you gave us, as an  
5 example, steering; is that right?  
6 A. That's what my memory is, yes.  
7 Q. Okay. And is that from -- is  
8 steering an example of a part that it might  
9 take General Motors a year to resource that  
10 General Motors mentioned to you?  
11 A. Yes.  
12 Q. Okay. Do any other examples come  
13 to mind of more complicated parts that it might  
14 take General Motors a longer time certainly  
15 than a week to resource?  
16 A. Yes.  
17 Q. And what are those?  
18 A. Delphi provides electrical systems  
19 for certain GM models, and that also would have  
20 a substantial lead time.  
21 Q. Okay. About how long?  
22 A. I don't recall.  
23 Q. Okay. And I think you mentioned  
24 that in the prior examination on this subject  
25 that in terms of General Motors lines that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 there were some parts with respect to which it  
3 might take GM only a week or so to resource.  
4 Do you recall that?  
5 A. Yes.  
6 Q. Okay. And that's a view that you  
7 held?  
8 A. It's a view that was communicated  
9 to me and others at Treasury by General Motors.  
10 Q. Okay. And do you have any examples  
11 of the kinds of parts that General Motors might  
12 have been able to resource in a matter of a  
13 week or so in the event of a Delphi shutdown or  
14 cessation of supplying parts to GM?  
15 A. General Motors produced a very  
16 substantial PowerPoint study on it that I know  
17 has been produced because I've seen it, and I  
18 just don't recall the specific parts from that  
19 document. But it exists.  
20 Q. Okay. Fair enough. And I think  
21 you said that there are some more complicated  
22 parts that it could take General Motors up to a  
23 year to resource. Right?  
24 A. That's correct.  
25 Q. Okay. And is that something that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 might have to be shut down, trucks was one of  
3 those?  
4 A. That's my understanding, correct.  
5 Q. Okay. Did you -- were you ever  
6 told by General Motors or anyone else that  
7 there were other General Motors lines that  
8 might have to be shut down in the event that  
9 Delphi stopped supplying parts to General  
10 Motors?  
11 A. Yes. My understanding from General  
12 Motors is many of their lines would be shut  
13 down for some period of time.  
14 Q. Okay. Did you or anyone at -- on  
15 the Auto Team or Auto Task Force consider what  
16 impacts a General Motors shutdown might have on  
17 General Motors' constituents, such as employees  
18 and the like?  
19 A. I'm not sure I understand the  
20 question. What do you mean by "impact"?  
21 Q. Well, if General Motors had to shut  
22 down certain lines of business in the event of  
23 Delphi's stopping the supply of parts to  
24 General Motors, what effect, if any, would that  
25 have on General Motors' business?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. General Motors would not be able to  
3 produce cars in lines that were shut down.  
4 Q. Okay. And would that have an  
5 impact on the employees who worked in those  
6 lines producing whatever vehicles those lines  
7 produced?  
8 A. It would depend on how long that  
9 shutdown was for.  
10 Q. Okay. And if the shutdown was for  
11 a fairly lengthy period of time, would it have  
12 any impact on those employees?  
13 MR. SCHWARTZ: Objection.  
14 A. Yes.  
15 Q. Okay. And did you have a view at  
16 any time during your involvement with the  
17 Delphi bankruptcy as to what that impact might  
18 be?  
19 A. Treasury's view was that there  
20 would be no impact on General Motors or its  
21 employees, because we don't believe and -- and  
22 General Motors doesn't believe that a shut --  
23 that there would be a lengthy shutdown if  
24 Delphi stopped supplying and the case  
25 converted.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 the more likely shutdown scenario from General  
3 Motors' perspective, at least as you at  
4 Treasury saw it, was that in the event that  
5 Delphi did stop supplying parts and shut down,  
6 that GM could acquire the plants it needed to  
7 continue operating either from a Chapter 7  
8 trustee or from a lender who may have  
9 foreclosed on the plants?  
10 A. Either we could acquire those  
11 facilities or if we couldn't, then those  
12 facilities would have no value and a lot of  
13 liabilities to whoever continued to own them.  
14 Q. Have you ever heard of the term  
15 "cold shutdown"?  
16 A. Yes.  
17 Q. In what context have you heard that  
18 term used?  
19 A. I've heard it used in context of  
20 Delphi; I've heard it used in the context of  
21 other manufacturing companies.  
22 Q. And how has it been used in your  
23 experience in the context of Delphi?  
24 A. Delphi, in doing their liquidation  
25 analysis, they contemplated a cold shutdown.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And then -- and explain for me why  
3 you felt that there would not be a lengthy  
4 shutdown if Delphi stopped supplying and the  
5 case converted.  
6 A. Because the only buyer for the  
7 critical sites that -- where Delphi produces  
8 parts is General Motors. And so a Chapter 7  
9 trustee, in an attempt to maximize value, would  
10 have to sell those sites to General Motors,  
11 because every day that goes by where General  
12 Motors is able to resource a part eviscerates  
13 the value of that plant in a sale and that's  
14 inconsistent with the trustee's obligations.  
15 Q. Okay. And did you or did Treasury  
16 have that same view as to what would happen if  
17 Delphi stopped -- shut down and stopped  
18 supplying parts if a lender foreclosed on the  
19 plants?  
20 A. Yes, we -- we had a view.  
21 Q. And what was that view?  
22 A. The view was that the lenders also  
23 would have to sell to General Motors or watch  
24 the value of their collateral evaporate.  
25 Q. Okay. So is it fair to say that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Q. And what was your understanding of  
3 what a cold shutdown would entail, at least as  
4 envisioned by Delphi in their analysis?  
5 A. Essentially closing the facilities  
6 without -- not just closing the facilities, but  
7 taking all the machinery down so that it would  
8 take a period of days or weeks or perhaps a  
9 month to bring them back up to speed and  
10 operational.  
11 Q. Okay. And in that cold shutdown  
12 scenario, at least as you understood it, in --  
13 based on your communications with Delphi, would  
14 Delphi not supply parts to General Motors?  
15 A. Correct. They would not.  
16 Q. Okay. Now, is that something that  
17 you thought was a realistic scenario?  
18 A. Yes.  
19 Q. In what respect?  
20 A. We thought that if the case  
21 converted, there would be a cold shutdown.  
22 Q. And you also thought that if the  
23 case converted, a Chapter 7 trustee would more  
24 or less feel compelled to sell those plants and  
25 the equipment in them to General Motors if  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 General Motors made an offer to buy them?  
3 A. We thought a couple things. We  
4 thought that the Chapter 7 trustee would be  
5 unlikely to operate those plants because he  
6 doesn't have a source of funding. We thought  
7 that the plants had very little value in the  
8 hands of anyone other than General Motors,  
9 basically the most important sites to General  
10 Motors. And so, you know, our view was that  
11 over some period of time, General Motors would  
12 acquire those sites from a Chapter 7 trustee.  
13 Q. Okay. And would do so in -- with  
14 whatever speed it thought was appropriate in  
15 order to avoid harm to its business?  
16 A. There wasn't a need for a lot of  
17 speed. General Motors itself was about to shut  
18 down for 90 days. General Motors has inventory  
19 in the market that would -- of its cars  
20 between, you know, sort of 70 days on the low  
21 side and, you know, as much as 180 days on the  
22 high side. So, you know, General Motors'  
23 inventory is enormously bloated, or it was  
24 before it shut down itself for the summer this  
25 year.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 suppliers other than Delphi --  
3 MR. SCHWARTZ: Objection.  
4 Q. -- who supplied General Motors?  
5 A. If -- General Motors is shut down  
6 right now with the exception of the Camaro  
7 line.  
8 If -- really, what you're asking is  
9 if General Motors was not able to come back up  
10 at some point consistent with its plan, would  
11 it have an effect, and the answer is yes.  
12 Q. And what would that effect be?  
13 A. Presumably some suppliers would be  
14 negatively impacted by that. Earnings would be  
15 lower. Revenues would be lower.  
16 Q. Okay. And, I mean, is it your  
17 understanding that Delphi itself relies on  
18 other suppliers for parts that it uses to build  
19 component parts for General Motors?  
20 A. Yes.  
21 Q. And those other suppliers might be  
22 affected if there were a Delphi shutdown?  
23 A. Presumably, they would be very  
24 negatively affected.  
25 Q. Okay. Have you ever heard of a  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 And so, you know, there was not a  
3 whole lot of rush to acquire those plants if  
4 the Delphi case converted. But at some point,  
5 General Motors would likely acquire them where  
6 they couldn't resource the parts and resource  
7 where they could.  
8 Q. Okay. Because at some point, they  
9 would run out of inventory, would need parts?  
10 A. At some point.  
11 Q. Right. And did anyone do an  
12 evaluation for you as to how much it would cost  
13 in total General Motors to resource the parts  
14 that Delphi supplies for it, including things  
15 like the steering parts that you talked about?  
16 A. To resource 100 percent of the  
17 parts?  
18 Q. Yeah.  
19 A. No, not that I'm aware of.  
20 Q. Okay. Now, if GM did have to shut  
21 down any of its plants with respect to certain  
22 lines of vehicles that are produced in the  
23 event that, for example, Delphi stopped  
24 supplying steering components to General  
25 Motors, could that have an effect on other  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 firm called OHorizons?  
3 A. Yes.  
4 Q. Who do you understand them to be?  
5 A. They are a firm run by previously  
6 employed, now unemployed, GM and Delphi  
7 executives.  
8 Q. And when you say "now unemployed GM  
9 and Delphi executives," you mean they used to  
10 be employed by GM and Delphi but are now  
11 employed with OHorizons?  
12 A. That's what I mean.  
13 Q. Okay. Did OHorizons make a  
14 presentation to you and other members of the  
15 Auto Team?  
16 A. Yes.  
17 Q. And what was the nature of that  
18 presentation?  
19 A. They wanted to explain to us how  
20 much General Motors would be harmed if Delphi  
21 shut them down.  
22 Q. Okay. Do you recall anything  
23 specific from their presentation?  
24 A. Nothing specific.  
25 Q. Okay. Do you recall a discussion  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 of the steering business?  
3 A. Yes.  
4 Q. Okay. What was your reaction to  
5 that presentation?  
6 A. Thought it was pretty shoddy.  
7 Q. Why?  
8 A. I thought it was very superficial.  
9 I thought it relied on old paradigms that  
10 didn't exist. It didn't even take into  
11 consideration the fact that General Motors  
12 itself was going to shut down. They never took  
13 a look at what General Motors' inventory of the  
14 various lines were. I thought it was -- I  
15 thought, look it, I'm not an expert on the auto  
16 industry, but I have been immersed in it for  
17 three or four months. I thought it represented  
18 everything wrong about the way people think  
19 about autos.  
20 Q. Did you ask GM to react to that  
21 presentation?  
22 A. Not specifically, no.  
23 Q. Did the U.S. Treasury ask GM to  
24 make a study of what it -- of what the impact  
25 would be on it if it had to resource Delphi?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 weeks to do that and then you'd have to build  
3 new tools.  
4 I mean, they basically took an  
5 approach that ignores what's happening in other  
6 OEMs. It was -- it was, you know, sort of  
7 based on, you know, what I would characterize  
8 as sort of the old General Motors style of how  
9 things get done, which is a little bit like,  
10 you know, they used to run the Soviet Union.  
11 It did not at all take into consideration that  
12 if General Motors was fighting for its life and  
13 unable to produce cars that it might actually  
14 look at things from a little different  
15 perspective.  
