

IN THE SUPREME COURT OF OHIO

SHILOH AUTOMOTIVE, INC.,)	
)	Appeal from the Ohio
Appellant,)	Board of Tax Appeals
)	
)	BTA Case 2004-M-380 and 1283
-vs-)	
)	Supreme Court Case 2006-1384
WILLIAM W. WILKINS,)	
TAX COMMISSIONER OF OHIO,)	
)	
Appellee.)	

SUPPLEMENT TO BRIEF OF APPELLANT
Volume 1 of 2

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SUPREME COURT OF OHIO

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BEFORE THE BOARD OF TAX APPEALS

STATE OF OHIO

- - -

Shiloh Automotive, Inc.,)

Appellant,)

vs.) Case No. 04-M-0380 and

William W. Wilkens,) Case No. 04-M-1283

Tax Commissioner,)

Appellee.)

- - -

Hearing Room D

State Office Tower

30 East Broad Street

24th Floor

Columbus, Ohio 43215

Tuesday, May 3, 2005

Met, pursuant to assignment, at 9:00
o'clock a.m.

BEFORE:

Rebecca R. Luck, Attorney-Examiner

- - -

COPY
TRANSCRIPT

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	EXHIBITS	MARKED	RECEIVED
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2	Appellant's Exhibit No. 1 -	7	305
3	Proxy Statement		
4	Appellant's Exhibit No. 2 -	7	305
5	Asset Purchase Agreement		
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11	Tax Memo dated December 31, 1998		
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16	Appellant's Exhibit No. 8 -	7	305
17	Project Cadet Detailed Due Diligence		
18	Request list date December 23, 1998		
19	Appellant's Exhibit No. 9 -	7	305
20	MTD Automotive Information Request List		
21	dated March 12, 1999		
22	Appellant's Exhibit No. 10 -	7	305
23	Questions for March 19, 1999		
24	Discussion re: SII & MTDA		
25			

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1 I N D E X

2 (continued)

3 - - -

4	EXHIBITS	MARKED	RECEIVED
5	Appellant's Exhibit No. 11 -	7	305
6	Shiloh Industries, Inc. Board of		
7	Director's Meeting dated March 25, 1999		
8	Appellant's Exhibit No. 12 -	7	305
9	Shiloh Industries, Inc.		
10	Board of Directors Issues/Questions		
11	Appellant's Exhibit No. 13 -	7	305
12	Board Questions		
13	Appellant's Exhibit No. 14 -	7	305
14	MTD Products, Inc., and		
15	MTD Automotive Business Unit		
16	Descriptive Memorandum dated		
17	November, 1998		
18	Appellant's Exhibit No. 15 -	7	305
19	Shiloh Industries, Inc. Board of		
20	Directors Meeting dated December 10, 1998		
21	Appellant's Exhibit No. 16 -	7	305
22	Shiloh Industries, Inc. Board of		
23	Directors Meeting dated February 18, 1999		
24			
25			

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I N D E X
(continued)

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EXHIBITS	MARKED	RECEIVED
Appellant's Exhibit No. 17 -	7	305
Shiloh Industries, Inc. Board of		
Directors Meeting dated March 25, 1999		
Appellant's Exhibit No. 18 -	7	305
Shiloh Industries, Inc. Board of		
Directors Meeting dated May 20, 1999		
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Shiloh Industries, Inc. Board of		
Directors Meeting dated June 17, 1999		
Appellant's Exhibit No. 20 -	7	305
Robert W. Baird & Co., Inc. Project		
Cadet Presentation to the Board of Directors		
Appellant's Exhibit No. 21 -	7	305
MTD Products, Inc. Loan Agreement		
Appellant's Exhibit No. 22 -	7	305
Amendment to Loan Agreement		

- - -

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P R O C E E D I N G S

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Tuesday, May 3, 2005

4

Morning Session

5

- - -

6

Thereupon, Appellant's Exhibit Nos. 1

7

through 22 were marked for purposes of

8

identification.

9

- - -

10

THE EXAMINER: This is a hearing before

11

the Board of Tax Appeals, State of Ohio, relative

12

to an appeal styled Shiloh Automotive, Inc. versus

13

William W. Wilkens, Tax Commissioner of Ohio,

14

Board of Tax Appeals Case Nos. 2004-M-380 and

15

2004-M-1283.

16

These appeals are being heard in

17

Hearing Room D in the offices of the Board of Tax

18

Appeals on the 24th floor of the State Office

19

Tower, 30 East Broad Street, Columbus, Ohio on

20

May 3, 2005 at 9:00 o'clock a.m. pursuant to

21

assignment before Rebecca Luck, Attorney-Examiner

22

for the Board of Tax Appeals.

23

The Notices of Appeal were filed with the

24

Board of Tax Appeals on April 27, 2004 and

25

November 22, 2004. The one appeal is from a final

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1 determination of the Tax Commissioner, March 5,
2 2004, and the other from a final assessment
3 certificate issued October 29, 2004.

4 Through both the final determination and
5 the final assessment certificate, the Tax
6 Commissioner fixed a final assessment at the final
7 value of certain taxable personal property for the
8 tax periods 2001 and 2002.

9 Will the Appellant's representative
10 please enter an appearance by name, mailing
11 address and telephone number?

12 MR. STEINES: Yes, ma'am.

13 Charles M. Steines, S-t-e-i-n-e-s. My firm's name
14 is Jones Day. The address is 901 Lakeside Avenue,
15 Cleveland, Ohio 44114. My telephone number is
16 216-586-7211.

17 THE EXAMINER: Thank you, Mr. Steines.

18 Will the Appellee's representative please
19 enter his appearance by name, mailing address and
20 telephone number.

21 MR. MAIER: Yes. I'm appearing on behalf
22 of Appellee, Tax Commissioner of Ohio, Jim Petro,
23 Attorney General, by Robert C. Maier, 30 East
24 Broad Street, 16th Floor, Columbus, Ohio 43215,
25 614-466-5967.

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1 Q. You mentioned that you've been with
2 Shiloh since January of 2002. Could you briefly
3 recount your employment history prior to that
4 time?

5 A. Yes. I spent over 27 years with Spindler
6 Product Company, a Cleveland based company global
7 automotive supplier, where I started in several
8 engineering positions from 1973 to 1982. And then
9 I was promoted to Division Manager and General
10 Manager from 1982 to 1986. I was Vice President,
11 U.S. Operations from '86 to '89, and then
12 President of the Standard Products Company in
13 1989-1990.

14 In 1990, I was promoted to Executive Vice
15 President, North American Operations. Then in
16 1991, I was elected the President and a member of
17 directors for Standard Products Company worldwide,
18 and Chief Operating Officer of the company,
19 through 1999, at which point we sold the company.

20 Q. Do you serve as a Director of Shiloh
21 Industries?

22 A. Yes.

23 Q. When were you first appointed as a
24 Director?

25 A. In 1993.

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1 Q. I'm going to ask you to turn to the
2 vellum bound document that relates to
3 Case No. 2004-M-380.

4 A. Right.

5 Q. And I believe it is the case -- That
6 document that you have may not be as complete as
7 it needs to be, so I'm going to let you borrow
8 mine for just a second.

9 A. Thank you.

10 Q. Would you turn to Pages 77 through 135 of
11 the transcript?

12 A. Okay.

13 Q. Do you recognize the document reproduced
14 on those pages and captioned "Asset Purchase
15 Agreement among Shiloh Industries, Inc., Shiloh
16 Automotive, Inc. and MTD Products, Inc. dated as
17 of June 21, 1999"?

18 A. Yes.

19 Q. Pursuant to this agreement, did Shiloh
20 Automotive purchase substantial^{ity} quality^{ty} assets of
21 MTD Products Automotive Division?

22 A. Yes.

23 Q. When did the purchase transaction close?

24 A. On November 1, 1999.

25 Q. Turn, if you would, to the binder of

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1 Industries' vow with the SEC for the period ending
2 April 30, 1999?

3 A. Yes.

4 Q. Does the Proxy Statement include as
5 Appendix E a copy of MTD Automotive's Financial
6 Statements?

7 A. Yes.

8 Q. And does the Proxy Statement include as
9 Appendix F a copy of the management's discussion
10 of the results of operation of MTD Automotive
11 Division?

12 A. Yes.

13 Q. Do you recognize the document marked for
14 identification as Exhibit 1, including the
15 Appendixes A through F, to be the same document
16 included in the transcript of evidence certified
17 by the Commissioner of Pages 21 through 212?

18 A. Yes.

19 Q. Directing your attention to Page 4 of the
20 Proxy Statement, what was the --

21 A. Page 4, you say?

22 Q. Page 4 of Exhibit 1.

23 A. Okay.

24 Q. For everybody's convenience, the
25 pagination in Exhibit 1, when it relates to one of

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1 the exhibits, is prefaced by a letter that's A, B,
2 C or whatever, whereas the Proxy Statement proffer
3 has no preface.

4 What was the record date for the
5 determination of Shiloh's stockholders entitled to
6 vote on the issuance of additional Shiloh's shares
7 that was used as consideration of the assets of
8 MTD Products Automotive Division?

9 A. July 22, 1999.

10 Q. Mr. Zampetis, what I'd like to do now is
11 establish the ownership of the parties to the
12 Asset Purchase Agreement.

13 At the close of business on July 22,
14 1999, is Shiloh Automotive a wholly-owned
15 subsidiary of Shiloh Industries?

16 A. Yes.

17 Q. When was Shiloh Automotive formed?

18 A. On June 16, 1999.

19 Q. And for what purpose was it formed?

20 A. To be used as an acquisition vehicle for
21 MTD Automotive Division.

22 Q. At the close of business on July 22,
23 1999, was Shiloh Industries a publicly-owned
24 corporation?

25 A. Yes.

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1 Q. Were its shares traded on the
2 international market?

3 A. Yes. The shares of Shiloh were traded on
4 the NASDAQ Stock Exchange.

5 Q. Again, directing your attention to Page 4
6 of the Proxy Statement, at the close of business
7 on July 22, 1999, how many shares of Shiloh
8 Industries were issued and outstanding?

