UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	)	Chapter 11
	)	
COLLINS & AIKMAN CORPORATION, et al.	)	Case No. 05-55927
	)	(Jointly Administered)
Debtors.	)	Honorable Steven W. Rhodes

REPORT OF JUDY A. O'NEILL, FEE EXAMINER*

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I. INTRODUCTION

Collins & Aikman Corporation (the "Reporting Company"), Collins & Aikman Products Co. and substantially all their direct and indirect wholly-owned subsidiaries incorporated or organized in the United States (collectively, the "Debtors") were a leading tier one supplier of automotive plastic and trim components, systems and modules to a substantial majority of the largest automotive original equipment manufacturers ("OEMs"), including the entity then known as DaimlerChrysler Corporation ("DaimlerChrysler"), Ford Motor Company ("Ford"), General Motors Corporation ("GM"), Toyota Engineering Motor Manufacturing North America, Inc. ("Toyota"), Honda of America Manufacturing, Inc. ("Honda") and Nissan North America, Inc. ("Nissan," and together with DaimlerChrysler, Ford, GM, Toyota and Honda, the "OEM Customers"). The Debtors also provided supply to certain other automotive suppliers (collectively, with the OEM Customers, the "Customers").[1]

The Debtors, whose predecessors had been in operation since 1843, conducted their operating activities through the Reporting Company's wholly-owned subsidiary, Collins & Aikman Products Co. and the direct and indirect subsidiaries of Collins & Aikman Products Co. The Debtors primarily operated in two business segments: a plastics segment ("Plastics"), and a "soft-trim" segment ("Soft Trim"). Through Plastics, the Debtors manufactured and supplied a full range of plastic-based automotive interior products, such as instrument and door panel and console parts, and exterior products, such as bumper parts. Through Soft Trim, the Debtors

[1] The Fee Examiner has not distinguished with respect to the various Customers throughout this Report and has used the term when only a subset of the entire Customer group is involved. The Fee Examiner notes that the Customers changed throughout the cases, but that at all times the Customers included DaimlerChrysler, Ford and GM. The only Customers the Fee Examiner interviewed were DaimlerChrysler, Ford and GM.

manufactured and supplied various automotive carpet and acoustics products and convertible roof products.

At the time of the Debtors' bankruptcy filings, the Debtors were market share leaders in their primary product areas in North America. GM, Ford and DaimlerChrysler (the "Domestic Customers") accounted for approximately 80 percent of the Debtors' revenues in 2005 and the remaining 20 percent of the Debtors' revenues were generated by business from Toyota, Honda and Nissan, as well as several other tier one suppliers. According to some estimates, parts supplied by the Debtors were on 85 percent of U.S. domestic-built vehicles.

On January 12, 2001, Heartland Industrial Partners, L.P. ("Heartland"), the private equity fund that would eventually place several members on the Reporting Company's board of directors (the "Board"), made a $260 million preferred and common stock investment in the Reporting Company to acquire approximately 60 percent of the Reporting Company's stock. Shortly after this investment, the Debtors quickly pursued and closed a series of debt-financed acquisitions. During 2001, the Debtors completed the acquisitions of the Becker Group, L.L.C., an automotive plastics supplier, Joan Automotive and Western Avenue Dyers, L.P., together an automotive cloth supplier, and Textron Automotive Company's Trim division, one of the largest suppliers of assembled cockpit modules, instrument panels and exterior trim parts. These acquisitions had a total transaction value of over $1.6 billion.

During the years preceding the Debtors' bankruptcy filing, the Debtors experienced a severe deterioration in their performance. Increased raw material costs, which the Debtors were unable to recover under their long-term fixed price contracts with their Customers, constituted a significant factor contributing to the Debtors' financial decline. Another factor was the Debtors' inability to recover engineering, tooling and development costs as timely as the Debtors

estimated. The Debtors recovered these costs as an incremental portion of the price paid by Customers for each piece the Debtors produced. Actual volumes from the Debtors' major Customers often failed to meet projected volumes, lengthening the amortization of these investments. The Debtors' overlevered capital structure and well-publicized accounting and management issues prior to their bankruptcy filings compounded the Debtors' other problems. On May 17, 2005 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

As described in further detail below, the Debtors attempted to reorganize over a period of approximately 17 months. To this end, throughout most of 2006, the Debtors focused their efforts on executing their Business Plan (as defined and described below), which was initially issued in January 2006. The Business Plan included projections for the Debtors' adjusted EBITDA for 2006. The projections in the Business Plan incorporated contingencies and assumptions, including cost cutting, Customer price increases, and new business projections which, if met, would have substantially increased the Debtors' 2006 adjusted EBITDA[2] over the Debtors' actual 2005 EBITDA of approximately $60 million. However, the Debtors' financial performance failed to meet the projections in the plan, such that the Debtors materially revised the plan twice during 2006, eventually lowering their projection for adjusted 2006 EBITDA from $265 million to $105.5 million.[3]

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[2] This Report places particular emphasis on the Debtors' 2006 EBITDA. In this situation, the Debtors' 2006 EBITDA was critical because, as described further below, if the Debtors did not achieve EBITDA of $265 million, without third-party concessions the Debtors would not have liquidity necessary to fund their operations and continue their reorganization efforts to enable the creation of value in years after 2006.

[3] In a February 7, 2007 report entitled "December 2006 Financial Performance," the Debtors reported final 2006 EBITDA of $119.4 million.

On October 26, 2006, the Debtors announced in a sealed courtroom that they no longer had the ability to reorganize, and thus would pursue the liquidation of their assets. As of June 30, 2007, approximately $123 million in fees and expenses had been incurred in these cases by twenty-five professionals whose fees are subject to section 327 and section 328 of the Bankruptcy Code.

On May 4, 2007, the Court entered an opinion (the "Fee Examination Opinion") determining the need for a fee examination (the "Fee Examination"). On May 24, 2007, the Court entered an order (the "Fee Examination Order") in accordance with the Fee Examination Opinion, appointing the Fee Examiner and ordering the Fee Examiner to answer the following questions (the "Fee Examination Questions"):

(a) Should the substantial operational, managerial and financial issues in the debtors' plastics division and the effect of such issues on the achievability of management's business plan goals have been discovered earlier?

(b) If so, did the delay result in either unnecessary losses or reductions in creditor recoveries?

(c) Were the key assumptions underlying management's business plan, the nature and substance of the debtors' operating challenges in the debtors' plastics division and substantive developments and changes in the debtors' views on future operating performance adequately and timely disclosed to the debtors' principal creditor constituencies?

(d) Once it became reasonably clear that the value of the debtors' estate was substantially diminished or that a reorganization was unlikely, did any of the estate professionals undertake or continue work on activities that no longer were reasonably necessary under the circumstances in view of their roles?

II. SCOPE OF FEE EXAMINATION

A. Documents Reviewed

In the course of her investigation, the Fee Examiner or her professionals reviewed various documents, including without limitation those described on Exhibit A.

B. Parties Interviewed

The Fee Examiner conducted informal interviews and examinations of key parties and professionals in these cases, rather than formal depositions. In the course of the Fee Examination, the Fee Examiner interviewed the individuals set forth on Exhibit B. The Fee Examiner worked with the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), and JP Morgan Chase Bank, N.A. (the "Prepetition Agent"[4] and the "Postpetition Agent," and when acting as both simultaneously, the "Agent") to obtain entry of a protective order to protect parties from the disclosure of sensitive confidential information on certain terms (the "Protective Order"). The Protective Order was modified by subsequent stipulations approved by the Court on August 17, 2007 and October 12, 2007. The Fee Examiner sent each person or constituency whose representatives were formally interviewed a letter substantially in the form of Exhibit C (the "Fee Examination Letter"). Through the Fee Examination Letter or otherwise, the Fee Examiner requested that each party interviewed provide input on any documents that should be reviewed and identify any additional parties that should be interviewed pursuant to the Fee Examination. The Fee Examiner conducted additional interviews and followed up on additional points of investigation, as requested by the parties interviewed.

The Fee Examiner conducted her preliminary investigation of the ordinary course professionals on the list attached as Exhibit D and the other non-327(a) professionals (collectively, with the exception of Davis Polk & Wardwell, the "Ancillary Professionals") by consultation with Stacy Fox ("Fox"), the Executive Vice President, Chief Administrative Officer and General Counsel of the Debtors. After discussion with Fox and the objectors, Third Avenue

[4] The Prepetition Agent acted on behalf of a group of Prepetition Lenders and took directions when appropriate from a subset of that group acting which acted as a steering committee for the Prepetition Lenders (together with the Prepetition Agent, the "Bank Group").

and the Prepetition Agent (collectively, the "Objectors"), the Fee Examiner determined it was not worthwhile to further investigate the fees of these professionals.

Several interviewed parties requested and received follow-up interviews. The Fee Examiner verbally provided her preliminary findings to Third Avenue on August 10, 2007 and to the Prepetition Agent on August 13, 2007. The Fee Examiner disseminated a draft of this Report (the "Draft Report") on August 29, 2007. Pursuant to the Fee Examination Order, the Fee Examiner received comments on the Draft Report from various parties, including the Prepetition Agent, Kirkland & Ellis LLP ("Kirkland"), KZC Services, LLC ("KZC"), Lazard Freres & Co. ("Lazard") and Davis Polk & Wardwell ("Davis Polk"), during the consultation period after such distribution. During the consultation period, various professionals also made offers to settle fee disputes, pursuant to discussions with the Prepetition Agent and the Fee Examiner. These offers are discussed in section VII. below. Following the disclosure of her preliminary findings and analysis of the comments on the Draft Report, the Fee Examiner pursued various follow-up issues and prepared this final Report.

III. SUMMARY OF FEE EXAMINER'S CONCLUSIONS[5]

(a) Should the substantial operational, managerial and financial issues in the debtors' plastics division and the effect of such issues on the achievability of management's business plan goals have been discovered earlier?

Yes. From the outset of the cases, the Customers, the Bank Group, the Agent and the Committee (collectively, the "Key Constituents") and the Debtors were aware of the substantial operational, managerial and financial issues in Plastics. Due in large part to these Plastics issues, until the approval of the October 2005 Customer Agreements in December 2005, the Debtors could not formulate a reliable business plan. As a result of the awareness of these issues and the

[5] Certain capitalized terms used and not previously defined herein have the meanings ascribed below.

Debtors' inability to formulate a reliable Business Plan until January 2006, the meaningful inquiry required by this question is whether there was delay in discovering when the *impact* of these issues rendered that Business Plan and the EBITDA projections therein, as modified, unachievable. For that purpose, the Fee Examiner analyzed two periods: (a) January 2006, when the Business Plan was issued; and (b) the summer of 2006 when the Business Plan was modified by revised business plan projections known as the "4+8 Plan" issued in June 2006 and the "6+6 Plan" issued in August 2006.

With respect to the January 2006 period, certain of the Key Constituents argued that the Business Plan was overaggressive and unachievable when it was issued in January 2006. Notwithstanding and after full consideration of these arguments, the Fee Examiner concludes that it was reasonable for the Board and KZC to defer to Frank Macher (who insisted that the Business Plan was achievable) with respect to the achievability of the Business Plan when it was issued in January 2006, despite the issues in Plastics.

With respect to the summer of 2006, the Fee Examiner concludes that based on the Debtors' performance in March, April and May of 2006 (particularly with respect to initiatives intended to correct the issues in Plastics, the failed implementation of which became clear in June 2006) the Debtors should have known that (a) the aggressive $179 million 2006 EBITDA projection in the 4+8 Plan was unachievable considering the Plastics Issues in June 2006; and (b) projected 2006 EBITDA at that time should have more realistically resembled the $105.5 million projected in the 6+6 Plan subsequently issued in August 2006. As a result, the Fee Examiner concludes that there was a delay in discovery of the impact of the Plastics Issues on the Debtors' Business Plan during the period between the issuance of the 4+8 Plan in June 2006 and the 6+6 Plan in August 2006.

(b) If so, did the delay result in either unnecessary losses or reductions in creditor recoveries?

Yes. Given her conclusion that delay existed, the Fee Examiner reviewed the recoveries of each of the Key Constituents to determine whether the delay resulted in either unnecessary losses or reductions in creditor recoveries. As described in more detail below, the Fee Examiner does not believe that the delay resulted in material unnecessary losses or reductions in creditor recoveries, except with respect to: (a) the Prepetition Lenders who funded professionals' fees and likely unnecessarily funded two months of fees as a result of the delay; and (b) the Customers, to the extent they made business decisions during the delay that increased their costs upon liquidation.[6] The Fee Examiner acknowledges that this conclusion requires speculation as to outcomes had the delay had not occurred.

In addition, because of arguments that the Debtors should have proceeded with a more conservative business plan in January 2006, the Fee Examiner has analyzed what the potential outcomes and the recoveries and losses of the same parties might have been had the Business Plan been more conservative when issued in January 2006. She did so to assist the Court in its analysis, in the event the Court comes to a different conclusion. If the Court concludes that the Business Plan should have been more conservative when initially issued in January 2006, the Prepetition Lenders and the Customers likely suffered losses or reductions in recoveries.

[6] As described in further detail below, certain Customers generally released administrative claims against the Debtors through a Customer Agreement and the Debtors' confirmed chapter 11 plan.

(c) Were the key assumptions underlying management's business plan, the nature and substance of the debtors' operating challenges in the debtors' plastics division and substantive developments and changes in the debtors' views on future operating performance adequately and timely disclosed to the debtors' principal creditor constituencies?

Except with respect to the issues noted in the summary answers to questions (a) and (b) with respect to the achievability of the Business Plan and the delay in the summer of 2006, the Fee Examiner concludes that the Debtors adequately and timely disclosed the assumptions underlying the Business Plan (including projections), the substance of the Debtors' operating challenges in Plastics, and the substantive developments and changes in the Debtors' views on future operating performance.

(d) Once it became reasonably clear that the value of the debtors' estate was substantially diminished or that a reorganization was unlikely, did any of the estate professionals undertake or continue work on activities that no longer were reasonably necessary under the circumstances in view of their roles?

Because the Debtors' inability to timely achieve the Business Plan improvements resulted in a *failure to increase* value rather than a true decrease in value, the Fee Examiner concludes that substantial diminution of the Debtors' estates is not relevant to this inquiry, and therefore, that the relevant initial inquiry is whether any particular work was no longer reasonably necessary after reorganization became unlikely. The Fee Examiner concludes that the probability of any reorganization (including one based on the conversion of secured debt to equity) substantially decreased in June 2006, when: (a) the Debtors' projected 2006 adjusted EBITDA fell substantially below $179 million; and (b) reorganization at the lower EBITDA level became necessarily contingent upon additional third-party concessions, such as extraordinary Customer relief which the Fee Examiner concludes was not likely to be obtained.

As stated above, the Fee Examiner concludes that there was a delay between June 2006 and August 2006 in the realization that the Debtors' achievable 2006 EBITDA was substantially

less than $179 million. Given the delay, the Fee Examiner concludes that the decision to liquidate these Debtors reasonably could have occurred approximately two months earlier. Therefore, these cases, and the attendant fees, were unnecessarily extended by approximately two months.

In addition, the Fee Examiner concludes that other, less significant work may have been reasonably unnecessary under the circumstances. That work is specifically identified below.

IV. RELEVANT BACKGROUND FACTS AND FINDINGS[7]

Exhibit E is a timeline that sets forth certain key events that are particularly significant to the Fee Examiner's conclusions. Many of these events are discussed in greater detail in the text below.

A. Inception of these Bankruptcy Cases

i. Capital Structure of the Debtors

As of the Petition Date, the Reporting Company and substantially all its domestic direct and indirect subsidiaries (the "Guarantor Parties") were borrowers and/or guarantors under the Senior Secured Credit Facility with the Prepetition Lenders (the "Prepetition Loan Facility"). Approximately $748 million was outstanding under such facility as of the Petition Date. In addition, Collins & Aikman Products Co. also had: (a) approximately $520.7 million in principal and interest outstanding under unsecured 10 3/4 percent Senior Notes due 2011, issued on December 20, 2001 (the "Senior Notes"); and (b) approximately $414.4 million in principal and interest outstanding under unsecured 12 7/8 Senior Subordinated Notes due August 15, 2012,

[7] These facts have been taken from the statements made by various individuals during the Fee Examiner's investigation. Many of these facts are without independent verification. To the extent possible, where disputes exist as to key facts, the Fee Examiner has attempted to note the contradictory facts.

issued on August 26, 2004 (the "Senior Subordinated Notes"). The Senior Notes and the Senior Subordinated Notes were guaranteed by unsecured guaranties of the Guarantor Parties.

Collins & Aikman Products Corporation also had $127 million outstanding as of the Petition Date on a certain receivables financing facility (the "GECC Facility") provided by General Electric Capital Corporation ("GECC"). The Debtors also guaranteed obligations of their European affiliates under an overdraft facility provided by the Agent, which obligations totaled $21 million as of the Petition Date. As of the Petition Date, the Debtors had other general unsecured debt of $539 million. A chart of the Debtors' capital structure is attached as Exhibit F.

ii. Liquidity Issues

Prior to the Petition Date, the Debtors leveraged most of their assets to try to meet their liquidity needs. Much of the Debtors' equipment and real estate was subject to leases as a result of sale-leaseback transactions. The Debtors securitized their receivables pursuant to the GECC Facility.

On April 4, 2005, the Debtors announced a commitment by Credit Suisse First Boston to provide an additional $75 million of term loan financing under the Prepetition Loan Facility. This loan closed on April 8, 2005. The Debtors quickly consumed this additional funding. Less than five weeks later, the Debtors found themselves without sufficient cash.

As a result, on May 12, 2005, the Reporting Company filed an 8-K report (the "May 2005 8-K") with the Securities and Exchange Commission (the "SEC"), announcing a severe cash crisis. The Reporting Company explained that it was fully drawn on the Prepetition Loan Facility, and would fund ongoing operations by accessing remaining availability under the GECC Facility and certain foreign receivables factoring and "fast pay" financing programs. In

the May 2005 8-K, the Reporting Company stated that for the near future, it expected to operate its businesses, which generated almost $4 billion in annual sales, with approximately $20 million or less of daily available liquidity.

iii. Information Issues

By all accounts, the Debtors' financial reporting and management processes and controls were severely deficient as of the Petition Date. In Plastics, the Debtors had no "flash" reporting systems or reliable cash management processes, and lacked the financial reporting systems that are typical in similar companies, which would permit instantaneous financial review of a company's integrated operations. As a result, financial reports for Plastics' plants had to be created after the fact, by looking back on a given month's performance.

In addition to the Debtors' lack of reporting systems, at the outset of the cases, fear prevented transparency as to financial issues. The ongoing government investigation had created an atmosphere of fear amongst many employees, who were concerned about discussing problems with the Debtors' professionals. Employees even requested the presence of personal counsel during conversations with the Debtors' professionals. During the tenure of David Stockman ("Stockman"), the Debtors' prior CEO, those who questioned finances or strategy met with disfavor, creating a corporate culture that stymied problem identification and delivery of pertinent information.

Furthermore, the Reporting Company had ceased filing 10-K reports with the SEC after March 17, 2004. The Debtors experienced financial accounting and reporting irregularities during the period preceding the Petition Date, including allegedly improper treatment of supplier rebates. On March 17, 2005, the Reporting Company publicly announced in a filing with the SEC on Form 8-K (the "March 2005 8-K") and an accompanying press release that it had failed

to file its annual report on Form 10-K containing fiscal year 2004 audited financial statements by its due date on March 16, 2005.

The Reporting Company stated in the March 2005 8-K that it expected to: (a) restate financial results for the nine months ended September 30, 2004 to reflect correct accounting for various rebates; and (b) reduce its previously reported operating income during the 9 months prior to September 30, 2004 by between $10 million and $12 million. The Reporting Company also stated that the historical financial statements for the period during the 9 months prior to September 30, 2004 should no longer be relied upon. The Reporting Company announced an investigation into whether a restatement of results prior to 2004 would be necessary. Such a restatement has not occurred.

On or about May 11, 2005, the Debtors accepted the resignation of Stockman, the Chief Executive Officer and Chairman of the Board. The Debtors installed Charles Becker ("Becker") as acting Chief Executive Officer.[8]

iv. Distressed Emergency Bankruptcy Filing

On Thursday, May 12, 2005, only five days prior to the Petition Date, the Debtors retained Kirkland to act as restructuring counsel because the Debtors were in severe financial distress. By all accounts, the scene at the Debtors' headquarters was chaotic, even for a distressed soon-to-be chapter 11 debtor. On Friday, May 13, 2005, the Debtors worked with the Agent to line up debtor-in-possession ("DIP") financing from certain lenders (the "DIP Lenders"). The Agent recommended three potential financial advisor candidates, including AlixPartners and KZC.

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[8] On March 26, 2007, federal prosecutors in New York indicted Stockman, alleging he engaged in "a scheme ... to defraud [the Debtors'] investors, banks and creditors by manipulating [the Debtors'] reported revenues and earnings."

The Debtors hired KZC on May 13, 2005. The Board discussed whether KZC's lack of automotive industry experience would affect the restructuring. The Board ultimately hired KZC because: (a) KZC's work on the Enron bankruptcy case (which involved similar SEC reporting issues) and other multi-billion-dollar complex cases demonstrated KZC's skill in restructurings; and (b) KZC's independence, caused by its lack of automotive industry allegiances, would enable KZC to take a fresh look at the Debtors' contractual relationships with the Customers. A team from KZC, including John Boken ("Boken"), began working at the Debtors' headquarters on Saturday, May 14, 2005. The Debtors immediately appointed Boken as their Chief Restructuring Officer. On May 17, 2005, the Debtors hired Lazard to serve as their investment banker.

Based on assurances by the Debtors' personnel that they had sufficient liquidity to fund operations for a few weeks, Kirkland and KZC began to plan for a controlled filing. It quickly became apparent to the professionals that the Debtors had actually run out of cash on Friday, May 13, 2005, when the Prepetition Agent stopped honoring checks drawn on the Debtors' credit facilities.

