

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF TK HOLDINGS INC., AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "A" HERETO (collectively, the "Chapter
11 Debtors")**

**AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors",
and collectively with the Chapter 11 Debtors, the "Debtors")**

**APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORATION
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**MOTION RECORD
VOLUME I OF V**

**(Re: Recognition Of Chapter 11 Plan And Related Orders)
(Returnable March 14, 2018)**

March 6, 2018

McCarthy Tétrault LLP
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Fax: (416) 868-0673

Heather Meredith LSUC#: 48354R
Tel: (416) 601-8342
Email: hmeredith@mccarthy.ca

Eric S. Block LSUC#: 47479K
Tel: 416-601-7792
Email: eblock@mccarthy.ca

Trevor Courtis LSUC#: 67715A
Tel: (416) 601-7643
Email: tcourtis@mccarthy.ca

Adrienne Ho LSUC#: 68439N
Tel: 416-601-8919
Email : aho@mccarthy.ca
Lawyers for the Foreign Representatives

TO: The Service List

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF TK HOLDINGS INC., AND THOSE OTHER COMPANIES
LISTED ON SCHEDULE "A" HERETO (collectively, the "Chapter 11 Debtors")**

**AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors", and
collectively with the Chapter 11 Debtors, the "Debtors")**

**APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORATION
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**MOTION RECORD
(Re: Recognition Of Chapter 11 Plan And Related Orders)
(Returnable March 14, 2018)**

INDEX

Tab.	Documents
<u>VOLUME I OF V</u>	
1.	Notice of Motion
2.	Affidavit of Kenneth Bowling sworn March 6, 2018
A.	Declaration of Kenneth Bowling, signed February 14, 2018
B.	Transcript of Confirmation Hearing, February 16, 2018
<u>VOLUME II OF V</u>	
C.	Confirmation Order, dated February 21, 2018
<u>VOLUME III OF V</u>	
D.	Declaration of Andrew Yearley, signed February 14, 2018
E.	Declaration of Stephen Fleming, signed February 14, 2018

Tab.	Documents
F.	Declaration of Joseph Perkins, signed February 14, 2018
G.	Declaration of Roger Frankel, signed February 14, 2018
H.	Declaration of Thomas Vasquez, signed February 14, 2018
I.	Declaration of Christina Pullo, signed February 16, 2018
J.	Restructuring Support Agreement Order, dated December 13, 2017
K.	Supplemental Bar Date Order, dated December 18, 2017
<u>VOLUME IV OF V</u>	
L.	Solicitation Procedures Order, dated January 5, 2018
M.	Claims Objection Order, dated February 2, 2018
N.	Disputed Claims Reserve Order, dated February 26, 2018
O.	Plan Supplement, dated January 23, 2018
<u>VOLUME V OF V</u>	
P.	Second Plan Supplement, dated February 11, 2018
Q.	Third Plan Supplement, dated February 16, 2018
R.	Notice of Claims Bar Dates – Globe and Mail, October 25, 2017
S.	Notice of Claims Bar Dates – Le Devoir, October 27, 2017
T.	Notice of Supplemental PPIC Bar Date – Globe and Mail, January 17, 2018
U.	Notice of Supplemental PPIC Bar Date – Le Devoir, January 18, 2018
V.	Disclosure Statement, January 5, 2018 (without exhibits)
3.	Draft Confirmation Recognition Order

Court File No. CV-17-11857-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF TK HOLDINGS INC., AND THOSE OTHER COMPANIES
LISTED ON SCHEDULE "A" HERETO (the "Chapter 11 Debtors")**

**AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors", and
collectively with the Chapter 11 Debtors, the "Debtors")**

**APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORATION
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

NOTICE OF MOTION

**(Recognition of Chapter 11 Plan and Related Orders)
(Returnable March 14, 2018)**

The U.S. Foreign Representative will make a motion pursuant to Part IV of the CCAA before a judge presiding over the Commercial List on March 14, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

All capitalized terms used but not otherwise defined herein have the meanings given to them in the glossary attached hereto as **Schedule "C"** or the Affidavit of Kenneth Bowling, sworn March 6, 2018.

THE MOTION IS FOR:

An order substantially in the form of the draft order included at Tab 3 of the Motion Record of the U.S. Foreign Representative that, among other things, recognizes and gives full force and effect in all provinces and territories of Canada to the following Orders of the U.S. Bankruptcy Court:

- (i) the Findings of Fact, Conclusions of Law, and Order Confirming the Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors (“**Confirmation Order**”) dated February 16, 2018;
- (ii) the Corrected Order Pursuant to 11 U.S.C. §§105(a), 362, 363(b), 503, and 507, and Fed. R. Bankr. P. 4001 and 6004 (I) Authorizing Debtors to Enter Into and Perform Under Restructuring Support Agreement; (II) Approving Plan Sponsor Protections; and (III) Modifying the Automatic Stay (“**Restructuring Support Agreement Order**”) dated December 13, 2017;
- (iii) the Order Pursuant to 11 U.S.C. §§502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3001, 3002, 3003(c)(3), 5005, and 9007, and Local Rules 2002-1(e), 3001-1, and 3003-1 to (I) Establish Supplemental Deadline and Related Procedures for Filing Proofs of Claim by, and (II) Approve Procedures for Providing Notice of Supplemental Bar Date, and Other Important Dates and Information to, Certain Potential PSAN Inflation Claimants that Purchased Vehicles Subsequent to the Commencement of the Chapter 11 Cases (“**Supplemental Bar Date Order**”) dated December 18, 2017;

- (iv) the Order Pursuant to 11 U.S.C. §§ 105, 502, 1125, 1126, and 1128, Fed. R. Bankr. P. 2002, 3003, 3016, 3017, 3018, 3020, and 9006, and Local Rules 2002-1, 3017-1, and 9006-1 for Entry of an Order (I) Approving the Proposed Disclosure Statement and the Form and Manner of the Notice of a Hearing Thereon, (II) Establishing Solicitation and Voting Procedures, and (III) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Plan ("**Solicitation Procedures Order**") dated January 5, 2018; and
- (v) the Order Sustaining Debtors' Third Non-Substantive Omnibus Objection to Claims (Incorrect Debtor Claims) ("**Claims Objection Order**") dated February 2, 2018; and
- (vi) the Order Pursuant to 11 U.S.C. §§ 502(c) and 105(a) Estimating the Maximum Amount of Certain Contingent, Unliquidated, and Disputed Claims for Purposes of Establishing Disputed Claims Reserves Under Debtors' Proposed Joint Chapter 11 Plan of Reorganization ("**Disputed Claims Reserve Order**") dated February 26, 2018.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On June 25, 2017, as a result of the unprecedented and highly publicized recalls of the Chapter 11 Debtors' airbags containing PSAN Inflators, the Chapter 11 Debtors commenced the Chapter 11 Proceedings.

2. Prior to the commencement of the Chapter 11 Proceedings, the Chapter 11 Debtors had conducted a marketing and sale process, which identified the Plan Sponsor as the purchaser of substantially all of Takata's worldwide assets (excluding PSAN Inflator-related assets) (the "**Global Transaction**").

3. The Chapter 11 Proceedings were commenced to provide the Chapter 11 Debtors with necessary breathing space to finalize the Global Transaction while also preserving global liquidity and ensuring the ongoing manufacture and supply of replacement parts required for ongoing recalls.

4. A mere eight months after commencement of the Chapter 11 Proceedings, the Chapter 11 Debtors have, among other things:

- (a) finalized and executed an Asset Purchase Agreement with the Plan Sponsor and other related documentation necessary to effect the Global Transaction;
- (b) conducted a global claims process, which included an extensive and unprecedented noticing program;
- (c) carried out a court-approved solicitation and voting process;
- (d) prepared a Chapter 11 Plan to implement the Global Transaction; and
- (e) participated in complex and extensive negotiations to obtain support for the Chapter 11 Plan from each of their major creditor groups, including the Consenting OEMs (by far the largest creditor constituency by value), the

Creditors' Committee, the Tort Claimants' Committee, and the Future Claims Representative.

Chapter 11 Plan

5. On February 16, 2018, the U.S. Bankruptcy Court confirmed the Chapter 11 Plan. The Chapter 11 Plan implements the Global Transaction, and, among other things:

- (a) Provides for the sale and transfer of substantially all of the Chapter 11 Debtors' non-PSAN business as a going concern to the Plan Sponsor;
- (b) Preserves the employment of substantially all of the Chapter 11 Debtors' 14,000 employees;
- (c) Ensures the continued operation of the Chapter 11 Debtors' PSAN production for a limited period of time to facilitate the recalls of PSAN Inflators;
- (d) Ensures that TKJP is able to comply with the Joint Restitution Order entered by the United States District Court for the Eastern District of Michigan on February 27, 2017 in the case captioned U.S. v. Takata Corporation, Case No. 16-cr-20810 (E.D. Mich.) (the "**DOJ Restitution Order**") in connection with the settlement of the two (2)-year criminal investigation by the Department of Justice (the "**DOJ**") into Takata, in particular the \$975 million in restitution payments for the \$125 million personal injury and wrongful death restitution fund (the "**DOJ PI/WD Restitution Fund**") and the \$850 million OEM restitution fund established under the DOJ Restitution Order; and

- (e) Provides voting classes of claims and interests with recovery equal to or in excess of what such claimants would receive in a hypothetical liquidation.

6. The Chapter 11 Plan also incorporates the terms of settlements including resolution of over \$4 billion of claims of the Consenting OEMs in exchange for a payment that is estimated to be approximately \$246 million. As a result of the settlement of these secured and priority claims for a fraction of their potential value, there is significant value available for unsecured creditors.

Canadian Operations and Claimants

7. On June 28, 2017, on an application by the U.S. Foreign Representative, this Court issued the Canadian Recognition Orders, which, among other things, (i) recognized the Chapter 11 Proceedings as “foreign main proceedings”, and (ii) appointed the Information Officer.

8. Takata does not have any assets, operational presence, or employees (other than retainers with counsel) in Canada. However, Takata did face litigation in Canada, including class action claims.

9. The Chapter 11 Debtors received 46 proofs of claim from claimants with an address listed in Canada (the “**Filed Canadian Claims**”):

- (a) Claims filed by 20 PPICs, none of which were class claims;
- (b) Class claims filed with respect to 3 of the 4 Canadian Competition Class Actions, in the aggregate amount of approximately CAD \$310 million (not considering duplicate claims);

- (c) Claims filed in all three Canadian Personal Injury Actions, in the aggregate amount of CAD \$3.5 million;
- (d) Claims filed by nine General Canadian Creditors, in the aggregate amount of USD \$202,097.10; and
- (e) Claims filed by Subaru Canada Inc. and Mazda Canada Inc. further to the claims protocol for Consenting OEMs.

Treatment of Canadian Claimants Under Chapter 11 Plan

10. Filed Canadian Claims are treated under the Chapter 11 Plan in the same manner as similarly situated claims of U.S. creditors in the same class.

11. The Chapter 11 Plan provides for an approximate recovery from the Chapter 11 Debtors' estates of 0.1% to 0.4% to holders of General Unsecured Claims regardless of which class of General Unsecured Claims the claim may be in (based on estimates as of the date of the Disclosure Statement).

12. While each of the General Unsecured Classes (Classes 4-7) is expected to receive the same percentage of recovery from the Chapter 11 Debtors' estates, additional funds are available from the PSAN PI/WD Trust (for the benefit of claimants with PSAN PI/WD claims and Other PI/WD Claims) and the Support Party Creditor Fund (for the benefit of Eligible Creditors, which include vendors and suppliers with whom the Plan Sponsor, Reorganized Debtors or Consenting OEMs may do business with going forward). Such recoveries do not come from the Chapter 11 Debtors' estate and, therefore, do not change the equal treatment provided within and among each class from the Chapter 11 Debtors' estate, but do represent additional funds for such

creditors. Similarly, the DOJ PI/WD Restitution Fund represents an additional source of recovery for eligible PSAN PI/WD claims.

13. The liquidation analysis prepared by PricewaterhouseCoopers LLP demonstrates that all voting classes of claims and interests will recover substantially more value under the Chapter 11 Plan than through a liquidation of the Chapter 11 Debtors. Notably, the holders of General Unsecured Claims are not expected to recover any property in a hypothetical liquidation whereas, as of December 31, 2017, approximately \$69 million is being made available for unsecured creditors under the Chapter 11 Plan.

Releases

14. The Plan includes (a) broad releases by the Chapter 11 Debtors, (b) a broad Consensual Release of claims against the Chapter 11 Debtors, the Plan Sponsor and certain others (not including OEMs), and (c) a channelling injunction that releases certain PSAN PI/WD Claims against certain non-Debtor third parties (the “**Protected Parties**”) and channels those claims to the PSAN PI/WD Trust.

15. OEMs are not released by any holders of claims and interests (including Canadian creditors) under the Chapter 11 Plan except that Participating OEMs, which are OEMs who contribute to the PSAN PI/WD Trust by paying their portion of personal injury or wrongful death claims in full, may become “Protected Parties” and be released by holders of PSAN PI/WD Claims whose claims are channelled to the PSAN PI/WD Trust subject to the claimant’s right to opt-out.

Voting Results

16. The various classes entitled to vote on the Chapter 11 Plan each approved it by at least 74.38% in number and, other than in the subclass of Class 6 relating to TKH, by at least 74.38% in value.

17. In the subclass of Class 6 relating to TKH, a single vote cast by the Commonwealth of Puerto Rico (“**Puerto Rico**”) affected the percent acceptance by value since that claim is in the amount of approximately \$1.8 billion (on account of alleged civil penalties, restitution, and disgorgement claims arising from alleged violations of certain consumer protection statutes). The Chapter 11 Debtors classified the claims of the States as Class 9 – Subordinated Claims on the basis that they are penalties or punitive claims and would harm or reduce recoveries for other creditors (the “**State Subordination**”). The Chapter 11 Debtors intended to classify and/or reclassify the claims of Puerto Rico and other Governmental Units in the same manner.

18. If this high value Puerto Rico claim is classified as a subordinated claim in Class 9, the percent acceptance by value in Class 6 is at least 86.56% (depending on the sub-class). At the hearing for the Confirmation Order, the U.S. Bankruptcy Court did not make a finding with respect to the classification of the Puerto Rico claim in Class 9 as a matter of process as the matter was not technically before the Court at the hearing for the Confirmation Order, although the Court held that the claims of the Objecting States were each properly classified as Class 9 – Subordinated Claims, rejecting their objections.

19. It was also unnecessary to make such a finding since, in confirming the Chapter 11 Plan, the U.S. Bankruptcy Court commented that there was substantial and sufficient support by creditors for confirmation of the Chapter 11 Plan whether the Puerto Rico Claim is reclassified

as a Class 9 claim or as a matter of cram down. The Confirmation Order provides that (i) the Chapter 11 Plan did not discriminate unfairly because holders of claims or interests with similar legal rights will not be receiving materially different treatment under the Chapter 11 Plan; and (ii) the Chapter 11 Plan was fair and equitable with respect to each class of claims or interests that was impaired or that had not accepted the Plan.

20. Subsequent to the Confirmation Hearing, the Chapter 11 Debtors served a motion to reclassify the entirety of the Puerto Rico Claim as a Class 9 Subordinated Claim. The proposed hearing date for this motion is March 13, 2018.

Appeal

21. The States of Hawaii and New Mexico and the Government of the United States Virgin Islands filed a Notice of Appeal of the Confirmation Order. These States objected to the State Subordination. The Confirmation Order is not currently stayed as a result of the appeal, and no motion has been brought to obtain such a stay. It is not a condition precedent to implementation of the Chapter 11 Plan that there be no appeal extant with respect to the Confirmation Order, and the Debtors do not expect the appeal to impede or prevent consummation of the Global Transaction.

22. The Chapter 11 Debtors intend to proceed to implement the Chapter 11 Plan notwithstanding this appeal.

Appropriate to Recognize Confirmation Order

23. Pursuant to section 9.1(g) of the Chapter 11 Plan, it is a condition precedent to the implementation of the Chapter 11 Plan that “a Canadian court of competent jurisdiction shall

have entered a Final Order recognizing the Confirmation Order entered by the Bankruptcy Court.”

24. The Chapter 11 Plan and the Global Transaction it contemplates preserves the going-concern value of the Chapter 11 Debtors’ businesses, maximizes creditor recoveries, provides for an equitable distribution to all of the Chapter 11 Debtors’ stakeholders, and protects the jobs of the Chapter 11 Debtors’ invaluable employees.

25. An Order recognizing the Confirmation Order in Canada, which has not been stayed and continues in full force and effect, is a precondition to these significant benefits being realized by the Chapter 11 Debtors, their creditors and other stakeholders. Accordingly, such recognition is necessary for the protection of the Chapter 11 Debtors’ property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction.

Appropriate to Recognize Related Orders

26. In addition to the Confirmation Order, the U.S. Foreign Representative also seeks recognition of orders relating to the approval of the Chapter 11 Plan, specifically the Restructuring Support Agreement Order, the Supplemental Bar Date Order, the Solicitation Procedure Order, the Claims Objection Order, and the Disputed Claims Reserve Order.

27. Recognition of the Restructuring Support Agreement Order, the Supplemental Bar Date Order and the Solicitation Procedures Order in Canada is necessary as each is an important step to the implementation of the Chapter 11 Plan and the consummation of the Global Transaction and, therefore, important for the protection of the Chapter 11 Debtors’ property and the interests of creditors.

28. The Claims Objection Order sustained the Chapter 11 Debtors' objection to certain listed claims which were asserted against the incorrect Chapter 11 Debtor. The Claims Objection Order, which affected one Filed Canadian Claim, was directed at maintaining a more accurate claims registry. Accordingly, recognition of this Order in Canada is necessary for the protection of the Chapter 11 Debtors' property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction.

29. Finally, the Disputed Claims Reserve Order estimates that the Disputed Claims in Class 6 (General Unsecured Claims) and Class 7 (Other PI/WD Claims) be in the total aggregate amount of \$1,532,200,000.00 for the purpose of determining the Disputed Claims Reserve to be set for these claims under the Chapter 11 Plan.

30. Accordingly, recognition of these orders in Canada is necessary for the protection of the Chapter 11 Debtors' property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction.

31. There is no basis to second guess the decision of the U.S. Bankruptcy Court in the foreign main proceedings and the U.S. Foreign Representative submits that it is appropriate and necessary to recognize these orders.

32. The moving party will also rely on:

- (a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) the *Rules of Civil Procedure* (Ontario), with particular reference to Rules 3.02, 5, 6.01, 16 and 37; and

- (c) such further and other grounds as counsel may advise and the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (d) Affidavit of Kenneth Bowling, sworn March 6, 2018;
- (e) Second Report of the Information Officer dated December 28, 2017;
- (f) Third Report of the Information Officer, to be filed;

Such further and other materials as counsel may advise and this Court may permit.

March 6, 2018

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Heather L. Meredith LSUC#: 48354R
Tel: (416) 601-8342
Email: hmeredith@mccarthy.ca

Eric S. Block LSUC#: 47479K
Tel: 416-601-7792
Email: eblock@mccarthy.ca

Trevor Courtis LSUC#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Adrienne Ho LSUC#: 68439N
Tel: 416-601-8919
Email: aho@mccarthy.ca
Lawyers for the Foreign Representatives

Schedule “A” – Chapter 11 Debtors

1. TK Holdings Inc.
2. Takata Americas
3. TK Finance, LLC
4. TK China, LLC
5. TK Mexico Inc.
6. TK Mexico LLC
7. Interiors in Flight, Inc.
8. Takata Protection Systems Inc.
9. TK Holdings de Mexico S. de R.L. de C.V.
10. Industrias Irvin de Mexico, S.A. de C.V.
11. Takata de Mexico, S.A. de C.V.
12. Strosshe-Mex, S. de R.L. de C.V.

Schedule “B” – Japanese Debtors

1. Takata Corporation
2. Takata Kyushu Corporation
3. Takata Service Corporation

Schedule “C” – Glossary

Defined Term	Definition
Abeyance Actions	<p>The five Canadian Class Actions that are currently being held in abeyance, specifically:</p> <ul style="list-style-type: none"> • <i>Rai v. Takata Corporation et al.</i>, B.C. Supreme Court File No. S-148694 • <i>Loewenthal v. Takata Corporation et al.</i>, B.C. Supreme Court File No. S149072 • <i>Covill v. Takata Corporation et al.</i>, Saskatchewan Court of Queen’s Bench File No. QBG 2561/2014 • <i>Hall v. Takata Corporation et al.</i>, Saskatchewan Court of Queen’s Bench File No. QBG 1284/2015 • <i>Vitoratos et al. v. Takata Corporation et al.</i>, 500-06-000723-144
Canadian Actions	Collectively, the Canadian Class Actions, the Canadian Competition Class Actions and the Canadian Personal Injury Actions.
Canadian Class Actions	14 putative class actions commenced in four Canadian provinces (British Columbia, Saskatchewan, Quebec and Ontario) which name TKH, TKJP and certain non-Debtor subsidiaries, as well as certain OEMs, as Defendants.
Canadian Competition Class Actions	<p>Four putative competition class actions commenced in four Canadian provinces (British Columbia, Ontario, Saskatchewan, Quebec) against TKH, TKJP, along with certain OEMs, specifically:</p> <ul style="list-style-type: none"> • <i>Sheridan Chevrolet Cadillac Ltd. v. Autoliv ASP, et al.</i>, Ontario Superior Court of Justice File No. CV-13-472259-00CP • <i>M. Serge Asselin v. Autoliv Inc., et al.</i>, Quebec Superior Court File No. 200-06-000158-132 • <i>Ewert v. Autoliv, Inc., et al.</i>, B.C. Supreme Court File No. S132959 • <i>Cindy Retallick and Jagjeet Singh Rajput v. Autoliv ASP</i>

Defined Term	Definition
	<i>Inc. et al.</i> , Saskatchewan Court of Queen’s Bench File No. Q.B. No. 988 of 2014
Canadian Personal Injury Actions	<p>Three personal injury actions commenced by individual plaintiffs against TKH and/or TKJ in Ontario, specifically:</p> <ul style="list-style-type: none"> • <i>Bluestone et al. v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-15-535772 • <i>Hallett v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-55579700CP • <i>Gordon v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-17-577414
Canadian Recognition Orders	The Initial Recognition Order (Foreign Main Proceeding) and Supplemental Recognition Order (Foreign Main Proceeding) issued by the Ontario Superior Court of Justice on June 28, 2017, as amended by the Japanese Recognition Order.
CCAA	<i>Companies’ Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36, as amended.
Chapter 11 Proceedings	The proceedings commenced by the Chapter 11 Debtors in the U.S. Bankruptcy Court.
Chapter 11 Claims Process Order	The Order issued by the United States Bankruptcy Court District of Delaware Pursuant to 11 U.S.C. §§ 105(a) and 502(b)(9), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005, and 9007, and Local Rules 2002-1(e), 3001-1 and 3003-1 for Authority to (I) Establish Deadlines For Filing Proofs of Claim, (II) Establish the Form and Manner of Notice Thereof, and (III) Approve Procedures for Providing Notice of Bar Date and Other Important Deadlines and Information to Potential PSAN Inflater Claimants on October 4, 2017.
Claims Process Recognition Order	Order issued by the Ontario Superior Court of Justice on October 13, 2017
Continuing Actions	<p>The five Canadian Class Actions that have been consolidated into national class actions proceeding in Ontario, specifically:</p> <ul style="list-style-type: none"> • <i>Des-Rosiers et al. v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543767-00CP

Defined Term	Definition
	<ul style="list-style-type: none"> • <i>McIntosh v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543833-00CP • <i>Coles v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543764-00CP • <i>Mailloux v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543763-00CP • <i>D'Haene et al. v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543766-00CP
Disputed Claims	Claims that are have not been allowed or disallowed, as further described in the <i>Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors</i> .
DOJ Restitution Order	Joint Restitution Order entered by the United States District Court for the Eastern District of Michigan on February 27, 2017 in the case captioned U.S. v. Takata Corporation, Case No. 16-cr-20810 (E.D. Mich.)
Foreign Proceedings	Collectively, the Chapter 11 Proceedings and the Japanese Proceedings.
Foreign Representatives	Collectively, the U.S. Foreign Representative and the Japanese Foreign Representative.
Information Officer	FTI Consulting Canada Inc., in its capacity as information officer appointed pursuant to the Canadian Recognition Orders.
Japanese Court	The 20 th Department of the Civil Division of the Tokyo District Court.
Japanese Court Orders	The Orders issued by the Japanese Court on June 26, 2017 and June 28, 2017 (i) appointing the Supervisor, and (ii) approving the commencement of the Japanese Debtors' proceedings under the Civil Rehabilitation Act and establishing a schedule for the civil rehabilitation proceedings.
Japanese Foreign Representative	TKJP in its capacity as foreign representative of the Japanese Debtors.
Japanese Proceedings	The civil rehabilitation proceedings commenced by the Japanese Debtors in the Japanese Court.

Defined Term	Definition
Japanese Recognition Order	The Japanese Recognition Order issued by the Ontario Superior Court of Justice on September 1, 2017.
OEMs	Original Equipment Manufacturers
Plan Supplement	Supplements as incorporated by the <i>Notice of Filing of Plan Supplement Pursuant to the Third Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors</i> , filed January 23, 2018
PPICs	Potential PSAN Inflater Claimants
Prime Clerk	Prime Clerk LLC
Reorganized TK Holding Trust Assets	As defined under the <i>Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors</i> , which largely includes assets and disputed claim reserves not acquired by the Plan Sponsor.
Second Plan Supplement	Supplements as incorporated by the <i>Notice of Filing of Second Plan Supplement Pursuant to the Third Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors</i> , filed February 11, 2018
Supervisor	Mr. Katsuyuki Miyakawa, a Japanese attorney, appointed as the Japanese Debtors' supervisor pursuant to the Japanese Court Orders.
Takata	TKJP collectively with TKH and all of TKJP's direct and indirect subsidiaries.
Third Plan Supplement	Supplements as incorporated by the <i>Notice of Filing of Third Plan Supplement Pursuant to the Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc and its Affiliated Debtors</i> , filed February 16, 2018
TKH	TK Holdings Inc.
TKJP	Takata Corporation
U.S. Bankruptcy Court	The United States Bankruptcy Court for the District of Delaware.
U.S. First Day Orders	Certain first day orders that were issued in the Chapter 11 Proceedings on June 27, 2017.

Defined Term	Definition
U.S. Second Day Orders	Certain second day orders that were issued in the Chapter 11 Proceedings on July 26, 2017, August 9, 2017, August 30, 2017, September 7, 2017, September 12, 2017, September 18, 2017, and October 2, 2017.
U.S. Foreign Representative	TKH, in its capacity as foreign representative of the Chapter 11 Debtors.

IN THE MATTER OF APPLICATION OF AN APPLICATION BY TK HOLDINGS INC.
AND TAKATA CORPORATION UNDER SECTION 46 OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT

Court File No. CV-17-11857-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**NOTICE OF MOTION
(re: Recognition of Chapter 11 Plan
and Related Orders)
(Returnable March 14, 2018)**

McCarthy Tétrault LLP

Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Eric S. Block LSUC#: 47479K

Tel: 416-601-7792

Email: eblock@mccarthy.ca

Heather L. Meredith LSUC#: 48354R

Tel: 416-601-8342

Email: hmeredith@mccarthy.ca

Trevor Courtis LSUC#: 67715A

Tel: 416-601-7643

Email: tcourtis@mccarthy.ca

Adrienne Ho LSUC#: 68439N

Tel: 416-601-8919

Email: aho@mccarthy.ca

Lawyers for the Foreign Representatives
DOCS 17478365

Court File No. CV-17-11857-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF TK HOLDINGS INC., AND THOSE OTHER COMPANIES
LISTED ON SCHEDULE "A" HERETO (the "Chapter 11 Debtors")**

**AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors", and
collectively with the Chapter 11 Debtors, the "Debtors")**

**APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORATION
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**AFFIDAVIT OF KENNETH BOWLING
SWORN MARCH 6, 2018
(re: Recognition of Chapter 11 Plan and Related Orders)**

TABLE OF CONTENTS

I. OVERVIEW	8
The Chapter 11 Proceedings	8
Confirmation of the Chapter 11 Plan	9
Recognition in Canada.....	13
II. THE CHAPTER 11 CLAIMS PROCESS	14
The Chapter 11 Claims Process	14
Supplemental Claims Bar Date and Notice	16
Proofs of Claim Filed by Canadian Creditors.....	17
III. THE CHAPTER 11 SOLICITATION AND VOTING PROCESS	18
The Solicitation Procedures Order.....	18
Solicitation of Votes	19
Settlements with Representative Committees.....	19
IV. CONFIRMATION ORDER AND THE CHAPTER 11 PLAN	20
Confirmation Hearing.....	20
Overview of Classes of Creditors	22
PSAN PI/WD Trust.....	23
Releases.....	25
Treatment of Canadian Creditors in Chapter 11 Plan.....	27

- a) Classification of Canadian Creditors 27
- b) Treatment of Canadian Creditor Claims 28
- c) Canadian Personal Injury Claims Against Contributing OEMs 29
- d) Canadian Economic Loss and Other Claims Against Contributing OEMs 30
- Voting Results..... 31
- Confirmation Order Should be Recognized..... 34
- V. RECOGNITION OF RELATED ORDERS35

Court File No. CV-17-11857-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF TK HOLDINGS INC., AND THOSE OTHER COMPANIES
LISTED ON SCHEDULE "A" HERETO (the "Chapter 11 Debtors")**

**AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors", and
collectively with the Chapter 11 Debtors, the "Debtors")**

**APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORATION
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**AFFIDAVIT OF KENNETH BOWLING
SWORN MARCH 6, 2018
(re: Recognition of Chapter 11 Plan and Related Orders)**

I, Kenneth Bowling, of the City of Auburn Hills, in the State of Michigan, United States of America, MAKE OATH AND SAY:

1. I am the Chief Financial Officer for TK Holdings Inc. ("**TKH**") and the North American subsidiaries and affiliates of Takata Corporation ("**TKJP**" and collectively with TKH and all of TKJP's direct and indirect subsidiaries, "**Takata**") and have served in this capacity since being appointed on April 1, 2015. I have also served in various other finance and production related capacities at Takata since 1988, including Vice-President – Non-Automotive Safety, Vice President – Production Controller, and Group Controller – Airbag Division.

2. Accordingly, I have personal knowledge of the matters herein, except where I have indicated that I have obtained facts from other sources, in which case I believe those facts to be true.
3. All capitalized terms used but not otherwise defined in this affidavit have the meanings given to them in the glossary attached hereto as **Schedule “C”** or in the Chapter 11 Plan (defined below).
4. On February 14, 2018, I signed a declaration (the “**Bowling Declaration**”) in support of a motion by the Chapter 11 Debtors for an order from the U.S. Bankruptcy Court confirming the *Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors*, dated February 14, 2018 (the “**Fourth Amended Plan**”), which was subsequently modified by the *Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors* (the “**Fifth Amended Plan**” and as supplemented by the Plan Supplement and anything incorporated into the Fifth Amended Plan hereafter, including all exhibits, schedules, and supplements accorded therein, and as otherwise amended in accordance with the Confirmation Order, the “**Chapter 11 Plan**”). The confirmation hearing was held on February 16, 2018 (“**Confirmation Hearing**”). True copies of the Bowling Declaration, the transcript from the Confirmation Hearing, and the Findings of Fact, Conclusions of Law, and Order Confirming the Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors (“**Confirmation Order**”) dated February 21, 2018, which attaches the Chapter 11 Plan, are attached hereto as **Exhibits “A”, “B” and “C”** respectively.

5. In addition, the following declarations (collectively with the Bowling Declaration, the “**Supporting Declarations**”), among others, were sworn in support of the motion for the Confirmation Order:

- (a) The Declaration of Andrew Yearley of Lazard Frères & Co. LLC, investment banker to Takata in the Chapter 11 Proceedings, regarding the marketing process and allocation of purchase price under the Global Transaction, signed February 14, 2018, a true copy of which is attached hereto as **Exhibit “D”**;
- (b) The Declaration of Steven Fleming of PricewaterhouseCoopers LLP regarding the Chapter 11 Debtors’ liquidation analysis, signed February 14, 2018, a true copy of which is attached hereto as **Exhibit “E”**;
- (c) The Declaration of Joseph Perkins of the Plan Sponsor regarding the Global Transaction and the findings of fact made in the proposed Confirmation Order, signed February 14, 2018, a true copy of which is attached hereto as **Exhibit “F”**;
- (d) The Declaration of Roger Frankel, the court-appointed Future Claimants’ Representative in the Chapter 11 Proceedings, which states that the Chapter 11 Plan is fair and equitable in its treatment of future personal injury and wrongful death claimants, signed February 14, 2018, a true copy of which is attached hereto as **Exhibit “G”**;
- (e) The Declaration of Thomas Vasquez of Ankura Consulting Group, LLC, an economic and management consulting services group, regarding an analysis of potential future liability relating to or arising from the Chapter 11 Debtors’

products, signed February 14, 2018, a true copy of which is attached hereto as **Exhibit “H”**; and

- (f) The Declaration of Christina Pullo of Prime Clerk LLC which outlines the results of voting on the Fourth Amended Plan, signed February 15, 2018, a true copy of which is attached hereto as **Exhibit “I”**.

6. I swear this affidavit in support of the motion brought by the U.S. Foreign Representative, pursuant to Part IV of the CCAA seeking an order (the “**Confirmation Recognition Order**”) substantially in the form of the draft order included at Tab 3 of the Motion Record of the U.S. Foreign Representative that, among other things, recognizes and gives full force and effect in all provinces and territories of Canada to the following Orders of the U.S. Bankruptcy Court:

- (a) the Confirmation Order;
- (b) the Corrected Order Pursuant to 11 U.S.C. §§105(a), 362, 363(b), 503, and 507, and Fed. R. Bankr. P. 4001 and 6004 (I) Authorizing Debtors to Enter Into and Perform Under Restructuring Support Agreement; (II) Approving Plan Sponsor Protections; and (III) Modifying the Automatic Stay (“**Restructuring Support Agreement Order**”) dated December 13, 2017, attached hereto as **Exhibit “J”**;
- (c) the Order Pursuant to 11 U.S.C. §§502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3001, 3002, 3003(c)(3), 5005, and 9007, and Local Rules 2002-1(e), 3001-1, and 3003-1 to (I) Establish Supplemental Deadline and Related Procedures for Filing Proofs of Claim by, and (II) Approve Procedures for Providing Notice of Supplemental Bar Date, and Other Important Dates and Information to, Certain

Potential PSAN Inflator Claimants that Purchased Vehicles Subsequent to the Commencement of the Chapter 11 Cases (“**Supplemental Bar Date Order**”) dated December 18, 2017, attached hereto as **Exhibit “K”**;

- (d) the Order Pursuant to 11 U.S.C. §§105, 502, 1125, 1126, and 1128, Fed. R. Bankr. P. 2002, 3003, 3016, 3017, 3018, 3020, and 9006, and Local Rules 2002-1, 2017-1, and 9006-1 for Entry of an Order (I) Approving the Proposed Disclosure Statement and the Form and Manner of the Notice of a Hearing Thereon, (II) Establishing Solicitation and Voting Procedures, and (III) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Plan (“**Solicitation Procedures Order**”) dated January 5, 2018, attached hereto as **Exhibit “L”**;
- (e) the Order Sustaining Debtors' Third Non-Substantive Omnibus Objection to Claims (Incorrect Debtor Claims) (“**Claims Objection Order**”) dated February 2, 2018, attached hereto as **Exhibit “M”**; and
- (f) the Order Pursuant to 11 U.S.C. §§ 502(c) and 105(a) Estimating the Maximum Amount of Certain Contingent, Unliquidated, and Disputed Claims for Purposes of Establishing Disputed Claims Reserves Under Debtors' Proposed Joint Chapter 11 Plan of Reorganization (“**Disputed Claims Reserve Order**”), dated February 26, 2018, attached hereto as **Exhibit “N”**.

I. OVERVIEW

The Chapter 11 Proceedings

7. On June 25, 2017, as a result of the unprecedented and highly publicized recalls of the Chapter 11 Debtors' airbags containing PSAN Inflators, the Chapter 11 Debtors commenced the Chapter 11 Proceedings. On June 27, 2017, the U.S. Bankruptcy Court issued the U.S. First Day Orders.

8. Prior to the commencement of the Chapter 11 Proceedings, the Chapter 11 Debtors conducted a thorough prepetition marketing and sale process, which identified the Plan Sponsor as the purchaser of substantially all of Takata's worldwide assets (excluding PSAN Inflator-related assets) (the "**Global Transaction**").

9. The Chapter 11 Proceedings were commenced to provide the Chapter 11 Debtors with necessary breathing space to finalize the Global Transaction while also preserving global liquidity and ensuring the ongoing manufacture and supply of replacement parts required for ongoing recalls.

10. On July 7, 2017, the U.S. Trustee appointed a statutory committee of unsecured creditors (the "**Creditors' Committee**") and a statutory committee of tort claimant creditors (the "**Tort Claimants' Committee**"). On September 6, 2017, the U.S. Bankruptcy Court appointed Roger Frankel as the legal representative (the "**Future Claims Representative**") for individuals who sustain injuries related to PSAN Inflators after the commencement of the Chapter 11 Proceedings.

11. On October 25, 2017, the U.S. Bankruptcy Court issued an Order authorizing the Creditors' Committee to retain and employ Davies Ward Phillips & Vineberg LLP as Canadian counsel.

Confirmation of the Chapter 11 Plan

12. In a feat that is a testament to the efforts of the Chapter 11 Debtors, their creditors and other stakeholders, and their respective advisors and assistants, a mere eight months after commencement of the Chapter 11 Proceedings, the Chapter 11 Debtors have, among other things:

- (a) finalized and executed an Asset Purchase Agreement with the Plan Sponsor (the “**U.S. Acquisition Agreement**”) and other related documentation necessary to effect the Global Transaction;
- (b) conducted a global claims process, which included an extensive and unprecedented noticing program (the “**Chapter 11 Claims Process**”);
- (c) carried out a court-approved solicitation and voting process;
- (d) prepared the Chapter 11 Plan, which implements the Global Transaction; and
- (e) participated in complex and extensive negotiations to obtain support for the Chapter 11 Plan from each of their major creditor groups, including the Consenting OEMs (by far the largest creditor constituency by value), the Creditors' Committee, the Tort Claimants' Committee, and the Future Claims Representative.

13. On January 23, 2018, the Chapter 11 Debtors filed the Plan Supplement, which contained forms of documents that were considered part of the Chapter 11 Plan to be confirmed. A true copy of the Plan Supplement is attached hereto as **Exhibit “O”**.

14. On February 11, 2018, the Chapter 11 Debtors filed the Second Plan Supplement, which amended the PI/WD Trust Distribution Procedures attached to the initial Plan Supplement. A true copy of the Second Plan Supplement is attached hereto as **Exhibit “P”**.

15. On February 16, 2018, the Chapter 11 Debtors filed the Third Plan Supplement, which amended the PSAN PI/WD Trust Agreement and Participating OEM Contribution Agreement attached to the initial Plan Supplement. The Plan Supplement, as amended in the Second Plan Supplement and Third Plan Supplement, was confirmed by the U.S. Bankruptcy Court in the Confirmation Order. A true copy of the Third Plan Supplement is attached hereto as **Exhibit “Q”**.

16. In the Confirmation Order dated February 21, 2018, the U.S. Bankruptcy Court confirmed the Chapter 11 Plan, approved the Plan Supplement (as outlined more fully below), and approved the Exhibits and Schedules to the Chapter 11 Plan, and any amendments, modifications and supplements thereto subject to reasonable acceptance of certain stakeholders’ committees in accordance with settlement agreements.

17. In the Confirmation Order, the U.S. Bankruptcy Court held, among other things, that modifications made to the *Third Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors*, dated January 5, 2018, (“**Third Amended Plan**”) following the solicitation of votes do not adversely affect the treatment of any of the allowed claims, so neither additional disclosure nor re-solicitation of votes of the Chapter 11 Plan were

required, nor did it require that holders of claims be afforded an opportunity to change previously cast acceptances or rejections of the Third Amended Plan.

18. The Chapter 11 Plan implements the Global Transaction, and, among other things:
- (a) provides for the sale and transfer of substantially all of the Chapter 11 Debtors' non-PSAN assets to the Plan Sponsor free and clear of all Claims, interests, Liens and other encumbrances and liabilities of any kind or nature whatsoever;
 - (b) preserves the employment of substantially all of the Chapter 11 Debtors' 14,000 employees;
 - (c) carves out certain of the PSAN-related assets from the sale to the Plan Sponsor and vests them in TKH and certain of its subsidiaries upon TKH's emergence from the Chapter 11 proceedings (the "**Reorganized Debtors**") to continue limited production of PSAN Inflators and PSAN propellant to facilitate the recalls of PSAN Inflators;
 - (d) vests the Warehoused PSAN Assets (as defined in the Chapter 11 Plan) in a Delaware corporation established under the Chapter 11 Plan to comply with the Chapter 11 Debtors' obligations under the NHTSA Preservation Order and to continue the maintenance, shipping and disposal of the Warehoused PSAN Assets after the implementation of the Chapter 11 Plan;
 - (e) ensures that TKJP is able to comply with the DOJ Restitution Order in connection with the settlement of the two (2)-year criminal investigation by the Department of Justice (the "**DOJ**") into Takata, in particular the USD\$975 million in

restitution payments for the \$125 million personal injury and wrongful death restitution fund (the “**DOJ PI/WD Restitution Fund**”) and the \$850 million OEM restitution fund established under the DOJ Restitution Order;

- (f) provides for the consensual resolution and settlement of claims by the Consenting OEMs, the Plan Sponsor, the Creditors’ Committee, the Tort Claimants’ Committee and the Future Claims Representative;
- (g) provides all voting classes of claims and interests with recovery equal to or in excess of what such claimants would receive in a hypothetical liquidation; and
- (h) provides appropriate releases and a permanent injunction of certain PSAN PI/WD Claims against Protected Parties – addressing the liabilities associated with PSAN PI/WD Claims was a principal motivating factor for the restructuring, particularly for the Plan Sponsor, for whom limiting exposure to PSAN Inflater-related liability was a precondition to the Global Transaction.

19. The Chapter 11 Plan also incorporates the terms of settlements including resolution of over \$4 billion of claims of the Consenting OEMs in exchange for a payment that is estimated to be approximately \$246 million. As a result of the settlement of these secured and priority claims for a fraction of their potential value, there is significant value available for unsecured creditors.

20. Accordingly, I believe the implementation of the Chapter 11 Plan and the consummation of the Global Transaction are in the best interests of the Chapter 11 Debtors’ creditors, employees, vendors, and all other parties in interest.

Recognition in Canada

21. As previously reported to the Court, Takata does not have any assets (other than retainers with counsel) or operational presence in Canada. The Chapter 11 Debtors do not operate any plants or R&D facilities in Canada or otherwise have any assets situated in Canada in the ordinary course of business. The Debtors do not have any employees in Canada, nor do they engage any independent contractors based in the country to sell their products to Canadian business. There was, however, litigation against Takata in Canada.

22. On June 28, 2017, on an application by the U.S. Foreign Representative, this Court issued the Canadian Recognition Orders, which, among other things, (i) recognized the Chapter 11 Proceedings as “foreign main proceedings”, (ii) recognized and gave full force and effect in all provinces and territories of Canada to the U.S. First Day Orders, and (iii) appointed the Information Officer.

23. On October 13, 2017, the Canadian Court recognized the Chapter 11 Claims Process Order. On the same date, the Canadian Court also issued the Second Day Recognition Order which, among other things, recognized and gave full force and effect in all provinces and territories of Canada to the U.S. Second Day Orders, which included (i) final versions of the U.S. First Day Orders, (ii) orders regarding the employment and retention of professionals by the Chapter 11 Debtors and others, and (iii) the order appointing the Future Claims Representative.

24. On this motion, the U.S. Foreign Representative seeks recognition of certain orders relating to the approval of the Chapter 11 Plan that have been issued by the U.S. Bankruptcy Court since the last hearing before the Canadian Court in October 2017.

25. The Chapter 11 Plan contemplates a global restructuring of all claims against the Chapter 11 Debtors, including the claims of Canadian creditors. The claims of Canadian creditors, regardless of which class such claims are in, are dealt with in the Chapter 11 Plan in the same manner as other similar claims in the same class. Accordingly, it is appropriate to recognize the Confirmation Order, and the other related orders of the U.S. Bankruptcy Court, in Canada.

II. THE CHAPTER 11 CLAIMS PROCESS

The Chapter 11 Claims Process

26. On October 2, 2017, the U.S. Bankruptcy Court issued the Chapter 11 Claims Process Order, which established deadlines and procedures associated with the filing of claims against the Chapter 11 Debtors. In order to provide the maximum notice to potential claimants while also conserving the limited resources of the Chapter 11 Debtors, the Chapter 11 Claims Process Order contemplated the following noticing and claims process and deadlines:

- (a) Proofs of claim by any person or entity *other* than PPICs and Governmental Units were required to be filed by November 27, 2017;
- (b) Proofs of claim by Governmental Units were required to be filed by December 22, 2017;
- (c) Proofs of claim by PPICs were required to be filed by December 27, 2017;
- (d) The Chapter 11 Debtors were required to mail a General Proof of Claim and General Bar Date Notice to known creditors, including known creditors in Canada, by October 5, 2017;

- (e) The Chapter 11 Debtors were required to mail a PPIC Combined Notice to all U.S. PPIC Notice Parties by November 4, 2017; and
- (f) The Chapter 11 Debtors were required to publish newspaper notices in U.S. and international publications, including *The Globe and Mail* and *Le Devoir* in Canada.

Canadian Claimants and Recognition of Claims Process

27. Prior to conducting the Chapter 11 Claims Process, the potential Canadian creditors of the Chapter 11 Debtors whose identities were known to Takata of whom I am aware were:

- (a) The putative representative plaintiffs in the Canadian Class Actions;
- (b) The putative representative plaintiffs in the Canadian Competition Class Actions;
- (c) The plaintiffs in the two Canadian Personal Injury Actions that have been commenced against TKH in Canada (a third personal injury action has been commenced against TKJ only); and
- (d) 137 other general unsecured creditors (the “**General Canadian Creditors**”).

28. Additionally, the unknown potential Canadian creditors of the Chapter 11 Debtors largely consisted of PPICs who might assert an economic loss claim against the Chapter 11 Debtors arising out of the recall of over 5.2 million Takata airbag inflators in Canada.

29. On October 13, 2017, this Court issued the Claims Process Recognition Order which, among other things, recognized and gave full force and effect in all provinces and territories of Canada to the Chapter 11 Claims Process Order.

30. In accordance with the Chapter 11 Claims Process Order, the Chapter 11 Debtors published notice of the various claims bar dates in *The Globe and Mail* (National Edition) on October 25, 2017 and *Le Devoir* on October 27, 2017. True copies of these notices are attached hereto as **Exhibits “R”** and **“S”**, respectively.

Supplemental Claims Bar Date and Notice

31. On December 18, 2017, the U.S. Bankruptcy Court issued the Supplemental Bar Date Order, which established a supplemental claims and noticing process for PPICs who purchased vehicles containing certain PSAN Inflators between August 2, 2017 and December 19, 2017. The Supplemental Bar Date Order imposed a deadline of February 6, 2018 for submission of these claims (the **“Supplemental PPIC Bar Date”**). Notice of the Supplemental PPIC Bar Date was to be provided in substantially the same publications as those listed in the Chapter 11 Claims Process Order.

