

1. ERISA Named Plaintiffs Greg Bartell, Kimberly Chase-Orr, Neal Folck, Thomas Kessler, Donald McEvoy, and Irene Polito, through their counsel, in compliance with Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, request that the Court preliminarily approve a Modification to Stipulation and Agreement of Settlement With Certain Defendants – ERISA Actions (the “Settlement Modification”) (attached to the memorandum in support of this motion as Exhibit A).¹ In connection with the Settlement Modification, Named Plaintiffs respectfully submit a proposed Order for Notice and Hearing, filed herewith.

2. The proposed Settlement Modification (i) eliminates the effectiveness of Delphi’s Plan of Reorganization as a condition to the Settlement becoming final, and (ii) permits subordination of the Allowed Equity Interest to the payment in full of general unsecured creditors. For the reasons set forth in the memorandum submitted in support hereof, Lead Counsel believes that the proposed Settlement Modification is in the best interests of the Settlement Class.

3. The ERISA Named Plaintiffs also ask the Court to modify the January 23, 2008 Order and Final Judgment under Fed. R. Civ. P. 60(b)(6) at the time of any final approval of the Settlement Modification. A proposed Order and Final Judgment is filed herewith.

WHEREFORE, ERISA Named Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement Modification, approve the proposed forms and methods of providing notice to the Settlement Class, and modify the January 23, 2008 Order and Final Judgment accordingly under Fed. R. Civ. P. 60(b)(6).

¹ Capitalized terms not otherwise defined in this Motion shall have the same meaning as ascribed to them in the Settlement Modification.

Respectfully submitted this 16th day of September, 2009.

KELLER ROHRBACK L.L.P.

By: /s/Lynn Lincoln Sarko
Lynn Lincoln Sarko
Gary A. Gotto
Amy Williams-Derry
Laura R. Gerber
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
(206) 623-1200 (Telephone)
(206) 623-3384 (Facsimile)
Lead Counsel for Plaintiffs

Jeffrey T. Meyers (P34348)
MORGAN & MEYERS PLC
3200 Greenfield, Suite 260
Dearborn, MI 48120-1802
(313) 961-0130 (Telephone)
(313) 961-8178 (Facsimile)
Liaison Counsel for Plaintiffs

**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
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This Document Relates to:
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In re Delphi Corp. ERISA Litigation,
:
Nos. 05-CV-70882, 05-70940,
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05-71030, 05-71200, 05-71249,
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05-71291, 05-71339, 05-71396,
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05-71397, 05-71398, 05-71437,
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05-71508, 05-71620, 05-71897,
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05-72198
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**MEMORANDUM IN SUPPORT OF ERISA NAMED PLAINTIFFS' MOTION
FOR ORDER PRELIMINARILY APPROVING SETTLEMENT MODIFICATION,
FORMS AND METHOD OF NOTICE, WITH RESPECT THERETO, AND FOR
JUDGMENT MODIFICATION UNDER FED. R. CIV. P. 60**

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STATEMENT OF ISSUES PRESENTED

1. Whether the Court should preliminarily approve the Modification to Amended Stipulation and Agreement of Settlement With Certain Defendants – ERISA Actions dated July 10, 2009 (the “Settlement Modification”), a copy of which is attached hereto as Exhibit A.¹

2. Whether the Court should approve the form and method of notice to the Class of the proposed Settlement Modification and related deadlines and schedule a hearing date with respect to final approval of the Settlement Modification.

3. Whether the Court should modify the January 23, 2008 Order and Final Judgment under Fed. R. Civ. P. 60(b)(6) at the time of any final approval of the Settlement Modification.

¹ The capitalized terms are defined either in this Memorandum or the Settlement Modification itself.

**STATEMENT OF
MOST APPROPRIATE AUTHORITY FOR RELIEF SOUGHT**

Pursuant to Local Rule 7.1(c)(2), Plaintiffs Greg Bartell, Kimberly Chase-Orr, Neal Folck, Thomas Kessler, Donald McEvoy, and Irene Polito (collectively, “ERISA Plaintiffs”) list the following authority as the most appropriate for the relief sought in their motion:

- *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003);
- *In re Delphi Corp. Sec., Derivative & "ERISA" Litig.*, 248 F.R.D. 483 (E.D. Mich. 2008);
- *Int’l Union v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363 (E.D. Mich. July 13, 2006); and
- Fed. R. Civ. P. 23.

I. THE PROPOSED SETTLEMENT MODIFICATION

A. Events Leading to the Proposed Settlement Modification.

On January 11, 2008, the Court granted final approval to the settlement of this ERISA action with certain Defendants (Docket No. 318). The Settlement provided for the resolution of the claims asserted against the Settling Defendants in the ERISA Action in exchange for (a) the payment of \$22.5 million in cash insurance proceeds; and (b) an allowed equity interest (the “Allowed Equity Interest”) in the Delphi Corporation Chapter 11 bankruptcy case in the face amount of \$24.5 million. Under the Settlement Stipulation, the Allowed Equity Interest is entitled to receive the same priority and treatment under the Delphi bankruptcy Plan of Reorganization as claims of general unsecured creditors. The Effective Date of the Settlement is subject to various conditions, including the distribution of certain consideration from the Delphi bankruptcy estate upon substantial consummation of Delphi’s Plan of Reorganization.

The Plan of Reorganization confirmed by the Bankruptcy Court in January 2008 was never consummated due to intervening developments in the bankruptcy case and the continued deteriorating conditions in the overall economy and the automotive industry generally since that time. Lead Counsel concluded that these developments significantly jeopardized Delphi’s ability to emerge from bankruptcy, and made it likely that upon any emergence, unsecured creditors in the Delphi bankruptcy would fare much worse than was anticipated when the Settlement was reached in 2007. In light of these circumstances, Lead Counsel and Delphi negotiated a modification to the Settlement that would de-couple the Effective Date of the Settlement from consummation of the Plan of Reorganization. *See* Modification to Amend Stipulation

Agreement of Settlement with Certain Defendants – ERISA Actions dated July 10, 2009, attached as Exhibit A.

B. Terms of the Proposed Modification.

The proposed modification alters the existing Settlement as follows:

First, substantial consummation of Delphi's Plan of Reorganization is eliminated as a condition to the Effective Date of the Settlement. Rather, the Settlement would become effective upon the Court's and the Bankruptcy Court's approvals of the Settlement Modification (and the corresponding modification to the Securities settlement) becoming Final.

Second, the Class's Allowed Equity Interest would no longer be entitled to the same treatment as unsecured claims in the Delphi bankruptcy, unless unsecured claims receive full payment plus interest.

II. THE SETTLEMENT MODIFICATION IS IN THE BEST INTERESTS OF THE SETTLEMENT CLASS AND SHOULD BE PRELIMINARILY APPROVED

Lead Counsel believes that the Settlement Modification is in the best interests of the Settlement Class. The de-coupling of the Effective Date of the Settlement from substantial consummation of Delphi's Plan of Reorganization eliminates substantial uncertainty and the potential for delay with respect to the Settlement's effectiveness and ultimate distribution to the Class. While the Settlement Modification provides for the concession by the Settlement Class of the legal right under the Settlement to treatment equivalent to the treatment of general unsecured creditors with respect to the Allowed Equity Interest, that concession is of little, if any, practical or economic significance. Under the new Delphi Plan of Reorganization that was confirmed by the Bankruptcy Court in July 2009, general unsecured creditors will at most receive only a small percentage of the amount of their claims, and have no real assurance of receiving anything.

Thus, even with equivalent treatment to that of general unsecured creditors, the Settlement Class would have received little if anything with respect to the Allowed Equity Interest. Moreover, there is a substantial risk that the Bankruptcy Court would have declined to approve non-subordinated treatment of the Allowed Equity Interest (particularly in the face of opposition from the Official Committee of Unsecured Creditors), which would then jeopardize the entire Settlement.

A. The Settlement Modification Satisfies Each Element of the Sixth Circuit’s Test for Fairness in Class Action Settlements.

The Sixth Circuit has identified eight factors that District Courts may examine when deciding whether to approve a class action settlement:

(a) the likelihood of success on the merits weighed against the amount and form of the relief offered in the settlement; (b) the risks, expense, and delay of further litigation; (c) the judgment of experienced counsel who have competently evaluated the strength of their proofs; (d) the amount of discovery completed and the character of the evidence uncovered; (e) whether the settlement is fair to the unnamed class members; (f) objections raised by class members; (g) whether the settlement is the product of arm’s length negotiations as opposed to collusive bargaining; and (h) whether the settlement is consistent with the public interest.

In re Delphi Corp. Sec., Derivative & “ERISA” Litig., 248 F.R.D. 483, 496 (E.D. Mich. 2008) (citing *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 522 (E.D. Mich. 2003) (further citations omitted)). All of these factors, except for class members’ objections, if any, are ascertainable at this time, and should inform this court’s analysis of the proposed Settlement Modification.²

In its Order approving the initial settlement in this case, this Court noted that “each of the Sixth Circuit’s factors weighs in favor of approval of both [the ERISA and Securities]

² See Section III, *infra*, for a discussion of the proposed notice plan with respect to the Settlement Modification.

Settlements.” *Id.* The Settlement Modification does not change this analysis; rather, it makes the Settlement at least, if not more, appealing than it was in the first instance through the removal of a significant contingency – substantial consummation of Delphi’s Plan of Reorganization. The first factor, “likelihood of success on the merits weighed against the amount and form of the relief offered in the settlement,” still supports approval of the settlement. *Id.* As mentioned above, the Class gains a substantial benefit from the Settlement Modification that it did not have in the original settlement: its recovery no longer depends on Delphi successfully emerging from bankruptcy. Therefore, the weighing of likelihood of success on the merits and the amount and type of relief offered in the settlement still suggests that this settlement “is fair, adequate, reasonable and consistent with the public interest.” *Id.*

Likewise, the second factor weighs in favor of the Settlement Modification. Indeed, “the risks, expense, and delay of further litigation,” *id.*, are more imminent now than they were when the court approved the original settlement. Delphi has indicated that in light of the reduced prospects for recovery by its unsecured creditors, it believes that the Class’s Allowed Equity Interest must be subordinated to the claims of unsecured creditors unless unsecured creditors in fact receive payment in full plus interest. Lead Counsel disagrees that the Bankruptcy Code requires such subordination, and the resolution of this issue would likely produce significant litigation costs and could delay or prevent final resolution and recovery for the class. Because the Settlement Modification allows the parties to avoid this “risk[], expense, and delay,” *id.*, it weighs in favor of approval of the Settlement Modification.