To investigate the cash flow issues, Boken met with the Debtors' Chief Financial Officer, Bryce Koth, and Treasurer, John Valenti. Both expressed shock at the Debtors' lack of cash. Both anticipated available cash from a payment of $25 million to the Debtors by DaimlerChrysler on Monday, May 16, 2005. KZC invalidated this assumption when it confirmed that the $25 million payment was already earmarked for application against the obligations owed to GECC on the GECC Facility.

The Debtors had less than $1 million in cash on hand. Because this amount was insufficient to continue the Debtors' operations, the professionals prepared for an immediate

chapter 11 filing. The Debtors filed chapter 11 petitions on May 17, 2005, only three days after KZC was hired.

On May 24, 2005, the United States Trustee appointed the following entities to the Committee: (a) Third Avenue (which had purchased 50.1 percent of the Senior Notes);[9] (b) MacKay Shields (which had purchased a controlling interest in the Senior Subordinated Notes); (c) BNY Midwest Trust Company; (d) Law Debenture Trust Company of New York; (e) the Pension Benefit Guaranty Corporation; (f) the United Steel Workers of America AFL-CIO; (g) the International Union, UAW; (h) the Brown Corporation of America; and (i) Delphi Corporation. David Barse ("Barse") of Third Avenue served as the Chairman of the Committee. Neil Goldman of MacKay Shields served as the Co-Chairman.

On or around June 1, 2005, the Committee retained Alvarez & Marsal ("Alvarez") as financial advisor. On or around June 7, 2005, the Committee retained Chanin Capital Partners ("Chanin") as investment banker. The Committee retained both Chanin and Alvarez despite Alvarez's attempt to convince the Committee that it could provide both financial advisory and investment banking services to the Committee.

v. Management Issues

During the period immediately following the Petition Date, KZC learned that the Debtors' corporate management was inadequate. Much of the then-existing management team was considered to be weak and incapable of addressing the large hurdles faced by the Debtors. As a result, the positions of Chief Executive Officer, Chief Financial Officer, General Counsel,

[9] Third Avenue acquired a majority of the Senior Notes after placing the Debtors on their watch list in the fall of 2004, and waiting for bond prices to fall. The Debtors were attractive, in part, because concerns with David Stockman provided an opportunity to easily change management. Upon accumulation of 50.1 percent of the Senior Notes, Third Avenue believed it held a "blocking" vote of all unsecured claims.

President of Plastics Division, President of Soft Trim, Vice President of Manufacturing Operations, Treasurer and Chief Engineer, among other important posts, were either vacant for at least some period or filled by new personnel during the first several months of these cases.

All parties determined that, in order to reorganize the Debtors, the Debtors needed a strong operations manager to effect an operational turnaround, particularly in Plastics. The Debtors sought to retain Macher in the summer of 2005. Macher had concluded a successful tenure as Chief Executive Officer and Chairman of the Board of Federal Mogul. He had an outstanding reputation in the automotive industry for improving operations, including through cost cutting.

On July 7, 2005, the Debtors: (a) accepted the resignation of Charles Becker; (b) appointed Macher as President and Chief Executive Officer;[10] and (c) appointed Stephen Cooper ("Cooper"), Chairman of KZC, to be Chairman of the Board, and Leonard LoBiondo ("LoBiondo"), a managing director of KZC, to the Board. The Debtors also announced the establishment of a restructuring committee of the Board, which included Cooper, LoBiondo, Anthony Hardwick, Timothy Leuliette, and Daniel Tredwell.

Macher hired a number of executives to assist with the Debtors' restructuring. Macher hired: (a) Susan Armstrong as Vice President of Strategic Planning in July 2005; (b) Timothy Trenary ("Trenary") as Vice President, Treasurer in September 2005 (subsequently promoted to Chief Financial Officer in February 2006); (c) Fox as General Counsel in November 2005; (d) Matti Masanovich ("Masanovich") as Vice President, Internal Audit in November 2005

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[10] Under his employment agreement, Macher was entitled to a 20 percent share of the Debtors' incentive compensation pool in the event of confirmation of a plan or sale of substantially all the assets of the Debtors. The size of the incentive compensation pool varied according to either the post-reorganization enterprise value of the Debtors or the aggregate transaction value in the event of a sale of substantially all the Debtors' assets.

(Masanovich became Controller in March 2006); (e) Peter Speers as Vice President, Financial Planning in November 2005; (f) Dennis Profitt ("Profitt") as President of Plastics in December 2005; (g) James Wynalek ("Wynalek") as Chief Technology Officer in December 2005 (Wynalek was appointed President of Plastics on August 1, 2006, after Profitt vacated the position); (h) Mark Leyda as Vice President, Human Resources in January 2006; (i) Mary Ann Wright ("Wright") as Vice President, Commercial and Program Management in February 2006; and (j) Michael De Irala as Vice President, Advanced Manufacturing in February 2006.

B. Initial Phases of Restructuring Efforts: May 2005 – October 2005

i. Initial Postpetition Financing and June 2005 Customer Agreement

At filing, the Debtors obtained a $300 million debtor-in-possession facility (the "DIP Facility") they had negotiated with the Postpetition Agent. The DIP Facility encompassed a $150 million interim financing commitment, with the remaining $150 million to be loaned thereafter, pursuant to a postpetition credit agreement (the "DIP Credit Agreement"). The interim facility was intended to cover borrowing needs over the initial four weeks of these cases.

By June 11, 2005, the Debtors had consumed all of the initial $150 million commitment under the DIP Facility. This consumption occurred, in part, because the GECC Facility was not paid down as anticipated. Upon investigation, Boken learned that the projected pay down of the GECC Facility did not occur as anticipated due to the miscalculation of the borrowing base on that facility. (The borrowing base incorrectly included fraudulent receivables and prepetition receivables that were withheld by Customers.) Given the lack of available collateral and the unanticipated speed at which the interim financing was spent, the Postpetition Agent informed

the Debtors that it would not loan the additional $150 million under the DIP facility.[11] As a result, within three weeks of the Petition Date, the Debtors were again without cash. The Debtors were forced to seek funding from the Customers, as the lenders of last resort.

The Customers agreed to fund $30 million in bridge financing (the "Bridge Financing") on an unsecured administrative claim basis to continue the Debtors' operations pending the establishment of other financing arrangements. Without the Bridge Financing, the Debtors would have been forced to cease operations. The Court approved the Bridge Financing on June 23, 2006.

The Customers dispensed the $30 million under the Bridge Financing on the basis of actual cash needs, which were determined during daily calls with the Debtors. The Debtors' viability hung in the balance with those daily calls. Given the Debtors' liquidity issues and the state of chaos, the Key Constituents placed professionals on site at the Debtors' headquarters and plants. On site at any time were approximately twelve to fifteen people from KZC on behalf of the Debtors, three to five people from Capstone on behalf of the Prepetition Agent and the Postpetition Agent, and twelve to twenty-four people from BBK on behalf of DaimlerChrysler, GM, Honda and Toyota. BBK had both operations and financial professionals analyzing the Debtors. Ford retained operations and financial professionals from Grant Thornton, some of which were on site at the Debtors. In addition, Alvarez (for the Committee) and Kraft Corporation (for Nissan) had personnel on site from time to time.

Becker was generally uncomfortable negotiating against the Debtors' Customers for necessary concessions in connection with the Bridge Financing, particularly because the

[11] The Debtors had few assets to support the additional DIP facility. As stated above, the Debtors had leased a substantial portion of their real estate and equipment and, given the accelerated payment terms by the Customers, the Debtors had insignificant post-petition receivables.

Prepetition Agent took the position that the Customer funding would be subordinate to the liens of the Prepetition Lenders. Therefore, Boken and Schrock took the lead in these discussions.[12]

On or around June 29, 2005, the Committee threatened fraudulent conveyance, antitrust and other litigation against the Customers and brought an expedited motion to compel the Debtors to reject unprofitable contracts. These actions were consistent with the Committee's strategy to obtain substantial relief from the Customers and avoid an immediate sale of the Debtors' assets, which the Committee believed would be detrimental to unsecured creditors.[13] In the absence of Customer concessions, at this time there was insufficient enterprise value in the Debtors to ensure full coverage of the Prepetition Lenders' debt and thus a recovery for the unsecured creditors. *See* Exhibit G: 2005 Adjusted EBITDA and Exhibit H: Estimated Enterprise Value.[14] The Committee perceived it had leverage because the Debtors' parts were used in 85 percent of automobiles produced in the U.S. The Committee recognized that shutting down the Debtors would substantially halt U.S. automotive production.

On July 8, 2005, the Debtors and the Customers entered into an agreement (the "July 2005 Customer Agreement"), pursuant to which the Customers provided, among other things: (a) $82.5 million of temporary price increases through September 30, 2005 (the "July 2005

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[12] The Agent confirmed that Boken's status as an "outsider" in the automotive community enabled him to negotiate more independently with the Customers, affirming the Board's rationale for hiring KZC.

[13] As stated above, substantially all of the Key Constituents: (a) approximated the value of the Debtors by multiplying annual EBITDA by five; and (b) assumed a necessary threshold valuation of approximately $1.25 billion in order for the unsecured creditors to have a recovery. Therefore, annual EBITDA needed to be at least approximately $250 million for value to clearly extend beyond secured and priority claims to unsecured creditors. *See* Exhibit G and Exhibit H.

[14] Throughout this Report, when discussing the Debtors' enterprise value, the Fee Examiner has adopted a rough EBITDA-based valuation approach used by most of the people interviewed. This approach calculates enterprise value as a figure that is five times adjusted annual EBITDA. The Fee Examiner acknowledges that value is not typically determined on the basis of a single year's EBITDA. However, in this instance, as described in various portions of this Report, the Debtors' 2006 EBITDA was critical to the Debtors' continued viability and reorganization efforts and to permit the Debtors to establish a foundation for obtaining value in future years.

Customer Funding Period") under existing contracts; (b) an additional $82.5 million of DIP financing (subordinated to the Prepetition Loan Facility); (c) "net instant" (i.e., 5-day) payment terms;[15] and (d) an agreement not to resource production away from the Debtors prior to September 30, 2005. Despite the fact that the Customers were loaning post-petition funds, the Prepetition Agent required the loans to be junior to the Prepetition Loan Facility.

The Committee objected to the approval of the July 2005 Customer Agreement on the grounds that, among other things, the Debtors had failed to properly exercise their leverage against the Customers by (a) agreeing not to seek further price concessions under the Customers' apparently loss-producing contracts during the July 2005 Customer Funding Period; and (b) granting liens to the Customers, which elevated the Customer loans above the claims of unsecured creditors.

On August 11, 2005, the Court approved the July 2005 Customer Agreement. The July 2005 Customer Agreement was intended to provide a framework and time for the Debtors to formulate longer-term solutions to their problems. The solutions contemplated, at the time, included negotiations with Customers regarding long-term pricing and other contract relief. In order to provide a framework for further negotiations, the July 2005 Customer Agreement required the Debtors to develop a business plan by August 31, 2005.

Throughout the summer of 2005, the Debtors' primary focus was daily cash management. The Debtors' entire finance department, a team from KZC, and a large team from various Customers met daily to manage and disburse cash. This process eventually became much less

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[15] Ironically, these 5-day payment terms actually created difficulty for the Debtors, because: (a) to be viable in the long term, the Debtors would have to be weaned off of these extremely short payment terms and resume normal payment terms; and (b) the Debtors would not have sizeable receivables upon exit to support exit financing requirements.

cumbersome. However, it continued until subsequent price increases granted by the Customers took effect in October 2005. Simultaneously, KZC worked to establish cash management and financial reporting processes.

ii. Problems in the Debtors' Plastics Division

From the outset of the cases, it became apparent to all constituents that Plastics suffered from a number of critical problems. Plastics had negative EBITDA and cash flows, in addition to substantial near-term capital expenditure requirements. In addition, Plastics lacked effective management throughout the organization. Becker terminated the President of Plastics within three weeks of the Petition Date. The Chief Financial Officer of Plastics was terminated on April 28, 2006. Moreover, Plastics' plants were operating at only 60 to 70 percent capacity. At the same time, Plastics' costs were very high because of substantial above-market facility and equipment lease charges.

In Plastics, programs were often awarded three to four years before the start of production. The Debtors had not received any significant new business for approximately one year preceding the Petition Date. Given their instability, the Debtors did not expect significant new awards of business while in bankruptcy. With the run-off of existing programs and the lead time in awards, the Debtors had to receive "transfer business" previously sourced to other suppliers in order to preserve their historical sales volumes.

The Debtors' contracts with the Customers were generally fixed price contracts, which did not provide for recovery of increases in raw material prices. Raw material prices (particularly resin prices) had increased dramatically, eroding the Debtors' margins. Notwithstanding that erosion, the Debtors were contractually committed to reduce pricing every year by set percentages.

These contracts also committed the Debtors to produce service parts for years (often ten or more) after primary production ceased. The Debtors were obligated to sell the service parts at the original price set for products produced during the program life. The Debtors' costs had increased from the time that they entered into these contracts, rendering the Debtors' actual costs to produce such parts as high as two to three times the original price under the contract.

In addition, the Debtors' contracts with the Customers often required significant investment of capital by the Debtors for engineering and design, capital equipment and tooling. Certain of these items, such as engineering and design costs, were amortized by the Debtors over the life of the program, with payment obtained through incremental portions of the price of each part produced and sold.

Plastics had poor pricing data, and often priced parts with inaccurate margins. Additionally, the Debtors priced parts based on the assumption that full production program volume estimates would be met. The Debtors advanced funds for various capital investments, including engineering and design costs, with the expectation of reimbursement by the Customers based upon estimated volumes. Because these volumes were not achieved, the Debtors were unsuccessful in predicting when their program investments would be repaid. Indeed, the Debtors' survey of one Domestic Customer's programs illustrated that out of fifty programs, volume estimates were achieved for only one program.

The Debtors' tooling system made their advance cash investment greater than that of most other suppliers. The Debtors produced in-house approximately half of the tooling they used. As a result, the Debtors financed themselves tooling costs that are typically financed by outside tooling vendors. The Debtors had approximately $350 million of open purchase orders with the Customers which included amortization of some amount of the Debtors' advance

investment over the piece price of parts. Tooling is commonly reimbursed after the completion of the Production Part Approval Process ("PPAP"). In many instances, the Debtors' internal spend on tooling exceeded the amount of the respective tooling purchase order, compounding the burden created by the Debtors' financing of tooling. The Debtors could not recover this incremental amount when the OEMs conducted tooling audits.

Plastics did not have competent plant managers. Plastics experienced extensive turnover after the Petition Date, leaving gaps in Plastics' roster of plant managers and controllers. *See* Exhibit I: Plant Leadership Assessment dated June 8, 2006.

An example of Plastics' problems with plant management arose at the facility in Hermosillo, Mexico. The Debtors had a critical and large Ford Fusion launch scheduled from their Hermosillo plant in early 2006. When Macher arrived, the Debtors were unprepared and three or four months behind Ford's schedule. The manufacturing process was not established and personnel were not adequately trained. According to Macher, the Debtors did not even have screwdrivers to put parts together. The Debtors were painting parts by hand, producing 30 or 40 parts per day when they should have been producing 200 per day and ramping up towards 1000 per day for full production. Macher used his leadership to address these problems. Macher traveled to Hermosillo and reorganized the production. By the time of the launch, the Debtors were producing the proper amount of parts, while Macher was still improving the process.

There also had been no capital investment in Plastics' plants for years prior to the Petition Date. Maintenance had not been performed in Plastics' facilities as necessary, which precipitated production and quality issues. The most glaring example of problems resulting from lack of maintenance occurred in the summer of 2006, when Capstone representatives and Macher toured the Debtors' Evart, Michigan plant. A thunderstorm revealed roof leaks so significant

that within minutes, water was ankle-deep and surrounded electrical equipment. The roof situation had been reported for repair prior to the Petition Date, but these requests were ignored because of liquidity issues. As a result of the failure to correct this issue, the problem was not reported again.

Plastics' plants did not have reliable systems for providing timely plant-level financial information, or for tracking effective material management or scrap levels. Monitoring of plant performance primarily occurred through a historical review of plant results and performance each month, in arrears. The lack of effective projection and monitoring systems delayed the discovery of problems. For example, if a plant was delinquent on delivery and was therefore required to deliver parts to Customers by air freight, upper management would not be aware of the issue until one month later when historical reporting occurred. Therefore, the issue could not be addressed until after significant costs had been incurred. An egregious example of the problems arising from the deficient reporting mechanisms occurred in Plastics' Guelph, Ontario plant. There, historical reporting evidenced a change in EBITDA from a negative amount to a positive $40 million over the course of two months, without explanation.

By early summer of 2005, KZC concluded that the Debtors' Plastics business was unsustainable given its condition and that the Debtors' economic model for that business was "broken." KZC informed the Agent and the Committee of this conclusion, and advised them that the potential success of a Plastics restructuring depended on: (a) reconstituting the management team (with focus on finding industry operating expertise in plastics); (b) securing liquidity enhancements and other significant accommodations from the OEM Customers; (c) obtaining significant transfer business from the OEM Customers to fill a future gap in revenue created by prepetition resourcing and loss of business; and (d) implementing an operational cost-savings

turnaround. At this point, all constituencies agreed that rather than sell or wind-down the business, it made sense to hire an industry expert, seek concessions from the Customers, and attempt to improve the Plastics business.

iii. Government Investigation

From before the Petition Date until March 23, 2007, the United States Department of Justice (the "DOJ") and the SEC investigated the Debtors' prepetition accounting and financial reporting irregularities. The government expected the Debtors to perform much of the investigative work at their own expense. The Audit Committee of the Board oversaw the internal investigation, which was substantially handled by Davis Polk and Ernst & Young LLP ("E&Y").[16] The Debtors' chief goal in connection with the investigation was to avoid being indicted or fined. These activities accrued over $10 million in fees and expenses. Davis Polk was not initially comfortable with simultaneously representing both the audit committee and the Debtors. Therefore, during the initial stages of these cases, Kirkland represented the Debtors with respect to the investigation and Davis Polk represented the Debtors' audit committee in the matter. Kirkland assisted with collection and review of documents in response to government subpoenas, and then would send the documents to Davis Polk for Davis Polk's review on behalf of the audit committee. Kirkland's personnel also represented the Debtors in connection with employee interviews with the DOJ and the SEC. Shortly after Fox assumed the role of General Counsel for the Debtors, the Debtors determined that Davis Polk could represent both the audit

[16] Both of the Objectors questioned the amounts expended on the investigation. Because E&Y's fees are outside of the scope of the Fee Examination Order (due to the prior entry of a final order approving such fees), the Fee Examiner investigated only those of Davis Polk.

committee on behalf of itself and the Debtors. The Debtors thereby substantially reduced Kirkland's role in this matter.[17]

Once the Debtors publicized in October 2006 that they would pursue a liquidation rather than restructuring, the Debtors requested that Davis Polk wind-down this work. The wind-down entailed finishing the document production already underway and transitioning the document databases to the government.

iv. August 2005 Business Plan

Pursuant to the July 2005 Customer Agreement, the Debtors distributed a business plan on August 31, 2005 (the "August 2005 Business Plan"). Given the chaos at the outset of these cases, the Debtors' professionals did not completely understand the Debtors' true financial and operational challenges at the time they issued the August 2005 Business Plan. A copy of the August 2005 Business Plan is attached as Exhibit J. The August 2005 Business Plan was disseminated to the Agent and the Committee, in addition to other Key Constituents.[18]

The August 2005 Business Plan projected a baseline[19] 2006 adjusted EBITDA of between $80 million and $90 million, prior to adjustments and inclusion of restructuring professional fees and retirement charges. The August 2005 Business Plan also projected that the

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[17] It appears that Kirkland billed approximately $352,556 of fees to the government investigation from September 2005 through May 2006. Kirkland began to shift their responsibilities to Davis Polk in November 2005, substantially decreasing Kirkland's fees on this work thereafter.

[18] The references to "Business Plan" and attendant discussion in this Report do not include the August 2005 Business Plan because that plan was formulated without the benefit of reliable financial information and was generally understood to be a "placeholder" until the 2006 Operating Plan could be formulated as discussed below.

[19] The concept of "baseline" annual EBITDA, as used in this Report, means EBITDA prior to improvements assumed in a given business plan, such as Customer price increases or cost-savings.

Debtors would achieve a 2006 adjusted EBITDA ranging from $278 million to $333 million.[20] The projections for adjusted 2006 EBITDA in the August 2005 Business Plan assumed that the Debtors would achieve in 2006: (a) between $139 million and $159 million of EBITDA impact in price increases from the Customers; (b) between $48 million and $70 million of EBITDA impact in operational improvements; and (c) between $11 million and $14 million of EBITDA impact in corporate overhead savings.

In the August 2005 Business Plan, and each of their business plans issued thereafter, the Debtors projected 2006 adjusted EBITDA using the 2005 EBITDA figure as a foundation. However, at the time of the preparation of the August 2005 Business Plan, which was the first of the Debtors' business plans that projected adjusted EBITDA for 2006: (i) the Debtors did not have reliable historical financial reports; or (ii) the benefit of actual results for the remaining four months of 2005, which was significant given the Debtors' difficulty in projecting future performance due to their inadequate information systems. For its part, as of September 29, 2005, Capstone estimated the Debtors' baseline 2005 EBITDA to be approximately $50 million.[21]

The key risk factors described in the August 2005 Business Plan included: (a) the heavy dependence of Debtors' revenues on sales volumes for DaimlerChrysler, GM and Ford vehicles at a time when market shares of those OEMs continued to deteriorate; (b) the outcome of final Customer negotiations on pricing concessions which were anticipated to occur; (c) the potential increase over time in the primary Customers' ability to resource core contracts; (d) the sufficiency of capital resources to maintain production and make progress on launches and future

[20] Applying a multiple of 5 times adjusted EBITDA, the August 2005 Business Plan implied an enterprise valuation for the Debtors of between $1.39 billion and 1.67 billion.