9 A. 13,080,563 shares.

10 Q. At the close of business on July 22,
11 1999, did MTD Products or its shareholders or its
12 pension fund own or control, directly or
13 indirectly, any shares of Shiloh Industries?

14 A. Yes.

15 Q. Directing your attention to Pages 2 and
16 36 of the Proxy Statement.

17 A. Right.

18 Q. What percent of Shiloh Industries shares
19 were owned and controlled, directly or indirectly,
20 by MTD Products or its shareholders or its pension
21 fund at that time?

22 A. Approximately 51 percent.

23 Q. Out of the 51 percent, was approximately
24 16 percent owned by the pension fund?

25 A. That is correct.

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1 Q. And the shares held in the pension fund
2 were held for the benefit of Shiloh's employees?

3 A. Yes.

4 Q. And they were managed by whom?

5 MR. MAIER: I'm going to -- Never mind.
6 Strike that.

7 THE WITNESS: It was managed by MTD's
8 management as representative of the employees.

9 BY MR. STEINES:

10 Q. The trustee of the pension trust?

11 A. Yes.

12 THE EXAMINER: Mr. Steines, just to make
13 a record clear, could you ask your last question?
14 I think you might have said Shiloh and meant MTD.
15 Was the 16 percent controlled by....

16 THE WITNESS: By MTD pension fund.

17 THE EXAMINER: Okay. Thank you.

18 THE WITNESS: Right.

19 BY MR. STEINES:

20 Q. Change focus to MTD Products now.

21 In 1999, was MTD Products a
22 privately-held corporation?

23 A. Yes.

24 Q. Pursuant to the Asset Purchase Agreement,
25 Shiloh Automotive purchased MTD Products

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1 Automotive Division for cash and a certain amount
2 of Shiloh Industries' stock; is that correct?

3 A. Correct, yes.

4 MR. MAIER: I'm going to move to strike.
5 He's leading the witness.

6 THE EXAMINER: I'm going to allow him a
7 little leeway, and this is just because he's
8 trying to suggest the fact that ownership factor
9 isn't necessarily the easiest way to do it.

10 MR. MAIER: Okay. I'll withdraw the
11 objection then for that purpose.

12 THE EXAMINER: Thank you.

13 BY MR. STEINES:

14 Q. Immediately after Shiloh Automotive's
15 purchase of the automotive division, what was
16 Shiloh Industries' shares of MTD Products or its
17 shareholders or its pension fund owned, directly
18 or indirectly?

19 A. Fifty-six percent.

20 Q. Prior to Shiloh Automotive's acquisition
21 of MTD Automotive Division, in what business was
22 Shiloh Industries engaged?

23 A. Shiloh Industries was engaged primarily
24 in tool design and development, precision tooling
25 in first line blanket operations and some certain

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1 stamping and steel processing as a Tier-2 supplier
2 to the automotive industry.

3 Q. What's a Tier-2 supplier?

4 A. A Tier-2 supplier is a supplier that
5 provides parts to a Tier-1 supplier that is
6 dealing directly with the automotive OEMs.

7 Q. Can you give me an example of the
8 relationship between Tier-1, Tier-2 and OEMs?

9 A. Yes. A Tier-2 makes a component,
10 provides that to a Tier-1 that uses that component
11 in a subassembly that they deliver to General
12 Motors.

13 Q. And General Motors incorporates that into
14 a car?

15 A. Exactly.

16 Q. Directing your attention to Page 32 of
17 the Proxy Statement.

18 A. Okay.

19 Q. Prior to Shiloh Automotive's acquisition
20 of MTD Automotive Division, in what business was
21 MTD Products engaged?

22 A. MTD Products was engaged primarily in
23 three lines of business. Their biggest product
24 line was the consumer product division, which
25 primarily is dealing with lawn and garden

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1 equipment. The second --

2 MR. MAIER: I'm going to object to his
3 testifying about what business MTD was in because
4 his association at the time was with Shiloh and
5 not MTD. And as far as the document is concerned,
6 it speaks for itself.

7 MR. STEINES: I find it curious that this
8 case was based on an incestuous relationship --
9 alleged incestuous relationship between MTD and
10 Shiloh, yet, I can't talk about the business in
11 which MTD was engaged.

12 THE EXAMINER: I'm going to allow him to
13 give this information, just so the record is
14 complete. I agree this document speaks for
15 itself, but it will be easier to review the record
16 to have it as part of the transcript.

17 MR. MAIER: Okay. I understand.

18 THE EXAMINER: Mr. Steines, you may
19 continue.

20 BY MR. STEINES:

21 Q. You can continue on.

22 A. So the second business of some size with
23 MTD was the Automotive Systems Division that
24 provided components, shop assemblies and modular
25 assemblies to -- as the Tier-1 automakers and the

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1 third business unit was the so-called mechanical
2 systems division which was the smallest business
3 of the three and provided transmissions to
4 appliance manufacturers.

5 Q. Directing your attention to Page 39 of
6 the form 10-K, which you'll find in Exhibit 1 on
7 Page C-39.

8 A. Okay.

9 Q. What was the make-up of the Shiloh
10 Industries' Board of Directors as of January 29,
11 1999?

12 A. As of January 29, 1999, the make-up was
13 Dominick Fanello, Robert Grissinger,
14 James Fanello, Curtis Moll, Dieter Kaesgen.

15 Q. You better spell that one.

16 A. K-a-e-s-g-e-n, David Hessler,
17 Richard Gray, James Karman and Theodore Zampetis.

18 Q. Yourself?

19 A. Myself.

20 Q. Did Mr. Grissinger retire from the Board
21 on May 20, 1999?

22 A. Yes.

23 Q. Who replaced him?

24 A. Jack Falcon, as the new CEO.

25 Q. Aside from Mr. Grissinger, were all of

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1 the people you just mentioned directors of Shiloh
2 Industries on June 17, 1999?

3 A. Yes.

4 Q. Was anyone other than those you
5 mentioned, including Mr. Falcon, a Director of
6 Shiloh Industries on June 17, 1999?

7 A. No.

8 Q. On June 17, 1999, at the time Shiloh
9 Automotive's acquisition of MTD Automotive
10 Division was approved by Shiloh Industries Board
11 of Directors, were any of Shiloh Industries
12 directors affiliated in any way with MTD Products?

13 A. Yes.

14 Q. Could you name them?

15 A. Sure. Dominick Fanello, James Fanello,
16 Curtis Moll, Dieter Kaesgen, David Hessler, all of
17 these directors were associated with MTD.

18 Q. Did these individuals participate in the
19 vote that approved Shiloh Automotive's acquisition
20 of MTD Automotive, or the discussions that
21 preceded the vote?

22 A. No.

23 Q. Referring you to Page 5 of the Proxy
24 Statement, I'd like you to review the events that
25 lead to Shiloh Automotive's acquisition of MTD

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1 Automotive Division. And I'll lead you through
2 that process, okay?

3 A. Okay.

4 Q. On Page 5, focusing on the Transaction
5 Section of the document, the first paragraph of
6 the Transaction Section provides that from time to
7 time, prior to December of 1998, management of
8 Shiloh and MTD had informal discussions of the
9 strategic benefits of combining the operation of
10 automotive division with Shiloh, but that no
11 formal discussion occurred until mid-1998.

12 Can you shed light on the nature of the
13 theme of that discussion?

14 A. Well, on and off, because of the
15 situation that existed in the automotive industry
16 and the fact that both MTD had an automotive
17 division and Shiloh was a growing automotive
18 supplier, there were informal discussions about
19 the potential benefits of combining the two
20 operations.

21 And that's all; I mean, nothing formal.

22 Q. The first paragraph also provides that in
23 July 1, 1998 in light of certain trends affecting
24 the automotive industry, Mr. Grissinger and
25 Mr. Hessler initiated the discussion regarding the

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1 possibility of pursuing acquisition of MTD
2 Automotive Division.

3 My question to you is: What were the
4 trends affecting the automotive industry that
5 prompted this discussion, and why might that make
6 that acquisition of the automotive division
7 attractive to Shiloh?

8 A. Well, there were three basic and
9 fundamental trends that were actually affecting
10 every automotive supplier at the time. Number one
11 trend was the request by the automakers, General
12 Motors, Ford, Chrysler, Toyota, Nissan, all of
13 them. So -- And these particular automakers were
14 requesting from all their suppliers in order to
15 continue doing business with them to demonstrate
16 what they called full-service supplier
17 capabilities.

18 Q. Could you explain that a bit?

19 A. Full-service supplier capabilities meant
20 a supplier must have the expertise and the human
21 capital resources to start a project from design
22 and development, to prototyping, to production, to
23 launch, to service, cradle to grave, and not many
24 suppliers have those capabilities.

25 Q. Okay.

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1 A. Therefore, the second major trend that
2 was caused by the full-service supplier
3 requirement is size. If you were not a sizeable
4 supplier, you won't survive.

5 And the third thing associated with size,
6 was your geographic footprint. You had to be
7 close to where your customers are, or else you are
8 not going to survive.

9 These were three fundamental trends that
10 everybody that was associated in the automotive
11 industry had to deal with.

12 Q. And how did those trends relate to the
13 attractiveness of MTD Automotive in the eyes of
14 Shiloh?

15 A. Obviously, there was a very attractive
16 potential combination there, because the size of
17 MTD was meaningful enough for a growing company
18 like Shiloh. And the complementary nature of the
19 Tier-1 component of MTD's focus, compared to the
20 Tier-2 focus of Shiloh, would provide a potential
21 and powerful combination.

22 Q. The first paragraph goes on to provide
23 that at the August 13, 1998 meeting of Shiloh's
24 Board of Directors, the Board was advised that
25 Shiloh should consider pursuing the acquisition of

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1 the automotive division; do you recall that
2 meeting?

3 A. Yes.

4 Q. What was the director's initial reaction
5 to the suggestion that Shiloh should acquire MTD
6 Automotive Division?

7 A. The Board of Directors, I recollect, we
8 acted rather calmly and, "Okay, let's see all
9 details, let's see the whole story." That's about
10 it.