32. In accordance with the Supplemental Bar Date Order, the Chapter 11 Debtors published notice of the Supplemental PPIC Bar Date in *The Globe and Mail* (National Edition) on January 17, 2018 and *Le Devoir* on January 18, 2018. True copies of these notices are attached hereto as **Exhibits “T”** and **“U”**, respectively.

Proofs of Claim Filed by Canadian Creditors

33. The Chapter 11 Debtors received 46 proofs of claim from claimants with an address listed in Canada (the “**Filed Canadian Claims**”):

- (a) Claims filed by 20 PPICs, none of which were class claims;
- (b) Class claims filed with respect to 3 of the 4 Canadian Competition Class Actions:
 - (i) two claims filed in relation to the Ontario and British Columbia actions respectively each in the amount of CAD\$100 million; (ii) two duplicate claims filed by the plaintiff in the Quebec action for CAD\$110 million; and (iii) a claim for USD \$29,542,726.16 on behalf of all persons in Canada (including those covered in the Ontario, British Columbia and Quebec class actions) who purchased Occupant Safety Systems (“**OSS**”) or purchased and/or leased a new vehicle containing OSS between January 1, 2003 and July 1, 2011 and/or any subsequent period during which prices were affected by an alleged price conspiracy;
- (c) Claims filed in all three Canadian Personal Injury Actions, in the aggregate amount of CAD \$3.5 million;
- (d) Claims filed by nine General Canadian Creditors, in the aggregate amount of USD \$202,097.10; and
- (e) Claims filed by Subaru Canada Inc. and Mazda Canada Inc. further to the claims protocol for Consenting OEMs.

34. The process to review claims and determine which claims are allowed or disallowed is ongoing.

III. THE CHAPTER 11 SOLICITATION AND VOTING PROCESS

The Solicitation Procedures Order

35. On January 5, 2018, the U.S. Bankruptcy Court issued the Solicitation Procedures Order, which, among other things,

- (a) approved the Disclosure Statement for the Third Amended Plan of the Chapter 11 Debtors, a true copy of which without exhibits is attached hereto as **Exhibit “V”**;
- (b) established certain procedures for (a) soliciting, receiving, and tabulating votes to accept or reject the Plan, including, without limitation, procedures with respect to PPICs, (b) voting to accept or reject the Third Amended Plan, and (c) filing objections to the Third Amended Plan; and
- (c) set February 6, 2018 at 4:00 p.m. EST as the deadline (the “**Voting Deadline**”), among other things, to vote to accept or reject the plan, file an objection, or opt out of providing the releases set forth in Section 10.6(b) of the Plan.

36. The Voting Deadline was thereafter extended by the Chapter 11 Debtors to February 9, 2018 at 4:00 p.m. EST, subsequently to February 12, 2018 at 5:00 pm EST, and subsequently, to February 14, 2018 at 8:00 p.m. EST.

Solicitation of Votes

37. On or before January 12, 2018, in accordance with the Solicitation Procedures Order, the Chapter 11 Debtors, through their administrative agent, Prime Clerk, caused the relevant Solicitation Packages (as defined in, and approved by, the Solicitation Procedures Order) to be transmitted to and served on claim and interest holders, including all creditors with Filed Canadian Claims.

Settlements with Representative Committees

38. On February 10, 2018, after months of negotiations, the Chapter 11 Debtors filed settlement term sheets (the “**Settlement Term Sheets**”), outlining a settlement reached with the Consenting OEMs, the Plan Sponsor, the Creditors’ Committee, the Tort Claimants’ Committee, and the Future Claims Representative. The agreements resolved the concerns of these stakeholders with the Chapter 11 Plan and were subsequently incorporated into the Chapter 11 Plan.

39. In order to inform creditors that the Creditors’ Committee and Tort Claimants’ Committee were now supporting the Chapter 11 Plan in light of the agreements reached in the Settlement Term Sheets, the following recommendation was displayed prominently on the website established by Prime Clerk for the Chapter 11 Proceedings:

Unsecured Creditors Committee Recommendation

Having reached settlement with certain key constituents, the Official Committee of Unsecured Creditors (the “Unsecured Creditors Committee”) now supports the Debtors’ Plan of Reorganization, as it will be amended to reflect the terms of the settlement (as amended, the “Plan”). **The Unsecured Creditors Committee recommends that unsecured creditors vote to accept the Plan. If an unsecured creditor has already voted to reject the Plan, the Unsecured Creditors Committee recommends that any such creditor change its vote to accept the Plan by submitting a new Ballot.**

The Unsecured Creditors Committee engaged in extensive negotiations with the Debtors, the Plan Sponsor, certain Original Equipment Manufacturers and other key parties in interest that resulted in a settlement that the Unsecured Creditors Committee believes to be beneficial to general unsecured creditors. Specifically, in resolution of certain pending investigations and disputes, the parties agreed (i) to establish a fund of \$7.5 million to provide enhanced recoveries to Eligible Creditors and (ii) that the Plan Sponsor will assume all third-party executory contracts related to the non-PSAN acquired business, subject to certain exceptions.

40. Soon after filing the Settlement Term Sheets, the Chapter 11 Debtors reached out to each of the remaining objectors offering to discuss the terms of the Settlement Term Sheets in the hopes of resolving certain of the objections and narrowing the issues before the U.S. Bankruptcy Court. Certain of the objectors, including certain states in the United States, accepted the Chapter 11 Debtors' offer and their objections were subsequently resolved.

IV. CONFIRMATION ORDER AND THE CHAPTER 11 PLAN

Confirmation Hearing

41. On February 14, 2018, the Chapter 11 Debtors filed the Fourth Amended Plan. Modifications to the Third Amended Plan were primarily made to incorporate provisions of the Settlement Term Sheets and to resolve certain objections to the plan. On the same date, the Chapter 11 Debtors also filed the Supporting Declarations.

42. The hearing of the U.S. Bankruptcy Court to consider whether to confirm the Chapter 11 Plan was originally scheduled for February 13, 2018. In light of the significant agreements reached with the Creditors' Committee, the Tort Claimants' Committee, and the Future Claims Representative and the necessary amendments to the Chapter 11 Plan and the extension of the Voting Deadline resulting therefrom, the hearing was adjourned to February 16, 2018 at 10:30 a.m. EST.

43. The Plan Sponsor and Consenting OEMs filed documents in support of confirmation of the Fourth Amended Plan.

44. The Confirmation Hearing was held on February 16, 2018. At the Confirmation Hearing, counsel advised that the Chapter 11 Plan was largely consensual and only three objections remained, including objections made by the States of Hawaii and New Mexico and the Government of the United States Virgin Islands (the “**Objecting States**”), who objected to the subordination of their claims. Following the Confirmation Hearing, the Chapter 11 Debtors filed the Fifth Amended Plan on February 20, 2018 along with a proposed Confirmation Order to reflect the record made at the confirmation hearing and to reflect certain resolutions with regard to objections.

45. The U.S. Bankruptcy Court issued the Confirmation Order on February 21, 2018, confirming the Chapter 11 Plan and overruling all outstanding objections thereto.

Overview of Classes of Creditors

46. The Chapter 11 Plan provides for the following nine classes of claims in section 3.2.

Class	Type of Claim or Interest	Impairment	Entitled to Vote
1	Other Secured Claims	Unimpaired	No (Presumed to accept)
2	Other Priority Claims	Unimpaired	No (Presumed to accept)
3	Mexico Class Action Claims and Mexico Labour Claims	Impaired	Yes
4	OEM Unsecured Claims	Impaired	Yes
5	PSAN PI/WD Claims	Impaired	Yes
6	Other General Unsecured Claims	Impaired	Yes
7	Other PI/WD Claims	Impaired	Yes
8	Intercompany Interests	Impaired	No (Deemed to reject)
9	Subordinated Claims	Impaired	No (Deemed to reject)

47. As discussed below, Canadian creditors with claims impaired in the Chapter 11 Plan are each in either Class 4, Class 5, Class 6 or Class 7.

48. Class 4 – OEM Unsecured Claims is comprised of OEMs with general unsecured claims against the Chapter 11 Debtors.

49. Class 5 – PSAN PI/WD Claims is comprised of claimants that have (or may have) general unsecured claims for alleged personal injuries, wrongful deaths, or other similar claims or causes of action allegedly caused by a PSAN Inflator supplied by the Chapter 11 Debtors.

50. Class 6 – Other General Unsecured Claims is comprised of the general unsecured claims of trade and other creditors, including contingent, unliquidated, and disputed litigation claims and any claims asserted by individuals alleging to have suffered an economic loss relating to PSAN Inflators supplied by the Chapter 11 Debtors.

51. Class 7 – Other PI/WD Claims is comprised of claimants that have general unsecured claims for alleged personal injuries or wrongful deaths, or other similar claims or causes of action allegedly caused by a Takata product other than PSAN Inflators.

52. Class 3 does not include Canadian Creditors. This class is comprised of creditors with unsecured litigation claims against certain Mexican entities of the Chapter 11 Debtors (“**Mexico Class Action Claims**”). I understand that the claimants in the Mexico Class Action have potential recourse against the assets of the Chapter 11 Debtors situated in Mexico (i.e., Mexican Class Action Claim holders may be able to obtain a lien or seize assets pursuant to a judgment rendered by a Mexican court not obligated to recognize the Chapter 11 Proceedings). This is dissimilar from other unsecured litigation claims, including Canadian litigation claims. The Chapter 11 Debtors are not Canadian entities and do not have any operations or assets situated in Canada (aside from retainers with professionals). As a result, it was not necessary or appropriate to have a separate class for Canadian litigation claimants.

PSAN PI/WD Trust

53. The Chapter 11 Plan provides for the establishment of a PSAN PI/WD Trust. Section 10.6(c) and 10.7 of the Chapter 11 Plan provide for the release of certain PSAN PI/WD claims against the Protected Parties – the key entities being the Chapter 11 Debtors’ affiliates, the

Participating OEMs and the Plan Sponsor Parties – and the channelling of these released claims to the PSAN PI/WD Trust.

54. The Consenting OEMs have the opportunity to benefit from the release and channelling injunction - solely with respect to PSAN PI/WD Claims - by electing to become Participating OEMs. Consenting OEMs that elect to become Participating OEMs will contribute additional, uncapped funds to resolve PSAN PI/WD Claims that have been asserted against such OEMs. As a result, claimants with PSAN PI/WD Claims affected by the channeling injunction will receive recovery of the full amount of their PSAN PI/WD Claim against the Participating OEM, as determined by the Special Master of the DOJ PI/WD Restitution Fund (“**Special Master**”) in accordance with the terms of the PSAN PI/WD Trust.

55. All PSAN PI/WD Claims against non-Participating OEMs are preserved and all PSAN PI/WD Claimants retain full rights to proceed against such non-Participating OEMs in the tort system. As of the date hereof, only American Honda Motor Co., Inc. and its subsidiaries and affiliates have elected to become Participating OEMs.

56. Claimants with either Class 5 or Class 7 personal injury or wrongful death claims will recover from the PSAN PI/WD Trust administered by the Special Master. Class 5 PSAN PI/WD Claims will be liquidated based on the Points Schedule employed by the Special Master in administering claims against the DOJ PI/WD Restitution Fund. The Points Schedule provides a methodology for classifying injuries into a manageable process, thereby ensuring the consistent and fair treatment of current and future claimants. By applying the same methodology, the process allows PSAN PI/WD Claimants to use the same claim form to recover from both the

PSAN PI/WD Trust and the DOJ PI/WD Restitution Fund. I understand that the Special Master will serve as the Trustee of the PSAN PI/WD Trust.

57. Importantly, at the conclusion of the PSAN PI/WD Trust evaluation process, if the PSAN PI/WD Claimant is not satisfied with the recovery in relation to PSAN PI/WD Claims against a Participating OEM as evaluated by the Special Master, they may elect to opt-out of the PSAN PI/WD Trust and file a lawsuit in the tort system against the applicable Participating OEM. PSAN PI/WD Claimants may do so without fear of being subject to defences such as contributory negligence or the statute of limitations.

58. The channeling injunction facilitates a comprehensive process for resolving PSAN PI/WD Claims in a speedy, transparent, and fair manner. Indeed, once a PSAN PI/WD Claim has been filed with the PSAN PI/WD Trust, it will be evaluated on the basis of clear, evidence-based criteria, to determine compensability. The Special Master has significant flexibility to ensure that PSAN PI/WD Claims are treated fairly in light of the severity of the injury. Claimants may seek supplemental review of the Special Master's determination and valuation of their PSAN PI/WD Claims.

Releases

59. In section 10.6(a), the Chapter 11 Plan provides for broad releases by the Chapter 11 Debtors, the Reorganized Debtors (as defined in the Chapter 11 Plan), and the Chapter 11 Debtors' Estates in favour of certain Consenting OEMs, (who released the Chapter 11 Debtors), and other Released Parties (defined below).

60. In section 10.6(b), the Chapter 11 Plan provides broad releases of claims (the “**Consensual Releases**”) against (i) the Chapter 11 Debtors, (ii) the Plan Sponsor Parties (as defined in the Chapter 11 Plan), (iii) the Future Claims Representative, (iv) the Creditors’ Committee and Tort Claimants’ Committee and their respective members, and (v) the affiliates of the Chapter 11 Debtors (except the affiliates that are not being acquired by the Plan Sponsor, TKJP and TAKATA Sachsen GmbH) (collectively, the “**Released Parties**”). A Consenting OEM is not a Released Party under the Chapter 11 Plan except in relation to releases provided by the Chapter 11 Debtors in section 10.6(a) of the Chapter 11 Plan.

61. Section 10.6(b) of the Plan provides that the following parties (excluding Consenting OEMs) will be determined to have consented to the Consensual Releases: (a) holders of Claims who vote to accept the Plan; (b) holders of Claims that are Unimpaired under the Plan; (c) holders of Claims whose vote to accept or reject the Plan is solicited but who do not vote either to accept or reject the Plan; (d) the holders of Claims or Interests who vote, or are deemed, to reject the Plan but do not opt out of granting the releases set forth therein; (e) the holders of Claims and Interests who are given notice of the opportunity to opt out of granting such releases but who do not opt of granting the releases; and (f) all other holders of Claims and Interests to the maximum extent permitted by law. The Chapter 11 Debtors’ solicitation materials provided clear conspicuous notice of both the Consensual Releases and the process for opting out of the Consensual Releases.

62. Finally, in sections 10.6(c) and 10.7, as outlined above, holders of PSAN PI/WD Claims provide a full and complete release to the Protected Parties (including Participating OEMs) and those released claims are channelled to the PSAN PI/WD Trust by the “Channeling Injunction”.

PSAN PI/WD Claims against Consenting OEMs that elect to become Participating OEMs and pay their portion of the PSAN PI/WD Claims in full, are released and channelled to the PSAN PI/WD Trust.

63. Other than such release of Participating OEMs from PSAN PI/WD Claims and the releases provided by the Chapter 11 Debtors in favour of the Consenting OEMs (in return for, among other things, the Consenting OEMs agreeing to settle their billions of dollars of secured and priority claims for a fraction of their potential value), **no** other claims against the OEMs, including Consenting OEMs and those OEMs that do not elect to become Participating OEMs, are released pursuant to the Chapter 11 Plan.

64. In the Confirmation Order, the U.S. Bankruptcy Court found that releases contained in the Chapter 11 Plan, as well as the Channeling Injunction, were adequately disclosed and explained in the Disclosure Statement, voting ballots, and the Chapter 11 Plan. It further held that the Consensual Releases were consensual.

65. In the Confirmation Order, the U.S. Bankruptcy Court found, among other things, that the releases of non-Debtors and the related injunction “are fair to holders of claims and are necessary to the proposed reorganization,” “were supported by fair, sufficient, and adequate consideration provided by or for [the parties being released]” and were “critical to the success of the Plan.”

Treatment of Canadian Creditors in Chapter 11 Plan

a) Classification of Canadian Creditors

66. Of the Filed Canadian Claims to the extent allowed: (i) the filed Canadian Competition Class Action claims, General Canadian Creditor claims and Canadian PPIC claims all appear to

fall within Class 6 – Other General Unsecured Claims in the Chapter 11 Plan; (ii) the filed Canadian Personal Injury Actions fall within Class 5 – PSAN PI/WD Claims or Class 7 – Other PI/WD Claims in the Chapter 11 Plan; and (iii) the Canadian OEMs (Mazda and Subaru) that filed claims fall within Class 4 – OEM Unsecured Claims. There was also one claim filed on a secured basis which falls within Class 1 – Allowed Secured Claims and, to the extent allowed, will be paid in full under the Chapter 11 Plan.

b) Treatment of Canadian Creditor Claims

67. The Chapter 11 Plan provides for (i) the claims of all Canadian creditors against the Chapter 11 Debtors and the Released Parties will be released; and (ii) an approximate recovery of 0.1% to 0.4% from the Chapter 11 Debtors' estates (based on estimates as of the date of the Disclosure Statement) to holders of General Unsecured Claims whether the Claims are included in Class 4, Class 5, Class 6, or Class 7. Each of these Classes is expected to receive the same percentage recovery from the Chapter 11 Debtors' estates.

68. In addition, the Consenting OEMs and Plan Sponsor have agreed to make additional contributions to the PSAN PI/WD Trust (for the benefit of claimants with PSAN PI/WD claims and Other PI/WD Claims) and the Support Party Creditor Fund (for the benefit of Eligible Creditors, which include vendors and suppliers with whom the Plan Sponsor, Reorganized Debtors or Consenting OEMs may do business going forward). Such recoveries do not come from the Chapter 11 Debtors' estate and, therefore, do not change the equal treatment provided within and among each class from the Chapter 11 Debtors' estate, but do represent additional funds for such creditors. Similarly, the DOJ PI/WD Restitution Fund represents an additional source of recovery for eligible PSAN PI/WD claims.

69. As explained in more detail in the Fleming Declaration, the liquidation analysis prepared by PricewaterhouseCoopers LLP demonstrates that all voting classes of claims and interests will recover substantially more value under the Chapter 11 Plan than through a liquidation of the Chapter 11 Debtors. Accordingly, each holder of a claim or interest against the Chapter 11 Debtors either has (i) accepted the Plan, or (ii) will receive or retain under the Chapter 11 Plan on account of such claim or interest, property of a value, as of the Effective Date of the Chapter 11 Plan, that is not less than the amount that such holder would receive or retain if the Chapter 11 Debtors were liquidated.

70. Notably, the holders of General Unsecured Claims are not expected to recover any property in a hypothetical liquidation whereas, as of December 31, 2017, approximately \$69 million is being made available for unsecured creditors under the Chapter 11 Plan.

c) Canadian Personal Injury Claims Against Contributing OEMs

71. The Canadian Personal Injury Actions each allege personal injuries caused by a Takata airbag malfunction. It is not clear from the pleadings in certain of the Canadian Personal Injury Actions whether these injuries resulted from a PSAN Inflator. As noted above, however, there have been no known instances of PSAN Inflator rupture in Canada.

72. To the extent that any alleged personal injuries were caused by a PSAN Inflator malfunction, a Canadian Personal Injury Action claimant with an allowed claim will be in Class 5 and have a claim against the PSAN PI/WD Trust and will either (i) not be released against any third-party OEM defendants, or (ii) be released against a third-party OEM defendant if that OEM has elected to become a Participating OEM and paid their portion of such personal injury claim

in full (subject to opting out). A Future Claims Representative represents the interests of any future holders of PSAN PI/WD Claims.

73. To the extent that any alleged injuries were caused by a Takata product other than a PSAN Inflator, a Canadian Personal Injury Action claimant with an allowed claim will be in Class 7 and receive their *pro rata* share of the Other PI/WD Funds which will be administered by the Special Master in connection with the PSAN PI/WD Trust. Such claims will not be released against any third-party OEM defendant under the Chapter 11 Plan.

d) Canadian Economic Loss and Other Claims Against Contributing OEMs

74. The Canadian Class Actions assert claims for economic losses based on the theories that (i) the recall of PSAN Inflators has reduced market value of vehicles and/or airbags containing PSAN Inflators, and (ii) they experienced losses arising from their inability or unwillingness to use their vehicles until the inflators were replaced and the expenses associated with such replacement. Each of the Canadian Class Actions names different OEMs as defendants.

75. While such claims are released against the Chapter 11 Debtors, section 10.6(b) of the Chapter 11 Plan provides that OEMs are not released from any economic loss actions, regardless of whether they elect to become Participating OEMs.

76. Similarly, the OEMs and any other non-Takata co-Defendants are not released from the Canadian Competition Class Actions although such claims are released against the Chapter 11 Debtors.

Voting Results

77. As outlined in the Pullo Declaration, the following were the results of the voting by the various classes in the Chapter 11 Plan (with the below chart reflecting the range of results for the various sub-classes in each class):

Class	% Number Accepting	% Amount Accepting
Class 4 – OEM Unsecured Claims	100%	100%
Class 5 – PSAN PI/WD Claims	74.38% - 78.18%	74.38% - 78.18%
Class 6 – Other General Unsecured Claims	<i>Where Claim of Puerto Rico is classified as a Class 6 Claim</i>	
	85.70% - 100%	1.57% - 100%
	<i>Alternative Tabulation: Where Claim of Puerto Rico is classified as a Non-Voting Class 9 Subordinated Claim</i>	
	85.71% - 100%	86.56% - 100%
Class 7 – Other PI/WD Claims	84.84% - 87.42%	84.94% - 87.42%

78. As the above chart shows, the various classes entitled to vote on the Chapter 11 Plan each approved it by at least 74.38% in number and, other than in the subclass of Class 6 relating to TKH, by at least 74.38% in value.

79. In the subclass of Class 6 relating to TKH, a single vote cast by the Commonwealth of Puerto Rico (“**Puerto Rico**”) affected the percent acceptance by value since that claim is in the amount of approximately \$1.8 billion (on account of alleged civil penalties, restitution, and disgorgement claims arising from alleged violations of certain consumer protection statutes). The Chapter 11 Debtors classified claims made by various U.S. states (the “**States**”) as Class 9 –

Subordinated Claims on the basis that they are penalties or punitive claims and would harm or reduce recoveries for other creditors (the “**State Subordination**”). The Chapter 11 Debtors intended to classify and/or reclassify the claims of Puerto Rico and other Governmental Units in the same manner.

80. If this high value Puerto Rico claim is classified as a subordinated claim in Class 9, the percent acceptance by value in Class 6 is at least 86.56% (depending on the sub-class). At the hearing for the Confirmation Order, the U.S. Bankruptcy Court did not make a finding with respect to the classification of the Puerto Rico claim in Class 9 as a matter of process as the matter was not technically before the Court at the Confirmation Hearing, although the Court held that the claims of the Objecting States were each properly classified as Class 9 – Subordinated Claims, rejecting their objections.

81. I am advised by Weil, Gotshal & Manges LLP (“Weil”), counsel to the Chapter 11 Debtors in the Chapter 11 Proceedings, that a plan may be confirmed under the U.S. Bankruptcy Code notwithstanding the rejection or deemed rejection by a class of claims or equity interests so long as the plan does not discriminate unfairly and is fair and equitable – a mechanism known colloquially as “cram down”. I am further advised that (a) a plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class, and (b) the “fair and equitable” requirement is met as set forth in section 1129(b)(2) of the U.S. Bankruptcy Code; and as a result, the court may “cram down” a plan over a dissenting vote of an impaired class or classes of claims or interests as long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to such dissenting class or classes.

82. In confirming the Chapter 11 Plan, the U.S. Bankruptcy Court commented that there was substantial and sufficient support by creditors for confirmation of the Chapter 11 Plan whether the Puerto Rico Claim is reclassified as a Class 9 claim or as a matter of cram down.

83. The Confirmation Order provides that (i) the Chapter 11 Plan did not discriminate unfairly because holders of claims or interests with similar legal rights will not be receiving materially different treatment under the Chapter 11 Plan; and (ii) the Chapter 11 Plan was fair and equitable with respect to each class of claims or interests that was impaired or that had not accepted the Plan. The Confirmation Order states that, with respect to Classes 6, 8 and 9, no holders of claims or interests junior to these classes will receive or retain any property under the Chapter 11 Plan on account of such claims or interests. As well, no holder of a claim senior to such classes is receiving a distribution under the Chapter 11 Plan in excess of the amount of its Allowed Claim. As a result, the Confirmation Order provides that notwithstanding that Class 6 (including Puerto Rico) against the TKH Debtors voted to reject the Chapter 11 Plan and other classes (Classes 8 and 9) were deemed to reject the Chapter 11 Plan, the Chapter 11 Plan does not discriminate unfairly and is fair and equitable, as required by section 1129(b)(1) and (b)(2) of the U.S. Bankruptcy Code, and accordingly was confirmed.

84. Subsequent to the Confirmation Hearing, the Chapter 11 Debtors served a motion to reclassify the entirety of the Puerto Rico Claim as a Class 9 Subordinated Claim. The proposed hearing date for this motion is March 13, 2018.

Appeal

85. The Objecting States, after their objections to the State Subordination were rejected by the U.S. Bankruptcy Court, filed a Notice of Appeal of the Confirmation Order on February 22,

2018. I have been advised by Weil that the Confirmation Order is not currently stayed as a result of the appeal, and no motion has been brought to obtain such a stay. It is not a condition precedent to implementation of the Chapter 11 Plan that there be no appeal extant with respect to the Confirmation Order, and the Debtors do not expect the appeal to impede or prevent consummation of the Global Transaction. Accordingly, it is my understanding that the Chapter 11 Debtors intend to proceed to implement the Chapter 11 Plan notwithstanding this appeal.

Confirmation Order Should be Recognized

86. Pursuant to section 9.1(g) of the Chapter 11 Plan, it is a condition precedent to the implementation of the Chapter 11 Plan that “a Canadian court of competent jurisdiction shall have entered an Order recognizing the Confirmation Order entered by the Bankruptcy Court, which order shall be final and shall remain in full force and effect.”

87. Pursuant to the DOJ Restitution Order, the Chapter 11 Debtors had a deadline of February 27, 2018 to consummate the Global Transaction. The Chapter 11 Debtors engaged in discussions with Judge Steeh of the United States District Court for the Eastern District of Michigan to extend the DOJ closing deadline. I understand a short extension has been granted.

88. The Chapter 11 Plan and the Global Transaction it contemplates preserves the value of the Chapter 11 Debtors’ businesses, maximizes creditor recoveries, provides for an equitable distribution to all of the Debtors’ stakeholders, and protects the jobs of the Debtors’ invaluable employees.

89. In making the Confirmation Order, the U.S. Bankruptcy Court held, among other things, that the Chapter 11 Plan (i) complied with all applicable provisions of the Bankruptcy Code, (ii)

was proposed in good faith and with the legitimate and honest purpose of maximizing the estate and recoveries to holders of claims, and (iii) was in the best interest of creditors.

90. An Order in Canada recognizing the Confirmation Order, which has not been stayed and continues in full force and effect, is a precondition to significant benefits associated with the Chapter 11 Plan and the Global Transaction being realized by the Chapter 11 Debtors, their creditors and other stakeholders. Accordingly, such recognition is necessary for the protection of the Chapter 11 Debtors' property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction.

Termination of Proceedings

91. The Chapter 11 Plan provides for an appointment of a person (the "**Legacy Trustee**") to, among other things, act as a trustee of the reorganized Takata entity (Reorganized TK Holdings Trust), to make certain distributions, to resolve claims, and to manage claims reserves. Once all Disputed Claims, other than Disputed PSAN PI/WD Claims have been allowed or disallowed, all of the Reorganized TK Holding Trust Assets have been distributed in accordance with the Chapter 11 Plan, and all Allowed Claims (other than PSAN PI/WD Claims) have been satisfied, the Legacy Trustee, pursuant to section 5.18 of the Chapter 11 Plan, shall seek authority from the U.S. Bankruptcy Court to close the Chapter 11 proceedings in accordance with applicable bankruptcy legislation.

V. RECOGNITION OF RELATED ORDERS

92. In addition to the Plan Confirmation Order, the U.S. Foreign Representative also seeks recognition of orders relating to the approval of the Chapter 11 Plan, specifically the

Restructuring Support Agreement Order, the Supplemental Bar Date Order, the Solicitation Procedures Order, the Claims Objection Order, and the Disputed Claims Reserve Order.

93. Following the execution of the U.S. Acquisition Agreement on November 16, 2017, to demonstrate their commitment for the Global Transaction and the Chapter 11 Plan, the Debtors, the Consenting OEMs, and the Plan Sponsor entered into a Restructuring Support Agreement dated November 16, 2017 (the “**RSA**”). On December 13, 2017, the U.S. Bankruptcy Court issued the Restructuring Support Agreement Order which, among other things, approved the RSA.

94. As detailed at para. 31 above, the Supplemental Bar Date Order established a supplemental claims and noticing process for PPICs who purchased vehicles between August 2, 2017 and December 19, 2017. It provided a noticing process that was substantially the same as the Chapter 11 Claims Process Order that was previously recognized by this Court on October 13, 2017. Notice of the Supplemental Bar Date was published in Canada approximately three weeks prior to the Supplemental PPIC Bar Date.

95. As detailed at para. 35 above, the Solicitation Procedures Order approved the Disclosure Statement, established procedures for the solicitation, receiving and tabulation of votes and objections and set the Voting Deadline. The Solicitation Package contemplated in the Solicitation Procedures Order was sent to all Canadian creditors with Filed Canadian Claims.

96. Recognition of the Restructuring Support Agreement Order, the Supplemental Bar Date Order and the Solicitation Procedures Order, which each represented an important step in the Chapter 11 Proceedings, in Canada is necessary for the protection of the Chapter 11 Debtors’

property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction.

97. The U.S. Bankruptcy Court also issued several orders which sustained objections of the Chapter 11 Debtors to certain proofs of claim filed in the U.S. claims process. Only one of these orders, the Claims Objection Order, affected a creditor with a Filed Canadian Claim. That order, which the U.S. Foreign Representative seeks to recognize, sustained the Chapter 11 Debtors' objection to certain listed claims (including one filed by a Canadian creditor) that were asserted against the incorrect Chapter 11 Debtor. As a result of the Claims Objection Order, the Filed Canadian Claim of Livingston International, in the amount of USD \$870.96, that had been asserted against Takata Protection Systems Inc. was reclassified as being against TKH. This reclassification helps to maintain a more accurate claims registry.

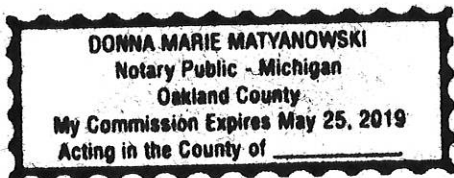
98. Finally, the Disputed Claims Reserve Order estimates that the Disputed Claims in Class 6 (General Unsecured Claims) and Class 7 (Other PI/WD Claims) be in the total aggregate amount of \$1,532,200,000.00 for the purpose of determining the Disputed Claims Reserve to be set for these claims under the Chapter 11 Plan.

99. Accordingly, recognition of these orders in Canada is necessary for the protection of the Chapter 11 Debtors' property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction.

100. I am advised by Weil that the issuance of the Confirmation Order, Restructuring Support Agreement Order, the Supplemental Bar Date Order, the Solicitation Procedures Order, the Claims Objection Order, and the Disputed Claims Reserve Order was within the standard and well-accepted procedures and practices of U.S. Bankruptcy Courts.

SWORN BEFORE ME at the City of)
Auburn Hills, Michigan this)
6 th day of March, 2018.)
Donna Marie Matyanowski)

Kenneth Bowling
Kenneth Bowling



Schedule “A” – Chapter 11 Debtors

1. TK Holdings Inc.
2. Takata Americas
3. TK Finance, LLC
4. TK China, LLC
5. TK Mexico Inc.
6. TK Mexico LLC
7. Interiors in Flight, Inc.
8. Takata Protection Systems Inc.
9. TK Holdings de Mexico S. de R.L. de C.V.
10. Industrias Irvin de Mexico, S.A. de C.V.
11. Takata de Mexico, S.A. de C.V.
12. Stroshe-Mex, S. de R.L. de C.V.

Schedule “B” – Japanese Debtors

1. Takata Corporation
2. Takata Kyushu Corporation
3. Takata Service Corporation

Schedule “C” – Glossary

Defined Term	Definition
Abeyance Actions	<p>The five Canadian Class Actions that are currently being held in abeyance, specifically:</p> <ul style="list-style-type: none"> • <i>Rai v. Takata Corporation et al.</i>, B.C. Supreme Court File No. S-148694 • <i>Loewenthal v. Takata Corporation et al.</i>, B.C. Supreme Court File No. S149072 • <i>Covill v. Takata Corporation et al.</i>, Saskatchewan Court of Queen’s Bench File No. QBG 2561/2014 • <i>Hall v. Takata Corporation et al.</i>, Saskatchewan Court of Queen’s Bench File No. QBG 1284/2015 • <i>Vitoratos et al. v. Takata Corporation et al.</i>, 500-06-000723-144
Canadian Actions	Collectively, the Canadian Class Actions, the Canadian Competition Class Actions and the Canadian Personal Injury Actions.
Canadian Class Actions	14 putative class actions commenced in four Canadian provinces (British Columbia, Saskatchewan, Quebec and Ontario) which name TKH, TKJP and certain non-Debtor subsidiaries, as well as certain OEMs, as Defendants.
Canadian Competition Class Actions	<p>Four putative competition class actions commenced in four Canadian provinces (British Columbia, Ontario, Saskatchewan, Quebec) against TKH, TKJP, along with certain OEMs, specifically:</p> <ul style="list-style-type: none"> • <i>Sheridan Chevrolet Cadillac Ltd. v. Autoliv ASP, et al.</i>, Ontario Superior Court of Justice File No. CV-13-472259-00CP • <i>M. Serge Asselin v. Autoliv Inc., et al.</i>, Quebec Superior Court File No. 200-06-000158-132 • <i>Ewert v. Autoliv, Inc., et al.</i>, B.C. Supreme Court File No. S132959 • <i>Cindy Retallick and Jagjeet Singh Rajput v. Autoliv ASP</i>


Defined Term	Definition
	<i>Inc. et al.</i> , Saskatchewan Court of Queen’s Bench File No. Q.B. No. 988 of 2014
Canadian Personal Injury Actions	<p>Three personal injury actions commenced by individual plaintiffs against TKH and/or TKJ in Ontario, specifically:</p> <ul style="list-style-type: none"> • <i>Bluestone et al. v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-15-535772 • <i>Hallett v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-55579700CP • <i>Gordon v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-17-577414
Canadian Recognition Orders	The Initial Recognition Order (Foreign Main Proceeding) and Supplemental Recognition Order (Foreign Main Proceeding) issued by the Ontario Superior Court of Justice on June 28, 2017, as amended by the Japanese Recognition Order.
CCAA	<i>Companies’ Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36, as amended.
Chapter 11 Proceedings	The proceedings commenced by the Chapter 11 Debtors in the U.S. Bankruptcy Court.
Chapter 11 Claims Process Order	The Order issued by the United States Bankruptcy Court District of Delaware Pursuant to 11 U.S.C. §§ 105(a) and 502(b)(9), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005, and 9007, and Local Rules 2002-1(e), 3001-1 and 3003-1 for Authority to (I) Establish Deadlines For Filing Proofs of Claim, (II) Establish the Form and Manner of Notice Thereof, and (III) Approve Procedures for Providing Notice of Bar Date and Other Important Deadlines and Information to Potential PSAN Inflater Claimants on October 4, 2017.
Claims Process Recognition Order	Order issued by the Ontario Superior Court of Justice on October 13, 2017
Continuing Actions	<p>The five Canadian Class Actions that have been consolidated into national class actions proceeding in Ontario, specifically:</p> <ul style="list-style-type: none"> • <i>Des-Rosiers et al. v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543767-00CP

Defined Term	Definition
	<ul style="list-style-type: none"> • <i>McIntosh v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543833-00CP • <i>Coles v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543764-00CP • <i>Mailloux v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543763-00CP • <i>D'Haene et al. v. Takata Corporation et al.</i>, Ontario Superior Court of Justice File No. CV-16-543766-00CP
Disputed Claims	Claims that are have not been allowed or disallowed, as further described in the <i>Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors</i> .
DOJ Restitution Order	Joint Restitution Order entered by the United States District Court for the Eastern District of Michigan on February 27, 2017 in the case captioned U.S. v. Takata Corporation, Case No. 16-cr-20810 (E.D. Mich.)
Foreign Proceedings	Collectively, the Chapter 11 Proceedings and the Japanese Proceedings.
Foreign Representatives	Collectively, the U.S. Foreign Representative and the Japanese Foreign Representative.
Information Officer	FTI Consulting Canada Inc., in its capacity as information officer appointed pursuant to the Canadian Recognition Orders.
Japanese Court	The 20 th Department of the Civil Division of the Tokyo District Court.
Japanese Court Orders	The Orders issued by the Japanese Court on June 26, 2017 and June 28, 2017 (i) appointing the Supervisor, and (ii) approving the commencement of the Japanese Debtors' proceedings under the Civil Rehabilitation Act and establishing a schedule for the civil rehabilitation proceedings.
Japanese Foreign Representative	TKJP in its capacity as foreign representative of the Japanese Debtors.
Japanese Proceedings	The civil rehabilitation proceedings commenced by the Japanese Debtors in the Japanese Court.

Defined Term	Definition
Japanese Recognition Order	The Japanese Recognition Order issued by the Ontario Superior Court of Justice on September 1, 2017.
OEMs	Original Equipment Manufacturers
Plan Supplement	Supplements as incorporated by the <i>Notice of Filing of Plan Supplement Pursuant to the Third Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors</i> , filed January 23, 2018
PPICs	Potential PSAN Inflater Claimants
Prime Clerk	Prime Clerk LLC
Reorganized TK Holding Trust Assets	As defined under the <i>Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors</i> , which largely includes assets and disputed claim reserves not acquired by the Plan Sponsor.
Second Plan Supplement	Supplements as incorporated by the <i>Notice of Filing of Second Plan Supplement Pursuant to the Third Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors</i> , filed February 11, 2018
Supervisor	Mr. Katsuyuki Miyakawa, a Japanese attorney, appointed as the Japanese Debtors' supervisor pursuant to the Japanese Court Orders.
Takata	TKJP collectively with TKH and all of TKJP's direct and indirect subsidiaries.
Third Plan Supplement	Supplements as incorporated by the <i>Notice of Filing of Third Plan Supplement Pursuant to the Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors</i> , filed February 16, 2018
TKH	TK Holdings Inc.
TKJP	Takata Corporation
U.S. Bankruptcy Court	The United States Bankruptcy Court for the District of Delaware.
U.S. First Day Orders	Certain first day orders that were issued in the Chapter 11 Proceedings on June 27, 2017.

Defined Term	Definition
U.S. Second Day Orders	Certain second day orders that were issued in the Chapter 11 Proceedings on July 26, 2017, August 9, 2017, August 30, 2017, September 7, 2017, September 12, 2017, September 18, 2017, and October 2, 2017.
U.S. Foreign Representative	TKH, in its capacity as foreign representative of the Chapter 11 Debtors.

This is **Exhibit "A"** referred to in the
affidavit of **KENNETH BOWLING**
sworn before me this
6th day of March, 2018


Donna Marie Matyancuski
A Commissioner for taking affidavits

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X		
	:		
In re	:		Chapter 11
	:		
TK HOLDINGS INC., et al.,	:		Case No. 17-11375 (BLS)
	:		
Debtors.¹	:		Jointly Administered
	:		
	X		Re: Docket No. 2056

**DECLARATION OF KENNETH BOWLING IN SUPPORT
OF CONFIRMATION OF FOURTH AMENDED JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF TK HOLDINGS INC. AND ITS AFFILIATED DEBTORS**

I, Kenneth Bowling, declare pursuant to 28 U.S.C. § 1746, under penalty of perjury to the best of my knowledge and belief, that:

1. I am the Chief Financial Officer for TK Holdings Inc. (“*TKH*”) and the North American subsidiaries and affiliates of Takata Corporation (“*TKJP*” and collectively with TKH and all of TKJP’s direct and indirect subsidiaries, “*Takata*”) and have served in this capacity since being appointed on April 1, 2015. I have also served in various other finance and production related capacities at Takata since 1988, including Vice President – Non-Automotive Safety, Vice President – Production Controller, and Group Controller – Airbag Division.

2. On June 25, 2017 (the “*Petition Date*”), TKH and its debtor affiliates and subsidiaries (collectively, the “*Debtors*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”) each commenced with this Court a voluntary case under chapter 11 of title 11 of the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Takata Americas (9766); TK Finance, LLC (2753); TK China, LLC (1312); TK Holdings Inc. (3416); Takata Protection Systems Inc. (3881); Interiors in Flight Inc. (4046); TK Mexico Inc. (8331); TK Mexico LLC (9029); TK Holdings de Mexico, S. de R.L. de C.V. (N/A); Industrias Irvin de Mexico, S.A. de C.V. (N/A); Takata de Mexico, S.A. de C.V. (N/A); and Strosshe-Mex, S. de R.L. de C.V. (N/A). Except as otherwise set forth herein, the Debtors’ international affiliates and subsidiaries are not debtors in these chapter 11 cases. The location of the Debtors’ corporate headquarters is 2500 Takata Drive, Auburn Hills, Michigan 48326.

United States Code (the “*Bankruptcy Code*”). I submit this declaration (the “*Declaration*”) in support of confirmation of the Debtors’ Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors, dated February 14, 2018 [Docket No. 2056] (as may be amended, modified, or supplemented, the “*Plan*”).²

3. In my capacity as Chief Financial Officer of TKH, I was directly involved in the development and implementation of the Plan and overseeing the day-to-day administration of the Chapter 11 Cases. I have reviewed, and I am generally familiar with, the terms and provisions of the Plan, the documents comprising the Plan Supplement, the U.S. Acquisition Agreement, the Disclosure Statement relating to the Plan, the U.S. RSA (as defined herein), and the Global Accommodation Agreement (as defined herein). Together with the Debtors’ legal advisors, I have reviewed the requirements for confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code and believe they are satisfied.

4. I am authorized to submit this Declaration on behalf of the Debtors. Except as otherwise indicated, all facts set forth herein are based upon my personal knowledge or the personal knowledge of employees who report to me, my review of relevant documents, information provided to me by the Debtors’ management or legal advisors, or my opinion based upon my familiarity with the Debtors’ business, operations, and financial condition. If I were called upon to testify, I could and would testify competently as to the facts set forth herein.

The Global Transaction

5. As the Court is aware, the Debtors commenced these Chapter 11 Cases as a result of the unprecedented recalls resulting from certain of the Debtors’ airbag inflators

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the *Memorandum of Law in Support of Confirmation of the Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors and Response to Objections to Confirmation* Docket No. [2050], as applicable.

containing phase-stabilized ammonium nitrate (“*PSAN Inflators*”) rupturing during deployment. As a result of these unprecedented and highly publicized product recalls, the Debtors, with the support of a significant majority of their OEM customers (each a “*Customer*” or an “*OEM*” and each OEM that is a party to the U.S. RSA (as defined herein), a “*Consenting OEM*” and, collectively, the “*Consenting OEMs*”),³ commenced a robust marketing process prior to the Petition Date to identify a potential purchaser for substantially all of their Assets and, on November 16, 2017, after nearly two years of intensive marketing, diligence, and negotiations between and among Takata, potential sponsor candidates, and the Consenting OEMs, the Debtors entered into that certain Asset Purchase Agreement (the “*U.S. Acquisition Agreement*”) with Joyson KSS Auto Safety S.A., a Luxembourg société anonyme (“*KSS*” and, collectively with one or more of its current or future Subsidiaries or Affiliates (each as defined in the U.S. Acquisition Agreement), the “*Plan Sponsor*”) and the Cross-Conditioned Agreements (as defined in the U.S. Acquisition Agreement), whereby the Plan Sponsor agreed to purchase substantially all of Takata’s worldwide assets (excluding PSAN Inflator-related assets), free and clear of all Claims, interests, Liens, other encumbrances, and liabilities of any kind or nature whatsoever, including rights or claims based on any successor or transferee liabilities, except for the Assumed Liabilities and Permitted Liens, for an aggregate purchase price of \$1.588 billion (the “*Global Transaction*” and the agreements, documents, and instruments executed and

³ The initial Consenting OEMs consist of the following parties and their affiliates and subsidiaries listed on Schedule 1 to the U.S. RSA: (i) BMW Manufacturing Co., LLC, (ii) Daimler Trucks North America LLC and Mercedes-Benz U.S. International, Inc., (iii) FCA US LLC f/k/a Chrysler Group LLC, FCA Group Purchasing Srl in the name and on behalf of its principals (FCA Italy SpA and FCA Melfi Srl), FCA Fiat Chrysler Automóveis Brasil Ltda., and FCA Automóviles Argentina S.A., (iv) Ford Motor Company, (v) General Motors Holdings LLC, (vi) Honda North America Inc., (vii) Mazda Motor Corporation, (viii) Mitsubishi Motors Corporation, (ix) Nissan North America, Inc. and Nissan Mexicana, S.A. de C.V., (x) Subaru Corporation, (xi) Toyota Motor Corporation, (xii) Volkswagen Group of America, Inc., (xiii) Volvo Group North America LLC and Mack Trucks, Inc., (xiv) Jaguar Land Rover, Ltd (For Voting Purposes Only), and (xv) PSA Automobiles SA (For Voting Purposes Only).

delivered in connection with the Global Transaction, as hereafter amended, supplemented, or otherwise modified, the “*Global Transaction Documents*”). To demonstrate their commitment for the Global Transaction and the Plan, the Debtors, the Consenting OEMs, and the Plan Sponsor (collectively, the “*Support Parties*”) entered into that certain Restructuring Support Agreement dated November 16, 2017 (together with all schedules, exhibits, or attachments thereto, and as may be modified, amended, or supplemented from time to time, the “*U.S. RSA*”), which was thereafter approved by the Court by order dated December 13, 2017 [Docket No. 1359].

6. Under the U.S. Acquisition Agreement, TKAM, TKH, TKML, TKHM, IIM, SMX, and TDM (collectively, the “*Sellers*”) will sell substantially all of their non-PSAN Assets to the Plan Sponsor, including the stock of certain subsidiaries of the Sellers, in exchange for the Sellers’ allocable portion of the \$1.588 billion purchase price (approximately \$878 million as of December 31, 2017), subject to certain adjustments in accordance with the U.S. Acquisition Agreement. The U.S. Acquisition Agreement also provides for certain protections for both the Sellers and the Plan Sponsor. It is my understanding that, in terms of Seller protections, among other things, the U.S. Acquisition Agreement provides that the Plan Sponsor will be subject to “hell or high water” obligations and regulatory termination fees with respect to both antitrust approvals and clearance by the Committee on Foreign Investment in the United States (“*CFIUS*”), thereby substantially mitigating any antitrust or CFIUS impediments to the closing of the U.S. Acquisition Agreement. I further understand that the U.S. Acquisition Agreement also provides for certain break-up fees and/or expense reimbursements (the “*Plan Sponsor Protections*”) in the event that the U.S. Acquisition Agreement is terminated for, among

other things, certain reasons related to a breach by the Sellers or the Sellers entering into an Alternative Transaction.