[21] During the course of 2005, the Debtors suffered substantial cost increases, which, if extrapolated over a year, would have an annual EBITDA effect of approximately negative $77 million.

programs during restructuring; and (e) the ability to pass through to Customers future price increases in raw materials. The August 2005 Business Plan stated that if the projections were achieved, the Debtors would become the industry leader in EBITDA margin performance (as a percentage of sales).

v. Negotiation of October 2005 Customer Agreements

In August 2005, after being substantially consumed with the Debtors' immediate liquidity needs during the initial months of the cases, the Debtors and other Key Constituents turned to longer-term liquidity issues. The Debtors determined that their contract pricing was substantially inadequate to permit the Debtors to continue operations, and that any restructuring would necessarily involve price increases. Starting in August 2005 and continuing into October 2005, the Debtors analyzed their Customer contracts to determine which contracts were unprofitable, and negotiated with the respective Customers to obtain concessions. The Debtors' analysis included, among other things, a review of the risks to the Debtors under the contracts, a quantification of pricing, volume, raw material and labor costs, manufacturing inefficiency issues under the contracts, and an evaluation of possible cost-cutting initiatives with respect to the contracts.

The Debtors negotiated agreements with the Customers (the "October 2005 Customer Agreements"), which provided for the following relief:

(a) approximately $15 million in capital expenditure funding;

(b) approximately $127 million in annual price increases (the amount was not precise due to the run off of various contracts or programs);

(c) approximately $48.5 million in additional one-time surcharges in fourth quarter 2005 (which were meant to address a liquidity shortfall existing after price increases and which were treated as revenue); and

(d) certain restrictions on resourcing by the respective Customers.

This relief was unprecedented.

The Committee consented to the approval of each of the October 2005 Customer Agreements, except for the Debtors' agreement with GM, to which it objected. At the hearing for approval on October 14, 2005, the Court directed the parties to negotiate and achieve a consensual agreement. As of October 26, 2005, the parties reached consensus on the GM October 2005 Customer Agreement. As a result of the Customer negotiations, the Debtors' adjusted EBITDA for 2006 was favorably affected by approximately $127 million. *See* Exhibit K: Roll Forward of 2005 Estimated EBITDA to 2006 Operating Plan.

The Committee's professionals described the Committee's feeling of elation at the conclusion of the negotiations. However, at the hearing on approval of the GM October 2005 Customer Agreement, Robert Weiss ("Weiss"), counsel for GM, stated that "Collins & Aikman is broken."[22]

C. <u>Development and Failure of 2006 Business Plan (November 2005 – March 2006)</u>

After obtaining concessions from the Customers under the October 2005 Customer Agreements, the Debtor, the DIP Lenders and the Prepetition Lenders and the Committee believed a milestone had been reached in these cases. The price at which the Senior Notes were then trading reflected this milestone. *See* Exhibit L. In November 2005, the Senior Notes were trading at approximately $.60 on the dollar. The Prepetition Lenders' debt was trading at par. Through October and November 2005 the Debtors began formulating a revised business plan for 2006. As acknowledged by all of the Key Constituents, this was the first opportunity the Debtors

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[22] Despite Weiss' statement that the Debtors were broken, none of the Customers indicated during their interviews that they believed Plastics was not fixable.

had to turn to the formulation of a plan, because prior to this time, the Debtors were consumed with putting out fires created by the Debtors' illiquidity and with accommodating demands for information by constituents.

On November 22, 2005, the Debtors issued a 2006 forecast in a revised budget (the "November 2005 Revised Post-Closing Date Budget"). A copy of the November 2005 Revised Post-Closing Date Budget is attached as Exhibit M. The November 2005 Revised Post-Closing Date Budget was a "top-down"[23] budget. It indicated an adjusted EBITDA for 2006 of $264.9 million. This EBITDA figure incorporated the value of the Customer pricing accommodations the Debtors had just obtained. These projections also included approximately $100 million in cost-savings. At Board meetings during this time period, Macher indicated his confidence in the cost-savings projections and stated that they were conservative. While Boken believed the Debtors could realize some cost-savings, Boken believed that the cost-saving projections were aggressive and expressed that view. This view created a tension between Boken and Macher that continued throughout these cases. The Board deferred to Macher on the achievability of the cost-savings, given his operational expertise.

The assumptions in the November 2005 Revised Post-Closing Date Budget included, among others: (a) the Debtors' estimate that they could achieve significant cost-savings through plant consolidations, manufacturing efficiencies, purchasing optimization, material usage improvements and productivity enhancements; (b) no reduction for potential contract rejection or loss of business due to Customer action; and (c) the assumptions described in the August 2005 Business Plan.

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[23] A "top-down" forecast, as used herein, means a forecast where the required results dictated from upper management drive the formulation of the forecast. A "bottom-up" forecast, as used herein, means a forecast built with plant-level projections as a foundation, with input from plant-level management.

After the preparation of the projections in the November 2005 Revised Post-Closing Date Budget, the Agent argued to KZC on a daily basis that the Debtors should not formulate a 2006 business plan based upon those projections. In the DIP Credit Agreement, Capstone and the Postpetition Agent had the right to approve the form and substance of the budgets that formed the basis of the Debtors' business plans and projections.[24] On December 13, 2005, Capstone opined to the Bank Group that the "viability of a stand-alone plan will be predicated on opportunities to rationalize the Company's operations."

The discussions regarding these projections culminated at a December 20, 2005 meeting between Capstone and KZC. At that meeting, Peter Nurge of Capstone explained (a) the Agent's opinions regarding the Debtors anticipated 2006 business plan (which would eventually become the 2006 Operating Plan described below); and (b) the reasons the Agent believed it was a disservice to issue that plan. Nurge considered that it would be difficult, even unrealistic, to turn around Plastics on the projected timetable, notwithstanding the Customer price concessions and operational improvement-based cost-savings being pursued by Macher. He believed that even if the Debtors could achieve $70 to $80 million of cost-savings, the Debtors would have to share those savings with the Customers. The Agent urged a sale of the Debtors.

The formulation of the 2006 Operating Plan created tension between the Committee, which wanted a stand-alone plan involving the conversion of unsecured debt to equity, and the Bank Group and the Customers, each of whom encouraged a sale path. The tension was resolved by the adoption of a dual-track process in which the Debtors would seek to effect a stand-alone

[24] *See* section 5.01(o) of the DIP Credit Agreement, as amended.

reorganization as a first priority, but have a sale option ready if needed. On or around December 20, 2005, the Debtors, with the Agent's support, commenced a sale process.[25]

By December 2005, the majority of the Debtors' new senior management team was in place. On January 24, 2006, the Debtors disseminated to the Committee and the Agent the Debtors' operating plan for 2006 (the "2006 Operating Plan"). A copy of the 2006 Operating Plan is attached as Exhibit N. The 2006 Operating Plan was a "bottom-up" plan. It forecast 2006 adjusted EBITDA of $265.2 million. Although the projected 2006 adjusted EBITDA remained approximately the same in the 2006 Operating Plan as it was in the November 2005 Revised Post-Closing Date Budget, a significant change occurred in the calculation of the adjusted 2006 EBITDA figure. The 2006 Operating Plan's EBITDA forecast for the first quarter of 2006 was $26 million lower than the forecast in the November 2005 Revised Post-Closing Date Budget due to delayed implementation of cost-savings. Additional cost-savings were identified for subsequent quarters, which resulted in the total adjusted 2006 EBITDA figure remaining substantially the same. Both the Agent and the Committee were aware of the "back-ended" nature of the cost-savings.

The risks described in the 2006 Operating Plan included: (a) the continued erosion of the Domestic Customers' market share and other volume losses; (b) Customer resourcing; (c) the sufficiency of the Debtors' capital resources for new launches; (d) implementation of raw material indexing protocols; and (e) timely realization of savings from cost-savings initiatives.

[25] The Committee essentially defined a stand-alone plan as a plan in which the Debtors had sufficient debt capacity to repay the Prepetition Lenders' debt and issue equity to unsecured creditors. However, due to a hole in the Debtors' new business awards, the Debtors could not solely "equitize" the unsecured debt. The Committee believed that either a rights offering would be required to raise funds in connection with a stand-alone plan, or a portion of the Prepetition Lenders' debt would need to be converted to equity. The Committee adamantly believed interests of the unsecured creditors were best served by a stand-alone plan. The Committee believed a controlled sale was better than a liquidation, but worse than a stand-alone option.

The assumptions for realization of the $265.2 million EBITDA contained in the 2006 Operating Plan included: (a) incremental price increases from the OEMs in the amount of $116 million in ordinary course pricing for 2006, which had already been obtained; (b) price increases in the service parts business of $15 million; (c) materials indexing from Ford yielding $11 million; (d) incremental cost reductions totaling $123 million; and (e) approximately $13 million of EBITDA impact from the transfer of business from DaimlerChrysler, consisting primarily of business previously sourced to Lear Corporation ("Lear"). Of all these assumptions and risks, only the $116 million of price increases had been obtained by the time the 2006 Operating Plan was issued. Only the incremental cost reductions were entirely within the control of the Debtors. All of the remaining elements depended upon concessions or other changes within the control of the Customers. All of the improvements with the exception of the price increases depended upon actions yet to be effectuated or revenues yet to be obtained. They were "upside" improvements.

At the time, DaimlerChrysler was embroiled in a substantial and well-publicized pricing dispute with the Debtors' competitor, Lear. As a result, the Debtors began negotiating with DaimlerChrysler to transfer business away from Lear (the "Lear Transfer Business"). The Debtors sought and expected to obtain the Lear Transfer Business to offset the Debtors' loss of business due to (a) normal run-off of program work and (b) the Debtors' financial instability during the normal award cycles. The Lear Transfer Business was to begin in the third quarter of 2006 and run through 2009.[26]

[26] In interviews with the Fee Examiner, DaimlerChrysler representatives substantiated DaimlerChrysler's willingness to transfer the Lear Transfer Business if the Debtors could have achieved financial viability. In the negotiations regarding the transition of the Lear Transfer Business, DaimlerChrysler requested that the Debtors pay a substantial sum owed by the Debtors to DaimlerChrysler. The Debtors did not include this payment in the 2006 Operating Plan, for reasons including that the request was unknown to some representatives of the Debtors at the time. However, upon inquiry by the Fee Examiner, DaimlerChrysler acknowledged that (a) the payment of the sum was part of incomplete negotiations between the Debtors and DaimlerChrysler; and (b) the payment would not have impeded the transfer of the business, because DaimlerChrysler wanted the Debtors to survive.

The 2006 Operating Plan also assumed the establishment of a service parts business. Macher had established a service parts business at Federal Mogul. He charged Wright with implementation of this new business initiative. In order for the service parts business to succeed, the Debtors needed the Customers to agree to: (a) pricing relief on the service parts; (b) a partnership on the process such that there could be planning on production to avoid last minute orders; and (c) some modicum of volume stability with respect to the service parts. Macher envisioned that he could ultimately make the service parts business a profit center, generating $20 to $50 million over time.

The cost-reduction portion of the 2006 Operating Plan was based upon over 750 separate cost-cutting initiatives with an average savings of over $164,000 each. In formulating the cost reduction component of the 2006 Operating Plan, the Debtors calculated the anticipated cost-savings and then discounted it by 25 percent for risk. In addition, the Debtors discounted the projections an additional $5 million to account for risk with respect to the implementation of cost reductions in the Plastics business.

The Debtors planned to close eleven manufacturing facilities (eight in 2006 and three in 2007), launch the Lear Transfer Business (while obtaining full margins upon launch), and move their headquarters while implementing the cost-cutting initiatives. Because the plan was so dependent on cost reductions Trenary and Masanovich instituted a process for measuring the cost reductions in January 2006, and published a book of the results every month. This book was made available to all Key Constituents.

Even though the Debtors' actual 2005 EBITDA was $60 million, as described in Exhibit K, the 2006 Operating Plan gives evidence that if the cost increases that occurred throughout the year were incurred for the entire year, the 2005 EBITDA before any improvements would have

been negative $36 million. *See* Exhibit K: Roll Forward of 2005 Estimated EBITDA to 2006 Operating Plan. This baseline EBITDA was comprised of 2005 actual baseline EBITDA of $60 million adjusted for (a) the higher material and energy prices experienced in the fourth quarter of 2005 and (b) volume/mix changes in production. As a result, when analyzed in detail, the 2006 Operating Plan did not truly constitute an attempt to increase annual adjusted EBITDA performance from $60 million in 2005 to $265 million in 2006. Rather, the 2006 Operating Plan projected an increase in annual adjusted EBITDA performance from a 2005 baseline of negative $36 million (excluding approximately $127 million of EBITDA impact from the October 2005 Customer price increases) to a projected result for 2006 of $265 million. Thus, the upside contingencies in the 2006 Operating Plan were critical to make the Debtors viable.

Moreover, the Debtors were cash flow "break even" at a projected 2006 adjusted EBITDA of $265 million. The Debtors required cash flow to pay interest (estimated to be approximately $95 million for 2006), professionals' fees (estimated to be $90 million for 2006) and capital expenditures (estimated to be approximately $97 million for 2006). *See* Exhibit O: March 6, 2006 Lender Group Update – 2006 Operating Plan. Due to the Debtors' cash flow situation, absent extraordinary third party concessions or a capital infusion, the Debtors had to achieve the improvements in the 2006 Operating Plan on the timetable projected in that plan in order to meet their 2006 cash needs, survive, continue their reorganization and maintain any possibility of obtaining long-term benefits and value from the Business Plan improvements in years beyond 2006.

All of the Key Constituents believed the 2006 Operating Plan was overly aggressive. The financial advisors for the Domestic Customers believed that the EBITDA projections were too aggressive. Grant Thornton, the advisor to Ford, believed that the projection of $123 million

of cost improvements was questionable. In addition, it knew that Ford was not in a position to give the Debtors new business, and concluded that the requirement for new transfer business would have to be satisfied by the other Customers.

Capstone discounted the projected 2006 adjusted EBITDA of $265.2 million in the 2006 Operating Plan to approximately $180 million. This amount approximated the amount required for the Prepetition Lenders to be fully secured. *See* Exhibit H. However, as noted by Capstone on March 6, 2006, at $180 million of 2006 adjusted EBITDA, the Debtors would not have sufficient cash flow to service anticipated 2006 interest payments, professionals' fees and capital expenditures, including interest to and the fees of the Prepetition Lenders. *See* Exhibit O, p. 5. Capstone refused to put unmitigated faith in over 750 separate cost-cutting initiatives with an average savings of over $164,000 each, given that during the projection period, the Debtors had planned on eliminating some plants, launching conquest or transfer business (while obtaining full margins upon launch), and moving their headquarters. In many cases, there were multiple launches for one program. These launches were taking place at most of the Plastics facilities.

The situation at the Evart, Michigan plant validated Capstone's concerns. Evart had negative $13 million of EBITDA for 2005. Yet, the Debtors forecasted positive EBITDA of $10 million for 2006, based on the anticipated cost-savings. At the same time, the plant was launching a significant new platform. In addition, that plant had bad management and had made no capital improvements for some time, leaving it with poor equipment and poor operating conditions. Capstone believed that because all attention was directed to the launch, cost-savings initiatives would not be implemented. As they reiterated to the Prepetition Lenders on February 7, 2006, Capstone believed that implementation of cost- savings improvements was the greatest risk to the achievability of the Debtors' forecast in the 2006 Operating Plan.

Capstone believed the aggressive projections negatively affected the Debtors' credibility in the sale process. Capstone believed that a robust sale process required reliable projections. While the Debtors received offers, the contingent nature of the projections affected the quality of the offers. Potential buyers told Lazard that if they were going to value the Debtors on the basis of the forecasts, the Debtors needed to be able to achieve the forecasts by obtaining the cost-savings, the pricing concessions, cheaper raw materials, and the Lear Transfer Business.[27]

Despite the Key Constituents' belief that the 2006 Operating Plan was overly aggressive, it was not in the interest of the Debtors, the Committee or the Agent to argue for materially lower projections. The Debtors required a 2006 adjusted EBITDA of approximately $265 million, which in turn required the achievement of numerous contingent improvements on the timetable under the Business Plan, in order to maintain liquidity (and thus their reorganization prospects) in the absence of additional third party concessions. From the Petition Date until August 29, 2006, the Debtors paid the fees of the professionals of the Prepetition Lenders. Those fees totaled $7,744,000. Interest charges on the debt of the Prepetition Lenders and DIP Lenders for 2006 were approximately $95 million. The payment of these amounts would have been jeopardized by a substantially lower EBITDA.

Capstone argued that the projections were overly aggressive, and internally discounted projected 2006 EBITDA to $180 million. $180 million in 2006 EBITDA suggested a value that would leave the Committee without a seat at the table while the Prepetition Lenders were fully secured. However, at $180 million in 2006 EBITDA, the Debtors would not have sufficient cash flow to service anticipated interest payments of approximately $95 million, budgeted

[27] One person interviewed commented that the projections were not "scrubbed" by Lazard in the manner observed by that person in working with investment bankers outside of the bankruptcy arena. Others posited that, had the projections been more realistic, the Debtors could have found a buyer, albeit at a lower price.

professional fees of approximately $90 million and budgeted capital expenditures of approximately $97 million.

The Committee and its professionals were aware of the aggressiveness of the 2006 Operating Plan, yet they encouraged robust projections. Alvarez had concerns about Macher's ability to implement, notwithstanding his "rock star" reputation in operations, because Alvarez saw "holes" in the projections. The Committee's professionals conveyed these concerns to the Debtors privately. However, they were cautious in expressing their concerns because they needed high projections to support a high enough value of the Debtors to support a recovery to unsecured creditors. Alvarez avoided giving any analysis of projections to the Committee in writing because of the concern that in a valuation fight, written work product of Alvarez stating that Macher could not make his projections would be damaging. Neither Alvarez nor the other Committee professionals felt it was in the Committee's interest to highlight the fact that the projections were overly aggressive or unrealistic because whether unsecured creditors were "in the money" or not depended on the success of Macher's operational turnaround and cost-savings measures. Despite their internal concerns, the Committee argued to the Debtors and other Key Constituents that the projections were too conservative.

In late January 2006, Barse prepared for a face-to-face meeting with Macher. The purpose of the meeting was to deliver certain messages, as to which Barse sought guidance from the Committee's professionals. The messages included the following:

(a) The business plan must include a cost cutting plan and Macher should resist the Board's concerns regarding the achievability of the plan;

(b) The Committee supports Macher driving the plan, as opposed to the Debtors' professionals, because "he had more years of automotive experience than the rest of them combined";

(c) Macher should not waste time on the sale process, but rather he should focus on a stand-alone plan; and

(d) Macher should repair the relationships with the OEMs and convince them to support a stand-alone plan.

See Exhibit P.

In February 2006, Barse began meeting with the Customers, accompanied by Macher. At those meetings, Barse stated that Third Avenue was considering whether to sponsor a plan, but required Customer support. Barse met with Bo Andersson, GM's Vice-President of Global Purchasing and Supply. Barse believed that GM was intrigued by the possibility of the plan and that GM encouraged him to work to accomplish a plan. Barse and Macher also had high level meetings with DaimlerChrysler, Honda, and Toyota. In connection with these meetings, DaimlerChrysler continued to mention the possibility of awarding the Debtors the Lear Transfer Business.

On February 17, 2006, Third Avenue delivered a term sheet to the Committee and the Debtors in which Third Avenue proposed that it "back-stop" a rights offering. A copy of this term sheet is attached as Exhibit Q. The rights offering would raise $400 million in exchange for a $40 million second priority convertible secured note and $360 million of new convertible preferred stock. The holders of the Senior Notes would receive 76 percent of the rights offering and the general unsecured creditors would receive 24 percent of the rights offering. In the aggregate, this debt and equity would have been convertible into 85 percent of the common stock of the reorganized Debtors.

On February 27, 2006, Third Avenue sent a letter to Kirkland, Lazard, Chanin and Akin Gump Strauss Hauer Feld LLP, counsel to the Committee ("Akin"). In this letter, Third Avenue reiterated its interest in potentially serving as a standby purchaser in a rights offering to "back-

stop" a chapter 11 plan. Third Avenue also expressed its belief that, notwithstanding its potential role as a purchaser, Third Avenue's continued service on the Committee would be in the best interest of the estates. Third Avenue had sought assistance in its bid from Akin and Chanin. Akin and Chanin declined because they represented the Committee, and not Third Avenue.

Akin and Kirkland made changes to Third Avenue's rights offering term sheet. Akin's revisions to Third Avenue's term sheet created tension between Michael Stamer, lead counsel for the Committee, and Barse. Third Avenue refused to accept virtually any of Akin's and Kirkland's comments on the term sheet. The Committee considered Third Avenue's rights offering proposal offensive.

On February 28, 2006, the Debtors issued their five-year business plan for 2006 through 2010 (the "Five-Year Business Plan"). A copy of the Five-Year Business Plan is attached as Exhibit R. The Five-Year Business Plan incorporated the 2006 Operating Plan, including its assumptions (collectively, as amended as of a given time of reference by the modifications in the 4+8 Plan and the 6+6 Plan (each defined below), the "Business Plan"). The Five-Year Business Plan stated that the Debtors' new senior management team was in place as of its issuance. Despite the Debtors' recent lack of substantial new business awards, and the Debtors' knowledge that "ordinary course" new business would not be awarded until they exited chapter 11, the Five-Year Business Plan incorporated an aggressive new business forecast for the five-year period. *See* Exhibit S: Collins & Aikman Business Plan Presentation February 28, 2006, p. 16.

On March 6, 2006, Capstone warned the Prepetition Lenders that "given the potential for impacting the ongoing sale process, we have not provided editorial comments or addressed and sensitized the risks and opportunities inherent in the [2006 Operating Plan]." Capstone noted

that the Five-Year Business Plan was "the first plan prepared almost exclusively by the new management team and [KZC] was less central to creation of this budget." *See* Exhibit O.