11 Q. You were willing to listen?

12 A. Yes, we were willing to listen.

13 Q. The first paragraph provides that based
14 on the director's initial reaction to the
15 August 13th proposal, it was recommended that
16 Shiloh's management make a formal presentation to
17 the Board at the next scheduled Board Meeting; is
18 that your recollection, as well?

19 A. That is correct.

20 Q. In August 1998, was Shiloh Industries
21 under any internal pressure to purchase MTD
22 Automotive Division?

23 A. No.

24 Q. As far as you know, in August of 1998,
25 was Shiloh Industries under any pressure from MTD

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1 to purchase MTD Automotive Division?

2 A. No.

3 Q. To your knowledge, in August of '98, was
4 MTD under any pressure to sell its automotive
5 division?

6 A. No.

7 Q. The second paragraph of the Transaction
8 Section of Proxy Statement provides that in
9 September 1998 MTD retained PWC Securities to
10 assist in the sale of the Automotive Division and
11 in the preparation of an offering memorandum that
12 was provided to Shiloh in November of 1998.

13 What I would like you to do in a moment,
14 is to locate Exhibit No. 14.

15 A. Okay.

16 Q. Do you recognize Exhibit 14 to be a copy
17 of the offering memo?

18 A. Yes.

19 Q. Is the offering memo an all-inclusive
20 recitation of facts relating to MTD Automotive
21 Division?

22 A. Not really. This is an offering
23 memorandum from MTD, obviously, promoting MTD's
24 point of view and the way they see the company --
25 their automotive systems division, and we,

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1 therefore, took it as such.

2 Q. Was MTD Automotive a stand-alone division
3 of MTD Products? Did it have its own set of
4 books?

5 A. No, not really.

6 Q. The third paragraph of the Transaction
7 Section of the Proxy Statement provides that on an
8 unspecified date in December 1999, MTD made a
9 presentation to Shiloh's executive staff regarding
10 the strategic benefits of combination, and that a
11 similar presentation was made to Shiloh's Board on
12 December 10, 1998.

13 Do you recall that presentation?

14 A. Yes.

15 Q. Are the strategic reasons presented in
16 Exhibit 14 on Pages 47 through 52?

17 A. Yes.

18 Q. Can you briefly review the strategic
19 benefits of the combination that MTD was ^{telling} telling?

20 A. Could you repeat the --

21 Q. 47 through 52.

22 A. Yes. Exhibit 14, right?

23 Q. Right.

24 A. Okay. Some of the -- Obviously, some of
25 the strategic, you know, opportunities was the

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1 fact that the -- Looking at the Tier-2 focus of
2 Shiloh versus Tier-1 focus of MTD would obviously
3 provide a combination that would be capable to
4 fulfill the full service requirements of the
5 customers in a much more plausible way.

6 Number two was that the synergies from
7 the tooling and management of the stamping
8 operations between MTD and Shiloh would be much
9 more optimized if we do that.

10 In other words, the economical scale
11 would create some benefits that would create a
12 much more efficient and productive organization at
13 the end of day. And --

14 Q. Could you explain that just a little bit
15 more?

16 A. Yes. Shiloh had a focus on precision
17 tooling design and development, and they had
18 certain facilities and employees associated with
19 that.

20 On the other hand, MTD - Modern Tool &
21 Die, that's their name -- I mean, the whole
22 company was growing and created based on that
23 tooling expertise. So there were synergies there
24 to be harvested.

25 Even though we -- at this point in time,

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1 we did not know exactly what kind of synergy those
2 were, it was fair to assume that they had to be
3 synergies that can be material in nature.

4 And, of course, the other thing is that
5 MTD had a capability that was in deep draw die
6 development and part manufacturing that Shiloh did
7 not have.

8 Q. Explain the concept of "deep draw".

9 A. "Deep draw" is when we stamp, we can
10 stamp easy commodity stampings, or we can go to
11 complicated deep draw, deep in nature that
12 requires very important knowledge in both tooling
13 development and the physics of how material grows
14 under these extreme situations.

15 Q. Give me an example.

16 A. An example is an oil pan. If you see an
17 oil pan in an engine and you look at the geometry
18 of how deep it's drawn, then you will appreciate
19 that it takes somebody with unique specialties to
20 really make that. There's not too many
21 manufacturers.

22 And as technology found out, MTD, for
23 instance, had a high percent of the North American
24 oil pan business that were stamped because of that
25 unique expertise. So that was something Shiloh

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1 could benefit from.

2 Q. As you go through Pages 47 through 52, is
3 there any other factors that you would like to
4 make a comment on?

5 A. Yes, there were several other factors, of
6 course.

7 You know, the -- Being a Tier-1 supplier,
8 MTD Automotive, they had an integration in
9 processes, as such program management, because of
10 their relationship as a Tier-1, as a full service
11 supplier, that were obviously desirable potential
12 to Shiloh.

13 Q. These are relationships with the GMs of
14 the world?

15 A. The GMs of the world, the Fords of the
16 world, and these relationships demonstrate the
17 capability to, again, start from cradle to grave
18 and design, develop, prototype, manufacture, loans
19 programs, manage programs. Shiloh needed that.

20 Shiloh did not have that expertise,
21 because dealing with -- at the component level,
22 not at the system level, could not really -- there
23 were no requirements like that.

24 So Shiloh could learn a bit about these
25 kind of systems and processes that the customers

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1 are looking for the future of automotive
2 suppliers. So that was an important potential
3 benefit.

4 Q. Anything else?

5 A. Obviously, technology, as we said,
6 generally speaking, the OEM relationships that
7 Shiloh did not have. Shiloh was dealing with
8 Tier-2 suppliers, Tier-1 suppliers, it was not
9 necessarily dealing directly with General Motors,
10 Ford, Chrysler and the customers that MTD had.

11 Q. Okay. The third paragraph -- Again, back
12 on Page 5 of the Proxy Statement.

13 A. Okay.

14 Q. The third paragraph provides that based
15 on MTD's presentation, Shiloh's Board authorized
16 its management to conduct due diligence review to
17 evaluate the merits of the acquisition.

18 Is that your recollection, as well?

19 A. Yes.

20 Q. What I'd like you to do now is to locate
21 the document marked for identification as
22 Exhibit 15.

23 A. Okay.

24 Q. Do you recognize this document to be a
25 copy of the minutes of the December 10, 1998

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1 meeting of Shiloh's Board of Directors?

2 A. Yes.

3 Q. For purposes of evaluating MTD's offering
4 memo and the possible acquisition of MTD
5 Automotive Division, did Shiloh Industries retain
6 outside legal counsel?

7 A. Yes.

8 Q. Who was it?

9 A. Jones Day.

10 Q. Did Shiloh Industries retain an outside
11 advisor to help it evaluate financial and
12 accounting matters relating to the acquisition and
13 otherwise assist Shiloh in its due diligence
14 effort?

15 A. Yes.

16 Q. And who was that?

17 A. Ernst & Young.

18 Q. Did Shiloh Industries retain an outside
19 financial adviser?

20 A. Yes.

21 Q. And who was that?

22 A. Baird & Co.

23 Q. For what purpose?

24 A. To, obviously, assess the financial
25 viability of the company and assist us in

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1 eventually providing a fairness agreement that we,
2 as the Board of Directors, knew we were going to
3 have to have.

4 Q. You just alluded to this, but did Shiloh
5 Industries eventually seek an opinion from
6 Robert Baird & Associates with regard to the
7 fairness of the amount being considered as the
8 purchase price for MTD Automotive Division?

9 A. Yes, we did.

10 Q. Why did Shiloh Industries feel the need
11 to hire these independent advisors?

12 A. Because these independent advisors are
13 experts in analyzing, evaluating and independently
14 recommending if the price that the Board has in
15 mind at the end of the due diligence is the
16 correct price that we should be paying.

17 And in addition to that, every Board of
18 Directors needs that independent expert advice as
19 a safeguard, that at the end of the day, we
20 exercise properly our duties to our minority
21 shareholders. Because, remember, most of the
22 deals were handled by us, the Disinterested
23 Members of the Board, and our key objective was
24 our duty to care and our duty to loyalty to the
25 minority shareholders and not so much to MTD or

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1 anybody else.

2 Q. For purposes of negotiating a sale of its
3 automotive division, did MTD obtain outside legal
4 counsel?

5 A. Yes.

6 Q. Please locate the document marked for
7 identification as Exhibit 8.

8 A. Okay.

9 Q. Do you recognize this document? And if
10 you do, can you tell us what it is?

11 A. There is a Detailed Due Diligence Request
12 List that we made sure that the management team of
13 Shiloh had, along with what they were prepared to
14 do as we moved into due diligence.

15 Q. What was the date on this document?

16 A. This was December 23, 1998.

17 Q. And does it indicate the depth of the
18 inquiries Shiloh anticipated with regard to the
19 automotive division?

20 A. Yes, I think so.

21 Q. Do you know where this document came
22 from?

23 A. This document came from the records of
24 Shiloh. As we were preparing for this hearing, we
25 dug into the files of Shiloh that pertains to

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1 transaction and we found this document and other
2 documents.

3 Q. Turn back, if you would, to the Proxy
4 Statement, this time to Page 6.

5 A. Okay.

6 Q. The first paragraph on Page 6 provides
7 that between December 18, 1998 and February 18,
8 1999, meetings were held by representatives of
9 Shiloh and MTD to discuss various issues relating
10 to the automotive division and the impact of
11 Shiloh's acquisition of the division.

12 It indicates that the parties focused on
13 the automotive division's revenue stream, its
14 steel purchasing policy, its tooling components of
15 the division's business and the division's history
16 of loss and its potential for future earnings.

17 Were you generally aware of these
18 discussions?

19 A. Yes.

20 Q. The second paragraph on Page 6 provides
21 that on February 1, 1999, Shiloh's due diligence
22 team met to discuss the due diligence obtained as
23 of that date and concluded that additional work
24 needed to be done to properly value the automotive
25 division.

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1 My question is this: As of February 1,
2 '99, had Shiloh determined an amount it would be
3 willing to pay for MTD Automotive Division that
4 concluded an acquisition of the division which was
5 consistent with its business strategy?