The third and fourth factors—“the judgment of experienced counsel ... [and] the amount of discovery completed and the character of the evidence uncovered,” *id.*—suggest now, as they

did in the initial settlement, that this Court should approve the Settlement Modification. The same counsel that this Court praised as experienced and competent when it approved the original settlement have carefully considered and weighed the benefits of this Modification against the risks of no modification. In light of the developments surrounding Delphi's bankruptcy and deteriorating financial condition, *see supra* § I.A., the finding that counsel have "made informed judgments regarding the Settlements," *Delphi*, 248 F.R.D. at 498, is still valid and the third and fourth factors favor approval of the Settlement Modification.

Like the Settlement previously approved by this Court, the Settlement Modification was the product of arm's-length negotiations and so satisfies the fifth and seventh factors.³ When it became clear that Delphi might not be able to consummate the Plan of Reorganization, Lead Counsel began a series of protracted negotiations with Bankruptcy counsel. Eventually, Lead Counsel and Delphi reached an agreement that cements the delivery of monetary value for the class, while detaching the Settlement from the effectiveness of Delphi's Plan of Reorganization. Therefore, the Settlement Modification was "the result of arm's-length negotiations between the parties and fairly resolves all claims." *Id.* (citing *In re Rio Hair Naturalizer Prods. Liab. Litig.*, No. MDL 1055, 1996 WL 780512 at *14 (E.D.Mich. Dec. 20, 1996)).

Finally, the Settlement Modification is in the public interest. As this Court explained when it approved the initial settlement, this is a large and complex case that revolves around an important and complicated bankruptcy proceeding. *See id.* at 501. Indeed, this Court recognized that this litigation comprises two intertwined public interests: "encouraging settlement of

³ Factor six, objections raised by class members, cannot yet figure in this court's decision, since class members have not yet had the opportunity to object. After the Class receives notice, the court can evaluate this factor in connection with final approval of the settlement modification.

complex class action litigation . . . [and] assist[ing] Delphi and its employees and shareholders in concluding its bankruptcy proceeding and returning to a more solid financial condition . . .” *Id.* at 501-02. The Settlement Modification achieves both of these goals, and so satisfies the eighth and final element of the Sixth Circuit’s analysis for class action settlements.

Therefore, because the Settlement Modification follows in the footsteps of the original settlement and satisfies each element of the Sixth Circuit test that it could satisfy as postured, this court ought to grant preliminary approval to the Settlement Modification.

**III. LEAD COUNSEL’S PROPOSAL FOR CLASS NOTICE
OF THE SETTLEMENT MODIFICATION**

Lead Counsel proposes to provide notice of the proposed Settlement Modification to the Settlement Class that takes into account the fact that notice – by both mail and publication – was previously provided in connection with the original settlement, plan of allocation, and reserve for attorneys’ fees and expenses. Consequently, as set forth in more detail below, Lead Counsel now propose the mailing of a postcard notice regarding the Settlement Modification, notice by publication, and a full notice to be posted on a dedicated settlement website.

Attached as Exhibit B is a form of post card notice to be mailed to all persons to whom notice of the Settlement was mailed in accordance with the Court’s September 5, 2007 order preliminarily approving the settlement. The post card notice refers recipients to a website on which various materials concerning the Settlement and the Settlement Modification will be available, a notice attached hereto as Exhibit C. The post card notice will also contain a toll-free number that recipients may call to receive mailed copies of the more detailed notice and other information regarding the Settlement and the Settlement Modification.

In addition, Lead Counsel will publish a notice in the form attached as Exhibit D in the national edition of *USA Today* and in the *Detroit Free Press*. Individually and collectively, these steps are well-established means of providing legally sufficient notice. *See, e.g., Int'l Union v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363, at *4, *38 (E.D. Mich. July 13, 2006 (notice complied with Rule 23 where mailed to last known address of class members and published in *USA Today*, the *Detroit News*, and the *Detroit Free Press*). Lead Counsel believes that this approach, which provides Settlement Class members with ready access to all relevant information pertaining to the Settlement and the Settlement Modification, while achieving meaningful cost savings to the Settlement Class through the use of the post card notice device, is the best practicable notice under the circumstances.

Finally, Lead Counsel proposes that a deadline for the filing of objections to the Settlement Modification of thirty calendar days from the mailing of the post card notice be established, and that any such objection must be filed with the Court and served on Lead Counsel and counsel for the Settling Defendants. The proposed Order for Notice and Hearing in this matter is attached hereto as Exhibit E.

IV. IF THE COURT GRANTS FINAL APPROVAL TO THE SETTLEMENT MODIFICATION, THE COURT SHOULD ALSO VACATE THE JUDGMENT UNDER FED. R. CIV. P. 60

Because the Court on January 23, 2008 entered an Order and Final Judgment in this matter as to the Settling Defendants, that judgment should be vacated under Fed. R. Civ. P. 60(b)(6) at the same time the Court grants final approval to the Settlement Modification. Lead Counsel will make a formal request for such relief and the grounds therefore in its motion for final approval of the Settlement Modification. Attached hereto as Exhibit F, is a proposed form

of order and final judgment that would replace and supersede the original judgment dated January 23, 2008.

Respectfully submitted this 16th day of September, 2009.

KELLER ROHRBACK L.L.P.

By: /s/Lynn Lincoln Sarko

Lynn Lincoln Sarko

Gary A. Gotto

Amy Williams-Derry

Laura R. Gerber

1201 Third Avenue, Suite 3200

Seattle, WA 98101-3052

(206) 623-1200 (Telephone)

(206) 623-3384 (Facsimile)

Lead Counsel for Plaintiffs

Jeffrey T. Meyers (P34348)

MORGAN & MEYERS PLC

3200 Greenfield, Suite 260

Dearborn, MI 48120-1802

(313) 961-0130 (Telephone)

(313) 961-8178 (Facsimile)

Liaison Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 2009, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to:

- **Jeffrey J. Angelovich**
jangelovich@npraustin.com
- **Dennis M. Barnes**
dbarnes@bsdd.com, bmorris@bsdd.com
- **Stuart Baskin**
sbaskin@shearman.com, marc.ashley@shearman.com, bpolovoy@shearman.com
- **Bradley E. Beckworth** bbeckworth@nixlawfirm.com, ivanab@nixlawfirm.com
- **Frances Bivens**
Frances.bivens@dpw.com, ecf.ct.papers@dpw.com
- **Wilber H. Boies**
bboies@mwe.com
- **Patrick E. Cafferty**
pcafferty@caffertyfaucher.com, pecafferty@aol.com
- **Michael P. Coakley**
coakley@millercanfield.com, schultz@millercanfield.com, blanco@millercanfield.com
- **John P. Coffey**
sean@blbglaw.com
- **Timothy A. Duffy**
tduffy@kirkland.com, semorris@kirkland.com
- **Robert N. Eccles**
beccles@omm.com
- **Michael J. Faris**
michael.faris@lw.com, chefiling@lw.com
- **Pam Geller**
bruce@mfishlaw.com
- **Gary S. Graifman**
ggraifman@kgglaw.com
- **Stuart M. Grant**
sgrant@gelaw.com, cmarks@gelaw.com
- **Hannah E. Greenwald**
Hannah@blbglaw.com
- **Sean M. Handler**
ecf_filings@btjnc,cinm shandler@btkmc.com

- **Fred K. Herrmann**
fkh@krwlaw.com, brm@krwlaw.com, ecf@krwlaw.com
- **Benjamin Hinerfeld** bhinderfeld@btkmc.com
- **William H. Jeffress, Jr.**
William.jeffress@bakerbotts.com
- **Clark C. Johnson**
cjohnson@stites.com, lwagner@stites.com
- **Steven W. Kasten**
skasten@mwe.com, gsullivan@mwe.com
- **Dennis J. Levasseur**
dlevasseur@bodmanllp.com, kjarvis@bodmanllp.com
- **Howard T. Longman**
tsvi@aol.com, ssbny@aol.com
- **Matthew J. Lund**
lundm@pepperlaw.com, mondah@pepperlaw.com
- **Sara L. Madsen**
slmadsen@locklaw.com, khriebel@locklaw.com, crbaehman@locklaw.com
rmmorton@locklaw.com
- **J. Brian McTigue**
bmctigue@mctiguelaw.com, dbond@mctiguelaw.com
- **Bridget M. Moore**
Bridget.moore@bakerbotts.com
- **Marc L. Newman**
mln@millerlawpc.com, jns@millerlawpc.com, asl@millerlawpc.com
- **Joseph E. Papelian**
Joseph.e.papelian@delphi.com
- **Michael G. Patillo, Jr.**
Michael.patillo@bakerbotts.com
- **Debra B. Pevos**
dpevos@swappc.com
- **Abraham Rappaport**
rapplaw@yahoo.com
- **John W. Reale**
jreale@kirland.com
- **Nancy G. Ross**
Nross@mwe.com
- **James J. Sabella**
jsabella@gelaw.com
- **William A. Sankbeil**
was@krwlaw.com, cjv@krwlaw.com
- **Sherrie R. Savett**
ssavett@bm.net

- **Scott T. Seabolt**
sseabolt@foley.com
- **Elwood S. Simon**
esimon@esimon-law.com, evan@esimon-law.com
- **Andrew W. Stern**
stern@sidley.com
- **Jane B. Stranch**
jbs@branstetterlaw.com, cbatey@branstetterlaw.com
- **Thomas J. Tallerico**
ttallerico@bodmanllp.com, kbooms@bodmanllp.com
- **Bruce L. Townley**
bruce@mfishlaw.com
- **James D. VandeWyngearde**
vandewyj@pepperlaw.com, kuschj@pepperlaw.com
- **Stephen F. Wasinger**
sfw@sfwlaw.com, kfiema@kickhamhanley.com, swasinger@gmail.com
- **Christine E. Webber**
cwebber@cohenmilstein.com
- **Susan Whatley**
susanwhatley@nixlawfirm.com
- **Jill M. Wheaton**
jwheaton@kykema.com, chammond@dykema.com
- **Michael K. Yarnoff**
myarnoff@btkmc.com
- **John P. Zuccarini**
zuccarinis@aol.com, evan@esimon-law.com

//
//

and I hereby certify that I have mailed, via first-class U.S. mail, the foregoing documents to the following non-ECF participants:

Arthur N. Abbey
Abbey & Ellis
212 E. 39th Street
New York, NY 10016

Attorney for Plaintiff Carolyn Hanners

Gregory S. Bruch
Foley & Ladner
Washington Harbour, Suite 500
3000 K. Street NW
Washington, DC 20007-5109

Attorney for Defendant BBK, Limited

Joe R. Caldwell, Jr.
Baker Botts
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400

Attorney for Defendant J.T. Battenberg, III

Frederic S. Fox, Sr.
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue, 14th Floor
New York, NY 10022

Attorney for Plaintiff Policemens Annuity and Benefit Fund of Chicago

Robert I. Harwood
Wechsler Harwood
488 Madison Avenue
8th Floor
New York, New York 10022

Attorneys for Plaintiff Steven Kramer

Eric J. Belfi
MURRAY, FRANK & SAILER LLP
275 Madison Avenue, Ste. 801
New York, NY 10016

Attorney for Plaintiff Vanessa Jones

Regina M. Calcaterra
BARRACK, RODOS & BACINE
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

Attorney for Interested Party Government Employees Retirement System of the Virgin Islands, & Plaintiff Police and Fire Retirement System of the City of Detroit

Travis E. Downs, III
Coughlin, Stoia
655 W. Broadway, Suite 1900
San Diego, CA 92101

Attorneys for Plaintiff Shawn Dangerfield derivatively on behalf of Delphi Corp.