On March 17, 2006, the Debtors received two non-binding indications of interest, subject to finalization of due diligence and purchase documentation, to sell their convertibles business ("Convertibles") for $36-$40 million. The Debtors and the Agent believed the value of Convertibles was significantly higher. This value was based on projections that assumed GM had granted a price increase in connection with the move of certain Convertibles work from Mexico. The President of Convertibles informed Macher that GM had granted the price increase. Macher later learned that GM had not actually granted the price increase, and thus the Debtors and Prepetition Agent had overestimated the value of Convertibles. The Prepetition Agent and the Debtors rejected the indications of interest based on the misrepresentations of the executive. The Debtors subsequently liquidated Convertibles, ultimately receiving only approximately $2 million in proceeds from the liquidation.

In addition to Third Avenue's offer, the Debtors received several other preliminary offers for their assets in late March 2006, with valuations ranging from $1.1 billion to $1.3 billion. All offers required the completion of satisfactory due diligence. *See* Exhibit T: Summary of Preliminary Bids. In March 2006, WL Ross & Co. LLC ("Wilbur Ross") submitted a non-binding indication of interest for the Debtors' North American operations. *See* Exhibit U: Letter from Wilbur Ross dated March 21, 2006. Wilbur Ross' bid was based on a valuation of four to five times the forecasted EBITDA for 2007 of $257.6 million, for a total purchase price of $1.032 to $1.288 billion. Wilbur Ross' indication of interest was conditioned upon the following:

(a) Justification of capital expenditures for supported forecasted program levels;

(b) Satisfactory confirmation of alternative purchasing arrangements (and the terms of such arrangements) for resins and other procured components and materials (i.e., raw material cost reductions);

(c) Documentation by June 30, 2006 of "new business" for 2007 of no less than $376 million;

(d) Confirmation of Customer long-term agreements and comparison of their expected actual impact to the 1 percent annual price-downs in the Debtors' forecast; and

(e) Further detail and the existence of specific action plans to achieve operational cost reductions.

In March 2006, Chanin prepared a preliminary valuation analysis (the "Preliminary Valuation Analysis"). *See* Exhibit V: Preliminary Valuation Analysis. Chanin based the Preliminary Valuation Analysis upon the Five-Year Business Plan and indicated an enterprise value for the Debtors of $1.3 to $1.5 billion. This valuation was also conditioned upon obtaining additional information and the resolution of various matters and certain assumptions. Significant aspects of the valuation included the following:

(a) The valuation excluded the potential tax benefits of $400 million of pre-emergence net operating losses (the valuation noted that the additional value of this loss was unclear but did not appear to be substantial);

(b) The valuation stated that Chanin had requested from the Debtors but had not yet received an EBITDA bridge from 2006 through 2010 on an annual basis to facilitate their understanding of annual changes to the projections; and

(c) The valuation did not include any additional pension plan assumptions other than those used for the 2006 Operating Plan.

On April 28, 2006, Wilbur Ross sent another letter, declining to submit an actual bid to purchase the Debtors. A copy of this letter is attached as Exhibit W. The letter expressed that based upon initial due diligence conducted by Wilbur Ross, a number of open issues in the Debtors' Business Plan (and their attendant impact on the Debtors' 2007 EBITDA) prevented Wilbur Ross from submitting a term sheet. These issues included, among others:

(a) The lack of certainty of any decisions by Customers with respect to transfer business (which had a potential 2007 EBITDA impact of $86 million);

(b) The lack of certainty of resin purchase savings initiatives (with a potential 2007 EBITDA impact of $26 million);

(c) The aggressiveness of the service parts business projections (with a potential 2007 EBITDA impact of $7 million); and

(d) The sub-forecast results of the Plastics cost reduction turnaround initiatives.

On May 12, 2006, Third Avenue submitted a second bid to purchase the Debtors (which was subsequently revised on May 15, 2006). Third Avenue's bid was based on a rights offering for some equity, but primarily included debt. Third Avenue's bid provided for the unsecured creditors to receive a "to be determined" percentage of the common stock of the reorganized Debtors and a "to be determined" percentage of a rights offering, which consisted of an investment in the Debtors through convertible debt securities. The bid contained numerous conditions including: (a) the achievement of EBITDA benchmarks for 2006; (b) the issuance of updated five-year projections that were not materially worse than those issued on February 17, 2006; (c) the extension of five-day payment terms by the Customers for a further two years; and (d) long term business arrangements with the Customers. Furthermore, the bid provided for the estates to reimburse Third Avenue for expenses incurred to date.

Third Avenue retained Fried Frank to represent it in connection with the potential purchase. Third Avenue requested that the Debtors pay its attorneys' fees. The Debtors refused to reimburse the attorneys' fees of any potential purchaser. The Committee supported this position and considered Third Avenue's term sheet unreasonable to the extent it called for reimbursement of professional fees and contained significant commitment fees and break-up fees.

Third Avenue's purchase proposal was not viewed as credible because it required the Customers to continue five-day payment terms for two years after the Debtors' exit from bankruptcy. The Debtors did not believe that condition could be satisfied based upon their understanding that the Customers wanted to reinstate their normal business practices (which would not include such payment terms) when the Debtors emerged from chapter 11. The Committee's professionals believed Third Avenue lost credibility with the Committee as a result of this bid, due to the low amount of the bid and Third Avenue's requests for reimbursement of professional fees.

Third Avenue defended the debt component of the bid by claiming that if the Debtors failed, the bid constituted a remaining option for preservation of value. Third Avenue explored the possibility of working together with Wilbur Ross to purchase the Debtors. Because of the concerns of the Debtors and the Committee regarding collusion – given that, at the time, Third Avenue and Wilbur Ross were the only two remaining bidders – the Debtors did not approve a joint purchase strategy.

D. The Deterioration of the Debtors' Restructuring Prospects (March 2006 – December 2006)

i. Certain Setbacks in the Cost-Savings Initiatives

(1) Headquarters Lease

The Debtors leased their existing headquarters space from Becker. The space was excessive for the Debtors' operations and thus resulted in unnecessary expense. Macher saw a new lease arrangement as an opportunity not only to cut costs but to provide a fresh start for the Debtors. The Debtors located an alternative facility in Southfield and used it as leverage to negotiate with Becker for reduced rent on the existing facility. These negotiations produced an offer from Becker that would have enabled the Debtors to realize 40 to 50 percent of the savings

the Debtors would obtain from a move to Southfield. Despite Boken's recommendation that the Debtors accept Becker's offer and avoid the distraction of a move, Macher, the Bank Group and the Committee approved the new Southfield lease (the "March 2006 Lease").[28] Based on comments by the Bank Group, the March 2006 Lease included a buyout provision by the Debtors in the event of an early termination. Although the rent under the March 2006 Lease was less expensive than the Debtors' former rent, the Debtors incurred approximately $1.5 million in costs to move to their new headquarters. The March 2006 Lease provided that it would commence on June 1, 2006 and its base term would continue until November 30, 2016. In April and May 2006, the Debtors obtained increases of the amount of space, increasing the size of the rent and the buyout price in the event of an early termination. As a result, the Debtors obligated themselves to pay nearly $5.3 million to break the March 2006 Lease, after their decision to liquidate.

(2) Attempted Resin Purchase Savings

Macher contacted ACT, a company that had a connection to the Saudi Arabian Basic Industries Corporation ("SABIC"). Macher believed that SABIC had inexpensive raw resin materials available, which would substantially reduce the Debtors' costs to create plastic parts. Macher thought the Debtors could source resin from SABIC at a cost-savings of $20 to $40 million annually. Boken advised Macher not to contract with ACT, who acted as the broker to SABIC, because Boken's research on ACT raised concerns. Nonetheless, Macher entered into

[28] The Prepetition Agent disputes that Boken's recommendation was communicated to the Bank Group. The Prepetition Agent's lead counsel stated that the Bank Group was only told that the Debtors recommended acceptance of the March 2006 Lease. KZC maintains that Boken stated his recommendation to the Prepetition Agent and Capstone.

an agreement with ACT, paying approximately $3 million to begin the process of obtaining resin from SABIC.

ACT agreed to deliver test materials on certain dates. ACT missed those test dates. Additionally, the tests evidenced that the product did not meet the standards required to obtain Customer approval. Despite this setback, Macher continued to believe that this arrangement had potential benefits that would support the transfer of the Lear Transfer Business to the Debtors by DaimlerChrysler. In 2007, ACT filed a petition under Chapter 7 of the Bankruptcy Code. As a result, the Debtors lost their $3 million investment.

ii. March, April and May 2006 Financial Results

On March 9, 2006, the Debtors determined that January 2006 results were in line with the Business Plan projections. Notwithstanding that determination, beginning in March 2006, certain personnel of the Debtors started to become concerned about the achievability of the 2006 Operating Plan. Masanovich, the Debtors' Controller, began to think that the $265 million projection was too aggressive, particularly in light of the fact that (a) the Debtors did not have assurances with respect to the acquisition of the Lear Transfer Business; and (b) the Debtors' contemplated service business was not assured. In March 2006, Trenary and Masanovich began to institute various financial reporting processes that, Trenary noted, a typical stand-alone company would have in place.

Upon review of financial results through April 2006, the Debtors had achieved $16.7 million in cost-savings against a budgeted target of $14 million through April 2006. However, Plastics had only achieved a savings of $6.4 million against a target of $9.9 million. Trenary opined that the inability to realize the cost-savings was attributable to a handful of

underperforming plants (specifically, Port Huron, Michigan, Evart, Michigan and Guelph, Ontario). The actions planned to reduce costs had not taken effect as quickly as projected.

On April 26, 2006, Capstone reviewed the cash flow results for the first quarter of 2006. Capstone concluded that the outlook for the second quarter was "guarded yet optimistic."

On May 8, 2006, the Debtors issued financial statements for March 2006. On the surface, these financial statements indicated that the Debtors were "close" to achieving their first quarter forecast. Actual EBITDA for the three months ended March 31, 2006 was $56.1 million, as opposed to forecasted EBITDA for the same period of $59.8 million. This created an unfavorable variance of only $3.7 million (i.e., 6.2 percent below projections). However, sales for the period exceeded budget by $24.6 million (i.e., 3.5 percent above projections), overcoming the lack of cost-savings. *See* Exhibit X: Q1 2006 Actual Compared to 2006 Operating Plan. Because the cost-savings were back-end loaded, the Debtors' inability to achieve their targeted EBITDA signaled that the cost-savings anticipated in the Plastics operational turnaround were not being realized. *See* Exhibit Y: Total Manufacturing Cost Savings – 2006 Operating Plan.[29]

On May 9, 2006, Capstone issued its report to the Prepetition Lenders on the Debtors' February financials. Capstone stated that "the Plastics and Specialty Divisions are having difficulty in delivering their plans, but fortunately the Carpet & Acoustics Division and the corporate expenses are doing better than plan."

On May 11, 2006, at a hearing on the Debtors' motion to extend the exclusive time to file and solicit acceptance of a plan, the Debtors proffered the testimony of Boken. The Debtors stated that Boken would testify, if requested by the Court, that, among other things, the Debtors had developed and implemented the Five-Year Business Plan which, "in his opinion, provides

[29] Exhibit Y evidences that the cost-savings for the 2006 Operating Plan were "back-ended."

the Debtors with an opportunity to effectively reorganize and preserve and maximize value for the benefit of the stakeholders," and that the operational changes that Macher implemented were partly responsible for the Debtors' improved liquidity and cash flow.

On June 2, 2006, the Debtors issued financial statements for April 2006. Actual EBITDA for April 2006 was $5.8 million as opposed to forecasted EBITDA of $11.2 million, for an unfavorable variance of $5.4 million (48.2 percent below budget). Actual sales exceeded budgeted sales by $19.8 million (10.6 percent above the sales projection). April 2006's operating results indicated a significant deviation from the Business Plan. As a result, the Debtors proceeded to revise their plan. *See* Exhibit Z: Comparison of Income Statement Items to 2006 Operating Plan.

iii. June 2006 $179.4M EBITDA Plan (the 4+8 Plan)

Due to the failure to meet projections in March and April 2006, the Debtors revised the Business Plan. On June 8, 2006, the Debtors issued their new business plan forecast for 2006, comprised of four months of actual operating results through April 2006 and revised monthly forecasts for May 2006 through December 2006 (the "4+8 Plan"). A copy of the 4+8 Plan is attached as Exhibit AA. Under the 4+8 Plan, forecasted 2006 EBITDA dropped from $265 million to $179.4 million. *See* Exhibit BB: Comparison of 2006 Operating Plan to Updated Forecasts.

Trenary took charge of the process that generated the 4+8 Plan. To create the 4+8 Plan, the Debtors engaged in a "bottom-up" process in which each of the manufacturing facilities was charged with taking its year-to-date financials and forecasting the remainder of the year. This model projected the results for the year, by facility, and demonstrated, to the extent a facility did

not achieve its plan, why the facility was underperforming and the corrections needed to fix the problem.

The negative variation from the 2006 Operating Plan was predominantly caused by implementation issues, specifically unrealized cost-savings, lost business, and delays in implementation of pricing strategies. In addition, the Debtors had failed to obtain new business, including the Lear Transfer Business and miscellaneous other business having an EBITDA impact of approximately $16 million. The miscellaneous business lost or not obtained included resourced business (primarily GM's Lambda program) and follow-on or next generation business that the Debtors expected to receive but did not. *See* Exhibit AA, page 12. In short, the contingent components of the 2006 Operating Plan that were outside the Debtors' control – the development of a successful service parts business, securing the Lear Transfer Business and other follow-on business, and obtaining material indexing from Ford – remained unachieved.

Trenary spent substantial time creating the 4+8 Plan. The Debtors distributed the 4+8 Plan to the Key Constituents in June 2006. *See* Exhibit AA. On or about June 20, various Key Constituents met with the Debtors to go through the projections in detail. Alvarez and Chanin represented the Committee in person at this meeting. The presentation of the lower projections disappointed the Committee. Its representatives asked very pointed questions about the contents of the presentation. The new projections clearly suggested that the unsecured creditors were "out of the money."

Like the 2006 Operating Plan, the 4+8 Plan was "back-ended," in that most of the cost-savings were to be realized in the third and fourth quarter of 2006. Despite the failure to achieve the budget and Boken's growing skepticism, Macher continued to believe that he could meet the cost-savings projections through the remainder of 2006. The tension between Boken and Macher

continued, particularly given Boken's unheeded advice that Macher spend more time in the plants in order to effectuate the operational cost-savings turnaround.

A significant cause of the failure to achieve the cost-cutting improvements in Plastics was the lack of effective management. While Plastics had new management teams in both operations and finance, the new teams had failed to execute. The problems in Plastics were spread across all of its facilities, and in many cases, went quite deep into the organization. Plastics lacked competent personnel, which created a high execution risk in the operational turnaround. *See* Exhibit I.

Because the Debtors were cash flow "break even" at an adjusted EBITDA of $265 million, the reduction of projected EBITDA by approximately $85 million rendered the Debtors cash flow negative. *See* Exhibit O and Exhibit CC. With projected 2006 EBITDA of less than $265 million, the Debtors could not sustain budgeted payments of interest, professionals' fees and capital expenditures.

On June 28, 2006, Capstone issued to the Prepetition Lenders its review of the 4+8 Plan and its report on the Debtors' request to amend the DIP Facility to share asset disposition proceeds between the Prepetition Lenders and the Debtors. The parties began negotiating an amendment to the DIP Facility, which was eventually executed on July 13, 2006 (the "Fourth Amendment to the DIP Facility"). Pursuant to the Fourth Amendment to the DIP Facility, the Debtors were able to use up to $50 million in asset sale proceeds for operational liquidity.[30] In addition, through a series of orders entered on August 29, 2005, December 14, 2006 and

[30] Though the Prepetition Lenders had access, through Capstone, to the same information as the DIP Lenders, the Prepetition Lenders did not object to the Fourth Amendment to the DIP Facility. When questioned by the Fee Examiner about the effect of this amendment on the Prepetition Lenders, the Agent reiterated that the DIP Lenders did not want to use their tactical position to advance positions on behalf of the Prepetition Lenders.

January 11, 2007, the Court ordered, pursuant to the Debtors' requests, deferral of the Debtors' adequate protection payments to the Prepetition Lenders until August 1, 2007.

The Capstone review of the 4+8 Plan reported the following risks inherent in the 4+8 Plan:

(a) Customers' sales volumes declined in models critical to the Debtors;

(b) As reported by Frank Macher, Ford had re-tooled substantially all of the Debtors' Ford programs;

(c) The report continued to emphasize the risks in achieving the forecasted cost-savings; and

(d) The assumption in the 2006 Operating Plan that raw material price increases would be passed through to Customers as surcharges was at risk.

On June 29, 2006, the Debtors issued financial statements for May 2006, after closing their books for May 2006. A comparison of these financial statements to the 2006 Operating Plan and the 4+8 Plan is included in Exhibit DD. Prior to their release, the May 2006 results instantly troubled Trenary and others, including Boken, because Plastics had missed its projections for May 2006 by approximately $1.6 million.

iv. Further Offer by Wilbur Ross

In June 2006, the Debtors disseminated revised forecasts based on the 4+8 Plan to all interested potential purchasers. None of those potential purchasers had performed significant due diligence at that time.

On July 6, 2006, Wilbur Ross delivered an updated proposal to purchase the Debtors' businesses through a sale under section 363 of the Bankruptcy Code. The updated proposal offered a purchase price equal to 80 percent of the debt of the Prepetition Lenders and a one-time earn-out payment if the fiscal year 2007 EBITDA of the purchased entity exceeded $185 million. The proposal continued to be subject to numerous conditions, including that there be no material

adverse change to the Debtors' results of operations or variance from projections in the 4+8 Plan.[31] The 80 percent payment on the Prepetition Lenders' debt was below the 90 percent price at which such debt was trading at the time. This disparity was largely attributable to the lack of accurate information in the market.

At a meeting on or around July 12, 2006 with Wilbur Ross and the Bank Group, the Debtors' professionals argued passionately to the Bank Group that they should accept the Wilbur Ross offer because the Debtors' predicament would worsen with time as they stayed in chapter 11.[32] Nonetheless, the Bank Group rejected Wilbur Ross' offer because: (a) Wilbur Ross' offer had numerous contingencies (*See* Exhibit EE: Letter from Wilbur Ross dated July 6, 2006), including that there be no material variance from the 4+8 Plan; (b) contrary to the Debtors, the Prepetition Agent believed that the offer was illusory; and (c) there was no other bidder at the time to provide competition in the process.

Instead, the Bank Group decided to support a stand-alone plan, pursuant to which their secured debt would be converted to equity. To preserve a type of sale option, the Bank Group included a provision in its term sheet for such plan which permitted the sale of not less than 100 percent of the common stock of the reorganized entity for cash on the effective date of the plan, provided the purchase price was acceptable to the Debtors and the Prepetition Lenders holding two-thirds in amount and a majority in number of the Prepetition Lenders' claims.

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[31] Specifically, the term sheet provided, among other things that: (i) there would be "no material adverse change with respect to the Debtors' results of operations since March 31, 2006 or the reasonable likelihood of the Debtors achieving their revised projections"; and (ii) there would be "no material variance from the [4+8 Plan]."

[32] During their interviews, the representatives of the Prepetition Lenders did not recall this impassioned argument, but it was corroborated by several other attendees of the meeting.

v. The August 2006 $105.5M EBITDA Plan (the 6+6 Plan)

The Debtors' June 2006 operating results showed even further failure in Plastics' performance as compared with the 4+8 Plan. By June 2006, the Debtors had improved their reporting systems such that they were able to gain insight into a given month's financials within nine to ten days of month-end. Therefore, in early July 2006, the Debtors quickly observed the increased magnitude of the problems in Plastics. The June 2006 results severely jeopardized exit financing because there would be insufficient free cash flow to service the exit financing debt. All free cash flow was being used to fund Plastics.

As a result of the June 2006 failure to meet budget, Macher terminated the new President of Plastics. Macher came to learn that the President of Plastics had suffered significant personal issues that impeded his performance. In addition, the Vice President of Financial Planning was asked to leave the Debtors. Tension occurred between Macher, Trenary and Masanovich, because Trenary and Masanovich insisted that (a) the Debtors' financials would not support the Business Plan; and (b) the Debtors should stop and investigate the discrepancy between the 4+8 Plan and actual results.

At the start of July 2006, Trenary, Masanovich, and their teams began working seven days a week to further analyze Plastics' issues through a plant-by-plant review, and to formulate a new forecast for the Debtors' 2006 adjusted EBITDA. Telephone conferences with Plastics' plant managers and controllers occurred throughout the weekend. Trenary attended all Plastics division meetings, so that he could understand the Plastics issues himself. The teams generated a new forecast comprised of six months of actual performance and six months of forecasts for the remainder of the year (the "6+6 Plan"). A copy of the 6+6 Plan is attached as Exhibit FF.

Based on conversations with management at a number of facilities, Trenary was not satisfied with the thoroughness of the work that had gone into the 6+6 Plan. Because he did not want another set of unrealistic projections, Masanovich and his team put together large binders that examined historical results of fifteen key performance-drivers by plant. Trenary and Masanovich plotted the historical results on a graph, and overlaid it with the projections. This comparative analysis demonstrated that the historical performance bore no relationship to the forecasts. Rather, the comparison of historical performance to forecasts resembled the proverbial "hockey sticks," suggesting that forecasts could only be achieved with a definitive plan to accomplish the improvements.

On a Sunday in mid-July, Trenary met with the managers of the twelve Plastics facilities that had the largest gaps between the projections contained in the 4+8 Plan and the draft 6+6 Plan. The team worked late into the night, putting together high-level ranges (low/medium/high) to create projections for the Debtors' performance. The team met with Macher at 6 o'clock a.m. the next morning to reveal their conclusions. The team's conclusions disappointed Macher. As a result, Trenary's team, Macher and Plastics' senior management conducted a series of meetings over a two- to three-week period to attempt to close the gaps in the forecasts. At the end of that process, the team arrived at a projected 2006 adjusted EBITDA for the 6+6 Plan in the amount of approximately $105 million.