6 A. No.

7 Q. The second paragraph on Page 6 of the
8 Proxy Statement provides that on February 12,
9 1999, representatives of Shiloh and MTD met to
10 discuss issues relating to the value of the
11 automotive division.

12 My question is this: As of February 12,
13 1999, had either party determined the value for
14 MTD Automotive Division?

15 A. No.

16 Q. The third paragraph on Page 6 of the
17 Proxy Statement provides that on February 18,
18 1999, Shiloh's management informed its Board of
19 Directors that the process of review was ongoing,
20 and this was approximately six months after the
21 Board of Directors was first advised that Shiloh
22 should consider purchasing the automotive
23 division; is that time correct?

24 A. That is correct, yes.

25 Q. Did the Board authorize additional due

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1 diligence and instruct its management to be in a
2 position to make a formal presentation to the
3 Board regarding a possible acquisition of the
4 automotive division in its March 25, 1999 meeting?

5 A. Yes.

6 Q. Turn, if you would, to Exhibit 16.

7 Do you recognize this document to be a
8 copy of the minutes of the February 18, 1999
9 meeting of Shiloh's Board of Directors?

10 A. Yes.

11 Q. Turning back to Page 6 of the Proxy
12 Statement, the fourth paragraph on Page 6 provides
13 that between February 18 and March 25, 1999,
14 Shiloh's due diligence work continued and that
15 based on this work, Shiloh's management began to
16 arrive at a value for the automotive division.

17 Please locate Exhibit 9.

18 A. Okay.

19 Q. Do you recognize this document? And if
20 so, can you tell us what it is?

21 A. Yes, it is another complementary document
22 dated March 12, 1999 where there are outstanding
23 items to be checked regarding certain adjustments
24 that we had to consider for the years '96, '97 and
25 '98.

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1 Q. Adjustments to what?

2 A. Adjustments to the proposed value of MTD
3 Automotive.

4 Q. And these are additional questions for
5 the due diligence team?

6 A. Yes.

7 Q. Please locate the document marked for
8 identification as Exhibit 10.

9 A. Okay.

10 Q. Do you recognize this document? And if
11 so, can you tell us what it is?

12 A. Yes. This is another document dated
13 March 19, 1999, a discussion between Shiloh and
14 MTDA.

15 Also, there are a series of items in here
16 and a series of additional questions pertaining to
17 detail -- deep diving, if you will -- into the due
18 diligence process.

19 Q. These are questions that the Board of
20 Directors of Shiloh posed to the due diligence
21 team?

22 A. Yes.

23 Q. Does this document address any concerns
24 that Shiloh's Board might have with regard to the
25 possible acquisition of the automotive division,

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1 in particular whether it strategically was a good
2 fit?

3 A. We had questions, even up to that point
4 in time.

5 We had questions about the strategic, we
6 had questions about the integration, we had
7 questions about changes in leadership at Shiloh,
8 we had several questions that we were not
9 convinced, we were not persuaded up to that point,
10 that this was a deal that we should bless. So we
11 kept on asking more questions and more questions
12 and more questions.

13 Q. Okay. Please locate the document marked
14 for identification as Exhibit 13.

15 A. Okay.

16 Q. Do you recognize this document? And if
17 so, can you tell us what it is?

18 A. Yes. This is more questions from the
19 Board.

20 As we would receive answers, then we
21 would come up with a set of new questions, again,
22 going back and trying to dive deeper and make sure
23 that we understand not only what the management --
24 the due diligence team of the Shiloh management is
25 saying to us, but what also the certain advisors

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1 were also recommending.

2 So it's more questions.

3 Q. And do these questions relate typically
4 to the determination of value?

5 A. Yes; of course.

6 Q. To the extent you can recall briefly, can
7 you relate what the concerns were at this point in
8 time?

9 A. Well, some of the concerns, obviously,
10 were dealing with what we call in the industry
11 customer give-backs, or allowance for price
12 discounts.

13 As we were looking at some of the
14 financial statements that MTDA had provided to us,
15 and being in the automotive business -- and that
16 was our role as Independent Members of the
17 Board -- understand this, I was not fully
18 satisfied that there was a good accounting of the
19 give-backs that -- the kinds that Ford Motor
20 Company was looking, because I was doing
21 business -- we were doing business --

22 Q. Ford's a customer of MTD?

23 A. Exactly. Right. And we were doing
24 business with them, so we knew that they are
25 asking, for example, three percent per year. So

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1 where is the three percent per year in here, and
2 how does it start year after year after year.

3 Q. Explain to me --

4 THE EXAMINER: Excuse me, Dan. When you
5 refer to "we", is that --

6 THE WITNESS: We at Standard Products
7 Company.

8 THE EXAMINER: Standard Products, thank
9 you.

10 THE WITNESS: I was the President and CO
11 of Standard Products, a multi-billion global
12 automotive supplier, so I knew. And so I would
13 question where is the give-backs year after year
14 after year.

15 THE EXAMINER: Thank you.

16 BY MR. STEINES:

17 Q. Explain the concept of the "give-back".

18 A. Okay. In the automotive business, it's a
19 trend from 1988, where our customer, unfortunately
20 or fortunately, whatever, they are not allowing us
21 to increase prices year after year. They expect
22 good suppliers to be able to improve quality and
23 productivity every year and provide, therefore,
24 shares that benefit with them.

25 Q. So, for example, if you sell a product in

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1 1998 for a hundred dollars...

2 A. In 1999, that product will be sold for
3 \$97 and in 2000 it will be sold for \$94, and on
4 and on and on. And it has not stopped up to
5 today.

6 It is an incredible phenomenon that we
7 have learned to live with, and that's why
8 companies that cannot improve productivity,
9 companies that cannot improve quality, companies
10 that cannot manage their assets, and have a weak
11 and fast turnover on those assets, they are not
12 going to survive. And they are not surviving and
13 that's why we -- that's why we sell to fantasies
14 and we call it the Cinderella automotive industry.

15 Q. And your concern with regard to the
16 information being provided by MTD relating to
17 give-backs was what?

18 A. My concern was that maybe we are not
19 providing the actual story as it pertains to the
20 years to come. So, okay, this year it looks
21 like -- the numbers look okay, but what about the
22 assumptions that are made for next year or the
23 following year, because this was a long-term
24 agreement requirement that you could not violate;
25 so where is it.

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1 This is an example, but an important
2 example.

3 Q. Back on Page 6 of the Proxy Statement,
4 the fifth paragraph provides that at Shiloh's
5 March 25, 1999 Board Meeting, a formal
6 presentation regarding the automotive division was
7 presented.

8 Do you recall this presentation?

9 A. On March 25, 1999?

10 Q. Yes, a formal presentation.

11 A. Yes, I do.

12 Q. Do you recall who made it?

13 A. Yes. Mr. Burton made it that was the
14 Vice President of Strategic Planning of Shiloh
15 Industries.

16 Q. Before this presentation was made, did
17 Shiloh's legal advisors review the legal duties
18 and responsibilities of the Directors?

19 A. Yes.

20 Q. Based on the advice of Shiloh's legal
21 advisors, did the members of Shiloh's Board,
22 designated by MTD, leave the meeting before the
23 presentation was made?

24 A. Yes. They were asked to leave the
25 meeting, yes.

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1 Q. If you would, please locate the document
2 marked for identification as Exhibit 11.

3 A. Okay.

4 Q. Do you recognize this document? And, if
5 so, can you tell us what it is?

6 A. Yes. This is the agenda of the Board of
7 Directors Meeting dated March 25, 1999.

8 Q. Is it a complete compilation of the
9 agenda, or just selected portions of it?

10 A. I think it's the complete.

11 Q. And these include the presentation made
12 by Mr. Burton?

13 A. Yes. Well, let's see here. MTD
14 Automotive presentation, Item IV in the agenda,
15 was the subject under which everything pertained
16 to the MTD Automotive potential acquisition, was
17 discussed.

18 Q. Okay. Back on Page 6 of the Proxy
19 Statement. The sixth paragraph provides that at
20 Shiloh's March 25, 1999 Board Meeting, the primary
21 strategic reason for the acquisition is identified
22 as the ability to enhance Shiloh's Tier-1 business
23 and to complement its Tier-2 business.

24 I know you already touched on this a bit,
25 but could you just briefly give us an --

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1 Valley City, Ohio, three Greenfield operations
2 coming up.

3 And in addition to that, to satisfy the
4 strategic planning of 20 percent growth per year,
5 two new acquisitions in Michigan, Greenfield Tool
6 and Die and C & H Engineering Company, the company
7 was struggling at that time. The management team
8 was taxed to no end.

9 And here we are, the Independent Members
10 of the Board saying, "Are you guys capable of
11 really handling another acquisition?", and this
12 one, again, under the circumstances I mentioned
13 before. "Are you really up to it? Do you have
14 the horsepower?", what we call lovingly in the
15 automotive industry. "Do you have what it takes?"

16 That was our concern.

17 Q. All right. Locate, if you would, the
18 document marked for identification as Exhibit 11.

19 A. Okay.

20 Q. In the last two pages of that exhibit,
21 you will find documents captioned "Attachment II"
22 and "Attachment III".

23 A. Okay.

24 Q. Focusing on Attachment II --

25 A. Okay.

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1 Q. -- which is three sections to it, the
2 middle section being comprised of three columns,
3 with attachments being "Offering Memorandum", "MTD
4 Revisioned Forecast 399" and "Due Diligence
5 Reviewed to Date"?

6 A. Okay.

7 Q. At the bottom of the column captioned
8 "Offering Memorandum", it indicates that the
9 offering memo established, "Restate EBITDA"
10 E-B-I-T-D-A, to be \$9,786,000?

11 A. Right.

12 Q. First off, what does EBITDA stand for?

13 A. Okay. EBIT or EBITDA?

14 Q. EBITDA.

15 A. EBITDA, okay. EBITDA stands for Earnings
16 Before Interest, Tax, Depreciation and
17 Amortization Expense. It's a common method in
18 cash flow analysis in the automotive business.