Stanley Grossman
POMERANTZ HAUDEK BLOCK
GROSSMAN & GROSS LLP
100 Park Avenue, 26th Floor
New York, NY 10017

Attorney for Interested Parties Chernofsky Family, & Louisiana District Attorneys' Retirement System

Christopher S. Hinton
WOLD HALDENSTEIN ADLER FREEMAN
& HERZ LLP
270 Madison Avenue, Ste. 801
New York, NY 10016

Attorneys for Plaintiff Ira Gaines

Robert A. Izard
Schatz & Nobel
20 Church Street
17th Floor
Hartford, CT 06103

Attorneys for Plaintiff Steven Kramer

Brad S. Karp
Paul, Weiss
1285 Avenue of the Americas
New York, NY 10019-6064

*Attorneys for Defendant JP Morgan Chase
and Company formerly known as Bank One*

Daniel F. Kolb
Davis, Polk
450 Lexington Avenue
New York, NY 10017

*Attorneys for Defendant Deloitte and Touche,
LLP*

Leigh R. Lasky
Lasky & Rifkind
350 N. LaSalle Street
Suite 1320
Chicago, IL 60610

Attorney for Plaintiff Frank J. Fosbre

Michael E. Plunkett, Sr.
847 W. Edgehill Road
San Bernadino, CA 92405

*Attorney for Interested Party Michael E.
Plunkett, Sr.*

Dennis J. Johnson
Johnson and Perkinson
P.O. Box 2305
1690 Williston Road
South Burlington, VT 05403

Attorney for Plaintiff Edward Hammer

Christopher J. Keller
LABATON SUCHAROW LLP
140 Broadway
New York, NY 10005

*Attorney for Plaintiff Nextra Investment
Management S.G.R. S.p.A.*

Robert J. Kopecky
Kirkland & Ellis
200 e. Randolph Drive
Chicago, IL 60601

*Attorney for Defendant General Motors
Investment Management Corporation*

Bruce F. Rinaldi
Cohen, Milstein
1100 New York Avenue, N.W.
500 West Tower
Washington, DC 20005

Attorney for Plaintiff Chris Glinka

Jacqueline Sailer
Rabin & Peckel
275 Madison Avenue
34th Floor
New York, NY 10016

Attorney for Plaintiff Daniel Lazor

Samuel H. Rudman
Lerach, Coughlin
58 S. Service Road
Melville, NY 11747

Attorneys for Interested Party Institutional Funds

Robert S. Scher
Foley & Lardner
90 Park Avenue
New York, NY 10016

Attorney for Defendant BBK, Limited

Steven G. Schulman
MILBERG LLP
One Pennsylvania Plaza, 49th Floor
New York, NY 10119-0165

Attorney for Interested Party Institutional Investor Group

Evan J. Smith
BRODSKY & SMITH, LLC
Two Bala Plaza, Ste. 602
Bala Cynwyd, PA 19004

Attorney for Plaintiff Johnnie Cox

Robert M. Stern
O'Melveny & Meyers
1625 Eye Street N.W.
Washington, DC 20006

Attorney for Defendant Alan S. Dawes

Richard S. Schiffrin
Grant & Eisenhofer P.A.
1201 North Market Street
Wilmington, DE 19801

Attorney for Plaintiff Thomas Morrison

David R. Scott
Scott & Scott
108 Norwich Avenue
P.O. Box 192
Cochester, CT 06415

Attorney for Plaintiff Steven Willis

Lee Squitieri
Squitieri and Gearon
35 E. 57th Street
12th Floor
New York, NY 10022

Attorney for Clemie Hunter

Carl L. Stine
WOLF POPPER LLP
845 Third Avenue, 12th Floor
New York, NY 10022

Attorney for Plaintiff Robert Hillman

Jean-Marc Zimmerman
ZIMMERMAN, LEVI & KORSINSKY, LLP
226 St. Paul Street
Westfield, NJ 07090

Attorney for Plaintiff Illinois Fund

William W. Wickersham
ENTWISTLE & CAPPUCCI LLP
280 Park Avenue
26th Floor West
New York, NY 10017

*Attorney for Interested Party Secure Trading
Group, Incorporated*

/s/Lynn Lincoln Sarko
Lynn Lincoln Sarko
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
(206) 623-1200 (Telephone)
(206) 623-3384 (Facsimile)

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

-----X : : : 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 : : -----X	
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INDEX OF EXHIBITS

EXHIBIT	TITLE/DESCRIPTION OF EXHIBIT
A	Modification to Amend Stipulation and Agreement of Settlement with Certain Defendants – ERISA Actions, dated July 10, 2009
B	Notice of Proposed Modification to Settlement (Post Card Notice)
C	Notice of Proposed Modification to The Terms of the Settlement with Certain Defendants (Website Notice)
D	Summary Notice of Proposed Modification to the Terms of the Settlement with Certain Defendants (Long Form Notice)
E	[Proposed] Order for Notice and Hearing
F	[Proposed] Order and Final Judgment

EXHIBIT A

Systems”); the Delphi Corporation Board of Directors Executive Committee and its members; the Investment Policy Committee and its members; and the Delphi Officer and Director Defendants.¹

WHEREAS:

A. On August 31, 2007, the parties hereto executed the Stipulation and Agreement of Settlement with Certain Defendants – ERISA Actions (the “Stipulation”), which, subject to its terms including but not limited to approval by this Court and the Bankruptcy Court, provided for a final settlement and resolution of the Settled Claims against the Released Parties.

B. On September 5, 2007, the Court preliminarily approved the Settlement embodied in the Stipulation.

C. On September 6, 2007, Delphi and certain of its subsidiaries and affiliates filed in the Bankruptcy Court their Joint Plan of Reorganization of Delphi Corporation And Certain Affiliates, Debtors And Debtors-In-Possession (the “Plan”), which included the Stipulation as an exhibit thereto.

D. On various dates thereafter, Delphi filed certain amendments to the Plan to reflect agreements with Delphi’s key stakeholders and obtain their support of the Plan.

E. Consistent with the Stipulation, on September 7, 2007, Delphi filed a motion in the Bankruptcy Court seeking approval of the Settlement. On October 29, 2007, the Bankruptcy Court preliminarily approved the Settlement and scheduled the matter for final consideration to be heard in conjunction with Delphi’s confirmation hearing concerning the Plan.

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Amended Stipulation, as modified by this Modification.

F. On October 31, 2007, the parties hereto entered into an Amended Stipulation and Agreement of Settlement with Certain Defendants – ERISA Actions (the “Amended Stipulation”) that, *inter alia*, modified the Stipulation’s definitions of “Contribution Credit” and “Indemnity Credit” to resolve an objection that had been filed in the Court by State Street Bank and Trust Company, one of the defendants in the Delphi ERISA Action. The Amended Stipulation also corrected a typographical error in the Stipulation’s definition of “Judgment” and corrected the Stipulation’s inadvertent omissions of one of the ERISA plans at issue in the Delphi ERISA Action, namely, the Delphi Mechatronic Systems Savings-Stock Purchase Program.

G. On November 13, 2007, after due and adequate notice was provided to the Class, the Court conducted a fairness hearing concerning final approval of the Settlement.

H. The Court granted final approval of the Settlement in an opinion and order issued on January 10, 2008 and amended on January 11, 2008.

I. On January 23, 2008, the Court entered an Order and Final Judgment dismissing with prejudice the Complaint in its entirety against all defendants other than State Street Bank and Trust Company.

J. On January 25, 2008, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”), and the Confirmation Order became final on February 4, 2008. In connection with the approval of the Plan, the Bankruptcy Court entered an order approving the Settlement (the “Bankruptcy Court Approval Order”). The Bankruptcy Court Approval Order became final on February 4, 2008.

K. Although approved by the Bankruptcy Court and the Court, the Settlement does not become effective until the Delphi Consideration has been distributed following the Bankruptcy Effective Date.

L. The Plan has not been substantially consummated, and as a result the Bankruptcy Effective Date has not occurred.

M. Delphi has continued to work with its stakeholders to complete its restructuring efforts. Nonetheless, because the Bankruptcy Effective Date has not occurred, the Settlement has not become effective. The parties to the Amended Stipulation have determined that, based on the fact that the Bankruptcy Effective Date will not occur with respect to the Plan that is the subject of the Confirmation Order, it is in their best interests to finalize the Settlement, to, *inter alia*, make the releases granted thereunder effective, and to allow for the release from escrow all cash funds held by the Escrow Agent pursuant to the Amended Stipulation, as modified by this Modification, without regard to the occurrence of the Bankruptcy Effective Date.

N. Accordingly, the parties have agreed to modify the Amended Stipulation such that the Settlement, as modified by this Modification, becomes effective independent of the occurrence of the Bankruptcy Effective Date and/or the substantial consummation of any Delphi plan of reorganization. The separate stipulation of settlement of the Delphi Securities Action is being modified on terms similar to this Modification (the "Securities Stipulation Second Modification").

O. The parties agree that each of the conditions set forth in paragraphs 17(a)-(c) and (e)-(g) of the Amended Stipulation has been satisfied, that the conditions set forth in paragraphs 17(h)-(i) of the Amended Stipulation should be eliminated, and that the Settlement, as modified by this Modification, including without limitation the releases provided therein, should become effective upon the entry of an order by each of the Bankruptcy Court and the Court approving this Modification and the Securities Stipulation Second Modification, and such orders becoming Final. With respect to the Court's Judgment approving this Modification, such Judgment shall

amend the Order and Final Judgment dated January 23, 2008, and shall be in all material respects in the form attached hereto as Exhibit B.