Execution risk still permeated the 6+6 Plan. Calculating adjusted EBITDA on a "back of an envelope" basis, and deleting Customer surcharges and other one-time benefits, Trenary and

Masanovich could not reach the $105 million projected 2006 adjusted EBITDA figure included in the 6+6 Plan. Instead, they arrived at adjusted EBITDA for 2006 of $90 to $95 million.[33]

On August 14, 2006, the Debtors issued financial statements for June 2006. The financial statements revealed that the Debtors had missed their June adjusted EBITDA projections by $5.6 million as compared with the 4+8 Plan and by $11.2 million as compared with the 2006 Operating Plan. *See* Exhibit GG: June 2006 YTD Actual Compared to 2006 Operating Plan and 4+8 Plan. As stated above, the failure to meet projections evidenced that the Debtors were not meeting their operational turnaround cost-savings targets. Because the cost-savings were largely "back-ended" in the 2006 Operating Plan, once the Debtors entered the third and fourth quarters without achieving those targets, the Debtors could not expect to meet those savings for the year.

On August 16, 2006, the Debtor issued a Presentation to Stakeholders (the "August 2006 Stakeholders Presentation"), attached as Exhibit HH. The presentation identified various corrective actions in the Debtors' organization, operational controls, manufacturing systems and manufacturing footprint. The organizational actions involved changes in senior management and temporary staffing. The operational controls called for the Debtors to implement and monitor tracking systems. The manufacturing systems initiatives involved a wholesale overhaul, including work standard revisions, manpower planning, uptime and freight optimization and purchasing efficiencies. The manufacturing footprint actions detailed plans for plant closures, transfers and price increases. Two of the plants with problems were identified as "not fixable in the short term."

[33] Third Avenue (which alone had used a multiple of 6 in arriving at an approximate value for the Debtors) acknowledged that once adjusted EBITDA slipped below $150 million, unsecured creditors were not the holder of the "fulcrum securities" of the Debtors.

The August 2006 Stakeholders Presentation included the extensive assessment and comprehensive review of the Debtors' operations by management. The presentation recommended filling thirty-five new engineering positions and nine high priority positions at nine plants through the use of temporary employees. The Debtors required these personnel to implement the operational turnaround. The presentation also included plans to close six plants.

On August 18, 2006, Ford announced "an aggressive reduction" of fourth quarter production by 21 percent or 168,000 units. This reduction followed production reductions by Ford in the third quarter of 20,000 units.

On August 22, 2006, the Debtors issued the 6+6 Plan. On August 23 and August 31, 2006, Michael Fineman of Third Avenue sent emails to Chanin and Alvarez, instructing them that it was their job to challenge the 6+6 Plan and the downward implication of that plan on 2007 EBITDA. These emails characterized the projections in the 6+6 Plan as "crazy low and normalized levels are 2x as great." *See* Exhibit II. After the Debtors issued the 6+6 Plan, Barse instructed the Committee's professionals to: (a) pursue the fraudulent conveyance actions against the Customers; (b) investigate whether an examiner should be appointed; (c) investigate the possibility of appointment of a trustee; (d) conduct ongoing discovery of related issues; and (e) work to maximize the value of the Debtors. Although Third Avenue was the principal advocate for each of these initiatives, the initiatives had the support of the entire Committee.

On September 1, 2006, GM forecasted a 12 percent drop in fourth quarter production. Shortly thereafter, on September 19, 2006, DaimlerChrysler announced that it would cut production by 16 percent for the rest of 2006. It forecasted its own operating loss for 2006 at $1.26 billion.

On September 20, 2006, Capstone issued its report on the 6+6 Plan to the Prepetition Lenders. Capstone reported that the Debtors were sending multiple teams to the plants to resolve the operational problems causing the negative variance to both the 2006 Operating Plan and the 4+8 Plan. The report concluded that:

> [There is] "significant execution risk in achieving 2006 EBITDA of $105.5 million and to a greater degree, in achieving 2007 EBITDA of $157 million. We believe management has begun to institute the tools and apply the resources necessary to restructure the Plastics business. While there are significant execution and OEM volume risks in the 6+6 and 2007 Forecasts, we believe that the Plastics business can be restructured and is capable of achieving the forecasted EBITDA margins of 11 percent before corporate overhead allocations, although the timeline for achieving such improvements may be lengthier than forecasted by the company."

During this period, Macher continued to assure the Board that the Debtors' projections were achievable.

vi. Restructuring Efforts During Fall 2006

After the decision to reject Wilbur Ross' July offer, the Prepetition Agent embarked down the path of a stand-alone reorganization involving conversion of the Prepetition Lenders' debt to equity. On August 18, 2006 the Agent delivered a term sheet to the Debtors for such a plan. Discussions prior to the issuance of the 6+6 Plan revolved around the unsecured creditors obtaining an insignificant percentage of warrants and/or common stock. The Agent continued negotiations on the term sheet throughout August 2006, even after the issuance of the 6+6 Plan that projected 2006 adjusted EBITDA of approximately $105 million.

In August 2006, while negotiating the revised plan term sheet with the Prepetition Agent, Third Avenue insisted that the Committee would not settle for less than five percent of the equity, arguing that the Debtors had substantial value and the Prepetition Lenders would recover par value. This was a sharp contrast from the position taken by Third Avenue as a bidder in

February 2006, when projected 2006 EBITDA was $265 million, or $160 million more than that projected in August 2006. Third Avenue eventually agreed to accept less than five percent of the equity if KZC would reduce its fee by $1 million. When Cooper refused a reduction of KZC's fees (asserting that the proper avenue for such issues was the fee approval process), Third Avenue terminated its involvement in the negotiations. The Prepetition Agent then terminated negotiations with the Committee because the Committee would not be able to deliver the support of the largest unsecured creditor (which held a blocking vote) without Third Avenue's involvement in the negotiations. Subsequent negotiations with the Committee after the issuance of the 6+6 Plan involved granting a smaller percentage of a litigation trust to unsecured creditors (rather than granting unsecured creditors a share of the equity and/or warrants in the reorganized Debtors plus a larger share in the litigation trust as had been previously discussed).

At a projected 2006 adjusted EBITDA of $105 million, the Debtors did not believe a stand-alone plan was financeable absent extraordinary relief from the Customers. EBITDA of $105 million threatened the Debtors' ability to make capital expenditures essential to the new business required for reorganization. Pursuant to discussions with the Prepetition Agent, the Debtors compiled a list of accommodations from the Customers that would be necessary to make the plan financeable. The list included: (a) program awards; (b) price adjustments; (c) advance Customer funding of engineering; and (d) advance payments on tooling. The list of proposed Customer concessions (the "Proposed Customer Concessions") also included requests for immediate awards for certain programs beginning in 2009 and 2010. *See* Exhibit JJ: Draft Customer Agreement. The Proposed Customer Concessions were so extraordinary that one Customer remarked that the proposed Customer agreement "could not have been drafted by anyone who had ever been near a car." However, the concessions were necessary because, under

the customary method of the supplier making the initial investment in engineering and design, the Debtors' due diligence showed that, if the Debtors were awarded the requested new programs, the Debtors' engineering costs would be required to increase from approximately $40 million per year to $80 to $90 million per year.

The volume reductions by the Domestic Customers caused substantial damage to the Debtors' businesses given the Debtors' reliance on sales with the Domestic Customers. In addition, in May 2006, the Debtors lost GM's Lambda program to Cadence Innovation. The Debtors' production on the program was to begin in 2006. The 2006 Operating Plan had assumed flat line sales, making up lost business with the Lear Transfer Business and miscellaneous other resourced business having a collective positive EBITDA impact of approximately $16 million.

In mid-October 2006, the Prepetition Agent determined that a stand-alone plan was no longer possible.[34] On October 26, 2006, the Debtors reported to the Court that they could not reach an agreement that would enable a plan of reorganization.

The Debtors' decision to liquidate initiated a new round of negotiations resulting in new Customer agreements with the Domestic Customers in November 2006. At the time, operational changes were starting to take hold at key plants that were previously the primary contributors to the failed operational turnaround.

[34] During this time period, the Debtors realized that the Hermosillo plant could not be sold without price increases. After failed attempts to satisfactorily negotiate those increases, the Debtors, with the support of management, the Board, and the Committee, decided to shut down operations at the plant for several hours, to incentivize Ford, the primary Customer in that plant, to make certain concessions during negotiations. In addition, given the pendency of the stand-alone plan, the Debtors advised the Bank Group of their intended shutdown. The Bank Group did not act to stop the shutdown.

vii. Third Avenue's Resignation from the Committee

On September 22, 2006, Third Avenue resigned its position as Chair and member of the Committee.

viii. Failed Operational Improvements

All the representatives of the Debtors who were interviewed, including Leuliette, Cooper, Trenary, Fox, Masanovich, and Macher himself (as well as Kirkland), concur that Macher and his team were given sole responsibility to accomplish the operational improvements in the 2006 Operating Plan. Management and KZC divided their responsibilities so as to delegate to KZC the financial aspects of the turnaround, and to delegate to Macher and his team the operational aspects of the turnaround. This division was clearly denoted in KZC's third and fourth interim fee applications for the respective periods from January 1, 2006 through April 30, 2006 and from May 1, 2006 through August 31, 2006. The Board supported this division of labor due to Macher's extensive operational experience and expertise, and KZC's relative lack of automotive expertise. KZC therefore assumed responsibility for such matters as liquidity, pricing, and commercial settlements, while Macher was responsible for the implementation of his operational turnaround plan. The Board granted Macher substantial leeway in the operational turnaround, free of interference from the professionals, including KZC. With respect to the preparation of financial information and the Debtors' business plans, Macher's operations team provided KZC the information on the operational turnaround, which KZC then incorporated into the Debtors' financial models and business plans.[35]

[35] Various constituents attack this division as being "convenient" given the result obtained. These constituents point to the fact that they relied on financial information and projections as having the imprimatur of an independent financial consultant. They note that the purpose of bringing in KZC to serve as CRO, Chairman of the Board and to head and participate on the restructuring committee of the Board was to bring this independent

Macher assumed primary responsibility for the Debtors' failure to meet their projections with respect to the operational turnaround and cost-savings. He attributes the Debtors' failure to execute on problems that could not have been anticipated by senior management.[36] Specifically, Macher attributes the failure to achieve the turnaround to incompetent or insufficient plant management and to a corporate culture that did not promote the disclosure of relevant information, nor implementation. His characterization is supported by numerous people interviewed on behalf of the Debtors and other constituents. The following examples illustrate these problems.

When Macher visited the Debtors' Guelph, Ontario plant, he witnessed forty extra personnel on a shift (in excess of budget) to trim parts on a certain program there. Macher determined that subcontracting the business to another supplier would save the Debtors $4 million per year, based upon a quote received by the supplier. Macher instructed the plant manager to move forward with the plan to move the business to the alternate supplier, including ordering new tools to be constructed to use in ongoing production during the move. Unbeknownst to Macher, the plant already possessed a second set of tools, obviating the need to have a second set fabricated. The plant manager never offered this information to Macher. After weeks had passed and after numerous inquiries by Macher, Macher learned about the second set of tools. In the end, the plant manager's inability to take timely and appropriate steps to effectuate the outsourcing and to follow through on instructions delayed the implementation of

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financial and restructuring expertise to the process. They believe this process failed in that the Debtors consistently issued overly-optimistic projections.

[36] Macher recognized that if (a) the President of Plastics not suffered personal issues which impeded his performance; and (b) the Vice-President of Strategic Planning had possessed a skill set better suited to her position during the turnaround, some of these issues may have been discovered earlier.

the cost-savings measure. The Debtors lost the opportunity to realize $1 million of the anticipated $4 million in cost-savings as a result of this delay.

Similarly, Macher observed that there were two operators running two machines, who were not working for as much as 80 percent of the time they were on duty. Macher directed that the plant manager terminate one of the operators. This termination would have yielded approximately $150,000 in annual savings. Macher returned to the plant the next week and both operators were still working. The plant manager indicated that he did not fire the individual because he had to pay workers' compensation claims for the individual. Macher then proposed a transfer for the individual in such a manner as to eliminate one head count. This change was never made.

The Debtors' Port Huron, Michigan plant was also a model of inadequate execution and incompetent personnel. At one point, the Debtors were losing $1 million per month at their Port Huron plant. Macher traveled there every week and observed the following scenarios.

The Debtors had launched a new program with incompetent workers, yielding 95 percent scrap on the parts produced. The plant had no plant manager, no controller and no engineer. Rather, a quality control person was running the plant. Macher learned that the people formerly in these positions had been terminated to save money. Macher also learned that the former Port Huron plant manager had met projections in the first quarter of 2006 by running excessive overtime in the fourth quarter of 2005. The plant manager built a bank of parts over the December holiday period to increase performance in the next quarter. By April 2006, the plant manager quit, because he knew he could not meet his targets again.

On another occasion, Macher waited for a shift change in Port Huron. Instead of the shift change, he observed the plant shutting down. Upon inquiry, he learned that the shutdown was

due to the fact that the workers routinely called in sick on Fridays and Mondays, so that they would have to come in on Saturdays and Sundays to perform their work, entitling them to overtime for the work they should have performed on the days of their feigned illness. Macher had to terminate employees for this behavior, as such action was not taken before he learned of the practice.

Macher believed the Debtors could have achieved their operational turnaround goals if they had the proper personnel in place. According to Macher, the Debtors did not have sufficient resources to timely hire the additional personnel they required to effectuate the operational turnaround.

On April 26, 2007, the Debtors issued the Presentation to Pre-Petition Secured Lenders Chapter 11 Plan and Status of Sale/Wind-down Process. *See* Exhibit KK: Presentation to Pre-Petition Secured Lenders – Chapter 11 Plan and Status of Sale/Wind Down Process. In this presentation, the Debtors provided a post-mortem of the events leading to the ultimate outcome of the cases. The items of note included:

(a) Evolution of the Chapter 11 Plan (p. 10-11);

(b) Summary of Customer Agreements detailing in excess of $750 million of funding by the Customers since the beginning of these cases (p. 15);

(c) Evolution of the Carpet and Acoustics Forecast (pp. 29, 31-32);

(d) Marketing process and transaction economics for Plastic Interiors Transaction (pp 36, 39);

(e) Delineation of the sources of the $150 million postpetition financing repayment (p. 45); and

(f) Other key transactions, recoveries and developments, including the Canadian statutory severance of $72 million and the Debtors' agreement with the PBGC (pp. 49, 51-55).

V. FEE EXAMINER'S CONCLUSIONS WITH RESPECT TO QUESTIONS POSED BY THE COURT

General Statement:

Upon commencing these cases, the Debtors were like emergency room patients that were "dead on arrival." The Debtors had virtually no cash. They had encumbered substantially all of their assets as collateral to various lenders. The majority of the Debtors' business, Plastics, consisted of loss-producing contracts. Yet no constituent, particularly the Customers, who were dependent on the Debtors' supply for their own production needs, could have let the Debtors die on the operating table without attempting to revive them. The Customers' dependency on the Debtors at the outset of these cases was so great that it enabled the Bank Group (in funding negotiations), and the Committee (through threats of litigation and shutdown of the Debtors' operations) to successfully exert their leverage to extract monetary concessions from the Customers. Indeed, the Bank Group extracted unprecedented concessions from the Customers due to the Customers' perceived inability to resource their business away from the Debtors in a timely manner.

All constituents and professionals worked hard through the summer of 2005 to resuscitate the Debtors and keep them viable. This stabilization effort continued through the fall and winter of 2005. As a result of Customer concessions, the Debtors temporarily stabilized during the end of 2005 and the beginning of 2006, but they remained critically ill. Their only hope for continuation as a going concern was a miraculous cure to be administered on a critical projected timeframe during 2006. Because the Key Constituents and the Debtors each desired that the Debtors survive as a going concern, they were willing to explore extraordinary cure options. The Debtors adopted and pursued an aggressive operational turnaround plan, particularly in Plastics, which was to: (a) provide the Debtors with substantially increased EBITDA, which would (i)

create value for the Prepetition Lenders and the unsecured creditors and (ii) provide the necessary liquidity to permit the Debtors' reorganization; and (b) provide a stable platform for continued production for the Customers. This turnaround plan was contained in the Debtors' Business Plan as originally issued in January 2006 and modified in June and August of 2006.

The cure thus consisted of an array of contingent and uncertain improvements contained in the Business Plan. In the absence of extraordinary third party concessions or a capital infusion, these improvements had to be achieved on the timetable projected in the Business Plan in order to meet the Debtors' 2006 cash needs and thereby permit the survival of the Debtors and their ability to obtain value beyond 2006. Any deviation from the timetable set forth in the Business Plan threatened the Debtors' fragile liquidity and reorganization prospects. Therefore, the cure required monitoring to prevent the potential consequences of negative deviation.

The improvements necessary to cure the Debtors took time to implement. As time elapsed, the Debtors' financial results demonstrated that the operational turnaround was not occurring with sufficient speed to overcome the Debtors' revenue problems, ensure continued liquidity in 2006, and overcome the impact of the Debtors' dissipating book of business. Early "misses" on Business Plan projections and the downward revisions to EBITDA projections in the 4+8 Plan and the 6+6 Plan signaled that the cure was failing. While some Key Constituents pressed harder than others to continue in the attempt to rehabilitate the Debtors, the efforts to rehabilitate the Debtors ceased after projected EBITDA fell to levels at which the Debtors' cash flow issues mandated further extraordinary Customer accommodations to maintain the viability of the Debtors.

Now that the disappointing result of the Debtors' chapter 11 cases is clear and the bill for the efforts to save the Debtors has been tallied, questions have arisen as to whether, due to the

Debtors' grave condition, the formulation and execution of plans to rehabilitate the Debtors were flawed, or whether the attending physicians failed to heed warning signs of the Debtors' impending demise.

A. **Should The Substantial Operational, Managerial And Financial Issues In The Debtors' Plastics Division And The Effect Of Such Issues On The Achievability Of Management's Business Plan Goals Have Been Discovered Earlier?**

i. Discovery of The Plastics Issues

Without question, from the outset of these cases, the Debtors, the DIP Lenders and the Key Constituents were aware of the substantial operational, managerial and financial issues in Plastics (the "Plastics Issues"). The Plastics Issues became apparent in the midst of the liquidity crisis which was apparent as of the Petition Date and persisted throughout the summer of 2005. The signals that alerted the Debtors and all Key Constituents to the Plastics Issues included: (a) the Debtors' failure to obtain significant new business awards for at least a year prior to the Petition Date, which created an evaporating book of business and revenues; (b) the DIP Lenders' refusal to lend beyond the initial $150 million of interim financing, signaling concern; (c) the Debtors' lack of reporting processes, which impeded the Key Constituents' ability to obtain information, including information to forecast the Debtors' cash needs; (d) the prevalence of loss-producing contracts in the Plastics business, which, together with the Debtors' forecasting problems, precipitated the Debtors' daily liquidity crises; (e) abrupt changes in key management positions during the early months of these cases, including three changes of the Debtors' Chief Executive Officer and the termination of the President of Plastics, destroying continuity of management; (f) the Debtors' lack of unencumbered assets, which left the Debtors without collateral to offer for further financing; (g) significant operational issues at the plant level, as evidenced by, among other things, the total lack of readiness in the Hermosillo plant for the Ford

Fusion launch, evidencing inability to implement directives at the plants; and (h) the Debtors' internal managerial and operational paralysis caused by the corporate culture created by Stockman and the ongoing governmental investigation. Given the chaos, legions of professionals for the Key Constituents descended upon the Debtors and maintained consultants on site, at a cost to the estate that exceeded tens of millions of dollars. The estate spent these millions of dollars educating all Key Constituents as to the existence of the Plastics Issues.

ii. Delay in the Discovery of Effect Of Plastics Issues On Achievability Of Management's Business Plan

All Key Constituents knew of the existence of the Plastics Issues. The Business Plan hinged upon improvements in the Plastics Issues. The Business Plan could not be reasonably achieved and the cash flow needs of the Debtors could not be met if these improvements could not be implemented in the timeframe projected in the Business Plan. If the improvements were not implemented as scheduled, the Debtors would face dangerous liquidity risk that would threaten their viability in 2006 and beyond, impeding their reorganization efforts. Therefore, the true focus of the delay issue investigated in this question involves the timing of the discovery that the improvements in the Plastics Issues could not be achieved on the schedule anticipated in the Business Plan. If the improvements could not be achieved on schedule, the effect of the Plastics Issues rendered the Business Plan unachievable. To the extent the Debtors did not timely anticipate that the improvements could not be achieved as scheduled by the Business Plan, the Business Plan was unreasonably aggressive, constituting delay in the discovery of the impact of the Plastic Issues on the Business Plan. Given the fragility of the Debtors' liquidity and the critical nature of the Debtors' timely achievement of the improvements to sustain viability, any delay in discovery of the effect of the Plastics Issues on the Business Plan was significant to the success of the reorganization.

The Business Plan was originally formulated in January 2006. It was then modified by the 4+8 Plan issued in June 2006; and by the 6+6 Plan issued in August 2006. Therefore, the inquiry requires an analysis of the achievability of the Business Plan at the three times at which it was formulated: (a) January 2006; (b) June 2006; and (c) August 2006. The 6+6 Plan issued in August 2006 proved to be a realistic forecast of the Debtors' actual 2006 performance. As a result, the relevant analysis is the achievability of the Business Plan in January 2006 and June 2006. The achievability of the Business Plan during each of the foregoing timeframes is analyzed below.

