

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

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IN RE: DELPHI CORPORATION	:	MDL No. 1725
SECURITIES, DERIVATIVE & "ERISA"	:	Master Case No. 05-md-1725
LITIGATION	:	Hon. Gerald E. Rosen
	:	
	:	This Document Relates to:
	:	<i>In re Delphi Corp. ERISA Litigation,</i>
	:	Nos. 05-CV-70882, 05-70940,
	:	05-71030, 05-71200, 05-71249,
	:	05-71291, 05-71339, 05-71396,
	:	05-71397, 05-71398, 05-71437,
	:	05-71508, 05-71620, 05-71897,
	:	05-72198
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**NAMED PLAINTIFFS' MOTION AND MEMORANDUM
FOR APPROVAL OF PLAN OF ALLOCATION**

Pursuant to the Order Preliminarily Approving Settlement, Preliminarily Certifying A Settlement Class, Approving Forms and Methods of Notice, and Setting a Fairness Hearing on Final Approval ("Preliminary Approval Order"), Named Plaintiffs¹ and Class Representatives,

¹ Capitalized terms not otherwise defined in this Motion have the same meaning as ascribed to them in the Preliminary Approval Order.

by and through undersigned counsel, hereby move the Court for an Order approving the Plan of Allocation for the Settlement Distribution Amount. A copy of the proposed Plan of Allocation is submitted herewith as Exhibit A, and as Exhibit B to the Declaration of Lynn Sarko in Support of (1) Motion for Final Approval of ERISA Class Action Settlement; (2) for Approval of Reserve from the Gross Settlement Fund for Potential Award of Attorneys' Fees and Expenses; (3) for Approval of Named Plaintiff Case Contribution Awards; and (4) Motion for Approval of Plan of Allocation ("Sarko Decl."). In conjunction with filing this Motion, Class Counsel is posting this Plan of Allocation on the Settlement information website identified in the Notice of Class Action Settlement approved by the Court (the "Class Notice"), www.KellerSettlements.com.

The Court should approve the Plan of Allocation because it provides a fair, adequate, and reasonable allocation of relief to all members of the Settlement Class. *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 529 (E.D. Mich. 2003). As noted by other courts, an allocation formula need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel. *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (citing *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D. Minn. 1993), *aff'd*, 41 F.3d 402 (8th Cir. 1994)); *In re Oracle Sec. Litig.*, No. 90-0931, 1994 U.S. Dist. U.S. Dist. LEXIS 21593, at *3 (N.D. Cal. Jun. 16, 1994) ("A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.").

Here, the Plan of Allocation was designed by experienced Class Counsel familiar with the strengths and weaknesses of the potential claims of the Settlement Class members. It provides recovery to Settlement Class members, net of administrative expenses and attorneys'

fees and expenses that the Court may choose to reserve or award, on a pro rata basis according to each Class members' recognized claims of damages.

The Plan of Allocation was generally described in the Class Notice approved by the Court and mailed to Settlement Class members on September 28 and November 2, 2007. The Class Notice is also posted on Class Counsel's settlement-dedicated website, www.KellerSettlements.com.² As stated in the Class Notice, in general terms, the Net Settlement Fund will be allocated to Class Members on a pro rata basis such that the amount received by each Class Member will depend on his or her calculated loss compared to the total losses sought to be recovered in the Delphi ERISA Action from the Settling Defendants. Because the Distribution Amount is less than the total losses alleged to be suffered in this action, each Class member's proportionate recovery will be less than his or her alleged loss. If a Class Member's proportionate recovery is *de minimis* (less than \$10), it will be distributed pro rata to other Class Members.

The deadline for submitting objections was October 30, 2007, and has been extended until November 27, 2007 for certain Class Members, as explained in further detail in the Memorandum in Support of Motion for Final Approval of ERISA Class Action Settlement, for Certification of Settlement Class, for Reserve from the Gross Settlement Fund for Potential Award of Attorneys' Fees and Expenses, and for Case Contribution Awards to Named Plaintiffs. As of the date of this filing, Class Counsel has received no objections to the above-summarized method of allocating the Net Settlement Fund.

² Summary Notice, in the form previously approved by the Court, was published in *USA Today* (national edition) on September 27, 2007, and in *The Detroit Free Press* on September 28, 2007.

Class Counsel also note that plans of allocation similarly allocating class action settlement funds on a pro rata basis in ERISA company stock actions and securities actions have recently been approved by other courts as a reasonable approach to calculating and distributing settlement funds. *See, e.g., In re Visteon Corp. ERISA Litig.*, No. 05-71205, slip op. (E.D. Mich. March 9, 2007) (approving a plan of allocation substantially similar to the plan presented here) (attached to Declaration of Lynn Sarko as Exh. L); *In re CMS Energy ERISA Litig.*, No. 02-72834, 2006 U.S. Dist. LEXIS 55836, *7 (E.D. Mich. June 27, 2006) (same); *In re AOL Time Warner, Inc. Secs. & ERISA Litig.*, No. 02-5575, MDL No. 1500, 2006 U.S. Dist. LEXIS 17588, at *59 (S.D.N.Y. April 6, 2006) (plan of allocation provided “recovery to damaged investors on a pro rata basis according to their recognized claims of damages”); *Stoneridge Inv. Partners LLC v. Charter Communications, Inc.*, No. 02-1186, 2005 U.S. Dist. LEXIS 14772, at *33 (E.D. Mo. June 30, 2005) (plan of allocation approved as fair and reasonable where some shareholders could “benefit more from the Settlement than others depending upon when they purchased [the] shares, and if and when they sold those shares”); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (ERISA company stock case plan of allocation approved as fair and reasonable where it allocated “the settlement amount among plan participants based on their losses”).

Accordingly, Named Plaintiffs respectfully request that this Court enter an order approving the Plan of Allocation as fair, reasonable, and adequate.

Respectfully submitted this 2nd day of November, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2007, I electronically filed the forgoing document with the Clerk of the Court using the ECF system which will send notification of such filing to Jeffrey J. Angelovich, Dennis M. Barnes, Stuart Baskin, Bradley E. Beckworth, Frances Bivens, Wilber H. Boies, Patrick E. Cafferty, Michael P. Coakley, John P. Coffey, Timothy A. Duffy, Robert N. Eccles, Christopher H. Giampapa, Gary S. Gaifman, Stuart M. Grant, Hannah E. Greenwald, Sean M. Handler, Fred K. Hermann, Clark C. Johnson, Steven W. Kasten, Howard T. Longman, Mathew J. Lund, Sara L. Madsen, J. Brian McTigue, Jonathan E. Moore, Jodi L. Murland, Marc L. Newman, Sharan Nirmul, Joseph E. Papelian, Debra B. Pevos, Abraham Rappaport, John W. Reale, Richard A. Rossman, James J. Sabella, Williams A. Sankbeil, Sherrie R. Savett, Scott T. Seabolt, Elwood S. Simon, Andrew W. Stern, Jane B. Stranch, Ruth H. Swartout, W. Scott Turnbull, James D. VandeWyngearde, Stephen F. Wasinger, Susan Whatley, Jill M. Wheaton, Michael K. Yarnoff, and John P. Zuccarini and I hereby certify that I have mailed, via first-class U.S. mail, the foregoing documents to the following non-ECF participants:

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