P. With respect to ongoing bankruptcy matters, the ERISA Plans' Equity Interest granted to the Class pursuant to the Amended Stipulation will remain allowed in the same aggregate face amount as set forth in the Amended Stipulation, but will not be guaranteed any particular treatment or classification, and instead will be an interest to be classified under the Delphi Plan of Reorganization subject to further modifications and/or rulings of the Bankruptcy Court except as to the aggregate face amount of the ERISA Plans' Equity Interest. Regardless of the ultimate treatment and classification of the ERISA Plans' Equity Interest, the Settlement, as modified by this Modification, will be effective and final as of the Effective Date.

Q. Subject to Court approval and direction, the parties further agree that (i) notice of this Modification substantially in the forms attached as Tabs 1-3 to Exhibit A hereto should be provided to the Class that satisfies due process requirements so as to afford Class Members an opportunity to object solely to the Modification, and (ii) they will take appropriate steps to obtain the Court's approval of this Modification.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the parties to this Modification, through their respective counsel:

1. Except as otherwise set forth herein, the Amended Stipulation remains in full force and effect, subject to all of its terms and conditions.

2. Section 1(n) of the Amended Stipulation is amended in its entirety as follows:

“Delphi Consideration” means the consideration, if any, to be distributed pursuant to this Stipulation, as modified by the Modification, to satisfy the ERISA Plans' Equity Interest granted to Named Plaintiffs as representatives of the Class pursuant to this Stipulation, as modified by the Modification.

3. Section 1(q) of the Amended Stipulation is deleted in its entirety.

4. Section 1(s) of the Amended Stipulation is amended in its entirety as follows:

“Effective Date” means the date upon which the Settlement contemplated by this Stipulation, as modified by the Modification, shall become effective, as set forth in ¶ 17 hereof; it being understood that the Settlement contemplated by this Stipulation, as modified by the Modification, shall become effective regardless of the treatment and classification of the ERISA Plans’ Equity Interest under the Delphi Plan of Reorganization and regardless of the occurrence of the distribution of the Delphi Consideration following the Bankruptcy Effective Date.

5. Section 1(t) of the Amended Stipulation is amended in its entirety as follows:

“ERISA Plans’ Equity Interest” means the interest as against Delphi granted and approved by the Bankruptcy Court in its order approving this Settlement, as modified by the Modification, to Named Plaintiffs, as representatives of the Class, pursuant to this Stipulation, as modified by the Modification, which shall be an allowed interest in the aggregate face amount of Twenty-Four Million, Five Hundred Thousand Dollars (U.S. \$24,500,000), with no additional provision to be made for accrued interest, and which shall be an interest classified under the Delphi Plan of Reorganization in a separate equity class, representative of the claims of the Class against Delphi arising out of or relating to any and all claims or causes of action in the Delphi ERISA Action; provided, however, that Delphi shall have no obligation to propose any particular treatment of the ERISA Plans’ Equity Interest under the Delphi Plan of Reorganization, it being understood and agreed by the parties that the ERISA Plans’ Equity Interest will not be given priority equal to or higher than the priority of general unsecured claims under the Delphi Plan of Reorganization; provided further, however, that if the Delphi Plan of Reorganization provides for a par plus accrued recovery for general unsecured creditors, then the ERISA Plans’ Equity Interest will receive the same classification and treatment as general unsecured claims; provided further that the final treatment or classification of the ERISA Plans’ Equity Interest under any Delphi plan of reorganization confirmed by Final order of the Bankruptcy Court shall not affect the finality of the Settlement, as modified by the Modification, or the releases granted therein, on the Effective Date.

6. Section 1(z) of the Amended Stipulation is amended in its entirety as follows:

“Judgment” means (i) the proposed judgment or order by the Court approving the Settlement, as modified by the Modification, substantially in the form attached to the Modification as Exhibit B, or as may be modified with the written consent of the parties, and (ii) any of the judgments and orders to be entered by the Bankruptcy Court approving the Settlement, as modified by the Modification.

7. Section 1(ee) of the Amended Stipulation is amended in its entirety as follows:

"Notice" means the notice of the proposed Modification to the Settlement and hearing, which is to be mailed to members of the Class substantially in the form attached to the Modification as Tab 1 to Exhibit A.

8. Section 1(ff) of the Amended Stipulation is amended in its entirety as follows:

"Order for Notice and Hearing" means the proposed order scheduling a hearing to approve the Modification and directing notice thereof to the Class, substantially in the form attached to the Modification as Exhibit A.

9. Section 1(ii) of the Amended Stipulation is amended in its entirety as follows:

"Publication Notice" means the summary notice of the proposed Modification and hearing, for publication substantially in the form attached to the Modification as Tab 2 to Exhibit A.

10. Section 1 of the Amended Stipulation is amended by adding section 1(tt) after section 1(ss), which shall read as follows:

(tt) "Delphi Plan of Reorganization" means the First Amended Joint Plan Of Reorganization of Delphi Corporation And Certain Affiliates, Debtors And Debtors-In-Possession as confirmed by an order of the Bankruptcy Court entered January 25, 2008, as the same may be modified, amended, or superseded by Final order of the Bankruptcy Court.

11. Section 1 of the Amended Stipulation is amended by adding section 1(uu) after section 1(tt), which shall read as follows:

(uu) "Website Notice" means the Notice of Proposed Modification to the Terms of the Settlement with Certain Defendants, substantially in the form attached as Tab 3 to Exhibit A of the Modification, which shall be posted and maintained on the Delphi ERISA Action settlement website in accordance with the instructions provided by the Court in the Order for Notice and Hearing.

12. Section 4 of the Amended Stipulation is amended by amending the first sentence of Section 4 to read as follows:

The Court shall include the Bar Order in ¶¶ 5-6 in its final Judgment approving the Settlement, as modified by the Modification.

13. Section 8(b) of the Amended Stipulation is amended in its entirety as follows:

Delphi shall distribute pursuant to the Escrow Agreement the Delphi Consideration as soon as practicable after the later of (i) the satisfaction of each of the conditions in ¶ 17 (a)-(g) and (j)-(l), or (ii) the Bankruptcy Effective Date.

14. Section 14 of the Amended Stipulation is amended in its entirety as follows:

(a) Promptly after the Modification has been fully executed, Lead Counsel shall apply to the Court for entry of an Order for Notice and Hearing, substantially in the form annexed to the Modification as Exhibit A.

(b) The mailing or publication of the Notice and Publication Notice shall not occur until all such orders of the Court have been obtained.

15. Section 15 of the Amended Stipulation is amended in its entirety as follows:

If the Settlement contemplated by this Stipulation, as modified by the Modification, is approved by the Court, Lead Counsel and Settling Defendants' counsel shall request that a Judgment be entered which shall in all material respects be in the form annexed as Exhibit B to the Modification.

16. Section 17(h) of the Amended Stipulation is deleted in its entirety.

17. Section 17(i) of the Amended Stipulation is deleted in its entirety.

18. Section 17 of the Amended Stipulation is amended by adding the following clauses (j), (k) and (l) at the end thereof:

(j) entry by the Court of an order and Judgment, in all material respects in the form attached as Exhibit B to the Modification, amending the Order and Final Judgment, dated January 23, 2008, and approving the Modification, and such order and Judgment becoming Final, or, in the event that the Court enters a judgment in a form other than that provided above (the "Alternative Judgment") and none of the parties hereto elect to terminate the Settlement as modified by the Modification, the date upon which such Alternative Judgment becomes Final;

(k) entry by the Court of an order approving the Securities Stipulation Second Modification and such order becoming Final; and

(l) entry by the Bankruptcy Court of an order(s) approving the Modification and the Securities Stipulation Second Modification and such order(s) becoming Final.

19. Section 18 of the Amended Stipulation is amended in its entirety as follows:

Named Plaintiffs and Settling Defendants shall each have the right to terminate the Settlement, as modified by the Modification, and thereby this Stipulation, as modified by the Modification, by providing written notice of their election to do so (the "Termination Notice") to one another hereto within thirty (30) days of any of the following: (a) the Court declining to enter the Judgment in any material respect or entering an Alternative Judgment; (b) the Bankruptcy Court declining to enter an order approving the Modification or the Securities Stipulation Second Modification; (c) the

date upon which any appellate court vacates, reverses, or modifies in any material respect any order or judgment of the Court or the Bankruptcy Court approving the Settlement, as modified by the Modification, or the settlement of the Delphi Securities Action, as modified by the Securities Stipulation Second Modification; or (d) the date upon which the settlement in the Delphi Securities Action is terminated; provided, however, that all termination rights provided under this Stipulation, as modified by the Modification, shall expire upon the Effective Date.

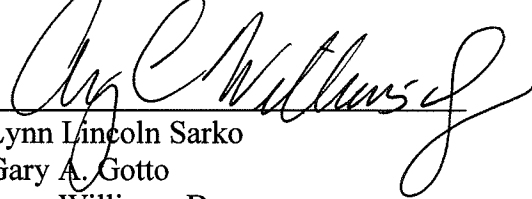
20. Following execution of this Modification, and subject to approval by and direction of the Court, Lead Counsel for Named Plaintiffs will cause the Notice substantially in the form attached to this Modification as Tab 1 to Exhibit A to be mailed to Class Members, and the Publication Notice substantially in the form attached to this Modification as Tab 2 to Exhibit A to be published, in a manner that satisfies due process requirements so as to afford an opportunity for Class Members to object solely to the Modification. Lead Counsel further agrees to post and maintain on the settlement administration website the Website Notice substantially in the form attached to this Modification as Tab 3 to Exhibit A, subject to approval by and direction of the Court. The parties agree that the costs of all notices described in this Modification and any related modifications to the settlement administration website will be paid by the Gross Settlement Fund.

21. Delphi will file a motion seeking the Bankruptcy Court's approval of this Modification and the Securities Stipulation Second Modification, and will use reasonable efforts to cause such motion to be returnable in connection with the July 23, 2009 omnibus hearing date in the Bankruptcy Case. Lead Counsel will use its reasonable efforts to assist Delphi in obtaining the Bankruptcy Court's approval of this Modification and the Securities Stipulation Second Modification.

22. Lead Counsel will take appropriate action to obtain the Court's approval of this Modification, and will use reasonable efforts to obtain the Court's approval as soon as practicable.

Dated: July 10, 2009

KELLER ROHRBACK L.L.P.



Lynn Lincoln Sarko
Gary A. Gotto
Amy Williams-Derry
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
Telephone: (206) 623-1200
Facsimile: (206) 623-3384

Lead Counsel

SHEARMAN & STERLING LLP

Stuart J. Baskin
Brian H. Polovoy
Brian G. Burke
599 Lexington Avenue
New York, New York 10022-6069
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

**Counsel for Delphi Corporation, ASEC
Manufacturing General Partnership (sued as
“ASEC Manufacturing”), Delphi Mechatronic
Systems, Inc. (sued as “Delphi Mechatronic
Systems”), the Investment Policy Committee,
Robert H. Brust, Susan A. McLaughlin,
and John D. Opie**


Dated: July 10, 2009

KELLER ROHRBACK L.L.P.