General Overview of the Plan

7. With respect to the Debtors, the Global Transaction will be implemented pursuant to the Plan and the U.S. Acquisition Agreement. The Plan truly is a remarkable result for the Debtors' Estates and their constituents. The Plan has broad support of the Debtors' key constituencies, including not only the Consenting OEMs (by far the Debtors' largest creditor constituency) and the Plan Sponsor, but also both Committees, the Future Claims Representative, and, although voting is still ongoing, a significant number of voting creditors. Given the status and posture of all the parties at the commencement of these Chapter 11 Cases a mere seven (7) months ago, it is a truly remarkable feat and testament to the work of these parties and their representatives, that the Debtors are before the Court seeking confirmation of their Plan on a largely consensual basis. The primary purposes of the Plan include:

- providing for the sale of substantially all of the Debtors' assets, other than the Excluded Assets, to the Plan Sponsor pursuant to the U.S. Acquisition Agreement, with such sale to be free and clear of all Claims, interests, Liens, other encumbrances, and liabilities of any kind or nature whatsoever, other than the Assumed Liabilities and the Permitted Liens;
- carving out the PSAN Excluded Assets from the sale to the Plan Sponsor and vesting such assets in TKH and certain of its subsidiaries upon TKH's emergence from chapter 11 (TKH, as reorganized, "***Reorganized TK Holdings***" and, collectively with its reorganized subsidiaries, "***Reorganized Takata***" and with respect to the carve out structure, the "***PSAN Carve-Out***");
- vesting the Warehoused PSAN Assets in a Delaware corporation established under the Plan (the "***Warehousing Entity***") to comply with the Debtors' obligations under the Preservation Order (as defined herein) and to continue the maintenance, shipping, and disposal of the Warehoused PSAN Assets after the Effective Date;
- providing for the establishment of a limited liability company organized under the laws of Delaware ("***TK Global LLC***"), which will be the parent

holding company of Reorganized TK Holdings and the Warehousing Entity;

- settling the Consenting OEMs' Adequate Protection Claims, Consenting OEM PSAN Cure Claims, and Consenting OEM PSAN Administrative Expense Claims pursuant to Bankruptcy Rule 9019, in exchange for certain consideration including (i) satisfaction of the DOJ Restitution Claim, (ii) the funding of the Warehousing Entity Reserve and Post-Closing Reserve, and (iii) the Business Incentive Plan Payment;
- paying all Administrative Expense Claims, Priority Claims, and Other Secured Claims in full and distributing proceeds of the Global Transaction allocable to the Debtors and other assets to various reserves required to be established under the Plan;
- providing for the establishment of a trust (the "***Reorganized TK Holdings Trust***" and, together with the Warehousing Entity, the "***Legacy Entities***") to, among other things, (i) resolve and make distributions on account of Allowed Administrative Expense Claims until the Non-PSAN PI/WD Claims Termination Date, (ii) hold the Other Excluded Assets belonging to the Debtors' estates, the reserves necessary to pay certain claims in full under the Plan, the recovery funds for each of the Debtors to make distributions to holders of Allowed General Unsecured Claims (the "***Recovery Funds***"), other than the Recovery Funds relating to PSAN PI/WD Claims (the "***PSAN PI/WD Funds***") and the Recovery Funds relating to OEM Claims (the "***OEM Funds***"), and the disputed claims reserves established for benefit of holders of subsequently Allowed Claims, and (iii) otherwise wind-down the Debtors' Estates;
- merging the OEM Funds with the DOJ OEM Restitution Fund to be administered by the Special Master; and
- providing for the establishment of a trust (the "***PSAN PI/WD Trust***") to administer the PSAN PI/WD Funds and resolve Allowed PSAN PI/WD Claims against IIM, SMX, TDM, and the TKH Debtors.

8. In addition, the Plan provides for the consensual resolution and settlement of several Claims and controversies between the Consenting OEMs, the Plan Sponsor, the Committees, the Future Claims Representative, and their respective constituents with respect to, among other things, (a) the validity and amount of the Consenting OEMs' General Unsecured Claims, (b) the validity and amount of the Adequate Protection Claims, (c) the release of Claims and causes of action subject to the Challenge Period, (d) resolution of all disputes by the

Committees relating to the Global Transaction, including, without limitation, certain provisions of the U.S. Acquisition Agreement, (e) the treatment of contracts and leases, (f) the treatment of the NHTSA Claims, (g) the treatment of Other PI/WD Claims, (h) the estimated amount of current and future PSAN PI/WD Claims, (i) the Trust Distribution Procedures, (j) the assignment of the Debtors' rights in Takata's product liability insurance, (k) the netting and treatment of Intercompany Claims, (l) the governance of the Reorganized TK Holdings Trust, and (m) the Debtors' release of the Consenting OEMs. In connection with, and as consideration for, these and other settlements, the Debtors have amended the Plan to provide for the following:

- The classification and allowance of the NHTSA Claim as a Class 6 Other General Unsecured Claim against TKH instead of being paid in full, which provides the Debtors' General Unsecured Creditors with an additional \$50 million in Available Cash to be distributed on account of their Claims;
- The establishment of a new Class—Class 7 (Other PI/WD Claims)—specifically for General Unsecured Claims relating to a personal injury or harm caused by a Takata Product, other than the Debtors' PSAN Inflater-related products;
- The contribution by the Plan Sponsor of \$25 million (the “**Plan Sponsor Contribution Amount**”) to the PSAN PI/WD Trust for the benefit of PSAN PI/WD Claims and Other PI/WD Claims as soon as practicable after the Plan Sponsor receives repayment of up to \$25 million drawn on the Plan Sponsor Backstop Funding Agreement by TKAM (on behalf of TSAC);
- The establishment of a fund by the Consenting OEMs (the “**Plan Settlement Fund**”) in which the Consenting OEMs contribute their rights to certain recoveries as and when such amounts would otherwise be paid or payable to the Consenting OEMs under the Plan, with such contributed recoveries in the Plan Settlement Fund being transferred pursuant to the Plan to the PSAN PI/WD Trust for the benefit of holders of PSAN PI/WD Claims and Other PI/WD Claims:
 - Eighty percent (80%) of the Consenting OEM GUC Recoveries until the Consenting OEMs have contributed \$5 million to the Support Party Creditor Fund in accordance with Section 5.19(g) of the Plan and, thereafter, ninety (90%) of Consenting OEM GUC Recoveries until the Consenting OEM GUC Recovery Threshold is

met (which is the Consenting OEMs' Pro Rata share of the first \$89.9 million of Available Cash);

- Twenty-five percent (25%) of the Consenting OEM GUC Recoveries in excess of the Consenting OEM GUC Recovery Threshold (the Consenting OEM Additional GUC Recoveries);
 - Eighty percent (80%) of the incremental amount of Consenting OEM GUC Recoveries resulting from or attributable to the NTHSA Claims being treated as Other General Unsecured Claims and/or the TKJP 503(b)(9) Claim being setoff or otherwise eliminated until the Consenting OEMs have contributed \$5 million) to the Support Party Creditor Fund in accordance with Section 5.19(g) of the Plan and, thereafter, ninety percent (90%) of such "Consenting OEM Incremental GUC Recoveries;" and
 - Eighty percent (80%) of any amounts that the Consenting OEMs would be entitled to receive on account of the Business Incentive Plan Payment, excluding any amounts of the Business Incentive Plan Payment that are allocable to TKAM;
- The establishment of a single coordinated process through which the holders of PSAN PI/WD Claims are able to access funds from both the PSAN PI/WD Trust and the DOJ PI/WD Restitution Fund;
 - The establishment of a fund by the Consenting OEMs and the Plan Sponsor (the "***Support Party Creditor Fund***"), funded in an amount not less than \$7.5 million—with \$5 million to be contributed by the Consenting OEMs and not less than \$2.5 million, inclusive of any remaining amount of the \$5 million Cure Claims Cap, to be contributed by the Plan Sponsor—for the benefit of settling Eligible Creditors (as defined below) in Class 6; and
 - The Plan Sponsor's agreement to assume all third-party executory contracts related to the Purchased Assets, subject to certain exclusions.

9. I believe that these Plan modifications are favorable changes that allow for additional funding to Estate creditors without any decrease in the value available for, or the redistribution of value away from, any specific Class. Accordingly, as these changes will only increase the amount of Available Cash available for distribution to holders Allowed Claims, based on conversations with counsel, I do not believe that any of the modifications warrant re-solicitation of the Plan.

10. Consummation of the Plan and the closing of the Global Transaction are in the best interests of the Debtors' creditors, employees, vendors, and all other parties in interest. The Plan and the Global Transaction will allow the Debtors to continue operating as a going-concern, including with respect to Reorganized Takata for a limited period of time, while also ensuring that the Debtors are able to comply with their ongoing obligations to the National Highway Traffic Safety Administration ("*NHTSA*"), fulfilling a fundamental commitment laid out by the Debtors at the onset of these Chapter 11 Cases—that the commencement of these bankruptcy cases would not impact or impede the general public's ability to fulfill their recalls. In addition, I believe that confirmation of the Plan and consummation of the Global Transaction in accordance with the timeline set forth herein will ensure that TKJP is able to comply with the Joint Restitution Order entered by the United States District Court for the Eastern District of Michigan on February 27, 2017 in the case captioned *U.S. v. Takata Corporation*, Case No. 16-cr-20810 (E.D. Mich.) (the "*DOJ Restitution Order*") in connection with the settlement of the two (2)-year criminal investigation by the Department of Justice (the "*DOJ*") into Takata.⁴ Absent satisfaction of the DOJ Restitution Claim in accordance with the DOJ Restitution Order, I do not believe that any third-party would be willing to purchase the Debtors' assets as a going concern and the Debtors would likely be forced into a piecemeal liquidation, which could result in the eventual loss of employment for nearly all of the Debtors' employees, the loss of future revenues and contracts for the Debtors' vendors and suppliers, and significantly lower recoveries for creditors. In short, I believe that the Plan preserves the going-concern value of the Debtors'

⁴ Pursuant to the DOJ Restitution Order, the Debtors have a deadline of February 27, 2018 to consummate the Global Transaction. The Debtors are currently in discussions with Judge Steeh of the United States District Court for the Eastern District of Michigan to extend the DOJ closing deadline.

businesses, maximizes creditor recoveries, provides for an equitable distribution to all of the Debtors' stakeholders, and protects the jobs of the Debtors' invaluable employees.

The Plan Satisfies the Bankruptcy Code's Requirements for Confirmation

11. Based on my understanding of the Plan, the events that led to the commencement of the Debtors' Chapter 11 Cases, and legal advice I have received from the Debtors' legal advisors, it is my belief that the Plan satisfies all of the applicable requirements for confirmation of a plan under the Bankruptcy Code as discussed below.

12. **Section 1129(a)(1): The Plan Complies with the Applicable Provisions of the Bankruptcy Code.** Based on my understanding and discussions with the Debtors' legal advisors, the Plan satisfies section 1129(a)(1) of the Bankruptcy Code. In that regard, I believe that the Plan satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code, which, respectively, govern the classification of claims and the contents of a plan.

13. **Section 1122: The Plan's Classification Structure is Proper.** Except for Administrative Expense Claims, Adequate Protection Claims, Fee Claims, and Priority Tax Claims, which I am advised need not be designated as Classes under the Plan, Article III of the Plan designates the following nine (9) Classes of Claims and Interests as required under section 1123(a)(1) of the Bankruptcy Code:

<u>Class</u>	<u>Type of Claim or Interest</u>
Class 1	Other Secured Claims
Class 1(a)	Other Secured Claims against TKAM
Class 1(b)	Other Secured Claims against TKF
Class 1(c)	Other Secured Claims against TKC
Class 1(d)	Other Secured Claims against the TKH Debtors
Class 1(e)	Other Secured Claims against IIM
Class 1(f)	Other Secured Claims against TDM

<u>Class</u>	<u>Type of Claim or Interest</u>
Class 1(g)	Other Secured Claims against SMX
Class 2	Other Priority Claims
Class 2(a)	Other Priority Claims against TKAM
Class 2(b)	Other Priority Claims against TKF
Class 2(c)	Other Priority Claims against TKC
Class 2(d)	Other Priority Claims against the TKH Debtors
Class 2(e)	Other Priority Claims against IIM
Class 2(f)	Other Priority Claims against TDM
Class 2(g)	Other Priority Claims against SMX
Class 3	Mexico Class Action Claims and Mexico Labor Claims
Class 3(a)	Mexico Class Action Claims and Mexico Labor Claims against IIM
Class 3(b)	Mexico Class Action Claims and Mexico Labor Claims against TDM
Class 4	OEM Unsecured Claims
Class 4(a)	OEM Unsecured Claims against the TKH Debtors
Class 4(b)	OEM Unsecured Claims against IIM
Class 4(c)	OEM Unsecured Claims against TDM
Class 4(d)	OEM Unsecured Claims against SMX
Class 5	PSAN PI/WD Claims
Class 5(a)	PSAN PI/WD Claims against the TKH Debtors
Class 5(b)	PSAN PI/WD Claims against IIM
Class 5(c)	PSAN PI/WD Claims against TDM
Class 5(d)	PSAN PI/WD Claims against SMX
Class 6	Other General Unsecured Claims
Class 6(a)	Other General Unsecured Claims against TKAM
Class 6(b)	Other General Unsecured Claims against TKF
Class 6(c)	Other General Unsecured Claims against TKC
Class 6(d)	Other General Unsecured Claims against the TKH Debtors
Class 6(e)	Other General Unsecured Claims against IIM
Class 6(f)	Other General Unsecured Claims against TDM
Class 6(g)	Other General Unsecured Claims against SMX

Class	Type of Claim or Interest
Class 7	Other PI/WD Claims
Class 7(a)	Other PI/WD Claims against the TKH Debtors
Class 7(b)	Other PI/WD Claims against IIM
Class 7(c)	Other PI/WD Claims against TDM
Class 7(d)	Other PI/WD Claims against SMX
Class 8	Intercompany Interests
Class 8(a)	Intercompany Interests in TKAM
Class 8(b)	Intercompany Interests in TKF
Class 8(c)	Intercompany Interests in TKC
Class 8(d)	Intercompany Interests in the TKH Debtors
Class 8(e)	Intercompany Interests in IIM
Class 8(f)	Intercompany Interests in TDM
Class 8(g)	Intercompany Interests in SMX
Class 9	Subordinated Claims
Class 9(a)	Subordinated Claims against TKAM
Class 9(b)	Subordinated Claims against TKF
Class 9(c)	Subordinated Claims against TKC
Class 9(d)	Subordinated Claims against the TKH Debtors
Class 9(e)	Subordinated Claims against IIM
Class 9(f)	Subordinated Claims against TDM
Class 9(g)	Subordinated Claims against SMX

14. I believe that the Claims or Interests in each particular Class are substantially similar to the other Claims or Interests, as the case may be, in such Class. I also believe that to the extent that Claims or Interests of equal priority are placed in different Classes, a valid business, factual, and/or legal reason exists for such separate classification.

15. The Plan provides for five (5) Classes of general unsecured Claims—Class 3 (Mexico Class Action Claims and Mexico Labor Claims), Class 4 (OEM Unsecured Claims), Class 5 (PSAN PI/WD Claims), and Class 6 (Other General Unsecured Claims), and Class 7

(Other PI/WD Claims). Class 3 exists only at Mexico Debtors IIM and TDM and contains the unsecured litigation Claims of Mexican creditors against these Mexican Debtors, Class 4 contains the general unsecured Claims of the Debtors' OEM customers, Class 5 contains the general unsecured Claims of the individuals who have (or may) suffer a personal injury or harm related to the Debtors' PSAN Inflators, Class 6 contains the general unsecured Claims of all the Debtors' trade and other creditors, including contingent, unliquidated, and disputed litigation Claims and any Claims asserted by individuals alleging to have suffered an economic loss related to the Debtors' PSAN Inflators, and Class 7 contains the general unsecured Claims of individuals who have suffered a personal injury or harm caused by a Takata Product, other than the Debtors' PSAN Inflator-related products. I believe that each of these Classes of creditors represent a voting interest that is sufficiently distinct and weighty to merit a separate voice in the decision of whether the proposed reorganization should proceed.

16. First, the OEMs are the Debtors' customers and primary source of revenue—without their business the Debtors would not have a business to reorganize or sell. Moreover, the Consenting OEMs have made unique contributions to these Chapter 11 Cases, providing financial accommodations to the Debtors, agreeing to volume commitments with the Plan Sponsor, and agreeing to the Plan Settlement, including the resolution of the Settled OEM Claims pursuant to the Plan Settlement and material contributions to the Plan Settlement Fund and the Support Party Creditor Fund.

17. Second, I believe that the unique shared interest that holders of PSAN PI/WD Claims and holders of Other PI/WD Claims have in these Chapter 11 Cases is of significant importance. I believe that holders of PSAN PI/WD Claims, due to the personal (and sometimes severe) nature of the injuries that gave (or will give) rise to their Claims against the

Debtors, deserve an independent voice in these Chapter 11 Cases, especially because they may otherwise be outnumbered by the Debtors' other creditors, most of whom have only suffered monetary losses. In addition, I understand that PSAN PI/WD Claims are potentially subject to the Channeling Injunction, and, therefore, I believe that it is reasonable and appropriate that these Claims constitute a separate Class from Other PI/WD Claims.

18. Third, I understand that because the Mexico Labor Claims and the Mexico Class Action Claims are filed by and against foreign entities (*i.e.*, IIM and TDM), such Claims are dissimilar from other unsecured Claims at these Debtors because of the potential recourse against these Debtors available to such claimants, *i.e.*, these Mexican creditors may be able to obtain a Lien or seize Assets pursuant to a judgment rendered by a Mexican court not obligated to recognize these proceedings.

19. In contrast, Class 6 (Other General Unsecured Claims) includes Claims arising out of, or relating to, contingent, unliquidated, and/or disputed litigation Claims (including, with respect to TKH, the Mexico Class Action Claims), trade and vendor Claims, certain employee Claims, and Claims arising out of, or relating to, the rejection of executory contracts and unexpired leases. Accordingly, I believe that it is appropriate that OEM Unsecured Claims, PSAN PI/WD Claims, Other PI/WD Claims, and, solely with respect to IIM and TDM, Mexico Labor Claims and Mexico Class Action Claims be separately classified from Other General Unsecured Claims.

20. **Section 1123(a): The Plan's Content is Appropriate.**

(a) *Section 1123(a)(1): Designation of Classes of Claims and Interests:* As discussed above, Article III of the Plan designates nine (9) Classes of Claims and Interests, in accordance with section 1123(a)(1) of the Bankruptcy Code.

(b) *Section 1123(a)(2): Specified Unimpaired Classes.* Section 3.2 of the Plan specifies that Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims) are Unimpaired by the Plan, as required by section 1123(a)(2) of the Bankruptcy Code.

(c) *Section 1123(a)(3): Specified Treatment of Impaired Classes.* Article IV of the Plan specifies the treatment of Impaired Classes of Claims and Interests, of which the following Classes are Impaired within the meaning of section 1124 of the Bankruptcy Code: Class 3 (Mexico Class Action Claims and Mexico Labor Claims), Class 4 (OEM Unsecured Claims), Class 5 (PSAN PI/WD Claims), Class 6 (Other General Unsecured Claims), Class 7 (Other PI/WD Claims), Class 8 (Intercompany Interests), and Class 9 (Subordinated Claims). Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

(d) *Section 1123(a)(4): Equal Treatment.* Pursuant to the Plan, each Claim against, or Interest in, a Debtor in each respective Class receives the same treatment from the Debtors as every other Claim or Interest in such Class.

As described in greater detail below, pursuant to the terms of the UCC Settlement, the Plan provides that, in addition to recoveries received from the Debtors' Estates, Eligible Creditors in Class 6 will receive their Pro Rata Share of Support Party Funds held in the Support Party Creditor Fund. Eligible Creditors include a significant number of vendors and suppliers that may not be parties to executory contracts, but with whom the Plan Sponsor, the Reorganized Debtors, and/or the Consenting OEMs may, directly or indirectly, continue to do business going forward. In connection with the UCC Settlement, the Plan Sponsor and the Consenting OEMs agreed to provide additional consideration to these parties. Functionally, the structure is an alternative to the Plan Sponsor assuming some but not all of these Claims. Accordingly, the Support Party Creditor Fund—which will be established and funded by the Plan Sponsor and the Consenting OEMs—is not a distribution from the Debtors' Estates.⁵ As such, I believe that the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

(e) *Section 1123(a)(5): Implementation of the Plan.* The Plan and the various documents and agreements set forth in the Plan Supplement as well as the exhibits and schedules to the Plan provide adequate and proper means for the implementation of the Plan, thereby satisfying section 1123(a)(5) of the Bankruptcy Code, including, without limitation, (a) the sale of the Purchased Assets to the Plan Sponsor free and clear of all Claims, interests, Liens, other encumbrances, and liabilities of any kind in nature whatsoever, in accordance with the terms of the Plan and the U.S. Acquisition Agreement, (b) the vesting of the PSAN Assets in Reorganized Takata, (c) the vesting of the Warehoused PSAN Assets and Other Excluded Assets in the applicable Legacy Entity, (d) the continued corporate existence of the Reorganized Debtors, (e) the Plan Settlement Payment, (f) the execution of the Reorganized TK Holdings Trust Agreement, (g) the establishment of TK Global LLC and the Warehousing Entity, (h) the establishment of the PSAN PI/WD Trust, (i) the creation of the Claims Reserves and the Recovery Funds to make Distributions to holders of Allowed General Unsecured Claims, and (j) the taking of all necessary or appropriate actions by the Debtors or the Reorganized Debtors, as applicable, to effectuate the Restructuring Transactions and the Plan.

⁵ Although the terms of the UCC Settlement do provide that, in certain remote and limited circumstances, the Debtors may be called upon to contribute certain limited amounts to the Support Party Creditor Fund (*i.e.*, Additional Support Party Funds) pursuant to Section 5.19(g)(iii) of the Plan, I believe that the likelihood of such obligation being triggered is extremely remote given the analysis and identification of contracts and Claims conducted by the Debtors and their advisors to date.

In addition, Article 5 of the Plan implements the terms of the Plan Settlement, which (i) provides for the resolution of the Claims and controversies relating to the Consenting OEMs' Adequate Protection Claims, Consenting OEM PSAN Cure Claims, and Consenting OEM PSAN Administrative Expense Claims, and (ii) incorporates the terms of the UCC and TCC Settlements, as well as agreements of the Plan Sponsor with respect to the Plan Sponsor Backstop Funding Agreement. Further, the Debtors are assigning their rights in Takata's product liability insurance to the PSAN PI/WD Trust.

Accordingly, I believe that the Plan, together with the documents and arrangements set forth in the Plan Supplement, provide the means for implementing the Plan as required by section 1123(a)(5) of the Bankruptcy Code.

(f) *Section 1123(a)(6): Non-Voting Equity Securities.* With respect to section 1123(a)(6) of the Bankruptcy Code, the certificate of incorporation, articles of incorporation, limited liability company agreement, operating agreement, or similar governing document, as applicable, of each Debtor have been or will be amended on or prior to the Effective Date to prohibit the issuance of non-voting equity securities.

(g) *Section 1123(a)(7): Designation of Directors and Officers.* Consistent with section 1123(a)(7) of the Bankruptcy Code, the Plan Supplement and Sections 5.7, 5.8, and 5.9 of the Plan contain provisions with respect to the manner of selection of directors and officers of the TK Global LLC, Reorganized Takata, and the Warehousing Entity, that are consistent with the interests of creditors, equity security holders, and public policy.

(h) *Section 1123(a)(8): Postpetition Person Service Payments—Inapplicable Provision.* Section 1123(a)(8) of the Bankruptcy Code is inapplicable to the Plan because the Debtors are not "individuals" (as that term is defined in the Bankruptcy Code).

21. In view of the foregoing, I believe that the Plan satisfies section 1123(a) of the Bankruptcy Code.

22. **Section 1123(b): The Plan's Content is Permitted.** In addition to the aforementioned, it is my understanding that section 1123(b) of the Bankruptcy Code sets forth six (6) permissive provisions that define what may be incorporated into a chapter 11 plan. Based on my understanding of the Plan, the events that have led to the commencement of the Debtors' Chapter 11 Cases, and discussions I have had with the Debtors' professional advisors, I believe that the Plan is consistent with section 1123(b).

23. **Section 1123(b)(1): Impairment/Unimpairment of Classes of Claims and Interests.** As discussed above, it is my understanding that Articles III and IV of the Plan classify

and describe the treatment for each Impaired and Unimpaired Class, in accordance with section 1123(b)(1) of the Bankruptcy Code.

24. **Section 1123(b)(2): Assumption, Assignment, and Rejection of Executory Contracts and Unexpired Leases.** Section 8.1 of the Plan provides that, as of, and subject to, the occurrence of the Effective Date, each of the Debtors' executory contracts and unexpired leases will be deemed assumed by, and assigned to, the Plan Sponsor, except for an executory contract or unexpired lease that: (a) has previously been assumed or rejected pursuant to a Final Order of the Bankruptcy Court; (b) is specifically designated on (i) the Schedules of Assumed Contracts, or (ii) the Schedule of Rejected Contracts;⁶ (c) is being assumed, assumed and assigned, or otherwise assigned pursuant to Section 8.4 of the Plan; (d) is the subject of a separate assumption or rejection motion filed by the Debtors under section 365 of the Bankruptcy Code pending on the Confirmation Date; or (e) is the subject of a pending Cure Dispute. The Debtors conducted an extensive review and analysis to determine which executory contracts and unexpired leases to assume or reject, and which have expired or been terminated by operation of law or contract. To calculate the cure amounts listed on the Schedules of Assumed Contracts, the Debtors and/or their advisors reviewed the terms and provisions governing the applicable executory contract or unexpired lease, the proofs of claim, if any, filed by the applicable contract counterparty, and the Debtors' books and records, and determined the amount owed for all outstanding defaults as of the time of assumption. I believe the Debtors exercised sound business judgment in identifying the executory contracts and unexpired leases included on the Schedules of Assumed Contracts and the Schedule of Rejected Contracts. Accordingly, the Plan provides for the assumption or rejection of executory contracts and unexpired leases that

⁶ I understand that, pursuant to the terms of the UCC Settlement and Section 5.19(h) of the Plan, additional modification of the Schedule of Rejected Contracts is subject to certain limitations and restrictions.

have not been previously assumed or rejected under section 365 of the Bankruptcy Code, as I understand is contemplated by section 1123(b)(2) of the Bankruptcy Code.

25. **Section 1123(b)(3): Settlement and Retention of Claims and Causes of Action.** I understand that pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, a debtor is permitted to incorporate the settlement of claims belonging to the debtor or the estate into a plan. The Plan incorporates several claim settlements: (i) the Plan Settlement; (ii) the UCC Settlement; (iii) the TCC/FCR Settlement; and (iv) the Debtors' Releases.

26. **The Plan Settlement:** I understand that, pursuant to Section 5.19(a) of the Plan, all Claims and controversies among the Debtors, the Restructuring Support Parties, the Committees, and the Future Claims Representative will be settled, including the Claims and controversies relating to the Consenting OEMs' Adequate Protection Claims (currently estimated to be approximately \$285 million), Consenting OEM PSAN Cure Claims (currently estimated to be approximately \$4 billion),⁷ and Consenting OEM PSAN Administrative Expense Claims (which Claims are contingent and unliquidated) (collectively, the "**Settled OEM Claims**"), which will be resolved and extinguished in exchange for receipt by the Consenting OEMs of (a) a Distribution in an amount equal to (i) the positive difference between the \$850 million DOJ Restitution Claim and the aggregate amount of (1) all actual payments to the Special Master from any other source on account of the DOJ Restitution Claim and (2) any amounts received by the OEMs that are credited by the Special Master against such OEMs' share of the DOJ Restitution Claim, plus (ii) the Plan Settlement Turnover Amount, which is up to \$400,000

⁷ The Debtors considered Customer Recalled Inflaters Claims as applicable for Consenting OEM PSAN Cure Claims, which, based on the Consenting OEMs' proofs of claim, totaled approximately \$8 billion. After reconciling these proofs of claim with the volume of PSAN Inflaters shipped by the Debtors, the Debtors estimate Consenting OEM PSAN Cure Claims to be an amount up to approximately \$4 billion.

payable by the Debtors in accordance with the payment waterfall set forth in section 5.19(c) of the Plan, which may constitute Available Cash for IIM, SMX, TDM, and the TKH Debtors (collectively, the “*Plan Settlement Payment*”) and (b) payment of the Business Incentive Plan Payment under the terms of the U.S. Acquisition Agreement, as modified by Section 5.19(b) of the Plan. I understand that the Plan Settlement Payment on account of the Settled OEM Claims is currently estimated to be approximately \$246 million.

27. In addition, the Plan Settlement incorporates the terms of the TCC Settlement whereby the Consenting OEMs contribute to the Plan Settlement Fund their rights to certain recoveries as and when such amounts would otherwise be paid or payable to the Consenting OEMs under the Plan, with such contributed recoveries in the Plan Settlement Fund being transferred pursuant to the Plan to the PSAN PI/WD Trust for the benefit of holders of PSAN PI/WD Claims and Other PI/WD Claims as follows:

- Eighty percent (80%) of the Consenting OEM GUC Recoveries until the Consenting OEMs have contributed \$5 million to the Support Party Creditor Fund in accordance with Section 5.19(g) of the Plan and, thereafter, ninety (90%) of Consenting OEM GUC Recoveries until the Consenting OEM GUC Recovery Threshold is met (which is the Consenting OEMs’ share of the first \$89.9 million of Available Cash);
- Twenty-five (25%) of the Consenting OEM GUC Recoveries in excess of the Consenting OEM GUC Recovery Threshold (the Consenting OEM Additional GUC Recoveries);
- Eighty percent (80%) of the incremental amount of Consenting OEM GUC Recoveries resulting from or attributable to the NTHSA Claims being treated as Other General Unsecured Claims and/or the TKJP 503(b)(9) Claim being setoff or otherwise eliminated until the Consenting OEMs have contributed \$5 million to the Support Party Creditor Fund in accordance with Section 5.19(g) of the Plan and, thereafter, ninety percent (90%) of such “Consenting OEM Incremental GUC Recoveries;” and
- Eighty percent (80%) of any amounts that the Consenting OEMs would be entitled to receive on account of the Business Incentive Plan Payment, excluding any amounts of the Business Incentive Plan Payment that are allocable to TKAM.

28. The Plan Sponsor has also agreed to contribute the Plan Sponsor Contribution Amount of \$25 million to the PSAN PI/WD Trust as soon as practicable after the Plan Sponsor receives repayment of up to \$25 million drawn on the Plan Sponsor Backstop Funding Agreement by TKAM (on behalf of TSAC). All funds contributed by the Plan Settlement Fund to the PSAN PI/WD Trust will be shared Pro Rata by holders of Class 5 (PSAN PI/WD Claims) and Class 7 (Other PI/WD Claims).

29. Lastly, the Plan Settlement incorporates the terms of the UCC Settlement and provides for the establishment and funding by the Consenting OEMs and the Plan Sponsor, for the benefit of Eligible Creditors, of the Support Party Creditor Fund with not less than \$7.5 million—with \$5 million to be contributed by the Consenting OEMs and \$2.5 million to be contributed by the Plan Sponsor, inclusive of any remaining amount of the \$5 million Cure Claims Cap. The UCC Settlement also provides for certain limitations on the Debtors' and the Plan Sponsor's ability to reject additional executory contracts going forward.

30. I believe that the Plan Settlement provides significant benefit to the Debtors' estates. First, the Plan Settlement resolves a litany of Claims and controversies involving the Consenting OEMs, the Plan Sponsor, both Committees, and the Future Claims Representative. The Plan Settlement resolves over \$4 billion in Claims on account of the Adequate Protection Claims, Consenting OEM PSAN Cure Claims, and Consenting OEM PSAN Administrative Expense Claims in exchange for an estimated \$246 million Plan Settlement Payment. I believe that litigating the Debtors' liability for these Claims with the Consenting OEMs would be both extremely time consuming and expensive with the outcome only serving to crystalize the magnitude of the Consenting OEMs' Claims against the Debtors' Estates. Further, the Plan Settlement resolves significant confirmation disputes related to the treatment of General

Unsecured Claims and the propriety of the Channeling Injunction and the other Release Provisions (as defined below)—issues if litigated by the Committees and the Future Claims Representative could have resulted in the incurrence of substantial administrative expenses to the direct detriment of unsecured creditors.

31. Second, I believe that the delay that litigating the Debtors' liability for, and the amount of, the Settled OEM Claims, as well as the treatment of General Unsecured Claims and the propriety of the Channeling Injunction and the other Release Provisions under the Plan, could be fatal to the Debtors' ability to consummate the Global Transaction. The Plan Settlement avoids protracted, complicated and expensive litigation involving fifteen (15) OEMs, two (2) Committees, and the Future Claims Representative and provides a significant level of certainty regarding confirmation of the Plan. Simply put, the Plan Settlement allows the Debtors to conserve their limited financial resources in order to reorganize, pay creditors, and produce replacement kits, rather than to engage in costly and protracted litigation.

32. In addition to the resolution of the Settled OEM Claims, the treatment of General Unsecured Claims, and the propriety of the Channeling Injunction and the other Release Provisions, the Plan Settlement provides for (a) the funding in full of the Post-Closing Reserve and the Warehousing Entity Reserve in accordance with the Plan, (b) the Consenting OEMs' obligations under the Indemnity Agreement, without which the Plan Sponsor would have been unwilling to enter into the Global Transaction, (c) the Consenting OEMs' post-Effective Date commitments to the Plan Sponsor's business, (d) the Plan Sponsor's obligation to provide the Plan Sponsor Backstop Funding subject to the terms of the Plan Sponsor Backstop Funding Agreement, (e) the Plan Sponsor's commitment to provide the Business Incentive Plan Payment, subject to the terms of the U.S. Acquisition Agreement, (f) the Plan Sponsor's Agreement to

enter into the Transition Services Agreement, (g) the Consenting OEMs' contributions to the Plan Settlement Fund, (h) the Plan Sponsor Parties' payment of the Plan Sponsor Contribution Amount to the PSAN PI/WD Trust, and (i) the contributions by the Plan Sponsor and the Consenting OEMs to the Support Party Creditor Fund. Without these benefits, I do not believe that consummation of the Global Transaction, and the resulting creditor recoveries provided for under the Plan, would be possible. For example, I believe that without the Consenting OEMs agreeing to settle their billions of dollars of secured and priority Claims for a fraction of their potential value, the Debtors would be administratively insolvent and unable to confirm a Plan. The Consenting OEMs would be entitled to substantially all of the value of the Debtors' Estates and other unsecured creditors would likely recover nothing on account of their Claims. In contrast, as a result of the satisfaction of the Settled OEM Claims pursuant to the Plan Settlement, significant funds are now available for the benefit of unsecured creditors.

33. Finally, the Plan Settlement (a) facilitates the sale of the Debtors' non-PSAN businesses as a going-concern, thereby maximizing creditor recoveries, (b) provides material benefits to the Debtors' suppliers and other businesses that depend on the go-forward business by assuming and assigning many of the Debtors' vendor and supplier contracts to the Plan Sponsor, (c) preserves fourteen thousand (14,000) jobs, and (d) facilitates the uninterrupted supply of replacement kits to PSAN Consenting OEMs.

34. Accordingly, I believe that the Plan Settlement satisfies section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019.

35. *The Debtors' Releases:* As discussed in paragraph 63 below, Sections 5.19(j) and 10.6(a) of the Plan respectively provide for the release of any and all Claims against the Consenting OEMs and the Released Parties (as defined below) by the Debtors, the

Reorganized Debtors, and the Debtors' Estates (subject to certain limited exceptions outlined in the Plan). For each of the reasons set forth in paragraph 63, I believe that these releases are permissible under, and consistent with, section 1123(b)(3)(A) of the Bankruptcy Code.

36. **Section 1123(b)(3)(B): Retention of Causes of Action and Reservation of Rights.** Pursuant to Section 10.11 of the Plan, all Avoidance Actions that relate to the continued operation of the Business (as defined in the U.S. Acquisition Agreement), Reorganized Takata, or the Warehousing Entity, including with respect to ongoing trade vendors, suppliers, licensors, manufacturers, strategic or other business partners, customers, employees, or counterparties to all Purchased Contracts to be acquired by the Plan Sponsor, assumed by Reorganized Takata, or assumed and assigned to the Warehousing Entity will be waived and released on the Effective Date. Further, subject to certain exceptions including with respect to the Purchased Contracts, the Plan preserves and vests in the Reorganized TK Holdings Trust any rights, Claims, Causes of Action (including Avoidance Actions), rights of setoff or recoupment, or other legal or equitable defenses that the Debtors had immediately before the Effective Date on behalf of the Estates or of themselves in accordance with any provision of the Bankruptcy Code or any applicable nonbankruptcy law. Accordingly, I believe that the Plan is consistent with section 1123(b)(3)(B) of the Bankruptcy Code.

37. **Section 1123(b)(4): Sale of Substantially all Assets.** As discussed above, pursuant to Section 5.2 of the Plan, on the Effective Date, the Debtors will consummate the sale and transfer of the Purchased Assets to the Plan Sponsor free and clear of all Claims, interests, Liens, other encumbrances, and liabilities of any kind or nature whatsoever, including rights or claims based on any successor or transferee liabilities, in accordance with section 1123(b)(4) of the Bankruptcy Code.

38. **Section 1123(b)(5): Modification of Rights.** In accordance and in compliance with section 1123(b)(5) of the Bankruptcy Code, Article IV of the Plan modifies the rights of holders of Claims in Class 3 (Mexico Class Action Claims and Mexico Labor Claims), Class 4 (OEM Unsecured Claims), Class 5 (PSAN PI/WD Claims), Class 6 (Other General Unsecured Claims), Class 7 (Other PI/WD Claims), and Class 9 (Subordinated Claims), and leaves unaffected the rights of holders of Claims in Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims).

39. **Section 1123(b)(6): Additional Plan Provisions.** In accordance with section 1123(b)(6), the Plan provides for (a) the establishment of Disputed Claims Reserves (as defined below); (b) releases of Claims held by certain *consenting* creditors and interest holders of the Debtors (the “**Consensual Releases**”) against certain non-Debtor third parties (collectively, the “**Released Parties**”); (c) a release and permanent injunction of certain PSAN PI/WD Claims (collectively, the “**Channeling Injunction**”) against certain non-Debtor third parties (the “**Protected Parties**”); (d) releases of certain Claims held by the Debtors and their Estates (the “**Debtor Releases**” and, together with the Consensual Releases and the Channeling Injunction, the “**Release Provisions**”) against the Consenting OEMs and the Released Parties; and (e) an exculpation of the Debtors and certain Estate fiduciaries (the “**Exculpated Parties**”).

40. **Establishment of Disputed Claims Reserves:** The Plan contemplates that the Debtors will establish and adequately fund four (4) separate disputed claims reserves—the IIM Disputed Claims Reserve, the SMX Disputed Claims Reserve, the TDM Disputed Claims Reserve, and the TKH Disputed Claims Reserve—for the benefit of holders of Allowed General Unsecured Claims at IIM, SMX, TDM, and the TKH Debtors, as applicable (collectively the “**Disputed Claims Reserves**”), with amounts in such Disputed Claims Reserves being

released to holders of Allowed General Unsecured Claims or the applicable Claims Administrator as Disputed Claims are resolved.

41. Consensual Releases: Section 10.6(b) of the Plan provides for the consensual release of certain Claims against the Released Parties held by certain Claim and Interest holders. Specifically, Section 10.6(b) of the Plan provides that the following parties will be determined to have consented to the Consensual Releases: (a) holders of Claims who vote to accept the Plan; (b) holders of Claims that are Unimpaired under the Plan; (c) holders of Claims whose vote to accept or reject the Plan is solicited but who do not vote either to accept or reject the Plan; (d) the holders of Claims or Interests who vote, or are deemed, to reject the Plan but do not opt out of granting the releases set forth therein; (e) the holders of Claims and Interests who are given notice of the opportunity to opt out of granting such releases but who do not opt of granting the releases; and (f) all other holders of Claims and Interests to the maximum extent permitted by law. The Debtors' solicitation materials provided clear conspicuous notice of both the Consensual Releases and the process for opting out of the Consensual Releases.

Accordingly, I believe that the Consensual Releases should be approved.

42. Channeling Injunction: Section 10.6(c) and Section 10.7 of the Plan provide for the release and permanent injunction of certain PSAN PI/WD Claims against the Protected Parties. The Protected Parties consist of the following: (i) the Debtors and their non-Debtor affiliates; (ii) the Participating OEMs (but no other OEMs),⁸ only to the extent certain conditions are met; and (iii) the Plan Sponsor Parties and the Acquired Non-Debtor Affiliates; as well as each of the foregoing parties' directors, officers, principals, employees, professionals, and other related parties. Specifically, the Plan provides that PSAN PI/WD Claims against such

⁸ As of the date of this filing, only American Honda Motor Co., Inc. and its subsidiaries and affiliates have elected to become Participating OEMs.

Protected Parties are released and channeled to the PSAN PI/WD Trust. As set forth below, I believe that the Channeling Injunction is an essential component of the Plan, appropriate under the circumstances, and should be approved.

43. Pursuant to the Channeling Injunction, PSAN PI/WD Claims that are released pursuant to Section 10.6(c) of the Plan, are enjoined and channeled to the PSAN PI/WD Trust. Pursuant to the Plan Settlement, the Consenting OEMS and the Plan Sponsor Parties are contributing more than \$130 million in additional value to the Plan Settlement Fund, which includes amounts paid to the PSAN PI/WD Trust to pay PSAN PI/WD Claims asserted against the Takata Defendants (the “*TD Claims*”).

44. Claimants with TD Claims will recover from the PSAN PI/WD Trust Funds, based on the Points Schedule employed by the Special Master in administering claims against the DOJ PI/WD Restitution Fund. The Points Schedule provides a methodology for classifying injuries into a manageable process, thereby ensuring the consistent and fair treatment of current and future claimants. By applying the same methodology, the process allows PSAN PI/WD Claimants to use the same claim form to recover from both the PSAN PI/WD Trust and the DOJ PI/WD Restitution Fund. I understand that the Special Master of the DOJ PI/WD Restitution Fund will serve as the Trustee of the PSAN PI/WD Trust.

45. In addition, pursuant to the terms of the Plan and the PSAN PI/WD TDP, and in exchange for the Channeling Injunction, Consenting OEMs that elect to become Participating OEMs will contribute additional, uncapped funds to resolve PSAN PI/WD Claims that have been asserted against such OEMs (the “*P-OEM Claims*”).⁹ In doing so, each PSAN

⁹ All claims against non-Participating OEMs are preserved and all PSAN PI/WD Claimants shall retain full rights to proceed against such non-Participating OEMs in the tort system.

PI/WD Claimant with a P-OEM Claim will receive recovery of the full amount of their P-OEM Claim, as determined by the Trustee and in accordance with the PSAN PI/WD TDP.

46. The Channeling Injunction facilitates a comprehensive process for resolving PSAN PI/WD Claims, including both TD Claims and P-OEM Claims, in a speedy, transparent, and fair manner. Indeed, once a PSAN PI/WD Claim has been filed with the PSAN PI/WD Trust, it will be evaluated on the basis of clear, evidence-based criteria, to determine compensability. The Trustee has significant flexibility to ensure that PSAN PI/WD Claims are treated fairly in light of the severity of the injury. Where warranted, the Trustee may evaluate a PSAN PI/WD Claim pursuant to an Extraordinary Review Process or an Individual Review Process in accordance with the PSAN PI/WD TDP. Holders of TD Claims may seek supplemental review of the Trustee's determination of the TD Claims, on the basis of both compensability and valuation, from the Future Claims' Representative for upward adjustment in accordance with the PSAN PI/WD TDP.

47. With respect to P-OEM Claims, after the Trustee has made his determination, the PSAN PI/WD Trust provides for a Valuation Schedule and a Scheduled Claim Process, as well as an Individual Review Process. The Trustee's determination with respect to P-OEM Claims may be appealed to a Review Panel consisting of reviewers from around the country—including from NHTSA's "Zone A" areas with high heat and humidity where PSAN PI/WD Claims are more likely to arise.

48. Importantly, at the conclusion of the PSAN PI/WD Trust evaluation process, as relates to the P-OEM Claims, each PSAN PI/WD Claimant may elect to opt-out of the PSAN PI/WD Trust and file a lawsuit in the tort system against the applicable Participating

OEM.¹⁰ PSAN PI/WD Claimants may do so without fear of being subject to defenses such as contributory negligence or the statute of limitations or statute of repose

49. I believe that the Channeling Injunction is appropriate under the circumstances for several reasons. First, I understand from discussion with counsel that this Court has “related to” jurisdiction to grant the Channeling Injunction and enjoin third-parties from bringing claims against the Protected Parties in non-bankruptcy forums because of the nature of the Debtors’ Purchase Orders (as defined below) with the Consenting OEMs. Pursuant to certain master purchase agreements, supply contracts, purchase orders, general terms and conditions, releases, and/or other contracts (collectively, the “*Purchase Orders*”) between the Debtors and the Participating OEMs, the Debtors have supplied such Participating OEMs with PSAN Inflators. I understand that under the terms of the Purchase Orders, these parties have various rights of indemnification, reimbursement, setoff, deduction, and/or recoupment against the Debtors for, *inter alia*, PSAN PI/WD Claims. Accordingly, any PSAN PI/WD Claims asserted against these parties would give rise, and indeed have given rise, to Claims being asserted against the Debtors’ Estates for the cost of defending such Claims and for indemnification of losses. Because these Participating OEMs’ contractual indemnity Claims would automatically create liabilities for the Debtors’ Estates in favor of such parties, I believe that this Court has “related to” jurisdiction to enjoin third parties from commencing litigation that would give rise to such Claims and thereby impact the administration of these Chapter 11 Cases.

50. With respect to the Debtors’ directors and officers, I understand from discussion with counsel that the Court similarly has “related to” jurisdiction over PSAN Inflater-

¹⁰ Claimants may not seek punitive or exemplary damages in connection therewith.

related actions asserted against these individuals as they too have rights of indemnification and reimbursement against the Debtors pursuant to one or more of the following: (a) specific board actions or resolutions; (b) articles of incorporation or articles of organization (as applicable); (c) bylaws and operating agreements; (d) employment agreements; or (e) statute or common law. Accordingly, as a lawsuit against the Protected Parties would be equivalent to a lawsuit against the Debtors, I believe that this Court has jurisdiction to approve the Channeling Injunction established under the Plan.

51. In addition to the above, I understand that the Debtors are named under the same products liability and officer and director insurance policies as certain of the Protected Parties, *i.e.*, certain non-Debtor affiliates, and share in the proceeds thereof. Accordingly, the assertion of PSAN Inflator-related actions against such entities or their directors and officers would deplete Assets that would otherwise form part of the Estates.

52. Second, I believe that extraordinary circumstances exist in these circumstances such that the Channeling Injunction is appropriate. As described above, the Protected Parties' indemnification rights and rights to share in the proceeds of the Debtors' insurance policies create an identity of interest among the Debtors and the Protected Parties. Moreover, the Debtors and the Protected Parties share a further identity of interest in the form of their common goal of implementing a mutually beneficial restructuring, which they have been jointly pursuing for more than two (2) years.

53. Further, I believe that the Protected Parties have made a substantial contribution to the Debtors' efforts to reorganize. I understand that TKJP and TKSAC, two non-Debtor affiliates of the Debtors that do not constitute Acquired Non-Debtor Affiliates, shall not be included as Protected Parties unless such affiliates agree to waive all net intercompany

payables owed by the Debtors in excess of \$4 million. I believe that such a waiver would constitute a substantial contribution to the Estate.

54. In addition to compromising billions of dollars in Claims in order to facilitate the Debtors' restructuring, the Participating OEMs have also provided the Debtors with substantial liquidity by agreeing to provide valuable postpetition accommodations including, among other things, acceleration of payables (only as necessary), limitations on setoffs, limitations on resourcing, and other accommodations and liquidity enhancements. Similarly, the Plan Sponsor's contributions include not only the Base Purchase Price under the U.S. Acquisition Agreement, but also significant sources of potential incremental value, including the Business Incentive Plan Payment and the Plan Sponsor Backstop Funding.