16 Q. All right. So in other words, that  
17 GM would somehow transform itself into a  
18 different type of OEM than the type that it is?  
19 A. I don't know whether GM will  
20 transform itself into another different type of  
21 OEM, but I know if Delphi shut General Motors  
22 down by stopping producing parts, one would  
23 hope that General Motors would be a little  
24 faster and a little nimbler in resourcing parts  
25 than they had been historically when there was  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. No, not -- no. I think I answered  
3 previously we never looked at what the costs  
4 would be to resource all of the Delphi parts.  
5 Q. Not all of them, but -- I'm not  
6 talking about all of them. But some of them.  
7 A. Yes. We -- strike that. Can you  
8 reask the question? I'm sorry.  
9 Q. I'm going back to what you had said  
10 about GM made a presentation to Treasury, and I  
11 thought that was a presentation concerning  
12 resourcing.  
13 A. That's correct.  
14 Q. Okay. Did that follow the meeting  
15 with OHorizons?  
16 A. I don't recall whether it was  
17 before or after. It was in that same time  
18 frame, though.  
19 Q. Okay. Now, you mentioned the --  
20 let me go back. You say that it represented  
21 everything wrong about the way people think  
22 about autos. What do you mean by that?  
23 A. The OHorizons guys came in and  
24 said, well, if you had to resource, you'd have  
25 an RFP and people would have -- insist on four  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 no pressure to do anything.  
3 Q. Right, right. Now, have they  
4 completed that transformation that you're  
5 describing, General Motors?  
6 A. No, they have clearly not completed  
7 that transformation.  
8 Q. Okay. And when you talk about  
9 other OEMs, you're talking about OEMs other  
10 than General Motors?  
11 A. That's correct.  
12 Q. For example -- well, give me  
13 example.  
14 A. Well, for example, it takes Fiat a  
15 year and a half to bring a car to market. It  
16 historically has taken General Motors three to  
17 four years to bring a car to market.  
18 Q. Okay, okay. So if the OHorizons  
19 presentation was being directed at an OEM like  
20 Fiat, it might be comparing apples to oranges;  
21 correct?  
22 MR. SCHWARTZ: Objection.  
23 A. No. I think if the OHorizons  
24 presentation is based on sort of historical  
25 norms at General Motors, then it's ignoring the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 current circumstances of General Motors and  
3 what the circumstances would be if Delphi had  
4 shut General Motors down.  
5 Q. Okay. Circumstances that might  
6 happen in the future; right?  
7 A. Well, if GM had to resource parts  
8 because Delphi had shut it down, then those  
9 would be the current circumstances.  
10 Q. Okay. And GM would then have to  
11 transform itself from the old-line OEM that it  
12 is into at least what you view as the paradigm  
13 of a modern OEM; is that right?  
14 A. GM is in the process of  
15 transforming itself. Hopefully, it will be  
16 able to continue that process. These guys have  
17 been employed at General Motors years past and  
18 had no idea what was happening within General  
19 Motors.  
20 Q. All right. That was your opinion?  
21 A. That was my opinion.  
22 Q. Okay. Have you had any discussions  
23 with anyone at General Motors as about -- about  
24 what the impact of the American Axle strike had  
25 on General Motors?  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. And that's true about every part of  
3 General Motors and every part of Chrysler and  
4 every part of Ford and every part of Fiat and  
5 every part of Toyota and every part of Honda,  
6 and on and on.  
7 Q. I'm not sure I follow.  
8 A. The bottom line is every part in  
9 this industry is critical to every OEM, so OEMs  
10 have to make a decision as to how they're going  
11 to operate.  
12 Q. Okay. So you're not suggesting  
13 that if Delphi were to stop supplying parts to  
14 GM, it would have no impact, no cost to General  
15 Motors?  
16 A. Not zero, no.  
17 Q. Okay. And they would have to --  
18 they would have to transform themselves and  
19 look to change their way of building cars?  
20 A. No, that's not what I've said.  
21 That's not at all what I've said.  
22 I said they'd buy the plants out of  
23 the converted case or from the lenders, because  
24 the lenders would otherwise be sitting on a  
25 goose egg, and none of those lenders would have  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 A. Yes.  
3 Q. What do you know about that?  
4 A. Well, when American Axle struck --  
5 when the American Axle workers struck American  
6 Axle, General Motors over a relatively short  
7 period of time had their line shut down, and  
8 they acceded to the union demands and basically  
9 caved to the union.  
10 Q. And approximately 30 plants were  
11 idled?  
12 A. I don't recall the details.  
13 Q. And how long was that shutdown?  
14 A. My memory is like four to six  
15 weeks, somewhere in that range.  
16 Q. 11 weeks sound --  
17 A. That could be right.  
18 Q. Okay. Do you remember that being  
19 discussed in the OHorizons report, the 11  
20 weeks?  
21 A. Not specifically.  
22 Q. Do you know what that shutdown cost  
23 General Motors?  
24 A. Billions of dollars.  
25 Q. Okay.  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 done that.  
3 Q. Okay, okay. So that -- that is  
4 a -- that's what you view as the likely outcome  
5 if Delphi had shut down?  
6 A. I think it's the only outcome.  
7 Q. Okay. With respect to the proposed  
8 transaction with General Motors, Platinum and  
9 Parnassus, and -- also known as the MDA, is it  
10 your understanding that that proposed  
11 transaction in the context of a 363 sale was  
12 proposed by the debtors as a private sale?  
13 A. That's my understanding.  
14 Q. Okay. Did the U.S. Treasury demand  
15 that that transaction be put forward as a  
16 private 363 sale?  
17 A. No.  
18 Q. Do you know who did?  
19 A. I don't know who did.  
20 Q. Okay. But it wasn't a requirement  
21 coming from the U.S. Treasury?  
22 A. Nor was it a requirement coming  
23 from General Motors. Neither Treasury nor  
24 General Motors made that demand.  
25 Q. Can you turn to Exhibit 7? And  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 looking at the second page of the exhibit, and  
3 the part of the e-mail that's from Jeff  
4 Tanenbaum dated April 19 that starts "I just  
5 got off the phone with Don." Do you see that?  
6 A. I do.  
7 Q. If you can -- feel free to read the  
8 whole thing to yourself, but toward -- just  
9 below -- you know, about halfway down, a little  
10 more than halfway down, it says, "As we  
11 expected, they are having issues with a company  
12 with control the way we proposed." Do you know  
13 what that is a reference to?  
14 A. Yes.  
15 Q. And what is that?  
16 A. As I've said, one of the primary  
17 principles for General Motors and Treasury was  
18 sanctity of supply, and so in the initial term  
19 sheet to the DIP lenders from a governance  
20 perspective, General Motors made it clear that  
21 the DIP lenders as majority owners of the  
22 company could not take actions that would  
23 interrupt sanctity of supply.  
24 Q. Okay. And how, in that term sheet,  
25 was that going to be accomplished, that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 sheet?  
3 A. I recall that a day later, they  
4 provided their own term sheet, and then a  
5 couple weeks later, they provided a marked-up  
6 term sheet with a lot of blanks in it. I do  
7 recall that.  
8 Q. Okay. And do you remember with  
9 respect to that later term sheet there being  
10 a -- at least a perception that there may have  
11 been a change in the DIP lenders' views on the  
12 issue of GM's control of the new entity?  
13 MR. SCHWARTZ: Objection.  
14 A. I don't recall.  
15 Q. Okay.  
16 (Feldman Exhibit 36 was marked for  
17 identification.)  
18 BY MR. MANCINO:  
19 Q. Do you recognize this document?  
20 A. No.  
21 Q. Okay. Look at the second page.  
22 There's an e-mail from Rick Westenberg to a  
23 number of people, and you are not on this, at  
24 least as far as I can tell.  
25 And do you see the words "We  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 objective? If you recall.  
3 A. I don't recall the specifics, but  
4 there was sort of minority control over certain  
5 transactions. They had to keep the commercial  
6 relationships with General Motors in place, but  
7 I don't recall the details of it.  
8 Q. And under that initial GM term  
9 sheet, what was it that the DIP lenders were  
10 going to get in terms of an interest in the new  
11 company?  
12 A. I believe my memory is they were  
13 going to own two-thirds of it.  
14 Q. Have an equity interest in  
15 two-thirds of the company?  
16 A. There were other things they were  
17 getting. The As and the Bs were getting paid  
18 off in full. I believe the hedges were getting  
19 paid off or assumed, and the C Tranche lenders  
20 were going to own two-thirds of the reorganized  
21 company.  
22 Q. Okay. Now, do you recall whether  
23 at some point, probably less than a couple  
24 weeks later, the DIP lenders providing a  
25 marked-up term sheet in response to the GM term  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 received a term sheet markup from the Delphi  
3 DIP lenders. They appear to have consented to  
4 GM's control of the new Delphi entity; however,  
5 they did -- they did not make a new proposal  
6 for the settlement of the C Tranche, left  
7 blank." Do you see that?  
8 A. I do.  
9 Q. Is that -- do you recall -- did you  
10 see the new term sheet that the DIP lenders  
11 sent along to General Motors in or around  
12 April 28-29?  
13 A. I'm sure I did.  
14 Q. Okay. And Mr. Westenberg indicates  
15 here that they appear to have consented to GM's  
16 control of the new Delphi entity. Do you see  
17 that?  
18 A. I do.  
19 Q. All right. Is that consistent with  
20 your memory?  
21 A. I don't have a memory, so it's not.  
22 Q. Okay. You can set that to one  
23 side. Mr. Feldman, did you ever have any  
24 discussions with Delphi about trying to cram  
25 down the Tranche C DIP lenders in connection  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 with a proposed transaction involving Delphi?  
3 A. Not in the legal bankruptcy sense  
4 of "cram down," no.  
5 Q. Right. In what sense?  
6 A. There were discussions, really,  
7 questions, we asked of Skadden as to whether a  
8 transaction could be completed without, you  
9 know, the majority of the DIP lenders  
10 supporting it.  
11 Q. Okay. And what was that  
12 discussion? What do you remember about that  
13 discussion?  
14 A. We asked Skadden and Jack Butler in  
15 particular whether a transaction could be  
16 completed without the support of the DIP  
17 lenders or without the support of the Tranche C  
18 DIP lenders.  
19 Q. And what did he tell you?  
20 A. You know, I recall Jack had some  
21 theories on how that might be able to be  
22 accomplished, but I don't recall the details of  
23 those theories.  
24 Q. Okay. Was one of those theories  
25 involving collective action under the DIP  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 credit agreement, Delphi can sell substantially  
3 all of its assets?  
4 A. Have I had discussions with Skadden  
5 about whether that could take place?  
6 Q. Yes, yes.  
7 A. Yes.  
8 Q. Okay. Now, what have those  
9 discussions been?  
10 A. Unless this is a different  
11 question, I think I previously said 30 seconds  
12 ago that Skadden and Jack Butler in particular  
13 had a heavy theory as to how that might be  
14 accomplished.  
15 Q. Okay. What is that theory?  
16 A. I don't recall.  
17 Q. Okay.  
18 A. Not sure I understood it.  
19 (Feldman Exhibit 37 was marked for  
20 identification.)  
21 BY MR. MANCINO:  
22 Q. Have you seen Exhibit 37 before?  
23 A. I -- I don't think I have.  
24 Q. Were you involved in any  
25 discussions about an interest expressed by a  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 credit agreement, if you recall?  
3 A. I just don't recall.  
4 Q. Okay. Now, the Delphi DIP lenders  
5 are post petition lenders; is that right?  
6 A. That's my understanding.  
7 Q. Okay. And they have secured  
8 claims. Is that your understanding?  
9 A. That's my understanding.  
10 Q. And that they also have allowed  
11 certain secured claims. Is that your  
12 understanding as well?  
13 A. I don't know that, but it wouldn't  