Lynn Lincoln Sarko
Gary A. Gotto
Amy Williams-Derry
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
Telephone: (206) 623-1200
Facsimile: (206) 623-3384

Lead Counsel

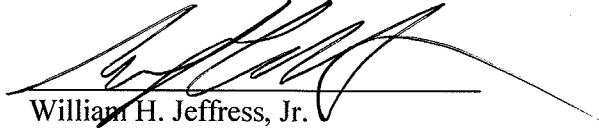
SHEARMAN & STERLING LLP



Stuart J. Baskin
Brian H. Polovoy
Marc D. Ashley
599 Lexington Avenue
New York, New York 10022-6069
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

**Counsel for Delphi Corporation, ASEC
Manufacturing General Partnership (sued as
“ASEC Manufacturing”), Delphi Mechatronic
Systems, Inc. (sued as “Delphi Mechatronic
Systems”), the Investment Policy Committee,
Robert H. Brust, Susan A. McLaughlin,
and John D. Opie**

BAKER BOTTS L.L.P.



William H. Jeffress, Jr.

Bridget M. Moore

Michael G. Pattillo, Jr.

Joe R. Caldwell, Jr.

1299 Pennsylvania Avenue, N.W.

Washington, DC 20004-2400

Telephone: (202) 639-7788

Facsimile: (202) 639 7980

Counsel for J.T. Battenberg III

O'MELVENY & MYERS LLP

Robert N. Eccles

Robert M. Stern

1625 Eye Street, N.W.

Washington, DC 20006-4001

Telephone: (202) 383-5315

Facsimile: (202) 383-5414

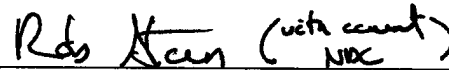
Counsel for Alan S. Dawes

BAKER BOTTS L.L.P.

William H. Jeffress, Jr.
Bridget M. Moore
Michael G. Pattillo, Jr.
Joe R. Caldwell, Jr.
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400
Telephone: (202) 639-7788
Facsimile: (202) 639 7980

Counsel for J.T. Battenberg III

O'MELVENY & MYERS LLP



Robert N. Eccles
Robert M. Stern
1625 Eye Street, N.W.
Washington, DC 20006-4001
Telephone: (202) 383-5315
Facsimile: (202) 383-5414

Counsel for Alan S. Dawes

EXHIBIT B

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

	X	
	:	
	:	
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>
	:	
	X	

NOTICE OF PROPOSED MODIFICATION TO SETTLEMENT

YOU ARE HEREBY NOTIFIED that a Modification to the terms of the Settlement with certain defendants in the Delphi ERISA Action has been preliminarily approved by the Court. The Modification provides that the effectiveness of the Settlement is no longer conditioned upon the occurrence of the Delphi Bankruptcy Effective Date and/or substantial consummation of Delphi's plan of reorganization, and the Class's allowed Equity Interest in the Delphi Corporation chapter 11 bankruptcy proceeding will not be guaranteed any particular treatment or classification under Delphi's plan of reorganization, and has no value under Delphi's new plan of reorganization confirmed by the Bankruptcy Court in July, 2009. The aggregate recovery for the Class will be at least \$22.5 million, less Court-awarded attorneys' fees and expenses.

For more details, please visit www.KellerSettlements.com or call (877) 296-9982. A hearing will be held before the Honorable Gerald E. Rosen in the Theodore Levin Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan 48226 in Courtroom _____, at _____:_____ __.m., on

_____, 2009 to determine whether the Modification should be finally approved by the Court as fair, reasonable and adequate.

You may object to the Modification by following the instructions in the Website Notice found at www.KellerSettlements.com. Any objection must be properly filed by _____, 2009.

By Order of The Court

EXHIBIT C

**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
	:		
	:		
	-----X		

**NOTICE OF PROPOSED MODIFICATION TO THE TERMS OF THE SETTLEMENT
WITH CERTAIN DEFENDANTS**

This notice provides important information concerning proposed modifications to the settlement with certain defendants (the "Settlement") in the above-captioned action (the "Delphi ERISA Action") brought against Delphi Corporation ("Delphi") and other persons and entities under the Employee Retirement Income Security Act ("ERISA") with respect to the Delphi Savings-Stock Purchase Program for Salaried Employees (the "Salaried Plan"), the Delphi Personal Savings Plan for Hourly-Rate Employees (the "Hourly Plan"), the ASEC Manufacturing Savings Plan (the "ASEC Plan"), and the Delphi Mechatronic Systems Savings-Stock Purchase Program (the "Mechatronic Plan") (collectively, the "Plans"). Your rights may be affected by the settlement or the proposed modifications. You should read this notice carefully.

TO: The “Class,” consisting of any person who was a participant at any time between May 28, 1999 and November 1, 2005 in the Delphi Savings-Stock Purchase Program for Salaried Employees (the “Salaried Plan”), the Delphi Personal Savings Plan for Hourly-Rate Employees (the “Hourly Plan”), or the ASEC Manufacturing Savings Plan (the “ASEC Plan”), or a participant at any time between June 1, 2001 and November 1, 2005 in the Delphi Mechatronic Systems Savings-Stock Purchase Program (the “Mechatronic Plan”) (collectively, the “Plans”), whose account included investments in the Delphi and/or GM Stock Funds; and, any beneficiary, alternate payee, representative, or successor-in-interest of any such person.

If the description above applies to you, you may be part of the Class and may have a right to know about the modifications to the Settlement of the Delphi ERISA Action and about all of your options.

YOU ARE HEREBY NOTIFIED that Named Plaintiffs, on behalf of themselves and the Class, and Delphi Corporation, ASEC Manufacturing General Partnership (sued as “ASEC Manufacturing”), Delphi Mechatronic Systems, Inc. (sued as “Delphi Mechatronic Systems”), the Delphi Corporation Board of Directors Executive Committee and its members, the Investment Policy Committee and its members, and the Delphi Officer and Director Defendants, have proposed a Modification to the terms of the Settlement in the above-referenced Delphi ERISA Action (the “Modification”) which has been presented to and preliminarily approved by the Court. The Modification amends the Settlement terms set forth in the Stipulation of Settlement With Certain Defendants – ERISA Action, dated August 31, 2007 (the “Stipulation”), as amended by the parties on October 31, 2007 (the “Amended Stipulation”). Unless stated otherwise, all

capitalized terms herein are as defined in the Amended Stipulation, as modified by the Modification.

A. PROCEDURAL HISTORY OF THE SETTLEMENT

On August 31, 2007, the parties executed the Stipulation, which provided for a final settlement and resolution of the Settled Claims against the Released Parties. The Stipulation was subsequently amended by the Amended Stipulation, dated October 31, 2007, and on November 13, 2007, after notice was provided to the Class, the Court conducted a fairness hearing concerning final approval of the terms of the Settlement set forth in the Amended Stipulation. On January 23, 2008, the Court entered an Order and Final Judgment granting final approval to the Settlement and dismissing with prejudice the Complaint against all defendants other than State Street Bank and Trust Company.

In the interim, on September 6, 2007, Delphi filed in the Bankruptcy Court its Joint Plan of Reorganization (“Plan”) which included the Stipulation as an exhibit thereto. Consistent with the Stipulation, on September 7, 2007, Delphi filed a motion in the Bankruptcy Court seeking approval of the Settlement. On October 29, 2007, the Bankruptcy Court preliminarily approved the Settlement and scheduled the matter for final consideration to be heard in conjunction with Delphi’s confirmation hearing concerning the Plan.

On January 25, 2008, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”) and approving the Settlement as set forth in the Amended Stipulation.

B. REASONS FOR AND TERMS OF THE MODIFICATION

1. Reasons for The Modification

Although approved by the Bankruptcy Court and the Court, the Settlement could not by its terms become effective until the Bankruptcy Effective Date, which would occur upon substantial

consummation of the Plan of Reorganization in Delphi's bankruptcy proceeding. Although Delphi has worked with its stakeholders to complete its restructuring efforts, the Plan of Reorganization originally approved by the Bankruptcy Court in the Confirmation Order entered in January, 2008, will not be consummated, and thus, the Settlement cannot become effective according to its terms. As a result, the parties to the Amended Stipulation determined that, based upon (i) the dramatic change in Delphi's circumstances since they entered into the Amended Stipulation, including the catastrophic downturn in the economy, and in the auto industry in particular, and (ii) the fact that the Bankruptcy Effective Date will not occur with respect to the Plan that was the subject of the Confirmation Order, it is in their best interests to enter into the Modification, to, *inter alia*, make the releases granted in the Settlement effective, and to allow for distribution to the Class of the cash held in escrow without regard to consummation of Delphi's Plan of Reorganization in the bankruptcy proceeding. Without the Modification, the cash payments would remain in escrow indefinitely and the Effective Date as originally contemplated would never occur. In sum, this Modification will allow Class Members to finally receive distribution of settlement funds that they are entitled to receive.

2. Terms of the Modification

On July 10, 2009, the parties to the Amended Stipulation entered into the Modification, which amended the Settlement as follows:

The Equity Interest granted to the Class pursuant to the Amended Stipulation will remain allowed in the same aggregate face amount as provided for in the Amended Stipulation, but will not be guaranteed any particular treatment or classification, and instead will be a claim to be classified under the Delphi Plan of Reorganization subject to further modifications and/or rulings of the Bankruptcy Court except as to the aggregate face amount thereof. Under the terms of

Delphi's new Plan of Reorganization confirmed by the Bankruptcy Court in July, 2009, the Equity Interest has no value.

The Modification further provides that the Settlement will become effective upon the entry of an order by each of the Bankruptcy Court and the Court approving the Modification (and the corresponding modification to the settlement of the Delphi Securities Action), and such orders becoming Final, independent of the occurrence of the Bankruptcy Effective Date and/or substantial consummation of Delphi's Plan of Reorganization.

The Bankruptcy Court approved the Modification in July, 2009, and that approval is now Final. Accordingly, the Settlement, as modified by the Modification, will become effective, if the Court approves the Modification and that approval becomes Final. Upon the Settlement becoming effective, Class Members will be able to receive the distribution of settlement funds which they are entitled to receive under the terms of the Settlement as modified.

C. CLASS MEMBERS' RIGHTS AND OBLIGATIONS

A hearing will be held before the Honorable Gerald E. Rosen in the United States District Court for the Eastern District of Michigan, Southern Division, Theodore Levin Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan 48226 in Courtroom ____, at ____:_____.m., on _____, 2009 (the "Fairness Hearing") to: (1) determine whether the Modification should be approved by the Court as fair, reasonable and adequate; (2) determine whether Judgment should be entered pursuant to the Modification; and (3) rule upon Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, and upon such other matters as the Court deems appropriate.