55. In addition to these substantial contributions, as specific consideration for the Channeling Injunction, the Participating OEMs are also effectively agreeing to pay in full their respective portion of the PSAN PI/WD Claims affected by the Channeling Injunction. The Participating OEMs, along with all Consenting OEMs, which retain the right to become Participating OEMs, also agreed to contribute significant recoveries to the Plan Settlement Fund for the benefit of holders of PSAN PI/WD Claims.

56. Further, the Plan Sponsor is agreeing to contribute the Plan Sponsor Contribution Amount (*i.e.*, \$25 million) to the PSAN PI/WD Trust, in exchange for the protections of the Release Provisions, including the Channeling Injunction, to enhance further the recoveries of PSAN PI/WD Claims. I believe that these contributions, which are for the benefit of holders of channeled claims, constitute a substantial contribution in the context of approving the Channeling Injunction.

57. Last, but certainly not least, the Protected Parties, including their directors and officers, have devoted untold resources over the past two (2) years toward negotiating and facilitating the implementation and execution of the Debtors' restructuring.

58. Third, I believe that the Channeling Injunction is essential to the Debtors' reorganization. From the outset of the negotiations surrounding the Debtors' restructuring, it has been clear that the substantial benefits conferred upon the Debtors' Estates by the Protected Parties—namely, (a) the compromise of significant Claims, (b) the provision of valuable accommodations, financing, and other contributions, (c) the provision of substantial value including the Base Purchase Price, the Business Incentive Plan Payment and the Plan Sponsor Backstop Funding, and (d) the support of the Protected Parties—were conditioned upon structuring the Plan to adequately address PSAN PI/WD Claims. I believe that adequately addressing the liabilities associated with PSAN PI/WD Claims was a principal motivating factor in structuring and implementing the Debtors' Plan and restructuring, particularly for the Plan Sponsor, for whom limiting exposure to PSAN Inflation-related liability was a precondition to the Global Transaction. Because the aforementioned contributions were critical to the Debtors' restructuring and were long-premised on the resolution of PSAN PI/WD Claims as ultimately embodied in the Channeling Injunction, I believe that the Channeling Injunction is essential to the Debtors' restructuring.

59. Fourth, the Plan and, significantly, the Channeling Injunction contemplated therein, is supported by the Creditors' Committee, the Tort Claimants' Committee, and the Future Claims Representative—the parties tasked with ensuring that the interests of the

claimants most impacted by the Channeling Injunction are adequately represented.¹¹ Moreover, as set forth below, I expect the final voting results to confirm that a significant majority of holders of Claims in Class 5 (PSAN PI/WD Claims), at each of the applicable Debtors, voted in favor of the Plan and expressed support for the Channeling Injunction.

60. In addition, I understand that as to each Participating OEM, the support of a significant number of such Participating OEM's own respective PSAN PI/WD Claimants (on an individual Participating OEM basis), as well as the Future Claims Representative, is a precondition to the effectiveness of the Channeling Injunction with respect to each such Participating OEM. In view of the foregoing, I believe that the Channeling Injunction has the overwhelming support of all relevant parties in interest.

61. Fifth, the Plan affords substantial recoveries to holders of Claims affected by the Channeling Injunction that would otherwise be unavailable. More precisely, I understand that the Plan provides for significant payments to holders of PSAN PI/WD Claims by the Protected Parties in a manner that avoids the otherwise significant litigation costs associated with the liquidation of these PSAN PI/WD Claims and by the Plan Sponsor on account of the Plan Sponsor Contribution Amount. In addition, as stated above, I understand that the Participating OEMs are agreeing to pay the full value of all PSAN PI/WD Claims that would be impacted by the Channeling Injunction as it applies to them.

62. Finally, in addition to each of the reasons set forth above, I believe that approval of the Channeling Injunction is warranted by the exceptional circumstances surrounding the Debtors' Chapter 11 Cases. The Debtors are involved in the largest automotive safety recall in United States history—a significant undertaking that they have been navigating

¹¹ Indeed, the Channeling Injunction as ultimately embodied in the Plan was the product of intense, good faith, and arms-length negotiations between the Debtors and these constituencies aimed at ensuring that affected claimants received fair treatment.

while simultaneously working to sell as a going concern a global business with over fourteen thousand (14,000) employees. The Protected Parties have been intimately involved with the Debtors' reorganization process for the past two (2) years—negotiating, formulating, and preparing to implement the Plan. This process has been long, painstaking, and exceedingly complex, and the Protected Parties have been instrumental and, indeed, invaluable throughout.

63. Debtor Releases: Sections 5.19(j) and 10.6(a) of the Plan respectively provide for the release of any and all Claims by the Debtors against the Released Parties, including the Consenting OEMs, subject to certain limited exceptions outlined in the Plan. The Debtors, in their business judgement, have determined that the Debtor Releases are fair, reasonable, and in the best interests of the Debtors and the Estates. I also believe that the Debtor Releases are integral to the overall Plan Settlement, including the Plan Sponsor's and the Consenting OEMs' contributions in connection therewith, the latter of which being premised in substantial part upon receiving the benefit of the Debtor Releases. Moreover, I do not believe that the Debtors are releasing any material Claims pursuant to the Debtor Releases. Indeed, my belief in this regard is further evidenced by the fact that both the Creditors' Committee and the Tort Claimants' Committee—*i.e.*, the primary creditor groups that have been investigating the Claims that would be released pursuant to the Debtor Releases throughout the Challenge Period (and which have conducted substantial discovery in connection therewith)—have determined to support the Debtor Releases.

64. Exculpation: Section 10.8 of the Plan exculpates the Exculpated Parties (which parties consist only of Estate Fiduciaries) on account of any act or omission in connection with or arising out of (a) the administration of the Chapter 11 Cases; (b) the negotiation and pursuit of (i) the Disclosure Statement (including any information provided or statements made

in the Disclosure Statement or omitted therefrom), (ii) the Restructuring Transactions, (iii) the Global Accommodation Agreement, (iv) the U.S. RSA, and (v) the Plan, and the solicitation of votes for, and confirmation of, the Plan, and the funding of the Plan; (c) the occurrence of the Effective Date; (d) the administration of the Plan and the property to be distributed under the Plan; (e) the wind-down of the Reorganized Debtors and Reorganized Takata; (f) the issuance of securities under or in connection with the Plan; and (g) the transactions in furtherance of any of the foregoing; except for breaches of fiduciary duty, fraud, gross negligence, willful misconduct, failure to comply with the Confirmation Order and failure to distribute Assets according to the Plan. I believe that this exculpation provision is reasonable and should be approved.

65. In view of the foregoing, I believe that the Plan satisfies section 1123(b) of the Bankruptcy Code.

66. **Section 1123(c): Non-Debtor Proposed Sales—Inapplicable Provision.** Section 1123(c) of the Bankruptcy Code is not applicable to the Plan.

67. **Section 1123(d): Cure of Defaults.** Section 8.3 of the Plan provides for the satisfaction of default Claims associated with each executory contract and unexpired lease to be assumed or assumed and assigned pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. All Cure Amounts, as set forth in the Schedule of Cure Amounts mailed to each applicable counterparty to an executory contract or unexpired lease with the Debtors, were determined in accordance with the underlying agreements and applicable bankruptcy and nonbankruptcy law. Accordingly, I believe that the Plan complies with section 1123(d) of the Bankruptcy Code.

68. **Section 1129(a)(2): The Debtors' Compliance with the Bankruptcy Code.** To the best of my knowledge and belief, based on discussions with the Debtors' legal

counsel, and as evidenced by the Solicitation Order, prior orders of the Bankruptcy Court, and the filings submitted by the Debtors, I believe that the Debtors have complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 regarding disclosure and Plan solicitation.

69. *Section 1125: Postpetition Disclosure Statement and Solicitation.* By entry of the Disclosure Statement Order on January 5, 2018, the Court approved the Disclosure Statement as containing “adequate information” pursuant to section 1125(b) of the Bankruptcy Code. As will be set forth in the Voting Certification, the Debtors solicited votes on the Plan from holders of Claims in the Voting Classes consistent with the Court-approved Solicitation and Voting Procedures. In compliance with section 1125(b), the Debtors did not solicit acceptances of the Plan from any holder of a Claim or Interest prior to entry of the Disclosure Statement Order.

70. Lastly, the Debtors provided an eight (8) day extension of the Voting Deadline, during which time the Debtors filed the Settlement Term Sheets. This extension of the Voting Deadline permitted holders of Claims in the Voting Classes with an opportunity to change their vote in light of the agreed terms set forth therein and ultimately incorporated into the Plan.

71. **Section 1126: Acceptance of the Plan.** As will be set forth in the Voting Certification, the Debtors solicited acceptances of the Plan from the holders of Claims against the Debtors in each Voting Class under the Plan in accordance with section 1126 of the Bankruptcy Code. The Voting Classes include Class 3 (Mexico Class Action Claims and Mexico Labor Claims), Class 4 (OEM Unsecured Claims), Class 5 (PSAN PI/WD Claims), Class 6 (Other General Unsecured Claims), and Class 7 (Other PI/WD Claims).

72. The Debtors did not solicit votes for the Plan from any holder of Claims in Class 1 (Other Secured Claims) or Class 2 (Other Priority Claims), as such Classes are Unimpaired and, therefore, deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Further, the Debtors also did not solicit votes for the Plan by any holder of Claims or Interests, as applicable, in Class 8 (Intercompany Interests) or Class 9 (Subordinated Claims), as such Classes will not receive or retain any property on account of their Claims or Interests and, therefore, are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code.

73. Although final voting results were not available prior to the filing of this Declaration, I understand that preliminary voting results suggest that Class 5 (PSAN PI/WD Claims) at TKH, IIM, TDM, and SMX and Class 6 (Other General Unsecured Claims) at TKH have not voted to accept the Plan.

74. **Section 1129(a)(3): The Plan has been Proposed in Good Faith.** The Debtors have proposed the Plan in good faith and solely for the legitimate and honest purposes of maximizing the value of the Debtors' Estates for the benefit of creditors by facilitating the sale of the Debtors' non-PSAN businesses to the Plan Sponsor as a going-concern, and preserving the Debtors' PSAN Inflator business to ensure ongoing production of replacement kits for use in connection with the ongoing PSAN Inflator recalls. Further, the Plan (including the Plan Supplement and all other documents necessary to effectuate the Plan) was negotiated at arm's length among representatives of the Debtors, the Restructuring Support Parties, the Committees, the Future Claims Representative, and their respective professionals solely for the purposes outlined above and the facts support no other conclusion.

75. The Restructuring Support Parties as well as the Committees and the Future Claims Representative support confirmation of the Plan. I believe that the support of the Plan by the Committees and the Future Claims Representative reflects the inherent fairness of the Plan and the good faith efforts of the Debtors to achieve the objectives of chapter 11.

76. **Section 1129(a)(4): The Plan Provides that Fee Claims are Subject to Court Approval.** All payments made or to be made by the Debtors for services or for costs and expenses of the Debtors' professionals in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, have been approved by, or are subject to the approval of, the Court as reasonable. Specifically, Section 2.5 of the Plan subjects payment of all Professional Persons to the filing and approval of final fee applications before the Court. Further, Section 11.1(a)(ix) of the Plan provides that the Court shall retain jurisdiction to hear and determine all Fee Claims.

77. **Section 1129(a)(5): The Debtors have Disclosed all Necessary Information Regarding Directors, Officers, and Insiders.** As disclosed in the Plan Supplement, the Debtors have proposed David Michael Rains as the Plan Administrator and Chief Executive Officer of TK Global LLC, which entity will be the owner of the sole equity interest in Reorganized TK Holdings, as well as all the equity interests in the Warehousing Entity. Accordingly, I believe that the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

78. **Section 1129(a)(6): Governmental Rate Approvals—Inapplicable Provision.** It is my understanding that section 1129(a)(6) of the Bankruptcy Code does not apply to the Plan.

79. **Section 1129(a)(7): The Plan is in the Best Interests of All Creditors and Interest Holders.** The Bankruptcy Code requires that, with respect to each impaired Class

of Claims and Interests, each holder of such Claim or Interest must either (a) accept the Plan or (b) receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

80. I reviewed the liquidation analysis annexed as Exhibit J to the Disclosure Statement (the “**Liquidation Analysis**”) prepared by PricewaterhouseCoopers LLP (“**PwC**”) and rely on the *Declaration of Steven Fleming in Support of the Debtors’ Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors* filed contemporaneously herewith (the “**Fleming Declaration**”).

81. I understand that section 1129(a)(7) is satisfied as to each holder of a Claim or Interest in a Non-Voting Class because each such holder is unimpaired and deemed to have accepted the Plan. As explained in detail in the Liquidation Analysis Declaration, the Liquidation Analysis demonstrates that all Voting Classes of Claims and Interests will recover substantially more value under the Plan than through a liquidation of the Debtors under chapter 7. As a result, I believe each holder of a Claim or Interest either has (i) accepted the Plan or (ii) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Accordingly, I believe that the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

82. **Section 1129(a)(8): The Plan is Expected to have been Accepted by Certain Impaired Classes Entitled to Vote:** As set forth above, the holders of Claims or Interests in Class 1 (Other Secured Claims) and Class 2 (Other Priority Claims) are unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code and are conclusively

presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Final voting results were not available prior to the filing of this Declaration. Based on the preliminary results available to the Debtors at the time of filing, the Debtors expect each of the following Classes to have voted to accept the Plan in accordance with section 1126 of the Bankruptcy Code: Class 3 (Mexican Class Action Claims and Mexican Labor Claims);¹² Class 4 (OEM Unsecured Claims); Class 6 (Other General Unsecured Claims) at all applicable Debtors except TKH; and Class 7 (Other PI/WD Class). Accordingly, Section 1129(a)(8) is satisfied with respect to these Classes.

83. Likewise, based on the preliminary voting results available, the Debtors expect each of the following Classes to vote to reject the Plan in accordance with section 1126 of the Bankruptcy Code: Class 5 (PSAN PI/WD Claims) at TKH, IIM, TDM, and SMX, and Class 6 (Other General Unsecured Claims) at TKH. In addition, I understand that holders of Claims or Interests, as applicable, in Class 8 (Intercompany Interests) and Class 9 (Subordinated Claims) are not entitled to receive or retain any property on account of their Interests in the Debtors and, as such, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

84. **Section 1129(a)(9): The Plan Provides for Payment in Full of All Allowed Priority Claims.** Pursuant to Articles II and IV of the Plan, and in accordance with sections 1129(a)(9)(A) and (B), the Plan provides that all Allowed Administrative Expense Claims, Adequate Protection Claims, Fee Claims, and Other Priority Claims will be paid in full, except as otherwise agreed by the parties. Likewise, pursuant to Section 2.6 of the Plan, all

¹² As the Mexican Class Action Claims and the Mexican Labor Claims were listed as contingent, unliquidated, and/or disputed on the Debtors' Schedules, holders of these Claims were required to file a proof of claim in order to vote on the Plan. However, as no holders filed a proof of claim, the Debtors did not solicit or receive any votes in Class 3.

Priority Tax Claims under section 507(a)(8) of the Bankruptcy Code will be paid in full, except as otherwise agreed by the parties. Accordingly, I believe that the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

85. **Section 1129(a)(10): Acceptance of the Plan by an Impaired Class.** As set forth above, although the final voting results were not available prior to the filing of this Declaration, the Debtors are confident that at least one impaired Class at each Debtor has voted to accept the Plan, even excluding the acceptance of the Plan by any insiders in such Classes. Accordingly, I believe that the Plan complies with section 1129(a)(10) of the Bankruptcy Code.

86. **Section 1129(a)(11): The Plan is Feasible.** Section 1129(a)(11) of the Bankruptcy Code permits a plan to be confirmed if it is feasible, *i.e.*, it is not likely to be followed by liquidation or the need for further financial reorganization. I understand that, in the context of the Plan, feasibility is established by demonstrating the Debtors' ability to timely perform all obligations described in the Plan. In particular, I believe that the Plan satisfies the feasibility requirement with respect to each of (i) obligations to pay creditors and fund various reserves on the Effective Date, (ii) the sufficiency of the funding of Reorganized Takata and the Warehousing Entity, and (iii) the sufficiency of the Reorganized TK Holdings Trust Reserve.

87. Each of the foregoing obligations will be funded by proceeds from the Global Transaction, including the Plan Sponsor Backstop Funding (if necessary), and the Debtors' other cash on hand not acquired by the Plan Sponsor. I am confident that, in accordance with the Plan, the Global Transaction will close immediately prior to or simultaneously with the occurrence of the Effective Date. Indeed, the Plan Sponsor has already obtained commitments for significant acquisition financing and the Guarantor (as defined in the

U.S. Acquisition Agreement) is guaranteeing the Plan Sponsor's payment and performance obligations under the U.S. Acquisition Agreement.

88. I believe that the foregoing amounts will be sufficient to satisfy all of the Debtors' obligations under the Plan that are due on the Effective Date, as well as the reserves that are being funded on the Effective Date, including the funding of Reorganized Takata, the Warehousing Entity, and the Reorganized TK Holdings Trust Reserve. In addition, the Plan Sponsor has committed to backstop up to \$75 million in the funding of, among other things, the Post-Closing Reserve and the Warehousing Entity Reserve, in each case up to certain caps, to the extent that they cannot be satisfied by the sale proceeds of the Global Transaction in accordance with the terms and subject to the conditions of the Plan Sponsor Backstop Funding Agreement.

89. Further, recent steps taken by the Debtors support my conviction that the Global Transaction will be closed in a timely manner and the Debtors will be able to satisfy their obligations under the Plan. First, on December 5, 2017, the Bankruptcy Court entered an order [Docket No. 1314] authorizing the Debtors to perform certain preparatory, pre-restructuring transactions with respect to the Debtors' Mexican affiliates, which will allow such affiliates to timely implement the Global Transaction. Second, on February 7, 2018, the Debtors filed a motion [Docket No. 1978] requesting entry of an order estimating the maximum amount of certain contingent, unliquidated, and disputed General Unsecured Claims in Class 6 for purposes of establishing the Dispute Claims Reserve under the Plan. Establishing the upper limit of the reserved amounts of the Disputed Claims for purposes of establishing the Disputed Claims Reserve will allow the Debtors to timely and efficiently allocate funds under the Plan. Third, on February 12, 2018, the Court entered an order [Docket No. 2024] approving the capitalization of an intercompany receivable owed to TKH thereby avoiding \$9 million in potential tax liability to

the Mexican government and ensuring the orderly consummation of the Global Transaction. Fourth, as described in detail below, together with the Plan Sponsor, the Debtors continue to work constructively with regulatory authorities, and I believe that the Global Transaction will receive all necessary regulatory approvals.

90. With respect to the sufficiency of the funding of Reorganized Takata and the Warehousing Entity, the Debtors' Disclosure Statement included at Exhibit K financial projections for Reorganized Takata and the Warehousing Entity (the "**Projections**"). An updated version of these projections for the Warehousing Entity is attached hereto as Exhibit A (the "**Updated Warehousing Entity Projections**"). The Projections and Updated Warehousing Entity Projections indicate that Reorganized Takata and the Warehousing Entity should have sufficient cash flow or reserves to satisfy their obligations (including Claims arising in the ordinary course of Reorganized Takata's business) and to fund their operations.¹³ Indeed, the PSAN Inflatons produced by Reorganized Takata will be priced to cover the costs of such production. Additionally, the Plan Sponsor Backstop Funding may be available to Reorganized Takata and the Warehousing Entity to cover PSAN Legacy Costs after the Effective Date, subject to certain caps, in accordance with the terms of the Plan Sponsor Backstop Funding Agreement.

91. Similarly, I believe that the Reorganized TK Holdings Trust Reserve to be funded pursuant to the Plan, along with Surplus Reserved Cash, Post-Closing Cash, and Dissolution Date Cash that may be available to the Reorganized TK Holdings Trust Reserve after the Effective Date, will be sufficient for the Reorganized TK Holdings Trust to carry out the purpose for which it was established.

¹³ It is expected that Reorganized Takata will also have general commercial liability insurance to cover claims that arise in the ordinary course.

92. For these reasons, I believe that the Plan provides for an achievable reorganization, which exceeds the Debtors' burden of showing that the Plan carries a reasonable likelihood of success. Accordingly, I believe the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

93. **Section 1129(a)(12): All Statutory Fees Have or Will be Paid.** In accordance with sections 507 and 1129(a)(12) of the Bankruptcy Code, Section 12.5 of the Plan provides that on the Effective Date, and thereafter as may be required, all fees payable pursuant to section 1930 of title 28 of the United States Code, together with interest, if any, shall be paid by the Reorganized Debtors.

94. **Section 1129(a)(13): Continuation of Retiree Benefits.** I understand that the Debtors have agreed to settlement and release agreements with all individuals entitled to retiree benefits under the Bankruptcy Code. Moreover, these agreements were approved by the Court pursuant to the *Order Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 1114(e) and Fed. R. Bankr. P. 9019(a) (I) Authorizing Debtors to Enter into Settlement and Release Agreements with the Covered Executives and (II) Authorizing Debtors to Terminate or Cease Providing Retiree Benefits*, entered on February 1, 2018 [Docket No. 1879]. Accordingly, I believe that the Plan satisfies section 1129(a)(13) of the Bankruptcy Code.

95. **Section 1129(a)(14), 1129(a)(15), and 1129(a)(16): Inapplicable Provisions.** Sections 1129(a)(14), 1129(a)(15), and 1129(a)(16) of the Bankruptcy Code do not apply to the Plan.

96. **Section 1129(b): The Plan Satisfies the "Cram Down" Requirements with Respect to the Rejecting Classes.** It is my understanding that a plan may be confirmed notwithstanding the rejection or deemed rejection by a class of claims or equity interests so long

as the plan does not discriminate unfairly and is fair and equitable. It is my further understanding that (a) a plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class, and (b) the “fair and equitable” requirement is met as set forth in section 1129(b)(2) of the Bankruptcy Code. For the reasons described below, I believe that the Plan does not “unfairly discriminate” and the “fair and equitable” requirement is satisfied as to Class 5 (PSAN PI/WD Claims) at TKH, IIM, TDM, and SMX and Class 6 (Other General Unsecured Claims) at TKH, each of which is expected to vote to reject the Plan, as well as Class 8 (Intercompany Interests) and Class 9 (Subordinated Claims), which were deemed to have rejected the Plan at all Debtors.

97. The Plan provides for an approximate recovery of 0.1% to 0.4% to holders of General Unsecured Claims from the Debtors’ Estates (based on estimates as of the date of the Disclosure Statement), regardless of whether such Claims are included in Class 4 (OEM Unsecured Claims), Class 5 (PSAN PI/WD Claims), Class 6 (Other General Unsecured Claims), or Class 7 (Other PI/WD Claims). Accordingly, as each of these Classes is expected to receive the same percentage recovery from the Debtors’ Estates, there is no discrimination amongst these Classes. The contributions of the Consenting OEMs and the Plan Sponsor Parties of the applicable Plan Settlement Funds and the Plan Sponsor Contribution Amount, respectively, to the PSAN PI/WD Trust for the benefit of, and Pro Rata distribution to, holders of Class 5 (PSAN PI/WD Claims) and Class 7 (Other PI/WD Claims), does not change this analysis as such contributions are not coming from the Debtors’ Estates and accordingly do not “result in,” or otherwise cause there to be, a materially lower recovery to any other Class. In the case of the Plan Sponsor Contribution Amount, such contribution is the consideration paid by the Plan

Sponsor for the benefit of being a Protected Party. In addition, with respect to the contributions from the Consenting OEMs, I believe that these contributions are justified by, among other things, the fact that the Consenting OEMs have the opportunity to become a “Participating OEM” and become eligible to participate in the Channeling Injunction, as well as the fact that at least one Consenting OEM is a co-defendant with the Debtors in all litigations asserting PSAN PI/WD Claims.

98. With respect to the Debtors IIM and TDM, the Plan provides for an approximate recovery of 1% to 76.9% and 4.7% to 100%, respectively, for Class 3 (Mexican Class Action Claims and Mexican Labor Claims). I do not believe that this treatment is unfair because the payment of these Claims protects the Assets of IIM and TDM—Assets from which replacement kits will be manufactured until Reorganized Takata is wound down, at which time such Assets will be liquidated for the benefit of all creditors—from attachment by foreign litigation creditors not subject to the jurisdiction of this Court.

99. With respect to Class 8 (Intercompany Interests) and Class 9 (Subordinated Claims), no other Classes of equal priority are provided for under the Plan. Accordingly, I do not believe that there can be a presumption of unfair discrimination with respect to these Classes and I believe that the Plan does not “discriminate unfairly” with respect to any Impaired Classes of Claims or Interests.

100. Section 1129(b)(2)(B)(ii) of the Bankruptcy Code provides that a plan is fair and equitable with respect to a class of impaired unsecured claims that did not accept such plan if, pursuant to the plan, no holder of a claim or interest that is junior to the interests of such class will receive or retain any property on account of their junior interest. Similarly, section 1129(b)(2)(C)(ii) of the Bankruptcy Code provides that a plan is fair and equitable with respect

to a class of impaired interests that did not accept the plan if, pursuant to the plan, no holder of an interest that is junior to the interests of such class will receive or retain any property on account of their junior interest.

101. Distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code and in accordance with the absolute priority rule. With respect to rejecting Classes of General Unsecured Claims, no Claims or Interests junior to these Classes will receive recoveries under the Plan on account of such Claims or Interests. Specifically, Class 8 (Intercompany Interests) and Class 9 (Subordinated Claims) will not recover or retain any property on account of their respective Interests and Claims under the Plan. Similarly, with respect to Class 8 (Intercompany Interests), no Classes of Interests junior to this Class exists, and with respect to Class 9 (Subordinated Claims), the only junior Class is Class 8 (Intercompany Interests) and such Class is not receiving any recoveries under the Plan. Accordingly, I believe that the Plan is “fair and equitable” and, therefore, consistent with the requirements of section 1129(b) of the Bankruptcy Code.

102. **Section 1129(c): The Plan is the Only Plan.** The Plan is the only plan filed in these Chapter 11 Cases and, accordingly, section 1129(c) of the Bankruptcy Code does not apply.

103. **Section 1129(d): The Principal Purpose of the Plan is not the Avoidance of Taxes.** The Plan has not been filed for the purpose of the avoidance of taxes or the application of Section 5 of the Securities Act of 1933, as amended.

104. **Section 1129(e): Small Business Case Plans—Inapplicable Provision.** Section 1129(e) of the Bankruptcy Code does not apply to the Plan.

105. **Section 1127: Modification of the Plan.** The Debtors modified the Plan on February 14, 2018 to, among other things, (a) provide for the classification of the NHTSA Claims as Class 6(d) (Other General Unsecured Claims), the Allowance of such Claims in the amount of \$50 million, and the survival of the NHTSA Consent Order (as modified by the Plan) with respect to Reorganized TK Holdings; (b) establish a new Class—Class 7 (Other PI/WD Claims)—specifically for General Unsecured Claims relating to a personal injury or harm caused by a Takata Product, other than the Debtors’ PSAN Inflator-related products; (c) revise the Plan Settlement to implement the terms of the TCC and UCC Settlements, including the establishment and funding of the Plan Settlement Fund and the Sponsor Party Creditor Fund, and the contribution of the Plan Sponsor Contribution Amount to the PSAN PI/WD Trust; (d) assign and transfer whatever rights the Debtors have in Takata’s products liability insurance policies to the PSAN PI/WD Trust, subject to applicable law; (e) provide for the selection of Joseph J. Farnan, Jr. as the Legacy Trustee and the appointment of a Claims Oversight Committee with three members (two selected by the Tort Claimants’ Committee and one selected by the Creditors’ Committee) to represent the interests of certain holders of Other General Unsecured Claims and to review the resolution of certain Claims by the Reorganized TK Holdings Trust; (f) stipulate to an estimated amount of current and future PSAN PI/WD Claims in the amount of \$1.3 billion and to an amount of Allowed Consenting OEM Claims of approximately \$38 billion; (g) remove the reallocation of Available Cash under the Distribution Formula to give effect to recoveries to holders of PSAN PI/WD Claims from insurance proceeds; and (h) reflect various clean up changes, such as entering missing docket numbers and correcting typographical errors. These changes do not adversely change the treatment of the Claim of any creditor or the Interest of any

equity security holder. Accordingly, I believe that the Debtors' modifications of the Plan are in accordance with Section 1127 of the Bankruptcy Code.

Additional Considerations

106. **Regulatory Approvals.** The Debtors have received or expect to receive all regulatory approvals required for consummation of the Global Transaction, including approval by the Committee on Foreign Investment in the United States (“CFIUS”). The *Notice of the United States of America Concerning the Review of Certain Transactions by the Committee on Foreign Investment in the United States*, filed February 9, 2018 [Docket No. 2012] (the “CFIUS Notice”) describes the process for CFIUS approval. Based on discussions that the Debtors and the Plan Sponsor have had with CFIUS and the terms of the U.S. Acquisition Agreement, which requires that the Plan Sponsor take any and all actions necessary to achieve CFIUS approvals, including any required divestitures (without an adjustment to the purchase price), I do not expect that CFIUS approval will be an obstacle to closing the Global Transaction.

107. **Subordination of Claims.** As described herein, the Plan provides for the separate classification of Claims against, and Interests in, each of the Debtors based upon differences in the legal nature and/or priority of such Claims and Interests. The Debtors established Class 9 (Subordinated Claims) under the Plan to capture any Claims which, pursuant to the priority scheme set forth under the Bankruptcy Code, were not entitled to receive distributions until holders of all other Claims were paid in full.

108. As set forth in the Plan, only Claims that are “subject to subordination under section 510 of the Bankruptcy Code” or “constitute a Claim for a fine, penalty, forfeiture, multiple, exemplary or punitive damages, or otherwise not predicated upon compensatory damages, and that would be subordinated in a chapter 7 case pursuant to section 726(a)(4) of the

Bankruptcy Code *or otherwise*,” can be classified in Class 9.¹⁴ Allowing punitive claims to recover in the same manner as General Unsecured Claims would be wholly inequitable to the Debtors’ other creditors, many of whom are victims of the alleged misconduct of the Debtors that formed the basis for the Class 9 Claims. I do not believe that it would be fair to allow holders of Class 9 Claims to recover for injuries that they did not suffer at the expense of the individual claimants who were directly injured by the PSAN Inflator defect.

109. Accordingly, I believe that the subordination of Class 9 Claims is appropriate.

110. **Treatment of the NHTSA Claims.** As discussed herein, the Debtors modified the Plan to classify and Allow the NHTSA Claims as Class 6 (Other General Unsecured Claims) as part of an overall resolution with NHTSA. I believe that several factors weigh in favor of this resolution of the NHTSA Claims, and the Debtors’ decision not to seek subordination of the NHTSA Claims. First, NHTSA is the Debtors’ regulator and the NHTSA Claims stem directly from violations of the Debtors’ reporting duties to it. Second, the Plan Sponsor’s obligation to consummate the Global Transaction is conditioned on NHTSA’s consent to the transaction. Third, there were several bases on which NHTSA—as the Debtors’ regulator and a party with consent rights on the Global Transaction—could have insisted that the Debtors pay its Claims in full (including requiring the Debtors to assume the NHTSA Consent Order as an executory contract), but as part of an overall compromise, NHTSA agreed not to object to the treatment of its Claims as Other General Unsecured Claims, which allowed substantial value to flow to other creditors as compared to what would have flown to them if the NHTSA Claims were treated as priority Claims. The consensual resolution of the NHTSA Claims and the

¹⁴ I understand that the Claims classified in Class 9 all seek fines, penalties, or punitive damages relating to defective PSAN Inflators manufactured by the Debtors.

treatment of the NHTSA Consent Order under the Plan provided significant benefits to the Debtors and their creditors. In view of the foregoing, I believe that the equities weigh in favor of classifying and Allowing the NHTSA Claims as Class 6 (Other General Unsecured Claims).

111. **Stay of the Confirmation Order.** I believe that under the circumstances and to conserve estate resources, it is appropriate for the Bankruptcy Court to permit the Debtors to consummate the Plan and commence its implementation without delay after the entry of the Confirmation Order. I believe that such relief is in the best interests of the Debtors' Estates and creditors and will not prejudice any parties in interest.

112. In light of all of the foregoing, I believe that confirmation of the Plan is appropriate, is in the best interests of all parties in interest, and should, therefore, be granted.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 14, 2018

TK Holdings Inc.

By: /s/ Kenneth Bowling
Kenneth Bowling
Chief Financial Officer

Exhibit A

Updated Warehousing Entity Projections

This summary assumes that in all regions, RTK is only responsible for costs of inflators received by 3/1/2018

Inflator Storage Holds Lifted 3/1/2018

**Europe costs are not included as they will be part of EMEA wind down costs*

	Totals	Capex	Special Master	NHTSA Monitor	DOJ Monitor	TK Services	North America			China			Japan and Rest of Asia		
							Warehousing	Shipping	Disposal	Warehousing	Shipping	Disposal	Warehousing	Shipping	Disposal
RTK Costs	\$ 216,410,281	\$ 4,000,000	\$ 27,250,000	\$ 42,380,000	\$ 34,560,000	\$ 36,376,679	\$ 7,697,872	\$ 6,415,226	\$ 36,698,326	\$ 225,426	\$ 48,120	\$ 319,905	\$ 6,771,111	\$ 3,064,741	\$ 10,602,874
	Totals														
TK Holdings Funding	\$ 108,190,000														
WSD Funding	\$ 108,220,281														

*The projections for the Warehousing Entity Reserve do not include the estimated costs and expenses of implementing the settlement reached between the Debtors and the Texas Commission on Environmental Quality regarding the expedited removal of warehoused PSAN Inflators. The Debtors estimate that such removal will cost approximately \$750,000.

This is **Exhibit "B"** referred to in the
affidavit of **KENNETH BOWLING**
sworn before me this
6th day of March, 2018

Donna Marie Matyasowski
A Commissioner for taking affidavits

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. .
TK HOLDINGS, INC., et al., .
. Case No. 17-11375 (BLS)
. .
. Courtroom No. 5
. 824 Market Street
. Wilmington, Delaware 19801
. .
Debtors. . February 16, 2018
. . 10:00 A.M.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Mark Collins, Esquire
Michael Merchant, Esquire
Amanda Steele, Esquire
Brett Haywood, Esquire
Russell Silberglied, Esquire
RICHARDS LAYTON & FINGER, P.A.
920 N. King Street
Wilmington, Delaware 19801

ECRO: DANA MOORE

Transcription Service: Reliable
1007 N. Orange Street
Wilmington, Delaware 19801
Telephone: (302) 654-8080
E-Mail: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording:
transcript produced by transcription service.

1 APPEARANCES (Continued):

2 For the Debtors:

Marcia Goldstein, Esquire
Ronit Berkovich, Esquire
Matthew Goren, Esquire
Jessica Diab, Esquire
Lauren Tauro, Esquire
Theodore Tsekerides, Esquire
John Mastando, III, Esquire
WEIL GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153

7 - and -

8
9 Keith Teel, Esquire
COVINGTON & BURLING LLP
One CityCenter
10 850 Tenth Street, NW
Washington, DC 20001-4956

11 For American Honda
12 Motor Co., and Honda
13 North America:

Jessica Boelter, Esquire
SIDLEY AUSTIN LLP
1 South Dearborn Street, Suite 900
Chicago, Illinois 60603

14 For the U.S. Trustee:

Jane Leamy, Esquire
UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
15 844 King Street, Suite 2207
16 Lockbox 35
Wilmington, Delaware 19801

17 For Roger Frankel,
18 the FCR:

William Bowden, Esquire
ASHBY & GEDDES
500 Delaware Avenue, Suite 8
19 Wilmington, Delaware 19801

20 For Automotive
Coalition For
21 Traffic Safety, Inc.:

Linda Richenderfer, Esquire
KLEHR HARRISON HARVEY BRANZBURG LLP
919 N. Market Street, Suite 1000
Wilmington, Delaware 19801-3062

22

23

24

25

1 APPEARANCES (Continued):

2 For the AIEG: Jeffrey Cianciulli, Esquire
WEIR & PARTNERS LLP
3 The Widener Building
1339 Chestnut Street, Suite 500
4 Philadelphia, PA 19107

5 For Whistleblowers
A and B: Kathleen Miller, Esquire
6 SMITH KATZENSTEIN & JENKINS LLP
1000 N. West Street, Suite 501
7 Wilmington, Delaware 19899

8 For Whistleblower C: William Chipman, Esquire
CHIPMAN BROWN CICERO & COLE LPP
9 1313 N. Market Street, Suite 5400
Wilmington, Delaware 19801

10 For the States of
11 Hawaii, US Virgin
Islands and the
12 Commonwealth of
Puerto Rico: Thomas Macauley, Esquire
MACAULEY LLC
300 Delaware Avenue
Wilmington, Delaware 19801

13 For Tort Committee: Laura Davis Jones, Esquire
14 PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
15 Wilmington, Delaware 19801

16 For the Committee: Mary Doheny, Esquire
MILBANK, TWEED, HADLEY & MCCLOY LLP
17 28 Liberty Street
New York, New York 10005-1413

18 For Joyson KSS
19 Auto Safety: Christine Okike, Esquire
SKADDEN ARPS SLATE MEAGHER & FLOM
4 Times Square
20 New York, New York 10036

21 For the MDL: Sander Esserman, Esquire
STUTZMAN BROMBERG ESSERMAN & PLIFKA
22 2323 Bryan Street, Suite 2200
Dallas, Texas 75201-2689

23
24
25

1 APPEARANCES (Continued):

2 For Ford Motor Mark Freeland, Esquire
 3 Company: MCGUIREWOODS LLP
 4 Tower Two-Sixty
 260 Forbes Avenue, Suite 1800
 5 Pittsburg, Pennsylvania 15222-3142

6 For the U.S. Rob Darnell, Esquire
 Environmental Protection Agency: UNITED STATES DEPARTMENT OF JUSTICE
 ENVIRONMENTAL AND NATURAL RESOURCES
 7 DIVISION
 P.O. Box 7611
 8 Ben Franklin Station
 Washington, DC 20044

9
10 TELEPHONIC APPEARANCES:

11 For the Office of the Hal Morris, Esquire
 Attorney General - STATE OF TEXAS
 12 Bankruptcy & OFFICE OF THE ATTORNEY GENERAL
 Collection Division: BANKRUPTCY & COLLECTIONS DIVISION
 13 300 West 15th Street
 Austin, Texas 78701

14 For the U.S Ward Benson, Esquire
 15 Department of Justice: UNITED STATES DEPARTMENT OF JUSTICE
 Post Office Box 227
 16 Washington, DC 20044

17 For Federal & State Kevin Dean, Esquire
 Personal Injury MOTLEY RICE LLC
 18 Claimants: 28 Bridgeside Boulevard
 Mount Pleasant, SC 2946

19
 20 For the State of Megen Miller, Esquire
 Michigan: ASSISTANT ATTORNEY GENERAL
 21 ENVIRONMENTAL, NATURAL RESOURCES
 & AGRICULTURE DIVISION
 22 Williams Building, 6th Floor
 525 West Ottawa Street
 23 P.O. Box 30755
 Lansing, Michigan 48909

24

25

1 TELEPHONIC APPEARANCES (Continued):

2 For the State of
3 Missouri:

Mary Long, Esquire
MISSOURI ATTORNEY GENERAL
P.O. Box 861
St. Louis, Missouri 63188

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc., and its Affiliated Debtors

ARGUMENT: 99 - 164

RULING: 165

PAGE #

DEBTORS' WITNESS(s)

CHRISTINA PULLO

Cross Examination by Mr. Cianciulli 60

Redirect Examination by Mr. Tsekerides 71

Recross Examination by Mr. Cianciulli 73

STEVEN FLEMING

Cross Examination by Mr. Cianciulli 76

KENNETH BOWLING

Cross Examination by Mr. Cianciulli 85

Redirect Examination by Mr. Mastando 96

EXHIBITS:

I.D.

REC'D

Bowling Declaration 26

Yearley Declaration 26

Fleming Declaration 27

Vasquez Declaration 27

Pullo Declaration 28

Perkins Declaration 29

Frankel Declaration 29

CR2 Class VI Ballot 65

1 (Proceedings commence at 10:00 a.m.)

2 (Call to order of the court)

3 THE COURT: Please be seated. Good morning.

4 ALL: Good morning, Your Honor.

5 THE COURT: Ms. Goldstein, ready to proceed?

6 Good morning.

7 MS. GOLDSTEIN: Good morning, Your Honor. Marcia
8 Goldstein, Weil Gotshal & Manges, on behalf of the debtors.

9 Before I start anything I would like to thank Your
10 Honor and your staff for all the assistance on scheduling and
11 everything else you have done to get us this hearing this
12 morning. It is very much appreciated. I will later thank
13 you more formally for taking in all of our filings and being
14 burdened by the hundreds of pages that --

15 THE COURT: You've all been busy.

16 MS. GOLDSTEIN: -- were produced by many who
17 worked very, very hard, again, in connection with this
18 hearing.

19 So, you know, every so often there's a catalyst
20 that brings folks together to get to a good result. In the
21 recent Super Bowl it was the Eagles opportunity --

22 THE COURT: Now you're just --

23 (Laughter)

24 THE COURT: -- pandering.

25 MS. GOLDSTEIN: All right.

1 THE COURT: Keep going, keep going.

2 MS. GOLDSTEIN: The opportunity to face the
3 Patriots in the Super Bowl -- and I know there are a few
4 Patriots fans in here, but many of us are Giants fans, and
5 Cowboys fans, and I know we have a lot of Eagles fans in
6 here, maybe one or two Redskins fans, but we all for one
7 night rallied together and enjoyed a very good result; to be
8 Eagles fans for a night.

9 So here it's not quite a Super Bowl, but parties
10 did -- and I don't know what the exact catalyst was, but I
11 think the desire of the parties in this case and the will of
12 the parties in this case to come together and work very hard
13 to get to a number of agreements, deals that would result in
14 what we bring to the court today, what I would call, a
15 largely consensual plan. I think it was a decision-making
16 catalyst that doing all the work to get to that was more
17 fruitful for the debtors and the debtors' creditors than
18 protracted litigation which would be fruitful for no one.

19 With me, from Weil, today are my colleagues.
20 You've seen them all before; Ronit Berkovich, Theodore
21 Tsekerides, John Mastando, Lauren Tauro and a number of -- I
22 won't name everybody, but a number of team who have been
23 working around the clock to prepare for this hearing today.

24 At counsel table as well are our co-counsel Mark
25 Collins, Michael Merchant, Amanda Steele and Brett Haywood

1 from Richards Layton; also invaluable in helping us get here
2 today. In addition, present are, in the courtroom, Ken
3 Bowling, chief financial officer of TK Holdings, Inc.

4 THE COURT: I've seen his declaration.

5 MS. GOLDSTEIN: Thank you, Your Honor.

6 Keith Teel, the general counsel of TK Holdings,
7 Inc.; Andrew Yearly, a managing director of Lazard, the
8 debtor's investment banker; Steven Fleming, a principal at
9 PWC, the debtors' financial advisors; Thomas Vasquez, senior
10 managing director of Ankura Consulting and debtor's economic
11 consultant. Also, we have Christina Pullo, a senior director
12 from Prime Clerk.

13 THE COURT: I have seen her balloting
14 certification.

15 MS. GOLDSTEIN: And, Your Honor, I would just take
16 the opportunity -- we are filing this morning a corrected
17 voting certification. It doesn't change the results, but
18 there was a transposition in what was originally filed. So
19 there will be a technically corrected certification and
20 declaration from Ms. Pullo.

21 THE COURT: Okay. Does it affect the treatment of
22 Class 6-D-1 that was a rejecting class?

23 MS. GOLDSTEIN: No, Your Honor. I will address
24 that class --

25 THE COURT: Is that the one with the Puerto Rico

1 claim that's mentioned in the briefing?

2 MS. GOLDSTEIN: Yes.

3 THE COURT: All right. I understand. You may
4 proceed.

5 MS. GOLDSTEIN: Yes. And Prime Clerk has
6 calculated with and without that vote, as you've probably
7 seen as well.

8 Your Honor, on the agenda this morning were two
9 matters; one which we will deal with later which is, and I
10 hope we don't need to, the motion by the debtors for entry of
11 an order extending our exclusive filing period and, of
12 course, then confirmation of the debtors' fourth amended
13 joint Chapter 11 plan of reorganization.

14 So with the court's permission we should move
15 forward with the confirmation.

16 THE COURT: Agreed.

17 MS. GOLDSTEIN: So I'd like to make a few opening
18 remarks really to update where we are and reserve legal
19 argument for later.

20 THE COURT: Okay.

21 MS. GOLDSTEIN: Unless, of course, the court
22 requests anything on that so that we can avoid lengthy
23 opening statements.

24 So I thought it would just make sense to speak to
25 what the plan currently provides and the settlements that are

1 incorporated in the plan.

2 THE COURT: You may proceed. I have seen the
3 settlement term sheets that were provided and filed recently
4 under notice of filing as well as the revised plan with the
5 blackline that was, likewise, recently filed.

6 MS. GOLDSTEIN: Right. And I would note that the
7 plan is -- and as a result of, you know, frankly, tireless
8 efforts of all of these parties -- is supported by the
9 customer group, the plan sponsor parties, the tort claimant's
10 committee, the official committee of unsecured creditors and
11 the future claims representative. We thank all of them for
12 all the work they have done to get this in place and working
13 with their constituents tirelessly.

14 Your Honor, confirmation of TK Holdings and the
15 other Chapter 11 debtors, the US debtors, is a very
16 meaningful milestone for the company and for this company's
17 14,000 employees; the substantial majority of which will, as
18 a result of the plan of reorganization, continue to be
19 employed by either the plan sponsor or the reorganized Takata
20 entities. Confirming this plan, I would say, is also
21 important for auto safety as the plan ensures that the
22 debtors will be able to facilitate the uninterrupted supply
23 of replacement airbag kits required by NHTSA in connection
24 with mandated recalls.

25 Since the disclosure statement hearing the

1 customer group, the plan sponsor, the committees and the FCR
2 have been engaging in numerous negotiations that resulted in
3 the global settlement which was outlined in the term sheets
4 filed on Saturday, February 10th and also incorporated in the
5 fourth amended plan which the debtors filed on Wednesday,
6 February 14th.

7 Your Honor, the impact of these settlements is
8 significant. Under the previous version of the plan only,
9 approximately, 5.5 million was available to non-OEM general
10 unsecured creditors. Under the version now on file
11 approximately 154 million is made available to non-OEM
12 general unsecured creditors.

13 The plan also implements the global transaction
14 with respect to the debtors which ensures a going concern
15 business bifurcated between the plan sponsor, which will
16 acquire the debtors' non-PSAN operations, and the reorganized
17 Takata debtors, which will administer the debtors' PSAN
18 production for a limited time post-emergence.

19 Among other things, the global transaction
20 provides for the satisfaction of the DOJ restitution order or
21 contributes to providing the satisfaction of that order.

22 And I think this brings me, Your Honor, to an
23 update that I would like to provide with respect to the
24 February 27th deadline.

25 THE COURT: Okay.

1 MS. GOLDSTEIN: In particular, as that deadline
2 relates to ongoing CFIUS review of the proposed transaction.
3 CFIUS is the Committee on Foreign Investment in the United
4 States is an inter-agency committee authorized to review
5 transactions that could result in control of a US business by
6 a foreign person.