(1) Background Facts Pertinent to the Formulation of the Business Plan

During the summer of 2005, the Debtors were focused on liquidity and survival. At this point, the Debtors did not have historical financial information or reporting ability to make reliable forecasts to make a foundation for a business plan. They were faced with two choices: attempt to reorganize or liquidate. Rather than liquidate, which would have yielded the lowest recovery for all stakeholders, the Debtors and the Key Constituents believed that the Debtors should attempt to reorganize by (a) hiring someone like Macher to lead the operational turnaround of the Debtors' business and (b) seeking substantial monetary and contractual concessions from the Customers. The Customers, who predictably preferred an immediate sale process to extract themselves from an insolvent sole-source supplier, did not appear to have immediate resource plans in place, and therefore had little leverage to oppose a reorganization.

In order to formulate a financial forecast that would indicate the Debtors were a viable economic entity, the Debtors required concessions from the Customers. The Customers yielded concessions in two rounds of negotiations. First, in July 2005, the Customers granted one-time surcharges and subordinated loans to sustain the Debtors while the Debtors evaluated their

options. Subsequently, the October 2005 price increases, obtained primarily through the efforts of KZC (and supported by the Committee's threats of litigation and shutdown), provided longer-term liquidity and stability which allowed the Debtors, their new management team and their professionals to construct and implement the Business Plan. The initial form of the Business Plan was the detailed 2006 Operating Plan. The severity of the Plastics Issues mandated a Business Plan premised on an operational turnaround. The operational turnaround consisted of numerous improvements, which were required to be made as scheduled in the Business Plan in order to preserve liquidity and permit the Debtors to demonstrate viability in 2006 and, thus, maintain their reorganization prospects.

(2) Summary of Conclusions with Respect to Achievability of the Business Plan in January and June 2006

The Fee Examiner concludes that whether the Business Plan was reasonably achievable when it was issued in January 2006 in the form of the 2006 Operating Plan due to the Plastics Issues is a subjective question. The Board considered the aggressiveness of the 2006 Operating Plan and determined that Macher should be afforded the opportunity to achieve the improvements that were the basis of the Business Plan. In so doing, they implicitly determined that the Business Plan was reasonably achievable.

Weighing all the factors, the Fee Examiner cannot conclude that it was unreasonable for the Board and KZC to defer to Macher with respect to the achievability of the improvements on which the Business Plan was based, when the plan was issued in January 2006. Therefore, the Fee Examiner cannot conclude that the improvements in the 2006 Operating Plan were not reasonably achievable at the time the plan was issued. The Fee Examiner concludes that there was no delay in the discovery that the Plastics Issues rendered the Business Plan unachievable as of the initial issuance of the Business Plan in January 2006.

The Fee Examiner concludes that based on the Debtors' performance in March, April and May 2006 and the liquidity issues caused by that performance, the Debtors should have known that the critical EBITDA projection in the Business Plan, as modified by the 4+8 Plan, was unachievable no later than the issuance of the 4+8 Plan in June 2006. The Fee Examiner believes that, by June 2006, the Debtors had or should have had sufficient information and knowledge to realize that the improvements embedded in the Business Plan could not be achieved in the timeframe anticipated in the Business Plan.

Only two months after issuing the 4+8 Plan in August 2006, the Debtors reformulated the Business Plan to project 2006 adjusted EBITDA of approximately $105 million – approximately $75 million less than the Debtors had projected only two months earlier. This change in the projections was due, in large part, to the failure to implement the improvements as anticipated. The Debtors controlled a significant portion of these improvements. The Fee Examiner believes that the Debtors should have known no later than June 2006 that (a) it was unlikely that the improvements would timely occur; and (b) EBITDA would be significantly less than $179 million, severely affecting liquidity. Therefore, the Fee Examiner concludes that there was approximately a two-month delay in discovery of the effect of the Plastics Issues on the achievability of the Business Plan, as amended by the 4+8 Plan. These conclusions are explained in further detail below.

(a) Initial Issuance of Business Plan in January 2006

The Debtors issued the Business Plan in the initial form of the 2006 Operating Plan in January of 2006. The Business Plan was based almost entirely on "upside" improvements which had not occurred as of the time of its initial issuance. As illustrated in Exhibit K, the Debtors' baseline EBITDA for 2006, based on actual 2005 performance, adjusted for the impact of rising commodity energy prices and other items, was negative $36 million. The only certain element of

the Business Plan was the October 2005 price increases, which had already been obtained from the Customers. Based upon this certain element and the Debtors' baseline EBITDA, the Debtors' value was starkly below the balance of the Prepetition Lenders' debt. The sum of (a) the baseline 2006 EBITDA (negative $36 million); and (b) the EBITDA impact of the October 2005 price increases, including one-time surcharges in the first quarter of 2006 (positive $127 million) was $91 million of 2006 EBITDA. Applying a multiple of five to this calculation of reasonably assured 2006 EBITDA (prior to inclusion of the projected upside improvements) implied an enterprise value for the Debtors of only $455 million, well below the Prepetition Lenders' debt and priority claims. *See* Exhibit H.

All other components of the Debtors' projected 2006 EBITDA, and hence, value to cover and exceed the Prepetition Lenders' debt, hinged upon the execution of future upside improvement initiatives (such as new business and cost savings efforts). Because these initiatives were contingent on future implementation, they each entailed significant execution risk.

Each Key Constituent recognized the materiality of the execution risk inherent in the various components of the Business Plan contemporaneously with the issuance of the Business Plan. The Business Plan expressly stated that it could not be achieved unless the Debtors: (a) implemented approximately $123 million of cost savings initiatives for 2006, consisting of hundreds of items at an average cost improvement of over $100,000 per item;[37] (b) established a service parts business that would generate approximately $15 million of annual EBITDA; (c) effectuated management changes, including filling numerous critical vacant positions; (d)

[37] Most of the cost improvements were not projected to have a material impact on the Debtors' EBITDA until the third or fourth quarters of 2006.

obtained over $300 million of new transfer business, having an EBITDA impact for 2006 of approximately $13 million; and (e) obtained material pricing indexing of approximately $11 million from Ford. *See* Exhibit K. Thus, the achievability of the Business Plan depended upon the achievement of its key components, which were clearly and demonstrably contingent on future implementation and subject to material risks. Moreover, in order to preserve liquidity and demonstrate viability in 2006, and thus maintain prospects for reorganization and potential value in years beyond 2006, the Debtors had to achieve the improvement initiatives on the scheduled timeline in the Business Plan. The Business Plan was "break even" at $265 million of EBITDA. At $91 million of EBITDA, which was the baseline for 2006 before the improvements in the Business Plan, the Debtors could not pay interest, professional fees and capital expenditures. Therefore, performance against the Business Plan was critical because any failure jeopardized the Debtor's liquidity and, hence, their ability to reorganize.

From the time of the August 31, 2005 release of the predecessor to the Business Plan, the August 2005 Business Plan, the Debtors disclosed the execution risks in the financial, managerial and operational assumptions underlying the Business Plan. Attached as Exhibit LL is a summary of various risks and assumptions identified in the Debtors' business plans from and after the August 2005 Business Plan.

While the Key Constituents acknowledge that the risks and assumptions in the Business Plan were disclosed, they dispute whether, in light of those risks, the Debtors should have issued and continued to pursue a plan as aggressive as the Business Plan, or, instead, should have issued a more conservative Business Plan that had a greater probability of being achieved in light of the Plastics Issues. If the Business Plan was unreasonably aggressive given the Plastics Issues, then

the Business Plan created expectations that it would be achieved. Had these expectations not been set, the course of these cases may have been different.

The Prepetition Agent argued that the Business Plan was too aggressive because it sought to implement $123 million in cost savings from hundreds of initiatives, in the midst of launching a significant number of new product platforms. The Prepetition Agent argued that the Plastics Issues should have prompted the formulation of a more achievable target for 2006 adjusted EBITDA. Such a plan should have recognized that the cost improvements would not occur until 2007, rather than in the third and fourth quarter of 2006 as projected by the Business Plan. Capstone believed in January 2006 that the 2006 EBITDA forecast should have been approximately $180 million. EBITDA of $180 million would have implied a value that threatened the Committee's seat at the table. *See* Exhibit H. As such, it would have changed parties' expectations and possibly the course of these chapter 11 cases.

At the same time, Capstone also acknowledged that time was an impediment to the Debtors' restructuring. The Debtors' financial instability impeded their ability to obtain new business awards before and during bankruptcy, leaving them with a significantly diminishing book of business. In order to achieve the same sales as they had in 2005 (i.e., keep sales flat in the Business Plan), the Debtors had to obtain over $300 million of transfer business already sourced to other suppliers. As the Debtors lingered in bankruptcy, they missed award cycles, compounding the problem.

Prior to the issuance of the Business Plan in January 2006, the Prepetition Agent voiced concerns to KZC regarding the plan's achievability. The Prepetition Agent speculated internally with the Bank Group that the Debtors' projected 2006 adjusted EBITDA should have been approximately $180 million. An EBITDA of $180 million would have implied a value that

threatened any recovery for unsecured creditors.[38] However, at an EBITDA of $180 million, the Debtors would not have had sufficient cash flow to pay interest, professional fees and capital expenditures, including interest and fees of the Prepetition Lenders. Yet, it does not appear that the Prepetition Agent addressed the cash flow problems that would result from a $180 million 2006 EBITDA.

Nonetheless, neither the Prepetition Agent nor its financial advisor, Capstone, disapproved the budget comprising the Business Plan or insisted upon changes in the Business Plan.[39] This inaction could have been attributable to the fact that (a) under the DIP Credit Agreement, the right to approve the form and substance of the budgets was held by the Postpetition Agent and Capstone, as the advisor to the Postpetition Agent; (b) the Prepetition Lenders' debt was trading at par or close to par during such time period, suggesting higher value; (c) the Prepetition Lenders were receiving payments of interest and fees, to which they would not be entitled if they were undersecured and which the Debtors would not be able to pay at an EBITDA of $180 million; and (d) in the event that a stand-alone was pursued, the Prepetition Lenders wanted a strategic value to support an acceptable treatment for themselves.

Certain Customers also criticized the Debtors for not being more conservative in the projections under the Business Plan. Some argued that if the projections had been more conservative, the sale process would have been more credible. In addition, they argued, the

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[38] Using a five-times-adjusted EBITDA multiple to calculate enterprise value, a $180 million adjusted EBITDA forecast implies sufficient value to pay the debts of the DIP Lender and the Prepetition Lenders in full, yet leaves no value for unsecured creditors.

[39] Section 5.01(o) of the DIP Credit Agreement, as amended, required that the Business Plan budgets be reasonably satisfactory to Capstone and the Postpetition Agent in form and substance. The DIP Credit Agreement did not expressly give these rights to the Prepetition Agent, or to Capstone on behalf of the Prepetition Agent (as opposed to the Postpetition Agent).

Debtors would not have lost credibility with their Customers by failing to deliver what they promised.

The Committee's professionals also believed the Business Plan was aggressive, yet did not raise those concerns. Because there was insufficient value to inure to unsecured creditors without the realization of the contingent initiatives in the Business Plan, the Committee believed it was against its interest to attack the Business Plan. In addition, the Committee professionals believed that the Committee's members would have characterized as inadequate any projections which did not demonstrate a value sufficient to pay unsecured creditors in full.

In contrast to the Bank Group, Customers and Committee professionals, Third Avenue argued that the Business Plan, when issued, was not only achievable, but was conservative, despite the Plastics Issues. However, Third Avenue believed that the passage of time during these cases destroyed the value created by: (a) the $127 million of price increases; and (b) Macher's cost improvement plan, because of the Debtors' diminishing book of business. The belief that time was the Debtors' enemy conflicted with the Debtors' need for time to permit Macher to overcome the chaos of 2005, take proper control of operations as he was hired to do, and implement the operational improvements, such that their value (including future value for years beyond 2006) could be recognized by a purchaser or creditors in a stand-alone plan.

The Board questioned the aggressiveness of the Business Plan, which was also the subject of much debate between Macher and Boken. The Board was comprised of sophisticated individuals, including Tim Leuliette, Chief Executive Officer of Metaldyne Company LLC, who has extensive experience in the automotive industry. Leuliette acknowledged that the Board gave substantial deference to Macher. Leuliette asserted that this was appropriate, because a Board ordinarily does not look behind the statements of and thereby micromanage the Chief

Executive Officer. He indicated that the Board understood it needed a Chief Executive Officer who understood the challenges of survival in the automotive supply industry and could formulate aggressive strategies to meet these challenges. Macher's reputation and strategy seemed to satisfy the Board's need.

In the Board's deliberations, both KZC and Lazard recall Macher assuring the Board that the Business Plan was achievable. Both recall Macher emotionally and emphatically reassuring the Board that "he always delivers what he promises." Giving further credence to Macher's assurances, many interviewed parties indicated that throughout the Debtors' attempts to reorganize, Macher reiterated to many of them that his plan was achievable. After these deliberations, the Board deferred to Macher's judgment regarding the achievability of the Business Plan.

The Fee Examiner questioned Macher about his motivations in formulating the Business Plan. Macher confirmed that he developed the Business Plan independent of pressure from the Committee and/or Third Avenue (contrary to the insinuations of some interviewed parties). Macher also asserted that the Business Plan was necessary to provide a more rational strategy to the Committee, which had previously used threats of litigation and production stoppages to obtain value for the unsecured creditors.

Despite their support for Macher, several Key Constituents criticize KZC. They assert that KZC, as an independent financial advisor, with its representatives acting as Chief Restructuring Officer, Chairman of the Board, member of the Board and members of the restructuring committee, was the independent face of the restructuring. They assert that, in its various capacities, KZC should have overridden Macher's support for an aggressive plan and moved forward with a more conservative plan.

KZC acknowledged that it did not impose its judgment regarding the achievability of the Business Plan and overrule those with more automotive experience. Rather, KZC asserts that it made full disclosures of all of the risks, so that the Key Constituents could make informed choices about the Business Plan.

Although most of the Key Constituents acknowledge that the Business Plan was aggressive, none address the fact that the Business Plan cash forecast was cash flow "break even" at an EBITDA of $265 million, due to the forecasted disbursements for professional fees, interest (including interest on the debt of and fees incurred by the Prepetition Lenders) and capital expenditures. Those parties challenging the aggressiveness of the Business Plan do not speculate as to how the Debtors and the Key Constituents would have handled a Business Plan that was not cash flow "break even," though they posit different outcomes for these cases. A Business Plan that was not cash flow "break even" would likely have changed the complexion of these cases.

The Fee Examiner considered: (a) the polarized viewpoints of the various constituents; and (b) the inherent risks of the forecast, including (i) the anticipated revenue enhancements that required favorable negotiations with third parties, including the Customers, who had spent or committed to spend over $200 million to enable the survival of the Debtors by the time of initial issuance of the Business Plan in January 2006; and (ii) the magnitude of cost improvement initiatives required by the Business Plan. The Fee Examiner believes that, although there is no doubt the timetable for the operational turnaround of the business was aggressive, the Board's deference to Macher with respect to the formulation and pursuit of the Business Plan as initially issued in January 2006 was reasonable given that: (a) each of the Key Constituents supported Macher; (b) Macher believed the Business Plan was achievable; (c) Macher was an industry

expert who had an excellent reputation and vast experience; and (d) Macher validated his reputation in the Hermosillo situation. In the exercise of its business judgment, the Board believed Macher needed to be given the opportunity to utilize his skills to create value for the estate. The Board accommodated the differing interests between the Prepetition Lenders and the Committee by opting for the Business Plan, which pursued both sale and stand-alone plan options. The Fee Examiner cannot view this deference as unreasonable.

Because the Fee Examiner defers to the Board's judgment in determining that the Business Plan was reasonably achievable, and because the plan included the dual track of a sale and stand-alone plan strategies, the Fee Examiner believes there was no delay in realizing that the effect of the Plastics Issues would render the Business Plan unachievable when the Business Plan was initially issued in January 2006.

(b) Modification of the Business Plan Through Issuance of the 4+8 Plan in June 2006

Critically, in order to ensure liquidity and thus their prospects for reorganization, the Debtors had to achieve their improvement initiatives in the Business Plan on the timeline scheduled in the Business Plan. If the Debtors failed to improve as scheduled, in the absence of further third-party concessions or a capital infusion: (a) they would not have sufficient cash resources to continue operation; and (b) their viability in 2006 would be jeopardized, which would likely prevent potential purchasers or plan sponsors from giving the Debtors credit for potential value and further improvements during years beyond 2006.

In early 2006, all parties were guardedly optimistic about the Debtors' performance against the initial iteration of the Business Plan, the 2006 Operating Plan. However, by early May 2006, when the March financial statements were issued, obvious warning signs appeared that indicated the Debtors' performance would not meet the projections in that plan. For March

2006, despite sales exceeding budget by approximately $25 million, the Debtors suffered a $3.7 million unfavorable EBITDA variance from the projections in the 2006 Operating Plan. Given the criticality of the improvements to the liquidity of the Debtors, this failure to meet projections was significant, despite the offset provided by increased sales.

On June 2, 2006, the Debtors issued financial results for April 2006 indicating an unfavorable EBITDA variance of $5.4 million (48 percent below projections in the 2006 Operating Plan), even though sales for the month exceeded 2006 Operating Plan projections by $19.8 million (10.6 percent higher than projected). On June 8, 2006, the Debtors issued their 4+8 Plan, revising projected 2006 adjusted EBITDA downward to $179.4 million. On August 14, 2006, the Debtors issued financial statements for June 2006. The actual adjusted June EBITDA of approximately $21 million was lower than both the 2006 Operating Plan (in comparison to which the results demonstrated an $11.2 million unfavorable variance) and the 4+8 Plan (in comparison to which the results demonstrated a $5.6 million unfavorable variance), while sales were on target with the 2006 Operating Plan and compared favorably with the 4+8 Plan.

On August 16, 2006, the Debtors issued a Presentation to Stakeholders outlining the operational problems faced by the Debtors. *See* Exhibit HH. On August 22, 2006, the Debtors issued their 6+6 Plan, revising expected 2006 adjusted EBITDA downward to $105.5 million.

Although the time period between the issuance of the 4+8 Plan and the 6+6 Plan is relatively short, because (a) a significant deviation from the 2006 Operating Plan started to appear by May and become more apparent by June 2006; (b) the liquidity issues presented by a plan that projected less than $265 million of EBITDA should have made such signals more significant; and (c) the Debtors forecasted such a dramatic further decline in the 6+6 Plan issued

just two months after issuance of the 4+8 Plan, the Fee Examiner considered whether the Debtors' conclusions reached in their 6+6 Plan should have surfaced by June 2006. Exhibit BB is a "bridge" from the projected 2006 adjusted EBITDA in the 2006 Operating Plan to the projected 2006 adjusted EBITDA in both the 4+8 Plan and the 6+6 Plan. This Exhibit evidences the underlying causes of the failure to meet projections. As such, it facilitates a determination as to whether the issues that threatened achievability of the Business Plan should have been discovered earlier.

As revealed by Exhibit BB, in addition to operational issues, revenue assumptions also contributed to the failure to achieve the forecasts in the 2006 Operating Plan. The Fee Examiner believes it should have been apparent well before August 2006 that these revenue assumptions would not be met. As set forth in Exhibit BB, the 4+8 Plan revealed approximately $44 million of revenue improvements which had not been or could not be achieved as anticipated. The 6+6 Plan revealed $62 million of revenue improvements which had not been or could not be achieved as anticipated. Each of these revenue enhancements depended upon reaching agreements with third parties. Although the achievement of these enhancements was not completely predictable, it is reasonable to assume that the Debtors should have known well before August 2006 that they would fail to achieve these enhancements sufficiently timely so as not to threaten the achievability of the Business Plan.

Although the failure to achieve these revenue enhancements was a significant component of the lower forecast for performance from the 2006 Operating Plan to the 4+8 Plan in June 2006, they were a much smaller reason for the downward revisions made between 4+8 Plan in June 2006 and the 6+6 Plan in August 2006. Rather, the downward revisions between the issuance of the 4+8 Plan and the 6+6 Plan were largely attributable to the further downgrade of

the achievability of cost improvements. The negative deviation in projected 2006 adjusted EBITDA as compared with the Business Plan was (a) $44.4 million with respect to revenue improvements and $41.2 million with respect to cost improvements in the 4+8 Plan; and (b) $61.7 million with respect to revenue improvements and $97.8 million with respect to cost improvements, in the 6+6 Plan. Thus, in the two month period between the 4+8 Plan and the 6+6 Plan, the deviation in Debtor-controlled cost improvements more than doubled.

As indicated on Exhibit BB, manufacturing performance, cost reductions and various miscellaneous expense issues caused this deviation. The bulk of these cost opportunities were not actually lost or decreased in the first four or six months of actual results during 2006, but rather *were not achieved as projected*. In addition to the factors discussed above, the Debtors' failure in achievement of the projections in the 2006 Operating Plan was foreseeable by June 2006, particularly considering the following:

- All parties acknowledge that the focus in 2005 was to keep production flowing to Customers and to obtain sufficient liquidity for the long run. With stability achieved by the October 2005 Customer price increases and the arrival of a new management team by early 2006, the Debtors and their professionals had five full months to analyze the production efficiencies for the Plastics plants.

- In his interview with the Fee Examiner, Macher concluded in hindsight that his failure to properly assess the strength of plant level management was the major cause for the failure to achieve the cost improvements. Yet, as demonstrated by Exhibit I, which was included in the 4+8 Plan, there were significant managerial deficiencies at the plant level, of which the Debtors should have been aware in June. Recognizing that time was required to determine that these deficiencies were in fact obstacles to the achievement of the Business Plan, the Fee Examiner believes that June 2006 was an appropriate time for the Debtors to discover the severity of their impact on the Business Plan.

- On August 16, 2006, the Debtors issued a Presentation to Stakeholders (*see* Exhibit HH) outlining the monumental operational tasks still confronting the Debtors. It is hard to imagine that the magnitude of the issues on this list developed solely between June and August of 2006 such that they should not have been discovered earlier.