If you are a Class Member, you may object to any aspect of the proposed Modification. To object, you must send a letter stating that you are a Class Member, that you object to the Modification in *In re Delphi Securities, Derivative and ERISA Litigation*, MDL No. 1725, Case

No. 05-md-1725, and the reasons why you object. In your objection, you must include your name, address, telephone number, and your signature. If you intend to present any witnesses at the Fairness Hearing, you must also so state. Your objection must be filed with the Court at the address below by _____, 2009, and received no later than _____, 2009, by counsel listed below:

Clerk of the Court:

David J. Weaver, Clerk of Court
United States District Court, Eastern District of Michigan
231 West Lafayette Blvd., Fifth Floor
Detroit, MI 48226

Lead Counsel and certain Settling Defendants' Counsel:

Lynn L. Sarko, Esq.
Gary A. Gotto, Esq.
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Ste 3200
Seattle, WA 98101-3052
Plaintiffs' Lead Counsel

Stuart J. Baskin, Esq.
Brian H. Polovoy, Esq.
SHEARMAN & STERLING, LLP
599 Lexington Avenue
New York, New York 10022
*Counsel to Settling Defendants
Delphi Corporation, ASEC Manufacturing
General Partnership (sued as "ASEC
Manufacturing"), Delphi Mechatronic
Systems, Inc. (sued as "Delphi
Mechatronic Systems"), the Investment
Policy Committee, Robert H. Brust,
Susan A. McLaughlin, and John D. Opie*

D. ATTORNEYS' FEES AND EXPENSES

In its January 23, 2008 Order and Final Judgment approving the Settlement, the Court established a reserve of 20% of the Gross Settlement Fund for a potential award of attorneys' fees and a reserve of \$750,000 for costs and expenses, to be distributed upon further order of the Court and Lead Counsel's application for award of attorneys' fees and expense to be filed upon conclusion of the Delphi ERISA Action as to all parties. Lead Counsel filed a Motion for an award

of the amounts so reserved on September 16, 2009. It is anticipated that the Court will consider that Motion at the Fairness Hearing.

GETTING MORE INFORMATION

This notice summarizes the proposed terms of the Modification. More details are contained in Modification itself, which is available at www.KellerSettlements.com, along with the Amended Stipulation and the original notice mailed to the Class which provide additional information concerning the Settlement. If you have questions regarding how to obtain copies of documents related to the Settlement, you may contact Lead Counsel at the address listed above or call toll free at (877) 296-9982.

By Order of the Court

EXHIBIT D

**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
	:	
	:	
	X	

**SUMMARY NOTICE OF PROPOSED MODIFICATION TO THE TERMS OF THE
SETTLEMENT WITH CERTAIN DEFENDANTS**

YOU ARE HEREBY NOTIFIED that a proposed modification ("Modification") to the terms of the settlement with certain defendants in the above-referenced Delphi ERISA Action has been presented to, and preliminarily approved by, the Court. This Modification amends certain of the settlement terms set forth in the Amended Stipulation and Agreement of Settlement With Certain Defendants – ERISA Actions, dated October 31, 2007 (the "Amended Stipulation"), which was approved by the Court on January 11, 2008 following a fairness hearing and notice the Class. Unless stated otherwise, all terms capitalized herein are as defined in the Amended Stipulation, as modified by the Modification.

The proposed Modification generally relates to the consideration to be provided by Delphi and the timing of the effective date of the Settlement. A summary of the proposed modifications follows:

1. The Settlement will become effective independent of the occurrence of the Bankruptcy Effective Date and/or the substantial consummation of any Delphi plan of reorganization, and thus, the \$22.5 million in cash (plus interest), less Court-approved attorneys' fees and expenses, currently being held in escrow for the benefit of the Class will be distributed pursuant to the terms of the Amended Stipulation, as modified by the Modification, regardless of when or whether Delphi emerges from bankruptcy.

2. The Equity Interest in the Delphi Corporation chapter 11 bankruptcy proceeding granted to the Class pursuant to the Amended Stipulation will remain allowed in the same face amount, but will not be guaranteed any particular treatment or classification under any plan of reorganization that ultimately may be consummated. Under the terms of Delphi's new plan of reorganization confirmed by the Bankruptcy Court in July, 2009, the Equity Interest will receive no distribution and thus will have no value.

In its Opinion and Order dated January 10, 2008 (amended on January 11, 2008), the Court approved a reserve of 20% of the Gross Settlement Fund for Lead Counsel's attorneys' fees, as well as a reserve of \$750,000 for costs and expenses. Lead Counsel have filed a motion for an award of such reserved amounts in connection with the Court's approval of the Modification.

Named Plaintiffs and Lead Counsel have determined that, based upon (i) the dramatic change in Delphi's circumstances since the parties entered into the Amended Stipulation, including the catastrophic downturn in the economy, and in the auto industry in particular, and (ii) the fact that the Bankruptcy Effective Date will not occur with respect to the Plan of Reorganization that was the subject of the Confirmation Order entered by the Bankruptcy Court in January, 2008, it is in the best interest of the Class to allow the Settlement to become effective without regard to the occurrence of the Bankruptcy Effective Date and/or consummation of Delphi's Plan of Reorganization in the bankruptcy proceeding.

For a more detailed description of the proposed Modification to the terms of the Settlement, please visit www.KellerSettlements.com to download all relevant documents, including the Website Notice and the Modification, or contact Lead Counsel at

Lynn Lincoln Sarko, Esq.
Gary A. Gotto, Esq.
Amy Williams-Derry, Esq.
Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
Toll-Free Phone: (877) 296-9982
Email: claimsadministrator@delphisettlement.com
www.KellerSettlements.com

A hearing will be held before the Honorable Gerald E. Rosen in the United States District Court for the Eastern District of Michigan, Southern Division, Theodore Levin Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan 48226 in Courtroom _____, at _____:_____ __.m., on _____, 2009 to determine whether: (1) the Modification should be approved by the Court as fair, reasonable and adequate; (2) Judgment should be entered pursuant to the Modification; and (3) such other matters as the Court deems appropriate to rule upon.

You may object to the proposed Modification by following the instructions for doing so in the Website Notice, which is available at the above-referenced website. Any objection must be properly filed by _____, 2009.

By Order of The Court

EXHIBIT E

and Agreement of Settlement With Certain Defendants – ERISA Actions, dated August 31, 2007 (the “Stipulation”), as amended by the parties thereto on October 31, 2007 (the “Amended Stipulation”); and

WHEREAS, in light of intervening developments following the Court’s approval, the parties to the Stipulation and Amended Stipulation have agreed to modify the terms of the Settlement set forth therein, and now present the Modification for preliminary approval by the Court, and for approval of the form and manner of providing notice of the Modification to the Class, and for the scheduling of a fairness hearing; and

NOW, upon consent of Named Plaintiffs and Settling Defendants, after review and consideration of the Modification and proposed forms and method of notice, and after due deliberation,

IT IS HEREBY ORDERED that:

1. Pursuant to Federal Rule of Civil Procedure 23(e), a hearing (the “Fairness Hearing”) shall be held on _____, 2009, at _____.m., in the United States District Court for the Eastern District of Michigan, Southern Division, the Honorable Gerald E. Rosen presiding, to

a. determine whether the Modification should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Class;

b. determine whether Judgment should be entered pursuant to the Modification; and

c. rule on such other matters as the Court may deem appropriate.

2. The Court reserves the right to adjourn the Fairness Hearing or any adjournment thereof, without further notice of any kind to Class Members.

3. The Court reserves the right to approve the Modification at or after the Fairness Hearing with such modification as may be consented to by Named Plaintiffs and Settling Defendants and without further notice to the Class.

4. Lead Counsel shall mail the Notice, substantially in the form of Exhibit B to the Memorandum in Support of ERISA Named Plaintiffs' Motion for Order Preliminarily Approving Settlement Modification, Forms and Method of Notice with Respect Thereto, and For Judgment Modification under Fed. R. Civ. P. 60, (the "Memorandum"), by postcard by United States mail, postage pre-paid, to all Class Members to whom notice of the Stipulation was mailed. Such mailing shall occur within fifteen (15) calendar days of entry of this Order.

5. Lead Counsel shall file with the Court and serve upon Settling Defendants' counsel no later than seven (7) days prior to the Fairness Hearing an affidavit or declaration describing the efforts taken to comply with this order and stating that the mailings have been completed in accordance with the terms of this order.

6. Within fifteen (15) calendar days of the entry of this Order, Lead Counsel shall cause to be published the Publication Notice, substantially in the form of Exhibit D to the Memorandum, once in the national edition of *USA Today* and once in *The Detroit Free Press*. Lead Counsel shall file with the Court and serve upon Settling Defendants' counsel no later than seven (7) days prior to the Fairness Hearing an affidavit or declaration stating that the Publication Notice has been published in accordance with the terms of this Order.

7. Within fifteen (15) calendar days of the entry of this Order, Lead Counsel shall cause the Website Notice substantially in the form of Exhibit C to the Memorandum to be posted on the website identified in the Notice and maintained until the Effective Date. The form and content of the Notice, the Publication Notice and the Website Notice, and the method set forth herein of notifying the Class of the Settlement and the Modification and their terms and

conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

8. Any Class Member may object to the Modification in the manner prescribed in the Website Notice, and any Class Member who fails to do so shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Modification or the Order and Final Judgment to be entered herein.

9. Any member of the Class who timely and properly objects to the Modification may appear in person or by his, her, or its attorney, at his, her, or its own expense, at the Fairness Hearing and present evidence or argument that may be proper or relevant; *provided, however*, that no person other than the parties and their counsel shall be heard, and no papers, briefs, pleadings, or other documents submitted by any person shall be considered by the Court unless on or before fourteen (14) days before the Fairness Hearing, such person files with the Court and serves upon counsel listed below: (1) a statement of such person's objections to any matters before the Court concerning this Modification; (2) the grounds therefore or the reasons that such person desires to appear and be heard, as well as all documents or writings such person desires the Court to consider; and (3) whether that person intends to present any witnesses. Such filings shall be served upon the Court and the following counsel:

Lead Counsel:

KELLER ROHRBACK L.L.P.

Lynn Lincoln Sarko, Esq.

Gary A. Gotto, Esq.

1201 Third Avenue, Suite 3200

Seattle, Washington 98101-3052

Counsel for certain of the Settling Defendants:

SHEARMAN & STERLING LLP

Brian H. Polovoy, Esq.
599 Lexington Avenue
New York, New York 10022-6069

10. Neither the Modification nor any provisions contained therein, nor any negotiations, statements, or proceedings in connection therewith, nor any action undertaken pursuant thereto shall be construed as, or deemed to be evidence of, an admission or concession on the part of any Settling Defendant or any other person of any liability or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Named Plaintiffs, any member of the Class, or any other person, has or has not suffered any damage.