19 Q. What's the significance of EBITDA as
20 employed in this exhibit?

21 A. This is a very significant key
22 measurable, because most, most companies --
23 sellers and buyers -- when they contemplate to
24 sell or buy a company, use the cash flows
25 generation capability of the company as a key

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1 measurable in valuing what the company's worth.

2 So it is a very important key measure.

3 Q. And in order to determine value, what
4 would the formula be?

5 A. Well, in order to determine value,
6 usually the buyer would like to sell his company
7 five or six times or seven times, EBITDA. And
8 the -- the seller I mean. And the buyer would
9 like to buy it four or five, but not necessarily
10 six or seven or eight. So there are different
11 objectives.

12 Q. So it's EBITDA times the multiplying
13 factor equals the value?

14 A. Right, exactly.

15 Q. On the last page of the exhibit,
16 Attachment III, in the bottom right-hand corner,
17 you see an EBITDA multiple of 4.9?

18 A. Right.

19 Q. Is that the multiple employed in this
20 particular exhibit?

21 A. Yes.

22 Q. If EBITDA is \$9,786,000, and a multiplier
23 is 4.9, the corresponding price would be
24 \$47,951,400, if my math is correct. Do you agree
25 with that?

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1 A. Yes, that is correct.

2 Q. Does Attachment II, indicate that by
3 March 1999, MTD had changed its view with regard
4 to EBITDA to \$10,574,000 (sic)?

5 A. Yes.

6 Q. And that, again, is at the bottom of the
7 middle column on this page.

8 If EBITDA is \$10,514,000. And I may have
9 just misspoken just a moment ago when I recited
10 that number. But if EBITDA \$10,514,000 and the
11 multiplier is 4.9, the corresponding price would
12 be \$51,800,000; is that correct?

13 A. That is correct.

14 Q. At this time, what did Shiloh consider
15 the automotive division's EBITDA to be?

16 A. We considered it to be what we see in the
17 third column, that was \$5,124,000.

18 Q. And based on an EBITDA of that amount and
19 a multiplier of 4.9, the corresponding price would
20 be \$25,180,000; is that correct?

21 A. That is correct.

22 Q. In March of 1999, was the spread the
23 company proposed \$25 million in Shiloh's view and
24 roughly \$51 million in MTD's view; is that the
25 spread?

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1 A. That is correct.

2 Q. Do you recall -- And that's attributable
3 exclusively to the difference of opinion with
4 regard to the makeup of EBITDA?

5 A. Right.

6 Q. Do you recall why the EBITDA amounts were
7 so far apart?

8 A. Yes. I thought it was very simple at the
9 time. Because the assumption that MTD was making
10 as a typical seller, was different than the
11 assumptions that Shiloh was making as a typical
12 buyer.

13 Q. Can you give me an example?

14 A. Yeah. MTD, for instance, had -- would
15 like to take credit for several items that were
16 one-time adjustments.

17 Q. These are deductions that would reduce
18 profit and, therefore, increase price and --
19 excuse me, decrease price?

20 A. Yes. I mean, these were adjustments, in
21 other words, that they would say, okay, the
22 benefits for these consolidation or reconstruction
23 is going to be this, that or the other; we didn't
24 necessarily agree with that.

25 Q. And these might be issues that they say

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1 are one-time events and you think they'll recur?

2 A. Exactly. In other words, they are
3 subjective in nature to some extent, and they are
4 levers by the buyer or the seller to fit, you
5 know, their appropriate interest.

6 Q. And these are typically negotiated
7 points?

8 A. Exactly. So, therefore, MTD wanted \$51
9 million, and we were saying \$25-. And that's
10 where we were at the time.

11 Q. Will you please locate the document
12 marked for identification as Exhibit 17?

13 A. Okay.

14 Q. Do you recognize this document to be a
15 copy of the minutes of the March 25, 1999 meeting
16 of Shiloh's Board of Directors?

17 A. Yes.

18 Q. Turning back to the Proxy Statement, and
19 in particular Page 7.

20 A. Okay.

21 Q. The first three paragraphs on Page 7
22 notes certain changes in Shiloh's Board and
23 management. After those changes occurred, were
24 the concerns raised at the March 15, 1999 Board
25 Meeting investigated by Shiloh's management?

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1 A. After these changes took place?

2 Q. Yes. We had the March 25th meeting?

3 A. Yes.

4 Q. And then we had these changes in
5 management?

6 A. Right.

7 Q. And then at that point in time, were the
8 concerns that we just reviewed a few moments back
9 investigated by Shiloh?

10 A. Yes. Yes. Of course.

11 Q. The fifth paragraph on Page 7 of the
12 Proxy Statement notes that in early April 1999,
13 MTD advised Shiloh of a 167 employee reduction in
14 the automotive division resulting in certain costs
15 savings.

16 What I'd like you to do is turn to
17 Page 216 of the Statutory Transcript for
18 Case No. 380.

19 A. Okay.

20 Q. Focus on Paragraph 18 of the department's
21 audit managers.

22 A. Okay.

23 Q. Where he writes, "...there was some
24 compulsions for this acquisition/restructuring to
25 occur", and he goes on to cite a few passages from

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1 the Baird's opinion which assumes at cost savings
2 and operating benefits expected to result from
3 "the division's reconstructing and financial
4 acquisition" will be realized.

5 My question is this: Can you describe
6 the restructuring Baird is referring to?

7 A. The restructuring that Baird was --

8 MR. MAIER: Excuse me, what page are we
9 on in the transcript?

10 MR. STEINES: Page 216.

11 MR. MAIER: Page 216; thank you.

12 THE WITNESS: What Baird was referring to
13 was the restructuring of fundamentally MTD taking
14 out 167 employees and the financial impact that
15 that could have on the profitability of the
16 automotive division.

17 BY MR. STEINES:

18 Q. Did it involve anything else?

19 A. No.

20 Q. Is this the reduction force referred to
21 in the Proxy Statement?

22 A. Yes.

23 Q. Did this reduction force compel Shiloh to
24 purchase and, for that matter, MTD to sell the
25 automotive positions without manager rights?

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1 A. No.

2 Q. Had MTD not undertaken this reduction in
3 force, would Shiloh have necessarily walked away
4 from the deal?

5 A. Not necessarily, no.

6 Q. What's the significance to you about the
7 reduction in force?

8 A. The significance to us was that if Shiloh
9 would end up acquiring the division, that would be
10 a good thing to have done while it is under the
11 ownership of MTD because of the subsequent, you
12 know, impact that that would have, obviously, both
13 from the automotive point of view and MTDA
14 adjourning the expense for this reconstruct.

15 Q. In your opinion, regardless of whether
16 MTD sold its automotive division, would it be
17 reasonable to assume that it would have reduced
18 its work force?

19 A. Yeah. Yes, it's reasonable to assume
20 that.

21 Q. Turn, if you would, to Page 217 of the
22 Statutory Transcript. Focus on Paragraph 19 --

23 A. Okay.

24 Q. -- where the audit manager writes that,
25 "...the impulse of this transaction was the need

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1 to improve the prospective operating performance
2 of the automotive division".

3 Assuming that Shiloh chose not to
4 purchase MTD Automotive Division, would the
5 automotive division's prospective operating
6 performance matter at all to Shiloh?

7 A. Not in the least.

8 Q. When considering whether to purchase the
9 automotive division, was Shiloh motivated to any
10 extent by a desire to improve the prospective
11 operating performance of the automotive division?

12 A. Not really, no.

13 Q. That was a factor that would be a concern
14 only to Shiloh --

15 MR. MAIER: I'm going to object to
16 leading the witness.

17 MR. STEINES: I'll withdraw the question.

18 THE EXAMINER: Thank you.

19 BY MR. STEINES:

20 Q. Turning back to Page 7 of the Proxy
21 Statement --

22 A. Okay.

23 Q. -- the fifth paragraph on Page 7 notes
24 that on April 28, 1999, representatives of Shiloh
25 and MTD met to discuss MTD's proposed purchase

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1 price for the automotive division and Shiloh
2 agreed to have its due diligence team review it.

3 What value did MTD attribute to the
4 automotive division at that time?

5 A. The fifty-million, fifty-fifty-one.

6 Q. And at that time, was there any
7 discussion of the upside or downside of sweeteners
8 based on that?

9 A. Yes. They were talking about an upside
10 sweetener. In case of the financial performance
11 of the division at the end of the first year,
12 after their position would exceed the established
13 target, then they would liken it to sweetener.

14 Q. And that was -- All right.

15 The sixth paragraph of Page 7 of the
16 Proxy Statement notes that on May 7, 1999,
17 Shiloh's management agreed to support the proposed
18 transaction at a value of \$40 million, subject to
19 certain price adjustments, to either increase or
20 decrease that amount, depending on the automotive
21 division's performance.

22 On May 20th of '99, Shiloh's Board met to
23 consider the proposal. On that day, did the Board
24 agree to purchase the automotive division?

25 A. Yes.

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1 Q. This is on May 20th?

2 A. But under one -- I mean, we discussed
3 several things. Up to that point the -- MTD, if I
4 recall, was talking about the sweetener, the
5 upside. We said, "If there's going to be a
6 sweetener, then there had to be a down
7 adjustment."

8 In other words, "Okay, if the division
9 performs above and beyond the plan, and you would
10 like to have a sweetener increasing price, then if
11 the division for some reason does not perform to
12 plan, then we would like to have a price
13 reduction."

14 And that was the final, if you will,
15 position of the board that led into the final
16 agreement.

17 Q. And that final agreement didn't occur as
18 of May 20th, did it?

19 A. Right. That's true.

20 Q. Locate the document marked for
21 identification as Exhibit 18.

22 A. Okay.

23 Q. You'll recognize this document to be a
24 copy of the minutes of the May 20, 1999 meeting of
25 Shiloh's Board of Directors?

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1 A. Yes.

2 Q. Turning back to the Proxy Statement, and
3 in particular, Page 8.

4 A. Okay.

5 Q. The first paragraph on Page 8 notes that
6 through June 17, 1999, the parties met to
7 negotiate an Asset Purchase Agreement with various
8 additional protections for Shiloh at certain price
9 concessions and capital expenditures of certain
10 projected amounts.