- Trenary, the Debtors' Chief Financial Officer, indicated to the Fee Examiner that in July 2006, he and Matti Masanovich could only calculate on the "back of an envelope" a projected 2006 adjusted EBITDA of approximately $95 to $105 million for the Debtors, which translates to approximately $105 to $110 million when the one-time Customer surcharges received in the first quarter of 2006 are included as they were in the 6+6 Plan. This suggested that, at least by July 2006, the Debtors should have known performance was going to be much more like their reduced estimates in August 2006.

As a result of the liquidity issues presented by a Business Plan projecting 2006 EBITDA below $265 million, the Debtors' operational and liquidity issues converged in June 2006. The Fourth Amendment to the DIP Facility was the "cash fix" to permit sufficient cash flow to enable the operational improvement forecasted in the latter half of 2006. However, if $179 million of EBITDA could not be achieved in 2006, as forecast in June 2006, it would mean that the operational turnaround was taking even longer to implement, meaning that the cash problem was greater. This greater problem would require a more significant and long term cash fix to permit the slower turnaround and, thus, long term viability. When EBITDA was finally acknowledged in the 6+6 Plan to have dropped below the $179 million, the fix ultimately chosen was the Proposed Customer Concessions that were not ultimately obtained.

Given the foregoing facts, the Fee Examiner believes the Debtors should have concluded by June 2006 that their actual 2006 adjusted EBITDA would be substantially less than the $179.4 million projected in the 4+8 Plan and that, therefore, the 4+8 Plan issued in June 2006 was unachievable given the Plastics Issues. Because this realization was made two months later, in August 2006, there was approximately a two-month delay (the "Delay") in determining the meaningful effect of the Plastics Issues on the achievability of the Business Plan. The Fee Examiner believes this unnecessarily extended these cases, and attendant professionals' fees, by two months.

B. If So, Did The Delay Result In Either Unnecessary Losses Or Reductions In Creditor Recoveries?

Given her conclusion that the Delay existed, the Fee Examiner reviewed the recoveries of each of the Key Constituents to determine whether the Delay resulted in either unnecessary losses or reductions in creditor recoveries. As described in more detail below, the Fee Examiner does not believe that the Delay resulted in material unnecessary losses or reductions in creditor recoveries, except with respect to: (a) the Prepetition Lenders, to the extent that these cases could have been accelerated by approximately two months and professional fees funded by the Prepetition Lenders could have been reduced accordingly; and (b) the Customers, to the extent they made business decisions during the Delay that increased their costs upon liquidation. The Fee Examiner acknowledges that this conclusion requires speculation as to hypothetical outcomes had the Delay had not occurred.

In addition, because of the arguments that the Business Plan was unreasonably unachievable when it was issued in January 2006 in the form of the 2006 Operating Plan, the Fee Examiner analyzed what the potential outcomes and the recoveries and losses of the same parties might have been had the Business Plan been more conservative when issued in January 2006. She did so to assist the Court in its analysis, in the event the Court comes to a different conclusion on this issue.

i. Analysis of Unnecessary Losses or Reductions in Recoveries for Certain Parties

(1) DIP Lenders

The Fee Examiner concludes that there was no material impact on the recovery of the DIP Lenders, because the DIP Lenders were paid in full, notwithstanding the Delay. The DIP Lenders were paid in full on April 4, 2007. Had there been no Delay, the DIP Lenders might

have been paid two months earlier. However, because the DIP Lenders received interest accrued until the principal was paid, the DIP Lenders suffered no harm as a result of the Delay.

(2) Prepetition Lenders

The Prepetition Lenders suffered reductions in their recovery as a result of the Delay because professional fees were paid from the proceeds of their collateral. The Prepetition Lenders did not otherwise suffer unnecessary losses or reductions in recovery. These conclusions are based on the analysis of several hypothetical scenarios that could have affected or did affect the recovery of the Prepetition Lenders. Each is discussed below.

(a) The Fourth Amendment to the DIP Facility

Professional fees were funded from the proceeds of collateral securing the debts of the Prepetition Lenders pursuant to the Fourth Amendment to the DIP Facility. Therefore, the Fee Examiner analyzed whether (a) the DIP Agent would have entered into the Fourth Amendment to the DIP Facility had it known in June 2006 that the Debtors' 2006 EBITDA would be substantially lower than $179 million (and, thus, the Delay had not occurred); and (b) whether the professional fees funded by the Fourth Amendment to the DIP Facility were greater as a result of the Delay.

In June 2006, once the Debtors acknowledged that their projected 2006 adjusted EBITDA dropped to $179.4 million, they realized they needed an amendment to the DIP Facility to fund operational liquidity. As stated above, the Debtors required approximately $265 million of annual EBITDA to fund payments of interest, professional fees and capital expenditures. The Fourth Amendment to the DIP Facility allowed the use of fixed asset sale proceeds to fund operational liquidity, including professional fees.

The Fee Examiner concludes that the DIP Agent would likely have entered into the Fourth Amendment to the DIP Facility and funded operations, including professional fees, even

if the Agent knew in June 2006 that the Debtors' 2006 EBITDA would be substantially lower than $179 million. This conclusion is based on the facts that (a) the Fourth Amendment to the DIP Facility did not affect payment of the DIP Loan (and the DIP Agent did not use its leverage to protect the Prepetition Lenders); and (b) when projected 2006 adjusted EBITDA was known to be only $105.5 million, the Bank Group continued to believe that a stand-alone plan was the primary exit strategy and funded professional fees to pursue that plan. Indeed, the Bank Group only abandoned this strategy in October 2006, after the confluence of several events, including the inability to achieve the extraordinary Proposed Customer Concessions, and reductions in volume by the Domestic Customers. As a result, the Fee Examiner believes that the Fourth Amendment to the DIP Facility would have been granted notwithstanding the Delay.

However, had the Delay not occurred, the fees and expenses in pursuit of the eventual liquidating plan would likely have concluded two months earlier, accelerating these cases and reducing the total amount of fees accrued. A chart showing the monthly fees incurred by the primary professional firms in these cases from May 2005 through June 2007 is attached as Exhibit MM. Based solely on this chart, the average monthly run rate for these professionals exceeded $3.7 million. This chart does not include the Ancillary Professionals or Davis Polk. The fees of Davis Polk averaged over $585,000 per month, prior to the decision to liquidate in October 2006. They were significantly reduced when the Debtors decided to liquidate, because there was no longer the need to avoid the indictment of the Debtors. Thus, an acceleration of these cases may have saved over $4.3 million per month, or a total amount of approximately $8.6 million. The Prepetition Lenders funded these fees. Thus, the Prepetition Lenders' recovery was likely reduced by $8.6 million as a result of the Delay.

(b) Sale to Wilbur Ross

The Fee Examiner also examined the possibility that the Bank Group would have pursued a sale to Wilbur Ross had the Delay not occurred. The Fee Examiner believes it is probable that the factors that made the Bank Group forego that alternative in June and July of 2006 would have compelled the same result had the Bank Group known in June 2006 that forecasted 2006 EBITDA would be substantially less than the then-projected $179 million. Specifically: (a) the debt was still trading above the offer to pay 80 percent of the Prepetition Lenders' debt, plus the earn-out; (b) had Wilbur Ross known of the lower projected EBITDA, any further offer from him would likely have been less than the "80 percent of the debt" offer he previously made; (c) Wilbur Ross' offer would still have been the only offer, leaving the Bank Group desirous of a stand-alone plan option that would provide competition; and (d) the Bank Group would still have considered Wilbur Ross' offer to be so contingent as to be illusory. For these reasons, the Fee Examiner concludes that the Bank Group would still have pursued a stand-alone plan in lieu of such offer, as it did in August 2006.

(c) Plant Sale/Wind-down

In addition, the Fee Examiner examined whether the Bank Group would have decided, as an alternative, to implement a total "by plant" sale/wind-down strategy for all plants had the Delay not occurred. The Fee Examiner concluded the Bank Group would not have chosen this option if they knew in June or July 2006 that projected adjusted EBITDA for 2006 was substantially less than $179 million because: (a) although this alternative would have entailed the lowest implementation risk, it also had lowest perceived gross recovery for the estate;[40] but (b)

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[40] The ability to achieve going concern value through a sale of facilities on a "by plant" basis would have been compromised by the fact that the Debtors were not "top of class" in their product classes, mid-level

even in August, 2006, when the risks of implementation of the operational improvements were fully known, the Bank Group pursued the stand-alone plan option described above. The Fee Examiner notes that, had this alternative been pursued earlier, professional fees would have been lower, but the payment of interest and fees to the Prepetition Lenders would likely have ceased earlier than August 29, 2006, offsetting this reduction.

(d) Soft Trim Reorganization

The Fee Examiner examined whether the Bank Group would have decided to reorganize around the Soft Trim business, had the Delay not occurred. Key Constituents have questioned why this option was not fully considered given the substantial risks in the Business Plan. The Fee Examiner concludes that this option would not have been pursued because: (a) the Debtors considered this option in April 2007, citing ten challenges to its realization (five of which were as pertinent in early 2006 as they were as of April 2007), which would likely have defeated that option (*See* Exhibit KK, pp. 31-32); and (b) at that time, none of the Key Constituents appeared to be evaluating the Debtors as separate entities, but rather treated the Debtors as if they were substantively consolidated, thereby considering only reorganization of the Debtors as a whole. The Debtors have indicated that the interdependent Customer base, and the concerns that the separate treatment of Plastics would have had a negative impact on Soft Trim supported a consolidated treatment for the Debtors. For these reasons, the Fee Examiner does not believe that this option was probable.

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management, production efficiency, engineering capability, internal controls or reporting systems. In addition, at certain plants, quality was deficient.

(e) Soft Trim Sale

Had the Delay not occurred, the Debtors may have decided to sell Soft Trim (excluding Convertibles after it had been liquidated). The Fee Examiner believes this would have been unlikely, given the Prepetition Lenders' decision to pursue a stand-alone plan even after the Debtors' projected 2006 EBITDA fell to $105.5 million. Various professionals of the Debtors believed that an independent Soft Trim sale would have been defeated by the Customers who they believe would have imposed ramifications on the prospective purchaser or the Debtors to avoid a result which deprived Plastics of the revenue support provided by Soft Trim. Undisputedly, the Plastics operations relied on revenues from Soft Trim to, among other things, fund losses that would have otherwise required support from the Customers. The Fee Examiner cannot reach this conclusion without more investigation, but acknowledges that financial support of Plastics derived from Soft Trim.

If Soft Trim had been sold earlier, the Fee Examiner believes that the sale proceeds would have been greater. By the time Soft Trim (exclusive of the liquidated Convertibles business) was actively marketed on an independent basis, its future business had substantially diminished, making it less valuable to any potential buyer. *See* Exhibit KK, pp. 19, 29-30, attributing sales declines to lost programs and JD Power's volume forecast decline. An earlier marketing program for this business on an independent basis may have prevented loss of value due to lost programs.

(3) Unsecured Creditors

The Fee Examiner does not believe that unsecured creditor recoveries were affected by the Delay. Using the valuation approach used by most of the Key Constituents in valuing the Debtors (i.e., five times EBITDA), there was insufficient value for unsecured creditors to receive a distribution, absent enterprise value in excess of $1.25 billion (the "Threshold Value"). This

Threshold Value was widely used by many of the Key Constituents. The Fee Examiner does not believe enterprise value ever exceeded the Threshold Value. To achieve $265 million in 2006 EBITDA (only slightly above the Threshold Value) and sustain the EBITDA for subsequent years as projected in the Business Plan, the Debtors had to achieve all of the initiatives set forth in the Business Plan, including $123 million of cost improvements, $15 million in service parts business and over $300 million of new transfer business having a $13 million EBITDA impact. None of these was achieved. Indeed, EBITDA under the 4+8 Plan suggested that unsecured creditors were "out of the money" by at least $152 million. As a result, unsecured creditors did not suffer a loss due to the Delay.

(4) Customers

The Fee Examiner believes that it is possible that the Customers suffered losses as a result of the Delay.[41] In reaching this conclusion, the Fee Examiner examined the following issues.

(a) Funding of Debtors

While the Fee Examiner concludes that these cases likely were extended by two months as a result of the Delay, the Fee Examiner does not have enough facts to determine if the actual period in which the wind-down occurred (i.e., from November 2006 to October 2007) was elongated by the Delay. However, if it was, the Customers would have suffered a loss from an increase of fees during such longer period, because the Customers absorbed the cost of such fees pursuant to the Customer Agreements approved in January 2007, under which they bore the costs

[41] Despite any loss incurred, pursuant to section XII.B. of the Debtors' confirmed chapter 11 plan and the final Customer agreement approved by the Court on January 11, 2007 (the "Final Customer Agreement"), the Customers that were parties to the Final Customer Agreement, namely GM (and certain of its affiliates), DaimlerChrysler (and certain of its affiliates), Ford, Honda (and certain of its affiliates) and AutoAlliance International, Inc. (the "Releasing Customers") released administrative claims against the Debtors, including any claims for damages under the relevant supply contracts at Plastics or Convertibles plants.

of the wind-down of the Debtors until the sale or resource of production from plants. *See* Exhibit KK, p. 13.

(b) Recovery on OEM Customer Loans

The Delay did not affect recovery on the Customers' loans. An earlier wind-down would not have likely improved the ultimate value of the liquidated estate. As indicated in Exhibit H, the Debtors owed approximately $906 million in debt to the Prepetition Lenders and other claimants senior to the $82.5 million subordinated Customer DIP loans. It is unlikely that a more timely "by plant" sale/wind-down strategy would have yielded a distribution sufficient to flow down to these subordinated loans.

(c) Wind-down losses

Had there been no Delay, certain of the Customers may not have granted the Debtors programs or made business decisions (such as decisions to delay resourcing) that increased their overall costs incurred to protect their production through a total sale/wind-down strategy. For example, Chrysler granted the Debtors certain programs that increased their total back-end costs, considering the ultimate need to resource those programs. The Fee Examiner does not have access to the necessary information in order to have reached any definitive conclusion on this issue.

It is worth noting that although the Customers received parts in consideration for higher prices, and their assembly lines were not interrupted during these cases (with the exception of the intentional Hermosillo shutdown), the Customers' total funding to the Debtors above their prepetition contracts was approximately $758 million. *See* Exhibit KK, pp. 14-15. Without question, this was extraordinary. The amount may well exceed the proceeds from the sale of all of the Debtors' assets.

ii. January 2006 Timeframe

For the reasons stated above, in case the Court comes to a different conclusion with respect to delay, the Fee Examiner examined whether the Key Constituents would have been spared losses or obtained greater creditor recoveries if the Business Plan had been more conservative when it was initially issued in January 2006. Set forth below is an analysis of the various hypothetical outcomes that might have been effected by a more conservative plan.

(1) Stand-Alone Plan.

Had the Business Plan been more conservative in January 2006, the threshold issue would have been the cash flow issues presented by a projected 2006 EBITDA of less than $265 million. Because the Debtors could not pay interest, professional fees and capital expenditures with 2006 EBITDA of less than $265 million, a lower EBITDA would have raised issues regarding the payment of all professional fees, including the fees of the professionals for the Prepetition Lenders. The inability to pay fees might have prompted different decisions regarding the incurrence of professional fees. For example, it may have allowed the parties or the Court to successfully reduce the scope of work of two financial professionals for the Committee. At a minimum, it would have brought professional fees into focus at a much earlier stage in the proceedings.

Had the cash flow issues not singularly changed the course of these cases, a more conservative Business Plan may have prompted a valuation contest surrounding a stand-alone plan involving conversion of secured debt to equity. While the Fee Examiner cannot speculate how the valuation contest would have played out, it would likely have crystallized, for the constituents and the Court, the appropriate role of the Committee in these cases, considering the

relative stake of unsecured creditors given the value of the Debtors. This also may have decreased professional fees.

(2) Wind-Down

For the reasons set forth above, the Fee Examiner does not believe this path would have been undertaken even if the Business Plan had been more conservative.

(3) Soft Trim Reorganization

For the reasons set forth above, the Fee Examiner does not believe this path would have been undertaken even if the Business Plan had been more conservative.

(4) Soft Trim Sale

The Fee Examiner believes that the Prepetition Lenders may have decided to sell Soft Trim if the Business Plan had been more conservative in January 2006. As discussed above, the Fee Examiner believes that the amount of sale proceeds from Soft Trim was negatively affected by a delay in marketing Soft Trim for sale. By the time Soft Trim (exclusive of the liquidated Convertibles business) was actively marketed on an independent basis, its future business had substantially diminished, making it less valuable to any potential buyer. *See* Exhibit KK, pp. 19, 29-30. As stated above, an earlier marketing program for this business on an independent basis may have prevented a loss of value due to lost programs.

(5) Earlier Sale of the Debtors

The Fee Examiner does not believe this path would have changed if the Business Plan had been more conservative. The Business Plan included the dual paths of sale and reorganization.[42] Therefore, a sale option was pursued notwithstanding the aggressiveness of the

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[42] The form of letter sent by Lazard with an initial information memorandum to parties that expressed interest in the Debtors stated "As you are aware, Lazard is assisting C&A with respect to a possible sale, stand-alone reorganization, or similar strategic transaction for the Company and/or certain of its businesses." Lazard believes

Business Plan. The Fee Examiner believes that the sale process as to segments of the Debtors' business may have been more robust had the Business Plan been more conservative. However, although the Prepetition Agent believed that the Business Plan should have been more conservative, the Fee Examiner did not discover evidence that the Prepetition Agent attempted to force any changes in the sale process (e.g., by mandating sales of business segments). Therefore, the Fee Examiner does not believe that a more conservative Business Plan would have resulted in an earlier sale.

As stated in response to first of the Court's questions above, critics of the Business Plan argue that a more conservative 2006 EBITDA forecast would have dramatically benefited the sale process in the first quarter of 2006. The Fee Examiner believes that even at a lower projected EBITDA for 2006, as was issued to purchasers in 4+8 Plan, the value to the Debtors from a sale would only have been based on the achievement of the revenue and cost initiatives in the Business Plan that subsequently proved to be unachievable. Prospective purchasers for the Plastics plants would have only paid for value that was going to be realized. Because the Debtors had no reliable historical financial statements, any offer for the Debtors' assets would have been dependent upon achieving even the forecasts contained in the Business Plan (and, subsequently, in the 4+8 Plan), which they did not do. Therefore, the Fee Examiner does not believe this result would have been different.

The Prepetition Agent suggests that had the Business Plan been more realistic, although the sale process may have yielded lower bids, the bids may have been less illusory in the Prepetition Agent's view. The Fee Examiner acknowledges that the Prepetition Agent would

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that the inclusion of the language "and/or certain of its businesses" evidenced the Debtors' openness to individual plant or company offers. The Fee Examiner believes that this may have been insufficient to invite a robust plant-by-plant or individual company sale process.

have had less skepticism about conditions in an offer that was based upon the ability to achieve forecasts. Although the ability to satisfy these conditions would have been more certain, for the reasons set forth above, the actual price received would not have been higher. Yet, to the extent the Prepetition Agent thought such conditions could be satisfied, and consequently viewed offers with such conditions as less illusory, the offers would have been accepted. As a result, the proceedings would likely have been resolved earlier, diminishing the amount of professionals' fees incurred.

C. Were The Key Assumptions Underlying Management's Business Plan, The Nature And Substance Of The Debtors' Operating Challenges In The Debtors' Plastics Division And Substantive Developments And Changes In The Debtors' Views On Future Operating Performance Adequately And Timely Disclosed To The Debtors' Principal Creditor Constituencies?

During the course of the Fee Examiner's investigation, each of the Debtors, the Committee, the Agent and each of their professionals acknowledged that the Debtors conducted a transparent process during these chapter 11 cases. Except with respect to the issues noted in sections V.A. and V.B. above with respect to the achievability of the Business Plan and the Delay, each agree that the Debtors adequately and timely disclosed the assumptions underlying the Business plan, the substance of the Debtors' operating challenges in Plastics, and the substantive developments and changes in the Debtors' views on future operating performance. They and the Customers also acknowledge that they were generally advised of substantive issues and problems and changes in the direction of the cases, promptly after they occurred.

In addition, the Debtors permitted each of the Key Constituents to maintain consultants on site at the Debtors' facilities to monitor performance issues. Moreover, the Debtors issued financial results and updated forecasts reasonably promptly after they were prepared (taking reasonable amounts of time when necessary to review and understand the numbers). Each time

the Debtors issued a forecast or plan, they also disclosed the assumptions inherent in the forecast or plan, and the methods for measuring performance against the assumptions they developed.

Based upon the Fee Examiner's investigation and interviews, the key assumptions underlying the business plan, the nature and substance of the Debtors' operating challenges in Plastics, and substantive developments and changes in the Debtors' views on future operating performance were adequately and timely disclosed to the Debtors' principal creditor constituencies.

D. Once It Became Reasonably Clear That The Value Of The Debtors' Estate Was Substantially Diminished Or That A Reorganization Was Unlikely, Did Any Of The Estate Professionals Undertake Or Continue Work On Activities That No Longer Were Reasonably Necessary Under The Circumstances In View Of Their Roles?

i. The Point of Reference Under This Question

In order to assess the necessity of work pursuant to this question, the Fee Examiner has sought to determine the earliest point at which either (1) the value of the Debtors' estates was substantially diminished or (2) reorganization became unlikely.

(1) Substantial Diminution of the Debtors' Estates

The Fee Examiner concludes that substantial diminution of the Debtors' estates did not occur prior to the time that the Debtors' reorganization became unlikely. As set forth in section V.A.ii.(2)(b) above, there was no true decrease or diminution in value that destroyed the Debtors' reorganization prospects. Rather, there was a failure to timely increase value that destroyed the Debtor's reorganization prospects. Absent the success of the initiatives set forth in the Business Plan on the projected timeline, the Debtors' value was below a reasonable threshold level for a reorganization.