11. Any party making submissions to the Court in support of approval of the Modification shall do so by seven (7) calendar days before the date scheduled for the Fairness Hearing.

12. The Court authorizes payment out of the Gross Settlement Fund of notice and administration expenses in accordance with the Amended Stipulation, as modified by the Modification.

13. The Court may, for good cause, extend any of the deadlines set forth in this order without further notice to Class Members.

SIGNED this _____ day of _____, 2009.

GERALD E. ROSEN
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT F

Court issued an order, dated January 23, 2008, granting final approval to the terms of the Settlement embodied in the Amended Stipulation.¹

Due to significant adverse developments with respect to Delphi's efforts to emerge from bankruptcy, and considering that the Effective Date of the Settlement was contingent upon substantial consummation of Delphi's Plan of Reorganization that was confirmed by the Bankruptcy Court in January 2008, the parties to the Amended Stipulation agreed to modify the terms thereof such that the effectiveness of the Settlement would not be contingent upon consummation of Delphi's Plan of Reorganization. This agreement was memorialized in the Modification to Amended Stipulation of Settlement With Certain Defendants – ERISA Actions, dated July 10, 2009 (the "Modification").

On September __, 2009, the Court granted the Plaintiffs' Rule 60(b)(6) motion to amend the January 23, 2008 Order and Final Judgment so that the parties could present the Modification and a proposed judgment consistent therewith for the Court's consideration and approval following notice to the Class. On September __, 2009, the Court entered an Order for Notice and Hearing preliminarily approving the terms of the Modification and directing Lead Counsel to provide notice to the Class thereof. The Court has received declarations attesting to notice having been provided to the Class in accordance with the Court's directions. A hearing was held on _____, 2009 to determine whether to approve the Modification as fair, reasonable and adequate and to rule upon such other matters as the Court might deem appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. This Order and Final Judgment amends that certain Order and Final Judgment, dated January 23, 2008 (the "Original Judgment"), in the above-captioned proceeding;

¹ All capitalized terms used in this Order and Final Judgment and not defined herein shall have the meanings assigned to them in the Amended Stipulation, as modified by the Modification.

2. The Court has jurisdiction over the subject matter of this action, all members of the Class, and all Settling Defendants pursuant to 29 U.S.C. § 1132(e).

3. In accordance with Federal Rule of Civil Procedure 23 and the requirements of due process, the Class has been given proper and adequate notice of the Settlement, the fairness hearings, the Plan of Allocation Motion and the Modification, such notice having been carried out in accordance with the Court's orders in respect thereof. The Notice, the Publication Notice, the Website Notice, and the notice methodology implemented pursuant to the Amended Stipulation, as modified by the Modification, and the Court's orders (a) constituted the best practicable notice; (b) constituted notice that was reasonably calculated, under the circumstances, to fairly apprise members of the Class of the proposed Settlement, as modified by the Modification, their right to object to the Settlement, as modified by the Modification, and their right to appear at the above-mentioned hearings; (c) constituted due, adequate and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of due process and the Federal Rules of Civil Procedure and any other applicable law.

4. The Settlement, as modified by the Modification, was negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of the action and of the strengths and weaknesses of their respective positions. The Settlement, as modified by the Modification, was reached after the parties had engaged in extensive negotiations with the assistance of a former United States District Judge acting as special master for settlement purposes. Lead Counsel and counsel for Settling Defendants were therefore well positioned to evaluate the benefits of the Settlement, as modified by the Modification, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

5. The proposed Settlement, as modified by the Modification, warrants final approval pursuant to Federal Rule of Civil Procedure 23(e)(1)(A) and (C) because it is fair, adequate, and reasonable to the Class and others whom it affects based upon (a) the likelihood of success on the merits weighed against the amount and form of relief offered in the Settlement, as modified by the Modification; (b) the risks, expense, and delay of further litigation; (c) the judgment of experienced counsel who have competently evaluated the strength of their proofs; (d) the amount of discovery completed and the character of the evidence uncovered; (e) the limited number of objections made to the proposed Settlement, as modified by the Modification; (f) the fact that it is the product of arm's-length negotiations as opposed to collusive bargaining; (g) the fact that it is consistent with the public interest; and (h) the fact that it promotes the effectiveness of the Settlement, as modified by the Modification, and distribution of the consideration to the Class independent of the events in Delphi's bankruptcy proceeding.

6. The Settlement, as modified by the Modification, hereby is APPROVED as fair, reasonable, adequate to members of the Class, and in the public interest. The settling parties are directed to consummate the Settlement in accordance with the terms of the Amended Stipulation, as modified by the Modification.

7. The Plan of Allocation is hereby APPROVED as fair, adequate, and reasonable. Subject to the provisions of paragraph 17 below and paragraph 23 of the Amended Stipulation, as modified by the Modification, upon this Order and any order of the Bankruptcy Court approving the Settlement, as modified by the Modification, becoming Final, and upon the Effective Date of the Settlement, as modified by the Modification, the Escrow Agent shall disburse the Net Settlement Fund to the Plans for distribution by the Plans' trustee(s) in accordance with the Plan of Allocation, subject to any amounts withheld by the Escrow Agent

for the payment of taxes and related expenses as authorized in the Amended Stipulation, as modified by the Modification.

8. The Escrow Agent is authorized to pay the reasonable costs of implementing the Plan of Allocation from the Gross Settlement Fund, upon notice to Settling Defendants' counsel, without further order of the Court, notwithstanding that this Order has not yet become Final as that term is defined in the Amended Stipulation, as modified by the Modification.

9. A case contribution award of \$5,000.00 payable from the Gross Settlement Fund is awarded to each Named Plaintiff. Such award may be distributed to each Named Plaintiff by the Escrow Agent upon the Effective Date of the Settlement, as modified by the Modification.

10. The Court retains jurisdiction over this action and the parties, the Plans, and members of the Class for all matters relating to this action, including (without limitation) the administration, interpretation, effectuation or enforcement of the Amended Stipulation, the Modification and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to members of the Class.

11. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Amended Stipulation and the Modification.

12. Named Plaintiffs and all members of the Class, on behalf of themselves, and the Class, and their personal representatives, heirs, executors, administrators, trustees, successors, and assigns, with respect to each and every Settled Claim, fully, finally and forever release, relinquish and discharge, and are forever enjoined from prosecuting, any Settled Claim against any of the Released Parties and shall not institute, continue, maintain or assert, either directly or indirectly, whether in the United States or elsewhere, on their own behalf or on behalf of any

class or any other person or any of the Plans, any action, suit, cause of action, claim or demand against any Released Party or any other person who may claim any form of contribution or indemnity from any Released Party in respect of any Settled Claim or any matter related thereto, at any time on or after the Effective Date.

13. The Settling Defendants fully, finally, and forever release, relinquish, and discharge, and are forever enjoined from prosecuting, the Settled Defendants' Claims against Named Plaintiffs, all members of the Class, and their respective counsel.

14. By operation of this Judgment, all Barred Persons are permanently barred, enjoined and restrained from commencing, prosecuting or asserting, either derivatively or on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any Barred Claims against any of the Released Parties in any forum, action or proceeding of any kind. The Court shall retain exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance, validity, interpretation, administration, enforcement or enforceability of the Bar Order, except to the extent any such matters relate to Delphi's bankruptcy proceeding, which shall be subject to the continuing jurisdiction of the Bankruptcy Court. Lead Counsel shall post the provisions of this paragraph on the website identified in the Notice.

15. Because Barred Persons are barred from asserting any Barred Claims against any of the Released Parties, any judgments entered against Barred Persons in the Delphi ERISA Action will be reduced by the Judgment Reduction Amount. Nothing in the Amended Stipulation, the Modification or this Judgment shall in any manner limit any joint and several liability applicable to any non-settling party as to the portion of any judgment against such non-

settling party in the Delphi ERISA Action remaining after application of any Judgment Reduction Amount.

16. By operation of this Judgment, Settling Defendants are barred and permanently enjoined from bringing against the Barred Persons, either derivatively or on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Barred Claims in any forum, provided that a Settling Defendant shall not be enjoined from bringing Barred Claims against a Barred Person if for any reason such Barred Person asserts, or is legally not barred by this Judgment from bringing, Barred Claims against such Settling Defendant. The entry of the bars, injunctions and related provisions set forth in paragraphs 14 through 16 above is fair to all persons or entities, including but not limited to the Named Plaintiffs, the Settling Defendants, all Class Members, any non-settling defendants, and all Barred Persons.

17. Until the Delphi ERISA Action has been concluded and fully and finally resolved with respect to all Barred Persons, there shall be no distribution from the Net Settlement Fund that would cause the balance remaining in the Net Settlement Fund to be less than the aggregate of Named Plaintiffs' claims for potential damages with respect to all claims against Barred Persons that have not been concluded and fully and finally resolved. In addition, until the Delphi ERISA Action has been concluded and fully and finally resolved with respect to State Street Bank and Trust Company ("State Street"), there shall be reserved from the Net Settlement Fund the sum of \$5,000,000, and if State Street is not adjudicated to be liable in this Action, State Street shall be entitled to reimbursement from such reserve for its costs in connection with the defense of this action, including its reasonable attorneys' fees and related expenses, payable at the time final judgment is entered in State Street's favor on the remaining claims, to the extent

that State Street would have been entitled to assert a claim for contractual indemnity with respect to such costs against one or more Released Parties but for the provisions of Paragraph 14 hereof barring the assertion of Barred Claims against Released Parties. The ERISA Action has been concluded and fully and finally resolved with respect to all Barred Persons, including State Street (with respect to whom the Court entered its Final Judgment on March 18, 2009).

18. All counts asserted in the Delphi ERISA Action against the Settling Defendants or against any Released Party that at any time was a defendant in the Delphi ERISA Action are DISMISSED WITH PREJUDICE, without further order of the Court, pursuant to the terms of the Amended Stipulation, as modified by the Modification. In addition, upon this Order and Final Judgment becoming Final, the Named Plaintiffs and the members of the Class shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally and forever released, and are forever enjoined from prosecuting, any and all Settled Claims. However, in the event that the Settlement is terminated in accordance with the terms of the Amended Stipulation, as modified by the Modification, this Judgment shall be null and void and shall be vacated nunc pro tunc, and paragraph 20 of the Amended Stipulation, as modified by the Modification, shall govern the rights of the parties thereto.

19. There is no just reason for delay in the entry of this Order and Final Judgment, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this ___ day of _____, 2009.