7 THE COURT: Right. They filed a notice last week
8 with respect to the pendency of the transaction and the plan
9 process.

10 MS. GOLDSTEIN: Yes. And so that has been public.
11 The Department of Justice did file that to inform parties and
12 the public that this was a possible process here.

13 CFIUS comes into play here because Key Safety is
14 owned by Joyson, which is a Chinese company.

15 CFIUS began its review of the global transaction
16 on January 11th, 2018 and subsequently informed the debtors
17 and the plan sponsor that the investigation period was
18 extended until March 26th, 2018. Of course, the debtors and
19 the plan sponsor are working with the CFIUS committee to
20 satisfy their requirements. The debtor is highly confident
21 that CFIUS approval will be obtained and that the global
22 transaction will be able to close within the extended period.

23 It doesn't mean that a closing can't occur before
24 March 26th; however, out of an abundance of caution the
25 debtors, KSS and the Department of Justice have agreed that

1 the DOJ closing deadline should be extended from February
2 27th to April 13th. And they will be presenting a
3 stipulation. They've informed Judge Steeh at the United
4 States District Court for the Eastern District of Michigan
5 and will be presenting a stipulation to that court.

6 THE COURT: Okay. I understand.

7 MS. GOLDSTEIN: So, Your Honor, I thought it would
8 make sense to talk about the four contributing settlements
9 that have enabled us to come to this largely consensual plan,
10 the plan settlement, the settlement with the tort committee
11 and the FCR, the UCC settlement and the resolution of the
12 treatment of the NHTSA \$50 million-dollar claim.

13 In addition, Your Honor, while not technically a
14 plan settlement, I will also, after discussing the plan
15 settlements, describe briefly the settlement with the multi
16 state attorney's general. We filed a 9019 motion.

17 THE COURT: I saw the motion. That's on for a
18 hearing in March.

19 MS. GOLDSTEIN: While not before the court it is
20 very relevant to the plan process; not before the court
21 today.

22 We speak to the plan settlement which really is
23 the lynchpin for the plan, the global transaction and all the
24 settlements around it. In short, the plan settlement
25 resolves all claims and controversies among the debtors, the

1 consenting OEM's, plan sponsor, the committee's and the FCR.

2 With respect to the consenting OEM's the plan
3 settlement resolves the, what we define as, settled OEM
4 claims which include the consenting OEM's adequate protection
5 claims, their PSAN cure claims and their PSAN administrative
6 expense claims. Pursuant to the settlement the consenting
7 OEM's are releasing the settled OEM claims, which are
8 estimated at more than \$4 billion dollars, in exchange for
9 receipt by the OEM's of the plan settlement payment of
10 approximately \$246 million dollars; and the payment of 20
11 percent of the business incentive plan payment that is
12 provided for in the US acquisition agreement.

13 I would note that the OEM's, upon receipt of the
14 \$246 million dollars, accept that as a credit against what
15 they would have received from the DOJ restitution fund.

16 THE COURT: I understand.

17 MS. GOLDSTEIN: The plan settlement includes or
18 incorporates the terms of both the tort committee/FCR
19 settlement and the UCC settlement. So the tort committee/FCR
20 settlement at its most basic level -- nothing in this case,
21 Your Honor, is uncomplicated. So when I speak about the
22 outline of a settlement it's just that; it summarizes. It's
23 subject to all the details that are in the plan of
24 reorganization. Essentially, it involves the consenting
25 OEM's and the plan sponsor making contributions to certain

1 funds and trusts that will benefit the personal injury and
2 wrongful death victims.

3 With respect to the consenting OEM's they are
4 contributing, through a fund they create to the plan
5 settlement fund, for the benefit of the PSAN PI/WD claims and
6 other PI/WD claims the following,

7 Eighty percent of the consenting OEM general
8 unsecured recoveries until the consenting OEM's have
9 contributed \$5 million dollars of their recoveries to the
10 support party creditor fund. I'll get to that. That was
11 created under the UCC settlement. And, thereafter, 90
12 percent of consenting OEM general unsecured claim recoveries
13 until the consenting OEM general unsecured recovery threshold
14 is met. That threshold is the consenting OEM's share of the
15 first -- and we don't round numbers here -- \$89.9 million
16 dollars of available cash. Twenty-five percent of the
17 consenting OEM general unsecured creditor recoveries in
18 excess of the consenting OEM general unsecured recovery
19 threshold. So after this \$89.9 million dollars has been met
20 or has occurred then the consenting OEM's contribute 25
21 percent of the additional recoveries.

22 In addition, 80 percent of the incremental amount
23 -- and this is somewhat duplicative, but I think it is
24 important to note; 80 percent of the incremental amount of
25 the consenting OEM general unsecured recoveries resulting

1 from or attributable to the NHTSA claims being treated as
2 general unsecured claims and TKJP's 503(b) claim as to which
3 rights are preserved being set-off or, otherwise, eliminated
4 until the consenting OEM's have contributed, again, five
5 million to the support party creditor fund.

6 So this part just identifies some additional
7 recoveries, Your Honor, that would come into the pool of cash
8 available for general unsecured creditors. The NHTSA claim
9 is resolved so there's an additional 50 million in the pool
10 that would be available for general unsecured creditors that
11 would not be paid in full as was proposed in our original
12 plan. So the OEM's, basically, are agreeing to the same
13 mechanic for those. And with respect to TKJP's claims,
14 although rights are reserved with respect to the treatment of
15 that claim, if there is a benefit to the estate this is how
16 it will be shared.

17 THE COURT: Okay.

18 MS. GOLDSTEIN: Also the fund for the benefit of
19 the PI/WD claims would receive 80 percent of any amounts that
20 the consenting OEM's would be entitled to receive on account
21 of the business incentive plan payment. Again, this is
22 addressed through our plan. The business incentive plan
23 payment is addressed in the asset purchase agreement.

24 Your Honor, in addition to the tort committee and
25 FCR settlement the plan sponsor has agreed to contribute 25

1 million to the PSAN PI/WD Trust and that will occur as soon
2 as practicable after the plan sponsor receives repayment of
3 up to 25 million that will be drawn on by the plan sponsor
4 backstop agreement to cover some timing on the receipt of
5 cash from one of the Chinese subsidiaries. So this is also a
6 part of this overall settlement with the tort committee and
7 the FCR.

8 Another significant part of that settlement is
9 that the debtors have agreed to assign and transfer whatever
10 rights the debtors have in Takata's products liability
11 insurance policy to the PSAN PI/WD Trust, subject to
12 applicable law. The debtors also agree to use reasonable
13 best efforts to prepetition intercompany claims and waive or,
14 otherwise, obtain waiver or, otherwise, eliminate any
15 residual intercompany payables owed by the debtor where the
16 net payable exceeds \$4 million dollars.

17 There is also agreement to appoint Joseph J.
18 Farnan, former chief judge of the District Court here in
19 Delaware, as the Legacy Trustee and to appoint a claims
20 oversight committee with three members, two selected by the
21 tort claimants committee, one from the creditors committee,
22 to represent the interest of certain holders of other general
23 unsecured claims, Your Honor, that's Class 6, and to review
24 the resolution of certain claims by the reorganized TK
25 Holdings.

1 The settlement also involves a stipulation to an
2 estimated amount of current and future PSAN PI/WD claims of
3 1.3 billion and to an amount of allowed consenting OEM claims
4 of approximately 38 billion. So these are the figures that
5 go to fixing the proportions.

6 The parties have also reached agreement on the
7 terms of the PSAN PI/WD Trust distribution procedures. We
8 refer to them as the TDP's. That was filed with the second
9 plan supplement. And as I mentioned previously, the
10 settlement includes a reservation of rights with respect to
11 treatment of certain claims of TKJP.

12 Turning to the UCC settlement; under the UCC
13 settlement a fund will be established of not less than \$7.5
14 million dollars. We call that the support parties creditor
15 fund. That will be funded by consenting OEM's and the plan
16 sponsor in accordance with the term sheet that we filed on
17 Saturday. That will fund payment to creditors who meet the
18 criteria of being an eligible creditor. It basically is
19 holders of non-contingent liquidated claims in Class 6. This
20 was a significant part of the deal for the UCC in terms of
21 vendors, suppliers and other non-contingent liquidated claim
22 holders and the desire that these creditors receive enhanced
23 recoveries. KSS and the consenting OEM's agreed that there
24 was a benefit to doing so.

25 Your Honor, this program, with the assistance of

1 the creditor's committee, is expected to assist the plan
2 sponsor in obtaining beneficial trade terms going forward.
3 And although the terms of this UCC settlement do provide that
4 in certain remote and limited circumstances the debtor may be
5 called upon to contribute certain limited amounts to this
6 support party creditor fund the debtors submit that the
7 likelihood, based on all projections that any such obligation
8 would be triggered, is extremely remote.

9 THE COURT: Okay.

10 MS. GOLDSTEIN: There are a number of agreements
11 spelled out in more detail in the plan documents between the
12 plan sponsor, the debtors and the UCC as to certain
13 restrictions and caveats regarding adding additional
14 contracts to the schedule of rejected contracts. In
15 consideration of this settlement the creditor's committee has
16 indicated its affirmative support for the plan.

17 Finally -- maybe not finally, but there are a
18 couple more points to this. I was hoping it was finally.

19 The amounts contributed by the consenting OEM's to
20 the support parties' creditor fund for the eligible creditors
21 --

22 THE COURT: This is the 7.5 million?

23 MS. GOLDSTEIN: This is the -- well, the OEM
24 contribution --

25 THE COURT: Their portion of the 7.5?

1 MS. GOLDSTEIN: Its part of the 7.5, is in
2 exchange for the full and final resolution of all potential
3 claims and causes of action against the consenting OEM's in
4 connection with the Chapter 11 cases including those subject
5 to the creditor's committee investigation.

6 THE COURT: Okay.

7 MS. GOLDSTEIN: The amounts contributed by the
8 plan sponsor also resolve any and all disputes that the
9 unsecured committee has and has had with the plan sponsor.
10 So as a result, the challenge period will be told until the
11 earlier of the effective date of the plan or 30 days
12 following the receipt of a "no plan notice" -- I don't think
13 that requires more definition than its name -- by either of
14 the committees or the debtors. Essentially, if there's a
15 notice that this plan isn't going to become effective that
16 triggers the 30-day termination of the challenge period.

17 THE COURT: Okay.

18 MS. GOLDSTEIN: Your Honor, we submit that the UCC
19 settlement does resolve a number of claims as does the
20 TCC/FCR settlement. They both result in increased recoveries
21 to a variety of creditors, and are in the best interest of
22 the debtors and their estate.

23 Turning to the NHTSA settlement, Your Honor, the
24 debtors and NHTSA have agreed -- and this is independent of
25 the other settlements -- to a resolution of the NHTSA claim

1 which will result, again as I've mentioned, in a significant
2 benefit to the debtors' estate. NHTSA has agreed not to
3 object to the debtors' classifying and treating its claim as
4 a Class 6 claim against TKH in the amount of 50 million. In
5 the context of this understanding the debtors have also
6 revised the plan to explicitly provide for the survival of
7 the other provisions of the NHTSA consent order with respect
8 to the reorganized debtors.

9 The multi state attorney's general settlement is
10 not before the court today. We filed a motion on Wednesday
11 to approve this settlement which includes attorney's general
12 for 45 US states and territories pursuant -- I'm sorry, Your
13 Honor.

14 THE COURT: Go ahead.

15 MS. GOLDSTEIN: Pursuant to this settlement the
16 attorney's general multi state working group has agreed to
17 conclude their investigation into TKH and release any state
18 consumer protection claims in exchange for a payment of
19 approximately \$139,000 dollars in representing expenses.

20 THE COURT: Right. For South Carolina, right?

21 MS. GOLDSTEIN: That will go to South Carolina.
22 They may share that; its --

23 THE COURT: Up to them.

24 MS. GOLDSTEIN: But it is for the expenses of the
25 group.

1 THE COURT: And then a subordinated claim of 650
2 million?

3 MS. GOLDSTEIN: Yes, which is also for the entire
4 45 participating state groups. There's also certain
5 injunctive relief that TKH would agree to. And as I
6 mentioned earlier the hearing for this is set for March 13th.

7 THE COURT: Okay.

8 MS. GOLDSTEIN: Obviously, these settlements
9 resulted in a number of changes to the plan. The revised
10 plan is now on file. There's so many documents, Your Honor,
11 but that was filed.

12 THE COURT: Tell me about it.

13 (Laughter)

14 MS. GOLDSTEIN: The revised plan was filed on
15 Wednesday. I may need some help from those who can count
16 days better than I can.

17 We will present to the court some additional
18 changes that, as you know, in the hours coming to the
19 courthouse have been agreed to. So that will be addressed
20 later.

21 The debtors and the committees, thereafter upon
22 reaching deals, took steps to inform creditors about these
23 developments. The debtors filed the term sheets. Certain
24 objecting parties, including certain of the states objecting
25 here today, did accept our offer to discuss the settlements

1 with them.

2 The TCC and FCR prepared and mailed a letter to
3 creditors describing the settlement and recommending that
4 members of their constituency vote to approve the plan and
5 the challenging injunction. The UCC also communicated to
6 creditors their recommendation. Debtors, particularly in
7 light of the continuing negotiations with the TCC and FCR,
8 extended the voting deadline through several extensions, but
9 ultimately to February 14th at nine p.m.

10 Now, I think this is a good time to go through all
11 the pleadings that makes the record here and the
12 declarations. I think it's a long list.

13 THE COURT: Why don't we start with the
14 declarations?

15 MS. GOLDSTEIN: Okay. I think you can assume the
16 plan documents and the memorandum I don't need to describe.

17 THE COURT: No. They're of record. They're
18 identified in the agendas. I've received them in the first,
19 second and third amended agendas. So I have a pretty good
20 handle on the filings.

21 MS. GOLDSTEIN: Thank you, Your Honor.

22 THE COURT: It would seem to me -- and, again,
23 I'll hear from anybody that wishes to be heard and will
24 proceed as appropriate, but I did note I think that there are
25 five or six declarations which include Mr. Perkins'

1 declaration for KSS; all of which are submitted by the debtor
2 in support of plan confirmation.

3 I'm not certain whether or not parties are going
4 to wish to take or challenge live testimony today, but it
5 seems to me the threshold step is to address those
6 declarations and determine whether or not they can be
7 admitted subject, of course, to the opportunity to cross-
8 examine because I think that each of those declarations which
9 I've received and had an opportunity to read go to various
10 elements of the debtors' case in chief for purposes of
11 confirmation.

12 So I think we should probably walk through each of
13 the declarations and determine whether there are objections
14 to the admissibility of those declarations.

15 MS. GOLDSTEIN: Yes, Your Honor. The debtors have
16 submitted a number of them; the declaration of Mr. Kenneth
17 Bowling, the debtors' chief financial officer.

18 THE COURT: All right. Mr. Bowling's declaration
19 addresses the 1129 issues as well as issues relating to the
20 appropriateness of the releases and the channeling
21 injunction.

22 Subject, again, to the opportunity to cross-
23 examine Mr. Bowling at the appropriate time are there any
24 objections to the admission of Mr. Bowling's declaration in
25 support of the debtors' case in chief for confirmation of

1 their fourth amended plan?

2 (No verbal response)

3 THE COURT: All right. Very well. That
4 declaration is admitted.

5 (Declaration of Kenneth Bowling admitted)

6 MS. GOLDSTEIN: Thank you, Your Honor.

7 The next declaration is that of Mr. Andrew Yearley
8 from Lazard, also in support of confirmation of the plan.

9 THE COURT: All right. Mr. Yearley's declaration
10 relates particularly to the marketing efforts on a
11 prepetition basis and the negotiation of the transaction with
12 KSS.

13 And I would ask if anyone objects to the admission
14 of Mr. Yearley's declaration, again, in support of the
15 debtors' case in chief for confirmation of their fourth
16 amended plan of reorganization?

17 (No verbal response)

18 THE COURT: Very well. Mr. Yearley's declaration
19 is, likewise, admitted.

20 (Declaration of Andrew Yearley admitted)

21 MS. GOLDSTEIN: We also have the declaration of
22 Mr. Steven Fleming, principal at PWC, in support of
23 confirmation of the plan.

24 THE COURT: All right. Mr. Fleming's declaration
25 goes primarily to the debtors' liquidation analysis that's

1 attached as a supplement to the plan and the disclosure
2 statement.

3 Are there any objections to the admission of Mr.
4 Fleming's declaration subject, again, to the opportunity to
5 cross-examine at the appropriate time?

6 (No verbal response)

7 THE COURT: Very well. Mr. Fleming's declaration
8 is admitted.

9 (Declaration of Steven Fleming admitted)

10 MS. GOLDSTEIN: Next is the declaration of Thomas
11 Vasquez of Ankura Consulting, again, in support of
12 confirmation of the plan.

13 THE COURT: All right. Mr. Vasquez's declaration
14 from Ankura Consulting goes to the claims estimates and the
15 analysis done of pending claims on a going forward basis.

16 I would ask if there are any objections to Mr.
17 Vasquez's declaration subject, once again, to the opportunity
18 to cross-examine at the appropriate time.

19 (No verbal response)

20 THE COURT: Very well. Mr. Vasquez's declaration
21 is submitted in support of the debtors' request for
22 confirmation of their fourth amended plan.

23 (Declaration of Thomas Vasquez admitted)

24 MS. GOLDSTEIN: The declaration of Ms. Christina
25 Pullo from Prime Clerk regarding solicitation and tabulation

1 of votes. Your Honor, I think there's a new declaration
2 coming in which does have a minor correction, but, otherwise,
3 there is no change in the result of what's set forth in that
4 declaration.

5 THE COURT: Okay. Again, subject to the
6 opportunity to cross-examine are there any objections to the
7 admission of Ms. Pullo's declaration as filed and then,
8 presumably, as technically amended and subsequently filed.

9 (No verbal response)

10 THE COURT: Very well. Ms. Pullo's declaration is
11 admitted.

12 (Declaration of Christina Pullo admitted)

13 MS. GOLDSTEIN: Debtors are also submitting the
14 declaration of Mr. Joseph Perkins of KSS in support of
15 confirmation of the plan.

16 THE COURT: All right. And Mr. Perkins is a
17 representative of KSS and provides testimony with respect to
18 KSS, and their participation in this process and allegations
19 with respect to KSS's good faith throughout the process.

20 Subject, again, to the opportunity to cross-
21 examine Mr. Perkins -- and I believe counsel has represented
22 that each of the declarants is in the courtroom -- I would
23 ask are there any objections to the admission of Mr. Perkins'
24 declaration in support of the debtors' request for
25 confirmation of their fourth amended plan?

1 (No verbal response)

2 THE COURT: Very well. Mr. Perkins's declaration
3 is admitted.

4 (Declaration of Joseph Perkins admitted)

5 MS. GOLDSTEIN: And last but not least is the
6 declaration of Roger Frankel, our future claim's
7 representative in support of confirmation of the plan.

8 THE COURT: And I've, likewise, seen Mr. Frankel's
9 declaration.

10 Subject, again, to the same stipulation of an
11 opportunity to cross-examine Mr. Frankel are there any
12 objections to the admission of Mr. Frankel's declaration in
13 support of plan confirmation.

14 (No verbal response)

15 THE COURT: Very well. That declaration is,
16 likewise, admitted.

17 (Declaration of Roger Frankel admitted)

18 THE COURT: I would also note that just in terms
19 of sufficiency of the record in order to use our time
20 efficiently, consistent with my practice in confirmation
21 hearings in the past, I do note that Mr. Bowling's
22 declaration walks through a number of the 1129 and 1123
23 factors as well as the debtor filed a comprehensive
24 memorandum followed shortly thereafter by a request to expand
25 the page limitation.

1 (Laughter)

2 THE COURT: The declaration speaks to all of the
3 1129 and 1123 factors, many of which are not subject to
4 material challenge or issue today. So while that's not
5 necessarily evidence in support it certainly is part of the
6 record for purposes of determining that the debtor has
7 established its record with respect to the statutory
8 criteria.

9 Again, I note that to the extent that there are
10 objections or the request to examine witnesses or challenge
11 the debtors' case that opportunity will certainly be
12 afforded, but I think I, again, consistent with my practice,
13 would note that the memorandum was filed and I've had an
14 opportunity to review it.

15 MS. GOLDSTEIN: Your Honor, I think now we can
16 make some decisions as to how to proceed with the rest of the
17 hearing.

18 THE COURT: Okay.

19 MS. GOLDSTEIN: I had not intended, consistent, I
20 think, with how you have handle hearings in the past, to open
21 on any legal issues or discuss the objections in terms of
22 legal responses at this point. I thought that could be
23 reserved.

24 We can talk about our solicitation procedures and
25 notice, the voting tabulation and results. I thought maybe

1 we could talk about Class 6. We could do that now or later.

2 THE COURT: I think that we could do that. At
3 some point in the nearest stages before I hear from those
4 parties that are supportive of the debtor -- again, I note
5 the significant stakeholders that have expressed their
6 support for the plan -- it would be helpful for me to get an
7 understanding of those objections that remain live.

8 I think that the debtors' agenda and the plan
9 structure that's been presented identifies that cure
10 objections, to the extent not resolved, are going to be held
11 in abeyance for a subsequent hearing. I think that's the way
12 the agenda reflected it. That seems to be the way that
13 parties are proceeding. So I don't need to hear from parties
14 on cure objections on the reservation of their rights. I
15 would expect that those rights are reserved consistent with
16 the debtors' representations.

17 With respect to the objections that are going to
18 be prosecuted today -- so I think I'd take your lead on, at
19 least, identifying the --

20 MS. GOLDSTEIN: Yes, we can do that.

21 THE COURT: -- balloting process and the current
22 status of the balloting.

23 Before I think I hear from the folks in support
24 I'd like to, at least, understand what remains contested for
25 purposes of this hearing, does that sound fair?

1 MS. GOLDSTEIN: Yes, Your Honor. That does sound
2 very fair.

3 The other thing I would point out is in my
4 description of the TCC/FCR settlement I did not describe,
5 because I was going to defer to Ms. Boelter, the channeling
6 injunction which, of course, is an integral part of that
7 settlement.

8 THE COURT: I'm aware.

9 MS. GOLDSTEIN: So Ms. Boelter can describe that
10 now before I go to the solicitation and voting or she can
11 discuss that when she speaks in support of the plan.

12 THE COURT: I actually think for purposes of the
13 record and, again, acknowledging that this has been moving
14 pretty quickly, I'm not faulting anyone, but pleadings have
15 been coming in fast and furious. So I think this actually
16 might be a good opportunity since we're, essentially, laying
17 the groundwork of the debtors' ultimate request and the
18 nature of the relief that's being sought.

19 I think this might actually be a good time to
20 ensure that the record in terms of a description of the
21 channeling injunction which is, again, described in the
22 disclosure statement, in the memorandum and then in the
23 declarations as well, but that it's also part of today's
24 record more directly.

25 MS. GOLDSTEIN: Yes. And it has changed --

1 THE COURT: I'm aware.

2 MS. GOLDSTEIN: -- in terms of its terms since the
3 disclosure statement.

4 THE COURT: And even since some of the
5 declarations -- or some of the briefings. So I think we can
6 --

7 MS. GOLDSTEIN: So, Your Honor, I would defer now
8 then to Jessica Boelter to describe that; counsel for Honda.

9 THE COURT: Very good. I think that sounds fine.
10 Ms. Boelter, good morning.

11 MS. BOELTER: Good morning. Jessica Boelter,
12 Sidley Austin, on behalf of American Honda Motor Co., and
13 Honda North America.

14 Your Honor, I will try to be brief because I know
15 we may have a lot of ground to cover today. What I'd like to
16 do is start with where we were at, at the disclosure
17 statement hearing. You'll recall at that point the debtors
18 had just filed Exhibit F to the disclosure statement which
19 was, essentially, a summary of the claims that could be
20 channeled as well as a valuation schedule. And at that point
21 in time Exhibit F had the agreement of the initial
22 participating OEM, which is my client Honda, as well as the
23 FCR and the chair of the tort committee.

24 Those parties, as we all know, did not at that
25 time agree to the channeling injunction itself or the terms

1 of the plan. And, indeed, there were members of the tort
2 committee, namely Mr. Esserman on behalf of the MDL
3 plaintiffs, that stood and argued against the channeling
4 injunction. But I said at that time and I'm happy to report
5 that we made it, that I hoped by the time we got to the
6 confirmation hearing the channeling injunction would be fully
7 consensual. In our view it is. It is, as Ms. Goldstein
8 said, an essential feature of the plan or reorganization
9 that's before the court. It was the vehicle for achieving
10 global settlement here.

11 In large part that structure remains unchanged
12 from what was before the court at the disclosure statement
13 phase; in other words, at that point, and even prior to that,
14 I made it well-known to the court and to plaintiffs that the
15 channeling injunction was not intended to provide a general
16 release of consenting OEM's and it was not intended to be a
17 non-consensual release. Rather, it was only intending to
18 release and channel claims against those OEM's that wanted to
19 participate.

20 At the disclosure statement phase there was one,
21 again, that was Honda. As I stand here today there still
22 remains only one and that's Honda; however, as I described at
23 the disclosure statement the parties were in the process of
24 negotiating an extended opt-in period with respect to the
25 channeling injunction. That extended opt-in period, you

1 probably saw it described in the term sheet, it's now in the
2 fourth amended plan. It's being baked into the trust
3 agreement as well. That was a key component of the
4 negotiations between the consenting OEM's on the one hand and
5 the tort claimant's committee and FCR on the other.

6 The initial version of the plan I think had, sort
7 of, a loose description of this opt-in period. Now there's
8 an initial opt-in period which is 18 months and then for
9 those consenting OEM's that do not have, what I'll call,
10 claims history at all with respect to PSAN PI/WD claims they
11 can exercise an extended opt-in. Now that extended opt-in
12 expires from the earlier of four years after the expiration
13 of that initial opt-in period that I described and 45 days
14 after what is called the opt-in trigger event.

15 Now you'll recall the OEM's that can take
16 advantage of this extended opt-in period; these are folks
17 that don't have any experience in the tort system. The opt-
18 in trigger event occurs if that particular OEM has three
19 suits that are filed with respect to that OEM and the third
20 one is not dismissed within 60 days. There's a 45-day period
21 of time that runs from the conclusion of that 60 days for the
22 OEM to opt-in.

23 In addition, as consideration for that extended
24 opt-in period there's an option cost to that. That cost is
25 \$10 million dollars, but the consenting OEM essentially

1 receives a dollar for dollar credit for the value of
2 contributions they've made in connection with the global
3 settlement. So that's a change from what you saw at the
4 disclosure statement phase.

5 The payment mechanic with respect to the
6 channeling injunction remains unchanged. It's still, as I
7 described it, a pay as you go structure. There is no
8 aggregate cap with respect to a participating OEM's
9 obligations; that's unchanged.

10 The governance is largely, as I described it, at
11 the disclosure statement phase. Eric Green will be the
12 trustee, Roger Frankel will be the future's representative
13 with a continuing role in the post-effective date trust,
14 there will still be a trust advisory committee with the
15 governance rights as they were described at that time --

16 THE COURT: I recall.

17 MS. BOELTER: -- and we will still have an OEM
18 advisory committee. The one modification to the OEM advisory
19 committee is the fact that because we now have significantly
20 additional consideration going into the settlement fund and
21 ultimately the trust we've made accommodation for non-voting
22 observer members on the OEM advisory committee which would be
23 non-participating OEM's.

24 With respect to the injury schedule and valuation
25 matrix that was reflected in Exhibit F to the disclosure

1 statement that has been incorporated into the trust
2 distribution procedures with respect to participating OEM's.

3 With respect to claims that are asserted against
4 the Takata debtors, rather than utilizing the complicated
5 valuation matrix that is more appropriate for a participating
6 OEM that's paying the full value of claims the tort
7 committee, the FCR and the consenting OEM's agreed that the
8 point schedule that Professor Green is using in his capacity
9 as special master for the DOJ restitution fund that that
10 point schedule would be used in determining pay-outs on
11 account of Takata claims. So that's a change that I think
12 will have appeared in the TDP's that were filed.

13 Finally, there is a section in the plan, in 5.10,
14 that provides for a reserve mechanic with respect to the
15 trust itself. That reserve mechanic was put into place to
16 ensure that consenting OEM's were not, essentially, having
17 their contributions to the settlement fund disproportionately
18 depleted by claims that were asserted with respect to another
19 OEM's vehicles. It's a long paragraph in the plan. I'm
20 going to give you a couple of bullets for purposes of the
21 record.

22 THE COURT: Okay.

23 MS. BOELTER: In short, two thirds of a
24 contribution that's attributable to a particular consenting
25 OEM may only be used for that particular consenting OEM's

1 claims or claims involving that consenting OEM's vehicles for
2 the first three years. For year four the reserve for that
3 consenting OEM's vehicle claim would be reduced by half.
4 Year five it gets reduced by a third. And thereafter, year
5 six, it gets eliminated.

6 So with that the documents that are before the
7 court reflect what we believe is a fully consensual
8 channeling injunction.

9 As Ms. Goldstein said, we can argue the legal
10 points later. I understand you want to hear from the
11 objections. So I would just like to reserve with respect to
12 that issue.

13 THE COURT: Of course. Yeah, I didn't think -- I
14 realize that there are, obviously, factors and standards
15 starting with Continental and then from its progeny that both
16 the debtors and the OEM's have briefed and that the
17 objections raise as well, but we'll get to them in due
18 course. I just think it's important that everybody
19 understand what the landscape is.

20 MS. BOELTER: Very well, Your Honor. Thank you.

21 THE COURT: Thank you.

22 Mr. Bowden.

23 MR. BOWDEN: Good morning, Your Honor. Bill
24 Bowden of Ashby & Geddes on behalf of Roger Frankel, the
25 future claimant's representative.

1 I thought Your Honor might be interested in
2 hearing the future claimant's representative's view with the
3 channeling injunction since it's such an integral part of
4 this case from the standpoint of future PSAN PI/WD claims.

5 THE COURT: Okay.

6 MR. BOWDEN: As Your Honor -- as we lay out, Your
7 Honor, in Mr. Frankel's declaration, when we started this
8 process Mr. Frankel did not support the channeling
9 injunction. The negotiation of the channeling injunction has
10 been arduous. Mr. Frankel believes and I believe it is fully
11 fair and equitable, appropriate and justified by the
12 circumstances of the case.

13 Your Honor, I'd just like to reserve some time, if
14 necessary, at the end of the day to make closing remarks and
15 respond to any arguments.

16 THE COURT: So noted. Thank you.

17 All right. Ms. Goldstein.

18 MS. GOLDSTEIN: Thank you, Your Honor.

19 Your Honor, before getting to the state of the
20 objections I will address the solicitation and voting.

21 THE COURT: Okay.

22 MS. GOLDSTEIN: And refer to Ms. Pullo's corrected
23 declaration. In that declaration it indicates that Classes 3
24 through 7 were entitled to vote on the plan. The declaration
25 indicates that Classes 3, 4, 5 and 7 all voted to accept the

1 plan and they have also done an alternative tabulation
2 showing the classes. If you do not count the vote of the
3 Commonwealth of Puerto Rico as a Class 6 claim that Classes
4 3, 4, 5, 6 and 7 all voted to accept the plan.

5 If you look at the original tabulation that
6 indicates Class 6 voted to reject the plan, as we've already
7 indicated, we do not think that's the entire story. Class 6
8 would be shown to reject the plan because of one vote cast by
9 the Commonwealth of Puerto Rico. This happened to have
10 occurred during the extended voting period and it seeks an
11 amount of nearly 1.8 billion in civil penalties, restitution
12 and disgorgement of claims for alleged unfair and deceptive
13 acts or practices in trade or commerce.

14 Your Honor, we looked at --

15 THE COURT: Is it the debtors' position that
16 belongs in Class 9 with subordinated claims?

17 MS. GOLDSTEIN: Yes. It is, Your Honor.

18 THE COURT: I understand.

19 MS. GOLDSTEIN: By its own terms, Your Honor, it
20 is within the definition. We reviewed the claim and its
21 description that it indicated as the basis for the claim and
22 by its own terms we believe, as Your Honor understands, that
23 it's within the definition of Class 9 subordinated claims.

24 If you do not count that very large claim the
25 result is that Class 6 at TKH approves the plan

1 overwhelmingly with 92.14 percent in amount and 87.5 percent
2 in number voting to accept the plan. These are numbers that
3 I don't think can be ignored. And, again, have also been
4 certified in alternative tabulation in the declaration filed
5 by Prime Clerk, Ms. Pullo.

6 The rationale for subordinating the other states'
7 claims, which we will discuss later, are equally applicable
8 to the Puerto Rico claim because it is a civil penalty. We
9 have discussed the civil penalty argument in our memorandum
10 and we'll address that later as needed.

11 The bottom line, Your Honor, we do not believe
12 that the filing -- excuse me, not the filing, the voting of
13 that claim should be determinative of the indication of how
14 Class 6 votes particularly since the other votes in Class 6
15 show overwhelming support for the class.

16 THE COURT: I understand the argument.

17 MS. GOLDSTEIN: If needed, Your Honor, we can also
18 meet the cram-down test under 1129(b). That is briefed as
19 well.

20 THE COURT: As I understand it, just to ensure
21 that I'm proceeding under the right analysis, if the debtors'
22 request that the court treat the Puerto Rico claim as a Class
23 9 claim, if the court accepts that argument, then the debtors
24 are not proceeding under 1129(b) because each --

25 MS. GOLDSTEIN: Yes, we would have no rejecting

1 class throughout all the classes in terms of every debtor.

2 THE COURT: Okay. I understand.

3 MS. GOLDSTEIN: Okay. In terms of the objections,
4 to get to what's left, just a note on the cure objections. I
5 know you've mentioned earlier that anything on cure will be
6 adjourned for a later hearing, but I would point out that we
7 had received 25 cure objections. So far 15 have been
8 resolved and I think we'll keep working at that. I'm hoping
9 you don't have to have a hearing and that we resolve teh rest
10 of them, but progress is being made.

11 THE COURT: I've observed before that I've never
12 actually conducted a cure hearing so I'm relying on you
13 people.

14 (Laughter)

15 MS. GOLDSTEIN: And the judge is relying on us.

16 So, Your Honor, I'm not even sure I previously
17 mentioned that 27 objections were filed to the plan
18 confirmation and, by the way, the parties with whom we were
19 negotiating the various settlements held back their
20 objections. So those 27 were beyond those who might have
21 filed if we didn't come to settlements.

22 We believe that all but three objections have been
23 consensually resolved. One of the three may incorporate some
24 multiple objections, but I'm lumping together the attorney's
25 information exchange with several of the plaintiffs who

1 followed their lead. So it's, I would say, three categories
2 perhaps would be a better description of the objections left.

3 The three, as we just mentioned, the AIEG
4 submission and certain plaintiffs that followed them, the
5 objection of the states of Hawaii, New Mexico, and the
6 Government of the US Virgin Islands and the objection of the
7 whistleblowers. As I mentioned before, we covered those in
8 our briefs. I don't plan to make opening statements unless
9 the court requests that I do so.

10 THE COURT: Was the -- I guess I have one specific
11 question; was the objection of the United States Trustee
12 resolved?

13 MS. GOLDSTEIN: Yes, Your Honor.

14 THE COURT: It went to exculpation and release
15 issues. And the debtors' statement with respect to
16 modification as to exculpation deemed it likely to resolve
17 the trustee's concerns.

18 MS. GOLDSTEIN: Yes. The trustee's concerns have
19 been resolved. We agreed to remove the consenting OEM's from
20 the definition of exculpated parties and any other issues
21 that the U.S. Trustee had, he indicated to us, were resolved
22 by our submissions.

23 THE COURT: All right. Ms. Leamy.

24 MS. GOLDSTEIN: And he's withdrawn.

25 MS. LEAMY: Good morning, Your Honor. Jane Leamy

1 for the U.S. Trustee.

2 Ms. Goldstein is correct. The fourth amended plan
3 removed the consenting OEM's from the exculpation clause.
4 And based on the memorandum of law and the supporting
5 declarations that were filed our concerns with respect to an
6 evidentiary record further releases are satisfied.

7 THE COURT: All right. Thank you.

8 Okay. Here's what I'd like to do; I think I'd
9 like to take just a five-minute break right now and I'd like
10 to hear from the objectors, but during the break I'd like
11 confirmation between the parties whether or not there's an
12 expectation to proceed by way of legal argument as to the
13 issues that are there or is there an expectation that parties
14 wish to cross-examine witnesses or introduce their own
15 witnesses and testimony.

16 Again, I want parties -- given that this has been
17 moving so quickly I think that report and the layout that's
18 been provided by Ms. Goldstein and Ms. Boelter, at least,
19 make sure that everybody knows where we are right now, but I
20 would like to, at least, have some understanding of where
21 we'll go from now.

22 Mr. Macauley, did you wish to address the court?

23 Good morning.

24 MR. MACAULEY: Good morning, Your Honor. Thomas
25 Macauley on behalf of the states of Hawaii and the United

1 States Virgin Islands. I'm also here on behalf of the
2 Commonwealth of Puerto Rico.

3 THE COURT: Okay.

4 MR. MACAULEY: I don't believe the state of New
5 Mexico is in attendance, but the objection was filed jointly.

6 THE COURT: Of course. And I would consider that
7 objection on the merits.

8 MR. MACAULEY: I thought it made sense before we
9 take a break just so I can sort of short circuit a little bit
10 of that for you.

11 THE COURT: Okay. Sure.

12 MR. MACAULEY: You know, 10 days ago the states
13 raised objections that could sort of be characterized in two
14 cans; one would be attacking the transaction and the second
15 one would be, sort of what I would call, preserving rights.
16 And there were other objections that we could have raised
17 after we saw the term sheets that would, you know with the
18 estate fiduciaries, deal with the transaction.

19 The states have decided on their own that, you
20 know, look, everyone is in support of the transaction, we're
21 not going to seek to mess with the transaction. So that's
22 why we didn't object to the admission of the declaration.

23 THE COURT: Okay.

24 MR. MACAULEY: We're not going to have cross
25 examination of the witnesses.

1 THE COURT: Okay.

2 MR. MACAULEY: And we are withdrawing all our
3 objections save two. So I thought this would be useful
4 before we took a break.

5 THE COURT: No. This is helpful. I appreciate
6 it. Thanks.

7 MR. MACAULEY: One is the proposed subordination
8 of the states' claims for civil penalties.

9 THE COURT: Okay.

10 MR. MACAULEY: As I'm sure you're aware from our
11 various hearings in the past those claims comprise two
12 different elements; civil penalties and restitution.
13 Secondly, relief from the plan and the discharge injunctions
14 to allow the states to continue to prosecute their pending
15 actions without the need to obtain relief by motion practice.

16 THE COURT: Okay.

17 MR. MACAULEY: Those are the two issues. We --
18 since we filed our plan objection, actually, no one ever
19 reached out to us to try and resolve our objections. So I
20 actually came up with a construct at six p.m. last night --

21 THE COURT: You going to bounce it off of me
22 first?

23 (Laughter)

24 MR. MACAULEY: I'm not going to bounce it off you
25 first, but what I'm saying is it would have resolved the

1 states' objections and it would have changed the vote of
2 Puerto Rico from a rejection to an abstention.

3 THE COURT: We're going to take a break. I said it
4 was five minutes, but that could be a lawyer's five minutes.

5 MR. MACAULEY: Absolutely.

6 THE COURT: And I certainly would invite you to
7 have that discussion. Obviously, the settlement that Ms.
8 Goldstein identified that's been reached between various
9 attorney's general and the debtor is not before the court
10 today, but as a practical matter I've raised that question
11 before in arguments involving the states about what's the
12 position of the other states.

13 So while that settlement does not bear or that
14 proposed settlement doesn't bear on the issues that are
15 before me today I think I, at least, need to understand some
16 context between the position of your clients which I would
17 include, obviously, New Mexico and Puerto Rico for purposes
18 of that discussion if you wish and, sort of, understand how I
19 approach that in light of, at least, the status of similarly
20 situated entities because that was part of the concern that I
21 articulated back in August at the original hearing about
22 concerns with respect to the states and the prospect of not
23 dealing simply with three states that were pursuing, what I
24 acknowledged were, legitimate concerns and protectable
25 interests, but the prospect of 47 states piling on after

1 that.

2 So I would invite you to have those discussions.
3 There may be ways to skin this cat. And I'm certainly
4 prepared to afford parties an opportunity.

5 I appreciate you, frankly, putting some context on
6 it before we took our break because, again, I want the time
7 to be used productively.

8 Ma'am, did you wish to be heard?

9 MR. MORRIS: Your Honor, may the Texas Attorney
10 General be heard briefly after the break when you're
11 finished?

12 THE COURT: Of course, Mr. Morris. Good morning.

13 MR. MORRIS: Thank you. Good morning, Your Honor.

14 THE COURT: Yes, ma'am.

15 MS. RICHENDERFER: Good morning, Your Honor.

16 Linda Richenderfer from Klehr Harrison Harvey Branzburg on
17 behalf Automotive Coalition for Traffic Safety.

18 Your Honor, our objection is at docket item number
19 1948.

20 THE COURT: I've seen it.

21 MS. RICHENDERFER: I just wanted to clarify for
22 the record that we have reached an agreement that that
23 objection will be put off until the March 26th omnibus
24 hearing. So just so that it's clear it's not a resolved
25 objection, but for purposes of today's hearing it is being

1 put off to another date.

2 THE COURT: So noted.

3 All right. So why don't we take a five-minute
4 break or longer and then we'll reconvene shortly. I
5 appreciate everyone's patience. We stand in recess.

6 (Recess taken at 11:11 a.m.)

7 (Proceedings resume at 12:10 p.m.)

8 (Call to order of the Court)

9 THE COURT: Please be seated. Ms. Goldstein, good
10 afternoon.

11 MS. GOLDSTEIN: Your Honor, I'm sorry we took so
12 long. It was attorneys plus five minutes.

13 Unfortunately, while there have been discussions
14 with Mr. Macauley, in particular, and some of his colleagues,
15 we do not have, at least, at this time any resolution with
16 the liquidating states.

17 THE COURT: Okay.

18 MS. GOLDSTEIN: We did hear during the break that
19 the attorney information exchange group wishes to cross
20 examine several witnesses: Mr. Bowling, Ms. Pullo, and Mr.
21 Fleming.

22 Your Honor, it's unclear to me that AIEG is a
23 creditor in this case or has standing. I know they know a
24 lot about the tort system, but I would object if the cross
25 examination is simply on behalf of this group.

1 THE COURT: Okay. I'll hear from --

2 MS. GOLDSTEIN: One other thing, Your Honor, I
3 don't want to forget.

4 THE COURT: Yeah.

5 MS. GOLDSTEIN: No one has requested a cross
6 examination of Mr. Perkins. And with the court's permission,
7 and maybe we should, you know, just check to make sure that
8 my understanding is correct, I would like Mr. Perkins to be
9 able to leave for the rest of the day.

10 THE COURT: I think that that would be fine. I
11 would ask -- well we'll deal with the request to cross
12 examine. And, again, I've admitted Mr. Perkins declaration.
13 It's on a specific narrow, admittedly important, area, but if
14 nobody wishes to cross examine Mr. Perkins, then I would be
15 certainly inclined to permit him to depart.

16 Mr. Cianciulli.

17 MR. CIANCIULLI: Your Honor, thank you. Thank you
18 again for your time. Jeffrey Cianciulli appearing on behalf
19 of two distinct claim objectors to attorney's information
20 exchange group and also certain, I believe, undisputed
21 creditors and parties in interest in the case. And, so, the
22 anticipated cross examination, limited as it will be, is not
23 solely on behalf of the AIEG.

24 THE COURT: Okay. I would find -- I would be
25 prepared to find that AIEG does not have standing. I know

1 that they have appeared previously in this matter and I think
2 I heard them in connection with certain other matters. It's
3 usually my practice to consider a standing objection, hear
4 what somebody has to say, and then make a ruling either on
5 the merits or on standing at the end, which I think was Judge
6 Walsh's favorite approach.

7 But given that I have seen the objections that
8 were filed, and I believe you were counsel for AIEG and also
9 for the individual creditors, and the debtor, I believe,
10 noted in the debtors' response to the objections that they
11 believe that while AIEG might not have standing, the debtors'
12 memorandum, I think, noted that decision was taken to have
13 identical pleadings or effectively identical pleadings.

14 So, I would permit the examination of the witness
15 as requested and consistent with the stipulation that the
16 court made at the outset.

17 But before we do that, I would actually like to
18 have an understanding of where the -- because I think we're
19 in some ways, we've covered a lot of ground, but we're still
20 -- the debtor has not rested. And part of the colloquy is to
21 confirm for me and for people in the courtroom what the game
22 plan is for the balance of the day, so we know where your
23 clients stand, Mr. Cianciulli.

24 MR. CIANCIULLI: Your Honor, just --

25 THE COURT: Yeah.

1 MR. CIANCIULLI: -- let me be clear that to the
2 extent the court previously ruled on AIEG's standing, and I
3 missed it on the docket, I apologize --

4 THE COURT: I don't know that I did.

5 MR. CIANCIULLI: I don't believe that you did, but
6 --

7 THE COURT: I may not have. I know that the issue
8 was raised, and my guess I probably ducked it.

9 (Laughter)

10 MR. CIANCIULLI: And that was prior to my
11 representation of the entity, so I'm not sure that I went all
12 the way back on the date range search.

13 THE COURT: That's fine. No apologies necessary.
14 The fact of the matter is that an objection has been filed by
15 you on behalf of certain claimants alleging injuries. And,
16 so, we'll deal with the witnesses at the appropriate time,
17 but we're not going to call those witnesses right now.

18 I'd like to know where we are with other objectors
19 and we'll go from there.

20 MR. CIANCIULLI: In the back of the room.

21 THE COURT: Very well.

22 MR. MORRIS: Your Honor, at some point may the
23 Texas Attorney General ask an inquiry?

24 THE COURT: Mr. Morris, this would be an ideal
25 time.

1 MR. MORRIS: Thank you, Your Honor. For the
2 record, Hal Morris, Assistant Attorney General for the state
3 of Texas.

4 Your Honor, separate and apart from the Consumer
5 Protection matters that Your Honor has been dealing with, as
6 the court is probably aware, and it appears on page 10,
7 letter (h) as in Harmony, the state of Texas filed a formal
8 objection to confirmation. We also filed an adversary and a
9 motion for partial summary judgment.

10 I'm certainly pleased to advise the court that
11 matter is resolved. And it is unclear from looking at the
12 agenda that was filed at 1:00 a.m. this morning that it
13 doesn't seem to note that that -- and this is true probably
14 for a lot of them -- that that objection has, in fact, been
15 resolved and I would appreciate if Ms. Goldstein or someone
16 else could inform us at what point in these proceedings those
17 objections will be taken up and the settlements will be
18 announced.

19 That was my only sort of point of housekeeping,
20 and thank you, Your Honor, for your time.

21 THE COURT: All right. Thank you, Mr. Morris.
22 Ms. Goldstein.

23 MS. GOLDSTEIN: Yes, that objection has been
24 resolved, and we hadn't gotten to our recitation of the
25 resolved objections and the language. Particularly, Mr.

1 Morris requested language that would be in the plan, so --

2 THE COURT: Right, we'll have a time I think when
3 we go through all of the resolved objections to the extent
4 that representations need to be made on the record. I know
5 that there are a lot of moving parts to that. My guess,
6 there are representations in the proposed form of order
7 that's presumably being worked on or on the record this
8 afternoon.