The only components of the Business Plan that were not contingent on the creation of value were (a) projected baseline 2006 EBITDA (which was actually negative $36 million as

described in Exhibit K); and (b) price increases obtained in the October 2005 Customer Agreements (approximately $127 million, including one-time surcharges in the first quarter of 2006). The sum of these numbers, constituting the Debtors' projected 2006 EBITDA, without the creation of value through the initiatives of the Business Plan, was $91 million. This was insufficient cash flow to sustain the Debtors, given its requirements for interest, capital expenditures and professional fees. Thus, the Debtors' survival and value depended upon these initiatives.

Based upon the foregoing, the Fee Examiner concludes that *a failure to create value, rather than a diminution of existing value*, was the most significant factor that destroyed the reorganization prospects. Therefore, the Fee Examiner concludes that the time of a substantial diminution of the Debtors' value is not the relevant point of reference under this question.

(2) Likelihood of Reorganization

The Fee Examiner concludes that the time at which the Debtors' reorganization became unlikely is the relevant point of reference under this question. The Fee Examiner concludes that the probability of any reorganization (including one based on the conversion of secured debt to equity) decreased such that reorganization became unlikely at the time when the Debtors' projected 2006 adjusted EBITDA fell substantially below $179 million.

With EBITDA substantially below $179 million, the Debtors did not have sufficient cash flow to meet their needs. Even with the abatement of interest through the Fourth Amendment to the DIP Facility, the Debtors still had insufficient cash to meet capital expenditures, professional fees and other cash needs. The Debtors found cash from various sources such as amounts paid by Customers in connection with certain of the Debtors' grants of resourcing rights. These

pockets of cash were viability-sustaining in the short term, and not value-creating in the long-term.

Therefore, the reorganization became unlikely when 2006 EBITDA fell substantially below $179 million. This conclusion is also supported by the following: (a) at projected 2006 adjusted EBITDA of $105.5 million, even the Agent recognized that a stand-alone plan converting secured debt to equity could not succeed without extraordinary concessions from Customers; and (b) the Proposed Customer Concessions required from the Customers given the Debtors' EBITDA were so extraordinary that they were unlikely to be obtained. The Proposed Customer Concessions included advance payments of engineering and design costs, extended five-day payment terms after the Debtors' proposed exit from chapter 11 and rights of last refusal on follow-on program work (even if the program platform or nameplate changed). These changes would have required the Customers to substantially change the way they did business. For example, Ford's representatives noted that certain of the changes requested by the Debtors would have required Ford to change its accounting processes throughout the company.[43] Because the Fee Examiner concluded that the Debtors should have known that projected 2006 EBITDA was substantially below $179 million in June 2006, and that, at such level, the probability of reorganization was decreased so as to be unlikely, the Fee Examiner believes activities after June 2006 should be scrutinized.

[43] The Fee Examiner acknowledges that the negotiations regarding these concessions did not progress to completion prior to the Debtors' and the Bank Group's determination to abandon reorganization efforts. Therefore, the Fee Examiner cannot determine whether the Debtors could have achieved some more narrowly-tailored alternative relief from the Customers which would have enabled a reorganization.

ii. Activities No Longer Reasonably Necessary Under The Circumstances

(1) Procedure Utilized

In accordance with the Court's statements in the Fee Examination Opinion, the Fee Examiner did not conduct a line-by-line review of time entries. Rather, the Fee Examiner reviewed the categorical descriptions of time in the fee applications filed by the various professionals subject to the Fee Examination Order from May 2006 through April 2007 to discern selected work activities that were arguably unnecessary.

The Fee Examiner did not review fee applications for the period between January 2006 and April 2006 given her conclusions regarding the Delay. The Fee Examiner only commented on work performed during this time to the extent that (a) the work was targeted by an Objected or interviewee, or (b) the Fee Examiner believed such comments would be helpful to the Court in the event the Court came to a different conclusion than the Fee Examiner in answer to the Court's first question above regarding the achievability of the Business Plan in January 2006.

In addition, the Fee Examiner asked substantially all of the interviewees to answer this question. The Fee Examiner reviewed and contemplated those responses in the context of the discussion below.

Furthermore, the Fee Examiner questioned the Objectors about the activities of the Ancillary Professionals and Davis Polk. Both of the Objectors indicated that they did not take issue with the charges of the Ancillary Professionals. The Objectors did take issue with the charges of Davis Polk, which worked on the government investigation, because Davis Polk's

fees were very large and were incurred for services the details of which were unknown to both Objectors.[44] Therefore, the Fee Examiner conducted a limited investigation of Davis Polk.

Both Objectors noted that, to the extent the Ancillary Professionals rendered services that may have been inappropriate, the impropriety may be the responsibility of those who directed that work. As to the Ancillary Professionals, the Fee Examiner limited her investigation to discussions with Fox, who directed their work. Based on those discussions, the Fee Examiner determined that there were no material unnecessary tasks undertaken by the Ancillary Professionals. As a result, the Fee Examiner does not include any discussion of those tasks.

Finally, the Fee Examiner reviewed all requests for reimbursement from the estates made by members of the Committee (the "Committee Member Reimbursement Requests"), which are discussed below.

Although the Fee Examiner has determined that (a) it was reasonable for the Board and KZC to defer to Macher with respect to the achievability of the Business Plan as it was initially issued in January 2006 and (b) reorganization did not become clearly unlikely until June 2006, the Fee Examiner has summarily commented on the possible impact on the fees of professionals from and after January 2006, if the Business Plan had been more conservative when issued. The Fee Examiner made these comments because she recognizes that the Court might come to a different conclusion than the Fee Examiner has with respect to the perceived impact of the Plastics Issues on the Business Plan at the time it was issued in January 2006.

[44] The Objectors also took issue with the fees of E&Y, which worked on the investigation with Davis Polk, for similar reasons. This Report does not address E&Y because E&Y is not within the scope of the Fee Examination Order because it was granted a final fee order.

(2) Work From and After June 2006

The work described below may be argued to have been unnecessary under the circumstances after June 2006. In addition, the Fee Examiner has set forth below her review of the Committee Member Reimbursement Requests.

(a) Work Performed as a Result of the Delay

As indicated above, the Fee Examiner concludes that there was a Delay in the discovery of the effect of the Plastics Issues on the Business Plan in the summer of 2006. Given the Delay, the Fee Examiner concludes that it is reasonable to assume that these cases were unnecessarily extended by two months. As a result, professional fees were unnecessarily increased to the extent of that period. As stated above, at the "run rate" in excess of $4.3 million per month, two months of unnecessary services cost the estate in excess of $8.6 million.

(b) Work on Stand-Alone Plan

The Fee Examiner concludes that at the time of work on the Prepetition Lenders' stand-alone plan, in July through October of 2006, reorganization was unlikely. However, the Fee Examiner concludes that work performed because of the continued pursuit of a stand-alone plan through October 2006 was not "unreasonable under the circumstances, in view of the professionals' roles," given the following: (a) the Bank Group's desire to pursue a stand-alone plan until it determined that a stand-alone plan was no longer feasible in October 2006; and (b) the fact that the Prepetition Lenders bore the burden of the professional fees during such time. As of June 2006, the Prepetition Lenders undisputedly held the fulcrum security (i.e., value was insufficient to support a recovery for unsecured creditors). This gave them even more control over these chapter 11 cases. By funding the continuing professional fees (by virtue of the Fourth Amendment to the DIP Facility), the Prepetition Lenders essentially paid for the opportunity to realize more value through a stand-alone plan. Put simply, the Bank Group demonstrated, by its

decisions to proceed with the stand alone plan, knowing that professional fees were potentially being funded by the proceeds of collateral otherwise payable to the Prepetition Lenders, that it was willing to assume the risk and fund the activities to potentially improve value through a reorganization. Therefore, the Fee Examiner concludes that though a reorganization was unlikely after June 2006, the efforts and activities undertaken in pursuit of a reorganization were not unreasonable under the circumstances. However, had the Delay not occurred, the Fee Examiner believes these cases would have been accelerated by two months and the final decision to abandon reorganization efforts would have been made earlier.

(c) Proposed Customer Concession Negotiation Work Relative to the Stand-Alone Plan

Attached as Exhibit JJ is a form of the Customer Agreement proposed in connection with the work towards the Prepetition Lenders' stand-alone plan. This agreement contains the Proposed Customer Concessions. The Fee Examiner concludes that the Proposed Customer Concessions were so extraordinary that they were unlikely to be achieved, particularly given that (a) the Debtors had previously obtained other extraordinary concessions from the Customers and (b) by this point the Debtor's leverage had waned because the Customers had extensive time to make other sourcing decisions. The Fee Examiner acknowledges that the concessions contained in the attached Customer Agreement represented an offer in negotiations and that not all of the concessions may have been required to satisfy the condition of the Prepetition Lenders to the implementation of their stand-alone plan. Despite this fact, the Fee Examiner believes that to fund capital expenditures and meet other liquidity needs, the Debtors would still have had to obtain extraordinary concessions from the Customers or another funding source, which were unlikely to be obtained. Therefore, any time spent working towards the Proposed Customer Concessions (as opposed to the concessions subsequently obtained in connection with the wind-

down) could be argued to be unnecessary, because the prospect of obtaining the necessary concessions was so unrealistic.

However, given that the work to attempt to obtain the Proposed Customer Concessions was necessary to the Prepetition Lenders' stand-alone plan, and because, as explained above, the Prepetition Lenders were willing to fund those activities for the possibility of obtaining greater value in a stand-alone plan, the activities were "reasonably necessary under the circumstances."

(d) Committee Financial Advisory Work

Beginning in June 2006, the Debtors' lowered 2006 EBITDA expectations and the Debtors' attendant life-threatening liquidity issues implied insufficient value to support a recovery to the unsecured creditors. Notwithstanding the value of the Debtors, the fees of Chanin and Alvarez were not renegotiated until December 2006 and January 2007. *See* Exhibit MM. The Fee Examiner concludes that the service of both advisors was unnecessary under the circumstances. However, the Fee Examiner acknowledges the following factors mitigate this conclusion: (a) the Chair of the Committee insisted on greater activity during this period; (b) during prior periods actual fees incurred exceeded monthly fees and, thus, given the fixed monthly fee structure, excess fees were intended to be absorbed by months in which fees incurred were less than the fixed fee; and (c) Chanin and Alvarez renegotiated or terminated their monthly fee in January 2007 with the understanding that this would resolve the Agent's objection to their fees.[45]

(e) Certain Sale Work

When adjusted 2006 EBITDA fell substantially below $179.4 million, as projected in the 4+8 Plan, the Debtors' ability to be sold as a going concern, as a whole, became limited. Indeed,

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[45] The Agent's understanding of this agreement was that it covered prospective fees, only.

for that reason, the Bank Group reviewed the stand-alone plan and liquidation options after issuance of the 6+6 Plan. Given the larger-scale sale abilities of Lazard, the Fee Examiner believes that the fees of Lazard may have been curtailed earlier than January 2007, were it not for the Delay.

However, the Fee Examiner notes, as a mitigating factor, that Lazard voluntarily reduced its fees in these cases on a couple of occasions. First, in negotiations concerning its application for retention in August 2005, Lazard agreed to forgo a five percent financing fee on any equity or capital raise. Furthermore, in January of 2007, Lazard further voluntarily reduced its monthly fee from $150,000 to $100,000. In July 2007, Lazard reached agreement with the Agent formalizing the reduction in its monthly fees, totaling $450,000.

(f) Litigation Work, Including 2004 Exam

Professionals engaged in activities related to potential litigation by the Committee involving fraudulent conveyance and related theories in the fall of 2006. During that time, reorganization was unlikely and recovery for the unsecured creditors was likely to be limited to a share of a litigation trust. Given that the Customers had already provided extraordinary financial relief to the Debtors at the time, and had significant claims against the estates, such activities of the Committee's professionals can be argued to be reasonably unnecessary.

The pursuit of these claims by the Committee resulted in increased fees of the Debtor's professionals, because it required the Debtors' professionals to spend time exploring the validity of the Committee's claims, as a predicate to releasing them pursuant to the plan. The Debtors could not release such claims without a sense of their value. Therefore, it could be argued that the work by the Committee prompted the incurrence of additional fees by the Debtors that would have been avoided but for these activities. The Fee Examiner realizes that this litigation was

mandated in large part by the Committee itself. As a result, these activities could be argued to have been rendered reasonably necessary by the circumstances of the client's demands.

(g) Reclamation Work

Kirkland incurred fees and expenses in addressing reclamation issues from and after June 2006. Kirkland's work on these matters eventually facilitated the Debtors' procurement of the Court's February 21, 2007 Order Deeming Reclamation Claims as General Unsecured Claims Against the Debtors and Granting Related Relief. Nonetheless, the Fee Examiner believes that these charges were excessive given the implied value of the Debtors as of June 2006 and the attendant clarity that unsecured reclamation claims should be treated as general unsecured claims. It could be argued that Kirkland could have achieved the same result with a substantially lower expenditure of fees, including by addressing the treatment of reclamation claims in the plan.

(h) Corporate Structure Analysis and Substantive Consolidation Work

From and after June 2006, the Committee continued analysis of the Debtors' corporate structure, their significant contracts and relationships with non-Debtor affiliates. Furthermore, the Committee continued analyzing intercompany claims and the potential substantive consolidation of the Debtors' estates, and conducted extensive review of the Debtors' schedules, statements of financial affairs, books and records, relationships with creditors, business dealings, and significant contracts. The foregoing work appears to have been unnecessary considering the Debtors' value, and thus the unsecured creditors' position, at the time.

(i) Committee Member Reimbursement Requests

There are no Committee Member Reimbursement Requests made for periods after March 2006. Because it became reasonably clear that there was insufficient enterprise value to support

a return to unsecured creditors in June 2006 and no requests were made for periods subsequent to June 2006, none of the Committee Member Reimbursement Requests appears to have been made unnecessary after reorganization became unlikely. Although beyond the scope of the Fee Examination Questions, the Fee Examiner does note, however, that some of the reimbursement requests, particularly with respect to airfare, appear to be very high.

iii. Comments to Assist the Court Regarding the Period From January 2006 Through May 2006

(1) Additional Work Charges Due to Longer Potential Delay Determined by the Court

To the extent the Court determines that there was delay in discovery of the effect of the Plastics Issues on the Business Plan from and after January 2006 (rather than June 2006 as the Fee Examiner has concluded), the Court may also find that these cases were unnecessarily extended (and thus the accrual of fees unnecessarily continued) for an additional 7 months.

(2) Committee Financial Advisor Work

Considering the five-times annual EBITDA calculation used by the Key Constituents, the Threshold Value to ensure unsecured creditor recovery required 2006 annual EBITDA at least in the amount of approximately $250 million. In January 2006, it was clear to all Key Constituents that 2006 EBITDA of $265 million (only slightly above the level that would support the Threshold Value) could not be reached absent the achievement of significant future initiatives. It should have also been clear to all financial advisors that if the initiatives were not implemented in the time provided in the Business Plan, the Debtors would suffer severe liquidity issues.

Notwithstanding: (a) this contingent value; (b) the Committee's belief that the Business Plan was robust; and (c) the liquidity issues that would result if the improvements were not timely achieved, the Committee retained and maintained two financial advisors, and proceeded

to incur professional fees in an "ordinary course fashion" that did not appear to recognize the extremely contingent recovery to unsecured creditors or the fragility of the Debtor's cash flow. The Fee Examiner recognizes that the tasks undertaken by the Committee's financial advisors may have been (a), in part, driven by the need to protect unsecured creditors' contingent recovery; and (b) driven by a client who insisted on more, rather than less, work under the circumstances. However, given the severe challenges to the Debtors' viability and unsecured creditor recoveries, the Fee Examiner believes that, after January 2006, the continued retention of both Chanin and Alvarez at the monthly rates negotiated at the outset of these cases was likely unnecessary.

iv. Certain Work Cited as Unnecessary by Interviewed Parties

During the investigation, several constituents identified the following services as unnecessary given the delay they believe occurred in these cases.

(1) March 2006 Lease

The Bank Group's professionals opined that the decision to enter into the Debtors' new headquarters lease would have been unnecessary had the Business Plan not been as aggressive as it was. Therefore, if the Court finds that the Business Plan was unreasonably aggressive when issued, the activities associated with the Debtors' new headquarters lease would have been unnecessary. Kirkland, KZC, Akin, McDonald Hopkins and CB Richard Ellis all appear to have charged fees for this work. However, because the Fee Examiner deferred to the judgment of the Board concerning the Business Plan, and therefore, concluded that the Business Plan was not unreasonably aggressive when issued, the Fee Examiner does not find that this work was unnecessary. Rather, the activities were reasonable under the circumstances that existed at the time.

(2) Motions for Exclusivity

After it became certain that the Debtors would liquidate in October 2006, the Debtors continued to pursue exclusivity. Kirkland, Akin Gump and KZC all charged the estates for work on continued exclusivity. Third Avenue has asserted that this service was unnecessary. Other Key Constituents have argued that exclusivity (a) was necessary to preserve stability; and (b) was agreed to by the Debtors, the Committee and the Agent, evidencing the reasonableness of the task associated with extending exclusivity.

The Fee Examiner believes the activities in connection with the extension of exclusivity were reasonable because the Key Constituents believed continued exclusivity was required to preserve stability, as evidenced by their consent to the motion.

VI. FACTORS REGARDING AMOUNTS OF FEES INCURRED

Virtually all of the Key Constituents and the Debtors' personnel (as opposed to the Debtors' professionals) interviewed by the Fee Examiner believed that the professional fees in these cases were excessive.

During interviews, Key Constituents noted the following factors that contributed to their belief that fees in these cases were unnecessarily high:

a. Certain Key Constituents asserted that fees were excessive in light of the fact that there was no major litigation in these cases and no significant negotiations concerning a plan, given the fact that the ultimate plan was a liquidating plan. They noted that many of the motions that were brought were uncontested, yet the professionals still spent time in court on such motions. These constituents suggested that much more Court-related work could have been effected by stipulation, at a savings to these estates.

b. Certain interviewees noted that fees were increased by the Customer conflict(s) of interest under which Kirkland labored, particularly with respect to GM. Because these cases were so heavily laden with Customer negotiations, the role of conflicts counsel, Carson Fischer, was increased. The Fee Examiner notes that there were

no allegations of non-disclosure of these conflicts at the time of Kirkland's or Carson Fischer's appointment.[46]

c. Macher noted that the fees of KZC could not be controlled because of the conflict of interest created by KZC's status as the Debtors' financial advisor, Boken's position as Chief Restructuring Officer and Cooper's position as Chairman of the Board. Macher notes that, in the event he considered services to be unnecessary, he could not complain to his Chairman about such concerns.

VII. SETTLEMENTS PROPOSED BY CERTAIN SIGNIFICANT PROFESSIONALS AND ACCEPTED BY THE PREPETITION AGENT AND SUPPORTED BY THE FEE EXAMINER TO ADDRESS THE FEE EXAMINER'S CONCLUSIONS

Because the Fee Examiner concluded that the Prepetition Lenders were the constituency that likely suffered creditor losses or reduced recoveries as a result of the Delay, following the issuance of the Draft Report, the Fee Examiner contacted the Prepetition Agent to discuss the possible settlement of issues raised by this Report[47]. The Fee Examiner and the Prepetition Agent then engaged in good faith discussions with various professionals to determine whether a mutual resolution could be reached to benefit the estates, to assist the Court in assessing the reasonableness of these professionals' fees and expenses and to avoid potentially costly litigation in connection with the conclusions set forth in this Report. The Fee Examiner is pleased to report that these negotiations were successful with respect to certain of the professionals. Those professionals and their proposed settlements are set forth below. The Fee Examiner strongly supports this resolution and believes that any concerns regarding each of the professionals set forth below that are raised in this Report are adequately addressed by this compromise. Other

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[46] Kirkland disclosed many Customer relationships in the affidavits of Richard Cieri supporting its employment. In particular, Kirkland disclosed its substantial relationships with GM in its original affidavit in support of its retention, as well as the Fourth, Sixth and Seventh supplemental affidavits in support of its retention.

[47] The Fee Examiner did not contact the Customers given the releases provided in the confirmed plan of reorganization.

professionals contacted by the Fee Examiner and not set forth below did not reach agreements as of the time of filing of this Report.

The proposed settlements set forth below are subject to the entry of an order of this Court approving them as final in the amounts set forth below.

A. Kirkland

Kirkland has agreed to reduce the amount of the fees and expenses sought in its final fee application by $1,000,000. Kirkland's agreement to this reduction is based up the foregoing reduction being the only reduction to its final fee application. Based on the interim fee applications filed to date by Kirkland and the invoices submitted by Kirkland to the Prepetition Agent after the last filed application, the Fee Examiner and the Prepetition Agent support this resolution.

B. Lazard

The discussions with the Prepetition Agent and Lazard focused on both: (a) the amount of Lazard's fee (a portion of which had to be calculated based on the amount of certain proceeds of sale) under the amended and restated engagement letter between Lazard and the Debtors in August 2007, and approved by the Prepetition Agent; and (b) the amount of an appropriate reduction under the circumstances. Those discussions resulted in an agreement that the Prepetition Agent and the Fee Examiner would support a total fee for Lazard (calculated using all reductions to which Lazard has previously and currently agreed, plus the further reduction discussed in the context of this Report) in the amount of $6,091,000, plus expenses.

C. Chanin

Chanin's fee pursuant to the engagement letter approved by the Court and previously amended by agreement of the parties is $3,758,709.68. Chanin has agreed to reduce those fees

by $237,500 – a reduction of 6.3 percent in fees – provided that there are no further reductions to this fee. The Prepetition Agent and Fee Examiner have agreed to support the fee in this amount.

The Fee Examiner notes that discussions with certain professionals were incomplete at the time of filing this Report. In particular, the Fee Examiner and the Prepetition Agent have reached a tentative proposed resolution with Davis Polk, which is subject to Davis Polk's final internal review. The Fee Examiner will file supplements to this Report if additional settlements are reached.

Respectfully submitted,

/s/ Judy A. O'Neill

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