14 surprise me.  
15 Q. Is it your understanding that under  
16 the DIP credit agreement, there are certain  
17 rights that the lenders have with respect to  
18 the sale of assets by Delphi?  
19 A. Yeah, I've never looked at the DIP  
20 credit agreement. My understanding is they've  
21 asserted that they have those rights, yes.  
22 Q. And have you had any conversations  
23 with Skadden about the -- about whether,  
24 without the support of a -- of whatever the  
25 requisite majority is of lenders under the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Chinese automotive company?  
3 A. I was involved in internal  
4 discussions at Treasury about it.  
5 Q. Okay. And can you tell us what  
6 that -- what those discussions concerned?  
7 MR. SCHWARTZ: We're not at  
8 liberty to discuss internal Treasury  
9 discussions.  
10 MR. MANCINO: Okay. On what  
11 grounds?  
12 MR. SCHWARTZ: They're protected  
13 by the government's deliberative process  
14 privilege.  
15 MR. MANCINO: Okay.  
16 BY MR. MANCINO:  
17 Q. Did you have any discussions with  
18 anyone at Delphi about an expression of  
19 interest by a Chinese automotive company?  
20 A. I did not, but I understand Harry  
21 did.  
22 Q. Okay.  
23 A. Harry Wilson did.  
24 Q. And you understand that's one of  
25 the topics on which you were designated to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 testify here today?  
3 A. I do.  
4 Q. Okay. And can you tell me what  
5 discussions, to the extent you know, that  
6 Mr. Wilson had concerning that Chinese  
7 automotive company?  
8 A. Yeah, I believe that he had two  
9 discussions with John Sheehan where he in  
10 substance said to John that if they were  
11 interested, they ought to get involved and move  
12 quickly, but that because of some internal  
13 deliberations that we had had, we would not be  
14 able to provide financing to that company.  
15 Q. Did you explain -- did Harry Wilson  
16 explain why you could not provide financing to  
17 that company?  
18 A. I don't believe so.  
19 Q. Okay. And what were the concerns  
20 about providing financing to that company?  
21 A. There are certain limitations in  
22 terms of how TARP funds can be used, and any  
23 financing that would have been provided by  
24 General Motors, which would have really been  
25 the provider of financing, are subject to those  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 lack of funds, it was likely that those two  
3 shutdowns would coincide.  
4 Q. No, I apologize. That's not what  
5 I'm referring to. We were -- not during our  
6 discussion here, but in the morning, you  
7 mentioned that the government could employ its  
8 unlimited capital and have General Motors shut  
9 down in the face of a threatened shutdown of  
10 supplies by Delphi.  
11 A. I think what I testified to was  
12 that if Delphi's shutdown, forced General  
13 Motors to shut down, the government could  
14 continue to support General Motors because we  
15 have unlimited capital at zero cost.  
16 Q. Okay. Okay. Now, who at the U.S.  
17 Treasury would make that call if that decision  
18 needed to be made, that is, to continue to  
19 support General Motors using the Treasury's  
20 unlimited capital?  
21 A. The Auto Team reports to Tim  
22 Geithner and Larry Summers and they report to  
23 the President, so somewhere within that chain  
24 of command, a decision would get made.  
25 Q. Okay. So a decision like that  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 limitations. And there was a concern around  
3 whether or not that buyer would qualify, be  
4 eligible to receive funding.  
5 Q. And what was it about the buyer  
6 that raised questions about its eligibility?  
7 A. It's a foreign buyer, which is  
8 generally not eligible for TARP funds.  
9 Q. Okay. So did Mr. Wilson say  
10 they're welcome to submit a bid but they've got  
11 to act quickly and they can't count on us for  
12 financing?  
13 A. I think he was probably a little  
14 more encouraging than that, but substantively,  
15 yes.  
16 Q. Okay. Going back to something that  
17 we touched on a little bit, with respect to  
18 this question of Delphi shutting down and  
19 seizing supplies to General Motors, you  
20 mentioned that one response that General Motors  
21 could have to that is simply to shut down. Do  
22 you remember that testimony?  
23 A. I think what I testified to was  
24 that General Motors had planned a shutdown and  
25 that if Delphi were to shut down because of the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 would have to go up the chain of command. It's  
3 not something that the individuals on the Auto  
4 Team could decide for themselves?  
5 MR. SCHWARTZ: That's a little  
6 bit hypothetical, isn't it?  
7 MR. MANCINO: Yeah.  
8 A. We all work for the administration.  
9 Ultimately, all of our decisions have to be  
10 approved, you know, by the White House and by  
11 the President.  
12 Q. Okay. You mentioned that there  
13 were some restrictions on your and Harry  
14 Wilson's ability to deal directly with the --  
15 well, with your respective former employers;  
16 right?  
17 A. It was broader than that, but yes.  
18 Q. Okay.  
19 A. It is broader than that.  
20 Q. It got more -- it got broadened,  
21 did it not?  
22 A. Yeah, our initial mandate changed  
23 over time as the ethics officers within  
24 Treasury began to understand more clearly what  
25 was involved in the Delphi bankruptcy, that's  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 correct.  
3 Q. Okay. And so did it get broadened  
4 to encompass dealings with all of the DIP  
5 lenders and their representatives?  
6 A. Just to be clear, it didn't  
7 broaden, it's that -- it's that.  
8 MR. SCHWARTZ: Why don't you step  
9 back and explain what the -- what the  
10 rule is?  
11 THE WITNESS: To the extent I  
12 understand it.  
13 MR. SCHWARTZ: To the extent you  
14 understand it.  
15 A. Harry and I are prohibited from  
16 working on any matter that involves our former  
17 employers. And as we got into this, it was not  
18 clear how Treasury would define "the matter."  
19 And our initial understanding was  
20 "the matter" was not having any interaction  
21 with our former employers directly. So I would  
22 not be in a position to speak to Willke, and  
23 Harry would not be in a position to speak to  
24 Silver Point. But at least initially, we  
25 thought we could cross, and I could speak to  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 impact on the ability of the DIP lenders or  
3 their representatives to deal directly, say,  
4 with you or Harry Wilson concerning the Delphi  
5 bankruptcy?  
6 A. Correct, and vice versa.  
7 Q. Okay. Did that have an impact on  
8 the process from your perspective? Did it make  
9 it easier or more difficult for you to deal  
10 with the Delphi situation?  
11 A. Probably both.  
12 Q. In what ways did it make it more  
13 difficult?  
14 A. Well, obviously, there are times  
15 when being in direct communications and direct  
16 negotiations can be beneficial.  
17 Q. Okay. Did you or Harry Wilson or  
18 any member of the Auto Team ever designate Jack  
19 Butler to be your intermediary in dealing with  
20 the DIP lenders in any quasiofficial capacity?  
21 A. Not that I recall, no.  
22 Q. And are you aware that at least  
23 some representatives of DIP lenders have raised  
24 issues about the Treasury's unwillingness or  
25 inability to deal directly with the DIP  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 Silver Point and he could speak to Willke.  
3 We were then told that, no, we had  
4 defined "matter" incorrectly, that neither of  
5 us could speak to either of our former  
6 employers and that, in fact, we couldn't speak  
7 directly with any of the DIP lenders as  
8 creditors.  
9 And then over a period of a week or  
10 10 days, based on additional conversations with  
11 the people within Treasury that sort of help us  
12 with these things, the definition was, you  
13 could say, broadened, but it settled on the  
14 view that "the matter" included all of the DIP  
15 lenders and their professionals, and that our  
16 interactions should not be with any of them.  
17 And not just us, but the entire Auto Team,  
18 because if you define "the matter" in that way,  
19 then none of us are allowed and none of our  
20 professionals are allowed to have direct  
21 interactions with anybody who we can't have  
22 interactions with, which, as they define  
23 "matter," it included all of the DIP lenders  
24 and their professionals.  
25 Q. Right. And that would have an  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
2 lenders?  
3 A. I'm aware of that, yes.  
4 Q. Okay. And that -- that inability  
5 of the DIP lenders to deal directly with  
6 Treasury concerning Delphi still exists?  
7 A. Still exists today.  
8 Q. Okay. All right. Why don't we  
9 just pause for a minute?  
10 (Discussion held off the record.)  
11 EXAMINATION  
12 BY MR. SCHWARTZ:  
13 Q. How did Platinum Equity first come  
14 to Treasury's attention as a potential party in  
15 a purchase of Delphi's assets?  
16 A. John -- I think I testified earlier  
17 John Sheehan put Platinum in contact with  
18 Treasury, and specifically with Harry.  
19 Q. And how did Federal-Mogul come to  
20 Treasury's attention?  
21 A. I think really in two ways. I  
22 think John put the CEO of Federal-Mogul, Jose  
23 Maria, in touch, and Jose Maria also is  
24 friendly with and had a dinner with Xavier -- I  
25 can't think of Xavier's last name, but he's the  
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1 M. Feldman - HIGHLY CONFIDENTIAL  
 2 principal person at Boston Consulting Group  
 3 who's our financial advisor in connection with  
 4 Delphi. So I know both Xavier and Sheehan  
 5 helped put Federal-Mogul in contact with us.  
 6 Q. I want to direct your attention to  
 7 Exhibit 7 again. Now, this morning when  
 8 counsel for the creditors' committee was  
 9 questioning you about this exhibit, you were  
 10 discussing the timing of the first GM term  
 11 sheet to the DIP lenders being shared with  
 12 Delphi. Do you recall that conversation?  
 13 A. Generally, yes.  
 14 Q. And you testified that Treasury was  
 15 trying to, quote, control the process. Do you  
 16 recall that?  
 17 A. Yes.  
 18 Q. What did you mean when you said  
 19 that Treasury was trying to control the  
 20 process?  
 21 A. Well, I think what I meant was that  
 22 Treasury had a view, General Motors had a view,  
 23 that a bilateral discussion or an agreement on  
 24 a bilateral deal made sense first, and so, you  
 25 know, General Motors was seeking to get to a  
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 2 CERTIFICATE  
 3 DISTRICT OF COLUMBIA:  
 4  
 5 I, MARY ANN PAYONK, CRR-RDR, CBC, CCP,  
 6 CLR, shorthand reporter, do hereby certify:  
 7 That the witness whose deposition is  
 8 hereinbefore set forth was duly sworn, and that  
 9 such deposition is a true record of the  
 10 testimony given by such witness.  
 11 I further certify that I am not related  
 12 to any of the parties to this action by blood  
 13 or marriage, and that I am in no way interested  
 14 in the outcome of this matter.  
 15 IN WITNESS WHEREOF, I have hereunto set  
 16 my hand this 21st day of July, 2009.  
 17  
 18  
 19 MARY ANN PAYONK, CRR-RDR, CBC, CCP, CLR  
 20 Shorthand Reporter  
 21  
 22  
 23  
 24  
 25  
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 2 deal or close to a deal with the DIP lenders  
 3 before bringing the company and others into the  
 4 negotiations.  
 5 So I think if I said Treasury was  
 6 controlling the process, I think what -- more  
 7 accurately, General Motors was trying to get to  
 8 a bilateral deal and Treasury was supportive of  
 9 that strategy.  
 10 MR. SCHWARTZ: Thank you.  
 11 Time noted: 4:48 p.m.  
 12  
 13  
 14 MATTHEW FELDMAN  
 15  
 16 Subscribed and sworn to before me  
 17 this day of , 2009.  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
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 4 1. To clarify the record.  
 5 2. To conform to the facts.  
 6 3. To correct transcription error.  
 7 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
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 17 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
 18 From \_\_\_\_\_ to \_\_\_\_\_  
 19  
 20 MATTHEW FELDMAN  
 21 SUBSCRIBED AND SWORN TO BEFORE ME  
 22 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.  
 23  
 24 (Notary Public)  
 25 My Commission expires: \_\_\_\_\_