11 Can you shed light on the concessions
12 negotiated and the reason for them? And in
13 particular, focus on the price concession and the
14 capital expenditures.

15 A. Right. Launching new programs, there
16 were certain projects underway. And we felt,
17 again, at the Board level, that these capital
18 expenditures that were projected, most likely they
19 are going to insufficient to complete the project.

20 So when -- And if Shiloh would acquire
21 this, we didn't want them to have them, Shiloh,
22 worry about making a few million dollars
23 additional capital investments to complete the
24 project that had started under MTD's ownership.
25 So we made sure that they understood that; that

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1 was on the price discount.

2 On the price discount concessions, go
3 back to the -- again, my previous explanation
4 about the give-back -- and dealt with specifically
5 Ford Motor Company, and the give-backs, we
6 believed that are going to be coming through in --
7 at the end of the first and second year, and we
8 wanted MTD to recognize that and be responsible
9 for it.

10 Q. And in certain circumstances there would
11 be price adjustments?

12 A. Exactly.

13 Q. The fourth paragraph on Page 8 of the
14 Proxy Statement provides that on June 17, 1999,
15 Shiloh's disinterested directors met and
16 considered a negotiated Asset Purchase Agreement.

17 Were you one of the disinterested
18 directors considering this agreement?

19 A. Yes.

20 Q. At the June 17th meeting, did the
21 company's legal advisers again review the terms
22 and conditions of the agreement with the
23 disinterested directors?

24 A. Yes.

25 Q. At the June 17th meeting, did Baird

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1 present the financial terms of the proposed
2 transaction?

3 A. Yes.

4 Q. Turn, if you would, to the document
5 marked for identification as Exhibit 20.

6 A. 20?

7 Q. 2-0.

8 A. Okay.

9 Q. Do you recognize the document? And, if
10 so, can you tell us what it is?

11 A. Yes. This is the document that deals
12 with the transactional review by Baird as a
13 financial advisor.

14 Q. This was a document presented to the
15 Board in conjunction with the June 17th discussion
16 by Baird?

17 A. Right.

18 Q. Did Baird also provide a written fairness
19 opinion indicating that the consideration to be
20 paid by Shiloh for the automotive division was
21 fair to Shiloh from a financial point of view?

22 A. Yes.

23 Q. Was this the fairness opinion that will
24 be found as Appendix B to Exhibit 1?

25 A. Yes.

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1 Q. Did the disinterested directors approve
2 to purchase the automotive division at this
3 meeting? Again, this is the June 17th meeting.

4 A. Yes, we did.

5 Q. Why did you do that? What finally tipped
6 the scales?

7 A. Well, we done that in the proxy, again,
8 and we articulated all the reasons to why we done
9 that.

10 We saw that strategically, it was the
11 right thing to do. Professionally, we were
12 confident that the management, especially the new
13 CEO, had a good grasp of what they were getting
14 in. And from the integration point of view, we
15 believe that the problems, at least with the two
16 new acquisition plants, were way behind and,
17 therefore, should be able to purchase some of the
18 new acquisition.

19 We believed that strategically,
20 operationally and for the good of the future of
21 Shiloh, entering into the Tier-1 business was
22 probably a good thing to do.

23 Q. You mentioned referencing in the Proxy
24 Statement the reasons. Are those found at the
25 bottom of Page 8?

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1 A. Yes.

2 Q. What I'd like you to do next is locate
3 the document marked for identification as
4 Exhibit 19.

5 A. Okay.

6 Q. Do you recognize this document to be a
7 copy of the minutes of the June 17th meeting of
8 Shiloh's Board of Directors?

9 A. Yes, sir.

10 Q. Okay. Turn, if you would, to Exhibit 1,
11 and in particular Appendix A of the exhibit, which
12 is the Asset Purchase Agreement.

13 A. Exhibit 1, Appendix A?

14 Q. A.

15 A. I'm missing something.

16 Q. Let me help you there.

17 A. Okay.

18 Q. On Page A-3 of that particular
19 document --

20 A. Okay.

21 Q. -- you will find Section 2.2 and 2.3?

22 A. Right.

23 Q. Pursuant to Section 2.2 of the Asset
24 Purchase Agreement, the purchase price negotiated
25 for MTD Automotive Division had initially three

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1 components; \$20 million in cash, a number of
2 shares of Shiloh common stock but pursuant to a
3 formula that turned out to be 1,428,571 shares,
4 with the assumption of certain liabilities; is
5 that correct?

6 A. Yes.

7 Q. Pursuant to Section 2.3 of the Asset
8 Purchase Agreement, the purchase price could be
9 adjusted downward in certain circumstances; is
10 that correct?

11 A. Yes.

12 Q. And the circumstances would be if closing
13 networking capital, as of the closing date, was
14 less than the initial networking capital, both
15 defined terms; is that correct?

16 A. Yes.

17 Q. Did that set of circumstances present
18 themselves?

19 A. Yes, it did.

20 Q. Locate, if you would, Exhibit 4.
21 Do you recognize this document?

22 A. Yes, sir.

23 Q. Can you tell us what it is?

24 A. This is a reconsideration of the price
25 allocation based on the agreement that we made in

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1 acquiring MTD Automotive.

2 Q. Was this spread sheet prepared at your
3 direction by an employee of Shiloh Automotive?

4 A. Yes.

5 Q. Is it based on the permanent books and
6 records of Shiloh Automotive?

7 A. Yes, sir.

8 Q. Does it reflect the amount paid for the
9 assets of MTD --

10 MR. MAIER: I'm going to object. This
11 witness didn't prepare the document and he's being
12 ask testify to it.

13 MR. STEINES: That's ridiculous.

14 THE EXAMINER: Gentlemen, please. I'm
15 going to overrule it. He said it was prepared
16 under his direction.

17 MR. MAIER: Okay.

18 BY MR. STEINES:

19 Q. Does it reflect the amount paid for the
20 assets of MTD Automotive Division on November 1,
21 1999, as determined in the Section 2.2 and 2.3 of
22 the Asset Purchase Agreement before any
23 adjustments were made under other sections of the
24 agreement?

25 A. Yes, sir.

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1 Q. And what is that amount?

2 A. \$48,340,479.

3 Q. And is that the amount at the bottom of
4 the first column of numbers, the third actual
5 column of the exhibit?

6 A. Yes.

7 Q. On Page A-5 of Exhibit 1 -- Appendix A
8 Exhibit 1 --

9 A. On Page A-5 . Okay.

10 Q. -- you'll find Section 2.8 of the Asset
11 Purchase Agreement.

12 Would you please explain the concept of
13 Section 2.8?

14 A. Sure. It basically says that this was
15 the last negotiating point, that if the EBITDA
16 during the first year of operations ends up being
17 more than what we both agreed that it should be,
18 then there's a sweetener, and if it is less, then
19 we have to pay less.

20 And that could be -- Shiloh then could
21 be -- could be paying as much as \$28 million more
22 or \$15 million less, depending on the financial
23 performance of the division.

24 Q. Was any adjustment made under Section 2.8
25 of the Asset Purchase Agreement?

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1 A. Yes, it was.

2 Q. Are all of the adjustments made under
3 Section 2.8 reflected in Exhibit 4?

4 A. Yes.

5 Q. And when did this adjustment occur?

6 A. This adjustment occurred on October 31,
7 2000.

8 Q. That was the one-year anniversary?

9 A. Yes.

10 Q. What was the amount of the adjustment?

11 A. \$1,000,740 --

12 Q. I think you may be looking at the wrong
13 column. Section 2.8, Adjustment?

14 A. I'm sorry. 2.8, okay. \$5,761,814.

15 Q. Was that an increase or decrease?

16 A. Increase.

17 Q. Turn, if you will, to Page A-24 of
18 Appendix A of Exhibit 1.

19 A. Okay.

20 Q. On that page -- Beginning on that page, I
21 think you'll find Section 4.4. And as part of
22 Section 4.4, you'll find 4.4 Subsection (b) and
23 (d)?

24 A. Right.

25 Q. Pursuant to these two subsections, in

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1 certain circumstances, would the purchase price be
2 decreased?

3 A. Yes.

4 Q. Was, in fact, any adjustment to the
5 purchase price made under Section 4.4 of the Asset
6 Purchase Agreement?

7 A. Yes, they were.

8 Q. Are all of the adjustments made under
9 Section 4.4 reflected on Exhibit 4?

10 A. Yes.

11 Q. When did the first reduction occur under
12 Section 4.4?

13 A. On October 31, 2000.

14 Q. And focusing on Exhibit 4, what was the
15 amount of the reduction under Subsection (d) of
16 4.4?

17 A. On October 31, 2000, it was \$1,000,740,
18 decrease.

19 Q. And, again, it was under Subsection (d).
20 Do you recall what Subsection (d) is? Could you
21 explain it?

22 A. Yeah. Subsection (d) relates to capital
23 expenditures.

24 Q. Which is the concept you discussed a few
25 moments back?

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1 A. Right.

2 Q. Okay. Were there any adjustments under
3 Section 4.4(b) as of October 31, 2000?

4 A. Yes. Subsection 4.4(b) pertains to the,
5 obviously, price concessions. And on October 31,
6 2000, there was an adjustment of \$819,873,
7 decrease.

8 Q. Were there any subsequent adjustments
9 under Section 4.4(b), and, in particular, any
10 adjustments on October 31, 2001?

11 A. Yes, it was. On October 31, 2001, there
12 was another adjustment of -- under the same
13 section of \$1,326,000, decrease.

14 Q. And, again, these were price concession
15 adjustments?

16 A. Price concession adjustments.

17 Q. Were there any similar adjustments made
18 as of October 31, 2002?

19 A. Yes. On October 31, 2002, under the
20 same, you know, again, price concession, there was
21 an adjustment of \$1,472,395, decrease.

22 So it was exactly what we thought it
23 would be in more than one consecutive year.

24 Q. When you say "exactly what you thought it
25 might be", you're not talking about numbers,

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1 you're talking about the concept?