9 But I had seen in your brief, as well as on the
10 agenda, and then on the agenda chart, which had the green,
11 yellow, red, which I have not seen before, but which was
12 pretty creative for green is resolved, yellow is under
13 discussion and red was not resolved, so. I don't think I've
14 seen that before.

15 MS. GOLDSTEIN: I've only seen that in figure
16 skating competitions.

17 (Laughter)

18 THE COURT: Okay. So, as I said, I will afford an
19 opportunity to cross examine as requested and as reserved,
20 but I think right now, I'd like to hear from counsel for the
21 whistleblowers.

22 MS. GOLDSTEIN: Your Honor, one further request
23 now that we have discussed Mr. Perkins. No one has requested
24 to cross examine Mr. Yearly and Vasquez. So, I'd like to
25 confirm that. And if they have obligations I would like to

1 request that they be permitted to leave.

2 THE COURT: I think that's a fair request.

3 Is there anyone in the courtroom that wishes the
4 opportunity to cross examine either -- well, we'll start with
5 Mr. Perkins.

6 (No verbal response)

7 THE COURT: Very well, the court has admitted Mr.
8 Perkins declaration and that is admitted without challenge.

9 (Declaration of Mr. Perkins, received into evidence)

10 THE COURT: If Mr. Perkins schedule requires him
11 to depart, he is welcome to do so. He has leave of court.

12 The next one was, I believe, with respect to --
13 did you say Mr. Yearley?

14 MS. GOLDSTEIN: Yes, Your Honor, Mr. Yearley and -
15 -

16 THE COURT: Again, the same inquiry. Does anyone
17 request the opportunity to cross examine Mr. Yearley
18 regarding the matters that are contained in his declaration?

19 (No verbal response)

20 THE COURT: Very well, that declaration, as noted
21 as previously been admitted and it is admitted now with out
22 opposition. And, again, if Mr. Yearley's schedule requires
23 him to depart, he has leave of court to do so.

24 And the last one, I believe, was Mr. Vasquez.

25 MS. GOLDSTEIN: Yes, Mr. Vasquez.

1 THE COURT: And does anyone wish to cross examine
2 Mr. Vasquez regarding the contents of his declaration and the
3 exhibits thereto?

4 (No verbal response)

5 THE COURT: Very well. Mr. Vasquez's declaration
6 has been previously admitted and is admitted now without
7 opposition or contradiction. If Mr. Vasquez's schedule
8 requires him to depart, he has leave of court to do so.
9 Okay.

10 Ms. Miller.

11 MS. MILLER: Yes, Your Honor, just you're asking
12 for a status?

13 THE COURT: Yeah, I think a status because it
14 seems to me the best way to deal with this is to understand
15 the status of the different objections, whether or not
16 parties are looking to cross examine witnesses or present
17 argument following on their objections, all of which I've
18 seen. And then we can figure out the most coherent path
19 forward.

20 At that point then, Mr. Cianciulli's comments was
21 that he expected that his examination would be relatively
22 brief and we'll see. But at the conclusion of that, then I
23 would move to substantive argument on the various objections
24 once we're clear that there's no additional evidence or
25 testimony to be elicited.

1 So that's kind of where I am right now, so if you
2 can give me a location check, that would be good.

3 MS. MILLER: Your Honor, we're not resolved. It's
4 just legal argument. We do not plan to call a witness or
5 present any other evidence.

6 THE COURT: All right, thank you, Ms. Miller.

7 Mr. Chipman, also on -- this is for whistleblower
8 C I think, right?

9 MR. CHIPMAN: Yes, Your Honor.

10 We have joined in the objection of whistleblower's
11 A & B and same thing.

12 THE COURT: Very good. Okay.

13 MR. CHIPMAN: Thank you, Your Honor.

14 THE COURT: Okay. And I think I'd like to just
15 confirm with Mr. Macauley.

16 I understand the state's objection are not
17 resolved. Is it your expectation these would be presented by
18 way of argument on the issues that I think you identified,
19 which were subordination and the discharge issue and the
20 reserved claims?

21 MR. MACAULEY: Yes, that is correct.

22 THE COURT: All right, then at this point, Ms.
23 Goldstein, unless you think it makes sense to proceed in a
24 different way, I think we would turn to the witnesses that
25 are to be called.

1 MS. GOLDSTEIN: We agree, Your Honor.

2 THE COURT: Mr. Cianciulli.

3 While he's making his way up, I know that the
4 declarations have been admitted and I have reviewed all of
5 the declarations. It's my practice when we use these kinds
6 of declarations that if the witness just wants to be sworn in
7 and proceed directly to cross examination that's fine. If
8 counsel wishes the opportunity to examine on direct the
9 witness, I would give an opportunity to do that, mindful that
10 I have read the affidavit, so I'm really at your pleasure.

11 MR. TSEKERIDES: No, we can leave them just --
12 good afternoon, Ted Tsekerides for the debtors. No, we'll
13 just stand on the declarations and then we'll deal with any
14 redirect.

15 THE COURT: Okay. And which is the witness that
16 you would be calling, Mr. Cianciulli?

17 MR. CIANCIULLI: Your Honor, I think I'd like to
18 call Ms. Pullo.

19 THE COURT: All right. All right, Ms. Pullo, if
20 you'd remain standing, please; place your hand on the Bible
21 and we'll swear the witness.

22 CHRISTINA PULLO, WITNESS, SWORN

23 THE CLERK: Please state and spell your name for
24 the record.

25 THE WITNESS: Christina Pullo; C-H-R-I-S-T-I-N-A,

1 Pullo, P-U-L-L-O.

2 THE COURT: Ms. Pullo, you've been in the
3 courtroom, so you're aware that your declaration has been
4 admitted. I believe the debtor has also filed a revised
5 declaration. If they're not at the witness stand now, then I
6 think it would be appropriate to get copies to Ms. Pullo.

7 UNIDENTIFIED SPEAKER: Inaudible.

8 THE COURT: Sure. Is this the revised:

9 UNIDENTIFIED SPEAKER: Yes.

10 THE COURT: Okay. I have the other one.

11 And, again, before Mr. Cianciulli gets going,
12 whether it's Ms. Pullo or Ms. Goldstein that would just
13 explain to me, I think you described the changes in the
14 revised one as non-material for purposes of the results of
15 the voting. Can you, at least, tell me what the change was?

16 Ms. Pullo.

17 THE WITNESS: Sure. In the first column of the
18 Exhibit A, the number accepting was the total number of
19 voting, instead. It didn't change the class results, but it
20 was just a transposing and we brought it over from the Excel
21 spreadsheet and that has been fixed.

22 THE COURT: Okay. All right, I appreciate the
23 clarification.

24 Mr. Cianciulli, you may proceed.

25 MR. CIANCIULLI: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. CIANCIULLI:

3 Q Ms. Pullo, I have some questions for you with regard to
4 your declaration and the exhibit attached to it as it relates
5 to certain of my clients. Now, they may have been tabulated.

6 What process, if any, did Prime Clerk undertake to
7 determine whether a particular claim would receive a ballot
8 in a particular class?

9 A Sure. Depending on the claim, as you know the bar
10 dates for these cases were, particularly for the PIC, was
11 December 27th and the voting record date is January 3rd.

12 So, based on the information we had at that time, we
13 did an initial, very preliminary analysis, depending on based
14 how people filed their proofs of claim to put people into
15 particular classes for the solicitation mailing. Thereafter,
16 we would send very detailed lists of all of the voting
17 parties in each of the classes to debtors and their paid
18 professionals who would then, now that they've had a more
19 fulsome time to review everything, would provide us with
20 updates to move classes now that the actual claims could be
21 more fully reviewed given the time in between the bar date
22 and the solicitation.

23 Q As it relates to that initial review that you said we,
24 were you personally involved with that review?

25 A I was personally involved. My team in coordination

1 with the debtors' professionals and -- the debtors'
2 professionals to that initial review to get -- we had, I
3 think it was until, you know, a few days after the order was
4 entered to get the solicitation materials out, so we did the
5 review in that. And then, thereafter, as I said, it would be
6 refined based on updates received from counsel professionals
7 to move classes once more a fulsome review of the claims
8 could be done.

9 Q Did the initial review, at least, involve reviewing the
10 proof of claim as filed?

11 A Yes, it did.

12 Q There were particularly for PSAN personal injury.
13 There would people would check off certain boxes on their
14 proofs of claims and that was programmatically done if
15 someone had indicated there were personal injury or economic
16 loss, something like that. We would do an initial -- it
17 would be based on what they put in their proofs of claim just
18 on the face of it.

19 Q Would it matter which type of form of proof of claim
20 was submitted by the creditor?

21 A The --

22 Q That is, would it matter as to how you would
23 characterize by claims the claim?

24 A Well, the PPIC proof of claim form actually had tick
25 boxes for whether it was personal injury or not, so, and PPIC

1 claims were directed to use that proof of claim. So, that
2 was obviously the easiest way to make that determination,
3 because they checked the box.

4 There was if to the extent if PPIC claim used the other
5 proof of claim form, there was a very preliminary analysis
6 done for those claims to put them in. That was later further
7 opined when we had more time to review the actual claims and
8 we received updates from the debtors.

9 Q I am going to hand to you two documents. Actually, one
10 document first. It's a form of proof of claim and I'll --

11 (participants conferring)

12 MR. CIANCIULLI: May I approach, Your Honor?

13 THE COURT: You may.

14 MR. CIANCIULLI: Counsel, you okay?

15 UNIDENTIFIED SPEAKER: Yeah.

16 MR. CIANCIULLI: Your Honor, I don't know how
17 we're marking exhibits today, but I can certainly mark it for
18 identification purposes as certain claimant objectors 1.

19 THE COURT: Fine.

20 MR. CIANCIULLI: It's a little long, I know, but -

21 -

22 THE COURT: I think we just call it creditor 1.

23 MR. CIANCIULLI: Creditor 1 is fine.

24 BY MR. CIANCIULLI:

25 Q Ms. Pullo, and I'm sensitive to this issue given my

1 last name, but --

2 A Pullo.

3 Q Pullo. I'll try to do better.

4 Ms. Pullo, if you look at a copy of Claimant's 1, which
5 purports to be a proof of claim airbag inflator related claim
6 by Ms. Kimberly Beaumont or on behalf of Ms. Beaumont, on the
7 second page in box number 9 is that when you indicated there
8 would be a box checked that might relate to personal injury
9 type claims?

10 A Correct.

11 Q And, so, is this the type of claim then that, at least,
12 given your initial review you would expect that claim to have
13 been included in Class V?

14 A Potentially, but not automatically, because there was a
15 review of parties that did check this to see if there was
16 some supporting documentation or otherwise.

17 Q And let me just ask you briefly, because counsel did
18 discuss this issue during the break and we tried to discuss
19 it, at least.

20 Did you have an opportunity to discuss with debtors'
21 counsel this issue before taking the stand?

22 A I just knew that you had -- the personal injury versus
23 Class VI was, the process was going to be questioned. Not
24 anything else.

25 Q So, you had, at least, that discussion?

1 A Yeah.

2 Q But nothing about specifics of claims?

3 A No, no, no.

4 Q Okay. And if, in fact, this claim is a claim that
5 should be classified as a PSAN PI/WD inflator claim, yes,
6 claim, you would expect that claim to have been classified in
7 Class V and receive a ballot in connection therewith?

8 A If it fit the definition of the class PSAN PI/WD then
9 yes.

10 Q Now, difficult, I'm sure, for you to say now, but do
11 you have any idea whether this claim was tabulated in Class V
12 or Class VI?

13 A I do not know this one.

14 Q How would you go about determining?

15 A I would look up the record in a database and figure out
16 what they were ultimately tabulated at.

17 Q To be fair, you certainly wouldn't look to your
18 declaration and be able to determine, right?

19 A No, I would not.

20 Q Because the votes in Class V are tabulated on a class
21 basis rather than a per claim basis?

22 A Correct.

23 Q Okay. And would you, in any event, be in a position to
24 identify the validly executed and submitted ballot as being,
25 at least, the formal ballot that was submitted or sent to

1 claimants?

2 A Would I be able to identify . . .

3 Q Let me ask a foundational question.

4 Did you have any part in formulating what a ballot
5 might look like when sent to a creditor?

6 A Yes.

7 Q Okay. And so, you would recognize if I gave it to you
8 a form of ballot that it might, at least, on the surface look
9 to be a valid ballot?

10 A Correct.

11 Q Okay.

12 MR. CIANCIULLI: May I approach the witness,
13 again, Your Honor?

14 THE COURT: Yes.

15 MR. CIANCIULLI: We'll mark the exhibit, Your
16 Honor, as Claimant 2 for identification purposes.

17 THE COURT: Creditor 2.

18 MR. CIANCIULLI: Creditor 2 for identification
19 purposes.

20 BY MR. CIANCIULLI:

21 Q Ms. Pullo, the document I've handed to you and marked
22 for identification purposes as Creditor 2 is a true and
23 correct form of a Class VI ballot, is it not?

24 A Yes, it is.

25 Q And does it purport to be the ballot submitted by or on

1 behalf of Kimberly Beaumont?

2 A Based on this document?

3 Q Based on that document, that's all we have.

4 A Yes.

5 Q And, of course, you would have a process by which you
6 could investigate whether this claim was classified for
7 voting purposes or tabulated for voting purposes in Class V
8 or Class VI, correct?

9 A Yes.

10 Q But you don't have any idea today why it's a Class VI
11 versus a Class V claim?

12 A No, we didn't make those determinations.

13 Q What about the proof of claim, based on your initial
14 review of the claims as they would come in, is there any
15 reason to believe that the claim as submitted would be
16 immediately identified as a Class VI claim and not Class V
17 claim?

18 A Not immediately, but there was analysis done before
19 ballots went out regarding whether something for personal
20 injury or Class V versus Class VI given the time that we had
21 to do that.

22 Q But you didn't --

23 A I did not do that.

24 Q And Prime Clerk did not do that?

25 A Prime Clerk provided lists and then they were reviewed

1 in the time that we were given and then ballots went out.

2 And then, like I said, they were further refined, depending
3 on whether additional review was done.

4 Q Generally speaking, what was the process after your
5 review, as you understand it, for determining if a claimant
6 had previously been identified as in Class A and was going to
7 be changed to a different class, what was that process?

8 A Well, I can only explain the process from Prime Clerk's
9 position and that was --

10 Q That's all I can ask.

11 A -- and that was to provide the list of voting parties
12 in each of the classes to the debtors and the professionals
13 and then they would provide us updates back. So, it was as
14 simple as that. We were not having any involvement in
15 whether they were five or six. We were just making the
16 updates based on debtors' review.

17 Q And do you know, even though you weren't involved in
18 the process -- it sounds like you were just receiving
19 instruction from someone representing the debtors.

20 A Correct.

21 Q And who was that someone?

22 A It was a team of associates and professionals.

23 Q So it was counsel.

24 A Counsel.

25 Q Understood; understood.

1 So, does the initial form of the proof of claim in any
2 way in connection with your initial review of how to classify
3 a claim, you or being Prime Clerk's, does that affect how a
4 claim is initially classified? Maybe if I can put some meat
5 on the bone.

6 I understand that there were two separate forms of
7 proof of claim that I'm showing to you, not to identify as
8 exhibits, but just to help you recall.

9 A Yes, I know there's two different. But on the face of
10 this, I could see how it would be, you know it indicates that
11 it's personal injury, but what the person put on the form
12 doesn't necessarily correspond to how it went out after, even
13 the initial review that was done.

14 Q Do you have records with you today that would indicate
15 if someone's voting class had been changed over the last,
16 say, six weeks?

17 A I don't have anything with me.

18 Q Maybe I can make it more precisely.

19 After an initial solicitation package had been sent to
20 a particular creditor.

21 A Yes.

22 Q Are you aware of that ever happening?

23 A Where a person was changed after we sent the initial,
24 yes.

25 Q Correct.

1 A Yes, that did happen.

2 Q In how many instances did that happen, if you know?

3 A I don't know that full number off the top of my head,
4 but it did happen between Class V and Class VI. And then,
5 again, when Class VII was added into the amended plan, we had
6 to obviously populate that. So, we received a list of Class
7 VII as well.

8 Q So, as it relates to Class V and Class VI, can you give
9 me a sense of how many claim classes changed as between
10 creditors of those classes?

11 A I think in the hundreds.

12 Q And let me be fair. I'm only talking about the period
13 after the solicitation packages were mailed.

14 A Yes, I believe in the hundreds, but I don't have the
15 number off the top of my head.

16 Q What notice or mailing would have been provided to your
17 knowledge to those creditors whose class had changed
18 subsequent to solicitation?

19 A If they would have went onto vote, they would have seen
20 a different ballot, but there was no formal notification
21 based on my understanding.

22 Q So, it would simply have been if somebody waited until
23 the extended voting deadline, for example, a day and a half
24 ago and went onto vote, the system would have given them only
25 the option to vote as a creditor in a particular class that

1 had been chosen for them after solicitation?

2 A After the mailing if their record was updated, the
3 database would reflect the proper classification and ballot
4 that they should have received at the beginning of the case.

5 Q To your knowledge, did Prime Clerk receive any
6 communications from any claimants or their representatives
7 questioning as they were trying to vote why their
8 classification had changed?

9 A Yes.

10 Q And do you have a specific example that you can tell
11 the court about?

12 A I can talk about it.

13 Q Let me ask you, did you take --

14 A I don't know the names -- I don't know a name, but we
15 would receive someone to say that I think I'm in Class VI or
16 Class V and say what happened. Then we would say after
17 review of the claim, the plan classification was updated by
18 the debtors and if you have any issues, we, obviously,
19 escalated to counsel.

20 Q And how, if you know, how many claimants who had been
21 solicited as being a member of Class V were changed to Class
22 VI and who contacted you within the last week from today?

23 A I don't know that number, because I'm not the only
24 person that they would contact.

25 Q I understand, but let's talk about just what you know.

1 A I mean maybe fifty. I mean I'm really just -- that's
2 being completely speculative there.

3 Q So, but speculation aside, somewhere around fifty
4 people were changed from Class VI to Class V within a week of
5 the plan without having any notice other than when they
6 reached out to Prime Clerk?

7 A Possibly, but a lot of people wait until the last
8 minute to cast their ballot, so we usually see enough
9 inquiries towards the deadlines.

10 Q Did Prime Clerk maintain any records relating to the
11 identity of those creditors whose class assignment changed
12 during the one week prior to today?

13 A We have lists of all of the updates that were provided
14 to us for changes.

15 Q Do you have those with you today?

16 A No.

17 Q Thank you.

18 MR. CIANCIULLI: No further questions at this
19 time.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. TSEKERIDES:

23 Q Hi, Ms. Pullo.

24 A Hi.

25 Q You were shown Creditor 1, the proof of claim form.

1 Can you just get that in front of you?

2 A Yes.

3 Q Is there any way to tell from this claim form if the
4 vehicle in question had a Takata airbag in it or not?

5 A No.

6 Q You gave some testimony about claim classifications, I
7 guess, being changed. You said hundreds. How many claims in
8 total were actually submitted?

9 A There were close over sixty-thousand claims, I believe;
10 about sixty-thousand -- yeah sixty-thousand.

11 Q And at the end there, you were asked some questions
12 about within the last week or ten days, people might have
13 changed from five to six. Do you know how those people were
14 voting? Were they voting in favor of the plan or against the
15 plan? Do you have any idea?

16 MR. CIANCIULLI: Objection, Your Honor; hearsay.

17 THE COURT: I'll allow it.

18 BY MR. TSEKERIDES:

19 A No, they would just how, you know, I see my ballot, and
20 they have a question on the classification. They wouldn't
21 tell us and it's not a general practice that we ask how
22 people are voting when they're submitting ballots.

23 Q Thank you.

24 MR. TSEKERIDES: I have nothing further, Your
25 Honor.

1 THE COURT: Any recross?

2 MR. CIANCIULLI: Yes, Your Honor, very brief,
3 though, and a comment.

4 Just to be clear, the point of my cross
5 examination for the court is not to suggest that Prime Clerk
6 was somehow asking creditors to vote a certain way.

7 THE COURT: I understand.

8 RECCROSS EXAMINATION

9 BY MR. CIANCIULLI:

10 Q Counsel asked you a question and you responded to there
11 were sixty-thousand votes.

12 A Sixty-thousand claims submitted.

13 Q Sixty-thousand claims submitted. Let's be clear about
14 how many votes were cast in Class V?

15 A In Class V, well there is a 121 in 5(a) --

16 Q Please feel free to refer to your declaration.

17 A Sure. Plus, all of them in five there were a 172, 91,
18 so looks like less than 500, I would say, if I had to
19 eyeball.

20 Q You would agree with me, at least, that fifty votes is
21 approximately ten percent of the total votes cast?

22 A Right, but I also clarify that people were in Class VI.
23 Like six to five, so I can't correlate to the percentages on
24 that.

25 Q Certainly since we don't know who the people are that

1 you received calls, the fifty people, we don't know how they
2 would have voted or did vote.

3 A Correct.

4 Q My point is that as a percentage of a voting class was
5 ten percent, correct?

6 A I just don't think I can make the -- if you're taking
7 the fifty calls for Class V going to the numbers then I'd
8 agree with that. But because they don't match up entirely, I
9 don't know that I can agree with the percentages is what I
10 mean.

11 Q And I understand. I think the question that I had
12 asked, perhaps, inartfully, was how many calls you received
13 in the last week where someone's classification was changed
14 from Class V to Class VI.

15 A Right and I said we got about, you know, calls asking
16 whether it was Class VI to Class V or Class V to Class VI and
17 that was the fifty that I kind of speculated on. So, that's
18 the difference.

19 Q And you don't know the precise distribution today.

20 A No.

21 Q And you don't have any documents with you today to
22 explain to the court what the distribution would have been if
23 those calls --

24 A Correct. And I don't even know if that's the number of
25 calls that I received.

1 Q And, so, we don't have any way of knowing how those
2 calls may have translated into votes that might affect the
3 count on vote, correct? Not as we stand here today.

4 A Right, but just because we got a call doesn't mean they
5 didn't vote.

6 Q Correct. So, we don't know how if those calls resulted
7 in votes how it might have affected voting, because you don't
8 know how they voted.

9 A No.

10 Q Thank you.

11 MR. TSEKERIDES: I have nothing further, Your
12 Honor.

13 THE COURT: Very good.

14 Ms. Pullo, thank you. You may step down.

15 (Witness excused)

16 THE COURT: Mr. Cianciulli, did you have another
17 witness that you were going to call?

18 MR. CIANCIULLI: I do, Your Honor.

19 Your Honor, I want to call the witness who has
20 been identified as an employee of Pricewaterhouse, but I
21 can't remember the name.

22 THE COURT: I believe that's Mr. Fleming.

23 MR. CIANCIULLI: Mr. Fleming, correct.

24 Mr. Tsekerides, same offer. Do you wish to elicit
25 any direct from Mr. Fleming before -- his declaration has

1 been admitted, but I'd make that offer to you if you wish?

2 MR. TSEKERIDES: I appreciate it. No, thank you.

3 THE COURT: Very well.

4 All right -- we'll swear the witness.

5 STEVEN FLEMING, WITNESS, SWORN

6 THE CLERK: Please state and spell your name for
7 the record.

8 THE WITNESS: Steven Fleming; S-T-E-V-E-N, F-L-E-
9 M-I-N-G.

10 THE COURT: Welcome.

11 THE WITNESS: Thank you.

12 CROSS EXAMINATION

13 BY MR. CIANCIULLI:

14 Q Mr. Fleming, good afternoon. Jeffrey Cianciulli
15 appearing on behalf of certain objecting creditors.

16 I have one question for you.

17 MR. TSEKERIDES: Excuse me. Your Honor, would you
18 ask Mr. Cianciulli to speak in the microphone. It's very
19 difficult to hear him.

20 THE COURT: Okay.

21 MR. CIANCIULLI: Not the first time.

22 THE COURT: No problem.

23 BY MR. CIANCIULLI:

24 Q The question is you would agree with me that in your
25 liquidation analysis were the debtors to be liquidated, the

1 OEMs would not receive a distribution on account of their OEM
2 unsecured claims, correct?

3 A I would agree that general unsecured creditors would
4 not receive a distribution under the liquidation scenario as
5 presented in my liquidation analysis.

6 Q And that would include the OEMs?

7 A The OEMs would receive a distribution on account of
8 their adequate protection claim.

9 Q I understand there may be a distinction to the type of
10 claim. My question is a simple one. And if we need to, we
11 can just refer to your declaration and the liquidation
12 analysis. Does your liquidation analysis identify that in a
13 liquidation to these debtors there would be any distribution
14 of property of the debtors on account of OEM unsecured
15 claims? This is a term that's used in your declaration. I'm
16 not making that term up.

17 MR. TSEKERIDES: I'm just going to object to the
18 form, Your Honor.

19 THE WITNESS: I'll repeat the answer --

20 THE COURT: Yeah if you understand the question,
21 you can answer.

22 THE WITNESS: I believe I understand the question.
23 There would be no distribution to any holders of general
24 unsecured claims under the Chapter 7 liquidation scenario.

25 MR. CIANCIULLI: No further questions.

1 THE COURT: Actually, hand on. I want to make
2 sure that I understand and you're welcome to ask further
3 questions.

4 If I understood your comment a moment before, your
5 testimony is that in a liquidation scenario as described in
6 the declaration that I've seen and the liquidation analysis
7 you performed, there would be no distribution to general
8 unsecured claims including general unsecured claims of the
9 OEMs, correct?

10 THE WITNESS: That's correct.

11 THE COURT: All right. But your testimony also
12 said that the OEMs would have adequate protection claims.

13 THE WITNESS: That's correct.

14 THE COURT: And I believe your liquidation
15 analysis identified that there would be a return, based on
16 the adequate protection claims; am I correct in that?

17 THE WITNESS: That's correct. The entire claim of
18 approximately \$284 million dollars would be satisfied under a
19 Chapter 7 liquidation scenario.

20 THE COURT: All right, so it's just different
21 types of claims. All right, I understand your testimony.

22 THE WITNESS: That's correct.

23 THE COURT: I apologize for the interruption.

24 And, Mr. Cianciulli, if you wish to continue your examination
25 or do you have any other questions based on that colloquy,

1 you're welcome to ask.

2 MR. CIANCIULLI: I'll ask the question and we'll
3 see what the answer is.

4 BY MR. CIANCIULLI:

5 Q The plan provides for --

6 THE COURT: You got to use the mike.

7 BY MR. CIANCIULLI:

8 Q The plan provides for certain percentages of OEM, GUC
9 claims to be contributed for the benefit of the trust
10 established for the PSAN PI/WD claimants, correct?

11 A That's my understanding.

12 Q Okay. Is it your understanding that the definition of
13 those claims that we contributed would include not only the
14 OEMs general unsecured claims, but also the types of claims
15 that his Honor asked you to describe?

16 MR. TSEKERIDES: Objection, Your Honor; are we
17 talking about in a liquidation analysis or generally? I'm
18 confused.

19 MR. CIANCIULLI: I'm asking about under the plan
20 now. I'm asking for his understanding of what's being
21 contributed under the plan.

22 MR. TSEKERIDES: But he's here about liquidation
23 analysis. He's not here as a plan expert.

24 THE COURT: If he can -- hang on. If he can
25 answer the question, I think I understand the drift of the

1 question. And, so, --

2 MR. CIANCIULLI: And it's really response to the
3 question that Your Honor asked, which asked about what would
4 be available.

5 THE COURT: Right. Well, I was a little bit
6 uncertain because the colloquy that you just had before I
7 chimed in gave two different answers. And part of it is a
8 question of the type of claim that you're talking about,
9 which was Mr. Tsekerides' concern, because the OEMs have
10 asserted adequate protection claims. They have asserted
11 general unsecured claims. They've got different types of
12 claims.

13 Obviously, an adequate protection claim depends on
14 how you formulate it, but it's likely an unsecured claim but
15 a priority claim under 507 or otherwise. So, there are
16 different types of claims and I just didn't -- I didn't
17 necessarily understand the point that was being made, but I
18 wanted to be clear, at least in my understanding, that in a
19 liquidation scenario, while we can talk about different types
20 of claims, the liquidation analysis performed by Mr. Fleming
21 identified a return to the OEMs in the context of a
22 liquidation.

23 Now, your question now is in the context of the
24 plan claims are being contributed, general unsecured claims
25 are being contributed by the OEMs and I think you're asking

1 the witness if he understands that that's occurring?

2 MR. CIANCIULLI: Right, right, and whether he's
3 opined on whether there would be any value to those under the
4 plan.

5 MS. GOLDSTEIN: Your Honor, it should be Mr.
6 Tsekerides, but the plan speaks for itself as to what --

7 THE COURT: We'll see if Mr. Fleming can answer
8 the question.

9 MS. GOLDSTEIN: That's fine.

10 THE COURT: I think I understand the question.

11 THE WITNESS: Can you please repeat it. I just
12 want to make sure I understand --

13 (Laughter)

14 THE COURT: You're killing me.

15 BY MR. CIANCIULLI:

16 Q In preparing your liquidation analysis, were you asked
17 to -- were you able to determine whether in review of the
18 plan as well -- let me ask you this. Have you reviewed the
19 plan?

20 A I have reviewed iterations of the plan. It has evolved
21 over time.

22 Q Did you make any determination in providing your
23 opinion as to whether under the plan there would be any value
24 to the contributing general unsecured claims of OEMs, not any
25 other type of claim, just the general unsecured claims?

1 A I did not. I looked at the plan and the recovery to
2 general unsecured creditors as a whole and compared that to
3 the liquidation scenario.

4 Q So that was -- it was outside of what you were asked to
5 do?

6 A I didn't specifically look at it, if that's your
7 question.

8 Q Was it outside of what you were engaged to do?

9 MR. TSEKERIDES: Are we talking about for the
10 liquidation analysis or PwC, in general? I mean PwC has a
11 lot of work on the case.

12 BY MR. CIANCIULLI:

13 A Yeah, I'm sorry; I don't understand the question. When
14 you say outside of what I was engaged to do, are you
15 referring specifically to the liquidation analysis or my
16 firm's role as the debtors' financial advisor?

17 Q Well, you're here now. I guess we can ask -- I see no
18 reason why unless Your Honor has --

19 MR. TSEKERIDES: Well, he's here now for the
20 liquidation analysis and what's in his declaration. This
21 would be outside the scope of that.

22 MR. CIANCIULLI: I was prepared to say that I
23 thought it was outside of the scope of his declaration, but
24 now he's indicating that he actually has done work and may
25 have an opinion on it.

1 THE COURT: That doesn't mean -- that means he's
2 being offered as a witness for everything that PwC has done
3 in this question.

4 The question -- I guess, I'd like to ask --

5 MR. CIANCIULLI: I think I can explain why I'm
6 asking, is that what your --

7 THE COURT: Yeah, because is the point here, at
8 least, a question whether to this witness or to the debtor
9 that OEM contribution in the settlement of their general
10 unsecured claims, is your point that, as a practical matter,
11 that's illusory?

12 MR. CIANCIULLI: That it doesn't -- that it is a
13 factor to be taken in consideration in determining whether
14 the debtors have met the standard set forth by the Zenith
15 case and whether the contribution is, in fact, significant.

16 THE COURT: Okay. I understand the point.

17 MR. CIANCIULLI: And, so, I think that the
18 question that I asked originally speaks to that issue, to
19 some extent, and it's within the scope of what he's been
20 presented to testify about today, so I'll withdraw the
21 question.

22 THE COURT: Yeah, I think the point is made and
23 you're welcome to argue that point, because, obviously, the
24 debtors have the burden of demonstrating that any party
25 that's a beneficiary of a release has to meet the applicable

1 factors, which everyone has briefed, so.

2 Whether or not this witness could speak further to
3 it is --

4 MR. CIANCIULLI: I wasn't going to try to square
5 peg in a round hole this witness, Your Honor.

6 THE COURT: Okay. No, I understand the point made
7 and I think we can move forward.

8 Did you have any other questions for Mr. Fleming?

9 MR. CIANCIULLI: No, I do not.

10 THE COURT: All right, Mr. Tsekerides, any
11 redirect?

12 MR. TSEKERIDES: No redirect; no thank you.

13 THE COURT: Mr. Fleming, thank you, sir. You may
14 step down.

15 (Witness excused)

16 THE WITNESS: All right, thank you.

17 THE COURT: Mr. Cianciulli, any other witness?

18 MR. CIANCIULLI: Yes, Your Honor, Mr. Bowling.

19 THE COURT: Mr. Bowling, welcome, sir. Please
20 remain standing. We'll swear the witness.

21 KENNETH BOWLING, DEBTOR, SWORN

22 THE CLERK: Please state and spell your name for
23 the record.

24 THE WITNESS: Kenneth Bowling; K-E-N-N-E-T-H, B-O-
25 W-L-I-N-G.

1 THE COURT: Welcome, sir.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Tsekerides, same offer.

4 MR. TSEKERIDES: Mr. Mastando is handling this
5 one.

6 MR. MASTANDO: Good afternoon, Your Honor, John
7 Mastando, no need for --

8 THE COURT: Okay.

9 MR. MASTANDO: We'll reserve for --

10 THE COURT: Very well.

11 MR. MASTANDO: Thank you, Your Honor.

12 THE COURT: Sure, you'll have that opportunity.

13 MR. MASTANDO: Thank you.

14 CROSS EXAMINATION

15 BY MR. CIANCIULLI:

16 Q Mr. Bowling, good afternoon. Jeffrey Cianciulli
17 appearing on behalf of certain objecting parties.

18 Sir, tell me if you can't hear me as well.

19 Were you involved in your capacity with the debtors in
20 any way in determining what classification, what voting class
21 a particular creditor would be included in?

22 A No, sir; legal counsel did that.

23 Q Sir, isn't it true that the debtors and the plan
24 expressly stated that they intended to move forward with plan
25 confirmation, even if the court does not approve the releases

1 and channeling injunction in Section 10 of the plan?

2 Do you have a copy of the plan in front of you?

3 A No, sir.

4 UNIDENTIFIED SPEAKER: I'm going to object to the
5 form, Your Honor. And if it's in the plan, it's in the plan.
6 I'm not sure if that relates to the witnesses' declaration.

7 THE COURT: The witness's declaration does cover
8 the releases and the factors as an evidentiary matter of
9 testimony, so I'll overrule that objection.

10 And I assume the witness has as copy of his
11 declaration up there. If you want to share the plan with
12 him, you're welcome to do so.

13 BY MR. CIANCIULLI:

14 Q Sir, I'm referring your attention to Section 10.7(f) on
15 page 149 of the plan. Did I, at least, give you the right
16 page, I hope?

17 A Yes, sir.

18 Q Now, in that section, isn't it true that the debtors
19 expressly stated that they intended to move forward with the
20 plan even if the court or district court determines the
21 holders of the PSAN PI/WD claimants have not indicated their
22 acceptance of the CIM releases in a "sufficient number"?

23 A Can you restate the question one more time?

24 Q Sure.

25 MR. CIANCIULLI: May I approach the witness, Your

1 Honor?

2 THE COURT: Of course.

3 (Pause)

4 THE COURT: We're at the bottom of 10.7(f), right?

5 MR. CIANCIULLI: Yeah.

6 THE COURT: Okay.

7 MR. MACAULEY: Your Honor, I would just object and
8 I think as this demonstrates 10.7(f) is obviously a
9 complicated provision, was provided, however, is another
10 thing. It states what it states and I'm not really sure what
11 we're trying to get from the witness.

12 THE COURT: I understand. I'm not certain what
13 the pending question is, so you may renew the objection, but
14 I think you should ask the question again.

15 MR. CIANCIULLI: Okay.

16 BY MR. CIANCIULLI:

17 Q The question is, given what the plan provides, if the
18 court decides not to improve the channeling injunction and
19 the releases, does the debtor intend to move forward with
20 confirmation?

21 MR. MACAULEY: I'm going to object to the form and
22 it calls for speculation.

23 THE COURT: I'll allow it.

24 BY MR. CIANCIULLI:

25 A Yes, the debtor plans to move forward.

1 Q Even if the court decides that the sufficient number of
2 votes accepting the releases have not been obtained?

3 MR. CIANCIULLI: I'll withdraw the question.

4 THE COURT: Okay.

5 BY MR. CIANCIULLI:

6 Q Does the plan indicate anywhere what the debtors
7 believe is a substantial majority sufficient to support
8 approval of the non-consensual third-party releases and
9 channeling injunction?

10 MR. MACAULEY: Objection, Your Honor; calls for
11 legal conclusion. I believe it's also beyond the scope of
12 the declaration.

13 THE COURT: Right.

14 MR. CIANCIULLI: I'm asking what the plan
15 provides. I'm just asking if it provides anywhere. I
16 haven't seen it, but maybe I missed it.

17 MR. MACAULEY: Well, if he's asking the witness
18 what the plan provides, obviously, it's a long and
19 complicated document and I don't think his declaration
20 purports to, you know, summarize every aspect of the plan.

21 THE COURT: Yeah, I'll sustain the objection.

22 I don't believe I read the plan and I don't
23 believe it actually gives a threshold. I believe it directs
24 the debtor to carry a burden that's been largely articulated
25 by case law and is driven by the circumstances of the case,

1 so I'll sustain that objection. You can move forward.

2 BY MR. CIANCIULLI:

3 Q Are you aware whether the debtor or anyone on behalf of
4 the debtor has undertaken an analysis of what the OEMs
5 liability to the Class V claimants would be outside of the
6 plan?

7 A Can you restate that question?

8 Q Sure.

9 Have you or anyone on behalf of the debtors --

10 A Right.

11 Q -- undertaken any analysis designed to determine what
12 the monetary liability would be of the OEMs outside of the
13 plan to the Class V claimants?

14 MR. MACAULEY: Again, objection, Your Honor; I
15 believe it's beyond the scope of the declaration and may call
16 for privileged or work product information.

17 MR. CIANCIULLI: Your Honor, this goes, I think,
18 to the heart of whether the contribution is substantive,
19 because in a case like this where overwhelmingly the
20 contribution is coming from the OEMs and, therefore,
21 benefitting them it's not a matter of just looking at the
22 dollars that are being put in. There ought to be, and maybe
23 this is an argument for the expansion of a standard, but
24 there ought to be some evaluation of what they're gaining
25 from -- what they're not going to have to pay and comparing

1 that, so --

2 THE COURT: If the witness is aware that the
3 debtor has performed this analysis then the witness can
4 testify. If he's not aware, then he'll answer.

5 THE WITNESS: I'm not aware. No, sir.

6 BY MR. CIANCIULLI:

7 Q As the chief financial officer of the debtor in
8 determining whether you believe the plan contributions by the
9 OEMs were substantial, don't you believe that that analysis
10 would have been an important factor to take into
11 consideration in reaching that conclusion, which you do in
12 your declaration?

13 MR. MACAULEY: Object to the form, Your Honor,
14 and, again, beyond the scope of the declaration.

15 MR. CIANCIULLI: It's not beyond the scope --

16 THE COURT: The declaration actually references
17 the substantial contribution made by the OEMs in support of
18 the factual predicate for the releases. So, I believe that
19 the witness has testified in the declaration that he believes
20 it's a substantial input from the OEMs in the declaration.

21 He's welcome to look at his declaration, but I'll
22 overrule the objection.

23 BY MR. CIANCIULLI:

24 A Is the question how much of a contribution they have
25 provided to the debtors?

1 Q It is not.

2 MR. CIANCIULLI: Do we have someone that can read
3 the question back, Your Honor?

4 THE COURT: Nope. It's your tax dollar at work.

5 (Laughter)

6 MR. CIANCIULLI: I didn't think so. But it's been
7 a while since I've been in your courtroom, I thought maybe
8 things have changed.

9 Let me see if I can . . .give me just a minute,
10 Your Honor. I know I marked off the declaration.

11 THE COURT: Okay.

12 BY MR. CIANCIULLI:

13 Q Sir, do you have a copy of your declaration in front of
14 you?

15 A Yes, sir.

16 Q Okay. Can you turn to page 29, paragraph 53? Let me
17 know when you're there.

18 A Number 52?

19 Q Fifty-three, sir.

20 A Fifty-three, okay.

21 Q Fifty-three.

22 A Okay. Again, can you restate the question for 53?

23 Q Sure. So, my question that I had posed earlier, which
24 I think I have to try to figure out a way to restate is in
25 your capacity as the chief financial officer of debtor

1 entities, don't you believe it would have been an important
2 part of your analysis in determining whether the OEMs are
3 making a substantial contribution to the plan through the
4 trust to determine --

5 THE COURT: Hang on; paragraph 53 is about TKJP
6 and TKSAC.

7 MR. CIANCIULLI: No, it says, I believe the
8 protected parties include the OEMs. And then it goes --

9 THE COURT: Right, paragraph 54 is about the OEMs.

10 MR. CIANCIULLI: It certainly is. But the
11 protective parties is a defined term that includes the OEMs.

12 THE COURT: Okay.

13 MR. CIANCIULLI: I believe.

14 THE COURT: All right, I'm sorry. I just wanted
15 to make sure we were singing from the same hymnal. Paragraph
16 53, you got it.

17 BY MR. CIANCIULLI:

18 Q In any event, the question really doesn't necessarily
19 relate to paragraph 53. I'm just referring you to where you
20 declared that there was a substantial contribution.

21 Don't you believe that determining what the OEMs were
22 likely to incur in liability outside of the plan would be an
23 important piece of information in determining in providing
24 your belief that the OEMs provide substantial contribution to
25 the plan?

1 A No, sir.

2 Q Why not?

3 A In my opinion, the OEMs have provided a substantial
4 contribution in several different forms. You've got the
5 resolution of the claims, as well as financing that the OEMs
6 have provided us during the bankruptcy, which could be
7 anywhere from accelerating payables to limiting the offset of
8 claims -- I mean offsets, as well as limiting the resourcing
9 of business, which has allowed us to continue operation
10 during the bankruptcy. And without that significant
11 contribution, Your Honor --

12 MR. CIANCIULLI: Your Honor, I would only ask the
13 witness is entirely not responsive.

14 MR. MACAULEY: Your Honor --

15 THE COURT: He is answering -- hang on just a
16 second.

17 You asked him whether or not it would be important
18 --

19 MR. CIANCIULLI: To take that into consideration.
20 What he's telling me is all the other things he did take into
21 consideration, not why he didn't think that was important.

22 MR. MACAULEY: Your Honor, he asked --

23 THE COURT: Hang on.

24 MR. MACAULEY: I'm sorry, Your Honor.

25 THE COURT: Then I don't understand your question.

1 MR. CIANCIULLI: I asked him why he didn't -- I
2 said why -- he said he did not believe that taking into
3 consideration how much the OEMs would have paid to creditors
4 outside of a plan, why that wasn't important. I asked him
5 why he thought that was not an important aspect of why he
6 thought -- of his opinion that the OEMs made a substantial
7 contribution.

8 And now he's telling us all the things that he
9 thinks constitute the substantial contribution, which is all
10 fine and good. What I'm asking is why he doesn't believe
11 that factor was an important factor to take into
12 consideration.

13 THE COURT: What the OEMs would have paid in the
14 absence of a plan?

15 MR. CIANCIULLI: Yes. So, for example, if the
16 OEMs -- if there was an analysis that said the OEMs were
17 likely to face seven billion dollars in liability, but under
18 the plan they're limited to paying, you know, \$1.3 billion.
19 That might be a factor in determining whether their
20 contribution is substantial.

21 MR. MACAULEY: Your Honor, if I may briefly. I
22 completely lost the question. But his original question was
23 why not. And the witness is explaining exactly why he thinks
24 not and counsel doesn't like it so he cut him off.

25 I would respectfully request that the witness be

1 able to finish his answer, which I think is directly
2 responsive to what the question was as to why the witness
3 thought that was the case. And the declaration, of course,
4 goes through in detail the substantial contributions that
5 have been made.

6 MR. CIANCIULLI: I only asked the witness to
7 respond to the question by asking Your Honor to make him
8 respond. If you think the answer is responsive, I
9 understand, Your Honor, but I don't believe it was.

10 THE COURT: All right, why don't we move forward.

11 MR. CIANCIULLI: Okay.

12 MR. MACAULEY: I'm sorry; can the witness finish
13 his witness, Your Honor? He was interrupted in the middle of
14 his response.

15 I'm sorry?

16 MR. CIANCIULLI: He told me we need to move
17 forward.

18 MR. MACAULEY: Oh, I apologize.

19 THE COURT: Yeah, I think we should move on. I
20 understood the witness's answer and where he was going and
21 there maybe confusion about the form of the question, so
22 let's just move on.

23 MR. CIANCIULLI: Okay.

24 BY MR. CIANCIULLI:

25 Q But suffice it to say, it was not a factor taking into

1 consideration by the debtors?

2 A Correct.

3 Q In your capacity as the chief financial officer of the
4 debtors, are you aware of how many claims have been settled -
5 - I mean Class V claims have been settled by Honda within the
6 last week?

7 A No, sir.

8 Q What monetary contributions are the debtors' officers
9 and directors making to the claim, if any?

10 A What's the question?

11 Q What monetary contributions, if any, are the debtors'
12 officers and directors making to the plan?

13 A Re-ask that question one more time to make sure I
14 understand it?

15 Q What monetary contributions, if any, are the debtors'
16 officers and directors making to the plan?

17 A They're not making a contribution.

18 MR. CIANCIULLI: No further questions, Your Honor.

19 THE COURT: Okay. Any redirect?

20 MR. MASTANDO: Your Honor, if I may briefly, John
21 Mastando on behalf of the debtors.

22 REDIRECT EXAMINATION

23 BY MR. MASTANDO:

24 Q Good afternoon, Mr. Bowling. Mr. Bowling, are the
25 debtors' directors and officers making contribution of their

1 time and effort in connection with these cases?

2 A The directors and officers are making a contribution of
3 time and effort, yes, sir.

4 MR. MASTANDO: Thank you.

5 Nothing further, Your Honor.

6 THE COURT: All right, any recross?

7 MR. CIANCIULLI: No, Your Honor.

8 THE COURT: Okay. Thank you, Mr. Bowling, you may
9 step down.

10 THE WITNESS: Thank you.

11 (Witness excused).

12 THE COURT: Mr. Cianciulli, any other witness?

13 MR. CIANCIULLI: No further witnesses, Your Honor;
14 although, and maybe -- this really relates to the declaration
15 of Mr. Frankel. I only have -- it's not examination. It's
16 more of an objection to an aspect of his declaration being
17 accepted as in the case.

18 THE COURT: All right.

19 MR. CIANCIULLI: I don't know how you want to
20 handle that.

21 UNIDENTIFIED SPEAKER: Kind of late for that,
22 isn't it, Your Honor?

23 MR. CIANCIULLI: No.

24 UNIDENTIFIED SPEAKER: I mean didn't we already
25 have --

1 THE COURT: Actually, I haven't sprung Mr.
2 Frankel.

3 So, all right, here's what I want to do. Any
4 other witnesses?

5 MR. CIANCIULLI: No, Your Honor.

6 THE COURT: We're going to break right now for
7 lunch. We'll reconvene at 2:30 and it will be 2:30 sharp.
8 Normally, I would say you get an hour, but with a group this
9 large it's just too hard. But I do intend to start at 2:30
10 sharp.

11 At this point, then, I believe the evidence is
12 largely closed. I will take argument with respect to the
13 sufficiency of Mr. Frankel's declaration. I would ask that
14 during the break you confer with Mr. Bowden and, at least,
15 let him know what the concern is.

16 MR. CIANCIULLI: I will do.

17 THE COURT: But at that point then, I will take
18 argument as to the objections and I will hear from parties in
19 support of the plan and we'll move forward from there.