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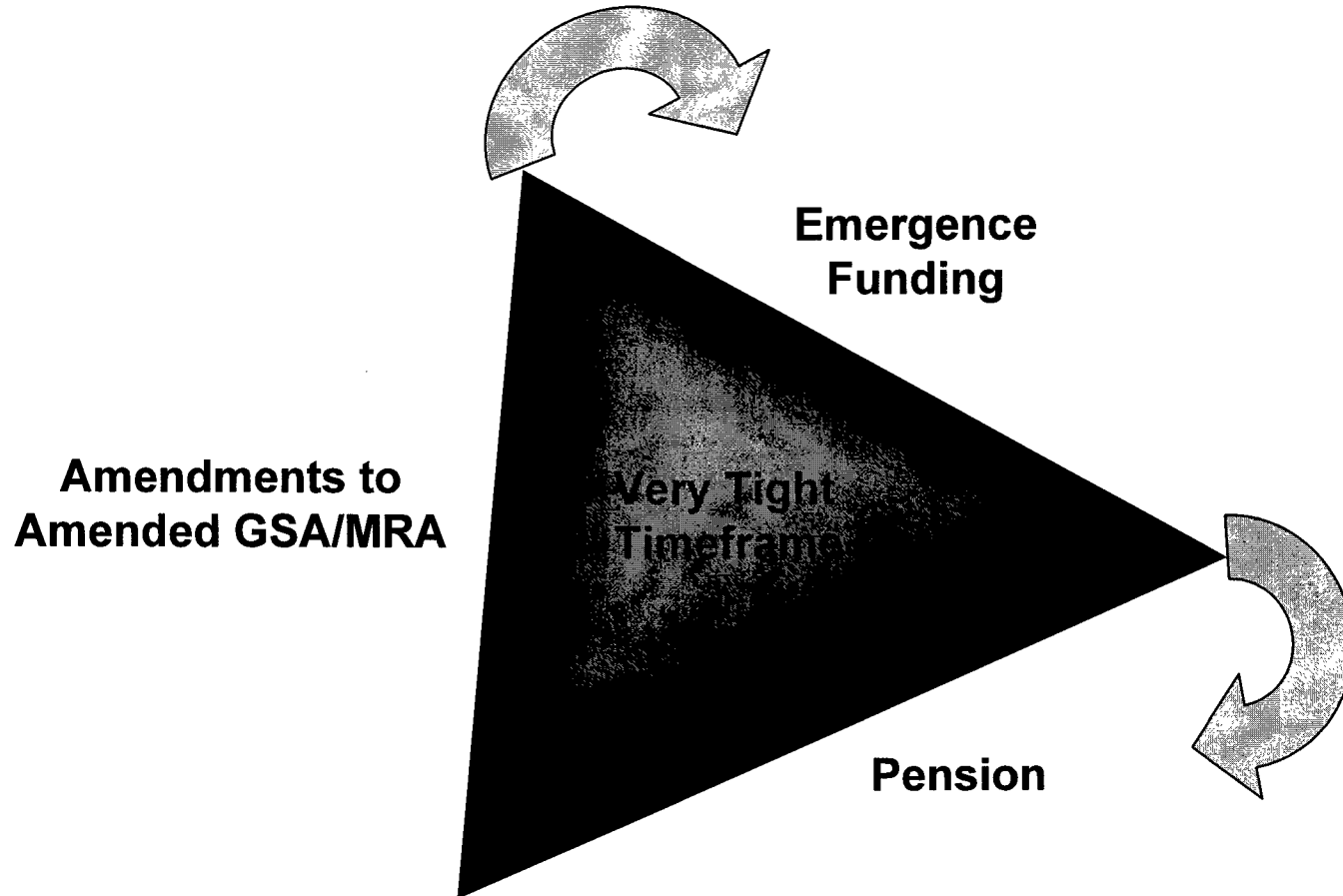
# Key Emergence Issues