2 A. The concept; the way business operates.

3 Q. At the end of the day, what was the final
4 purchase price paid for the assets of MTD
5 Automotive Division?

6 A. At the end of the day, with all the
7 adjustments, the increases and the decreases, the
8 final price was \$49,483,785.61.

9 Q. And that's set forth in the bottom
10 right-hand corner of Exhibit 4?

11 A. Right.

12 Q. Please turn to Page 305 of the transcript
13 of evidence certified by the Commissioner of
14 Case No. 2004-M-380.

15 A. Page 305?

16 Q. Page 305.

17 A. Okay.

18 Q. On that page, the audit manager writes,
19 "The consensus of the agent and audit manager is
20 that this was an 'arms-length' transaction for
21 financial statement purposes".

22 Now, if you would, turn to Page 215.

23 A. Okay.

24 Q. The first sentence of Paragraph 12 reads
25 "On the basis of the statement made by the

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1 disinterested directors and the review of
2 financial information available to the Department,
3 the Taxpayer's acquisition of MTD Automotive
4 Division can be viewed as a bargain purchase".

5 In light of those two statements, my
6 question is this: Did the partners negotiate a
7 discounted price for the MTD Automotive Division?

8 A. No.

9 Q. Can you describe the nature of the
10 transaction, how vigorously they were negotiated?

11 A. This was a vigorous transaction. I have
12 served in both, like, Standard Products, National
13 City Bank and I never, never had -- The amount of
14 time that we spent as Disinterested Members of the
15 Board in dealing with this transaction, it took us
16 more than a year.

17 It was very vigorous to the point that,
18 as we mentioned before, the people from MTD and
19 everything -- anybody that was even remotely
20 associated with MTD, had to exit the room when the
21 ultimate decisions were made.

22 I never have gone, in my career, through
23 such an exhaustive investigation and concern about
24 making a decision.

25 Q. Approximately how many documents

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1 memorialize this --

2 A. Over 60 documents and over a year of
3 time.

4 Q. You have before you, I believe, two bound
5 volumes?

6 A. Yeah.

7 Q. Could you hold those up. Those are each
8 approximately two-and-a-half-to-three-inches
9 thick; is that approximately right?

10 A. Yes.

11 Q. Would you look in the table of contents
12 of first --

13 MR. MAIER: Are the document he's
14 referring to part of record in the case?

15 MR. STEINES: No, not yet at least.

16 THE WITNESS: This is a transaction.

17 MR. MAIER: I'm going to object to him
18 testifying about the documents --

19 MR. STEINES: He's not testifying.

20 THE EXAMINER: Mr. Steines, what are
21 those?

22 MR. STEINES: We're about to get into
23 these. That's a series of 60 documents that
24 pertain exclusively to the transaction we're
25 talking about.

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1 THE EXAMINER: And are some of those
2 documents that are contained in the books part of
3 the records that -- exhibits that you have
4 presented today?

5 MR. STEINES: Yes.

6 THE EXAMINER: Very well.

7 BY MR. STEINES:

8 Q. Would you look at the table of contents.
9 How many documents are there -- How many tabs are
10 there?

11 A. Sixty-two.

12 Q. Now, if you would, locate Exhibit 2.

13 A. Exhibit 2 in -- Okay. That's Asset
14 Purchase Agreement.

15 Q. Do you recognize the document marked for
16 identification as Exhibit 2 to be a copy of the
17 table of contents of the two bound volumes you
18 just looked at?

19 A. Yes.

20 Q. Mr. Zampetis, if MTD received less than
21 fair market value for its automotive division,
22 will it realize a financial benefit or suffer a
23 financial benefit?

24 A. It would suffer a financial benefit.

25 Q. Under these circumstances, would it be

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1 financially prudent for MTD to accept a discounted
2 price for its automotive division?

3 MR. MAIER: I'm going to object to this
4 since he's not been qualified.

5 THE EXAMINER: I'm sorry. I'm a little
6 lost. Did you ask him -- What did you ask him?

7 MR. STEINES: I asked if it would be
8 financially prudent -- He's already testified that
9 he would receive a financial detriment if he
10 accepted this at less than fair market value. I
11 asked him if it would be financially prudent for
12 MTD to accept a discounted price for its
13 automotive division.

14 MR. MAIER: And I am renewing my
15 objection.

16 THE EXAMINER: And that objection will be
17 sustained.

18 MR. STEINES: All right.

19 BY STEINES:

20 Q. It's previously been noted, Mr. Zampetis,
21 that Baird issued a fairness opinion with regard
22 to the amount Shiloh paid for MTD Automotive
23 Division. I'm going to ask you a few questions
24 about Baird's opinion.

25 Turn, if you would, to Page 3 of the

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1 transcript in Case No. 380.

2 A. Okay.

3 Q. In the last paragraph on that page, the
4 Commissioner writes, "...presumably, the applicant
5 would not have contracted with Baird if it could
6 not make such determination". The determination
7 is referring to financial fairness of the price
8 Shiloh paid MTD Automotive Division.

9 My question is this: At the time Baird
10 was retained in December of 1998, had any price
11 been suggested for the amount to be paid for MTD
12 Automotive Division?

13 A. No, no price was suggested.

14 Q. The implication in the financial
15 statement was that Baird was obtained to serve as
16 a rubber stamp for whatever Shiloh wanted to pay
17 for the automotive division. Is that what you
18 expected or wanted from Baird?

19 A. Absolutely not.

20 Q. And why not?

21 A. Because there is no transaction that is
22 being made by a public company where the services
23 of independent financial experts are not required
24 to come in and become a sounding board in and an
25 advisor to the Board of Directors. There is no

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1 transaction.

2 We are risking our creditability, we are
3 risking lawsuits, we are risking everything in
4 that -- you know, bringing in people that their
5 job is to analyze, evaluate and look at a company
6 and advise Boards to make sure that their job
7 ultimately is the right one for all the
8 shareholders.

9 Q. Okay. With regards to the amount
10 described in Baird's opinion, the amount Shiloh
11 agreed to pay for the Automotive Division, was
12 Baird asked to simply reply on the fairness of
13 that amount, or did it have a hand in determining
14 the amount in the first place?

15 A. They definitely had a hand in determining
16 the amount in the first place.

17 Q. Turn to Page 218 of the transcript, if
18 you would.

19 A. Okay.

20 Q. In paragraph 30, the Department's audit
21 manager writes that Baird's fairness opinion is,
22 "...is based solely on financial information
23 dealing mainly with revenue with no consideration
24 of the value of assets acquired".

25 Do you agree with that statement?

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1 A. Yes, I agree with that statement.

2 Q. Can you explain why?

3 A. Sure. The last thing -- and I'm speaking
4 now as a manufacturing executive that I spent all
5 my life -- the last thing I want investment
6 bankers to do, is to walk through a facility and
7 try to tell me what is this 2,500 complex worth.
8 I have my own due diligence teams. I live and die
9 with this business. I can walk in -- That's my
10 job. I know what that press is worth to me.

11 But the most important thing is not
12 looking at an answer and looking at what is the
13 value of these assets based on accounting
14 principles and all that. We look at what is the
15 asset utilization? What is the productive up-time
16 of that asset? What is the income flow that that
17 asset generates?

18 We are an operating business; we are not
19 a theoretic entity here. We are in business to
20 make a penny so we can sustain and provide
21 employment to our people and create some money to
22 our shareholders. So I don't want investment
23 bankers to tell me what the assets are worth for
24 MTD.

25 The Shiloh due diligence team, under the

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6 bankers to do, is to walk through a facility and
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9 with this business. I can walk in -- That's my
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14 principles and all that. We look at what is the
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16 of that asset? What is the income flow that that
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21 employment to our people and create some money to
22 our shareholders. So I don't want investment
23 bankers to tell me what the assets are worth for
24 MTD.

25 The Shiloh due diligence team, under the

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1 direction of the Board, and all the continuous
2 list of questions and the direction we were
3 providing them, they will come back to us with all
4 the answers. And if we didn't like those answers,
5 we send them back and again and again and again.

6 So we don't need that. That's not how
7 things are done in the real world.

8 Q. And what is the function of Baird, in
9 your opinion?

10 A. The function of Baird is to look
11 objectively at all the financial performance of a
12 particular company, to look at the stream of
13 revenues, the stream of cash flow generated by it
14 and to advise the Board that based on this
15 particular operating business -- realities -- this
16 is what this business should be worth; don't pay
17 more, don't pay less.

18 Now then, it's up to us, the Board, to
19 consider any additional consideration for paying
20 more or less. But it has nothing to do with what
21 the value of 55 presses, that some of them are
22 20 years old and some of them 2 years old. If
23 these presses are 90 percent unutilized, what am I
24 going to do with them?

25 We are not in the -- We are not in the --

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1 in the used equipment business, in other words.
2 That's not why we buy a company.

3 Q. Turn, if you would, to the Proxy
4 Statement. It says Exhibit 1?

5 A. Exhibit 1, okay.

6 Q. And it's the beginning portion of it --

7 A. Okay.

8 Q. -- pages 11 through 14?

9 A. Okay; 11, yes.

10 Q. Was the analysis Baird made when
11 evaluating the price to be paid for MTD Automotive
12 Division summarized on those pages?

13 A. Yes.

14 Q. Okay. Mr. Zampetis, as a potential buyer
15 of an operating business, when you consider the
16 amount you were willing to pay for the business,
17 what factors are you primarily interested in?

18 A. I'm interested in the -- two things,
19 fundamentally, the top line, what we call the
20 revenue line growth and the bottom line growth.

21 In other words, is this company -- can
22 this company -- Can this operating business
23 provide a sustainable revenue growth and can this
24 business demonstrate to us that it can provide a
25 sustainable income growth?

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1 This is the only way we can recover our
2 return on investment and contribute some value to
3 our shareholders. Anything else is theoretical
4 and it doesn't belong in the real business world
5 today.

6 Q. If the revenues being projected for a
7 basis is not sufficient to cover the amount you
8 remember being paid for the business, what's the
9 turn on these assets? Would you consider buying
10 the business at the price being asked?