20 But we'll break right now until 2:30. All right,
21 we stand in recess. Thank you.

22 (Recess at 1:13 p.m.)

23 (Proceedings resumed at 2:35 p.m.)

24 (Call to order of the court)

25 THE COURT OFFICER: All rise.

1 THE COURT: Please be seated.

2 Ms. Goldstein?

3 MS. GOLDSTEIN: Yes, Your Honor. Before moving on
4 with the rest of the hearing, our last one I think I'm asking
5 for, at least -- well, of our declarants -- is Ms. Pullo --

6 THE COURT: Right.

7 MS. GOLDSTEIN: -- who's already been cross-
8 examined, and can she leave?

9 THE COURT: I would ask if there are any
10 objections or if anybody has further questions for Ms. Pullo,
11 in the absence of which she would have leave of the court.

12 (No verbal response)

13 MR. CIANCIULLI: Your Honor, I have no further
14 questions. It would be remiss of me if I didn't ask whether
15 there was any objection to the admission of the two exhibits
16 that I introduced?

17 THE COURT: Any objection to the two admissions --
18 to the two exhibits here, Creditor 1 and Creditor 2?

19 MR. TSEKERIDES: Creditor 1 and 2, the proof of
20 claim? No, no objection.

21 THE COURT: Very well. They're both admitted.

22 MR. CIANCIULLI: I'm not moving to admit the plan
23 as an exhibit.

24 MS. GOLDSTEIN: It's already a matter of record.

25 THE COURT: Yeah, the plan is a matter of record.

1 All right. Then, Ms. Pullo may have leave to depart if she
2 wishes.

3 MS. GOLDSTEIN: Okay. So, I wasn't sure, Your
4 Honor, if you now wanted to hear from the objectors following
5 the testimony or --

6 THE COURT: I think that would be appropriate. I
7 could hear from the objectors and then I would also hear from
8 -- following, which, I would hear from parties in support of
9 the plan.

10 Okay. Mr. Bowden?

11 MS. GOLDSTEIN: Including responsive arguments.

12 THE COURT: Of course. Was there an issue -- is
13 there still an issue with Mr. Frankel's declaration?

14 MR. BOWDEN: There are, for the record, yes. Bill
15 Bowden of Ashby & Geddes, for the future claimant's
16 representative.

17 And Mr. Cianciulli can speak for himself,
18 obviously.

19 THE COURT: Of course.

20 MR. BOWDEN: First of all -- and I'm happy to
21 address this issue, the dispute right now -- but, first of
22 all, just so I can preserve this argument in the event it's
23 necessary, they'd admit, without objection, Mr. Frankel's
24 declaration at the beginning of the hearing. The time to
25 raise the issues that are now being raised was then, not now.

1 Secondly, Mr. Frankel is testifying as the court-
2 appointed fiduciary for future claims based upon his 17 years
3 of experience and his firsthand knowledge in this case.

4 THE COURT: I get it. What's the bid and the ask
5 on the --

6 MR. BOWDEN: The bid and ask is this --

7 THE COURT: -- on the affidavit?

8 MR. BOWDEN: Your Honor, the bid and the ask is
9 this. Mr. Cianciulli, as I understand it, objects to the
10 affidavit to the extent it refers to the Norris report, as
11 the Norris report is not in evidence.

12 Your Honor, Mr. Frankel is not relying on the Norris report
13 for the truth of the matter, which is contained -- which is
14 said in the -- strike that.

15 Mr. Frankel is not relying on the Norris report
16 for the truth of what's set forth in the Norris report. It's
17 but one data point among the numerous data points that are
18 articulated in his declaration that have led him to the
19 conclusion that the channeling injunction in this case is
20 fair and equitable to the holders of PSAN PIWD claims.

21 And if anything, Your Honor, I would submit that
22 to the extent Your Honor has concerns about the Norris
23 declaration and the description in his declaration, Mr.
24 Frankel's declaration about it, at best, it goes to the
25 weight of the evidence. Thank you.

1 THE COURT: All right. Mr. Cianciulli?

2 MR. CIANCIULLI: Your Honor, thank you.

3 The issue that I raised, to be clear, is that Mr.
4 Frankel is not presented to this Court and his declaration is
5 not presented as expert testimony. He is a lay witness.
6 He has presented to Your Honor, proposed testimony in support
7 of the debtors' plan of reorganization. Opinion testimony by
8 the lay witness is permitted under certain circumstances, one
9 of which does not include when it is based on expert opinion
10 that is not before the Court.

11 And, moreover -- and I asked counsel if, again,
12 the underlying report and analysis that was prepared and
13 relied upon by Mr. Frankel by his professional, Norris, was a
14 matter of the record and I didn't see it, I would not be
15 standing here, but the answer is it's not.

16 And I believe that in several paragraphs of Mr.
17 Frankel's declaration, he makes clear that he engaged Norris.
18 He used them to conduct analyses about the value of claims,
19 present and future, and he used that analysis to form his
20 opinion about whether the debtors have met the standard in
21 the Third Circuit for approving channeling injunctions and
22 releases to non-debtor third parties.

23 THE COURT: What paragraphs?

24 MR. CIANCIULLI: Paragraphs 2, 4, 10, 15, 19, 20,
25 27. And I would say, in particular, Paragraphs 19 and 27,

1 Your Honor.

2 THE COURT: Okay. I understand. To the extent
3 that that's an objection to his testimony, I will overruled
4 that objection. I find that it goes to the weight of the
5 testimony.

6 I understand with, I think, a good deal of
7 clarity, the nature of the testimony that Mr. Frankel was
8 giving and, frankly, that he is obliged to give, following
9 his appointment by the Court.

10 As a practical matter, before we get too
11 philosophical about it, he operates in some ways as an expert
12 and as a lay witness in this context and both, the Court and
13 the State players are expected to benefit from both, his
14 engagement and his analysis on behalf of the constituency
15 that represents. And so, as I look at this, I do understand
16 -- and I would expect, frankly, as a practical matter -- that
17 Mr. Frankel would use a variety of sources in order to
18 evaluate and fulfill his task and to fulfill his
19 responsibilities.

20 But I don't believe that having looked,
21 particularly at Paragraphs 19 and 27 -- I've read the
22 declaration previously, but right now, especially focusing on
23 the areas that counsel has pointed to -- I don't believe that
24 that requires that the Court, to the extent that this is the
25 request, I don't believe that it requires the Court strikes

1 those paragraphs.

2 I understand, again, the context in which the
3 declaration is submitted and I understand the objection. I
4 will overrule it and observe, again, that I believe it goes
5 to the weight of the testimony. Okay?

6 MR. CIANCIULLI: Thank you.

7 THE COURT: All right. As I said, I think what I
8 would propose to do would be to hear from the objectors with
9 respect to their objections and then I would hear from
10 parties with respect to their support for the plan and
11 responses in opposition. And I think it might make the most
12 sense to begin with Mr. Macauley and the States.

13 Mr. Macauley, good afternoon.

14 MR. MACAULEY: Good afternoon, Your Honor. For
15 the record, Thomas Macauley, on behalf of Hawaii, the U.S.
16 Virgin Islands, and the Commonwealth of Puerto Rico.

17 Your Honor, as I mentioned before the break before
18 lunch, none of the issues that we've raised and are continued
19 to prosecute, I'm not -- have not withdrawn, address the
20 proposed transaction or its ability to close. And they --
21 neither of them address -- would require the re-solicitation
22 of votes, nor do they implicate any cram down objection that
23 could be asserted by a Class 6 creditor.

24 The debtors heard my recitation of the two
25 preservation of rights objections when I made them this

1 morning and they were unwilling to modify the confirmation
2 order accordingly. And, specifically, what I would -- what I
3 proposed was to carve out the States' claims from the
4 proposed categorical subordination under the plan, while
5 reserving rights under Section 510(c) on a case-by-case
6 basis. And then, two, to grant relief from the discharge and
7 plan injunctions to allow the States to liquidate their
8 claims in the State Court, but not to collect outside of this
9 Court.

10 We believe that can be accomplished in a one-
11 paragraph assertion to the confirmation order. So, let's
12 take those issues, there. On subordination, the plan's
13 definition of subordinated claims contains two subparts, all
14 right. One deals with claims supported under 510. The
15 second one deals with claims that if this were a Chapter 7
16 case, would be subordinated under 726(a)(4).

17 We objected to the disclosure statement back at
18 the end of the December to find out the basis for the
19 proposed subordination of the States' penalty claims. Now,
20 nothing in that plan definition, by the way, would
21 subordinate the States' claims for restitution.

22 The debtors resolved that objection in the amended
23 disclosure statement and added a footnote. That's Footnote
24 25; it's on Page 30. And that lists the authority decided by
25 the debtors to propose the subordination of the States'

1 penalty claims under Section 726(a)(4). I don't know if
2 you've seen that footnote. It's a -- it goes on to a couple
3 of pages.

4 THE COURT: Hold it. On Page 30?

5 MR. MACAULEY: I believe -- well, yeah, it should
6 be Page 30; it's Footnote 25.

7 THE COURT: Footnote 25, okay. Hold on. Of their
8 --

9 MR. MACAULEY: Disclosure statement.

10 THE COURT: Oh, the disclosure statement.

11 MR. MACAULEY: Sorry about that.

12 THE COURT: I'm sorry, I was looking at the
13 memorandum.

14 MR. MACAULEY: So, you know, because in this
15 context --

16 THE COURT: Okay. I'm there.

17 MR. MACAULEY: -- as you know, there's not really
18 an opening brief or reply -- you know, an answer and reply;
19 you sort of have -- you know, you glean what you get from the
20 disclosure statement and then they slam you with a hundred-
21 odd confirmation brief at the end.

22 So, anyway, we resolved -- we resolved the
23 objection to the disclosure statement through Footnote 25.

24 The footnote makes no mention of Section 510. So,
25 in our plan objection, we argued that Section 20 -- Section

1 726(a) (4) cannot be used to subordinate claims for civil
2 penalties in the Chapter 11 case when satisfaction of best
3 interests tests does not require any subordination, okay.

4 So, you've got the best interests test it and, you
5 know, there's this concept of it's got to satisfy -- you
6 know, someone can't make an objection under the best
7 interests test to say, Okay, well, you know, in a Chapter 7
8 case, you guys would get paid nothing, and, therefore, if
9 this were sort of a pot plan, if you're not getting those --
10 if -- let me put it this way. In other words, the only way
11 to import 726(a) (4) into Chapter 11 is through the best
12 interests tests, and if the best interests tests is satisfied
13 anyway, which it is in this case, then there's no reason to
14 use -- there's no basis to import 726(a) (4), because by
15 statute, 726(a) (4) doesn't apply to Chapter 11. I don't know
16 if that was that clear, but ...

17 THE COURT: I understand.

18 MR. MACAULEY: Now, in this case, the debtors'
19 liquidation analysis shows, as we heard Mr. Fleming say,
20 general unsecured creditors in a Chapter 7 get nothing, okay.

21 So, there's no need to import 726(a) (4) into this
22 case. There's no basis to import it.

23 So -- and since it doesn't apply and it can't be
24 used to subordinate claims in this case -- and you know, in
25 their 100-page confirmation brief, they really don't argue

1 726(a)(4); instead, they argue for the first time, that the
2 entire States' claims, not just the civil penalties, but the
3 restitution, as well, should be order -- should be
4 subordinated equitably under 510(c).

5 So, this is a complete by different argument that
6 they raise in the disclosure statement, in response to our
7 disclosure statement objection. It should be permitted under
8 the local rules in this instance and it goes against notions
9 of fair play and basic justice.

10 But if you considered the argument, it's
11 foreclosed by the Supreme Court decisions in Noland and in
12 CF&I. And their argument relies on pre-1996 cases that have
13 been expressly overruled on the very points that they rely
14 on. Now, Noland and CF&I, which were both unanimous
15 decisions, stand for the single proposition that you can't
16 use 510(c) to accomplish categorical subordination of claims.

17 Now, each of those decisions cites to -- they cite
18 the Third Circuit's case -- decision in In re Burden and the
19 Eighth Circuit's Schultz decision, as examples of cases
20 exercising categorical subordination. Noland even quotes
21 Judge Leo's separate opinion in Burden, where he parts with
22 the majority on the concept that decisions about treatment of
23 categories of claims in bankruptcy proceedings are outside
24 the judicial power of equitable subordination; yet, that is
25 exactly what the debtors are proposing to do here.

1 And worse, yet, for support, the debtors cite to
2 both, Burden and Schultz, on Page 99 of their brief. If you
3 could open them -- if you have the memorandum there --

4 THE COURT: I'm at Page 99.

5 MR. MACAULEY: -- Page 99 -- you're faster than
6 me.

7 If you look at -- if you look, they have a litany
8 of citations through there whether they cite Burden and they
9 cite Schultz at the bottom, there. And if you look at that
10 quotation of Schultz, they said, thus:

11 "Congress contemplated that Section 510(c)(1)
12 would be used to subordinate claims involving either an
13 inequitable conduct or claims, such as penalties."

14 Well, that quotation is not complete. They left
15 out the end of the sentence. The part they left out after
16 "penalties" was, "That were of a status susceptible to
17 subordination."

18 So, they cited the case for the very proposition
19 that the Supreme Court overruled it in a hundred-some-odd-
20 page brief that they dropped on us less than two hours --
21 less than two days before the hearing.

22 Now, to make no mistake that no one expressly
23 overruled the authority cited by the debtors, Page 541 in the
24 Noland decision, Justice Souter said:

25 "That the lower court in the case concluded that

1 the tax penalty claims are 'susceptible to subordination by
2 their very nature.'

3 Now, if you turn to Page 100 of their brief --

4 THE COURT: I'm there.

5 MR. MACAULEY: -- they cite the Owings Corning
6 case that we distinguished -- well, we didn't it distinguish;
7 it's dicta out of Owings Corning -- talking about that you
8 can subordinate oh you can subordinate claims using 726(a)(4)
9 by a visiting judge.

10 The other five cases are all predating 1996, which
11 is why Noland and CF&I were decided. So, Your Honor, the
12 debtors' have no viable case support for the last-minute
13 categorical subordination under 510(c), because it's been
14 foreclosed by binding Supreme Court precedent.

15 Now, I want to be clear, I'm not saying that the
16 debtors don't have a right -- and I said that initially, that
17 they don't -- I want to be clear that they have their rights
18 under 510(c) to seek out equitable subordination on a case-
19 by-case basis and, you know, that would require consideration
20 of specific facts and circumstances, but that's after a
21 notice and a hearing, all right. I submit, Your Honor,
22 there's been no notice and a hearing here -- well, there's a
23 hearing, but there's been no notice.

24 (Laughter)

25 MR. MACAULEY: You're the one sitting up there.

1 (Laughter)

2 MR. MACAULEY: So, we're asking that the penalty
3 claims not be subordinated, pursuant to the subordinated
4 claims definition in the plan.

5 Now, I want to address Your Honor's point that you
6 raised --

7 THE COURT: Before the break.

8 MR. MACAULEY: -- before lunch --

9 THE COURT: Uh-huh.

10 MR. MACAULEY: -- with respect to the State AG
11 sale. Now, that -- that's not scheduled for a hearing today.
12 It's not part of the record of this case -- of this hearing,
13 but you asked the question about the effect of the
14 settlement, so I figured I've give you an answer.

15 I think it's simple. Those states have
16 voluntarily, and of their own accord, reached a resolution
17 with the debtors and they have settled their claims. So I
18 think it makes things a lot easier for Your Honor because now
19 you're not worrying about who's similarly situated. You
20 simply have the states who are before you, arguing their
21 points.

22 You know -- I mean, not to go through the
23 settlement in any detail, Your Honor, because I didn't really
24 read it -- but I mean, you know, there's payment of
25 administrative expenses. There's certain things that they

1 agree to. But, you know, that's a settlement. You know,
2 it's two parties --

3 THE COURT: I'm not suggesting -- my question
4 wasn't somehow suggesting that you are somehow bound by it,
5 but it was consistent with a discussion that we'd had in
6 earlier hearings.

7 Part of the concern I had or the question I had
8 was, given that there are 50 states and a number of
9 territories, one of the questions that I had and raised to
10 you and your co-counsel was: Where do they stand --

11 MR. MACAULEY: Right.

12 THE COURT: -- and why are you the only ones that
13 are here? But I think it was clear from that discussion, and
14 certainly today, that that question doesn't impact your
15 standing or your right to seek to recover, but in a
16 collective bankruptcy proceeding, courts often inquire about
17 dogs that aren't barking.

18 MR. MACAULEY: I get it, Your Honor, but, you
19 know, to the debtors' credit, they've reached a settlement
20 with all the other dogs.

21 THE COURT: Okay.

22 MR. MACAULEY: Okay. I mean, the other way -- I
23 mean, you know, obviously, clients being represented have
24 pending litigation. There's different -- you know, there's
25 plenty of difference, but --

1 THE COURT: And, again, I want to be abundantly
2 clear, the settlement is not in front of me. I am aware of
3 it and your client was not obliged to participate and is not
4 bound by that in any respect, but I think you've answered my
5 question.

6 MR. MACAULEY: Okay. So, Your Honor, you know, as
7 I said, I think this -- we're in a bit of the difficult
8 position here because we're sort of getting this definition
9 thrown at us as a sword and, you know, because it would be
10 for the benefit of general unsecured creditors as a whole for
11 this definition for apply because there's certainly people
12 who have asserted punitive damages and other types of claims
13 that would be, you know, would fit into that, you know, that
14 definition.

15 And, you know, Mr. Bowling's declaration says,
16 You, it would be helpful for unsecured creditors if, you
17 know, people's claims were subordinated, but we've asked them
18 to carve our claims out and they won't do it, so I can make
19 the argument.

20 THE COURT: I understand.

21 MR. MACAULEY: So, let's turn to the second
22 argument. And, Your Honor, I confess, this wasn't really
23 briefed appropriately, but I think it's sort of in hand with
24 some of the events that occurred this week, so ...

25 THE COURT: Uh-huh.

1 MR. MACAULEY: Specifically, I want to -- you
2 know, we've requested that we be allowed to continue with our
3 litigation that's currently ongoing and not be affected by
4 the discharge injunction under 524(a)(2) or the plan
5 injunctions. Now -- and as I said, we seek to liquidate our
6 claims to judgment only, so it's not -- you know, this is a -
7 - this is not a, you know, an effort to collect outside of
8 this court.

9 Now, so, as the Court will recall, you enjoined
10 the State actions for approximately four months. You lifted
11 the injunction -- Your Honor lifted the injunction on
12 December 19th and that was based on the parties' agreement to
13 a stipulated litigation plan, as the parties negotiated.

14 The last two months, the parties have proceeded
15 under that plan with no apparent difficulties. It's my
16 understanding that several TKH depositions are scheduled --
17 have been scheduled for the next month or so and the States
18 would seek to continue this pending litigation outside of
19 this Court after taking all the effort to restart. The State
20 Courts are now familiar with the litigation again, and, you
21 know, as a practical matter, the pending police-power actions
22 would be statutorily prohibited from removal to this court
23 and transferred.

24 And, you know, at the end of the day, Your Honor,
25 the States' claims against TKH need to be liquidated. I

1 mean, that's a fact. You know, that's an issue that happens
2 not just in this case, but, you know, in many Chapter 11
3 cases.

4 So, now, like I said, I realize that we haven't
5 briefed this issue, although, I suspect Your Honor has dealt
6 with this issue in the past --

7 THE COURT: I have.

8 MR. MACAULEY: -- and, frankly, you know, absent
9 Your Honor's decision on Wednesday, you know, we should have
10 been able to actually litigate our actions because the
11 discharge injunction wouldn't necessarily apply, right? So,
12 we would be free to liquidate -- we would be free to continue
13 with our actions because, you know, the issue of discharge is
14 still at issue.

15 THE COURT: Right. But the debtor sued you for a
16 declaration that it would be susceptible to the discharge.

17 MR. MACAULEY: Correct.

18 THE COURT: That was the purpose of that
19 litigation.

20 MR. MACAULEY: Right. Right. And so what I'm
21 saying is because of your decision on Wednesday, it now
22 becomes important that we have relief, you know, from the
23 discharge injunction and from the plan injunctions to carry
24 on with our efforts to liquidate these claims.

25 THE COURT: Okay.

1 MR. MACAULEY: And, you know, if Your Honor feels
2 the need for briefing -- I know that Your Honor has a hearing
3 on the 26th scheduled, with connection to estimation of
4 claims -- we would -- we would -- we could deal with that,
5 then.

6 THE COURT: Okay. All right. I understand.

7 MR. MACAULEY: So, Your Honor, those are my two
8 points.

9 THE COURT: Okay.

10 MR. MACAULEY: All right.

11 THE COURT: Thank you.

12 MR. MACAULEY: Thank you, Your Honor.

13 THE COURT: I would hear from the whistleblowers.

14 MS. KATHY MILLER: Good afternoon, Your Honor, I'm
15 Kathy Miller, on behalf of Whistleblower A and B.

16 I know Your Honor's familiar with my client's
17 claims and generally why we're here, so I'll just keep that
18 part in very high level.

19 THE COURT: Okay.

20 MS. KATHY MILLER: Your Honor, the District Court
21 in Detroit has jurisdiction over the plea order and the
22 restitution order and no one here has disputed that. Had
23 this proceeding not been filed and the restitution fund was
24 funded, my clients would be in Detroit, you know, with Judge
25 Steeh on these issues, and the whistleblowers would be

1 seeking, as they are now, for compliance with the statute to
2 say that -- that says that the funds shall be available for
3 such awards to the extent the secretary --

4 THE COURT: Well, has suggested that the
5 whistleblowers -- that the matter is not pending District
6 Court in Michigan and that that Court has jurisdiction, and
7 the matter is *sub judice*, I don't believe it's been finally
8 disposed.

9 MS. KATHY MILLER: Right.

10 THE COURT: The debtors have, I think, made a
11 threshold argument that your -- anything relating to that
12 belongs in the Michigan court and is properly before the
13 Michigan court --

14 MS. KATHY MILLER: Right.

15 THE COURT: -- and so they're raising the
16 threshold argument that you lack standing to object to these
17 debtors' plans and that you're not creditors of these
18 debtors' estates.

19 MS. KATHY MILLER: Uh-huh.

20 THE COURT: Like your answer.

21 MS. KATHY MILLER: Yes, (indiscernible).

22 So, the -- first of all, the standard for
23 standing, you just have to allege a specific identifiable
24 trifle of an injury, okay. And a party in interest can
25 object to a plan. So, it's broader than a creditor. You do

1 not have to be a creditor.

2 In fact, the case cited by the debtors, Global
3 Industries, says that this should be read broadly and it's
4 intended to confirm broad standing at trial. And if you read
5 it more narrowly, that would be against the policy of
6 encouraging and promoting greater participation in
7 reorganization cases. So, that's the standard.

8 So, the issue is, the debtors with the OEMs to
9 come to this settlement and they came one this scheme -- and
10 I don't mean that derogatorily --

11 THE COURT: Yeah, I understand.

12 MS. KATHY MILLER: -- but, that instead of -- if
13 there was no bankruptcy, the funds would be funded and we
14 would deal out there.

15 But because of the settlement that's here, they're
16 asking for Your Honor to approve that we are going to deem
17 that the payments that we're making under this plan and under
18 the settlement agreement, satisfy our obligations to that DOJ
19 order. And they have said repeatedly in this case in this
20 court that that is key to this whole plan; they have to have
21 that. They have to have the sale -- even on a plea
22 agreement, they have to have the sale.

23 So, that's why we have standing. They are doing
24 something here, because now the funds are not going to be
25 available for our clients in the Detroit action. I mean, if

1 we hadn't come here and they would stand -- I'm sure the OEMs
2 would be standing in the Detroit court saying, You waived all
3 your rights. The Bankruptcy Court has already approved this,
4 and you've lost that.

5 So, it's the impact of the bankruptcy plan that
6 they're -- and the settlement agreement, really -- that they
7 are seeking approval here and one of the terms that they need
8 is for the special master to agree to this stinging scheme.

9 THE COURT: Which the special master has, correct?

10 MS. KATHY MILLER: No. He wrote a request.

11 THE COURT: Right.

12 MS. KATHY MILLER: Right. For the -- for the --
13 as a determinate. He applied the standard of a preliminary
14 injunction. He never told us any of that, so we've never
15 briefed it and that's the standard he applied. He talked to
16 third parties and on whatever information he got from those
17 third parties at the Government, he made his decision and we
18 didn't know that, either.

19 So, this, we believe, caused Judge Steeh such
20 pause that in the 24 hours after that was filed in District
21 Court, Judge Steeh said, I'm deciding this issue.

22 So, in our view, the special master report on that
23 is annulled. It's not even an appeal of that. We haven't
24 filed an appeal. We didn't -- it's not even a review of it.
25 Judge Steeh said, I am going to be deciding the

1 whistleblowers' objection hearing. Give me all the pleadings
2 that were filed from the special master. Government, I want
3 you to respond and, whistleblowers, I'm going to give you an
4 opportunity to respond after that. So, the whistle -- the
5 special master's report, which we gave you, and which, by the
6 way, the OEMs have said nothing about -- in our view, is --
7 have no force and effect.

8 THE COURT: Okay. The debtors, in their response
9 to your objection, in addition to saying that you don't have
10 standing or you don't have a claim against these debtors,
11 your claim goes to the DOJ restitution fund. Their point is,
12 if at some point, either by order of the District Court or by
13 a decision, I guess, by the Secretary of Transportation,
14 that, in fact, you were entitled to an award, they said that
15 the debtors' position is your remedy lies not with a claim
16 against this estate, but, in fact, would be some sort of
17 recoupment or other remedy that would likely be ordered by
18 the Michigan Court.

19 And so, their point is -- and they actually put
20 the phrase -- I think it's in there -- that they don't have a
21 dog in this fight.

22 MS. KATHY MILLER: I think they do.

23 THE COURT: I think it's in the brief.

24 MS. KATHY MILLER: They do say that, yes.

25 THE COURT: Okay.

1 MS. KATHY MILLER: They do say they don't have a
2 dog in this fight.

3 And I think I have maybe three responses to that.

4 THE COURT: Okay.

5 MS. KATHY MILLER: So, the statute -- the
6 whistleblower statute, under which my clients have a claim,
7 requires that the money be made -- that the funds be
8 available for the award. And what they're doing here is
9 violating a (indiscernible). You know, I want to be careful
10 of not accusing them of something, but, making it impossible
11 to comply with the statute, because the funds aren't going to
12 be available for the award, right. So, that's the first part
13 of it. So, we do have a problem with how the settlement is
14 working and the impact that it's going to have on the plan.

15 And, too, I think if you potentially even have
16 some other remedy -- and of course I don't know what remedy
17 you would have for -- well, my -- for the statute not being
18 complied with and the money being taken so that when the
19 secretary makes the award, assuming an award is made -- we do
20 agree it's discretionary, but the funds have to be there.
21 Well, there's two parts to that -- there's another piece.

22 So, in this case, they're asking that the money
23 that's going to go to the OEMs for their claims seem to be
24 satisfying the DOJ and that money is going to be free of all
25 claims, liens, and encumbrances. Potentially, that's the

1 money that's supposed to be in this fund and now you're going
2 to say that you can't come after that, because it's free from
3 all claims.

4 And what happens to our (indiscernible), then? We
5 get wiped out. They get, in essence, like, basically get a
6 release for that money. So, that's why we think there
7 actually is a dog in the fight.

8 THE COURT: Okay. I understand.

9 MS. KATHY MILLER: I think they were the arguments
10 that the debtors made and then the OEM -- oh, I can address
11 the OEMs' arguments, as well. First, you know, they tried to
12 paint our clients in a bad light of actually accusing them of
13 wanting to see the public -- the driving public's safety at
14 risk by trying to hijack the OEMs.

15 They had the claim under the statute and, in fact,
16 my clients came forward, made -- sought out the Government
17 and assisted in this investigation, and there's nothing
18 nefarious about this. The fact that they are unnamed; that's
19 how whistleblower statutes work. It would be a bad policy to
20 say, You can't have an award until you come out and become
21 publicly known. People aren't going to come out and do it.
22 You want them to deal under those statutes.

23 They say, the OEMs say that the settlement will
24 not impact the Whistleblowers' claim, and for the reasons
25 I've just identified, I believe it does and they have never

1 said otherwise.

2 They also make suggestions that, you know, there's
3 some big grand scheme of delay tactic here because the
4 Secretary of State -- not Secretary of State -- the Secretary
5 of Transportation has been asked to wait for rules to be put
6 in place to make the award. This is a new statute, and so as
7 I understand it -- I'm not a whistleblower lawyer -- that the
8 other statutes for whistleblowers, there are typically rules
9 and regulations.

10 THE COURT: I understand.

11 MS. KATHY MILLER: It's a new one. I understand,
12 because of the change of administration, that hasn't been
13 done yet. So, they want the process in place. There's
14 nothing wrong with anything that they're doing.

15 The whistleblowers also make a big deal of the
16 amount of the award -- I'm sorry -- of the potential award.
17 We didn't set the parameters. The statute sets a floor; it's
18 10 percent to 30 percent. So, we're asking that the funds
19 would be there so the statute can be complied with if the
20 secretary makes the award.

21 THE COURT: So, what's the relief that you're
22 requesting, is it a reservation of rights? Is it that the
23 debtor sock away a quarter of a billion dollars in cash?

24 MS. KATHY MILLER: Well, I don't know that -- they
25 said they're not going to do that -- that would be nice, so,

1 yes, we would like that, but I don't think they're going to
2 do it.

3 So, what we're saying is, we don't think Your
4 Honor can approve the settlement until Judge Steeh rules on
5 this issue.

6 THE COURT: I understand.

7 MS. KATHY MILLER: Because, if he rules in our
8 favor, then this -- this -- you know, the crux of their
9 settlement, I think, kind of -- they can rework it or do
10 whatever they need to do, but they can't go forward with the
11 way it's proceeding.

12 And I don't think -- our position is that Your
13 Honor doesn't have the jurisdiction to impact that case and
14 the fund over which Judge Steeh has jurisdiction to decide in
15 the first place.

16 THE COURT: Okay.

17 MS. KATHY MILLER: Let me just check my notes.

18 THE COURT: Sure.

19 MS. KATHY MILLER: And I think I might have heard
20 this in the -- so I just want to make sure, Your Honor -- the
21 briefing in that case, in the District Court was just changed
22 and they're now on a March 2 and a March 16 briefing
23 schedule.

24 THE COURT: I understand. Yeah, I think Ms.
25 Goldstein announced that at the outset.

1 MS. KATHY MILLER: Yeah, I thought that's who said
2 it. And I think I've hit all of their points in their
3 responses.

4 THE COURT: Okay. Mr. Chipman, did you wish to be
5 heard, as well, for Whistleblower C?

6 MR. CHIPMAN: Good afternoon, Your Honor. For the
7 record, William Chipman, on behalf of Whistleblower C.

8 In the interest of brevity, Your Honor, we did
9 join in the objection of Whistleblowers A and B and we adopt
10 the arguments made by Ms. Miller. I have nothing further to
11 add unless Your Honor has any questions?

12 THE COURT: No, I don't. Thank you.

13 MR. CHIPMAN: Thank you, Your Honor.

14 THE COURT: All right. And I think Mr. Cianciulli
15 for your clients?

16 MR. CIANCIULLI: Your Honor, thank you for your
17 time, again.

18 Your Honor, the debtors carry the burden to
19 establish by a preponderance of the evidence, all of the
20 elements of Section 1129 and to establish, as it relates to
21 the channeling injunction and release, that Your Honor has to
22 be satisfied that the elements necessary for a Section 105
23 injunction to be issued have been met.

24 We believe that when taking into consideration the
25 declarations in front of Your Honor and the testimony that

1 you've heard here today, that the channeling injunction and
2 releases, as it relates to the OEMs, are fundamentally unfair
3 and don't meet the needs standards to be applied by Your
4 Honor. We don't believe that the debtors have established
5 that the imposition of the releases and channeling
6 injunction, as contained in Section 10 of the plan, are
7 essential to the plan if the debtor is going to move forward
8 without them.

9 We don't believe that the debtors have met their
10 burden establishing that the contributions to be made by the
11 OEMs when considering the sources of the contribution and
12 whether they are, as Your Honor said, illusory, and whether
13 those contributions are -- how they relate to the OEMs'
14 liability outside of the plan in this particular context,
15 where we believe that the overwhelming funding for the trust
16 is coming from the OEMs. And so that really, in effect, this
17 is the OEMs paying for their release of claims, less than
18 that which they would otherwise be liable, outside of the
19 plan.

20 And this point doesn't need to be belabored. I
21 will admit that I know that one of the elements that Your
22 Honor will take into consideration is whether the class of
23 claims voting, whether to accept or reject the treatment in
24 Section 10, the channeling injunction and release, have
25 stated overwhelming support in favor of the plan. And we

1 just received the report of plan voting last night at 10:30,
2 so there wasn't really a long sometime to evaluate it, but it
3 looks to me that it's at about on the underside of 75
4 percent.

5 And I will confess to you that I have not seen any
6 cases that specifically state what a hard-and-fast rule on
7 what a -- an overwhelming support or overwhelming majority
8 support is. But I will suggest to you, Your Honor, in this
9 case, where there were a number of claimants who did not
10 vote, did not present their consent to the nonconsensual
11 release, and where there was a significant percentage --
12 nearly a court of those who did vote, voted very specifically
13 to reject the plan. The.

14 The debtors have not met their burden establishing
15 that the plan is fair and equitable, insofar that it would
16 include the channeling injunction and releases for the OEMs.

17 THE COURT: Okay.

18 MR. CIANCIULLI: Do you have any questions for me?

19 THE COURT: No, I don't have any questions.

20 All right. Are there other parties that wish to
21 be heard in opposition to confirmation?

22 Mr. Benson?

23 MR. BENSON: Your Honor, Ward Benson, from the
24 Department of Justice, Tax Division, here for the IRS.

25 I just want to be clear, we filed an objection.

1 We resolved almost everything, but not everything yet.
2 Assuming everything that we've already agreed on makes it
3 into is the confirmation order, we're set on retention
4 jurisdiction setoff and interest and penalties issues.

5 There's still a dispute as to the nature/scope of
6 discharge and injunction language, which we are trying to
7 work out.

8 THE COURT: Okay.

9 MR. BENSON: Essentially, the U.S.' position is,
10 as always, we understand 363 says what it does. 1141 does
11 what it says. We're bound by that, but the combination of
12 Tax Anti-Injunction Act, Declaratory Judgment Act, and the
13 Third Circuit ruling on related-to jurisdiction, means
14 nothing else can be imposed on us.

15 And so, we are trying to negotiate a carve-out
16 that is satisfactory to us, but I think doesn't -- gives the
17 plan sponsor assurance that they're not giving up any rights
18 that they're entitled to under those various provisions.

19 So, I would ask that we have a little more time to
20 discuss that.

21 THE COURT: I understand. Okay.

22 MR. BENSON: Thank you, Your Honor.

23 THE COURT: Sure. All right. Does any other
24 party wish to be heard in opposition to confirmation?

25 (No verbal response)

1 THE COURT: All right. What I'd like to do is
2 hear from the debtor in response to the objections that have
3 been raised and then I would hear from the OEMs,
4 specifically, in response to the objections that have been
5 raised since, I think that many of the issues, to the extent
6 they don't go directly to the debtor, they go directly to the
7 OEMs.

8 I realize that, then, at that point, I would wish
9 to hear from any of the other parties that wish to be heard -
10 - of course, the committees, the future claims rep, and,
11 frankly, any other party, but I'm just trying to arraigining
12 my dance card in the most coherent way.

13 Ms. Goldstein?

14 MS. GOLDSTEIN: Yes, Your Honor.

15 Yeah, there were many, many speeches, so I have to
16 organize my sheets of paper here, but I think I would first
17 respond to the States.

18 THE COURT: Okay.

19 MS. GOLDSTEIN: And, essentially, two issues
20 exist, with respect to their objection. And I do appreciate
21 Mr. Macauley narrowing the objection of his clients to make
22 it not necessarily an attack on confirmation of this plan or
23 approval of the transaction, but, nonetheless, I must explain
24 why we cannot agree to what he thinks is an easy request.

25 For one, we didn't just drop on the States, the

1 concept of subordination under 510. This has been in our
2 plan, in terms of the definition of what would be in Class 9
3 for subordinated claims since January. And, in fact, it --
4 Mr. Macauley, on behalf of his clients, raised this issue in
5 his own brief. So, it's not like we -- he suddenly
6 discovered it in the fourth amend plan. It's -- this has
7 been a definition in our plan all along.

8 I think that the notice issue is -- being polite -
9 - a stretch. The disclosure statement was just that, a
10 disclosure statement back in January. We made a number of
11 modifications to the plan, but the one thing that has been
12 consistent is the definition of what should be subordinated
13 under this particular plan of reorganization, and we actually
14 had these particular claims in mind -- not a whole category
15 of claims, as claimed by Mr. Macauley, although it is a
16 categorical definition, because it also does apply to the
17 Commonwealth of Puerto Rico.

18 But in terms of subordination of a penalty, which
19 other courts in Chapter 11 cases have allowed, we can't just
20 be limited to saying restitution is not a penalty when the
21 restitution, with respect to Hawaii, New Mexico, the Virgin
22 Islands, and Puerto Rico does not relate to a particular
23 injury to a particular party. Essentially, restitution is a
24 penalty that goes to the State treasuries in these
25 circumstances.

1 And what better case, what better set of facts
2 than these Chapter 11s to subordinate the claims of state --
3 of the States who are trying to take money out of this estate
4 to the detriment of the very parties they should be
5 protecting. In my view, that is exactly the type of harm to
6 creditors that 510(a) was designed to accomplish.

7 It's not news to Mr. Macauley. He has seen our
8 definition. He took it up in his own papers. He saw our
9 response. And so this is not something that is in any way
10 precluded from the case law that he cited. We believe that
11 our position is quite consistent on the facts of this case.

12 And we don't have to have a subordination
13 applicable to future cases. This is the Takata case, where
14 there's very little money in these estates. There's parties
15 who have been injured, and, in fact, to the extent that, you
16 know, they may say, This is for the benefit of certain
17 parties who may have suffered injuries, it's not going to
18 them and it may be duplicative of what those parties may get
19 this case.

20 These claims will just dilute creditors here if
21 they're not subordinated. And I think the case law that goes
22 to subordination of penalty claims and claims where parties
23 are not injured, goes exactly to that. Let's not dilute
24 creditors.

25 His second point goes to what happens to the

1 litigation that we have been engaged in with the States? And
2 our focus is the effective date of the plan. On the
3 effective date of the plan, these claims are going to be
4 discharged. Why would, from any perspective, the debtors be
5 required -- the debtors, who are reorganizing only in a
6 limited way. Most of the operating assets are being acquired
7 by Key Safety.

8 The reorganized Takata entities have a relatively
9 short life and they exist to produce the replacement airbags
10 that are necessary for the mandated recalls. That is not a
11 long life. And they have limited resources, and so if the
12 debtors, after having a plan confirmed, discharges these
13 claims, which means there's going to be treated under the
14 plan -- and they filed proofs of claim -- so, clearly,
15 there's no question that this Court has jurisdiction to
16 decide those claims -- what is the justice of now saying,
17 after the claim is discharged, that they can continue
18 litigating in Hawaii, the Virgin Islands, New Mexico and
19 Puerto Rico.

20 Where does the debtor get resources to do that?
21 And the burden, it, again, causes harm to the very parties,
22 the creditors of this case, that they should be interested in
23 protecting. We do not think there is any equitable or any
24 other reason to agree that these the States should be able to
25 continue to litigate in their own states, after the effective

1 date.

2 We're not suggesting that suddenly, we're going to
3 take away the depositions that they've scheduled. We could
4 talk about that with them. But what we are suggesting, that
5 the debtors should not be burdened once this plan goes
6 effective, to be litigating across this country and across
7 the Pacific Ocean, and across the Caribbean Sea, at great
8 expense and burden for claims that could not -- even if they
9 were not subordinated -- very little recovery, and can be
10 determined right here with full jurisdiction.

11 Particularly, Your Honor, we believe these claims
12 -- I'm going back to -- should be properly subordinated.
13 They'll be discharged under the plan, whether subordinated or
14 not, and it just not seem that it should be either important
15 to the States or proper for these States to seek to continue
16 to burden the debtors. So, that's what I have to say about
17 the States.

18 THE COURT: Let's talk about the whistleblowers.

19 MS. GOLDSTEIN: The whistleblowers. Your Honor,
20 this Court has undisputed jurisdiction over property of this
21 estate.

22 THE COURT: The question, I guess, is, is there --
23 I guess to put it as bluntly, Ms. Miller's concern was that
24 the District Court in Michigan is going to be faced with an
25 empty bag. That it has jurisdiction or authority to decide

1 the question of a whistleblower award or the Secretary of
2 Transportation does. They will make that decision and say,
3 Whistleblowers A, B, and C are entitled to X dollars.

4 And I think their concern or the objection is, the
5 monies that are supposed to be in that bag for us are being
6 disposed of here and there will be no remedy for us.

7 I'd like your answer.

8 MS. GOLDSTEIN: Your Honor -- yes -- well, first
9 of all, there has been no award made to date. And we're not
10 here to litigate the (indiscernible) of it, but that's a very
11 open question, as to whether there's even entitlement.

12 And even as admitted by counsel for the
13 whistleblowers, the Department of Transportation may decide
14 this in three years from now and in the meantime, we have a
15 case that will clearly yield nothing if we are sitting around
16 and waiting for some determination of whether the
17 whistleblowers are entitled to an award.

18 We also don't think it's necessary to wait for
19 Judge Steeh's decision. He has it under his jurisdiction to
20 decide issues between the whistleblowers and the special
21 master.

22 There is nothing, in our view, that rests
23 jurisdiction from this Court or that the whistleblowers can
24 allege, that affects our plan. The \$246 million that will be
25 paid from this estate to the OEMs is a payment on account of

1 their adequate protection claims.

2 If, for some reason, Judge Steeh thinks that there
3 might be some remedy three years from now because the
4 Department of Transportation decides, one, they fit into the
5 definition of that award and then they make that award, these
6 are the most solvent companies we're among -- the most
7 solvent companies in the world. I do not think that there
8 should be any impact, any hold back, any delay, that will be
9 harmful to the creditors of this company because of a yet,
10 unsubstantiated position and, certainly, an award that hasn't
11 been determined.

12 So, you know, we've made arguments in our brief
13 about their standing, but I wanted to be just responsive,
14 one, to you, and to the arguments made here today, which
15 essentially we're requesting delay. We do not think that's
16 appropriate.

17 THE COURT: I understand.

18 MS. GOLDSTEIN: And then I think we have to
19 respond -- although I do not have a lot to respond, because I
20 think it's fairly straightforward -- to the attorney for the
21 -- the attorney information exchange group, who also claims
22 that he represents two plaintiffs.

23 Your Honor, you know, the fact is, he speaks -- he
24 may speak for plaintiffs, but he's also speaking for a trade
25 association. By the way, they didn't file a Rule 2019

1 statement, in connection with representing a group, but I'll
2 let that pass for now. But, I'm looking through my notes on
3 him -- hold on -- a couple of comments.

4 Your Honor, in our brief, the declarations, we
5 believe that we have made a case to support the releases and
6 also the channeling injunction. And I believe that the
7 attorney for the AIEG has reached his conclusions based on
8 complete misperceptions of the plan and the channeling
9 injunction. Many of the contributions that support, frankly,
10 the release, in some respects, contributions made by the OEMs
11 to support this settlement, as an example, are not
12 necessarily the contribution that would support a particular
13 OEM participating in the channeling injunction. And I'm sure
14 that you'll hear more about this from Ms. Boelter on behalf
15 of Honda.

16 Right now, only Honda has elected to participate
17 in the channeling injunction, so any plaintiff can sue all of
18 the other OEMs without any limitation. And even if they
19 become participating OEMs under the channeling injunction, as
20 Honda has determined it would, there is no 1.3-billion-dollar
21 cap.

22 Honda has made it very clear that in connection
23 with the agreements reached with the future claims
24 representative and the tort committee, there will be payment
25 in full. That will be their contribution of the claim

1 argument determined.

2 And, frankly, if a plaintiff is dissatisfied with
3 the result of the channeling injunction, while they may have
4 to go through some steps, they can get back into the tort
5 system. So, there is no limitation applicable to plaintiffs
6 in the context of the channeling injunction, and so I think
7 it's a very severe misstatement to suggest that we're taking
8 away plaintiffs' rights.

9 So, we think this is supported, the releases are
10 supported. KSS is making a twenty-five-million-dollar
11 contribution, in consideration of it being a protected party
12 under the channeling injunction and under -- as -- and a
13 release party, and the -- you know, to suggest that the
14 directors and officer have to make payments, they have put an
15 amazing amount of time into this process and should also get
16 time and effort and, you know, giving up a lot of their
17 private lives for getting to this place. So, there -- in my
18 view, there is no basis for them not to be a protected party,
19 as well.

20 We also have some of the non-debtor affiliates, as
21 potential -- or as protected parties, based on their
22 participation in the overall restructuring. And as to TKJP
23 and TSAC, the Chinese subsidiary, that determination is to be
24 made, depending on the contributions.

25 So, Your Honor, the --

1 THE COURT: Can I actually -- before you close up,
2 can I ask you a question?

3 MS. GOLDSTEIN: Yes.

4 THE COURT: We've covered the various objections.
5 I did note that yesterday afternoon, there was a TKJP limited
6 objection that was filed that seemed, at least, to cast
7 somewhat as a reservation of rights, pending the process
8 playing itself out, but I would like to understand the status
9 of that issue --

10 MS. GOLDSTEIN: Yes, Your Honor.

11 THE COURT: -- and whether it's a hot issue for
12 today.

13 MS. GOLDSTEIN: It is not a hot issue for today.
14 We are in agreement with TKJP on the language that would --

15 THE COURT: Okay.

16 MS. GOLDSTEIN: -- be in the plan and the
17 confirmation order.

18 THE COURT: Okay.

19 MS. GOLDSTEIN: I just wanted to make sure I
20 didn't leave any -- any other -- one second.

21 (Pause)

22 THE COURT: Take your time.

23 MS. GOLDSTEIN: Your Honor, I don't know that this
24 really was an objection, but I did want to address any
25 suggestion by AIEG of any problem in the voting process. The

1 implicit assertion that there was some change in the result
2 because votes may have been reclassified -- this happens all
3 the time -- it's just mere speculation. In fact, I could say
4 -- and it might be speculation, but I could guess that it
5 actually hurt the debtor and made it harder after that -- but
6 I'm just going to concede that that's probably pure
7 speculation, as well.

8 There was an ongoing solicitation and review
9 process that was conducted in accordance with the specific
10 provisions of the solicitation procedures order. Primary has
11 certified the results of the vote on the plan, demonstrated
12 that Class 5 has, in fact, all the -- in fact, has accepted
13 the plan. So, I don't think that we need to have anything
14 further on the vote.

15 THE COURT: Okay.

16 MS. GOLDSTEIN: I think with that, Your Honor, I
17 would cede the podium to others.

18 THE COURT: All right. I'd like to hear from Ms.
19 Boelter and then what we would do is probably take just a
20 five-minute break, and then we would reconvene for comments
21 from anyone else who wishes to be heard.

22 Ms. Boelter?

23 MS. BOELTER: Thank you, Your Honor. Jessica
24 Boelter, Sidley Austin, on behalf of American Honda Motor Co.

25 Your Honor, I'm going to address the objections

1 that were made to the channeling injunction. There may be
2 other members of the customer group or the consenting OEMs
3 that would like to address the whistleblower remarks that
4 were raised, but I'm just going to limit my remarks just to
5 the channeling injunction.