*March 20, 2009*

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DIP Steering Committee – Agent-Level Information*

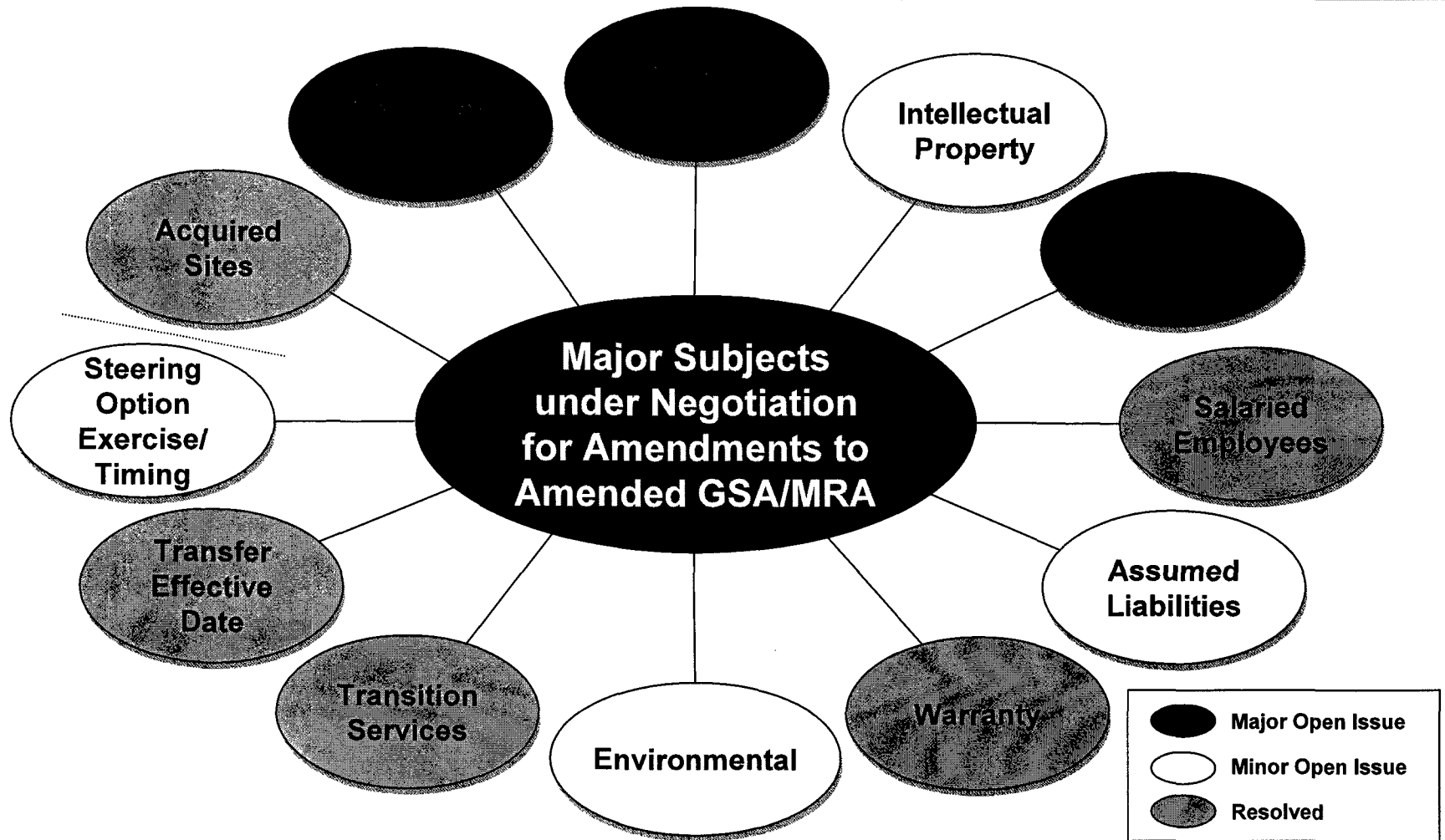
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# Key Issues To Resolve



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# Amended GSA/MRA Issues



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## Major Amended GSA/MRA Issues

Original GM Position	Original Delphi Position	Current Status: Resolution/Open Issues
<b>Acquired Sites</b>		
GM to buy all North American sites, including Mexican sites	Delphi to retain all North American sites and parties to adopt cash-flow break-even structure	<b>Resolved:</b> -GM to purchase all four UAW sites -Delphi to retain balance of North American sites, including Mexican sites -No cash-flow break-even structure
-Net working capital after implementing GM \$300M PTAP -Liquidation value for real property/ fixed assets	"Fill the hole" approach where GM provides funding necessary for Delphi to emerge	<b>Open Issue:</b> Purchase price to be resolved following discussions among Delphi, GM and DIP lender representatives
GM to receive "bulletproof" access rights for all non-purchased N/A sites, including Mexican sites	GM to receive "limited" access rights at retained U.S. sites pursuant to Amended MRA	<b>Resolved:</b> GM to receive "moderated" access rights for retained U.S. sites <b>Open Issues:</b> (i) Protection of GM Mexican supply in lieu of access rights (i.e., through IP rights, product pricing) and (ii) ownership of tooling for GM and other customers

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# Major Amended GSA/MRA Issues

Original GM Position	Original Delphi Position	Current Status: Resolution/Open Issues
<b>Intellectual Property</b>		
<b>REDACTED</b>	<b>REDACTED</b>	<b>REDACTED</b>
<b>Pension</b>		
GM not to assume pension liability unless terms of Amended MRA met	GM to assume HRP and SRP	<b>Open Issue:</b> Pension unresolved (see slide 9 below)
<b>Salaried Employees</b>		
GM to have sole discretion on who to hire and does not pay severance	GM to have sole discretion on who to hire but must pay severance to those not hired	<b>Resolved:</b> -GM has sole discretion on who to hire and will not pay severance -Severance costs to be addressed through purchase price.

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## Major Amended GSA/MRA Issues

Original GM Position	Original Delphi Position	Current Status: Resolution/Open Issues
<b>Assumed Liabilities</b>		
GM to assume liabilities as per Amended MRA	GM to assume all Retained Liabilities (defined in Amended MRA) for all North American sites	<p><b>Resolved:</b></p> <ul style="list-style-type: none"> <li>- Assumption of liabilities pursuant to Amended MRA plus supplemental liabilities (e.g., environmental, cure costs, warranty, salaried employees and workers' comp.)</li> <li>- Cost of retained liabilities to be reflected in purchase price</li> </ul> <p><b>Open Issues:</b> (i) Hedging obligations at acquired sites and (ii) party responsible for cancellation costs for contracts not assumed by GM</p>
<b>Warranty</b>		
GM to take only post-closing warranty liability for products made at acquired sites	GM to take pre- and post-closing warranty liability for all products made at acquired sites	<p><b>Resolved:</b> GM to take (i) pre- and post-closing warranty liability for GM products made at UAW Sites and sold to GM and (ii) post-closing warranty liabilities for products made at UAW Sites and sold by GM to non-GM customers</p>

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## Major Amended GSA/MRA Issues

Original GM Position	Original Delphi Position	Current Status: Resolution/Open Issues
<b>Environmental</b>		
GM to take only post-closing environmental liability for acquired sites	GM to take pre- and post-closing environmental liability for acquired sites	<b>Resolved:</b> GM to take pre-and post-closing environmental liability for UAW Sites <b>Open Issue:</b> Saginaw environmental liability
<b>Transition Services</b>		
Delphi to provide reasonable and customary transition services to GM at cost for 18 months and at cost plus a premium for an additional 6 months	Same	<b>Resolved:</b> Structure maintained with 12/31/2012 end date and IT transition services at cost throughout
<b>Transfer Effective Date</b>		
Closing to occur pursuant to § 363 sale prior to POR effective date	Closing to occur at effective date of POR confirmed pursuant to § 1129	<b>Resolved:</b> Closing occurs at effective date of POR confirmed pursuant to § 1129
<b>Steering Option Exercise And Timing</b>		
GM to exercise call option for \$1 immediately (upon cessation of marketing activities)	GM to exercise call option for adjusted pricing at emergence (and following cessation of marketing activities)	<b>Resolved:</b> GM Option Exercise Agreement executed 3/3/09 <b>Open Issues:</b> (i) Definitive documentation due 3/23, (ii) actual amount of borrowing base payment and (iii) treatment of alleged PBGC liens on Steering assets

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## Anticipated Sources Of Emergence Funding

Emergence  
Revolver from  
Tranche A and B  
DIP Lenders

Plan Investor  
Settlement

GM Payments  
and Assumption  
of Liabilities  
(through revisions  
to Amended  
GSA/MRA)

Support from  
U.S. Treasury  
(directly or  
indirectly)

Resolution of DIP  
Lender and  
Administrative  
Claims  
(cash, roll-over debt  
and conversion  
to equity)