GERALD E. ROSEN
CHIEF UNITED STATES
DISTRICT JUDGE

Mollee Johnston

From: cmecfadmin@mied.uscourts.gov
Sent: Wednesday, September 16, 2009 12:25 PM
To: cmecfadmin@mied.uscourts.gov
Subject: Activity in Case 2:05-md-01725-GER Delphi Corporation Securities, Derivative and "Erisa" Litigation Memorandum

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.***NOTE TO PUBLIC ACCESS USERS***
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U.S. District Court
Eastern District of Michigan

Notice of Electronic Filing

The following transaction was entered by Sarko, Lynn on 9/16/2009 3:24 PM EDT and filed on 9/16/2009

Case Name: Delphi Corporation Securities, Derivative and "Erisa"
Litigation

Case Number: 2:05-md-1725 <https://ecf.mied.uscourts.gov/cgi-bin/DktRpt.pl?207399>

Filer: Neal C. FolckIrene PolitoDon McEvoyKimberly Chase-OrrGreg BartellThomas Kessler
WARNING: CASE CLOSED on 03/18/2009

Document Number: 452

Copy the URL address from the line below into the location bar of your Web browser to view the document: Document: https://ecf.mied.uscourts.gov/doc1/09703772798?magic_num=69395986&de_seq_num=1582&caseid=207399

Docket Text:

MEMORANDUM re [451] MOTION for Order <I>Preliminarily Approving Settlement Modification, Forms and Method of Notice with Respect Thereto, and for Judgment Modification Under Fed. R. Civ. P. 60</I> by Neal C. Folck, Thomas Kessler, Greg Bartell, Kimberly Chase-Orr, Don McEvoy, Irene Polito (Attachments:

(1) Index of Exhibits, # (2) Exhibit A, # (3) Exhibit B, # (4) Exhibit C, # (5) Exhibit D, # (6) Exhibit E, # (7) Exhibit F) (Sarko, Lynn)

2:05-md-1725 Notice has been electronically mailed to:

Abraham Rappaport - MDL NOT ADMITTED rapplaw@yahoo.com

Amy C. Williams-Derry [awilliams-](mailto:awilliams-derry@kellerrohrback.com)
derry@kellerrohrback.com,
lgerber@kellerrohrback.com, mkjohnston@kellerrohrback.com, shugg@kellerrohrback.com

Andrew W. Stern astern@sidley.com

Benjamin Hinerfeld - MDL NOT ADMITTED bhinerfeld@btkmc.com

Bradley E. Beckworth - MDL NOT ADMITTED bbeckworth@nixlawfirm.com,
ivanab@nixlawfirm.com

Bridget M. Moore
bridget.moore@bakerbotts.com

Bruce L. Townley	bruce@mfishlaw.com
Cari C. Laufenberg	claufenberg@kellerrohrback.com
Christine E. Webber	cwebber@cohenmilstein.com
Clark C. Johnson lwagner@stites.com	cjohnson@stites.com,
Debra B. Pevos	dpevos@swappc.com
Dennis J. Levasseur kjarvis@bodmanllp.com	dlevasseur@bodmanllp.com,
Dennis M. Barnes bmorris@bsdd.com	dbarnes@bsdd.com,
Elwood S. Simon evan@esimon-law.com	esimon@esimon-law.com,
Frances Bivens ecf.ct.papers@dpw.com	frances.bivens@dpw.com,
Fred K. Herrmann brm@krwlaw.com, ecf@krwlaw.com	fkf@krwlaw.com,
Gary A. Gotto	ggotto@kellerrohrback.com
Gary S. Graifman - MDL Non Admitted	ggraifman@kgglaw.com
Hannah Greenwald	Hannah@blbglaw.com
Howard T. Longman - MDL NOT ADMITTED ssbny@aol.com	tsvi@aol.com,
J. Brian McTigue dbond@mctiguelaw.com	bmctigue@mctiguelaw.com,
James D. VandeWyngearde kuschj@pepperlaw.com	vandewyj@pepperlaw.com,
James J. Sabella	jsabella@gelaw.com
Jane B. Stranch cbatey@branstetterlaw.com	jbs@branstetterlaw.com,
Jeffrey J. Angelovich - MDL NOT ADMITTED bethgoodman@nixlawfirm.com	jangelovich@npraustin.com,
Jill M. Wheaton chammond@dykema.com	jwheaton@dykema.com,
John P. Zuccarini evan@esimon-law.com	zuccarinis@aol.com,
John Patrick Coffey	sean@blbglaw.com

John W. Reale	jreale@kirkland.com
Joseph E. Papelian	joseph.e.papelian@delphi.com
Lynn L. Sarko	lsarko@kellerrohrback.com
Marc L. Newman asl@millerlawpc.com, jns@millerlawpc.com	mln@millerlawpc.com,
Matthew J. Lund mondah@pepperlaw.com	lundm@pepperlaw.com,
Michael G. Pattillo michael.pattillo@bakerbotts.com	, Jr
Michael J. Faris chefiling@lw.com	michael.faris@lw.com,
Michael K. Yarnoff	myarnoff@btkmc.com
Michael P. Coakley blanco@millercanfield.com, schultz@millercanfield.com	coakley@millercanfield.com,
Nancy G. Ross	nross@mwe.com
Pamela Geller bruce@mfishlaw.com	
Patrick E. Cafferty pcafferty@caffertyfaucher.com, pecafferty@aol.com	
Robert N. Eccles	beccles@omm.com
Ron Kilgard	rkilgard@krplc.com
Sara L. Madsen crbaehman@locklaw.com, khriebel@locklaw.com, rmmorton@locklaw.com	slmadsen@locklaw.com,
Scott T. Seabolt	sseabolt@foley.com
Sean M. Handler shandler@btkmc.com	ecf_filings@btkmc.com,
Sherrie R. Savett	ssavett@bm.net
Stephen F. Wasinger kfiema@kickhamhanley.com, swasinger@gmail.com	sfw@sfwlaw.com,
Steven W. Kasten gsullivan@mwe.com	skasten@mwe.com,
Stuart Baskin bpolovoy@shearman.com, parth.chanda@shearman.com	sbaskin@shearman.com,
Stuart M. Grant	sgrant@gelaw.com,

emarks@gelaw.com

Susan Whatley - MDL NOT ADMITTED

susanwhatley@nixlawfirm.com

Thomas J. Tallerico
kbooms@bodmanllp.com

ttallerico@bodmanllp.com,

Timothy A. Duffy
semorris@kirkland.com

tduffy@kirkland.com,

Wilber H. Boies

bboies@mwe.com

William A. Sankbeil
cjb@krwlaw.com

was@krwlaw.com,

William H. Jeffress
william.jeffress@bakerbotts.com

, Jr

2:05-md-1725 Notice will not be electronically mailed to:

Arthur N. Abbey
Abbey & Ellis
212 E. 39th Street
New York, NY 10016

Brad S. Karp - MDL NOT ADMITTED
Paul, Weiss
1285 Avenue of the Americas
New York, NY 10019-6064

Bruce F. Rinaldi
Cohen, Milstein,
1100 New York Avenue, N.W.
500 West Tower
Washington, DC 20005

Carl L. Stine
Wolf, Popper,
845 Third Avenue
12th Floor
New York, NY 10022

Christopher J. Keller - MDL NOT ADMITTED
Labaton, Scharow
100 Park Ave
12th Floor
New York, NY 10017

Christopher S. Hinton - MDL NOT ADMITTED
Wolf, Haldenstein
270 Madison Ave
Suite 801
New York, NY 10016

Daniel F. Kolb
Davis, Polk,
450 Lexington Avenue
New York, NY 10017

David R. Scott
Scott & Scott
108 Norwich Avenue

P.O. Box 192
Colchester, CT 06415

Dennis J. Johnson
Johnson and Perkinson
P.O. Box 2305
1690 Williston Road
South Burlington, VT 05403

Eric J. Belfi
Murray, Frank,
275 Madison Avenue
Suite 801
New York, NY 10016

Evan J. Smith
Brodsky & Smith
11 Bala Avenue
Suite 39
Bala Cynwyd, PA 19004

Frederic S. Fox
Kaplan, Fox,
850 Third Avenue
14th Floor
New York, NY 10022

Gregory S. Bruch - MDL NOT ADMITTED
Foley & Lardner
Washington Harbour, Suite 500
3000 K Street NW
Washington, DC 20007-5109

Jacqueline Sailer
Rabin & Peckel
275 Madison Avenue
34th Floor
New York, NY 10016

Jean-Marc Zimmerman - MDL NOT ADMITTED
Zimmerman & Levi
226 St. Paul Street
Westfield, NJ 07090

Joe R. Caldwell
Baker Botts
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400

, Jr

Lee Squitieri
Squitieri and Fearon
32 E. 57th Street
12th Floor
New York, NY 10022

Leigh R. Lasky - MDL NOT ADMITTED
Lasky & Rifkind
350 N. LaSalle Street
Suite 1320
Chicago, IL 60610

Lyan Phillips
Irell & Manella LLP
840 Newport Center Dr.
Suite 400
Newport Beach, CA 92660

Michael E Plunkett, Sr
847 W Edgehill Road
San Bernardino, CA 92405

Regina M. Calcaterra - MDL NOT ADMITTED
Barrack, Rodos
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

Richard S. Schiffrin
Schiffrin, Barroway,
280 King of Prussia Road
Radnor, PA 19087

Robert A. Iazard - MDL NOT ADMITTED
Schatz & Nobel
20 Church Street
17th Floor
Hartford, CT 06103

Robert I. Harwood
Wechsler Harwood
488 Madison Avenue
8th Floor
New York, NY 10022

Robert J. Kopecky
Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601

Robert M. Stern - MDL NOT ADMITTED
O'Melveny & Meyers
1625 Eye Street N.W.
Washington, DC 20006

Robert S. Scher - MDL NOT ADMITTED
Foley & Lardner
90 Park Ave
New York, NY 10016

Samuel H. Rudman
Lerach, Coughlin,
58 S. Service Road
Melville, NY 11747

Stanley M. Grossman
Pomerantz, Haudek,
100 Park Avenue
26th Floor
New York, NY 10017

Steven G. Schulman
Milberg, Weiss,
One Pennsylvania Plaza
49th Floor
New York, NY 10119-0165

Travis E. Downs - MDL NOT ADMITTED
Coughlin, Stoia,
655 W. Broadway
Suite 1900
San Diego, CA 92101

, III

William W. Wickersham
Entwistle & Cappucci
280 Park Avenue
26th Floor West
New York, NY 10017-1216

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Document description: Main Document

Original filename: n/a

Electronic document Stamp:

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Document description: Exhibit A

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Document description: Exhibit C

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