6 THE COURT: Sure.

7 MS. BOELTER: And, in particular, I'm going to
8 limit them to the arguments that were made by counsel for
9 AIEG and answer any questions that Your Honor may have.

10 First, I would like to note there were a number of
11 items with respect to the channeling injunction that weren't
12 objected to. As we think about the Master Mortgage factors,
13 Your Honor, no one has called into request whether you,
14 sitting in bankruptcy jurisdiction, have the jurisdictional
15 basis to enter the channeling injunction, with respect to the
16 participating OEMs. That was clearly asked and answered in
17 connection with both preliminary injunction hearings when you
18 ruled that you did have related-to jurisdiction over these
19 claims.

20 And, similarly, I haven't heard any argument with
21 respect to the fifth Master Mortgage factor, which goes to
22 the payment-in-full provision. That being said, I understand
23 that counsel raised arguments pertaining to whether or not
24 there was a substantial contribution -- and I'll come back to
25 that point -- but on payment in full, Your Honor, no one has

1 argued that the valuation matrix or that the process that was
2 set up in the TDPs that was heavily negotiated with the FCR
3 and the tort claimants committee is in any way wrong or
4 unfair. Those are uncontested elements of the channeling
5 injunction.

6 Moving, then, to counsel's arguments with respect
7 to the substantial contribution, you know, I think counsel is
8 trying to cast light -- a negative light on the debtors by
9 suggesting that the debtors have not conducted their own
10 independent review of the claims against the OEMs in
11 connection with the channeling injunction and the agreement
12 to include the channeling injunction in the plan of
13 reorganization.

14 Your Honor, that's wrong. Dr. Vasquez did include
15 such an analysis in the channeling in his expert report,
16 which is Docket 2063. Just for your reference, it's Page 6
17 of 56, where he actually did estimate the claims against all
18 Defendants and then he estimated the claims against the
19 Takata Defendants.

20 Now, my client and the other OEMs, have clearly
21 stated we don't agree with this estimation, but this issue
22 has never come before Your Honor because we agreed to
23 uncapped, pay as you go. Uncapped pay as you go means the
24 debtors didn't have to come up with a specific estimation for
25 the claims against the non-debtor Defendants, nor did the

1 OEMs, nor did the tort committee, and nor did Mr. Frankel.

2 We were all able to reach the conclusion that the
3 channeling injunction was fair and that the participating OEM
4 was providing a substantial contribution to the bankruptcy
5 estate and to these creditors, because it's uncapped.
6 Whether Vasquez is right or wrong, to the extent we have the
7 valid channeling injunction, we're on the hook to pay for
8 those claims.

9 So, in our view, the substantial contribution
10 factor is absolutely satisfied and any suggestions by counsel
11 that the debtors didn't somehow compare it to actual
12 liability or that the liability is, in fact, illusory, is
13 just wrong.

14 The second issue that counsel has taken -- has
15 made arguments, with respect to, is whether or not the
16 channeling injunction is, in fact, essential to the
17 reorganization. And in oral argument he has effectively said
18 to the Court that there just is simply no evidence that the
19 debtors believe that to be the case.

20 As we sit here today, this case is no longer just
21 about the debtors. The case is about the debtors, and a
22 global settlement between the tort claimants committee, the
23 unsecured creditors' committee, the future claimants'
24 representative, and the entirety of the group of consenting
25 OEMs. The debtors have put in their plan that there needed

1 to be two pre-conditions that were satisfied to getting the
2 channeling injunction approved and for the plan to go forward
3 on that basis; both of those were satisfied.

4 The future claimants' representative insisted upon
5 it and the votes were delivered. As a result, it is a
6 critical component of the plan of reorganization. And if
7 that's not enough, Your Honor, we have the declaration of Mr.
8 Frankel, which is uncontroverted on this point, and he says
9 it in Paragraphs 26, 28, 31, Paragraphs 34 through 37, that
10 the channeling injunction provides significant value to
11 personal injury/wrongful death claimants. It provides for
12 payment in full. It's an essential element; he says that in

13 Paragraphs 27 and 43, with respect to the plan
14 before the Court. And from his perspective and the
15 perspective of the tort claimants committee, this was
16 essential to getting this consensual deal approved and into
17 this courtroom.

18 And I think as Your Honor is aware, we've been
19 talking about PSAN/PIWD claims since the beginning of these
20 Chapter 11 cases. The PSAN inflator defect that's at issue
21 with respect to those personal injury/wrongful death claims,
22 is the central feature of this Chapter 11 proceeding. The
23 fact that these parties were able to come to a global
24 restitution of an issue that has injured dozens of people in
25 the United States, it's remarkable and it's essential to

1 getting this deal done from our perspective.

2 Finally, Your Honor, counsel takes issue with
3 respect to whether we have actually satisfied the prong of
4 Master Mortgage which requires a substantial majority of the
5 impacted class to have accepted the plan. As we think about
6 substantial majority, Your Honor, there are two components to
7 that. The first is the future claimants. The future
8 claimants comprise the vast majority of individuals that are
9 going to be affected by the channeling injunction.

10 We have a fiduciary, who's present in the
11 courtroom, and who has submitted a declaration, who has
12 indicated his full support for the channeling injunction.

13 Again, that's for the overwhelming majority of
14 individuals that could be impacted by the channeling
15 injunction.

16 The second component is, of course, the current
17 claimants and the evidence before the Court right now
18 overwhelmingly demonstrates that that class has voted to
19 accept the plan. I think based on Ms. Pullo's declaration,
20 depending upon which debtor entity we're talking about, it's
21 between 79 and 81 percent of the class.

22 Now, you will recall, Your Honor, that at the
23 disclosure statement hearing, I walked you through the form
24 of ballot and the form of ballot permitted claimants to check
25 a box as to whether or not they supported or did not support

1 the channeling injunction, with respect to the OEM who
2 manufactured their vehicle. It's our understanding that the
3 "check the boxes" came in substantially in line with the
4 voting results; in excess of 80 percent in support.

5 That said, Your Honor, I've stood here multiple
6 times before the Court and I've said to multiple plaintiffs,
7 that it is our desire to have a consensual channeling
8 injunction. From Honda's perspective, if there were valid
9 PSAN PWID claimants against Honda that checked the "no" box
10 on their ballot, we're willing to carve those "no" checkboxes
11 out of the channeling injunction and make this fully
12 consensual, with respect to the participating OEM.

13 With that, Your Honor, I guess I would also say
14 that in our view, an attorney, as Ms. Goldstein indicated,
15 who represents so very few plaintiffs, should not get in the
16 way of a global resolution and a global settlement of the
17 PSAN inflator defect problem, that has the support of the
18 tort claimants committee, which is a fiduciary for all
19 current claimants and the future claimants' representative.

20 Unless you have any other --

21 THE COURT: No, I don't have any other questions.

22 All right. As I said, what we'll do is we'll take
23 a break for about five minutes and then I will hear from any
24 other party that wish to be heard. Five minutes.

25 Stand in recess.

1 (Recess taken at 3:43 p.m.)

2 (Proceedings resumed at 3:54 p.m.)

3 THE COURT OFFICER: All rise.

4 THE COURT: Please be seated. It is Friday
5 afternoon.

6 (Laughter)

7 THE COURT: I think at this point, I would like to
8 hear from the committees.

9 MS. DAVIS JONES: Good afternoon, Your Honor,
10 Laura Davis Jones, Pachulski Stang Ziehl & Jones, on behalf
11 of the official committee of unsecured tort and claimant
12 creditors.

13 Your Honor, to say the least, this has been a
14 long, intense process. Your Honor will recall when Mr. Dean
15 and I appeared to the first day hearing in this case, raising
16 concerns to Your Honor about the victims that are in this
17 case; those who suffered physical injury or, tragically,
18 death and those who experienced economic loss, and the need
19 to acknowledge and address those injuries.

20 Your Honor heard our concerns and the U.S.
21 Trustee's Office heard and considered our request that the
22 claimants have an official standing in this case. Said that
23 those claimants would be recognized and be heard.

24 Since that time, Your Honor, it's been a very
25 intensive period of analysis and negotiations and with what

1 started as a plan which provided almost nothing for our
2 constituency, we have the opportunity, through anticipated
3 substantial funding for the trust contemplated by the plan,
4 to distributions to wrongful death/personal injury victims
5 and increased cash in the waterfall for unsecured creditors.

6 We do, Your Honor, believe this plan and the
7 settlement embodied in it is a fair and reasonable result for
8 all creditors. We do believe that the debtor have carried
9 their burden through the evidentiary record, submitted
10 primarily through declarations, and in the mean, those
11 declarations remain uncontroverted. They've also carried
12 their burden through the legal briefing that's been done, by
13 not only the debtors, but the other parties in support of the
14 plan.

15 Your Honor, therefore, our committee does believe
16 that this plan should be confirmed. Thank you.

17 THE COURT: Thank you. May I hear from the
18 creditors' committee, please.

19 Ms. Doheny?

20 MS. DOHENY: Good afternoon, Your Honor. Mary
21 Doheny, of Milbank Tweed Headley & McCoy, on behalf of the
22 official committee of unsecured creditors.

23 Your Honor, I'm going to be brief. I think you've
24 heard a lot today about the efforts that have gone on over
25 the last several months. As Ms. Jones has pointed out, the

1 creditors' committee has worked for several months with the
2 parties in interest, the debtors, the plan sponsor, the
3 consenting customer group, and coordinated with the tort
4 committee and the future claimant -- claims representative,
5 to reach the result that are embodied in the current draft of
6 the plan, the proposed fifth amended plan.

7 Your Honor, the -- Ms. Goldstein has already laid
8 out the settlements that are proposed, but just to highlight
9 some of the key issues that the creditors' committee believes
10 are embodied in the plan, we believe over the last several
11 months that the committee has been able to negotiate on
12 behalf of its constituency; the overall result being a
13 reduction in some of the claimants in the pool, including the
14 subordination of the NHTSA claim, which we think is an
15 important factor. The -- as a Class 6 --

16 UNIDENTIFIED: Class 6, huh.

17 MS. DOHENY: -- the increase in total value
18 available to general unsecureds, generally, and,
19 specifically, as to the creditors who will participate in the
20 support party creditor fund, the enhanced recoveries that
21 they will see under the revised plan.

22 Other features that are important to the
23 creditors' committee settlement, Your Honor, relate to the
24 assumption of executory contracts. The creditors' committee
25 felt it was very important to the continuation of the

1 business that's being purchased and acquired by the plan
2 sponsor, as well as to RTK, that the contracts be assumed and
3 assigned through the plan and, as a related matter, to the
4 ongoing continuity of the business that any avoidance actions
5 are waived and they are, pursuant to the plan.

6 As Ms. Jones was just pointing out, Your Honor, we
7 believe that the -- after much analysis and consideration of
8 the plan and the related documents, we believe that the plan
9 is fair and reasonable to the creditors at large. We believe
10 that the debtors have carried their burden and established an
11 appropriate record, and for all of those reasons, Your Honor,
12 the creditors' committee is in support of the plan and its
13 confirmation.

14 THE COURT: Very good. Thank you, Ms. Doheny.

15 Can I hear from the future claims representative,
16 Mr. Bowden?

17 MR. BOWDEN: Thank you, Your Honor. For the
18 record, Bill Bowden, of Ashby & Geddes, together with Karen
19 Owens, on behalf of the future claimants' representative.

20 Your Honor, at the outset of my remarks, I would
21 like to take a moment to point out to Your Honor, if I might,
22 that the transaction that is presented before you from the
23 standpoint of future claimants, which we think is, obviously,
24 very favorable for the future claimants, is really the work
25 of my client, Roger Frankel, and my co-counsel, Rick Wyron;

1 they're the two tired-looking guys in the third row to Your
2 Honor's right. I'd ask Mr. Wyron to take the podium, but I
3 don't think he has the energy to get up at this point in
4 time.

5 Your Honor, if you think about -- if you stop and
6 pause a moment and think about where we were as recently as
7 the disclosure statement hearing, compared to where we are
8 today -- and I know Your Honor is not a fan of hyperbole and
9 adverbs -- but it's truly remarkable, truly, truly
10 remarkable. And we alluded to this in our objection to the
11 disclosure statement, Your Honor, that the original plan
12 filed by the debtors was dead on arrival from the standpoint
13 of future claimants.

14 There have been significant changes and
15 improvements since then, Your Honor, and they are articulated
16 by the counsel that have previously spoken and the briefs
17 filed by the debtor and the briefs filed by the OEMs -- and
18 I'm not going to repeat them here.

19 Your Honor, with respect to the channeling
20 injunction, Your Honor, Mr. Frankel's declaration, as has
21 been noted, is uncontroverted. And his testimony was not
22 subject to cross-examination. The channeling injunction, as
23 he says in his declaration, is the centerpiece of the plan
24 for future claimants and it's a very important piece of the
25 global deal that we have reached with the OEMs, the debtors,

1 and the plan sponsor.

2 Your Honor, if it's not plain to Your Honor by
3 now, I will try to make it plain. Mr. Frankel, in his
4 judgment, as the estate-appointed fiduciary for future
5 claimants representative -- for future claimants, and based
6 on his experience and the work he has personally done in this
7 case, believe that the channeling injunction is appropriate,
8 it's fair and equitable, particularly given what we believe
9 to be the uniquely and extraordinary circumstances present in
10 this case.

11 Your Honor, I'm happy to answer any questions that
12 Your Honor might have.

13 THE COURT: I don't have any questions at this
14 point, but thank you.

15 MR. BOWDEN: Thank you.

16 THE COURT: Ms. Okike?

17 MS. OKIKE: Good afternoon, Your Honor. Christine
18 Okike, of Skadden Arps, on behalf of (indiscernible) and KSS
19 Auto Safety, the plan sponsor.

20 Your Honor, it should come as no surprise that the
21 plan sponsor stands in support of confirmation of the plan.

22 (Laughter)

23 MS. OKIKE: Your Honor, this plan is the
24 culmination of over two years of restructuring efforts and
25 many, many months of settlement negotiations, and I think

1 represents a significant achievement on the part of the
2 debtors, the plan sponsor, the consenting OEMs, the tort
3 claimants' committee, the creditors' committee, and the
4 future claims' representative, as well as other key parties
5 in this case.

6 Your Honor, we would like to thank the Takata and
7 plan sponsor management teams who have dedicated an extensive
8 amount of time and effort to this transaction, which their
9 efforts are instrumental to bring us where we are here today.
10 Has not been an easy case and I think it --

11 THE COURT: I gathered --

12 (Laughter)

13 MS. OKIKE: It's a testament to the efforts of all
14 parties that we can stand here before you in support of the
15 largely consensual plan. I'd specifically like to point out
16 a couple of individuals on the plan sponsor side.

17 THE COURT: Sure.

18 MS. OKIKE: Mr. Joe Perkins, who has appeared
19 before Your Honor today.

20 THE COURT: He's our affiant today.

21 MS. OKIKE: Yes, who was one of the lead
22 negotiation -- lead negotiators on behalf of the plan sponsor
23 and instrumental to this transaction.

24 I would also like to recognize Bob Weiss, who's
25 the general counsel of Key Safety Systems, Inc., both of who

1 had to leave the court earlier today.

2 I'm happy to answer any questions that you may have of the
3 plan sponsor.

4 THE COURT: I do not have any questions for the
5 plan sponsor.

6 MS. OKIKE: Thank you.

7 THE COURT: Does anyone else wish to be heard?

8 MR. DEAN: (Via telephone) Your Honor, good
9 afternoon. This is Kevin Dean. May I have, say, 60 seconds?

10 THE COURT: You can have as much as time as you
11 need, Mr. Dean. You've been very patient today.

12 MR. DEAN: I was at the first hearing and I'm
13 sorry I couldn't be with Your Honor this afternoon. I've
14 been an AIG member for over 25 years. As Your Honor knows,
15 we have a large number of plaintiffs and I've worked very
16 closely with a number of other plaintiffs' lawyers who have
17 plaintiffs in this group.

18 We did not originally support this channeling
19 injunction. There's been a lot of tireless evenings, a lot
20 of hard work by all of the OEMs, the plaintiffs' contingency,
21 the TCC, the debtor, and a lot of people in this plan. I've
22 monitored it regularly on behalf of my clients, and I want
23 Your Honor to know that there's simply, on the plaintiffs'
24 side, maybe a small difference of opinion, but I -- my
25 clients voted in favor of the plan and the channeling

1 injunction because it was in their best interests and the
2 best interests of the future claimants.

3 I firmly believe that, and the other plaintiffs'
4 lawyers that are working -- in our working group have the
5 same belief. And I want Your Honor to know that we fully
6 support this for our clients and we believe it's in their
7 best interests moving forward.

8 THE COURT: Very good. Thank you, Mr. Dean.

9 Let me ask -- before I hear from anyone in reply -
10 - I would ask, does any party that has not yet addressed the
11 Court, wish to be heard?

12 Mr. Esserman, good afternoon.

13 MR. ESSERMAN: Good afternoon, Your Honor. Thank
14 you. Sandy Esserman, of Stutzman Bromberg Esserman & Plifka,
15 on behalf of the MDL and lead counsels in the MDL.

16 As Your Honor knows, we have raised various
17 questions at various points in time about the process
18 procedure and ultimate channeling order. I'm here before
19 Your Honor today to voice my support for the channeling order
20 and the plan. I think it offers a good remedy for the
21 claimants.

22 In essence, what's happening is the MDL -- and
23 Miami, as Your Honor knows, has every federal court -- every
24 case filed in federal court around the country consolidated
25 before Judge Moreno, personal injury and economic loss. And

1 there's two tracks to the MDL; one is the economic loss,
2 which is really not affected, except as against Takata. The
3 other is the personal injury, which could be affected here.

4 And I can stand here before Your Honor saying that
5 we do support this channeling order. If anything, it's a
6 positive to the case. It's a positive, the MDL.

7 And if Your Honor wants to look at it this way, it
8 really is a positive ADR from the litigation that's pending
9 and as Your Honor knows, I did express certain questions at
10 various times. Those questions have been answered in a
11 positive way through hard-working lawyers and negotiations
12 with the MDL and with Honda and the OEMs, all of whom
13 negotiated in extremely good faith and very hard.

14 So, I'm convinced that we have a proper exit to
15 the tort system, should that be necessary. I've expressed
16 issues on that. I'm very pleased to report that I think good
17 progress was made in that.

18 You heard from Ms. Boelter about a payment in full
19 and an uncapped -- uncapped liability for those OEMs that are
20 participating. For those OEMs who are not participating,
21 this does not affect their litigation and they are free to
22 proceed in the various states and federal courts, as they
23 want.

24 But the ADR, in essence, the ADR that's being
25 offered to the tort bar here, is one that is positive. I I

1 think you've heard from most of the plaintiffs that it's a
2 positive thing. Resolution is always better than litigation,
3 or at least in most cases, and this is a resolution process.

4 I commend the parties for setting up such a
5 process. It's not an easy process to set up; there's a lot
6 of pushes and pulls here, but I think it's one that has
7 successfully crossed the goal line, and I think, based on the
8 record here, can be supported with all the factors that Your
9 Honor looks alternative for third-party releases. Thank you,
10 Your Honor.

11 THE COURT: Thank you, Mr. Esserman.

12 I believe, Mr. Benson?

13 MR. BENSON: Your Honor, Ward Benson, for the
14 Department of Justice. We, on behalf of the IRS, have
15 resolved our issues with the plan sponsor. So, definitely,
16 the Government agencies involved, I'm not going to say we
17 support the plan, but we do not oppose -- I don't want to
18 trample on --

19 THE COURT: Be careful.

20 (Laughter)

21 MR. BENSON: Yes. So, IRS no longer opposes, and
22 may I be excused, Your Honor?

23 THE COURT: You may. Safe travels.

24 (Laughter)

25 THE COURT: All right. Does anyone else wish to

1 be heard before I hear anyone in reply?

2 Very well. Mr. Macauley, briefly.

3 MR. MACAULEY: Good afternoon, Your Honor. I note
4 from the comments that the debtors were the only ones who
5 referenced our specific objections. I just wanted to address
6 three arguments by Ms. Goldstein.

7 THE COURT: Sure.

8 MR. MACAULEY: Two of them address a
9 (indiscernible) issue. One was that Section 510 has been in
10 the plan all along.

11 Yeah, it has been in the plan all along. If you
12 pull the copy of your plan -- I don't know which copy you
13 have -- but if you go to the subordinated claim definition --

14 THE COURT: Yeah.

15 MR. MACAULEY: Okay. And as I said before, it's
16 got the one (i) and the little -- the little (i) and the
17 little (ii). The little (i) talks about any claim subject to
18 subordination or 510. Well, Your Honor, 510 is three
19 subsections, okay, and they're three distinct subsections.

20 And then if you look at little (ii), it says the
21 claim for a fine penalty, all right, otherwise not predicated
22 upon compensatory damages.

23 All right. So, as a State reading this
24 definition, there may be notice of potential subordination
25 under little (ii), but certainly not under little (i).

1 And I did note that she did not respond to the
2 inability to use 510(c) categorically.

3 The second point is she said -- she said that
4 restitution -- the States want restitution, but it's not
5 going to the consumers. Wrong.

6 Okay. Restitution goes to the consumers by state
7 statute. It's distributed to the consumers by State statute.
8 The OEMs -- not the OEMs -- Takata, in their summary judgment
9 brief on discharge, Page 15 specifically, says that --
10 acknowledges this and says that the States' claims compromise
11 of a penal component and a compensatory component, meaning
12 restitution.

13 And, Your Honor, that's exactly what's happening
14 with the DOJ restitution plan. The DOJ isn't keeping \$850
15 million; it's distributing it to the OEMs. It's the same
16 thing.

17 I'd also note that, again, I know the multi-state
18 motion is not part of the record, but the multi-state didn't
19 make any claim for restitution, according to their motion.

20 THE COURT: Okay.

21 MR. MACAULEY: The last point, Your Honor, deals
22 with the discharge issue. And she complained that, you know,
23 these claims are going to have to be litigated in different
24 places and that's a burden to the debtors.

25 Your Honor, the States -- you know, from August,

1 the States have coordinated in these Chapter 11 cases. We
2 tried to -- you know, we tried to make things uniform for
3 Your Honor. We coordinated on negotiating the stipulated
4 litigation plan that allows the State actions to go forward.
5 We've coordinated, or we will be coordinating, both, on the
6 litigation that's occurred in the last two months and on the
7 litigation going forward. And so this concern about having
8 to litigate in Hawaii and the Virgin Islands is overblown.

9 Your Honor, those are my points, unless you have
10 any questions?

11 THE COURT: No, I don't have any questions.

12 MR. MACAULEY: Thank you, Your Honor.

13 THE COURT: All right. Mr. Chipman?

14 MR. CHIPMAN: Good afternoon, Your Honor. Wayne
15 Chipman, on behalf of Whistleblower C, again. If I may
16 respond to a couple of points raised by debtors' counsel?

17 THE COURT: Okay.

18 MR. CHIPMAN: Your Honor, just to be clear, I
19 don't think the responses by debtors' counsel actually dealt
20 with the legal issues. Our client's claim is against the DOJ
21 restitution fund, as Your Honor is aware.

22 Who's entitled to the money in that fund is yet to
23 be determined. Your Honor hasn't been briefed yet. That's
24 under the jurisdiction of the Michigan District Court.

25 My understanding of the proposed settlement gives

1 the entire restitution to the OEMs. There's no provision
2 made for the whistleblowers' claims at all, Your Honor, that
3 I'm aware of. Your Honor, so, the free-and-clear language
4 that's contained in the settlement, that money is being
5 transferred free and clear of all liens, claims, and
6 encumbrances, is my understanding. We don't think that Your
7 Honor has jurisdiction to make that ruling, respectfully,
8 because those funds are under the jurisdiction of the
9 Michigan District Court.

10 In addition, Your Honor, to the extent that we do
11 have a claim, those funds will be gone, and then all the OEMs
12 -- I guess there's 9 or 10 or 11 of them -- will claim, Oh,
13 that money was transferred free of all liens, claims, and
14 encumbrances.

15 Your Honor, the other issue is counsel for the
16 debtors said that these claims may take three years to
17 resolve. Your Honor, in bankruptcy cases -- in an analogous
18 situation, in bankruptcy cases, every plan that I've ever
19 worked on has a reserve set up for contingent, unliquidated
20 disputed claims. They're not contemplating that here for the
21 DOJ restitution fund, and that's the issue, Your Honor.

22 So, Your Honor, we're not sure Your Honor has
23 jurisdiction to approve the settlement as drafted. We think
24 there's certain things that Your Honor can do. One is maybe
25 remove the language -- maybe make it not "free and clear."

1 The bottom line is, whatever Your Honor approves here should
2 not impact our ability to go after the funds for our clients
3 if our clients have a claim.

4 And maybe a reserve needs to be set up. I'm not
5 sure how that would work. Thank you, Your Honor.

6 THE COURT: All right. Okay. Does anyone else
7 wish to be heard?

8 Yes, sir?

9 MR. FREEDLANDER: Good afternoon, Your Honor. My
10 name is Mark Freedlander, of McGuire Woods. I'm here on
11 behalf of Ford Motor Company, but in this particular matter,
12 I likewise speak, on behalf of the entire OEM group, which is
13 actually 15 different OEMs, as you're aware, Your Honor.

14 Just briefly, with respect to the whistleblower
15 item and only that, Your Honor, the settlement under 519(b)
16 of the plan is a settlement of the OEM adequate protection
17 claims, our cure claims, and our administrative priority
18 claims. Those claims, as settled, will be credited against
19 the amounts that would otherwise be payable from the DOJ
20 restitution fund, but it would be subject to the approval of
21 the District Court.

22 And you have to appreciate, Your Honor, the
23 special master has filed a recommendation before the District
24 Court. That recommendation suggests that the allocations, as
25 agreed upon by the OEMs, which ostensibly indicates that the

1 settlement that we have reached would be approved, as well,
2 Your Honor, is something that, ultimately, will be determined
3 by the District Court in one way or another.

4 But to be clear, what occurs in the bankruptcy
5 case and what this Court would be approving under the plan is
6 a settlement where sizable claims, well in excess of the
7 amounts that would be attributable under the DOJ restitution
8 fund, are being settled. They're being settled in the estate
9 and credited against eight hundred and fifty -- that portion
10 of the eight hundred and fifty, to which the OEMs would
11 otherwise be entitled, Your Honor.

12 THE COURT: Okay. Thank you.

13 MR. FREEDLANDER: Thank you.

14 THE COURT: All right. Anyone else?

15 (No verbal response)

16 THE COURT: Very well. I need just a few minutes
17 to review my notes. I will return and rule. We stand in
18 recess.

19 MS. GOLDSTEIN: Your Honor, may I interrupt for
20 one moment? We were going to bring over -- I'm waiting for
21 my colleagues -- a printed -- you know, the new confirmation
22 orders that take into account all of the settlements. Did --
23 and the plan -- and the Texas Environmental -- I forgot the
24 rest of it -- but we have a settlement with them and they
25 asked that I read that into the record. So, we can -- I can

1 do that at any -- I mean --

2 MR. MORRIS: (Via telephone) Your Honor, if I
3 could interrupt -- this is Hal Morris -- given the lateness
4 of the hour and the Court's enormous patience today, we'd be
5 satisfied with just having that entered into the confirmation
6 order. I appreciate Ms. Goldstein honoring their agreement
7 that they would read it into the record, but given the
8 lateness of the hour, Your Honor, we're willing to waive that
9 requirement and just have the language we previously agreed
10 on in writing, just entered into the confirmation.

11 THE COURT: Mr. Morris, you are a mensch.

12 (Laughter)

13 THE COURT: All right. We're going to take a
14 break -- Counsel?

15 MR. DARNELL: Your Honor, may I approach?

16 THE COURT: You may approach with trepidation.

17 (Laughter)

18 MR. DARNELL: I'm very sorry, Your Honor. I'd
19 like to read something into the record. I'm Rob Darnell.
20 I'm with the United States on behalf of the USEPA.

21 THE COURT: Very well.

22 MR. DARNELL: All right. Our objection has been
23 resolved based on the revised numbers in the warehouse entity
24 trust funds for inflator disposal costs; and the water-
25 housing entity reserved for inflator warehousing; and

1 shipping costs, as well as debtors' agreement to include
2 negotiated language in Sections 5.9 and 10.15 of the plan;
3 and debtors' agreement to change the definition of "MDMR" to
4 "Missouri Department of Natural resources"; and include the
5 word "inflatators" in the Texas Missouri Trust Fund definition
6 in the plan.

7 And I believe Missouri and Michigan may be on the
8 phone if they have anything to add.

9 THE COURT: Sure. Does anybody else wish to be
10 heard that's on the phone this afternoon?

11 MS. MEGAN MILLER: (Via telephone) Your Honor,
12 this is Megan Miller from Michigan. On behalf of the
13 Michigan Department of Environmental Quality, we don't have
14 anything else to add to what Rob Darnell has stated.

15 THE COURT: Very good. Thank you.

16 MR. MORRIS: Your Honor --

17 MS. LONG: (Via telephone) And, Your Honor this
18 is -- forgive me -- Your Honor, this is Mary Long, on behalf
19 of the Missouri Attorney General's Office. We also have
20 nothing to add to what Mr. Darnell has expressed to the
21 Court.

22 THE COURT: All right. Was there other counsel
23 that wished to be heard on the phone?

24 MR. MORRIS: Your Honor, this is Hal Morris again.
25 I would ask the Court recognize my other environmental

1 colleague, who is also being mentioned so we don't feel
2 singled out.

3 (Laughter)

4 THE COURT: So noted.

5 MR. MORRIS: Thank you, Your Honor.

6 THE COURT: Does anyone wish to be heard?

7 (No verbal response)

8 THE COURT: Hearing nothing, we'll break briefly
9 and we'll return. Thank you.

10 (Recess taken at 4:22 p.m.)

11 (Proceedings resumed at 4:34 p.m.)

12 THE COURT OFFICER: All rise.

13 THE COURT: Please be seated. The matter before
14 the Court is the debtors' request for confirmation of their
15 fourth amended plan of reorganization. For the reasons I
16 will provide, I will confirm the plan and I will overrule
17 pending objections to the plan.

18 The record reflects that the Court has previously
19 approved a disclosure statement in January of these cases.
20 According to the declaration of Ms. Pullo, which has already
21 been admitted into evidence, that declaration reflects that
22 there was compliance with the Court's ordered solicitation
23 procedures and that the certification of Ms. Pullo also
24 reflect that there was sufficient creditor support to win
25 confirmation of a plan, consistent with the provisions of

1 Section 1126 of the Code.

2 I will address the specifics of the plan in a
3 moment, but I will first address the objections that have
4 been presented. I will start with the objection of the
5 States.

6 First, with respect to the objection of the States
7 to their treatment as subordinated claims in Class 9, I will
8 overrule that objection. Class 9 provides that penalties,
9 civil fines, and restitution claims under Section 510 will be
10 subordinated. I am satisfied that the record is sufficient
11 to warrant subordination of claims of this nature.

12 I believe that the matter has been adequately
13 presented and disclosed, consistent with principles of due
14 process, and it was the subject of sufficient notice to
15 present the matter before the Court. And there's more than
16 sufficient case law that supports subordination of civil
17 fines, penalties, restitution, particularly, where, as here,
18 the massive subordinated claims that are at issue would
19 likely operate to swamp the various classes and, in effect,
20 harm creditors that would be holding, otherwise, unsecured
21 claims. So, I am satisfied that the debtor has carried its
22 burden with respect to the request to subordinate the claims
23 in Class 9.

24 As for issues relating to discharge, the States
25 have requested that their litigations be carved out of the

1 discharge injunction. I will deny that request or overrule
2 that objection.

3 The Court ruled earlier this week that the State
4 claims are, in fact, susceptible to discharge, consistent
5 with the provisions of 1141(d)(6), and I will not revisit or
6 reverse the ruling that the Court made, in concluding that
7 those claims are, in fact, susceptible to discharge. So, the
8 request of the States that their matters be carved out from
9 the discharge or excluded from the discharge injunction is
10 denied.

11 With respect to the whistleblowers, I note that
12 the record reflects that these individuals do not presently
13 hold awards or allowed claims or entitlements to payment.

14 And they do not suggest that they have a claim in
15 these bankruptcy proceedings against these debtors, so their
16 standing today is certainly subject to question.

17 But, nevertheless, turning to it on the merits,
18 the whistleblowers expressed concern regarding distributions
19 to OEMs on account of what are effectively allowed or settled
20 claims of the OEMs. Matters relating to the whistleblowers
21 rest with the Michigan District Court and there is no
22 question, again, that that Court possesses jurisdiction over
23 the treatment and mechanics of any claims that they would
24 have.

25 But I see no basis before the Court and no basis

1 has been shown today to stay, reserve, or preclude the two-
2 hundred-and-forty-six-million-dollar distribution to the
3 OEMs, based upon the pendency of the whistleblowers' ultimate
4 request. So, that objection is overruled.

5 And, finally, there were some objection -- the
6 Court noted that AEIG has -- AIEG lacks standing to appear
7 before the Court for purposes of prosecuting an objection,
8 but the fact of the matter is that Mr. Cianciulli had the
9 opportunity to present, essentially, those objections by
10 virtue of the specific creditor objection that has been
11 filed. So the Court heard those objections on the merits.
12 I will overrule the -- what I will call the "AIEG objection"
13 on the merits for reasons that I will state in the context of
14 ruling on the channeling injunction on the releases. So,
15 there is no doubt; the objection of the tort plaintiffs is
16 overruled.

17 So, the matter before the Court is the request for
18 confirmation of the fourth amended plan and the evidentiary
19 record has been laid through the introduction, admission into
20 evidence of seven separate declarations. They are the
21 declarations of Mr. Perkins, Mr. Bowling, Mr. Yearley, Mr.
22 Fleming, Mr. Vasquez, and Mr. Frankel. Those are the six
23 substantive declarations, and, finally, the balloting
24 certification of Ms. Pullo, which, as the Court notes, has
25 been admitted into evidence.

1 Given the hour, I don't want to burden the record
2 any more than is necessary, but I have reviewed carefully and
3 admitted into evidence each of the affidavits. And they lay
4 out an evidentiary predicate that the plan satisfies the
5 relevant of Section 1129 and 1123 standards, as well as
6 meeting the Zenith, Master Mortgage, Continental standards
7 for the approval of releases and the channeling injunction.

8 I will repeat this observation later, but it is
9 essential to stress that the Court places great weight in the
10 context of this case, on the support of large creditor
11 stakeholders, and more importantly, the estate fiduciaries,
12 being the UCC, the tort claimants' committee, the future
13 claims' rep, and the MDL counsel, who also has actively
14 participated in these cases from the outset.

15 I also place significance on the position of the
16 Office of the United States Trustee, which has resolved its
17 objection and its concerns initially stated with respect to
18 the scope in effect of the releases and the channeling
19 injunction.

20 So, turning to the plan, as noted, Ms. Pullo's
21 declaration reflects more than adequate creditor support to
22 win confirmation under Section 1126. The confirmation memo
23 and the Bowling and Fleming declarations lay out, as I noted,
24 the satisfaction of the 1129 and the 1123 factors. And I'm
25 satisfied that the plan has been presented in good faith and

1 is feasible.

2 There are four settlements that have been
3 presented for consideration and for approval through the
4 plan. They were outlined by Ms. Goldstein at the outset and
5 I will run through them in summary or shorthand terms. The
6 first is the plan settlement. The second is the tort
7 claimant committee/FCR settlement. The third is the
8 settlement achieved with the unsecured creditors' committee.

9 And, finally, there's the settlement that was
10 achieved with the National Highway Traffic Safety
11 Administration, or NHTSA.

12 The terms of each of these settlements are laid
13 out in detail in the order and I'm not going to go through
14 them all right now. I don't believe that the record requires
15 that. I will, again, note that the declarations lay them out
16 with specificity, as does the plan, and the amended plan.

17 And so, I'm satisfied that the terms of the
18 settlements have sufficiently and adequately laid out. The
19 record reflect that each of these settlements was extensively
20 negotiated in good faith by sophisticated parties represented
21 by able counsel and professionals.

22 The record further reflects that each settlement
23 is an essential component to the constellation of agreements
24 and transactions that comprise this plan.

25 The standard for approval of settlements is set

1 forth under Bankruptcy Code Section 9019 and settlements are,
2 likewise, permitted to be presented in the context of plan
3 confirmation. Case law teaches that 9019 imposes a
4 relatively low burden. The four-factor Martin test is well-
5 known to parties and has been briefed by the debtor.

6 It's often boiled down to, a settlement much
7 achieve a point lower -- or higher than the lowest point on
8 the range of reasonableness. It is an understatement to say
9 that each of the four objections has carried that burden.

10 Each of the settlements that are built into the plan
11 that I've described and that are laid out in the record are
12 approved.

13 The Court turns next to the sale transaction that
14 involves KSS, which is the centerpiece of the plan settlement
15 and, essentially, the plan of reorganization here. Mr.
16 Yearley and Mr. Perkins supplied declarations that lay out
17 the background of the negotiations of the transaction, the
18 documentation, and, ultimately, the implementation of the
19 agreement.

20 The record reflects that the sale transaction
21 reflects entry into the sale transaction reflects the
22 exercise of this debtors' best business judgment and the
23 record further reflects that the sale transaction has been
24 negotiated, documented, and prosecuted in good faith,
25 consistent with the standard articulated by the Third Circuit

1 in the Abbotts Dairies case and its progeny.

2 And I am prepared to find that KSS is entitled to
3 all of the protections available under Section 363(m), as a
4 good faith purchaser and under 363(f), as a purchaser of
5 assets free and clear of liens, claims, and encumbrances.

6 Turning to the leases and the channeling
7 injunction, I note as a threshold matter that the Court
8 possesses subject-matter jurisdiction to consider and to
9 approve the channeling injunction and to approve the releases
10 that are here today. And I will deal with the channeling
11 injunction and the releases together, as a practical matter.

12 And I think the debtors' brief specifically notes
13 that the relevant factors and the legal analysis are largely
14 consistent between the two, so I will address both of them
15 together.

16 And in considering and applying the relevant
17 factors, I repeat, the Court's decision to approve the
18 releases and the channeling injunction is strongly influenced
19 and informed by the support of the committee, the tort
20 claimants' committee, the unsecured creditors' committee, and
21 the FCR, as well as the support expressed by the MDL counsel,
22 the OEMs, and other significant stakeholders in these
23 proceedings.

24 The factors have been just derived from case law,
25 as I mentioned. The parties have rules of evidence to it as

1 the Zenith standard, the Master Mortgage standard, the
2 Continental standard, but in essence, they have yielded a
3 relatively standard test. First, the debtor must demonstrate
4 that the case itself presents extraordinary circumstances.

5 And then the debtor would establish that the
6 releases or the channeling injunction are fair and necessary
7 and that they arrive or that they offer sufficient
8 consideration.

9 And in evaluating those three factors, courts have
10 identified five separate factors to be considered.

11 I will walk through each of them, but I will first
12 address the extraordinary circumstances standard. Again,
13 there is no shortage of references in the record from parties
14 on all sides that this case presents extraordinary
15 circumstances. Counsel for the debtor has repeatedly
16 informed or advised the Court that the matter before the
17 Court and this case involves the largest consumer recall in
18 history; tens of millions of individuals and vehicle owners
19 and parties around the world are affected.

20 The number of moving parts, in order to facilitate
21 both, the preservation of the enterprise, as many of the jobs
22 as possible, to treat and provide for individuals that have
23 been harmed either economically or by way of personal injury,
24 and also to address the concerns and considerations of other
25 stakeholders, including the OEMs, clearly reflect that this

1 is an extraordinary case.

2 And so when I look at the five factors, again, I
3 will address them in summary form, and I note and rely upon
4 the evidence that was submitted, particularly, Mr. Bowling's
5 declaration laying out the factors. But, nevertheless, for
6 purposes of completeness of the record, courts have
7 considered whether is there an identity of interest.

8 The Court has spent a great deal of time over the
9 past six or seven months, dealing with these proceedings and
10 identifying matters where there are indemnification
11 obligations that are running in every possible direction; in
12 addition, many, if not all of the release parties, including
13 officer and directors of the debtor entities, are parties
14 that would have meaningful indemnification rights.

15 So, the fact of the matter is, as the Court noted
16 in the injunction litigation, litigation against the debtor
17 is often litigation against multiple parties. And litigation
18 against the OEMs or other parties is effectively litigation
19 against the debtors. I am satisfied that the identity of
20 interest prong has been satisfied.

21 Second, the question of substantial contribution.
22 Again, I don't think there is any meaningful dispute that
23 there is, in fact, substantial contribution being provided by
24 each of the parties. The OEMs have provided for the
25 restitution of substantial claims in support of the debtors

1 in these proceedings through the accommodation agreement,
2 through the uncapped participation in the trust, and I would
3 obviously note that KSS has contributed substantially and
4 economically, as well.

5 I don't think that there are -- in the absence of
6 the transaction, and the participation of these parties, I
7 don't think there's any question that the results for
8 stakeholders would be far, far worse than the circumstances
9 presented, at least, as the prospect under the plan. So, I
10 am satisfied that there is, again, substantial contribution
11 being made in exchange for the releases.

12 I am, likewise, satisfied that they are, in fact,
13 essential to the plan. And counsel, in objecting, noted that
14 the plan actually provided for what was effectively an option
15 or a toggle that would allow the debtor to move forward in
16 the absence of approval.

17 I understand as a practical matter and as a
18 transactional matter, the nature of that, but that doesn't
19 undercut that the -- that these elements are essential. This
20 is a format and a structure that was articulated in broad
21 terms at the outset of these proceedings, actually in this
22 courtroom, back in June. And the terms of the releases, the
23 global settlement that is reflected with the other four
24 settlements, each of these are essential to the transactions
25 that are embodied within the plan, and so I have no

1 difficulty in finding that they are, in fact, essential to
2 the plan.

3 I am, likewise, satisfied that there's been
4 acceptance by a substantial majority of impacted classes, and
5 I've listened carefully to Ms. Pullo's testimony and
6 carefully reviewed her declaration. I would observe that
7 while I don't believe I have a motion predicate before me
8 today, it does seem to me that the Puerto Rico claim that was
9 at issue likely belongs in Class 9.

10 If that were -- if that claim were moved, in fact,
11 we would have a fully consensual confirmation; nevertheless,
12 under either analysis, whether it's consensual confirmation
13 or whether it is a cram down because of that Class 6(d)(1)
14 rejection, the fact of the matter is that there is
15 substantial and sufficient support by creditors for
16 confirmation of the plan.

17 And then, finally, that there are mechanisms to
18 pay fair consideration to the affected classes. I note
19 first, the payments that are contemplated within the various
20 settlements that have been identified, as well as, and
21 perhaps more importantly, the payments that are contemplated
22 under the channeling injunction and the trust that's created
23 thereby.

24 So, under the circumstances that are before me, I
25 am satisfied that the debtors have carried their burden under

1 the applicable case law and I would be prepared to enter an
2 order that approves the releases, as requested, and,
3 likewise, approves the channeling injunction, as proposed by
4 the debtor.

5 Finally, the debtor has asked that the Court waive
6 the Rule 320(e) stay of a confirmation order. And, again, I
7 think that these cases have been presented with relative
8 clarity about the deadlines that are coming up relating to
9 other proceedings. I believe the debtors' request for that
10 waiver remains extant, and assuming that it does, I'm
11 satisfied that the record is sufficient to authorize the
12 waiver of that deadline.

13 Finally, before we conclude, I have to extend my
14 appreciation and my compliments to all parties, but I would
15 observe, particularly, the counsel for the debtor. This was
16 a hard case fought out. I have to tell you I hear that all
17 the time. This was a complicated case. I hear that all the
18 time.

19 So, I was skeptical for a long time --

20 (Laughter)

21 THE COURT: You were right.

22 (Laughter)

23 THE COURT: Again, I -- in singling out the
24 debtor, it's not necessarily to diminish, again, the
25 involvement of any of the other stakeholders. It's not lost

1 on me, what is involved in getting to, as Ms. Goldstein noted
2 at the outset of the case, a largely consensual confirmation,
3 roughly six or seven months after filing a case of this size
4 and this complexity.

5 So, I would extend my professional comments,
6 certainly to debtors' counsel, but, again, to extend my
7 thanks and my compliments to all of the other players, large
8 and small, certainly the committees, the FCR, the OEMs as a
9 group and individually, and if I've left anyone out, I do
10 apologize for that.

11 But this is a remarkable case. I believe I was
12 obliged to find that it is extraordinary and in those
13 circumstances, I am satisfied that it is extraordinary.

14 So, based upon the record before me and the
15 evidentiary record established by the debtors, I am satisfied
16 the debtors have carried their burden, with respect to
17 Bankruptcy Code Section 1129, and I would be prepared to
18 enter a confirmation order, so providing.

19 Ms. Goldstein?

20 MS. GOLDSTEIN: Your Honor, I'm speechless, and I
21 thank you very much, but I will -- just some housekeeping --
22 we will be submitting an updated confirmation order with a
23 plan attached, presumably by certification of counsel.

24 We have been working -- my colleagues who are not
25 here this afternoon, were working to get the last bits,

1 hopefully, of a consensual resolution into those documents.

2 I have one question for Your Honor.

3 THE COURT: Yes, ma'am?

4 MS. GOLDSTEIN: Mr. Macauley indicated that he was
5 representing the Commonwealth of Puerto Rico, as well as the
6 States. Does the ruling on subordination apply to the
7 Commonwealth of Puerto Rico? I just --

8 THE COURT: Procedurally, I have to confess that
9 I'm not certain where we are. I saw that you raised the
10 issue in your brief --

11 MS. GOLDSTEIN: Yes.

12 THE COURT: -- but I think in order to reclassify
13 a claim, I think that we would probably need an additional
14 step of process. I have made my observation that Class 9 is
15 appropriately classified and subordinated and I understand
16 the concern. I've at least made my comments in dicta,
17 relating to that, but I'm not sure as a matter of process,
18 that I would be able to say that claim is in Class 9, without
19 giving Puerto Rico an opportunity to be heard on that
20 respect.

21 MS. GOLDSTEIN: Your Honor, that's what I thought,
22 but I did want to clarify that, so we will take the next
23 step.

24 THE COURT: Okay. I understand.

25 MS. GOLDSTEIN: Thank you very much. And we,

1 absolutely appreciate all of the time and attention and
2 reading that you have done, that your clerks have done, and
3 your team has done. It really was appreciated not by us
4 alone, but by all the parties, the clients, and we thank you
5 very much.

6 THE COURT: Very well. We'll stand in recess.

7 Thank you.

8 Have a good weekend.

9 (Proceedings concluded at 4:55 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/William J. Garling

February 17, 2018

William J. Garling, CET**D-543

Date

Certified Court Transcriptionist

For Reliable

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski

February 17, 2018

Mary Zajaczkowski, CET**D-5

IN THE MATTER OF APPLICATION OF AN APPLICATION BY TK HOLDINGS INC. AND
TAKATA CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT

Court File No. CV-17-11857-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**MOTION RECORD
VOLUME I OF V
(Re: Recognition of Chapter 11 Plan
and Related Orders)
(Returnable March 14, 2018)**

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Heather L. Meredith LSUC#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Eric S. Block LSUC#: 47479K
Tel: 416-601-7792
Email: eblock@mccarthy.ca

Trevor Courtis LSUC#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Adrienne Ho LSUC#: 68439N
Tel: 416-601-8919
Email : aho@mccarthy.ca

Lawyers for the Foreign Representatives
DOCS 17589355