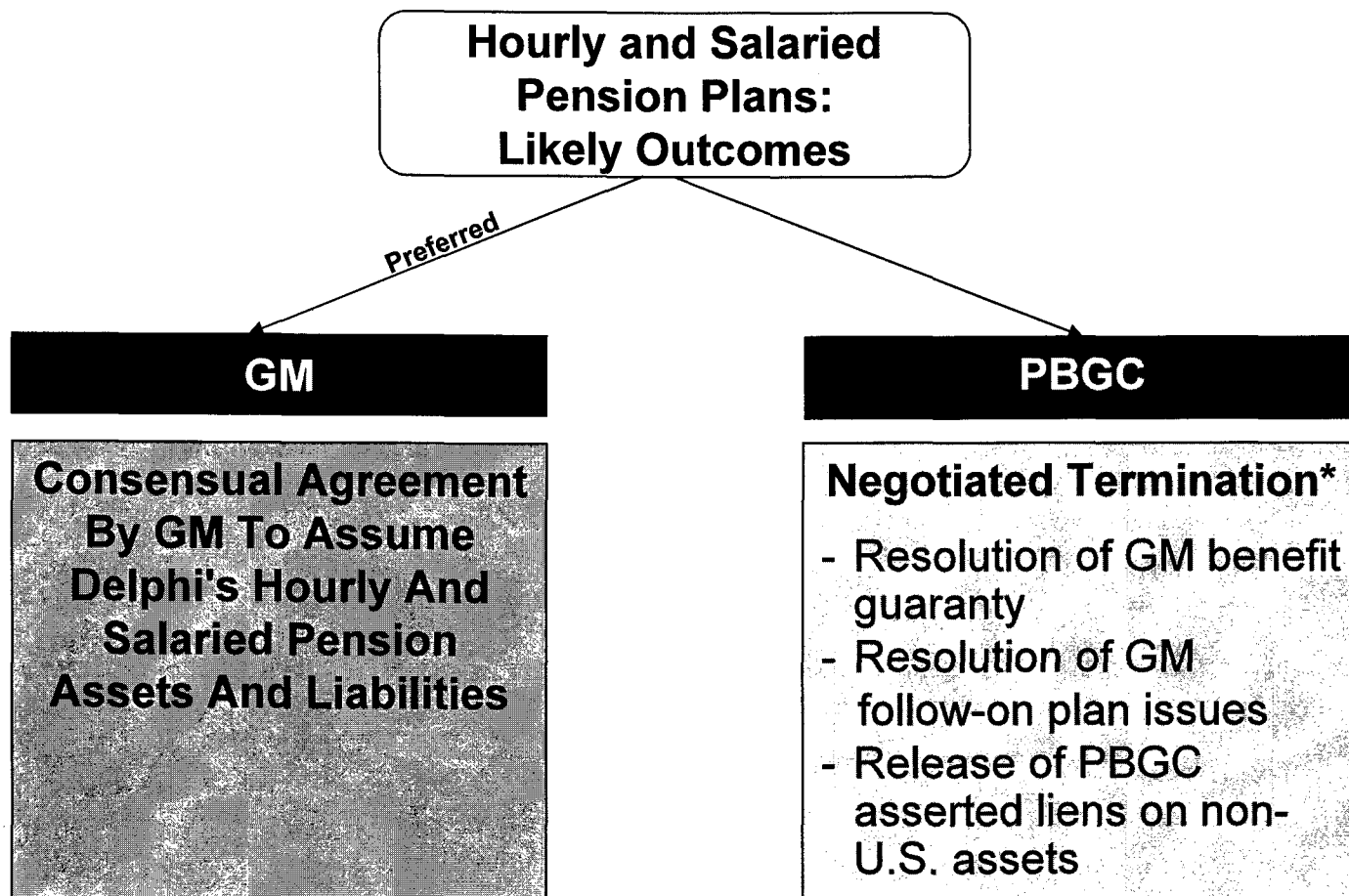
### Financial Support Needed To Implement Plan Modifications:

- \$2.8 billion in emergence funding,  
including \$800 million unfunded  
revolver



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# Pension

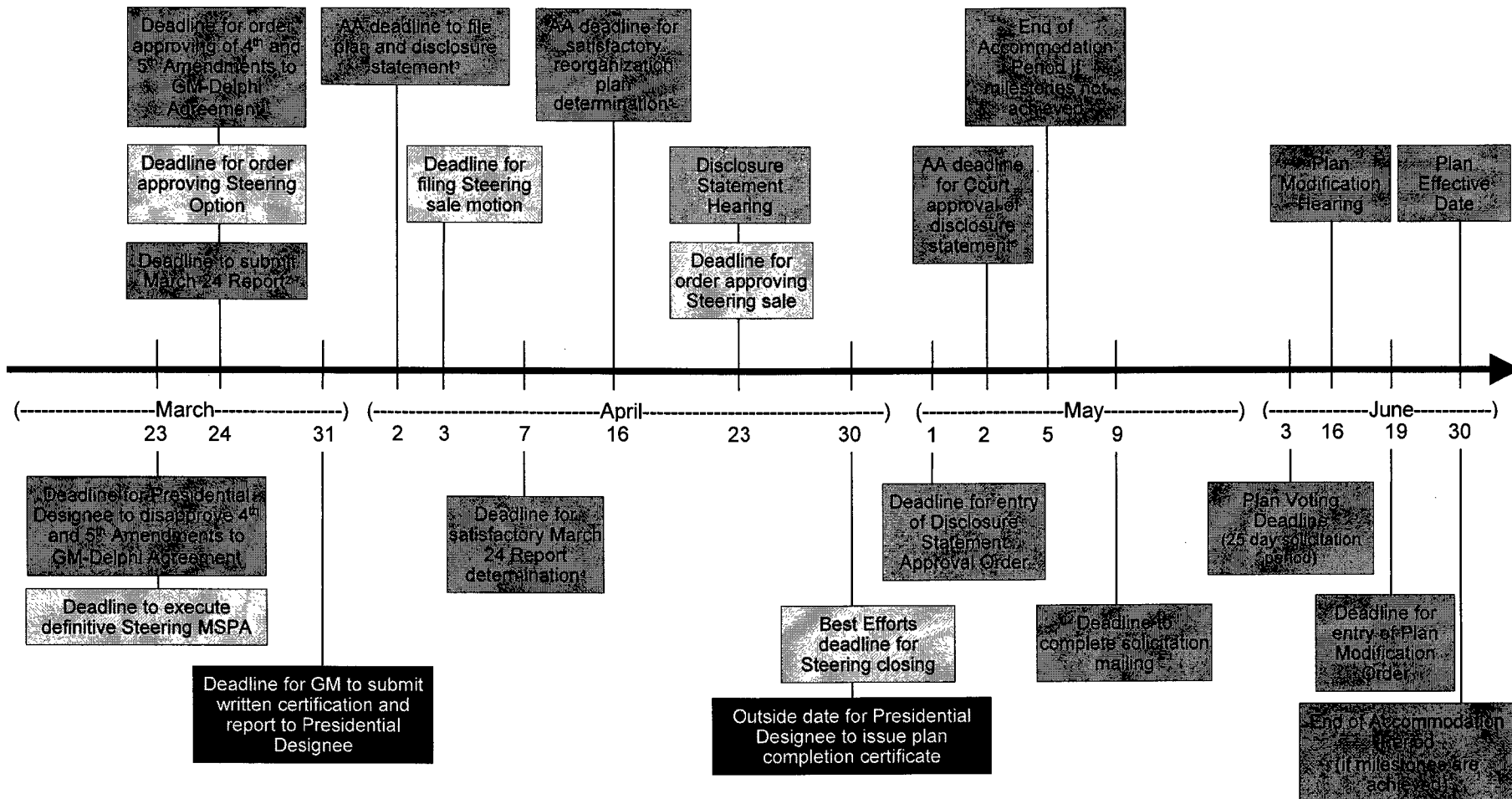


\* Note: Delphi-initiated "distressed termination" assumed not feasible due to timing issues

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 DIP Steering Committee – Agent-Level Information

# Event Timeline Assuming June 30, 2009 Emergence\*

\*Please see the notes on the following page



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DIP Steering Committee – Agent-Level Information

## Event Timeline Assuming June 30, 2009 Emergence – Notes To Event Timeline

1. If an amendment to GM-Delphi Agreement increasing GM commitment to \$450 million is not effective, on March 24 Delphi shall repay Tranche A and B loans with any remaining Incremental Borrowing Base Collateral
2. If Delphi fails to deliver the March 24 report, on March 25 Delphi shall repay Tranche A and Tranche B loans with any remaining Incremental Borrowing Base Collateral
3. If Delphi fails to file a plan by April 2, (i) the Accommodation Period ends on May 5 instead of June 30, and (ii) on April 3 Delphi shall repay Tranche A and B loans with any remaining Incremental Borrowing Base Collateral
4. If the requisite percentage of the DIP Lenders directs the Administrative Agent to notify Delphi that the March 24 Report is not satisfactory, within one Business Day of receipt of such notice, Delphi shall repay Tranche A and B loans with any remaining Incremental Borrowing Base Collateral
5. If the requisite percentage of the DIP Lenders directs the Administrative Agent to notify Delphi that the Plan of Reorganization is not satisfactory, (i) within one Business Day of receipt of such notice, Delphi shall repay Tranche A and B loans with any remaining Incremental Borrowing Base Collateral, and (ii) the Accommodation Period ends on May 5 instead of June 30
6. If Court fails to approve disclosure statement by May 2, the Accommodation Period ends on May 5 instead of June 30

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**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

-----X  
 :  
**In re** : **Chapter 11 Case No.**  
 :  
**GENERAL MOTORS CORP., et al.,** : **09-50026 (REG)**  
 :  
**Debtors.** : **(Jointly Administered)**  
 :  
 -----X

**DECLARATION OF RICK WESTENBERG  
 IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF ORDER APPROVING  
 (I) MASTER DISPOSITION AGREEMENT FOR PURCHASE OF CERTAIN  
 ASSETS OF DELPHI CORPORATION, (II) RELATED AGREEMENTS,  
 (III) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS,  
 (IV) AGREEMENT WITH PENSION BENEFIT GUARANTY CORPORATION,  
AND (V) ENTRY INTO ALTERNATIVE TRANSACTION IN LIEU THEREOF**

I, Rick Westenberg, declare as follows:

1. I am a Director of Business Development for General Motors Corporation (together with its direct and indirect subsidiaries, "GM"). I have personal knowledge of the facts set forth herein or have conducted a reasonable inquiry to determine that such statements are true and correct.

2. I received a Bachelor of Business Administration degree in 1996 from the University of Notre Dame. After graduating from college, I spent five years working as an auditor and financial consultant at Ernst & Young LLP. Thereafter I attended the University of Chicago and received an MBA.

3. I was hired by GM in 2003 and have been employed continuously since then. During my employment at GM I have held several positions in the New York Treasurer's Office focusing on different aspects of corporate finance. I am currently Director of Business Development and have held this position since 2008. As Director of Business Development, I am responsible for supporting the restructuring activities related to GM's involvement in the chapter 11 cases of Delphi Corporation ("**Delphi**"), which has operated under chapter 11 protection since October 2005. I previously supported these same restructuring activities as Manager of Business Development in 2005 through 2006.

4. I have been integrally involved in the negotiations between Delphi, GM and Parnassus Holdings II, LLC ("**Parnassus**") in connection with the purchase by each of GM and Parnassus of certain of Delphi's assets (the "**Proposed Transaction**").

5. I make this declaration in support of GM's motion to approve (i) the purchase, and guarantee of purchase, of certain assets of Delphi pursuant to the MDA<sup>1</sup>, (ii) entry into the SPA, the Operating Agreement, the Loan Agreement, the Commercial Agreements, and the Ancillary Agreements with Parnassus in connection with Parnassus's purchase of substantially all of the remaining operating assets of Delphi, (iii) assumption of certain executory contracts in connection with the sale of certain of Delphi's assets and assignment of such

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<sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to such terms in the Motion.

contracts and leases to Vehicle Holdings, (iv) entry into an agreement with the PBGC in connection with such transaction, and (v) entry into an Acceptable Alternative Transaction with the successful bidder, if applicable, in the auction of Delphi's assets (the "**Motion**").

**I. GM's Support to Date to Delphi's Chapter 11 Cases**

6. During the Delphi Cases, GM has been forced to spend billions of dollars and incur billions of dollars of additional liabilities primarily to protect its supply base by supporting Delphi. The following are some of the most significant contributions made by GM in the Delphi Cases:

- **Labor Solutions During Delphi's Cases.** GM made several critical contributions to facilitate Delphi's implementation of new agreements with its unions in 2006, 2007, and 2009, including paying or assuming billions of dollars of liabilities to allow Delphi to implement special attrition programs for certain of its hourly employees, providing opportunities for certain hourly employees to flow back to work for GM, the transfer of significant pension and post-retirement health care obligations to GM, and entering into memoranda of understanding with Delphi's unions to subsidize certain payments that GM believes Delphi would otherwise have had to make to its hourly employees.
- **Global Settlement Agreement/Master Restructuring Agreement.** To resolve many of the issues between GM and Delphi and increase Delphi's ability to exit chapter 11, GM and Delphi entered into a Global Settlement Agreement (as amended, the "**GSA**") and a Master Restructuring Agreement (as amended, the "**MRA**"), both of which have been amended several times during the Delphi Cases.<sup>2</sup> The GSA and the MRA both became effective in the fall of 2008. Pursuant to the GSA and the MRA, GM agreed, among other things:
  - to assume post-retirement health care and basic life insurance benefits for the vast majority of Delphi's U.S. hourly retirees (beyond such assumptions already contemplated in the labor contributions described above);

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<sup>2</sup> All summaries in this Declaration of any agreements are qualified in their entirety by the terms of such agreements and, in the event of any conflict between any summary and the applicable agreement, the terms of such agreement control.

- that the GM hourly pension plan would assume \$2.1-2.4 billion of net liability of Delphi's hourly pension plan in exchange for an allowed administrative expense claim equal to 77.5% of the transferred net liability;<sup>3</sup>
  - to subsidize through 2015 Delphi's U.S. hourly labor costs and, until closure or sale, the costs of operating several of Delphi's U.S. facilities;
  - to a revenue plan to provide Delphi with a substantial, long-term book of GM business (in some cases, at pricing GM believes to be higher than market competitive levels) and enhanced opportunities to win future GM business; and
  - to reduce GM's unsecured claims against the Delphi Debtors from an asserted amount in excess of \$13 billion to an allowed claim of \$2.7 billion.
- **Liquidity Support.** While looking for alternatives to exit chapter 11, Delphi sought support from GM in the spring of 2008 to address Delphi's liquidity issues and avoid a shut down. As a result, GM agreed to advance Delphi up to \$650 million in exchange for claims with a priority junior to the claims of the Delphi DIP Lenders (as amended, the "**GM-Delphi Financing Agreement**"). Since then, GM has made certain amendments to the GM-Delphi Financing Agreement such that GM's commitment to fund loans to Delphi thereunder is currently \$550 million (inclusive of outstanding loans). In addition, GM accelerated the payment of \$300 million in trade payables to Delphi over a three month period beginning in the first quarter of this year.

Notwithstanding the billions of dollars of support GM has already provided to Delphi, Delphi continues to need further liquidity support. In addition, Delphi's postpetition financing loans (the "**Delphi DIP Loans**") – in the current principal amount of approximately \$3.3 billion – matured on December 31, 2008 and are currently in default. Delphi's DIP Lenders entered into a series of forbearance agreements, but the forbearance may expire as early as July 10, 2009, at which point the Delphi DIP Lenders may seek to foreclose on all or some portion of Delphi's

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<sup>3</sup> GM also agreed that if Delphi could consummate a reorganization plan meeting certain criteria, (i) the GM hourly pension plan would assume an additional approximately \$3.2 billion of net liability (based on current estimated liabilities and asset values) of Delphi's hourly pension plan, (ii) GM would accept preferred stock in reorganized Delphi in lieu of repayment of GM's administrative and general unsecured claims against Delphi, and (iii) GM would, under certain conditions, share a portion of such preferred stock with Delphi's unsecured creditors. Due to the state of the Delphi Cases, GM strongly believes that Delphi will not be able to consummate a reorganization plan meeting such criteria.

assets. The chaos that could ensue as a result of such foreclosures could lead to a cessation of some or all of Delphi's operations. A cessation of operations by Delphi, whether due to liquidity constraints or foreclosures by the Delphi DIP Lenders, could shut down GM's production and lead to the attendant consequences described in the Declaration of Randall L. Pappal in support of the Motion, filed contemporaneously herewith (the "**Pappal Declaration**").

## **II. *The Need for the Proposed Transaction***

7. For the reasons set forth in the Pappal Declaration, in GM's relationship with Delphi, protection of supply is paramount. GM must take measures to secure continuity of supply. Due to Delphi's current liquidity crisis and the potential for foreclosure by Delphi's postpetition secured lenders (the "**Delphi DIP Lenders**") in the absence of a consensual resolution, it is imperative that the Debtors immediately secure the supply of parts from Delphi in order for GM's own reorganization to succeed. In light of current circumstances, GM can only obtain confidence that its supply of Delphi's parts will not be threatened by obtaining control of certain of Delphi's assets and/or through a transfer of Delphi's assets to an entity that GM is comfortable will be a stable and well-capitalized long-term supplier of parts to GM.

## **III. *Search for Other Alternatives to the Proposed Transaction***

8. Over the past several months, GM and Delphi have discussed with various parties, including the Delphi DIP Lenders and another potential purchaser of Delphi's assets, potential transactions to resolve the Delphi Cases. Platinum Equity Capital Partners II, L.P. ("**Platinum**") was the only party to present a viable business, operating, and restructuring plan, including stability of supply to GM, and to commit to a binding transaction on the expedited timeline required by the current situation. Accordingly, after extensive negotiations with Delphi and Platinum, GM determined that its most reliable and cost-effective option to secure the supply



of parts from Delphi's facilities would be to enter into agreements with Delphi, Parnassus (which was formed by Platinum), Platinum, and certain of Platinum's affiliates to provide for Delphi's sale of substantially all of its operating assets to GM (including to certain of GM's non-debtor affiliates) and Parnassus.

#### **IV. *The Benefits of the Proposed Transaction***

9. Accordingly, to stabilize and secure for itself the supply of essential parts, GM has entered into the Proposed Transaction with Delphi and Parnassus, which would be partly owned by GM, whereby GM (primarily through wholly-owned non-debtor affiliates) would purchase certain of Delphi's assets used primarily to manufacture parts for GM, and Parnassus would purchase substantially all of Delphi's remaining operating assets (which are also used to produce parts for GM and other customers).

10. More specifically, GM has decided to obtain control of Delphi's global steering business and Delphi's U.S. plants that employ workers represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") because those plants supply parts primarily to GM and, in the case of the U.S. UAW plants, are important to GM's relationship with the UAW. Operating assets of other Delphi businesses where GM is generally either not the principal customer or where the components are not as critical to GM production interests will be transferred to a third party. Because no other party has been willing to provide sufficient capital to fully reorganize these other assets, GM has agreed to provide significant funding to the entity that will own these assets under the Proposed Transaction to allow such entity to reorganize the assets and become a stable supplier to GM.

11. The Proposed Transaction would meet GM's goal of stabilizing the supply of parts currently manufactured by Delphi. While acquiring certain critical assets directly, the

other assets used to produce parts for GM would be transferred to a stable entity that would be well-capitalized and controlled by Platinum, which has the experience necessary to successfully operate the assets.<sup>4</sup> In the unlikely event that Parnassus encounters financial difficulties, GM will have greater means to protect itself due to enhanced rights it is obtaining under commercial agreements with Parnassus. Finally, because Parnassus will be properly capitalized and GM has confidence in Parnassus's business, operating, and restructuring plan, GM believes that it will eventually be able to recover most, if not all, of the funds that it will invest in and loan to Parnassus.

**V. Consideration to Be Paid by GM**

12. Under the Proposed Transaction, GM is providing the following consideration for the GM Purchased Assets:

- Assumption of certain ordinary course of business liabilities associated with the GM Purchased Assets;
- Assumption or payment of amounts necessary to cure defaults under Delphi's executory contracts that are to be assigned to GM (GM estimates this amount will be no more than \$90 million);
- Payment to Delphi of approximately \$900 million in cash;
- Payment to Delphi of up to \$50 million to fund certain expenses of winding down the Delphi Debtors' estates;
- Payment of 50% of Delphi's professional fees (such payment is capped at \$15 million), plus the costs of solicitation of votes for Delphi's Modified Plan (such payment is capped at \$12 million); and

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<sup>4</sup> Platinum has a successful track record of investing in and operating, among other types of companies, manufacturing and industrial companies. More importantly, Platinum has been doing due diligence on Delphi's assets for more than three years and has devised a comprehensive business plan for Parnassus that is not dependent for success on the automotive industry returning to pre-recessionary sales levels and that GM believes will result in the financial and operational success of Parnassus.

- Payment to Delphi of up to approximately \$145.5 million of the first net proceeds of the Plan Investor Litigation.

## **VI. *Involvement of U.S. Treasury***

13. The United States Department of Treasury (the “**U.S. Treasury**”) is the Debtors’ largest prepetition secured creditor and their postpetition secured lender. As such, the U.S. Treasury was kept abreast of and participated in the negotiations over the Proposed Transaction and approved GM’s entry into the Proposed Transaction.

14. Additionally, GM’s postpetition secured loan will enable GM to fund the Proposed Transaction or an Acceptable Alternative Transaction that requires funding by GM. To that end, with the approval of the U.S. Treasury, GM’s anticipated expenditures with respect to Delphi were built into the initial 13-week budget submitted to the Court as part of approval of GM’s postpetition financing (the “**DIP Budget**”) and the final DIP Budget reflects all of the projected expenditures to be paid by GM or the other GM Buyers, including funding of capital to Parnassus under the SPA, in connection with the Proposed Transaction or an Acceptable Alternative Transaction.

## **VII. *The PBGC Discussions***

15. Delphi’s hourly and salaried pension plans are currently significantly underfunded (the hourly plan has a net underfunded liability of approximately \$3.2 billion and the salaried plan has a net underfunded liability of approximately \$2.1 billion). The PBGC has asserted liens against the assets of Delphi’s non-debtor affiliates (which include the foreign assets under the Proposed Transaction) to attempt to secure certain of the PBGC’s pension-related claims against Delphi’s ERISA control group. Although Delphi has disagreed that these asserted liens are valid or enforceable, neither GM nor Parnassus (nor presumably any other

potential purchaser) is willing to purchase the assets (or shares in the non-debtor affiliates that own the assets) while they are subject to the threat of the PBGC liens. As a result, conditions precedent to the obligations of GM and Parnassus under the MDA are that the PBGC shall have agreed to remove its alleged liens on the assets subject to the Proposed Transaction.

Additionally, Delphi's obligations under the MDA are conditioned on Delphi not being subject to liability in respect of its hourly pension plan after the closing of the MDA.

16. GM, Delphi, the PBGC, and the U.S. Treasury have engaged in discussions regarding an agreement to satisfy these conditions and render saleable the assets subject to the PBGC's asserted liens (a "**PBGC Agreement**"). Although no PBGC Agreement has yet been reached, as part of any PBGC Agreement that may be ultimately reached, GM may agree to make a cash payment to the PBGC and/or assume all or some portion of the net underfunded liability of Delphi's hourly pension plan. GM will only agree to make these contributions if they are necessary to enable the Proposed Transaction or any Acceptable Alternative Transaction to proceed and the contributions are clearly outweighed by the benefits GM would receive from the Proposed Transaction or an Acceptable Alternative Transaction. In such circumstances, the GM contributions would be a sound exercise of GM's business judgment. Additionally, as with the other aspects of the Proposed Transaction, any GM contributions under a PBGC Agreement will be subject to U.S. Treasury consent.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing  
is true and correct to the best of my knowledge, information, and belief.

Dated: July 8, 2009  
New York, New York

/s/ Rick Westenberg  
RICK WESTENBERG

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
: **Chapter 11 Case No.**  
**In re** :  
: **09-50026 (REG)**  
**GENERAL MOTORS CORP., et al.,** :  
: **(Jointly Administered)**  
**Debtors.** :  
:  
-----X

**DECLARATION OF RANDALL L. PAPPAL  
IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF ORDER APPROVING  
(I) MASTER DISPOSITION AGREEMENT FOR PURCHASE OF CERTAIN  
ASSETS OF DELPHI CORPORATION, (II) RELATED AGREEMENTS,  
(III) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS,  
(IV) AGREEMENT WITH PENSION BENEFIT GUARANTY CORPORATION,  
AND (V) ENTRY INTO ALTERNATIVE TRANSACTION IN LIEU THEREOF**

I, Randall L. Pappal, declare as follows:

1. I am the Executive Director, HVAC and Mexico – Global Purchasing and Supply Chain for General Motors Corporation (together with its direct and indirect subsidiaries, “GM”). I have personal knowledge of the facts set forth herein or have conducted a reasonable inquiry to determine that such statements are true and correct.

2. I have a bachelors degree in industrial engineering, received in 1983, from the Rochester Institute of Technology. I also have an MBA from the University of Michigan, received in 1992.

3. I was hired by GM in 1983 and I have been employed by GM continuously since then. During my employment at GM I have held several positions in the GM organization focusing on purchasing and supply chain operations, both domestic and international. I am currently the Executive Director, HVAC and Mexico – Global Purchasing and Supply Chain and have held this position since 2008. In my current position as Executive Director, HVAC and Mexico – Global Purchasing and Supply Chain, I am responsible for purchasing for global HVAC and electrical commodity, as well as purchasing and supply chain activities for Mexico. In this position, I am also responsible for providing oversight for the Delphi<sup>1</sup> relationship within GM’s purchasing organization.

4. I make this declaration in support of GM’s motion to approve (i) the purchase, and guarantee of purchase, of certain assets of Delphi pursuant to the MDA, (ii) entry into the SPA, the Operating Agreement, the Loan Agreement, the Commercial Agreements, and Ancillary Agreements with Parnassus in connection with Parnassus’s purchase of substantially all of the remaining operating assets of Delphi, (iii) assumption of certain executory contracts in connection with the sale of certain of Delphi’s assets and assignment of such contracts and leases to Vehicle Holdings, (iv) entry into an agreement with the PBGC in connection with such transaction, and (v) entry into an Acceptable Alternative Transaction with the successful bidder, if applicable, in the auction of Delphi’s assets (the “**Motion**”).

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<sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to such terms in the Motion.

**I. *Commercial Relationship Between GM and Delphi***

5. GM and Delphi have a complex history arising from their interdependent relationship. Delphi consisted of divisions and subsidiaries of GM until GM's divestiture of Delphi in 1999. Since the spin-off, Delphi has been, and continues to be, GM's largest component parts supplier, accounting for approximately 11.3% of GM's North American purchases and 9.6% of GM's global purchases in 2008. Delphi is a sole-source, just-in-time, supplier of many critical parts to GM, including parts that are used in essentially every GM product line in North America.

6. In turn, since the spin-off, GM has been, and continues to be, Delphi's largest customer. Although Delphi's sales to GM have declined over the years, in 2008, Delphi's sales to GM aggregated approximately \$6.8 billion, or approximately 33% of Delphi's revenues. Thousands of Delphi's employees work at plants whose production is primarily dedicated to production for GM or GM's suppliers.

**II. *Affect on GM of Termination of Deliveries of Parts by Delphi***

7. Consistent with industry practice, GM operates on a "just-in-time" inventory delivery system, in which component parts from suppliers are typically assembled onto vehicles by GM within a few hours of the delivery of the parts to the vehicle assembly facility. Because GM operates on a just-in-time inventory delivery system, it generally maintains little or no inventory of parts on site, and relies instead upon frequent and regular shipments of parts from its suppliers, including Delphi. Consequently, if Delphi ever ceases shipping even a small fraction of production parts to GM, the GM plants relying on such shipments may run out of inventory of such parts and have to shut down within a matter of days.



8. Most parts that Delphi manufactures for GM are not readily available from an alternate source due to, among other things, capacity issues within the automotive parts supply industry, the length of time it takes to validate and obtain safety regulatory approval of a new supplier's parts, and lead time to develop and build tools for manufacture. While GM can accelerate efforts to resource Delphi parts in the event of a supply interruption, the sheer magnitude of the parts to be resourced and revalidation required would take at least several months to achieve.

9. The shutdown of GM plants as a result of termination of deliveries of affected parts from Delphi could idle tens of thousands of GM workers, and it is estimated that GM's revenues would decrease significantly. GM would also incur costs related to expedited resourcing efforts, including, but not limited to, hundreds of millions of dollars for duplicate tooling, premiums and price increases paid to alternative suppliers, and the continued costs of maintaining idled plants (such as plant overhead and other fixed costs).

10. Moreover, because GM purchases parts from many other automotive parts suppliers, a GM shutdown will likely affect many of its other suppliers. In the event of a shutdown of its North American facilities, GM would have no need for parts from its other suppliers and would be forced to stop purchasing all other parts used in the shut-down facilities, which include parts from over 1,500 other suppliers. Such a loss of revenue could force those suppliers to seek bankruptcy protection themselves, thus creating a broader risk to GM's and other motor vehicle manufacturers' future sources of parts supply.

11. In short, a prolonged cessation in the supply of parts from Delphi to GM would have a devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts suppliers.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing  
is true and correct to the best of my knowledge, information, and belief.

Dated: July 8, 2009  
New York, New York

/s/ Randall L. Pappal  
RANDALL L. PAPPAL

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

*/s/ Abby C. Wright*  
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ABBY C. WRIGHT