11 A. No.

12 Q. Does that mean you wouldn't be interested
13 in purchasing this business?

14 A. Not necessarily.

15 Q. Under what circumstances would you remain
16 peaceful?

17 A. Only if I would negotiate a price that
18 would be lower and only if I would see
19 strategically the basis that it would allow me to
20 level those assets to make it more profitable in
21 the future.

22 Q. Assuming you do not intend to sell off
23 the assets of an acquired business piece by piece,
24 is an appraisal of the individual assets of the
25 business particularly meaningful, too?

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1 A. It's subject to condition. It doesn't
2 make any sense anymore to talk about things like
3 that in the real business world. Again, this is
4 good only for the people that are buying and
5 selling used equipment; that's not what Shiloh is
6 doing.

7 Q. Is the depreciated value of the assets of
8 a business, as recorded on the books of the
9 current owner, of any interest to you when
10 determining the amount you're willing to pay for
11 the business?

12 A. Absolutely not.

13 Q. Why not?

14 A. Because it doesn't make any sense to me.
15 What I'm looking at is productive uptime, asset
16 utilization and generation of cash flow. These
17 are the three things I'm looking at. If it's
18 there, it's there; if it's not there, it's not
19 there. And in the case of the MTD Automotive,
20 it's not there.

21 Q. Turn if you would to Page 298 of the
22 transcript certified by the Commissioner of
23 Case 380.

24 A. Page 298?

25 Q. Page 298.

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1 A. Okay.

2 Q. Look at the last paragraph. And the
3 lead-in sentence for the last paragraph, the audit
4 manager's statement reads, "I realize in the
5 Taxpayer's situation that the predecessor's net
6 book value may not be reflective of true value".
7 It then goes on to write why he believes that.

8 My question is this: Do you agree with
9 the audit manager that the depreciated book value
10 of assets of the automotive division as recorded
11 on MTD's books and prior to the sale of the
12 division to Shiloh isn't reflective of the true
13 value?

14 A. Yes, I do.

15 Q. Turn, if you would, to Pages 498 through
16 502 of the transcript.

17 MR. MAIER: What was that page?

18 MR. STEINES: 498 through 502.

19 THE WITNESS: Okay.

20 BY STEINES:

21 Q. What appears on those pages?

22 A. This is Shiloh Automotive, Inc. Detail
23 Trial Balance. So their financial statements from
24 when to when. And they are from the fiscal year
25 ending 10-31-2000 to fiscal year ending '01, '02

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1 and nine months ended '03.

2 Q. Okay. Is that essentially from inception
3 through July 31 of 2003?

4 A. That is correct, yes.

5 Q. Turn, if you would, to Page 518 of the
6 transcript.

7 A. Yes, sir.

8 Q. What appears on those pages -- on that
9 page?

10 A. This is a summary of net income from
11 fiscal year ending 10-31-98 to the nine-month
12 fiscal year ending 7-31-03.

13 Q. Is this for MTD Automotive Division?

14 A. This is MTD Automotive Division, yes.

15 Q. Let's make sure I got this straight.

16 This is MTD Automotive Division for physical year
17 ending 10-31-98 through the six-month period
18 ending April '99?

19 A. Yes, sir.

20 Q. And the income statements for Shiloh
21 since inception through July --

22 A. Actually -- Excuse me. The six-month --
23 Yes, okay.

24 Q. And with regard to Shiloh Automotive,
25 it's from inception through July 31st --

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1 A. 7-31-03, yes.

2 Q. -- of '03?

3 A. Right.

4 Q. For the fiscal year ending 10-31-98 and
5 the six-month period ending April 31, '99, did MTD
6 Automotive turn a profit?

7 A. No.

8 Q. Since Shiloh Automotive acquired MTD
9 Automotive Division, has Shiloh Automotive turned
10 a profit?

11 A. Just the first fiscal year.

12 Q. Just the year ending 10-31-2000?

13 A. Yes.

14 Q. Since that first year, you've suffered
15 significant losses?

16 A. Yes.

17 Q. To what do you attribute the profit
18 earning in fiscal year ending October 2000?

19 A. This is an interesting phenomenon.
20 Again, it goes back to asset utilization. One of
21 the major programs that MTD Automotive was
22 launching during the period of sale was a major
23 Ford program that was dealing with the Ford
24 Windstar minivan.

25 During the period of the first year of

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1 operations, Ford was producing 1,200 minivans a
2 day, so this volume goes in our estimation that
3 that was at a sufficient level to generate a
4 profit.

5 When the next year Ford Motor Company,
6 responding to market trends, had to slow down and
7 lower the volume of the Windstar from 1,200
8 vehicle units a day to 850, 900 a day, the
9 breakeven for this facility in this particular
10 operation was so hard because of the inherent cost
11 that I was talking before.

12 All their plants, all their assets, UAW
13 Union flexibility, all that -- their breakeven
14 falling off, end result is losses. There was
15 nothing that could be done. And we still have
16 suffered. Still today, we are suffering. We are
17 losing money.

18 Q. Were the losses incurred in fiscal year
19 ending 2001, 2002 and 2003 anticipated when Shiloh
20 was considering an amount in this phase of the
21 automotive division?

22 A. No, it was not. We anticipated so many
23 things. We guided so hard and so intelligently.
24 We could not anticipate that the flexibility in
25 reducing the break-even point of that division

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1 would be as difficult as it turned out to be.

2 Q. If Shiloh had anticipated the losses,
3 would it have agreed to buy the automotive
4 division at this amount?

5 A. Absolutely not.

6 Q. In your opinion, based on the income
7 stream generated by the automotive division before
8 it was acquired by Shiloh, as well as the
9 cost-cutting steps taken shortly before the
10 acquisition, would any reasonably prudent and
11 well-informed person agree to pay the depreciated
12 value of the assets as recorded in the books of
13 MTD --

14 MR. MAIER: I'm going to object. He's
15 not an officer.

16 THE EXAMINER: You may answer that
17 question.

18 THE WITNESS: Can you repeat the
19 question, please?

20 BY MR. STEINES:

21 Q. Sure. In your opinion --

22 A. Right.

23 Q. -- based on income stream generated by
24 the automotive division before it was acquired by
25 Shiloh, and taking into consideration the

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1 cost-cutting steps that occurred shortly before
2 the acquisition, would any reasonable, prudent and
3 well-informed person agree to pay the depreciated
4 value of the assets of the business as recorded on
5 the books of MTD?

6 A. No.

7 Q. In your opinion, based on the income
8 stream generated by the automotive division after
9 it was acquired by Shiloh, would any reasonable,
10 prudent and well-informed person conclude that the
11 depreciated value of assets of the business as
12 recorded on the books of MTD in July of 1999
13 accurately reflect the true value of the assets?

14 A. No.

15 MR. MAIER: Objection.

16 THE EXAMINER: It is overruled. You may
17 answer.

18 BY MR. STEINES:

19 Q. And the last question, Mr. Zampetis.

20 In your opinion, based on the income
21 stream generated by the automotive division after
22 it was acquired by Shiloh, would any reasonable,
23 prudent and well-informed person conclude that the
24 amount actually paid by Shiloh for the assets of
25 the division accurately reflected the true value

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1 of assets in November 1999?

2 MR. MAIER: Same objection.

3 THE WITNESS: No.

4 BY MR. STEINES:

5 Q. Is it too high or too low?

6 A. Too high.

7 MR. STEINES: That's all the questions I
8 have.

9 THE EXAMINER: Let's take a ten-minute
10 break, and we'll come back for cross-examination.

11 (Recess taken.)

12 THE EXAMINER: Mr. Maier, do you have any
13 questions?

14 MR. MAIER: Thank you, your Honor.

15

- - -

16

CROSS-EXAMINATION

17 BY MR. MAIER:

18 Q. Mr. Zampetis, good morning. On your
19 direct testimony when you were a Director, what
20 was the starting point of your being a Director at
21 Shiloh?

22 A. I was the Director of Shiloh at the time
23 that Shiloh became a public company in 1993 -- in
24 June of 1993.

25 Q. Okay. And at the same time, your

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1 employment was with what, Standard Products?

2 A. Standard Products Company.

3 Q. Okay. Was Standard Products a Tier --
4 what we've called a Tier-1 supplier?

5 A. Yes.

6 Q. Okay. And at that time, Shiloh was a
7 Tier-2 supplier; is that correct?

8 A. Right.

9 Q. And during the time that you were a
10 Director, from 1993 forward and up until 1998, was
11 there any discussion in the Board of Directors
12 about Shiloh becoming a Tier-1 supplier?

13 A. Yes, indirectly; however, because
14 management, especially the CEO of Shiloh that was
15 a long-term employee of Shiloh, Mr. Grissinger,
16 had developed a strategic plan that he called
17 Shiloh 2000, and in that plan he was visioning
18 20 percent revenue growth every year. Now, all of
19 us knew at the directors level that that would not
20 happen internally, it has to happen through a
21 combination of organic growth, internal growth and
22 acquisition.

23 And so we kind of....

24 Q. So Mr. Grissinger was CEO when you became
25 a Director of Shiloh?

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1 A. That is correct.

2 Q. At what point in time did MTD or
3 MTD-related interests become a powerful
4 shareholder of Shiloh? Was that true when you
5 joined the Board of Directors?

6 A. Yes. When I joined the Board of
7 Directors, Shiloh had two constituents, the
8 Fanello brothers, James and Nick Fanello, that
9 owned, at the time I became a Director, 37 percent
10 of Shiloh and MTD that owned another 37 percent.
11 So those two were equal shareholders.

12 And subsequently, MTD acquired from the
13 Fanello brothers one million shares, a couple of
14 times, actually, and that's how MTD brought their
15 interest to 51 percent. But they acquired it from
16 the other big shareholder.

17 Q. Okay. And when did that acquisition
18 occur; do you recall?

19 A. That was probably 1996, '97, that time,
20 '98, at that time; those years.

21 Q. Okay. Before MTD made that acquisition
22 of the Fanello brothers' shares, what was the
23 level of interest in becoming a Tier-1 supplier at
24 that earlier time?

25 A. It was -- It was -- It was -- There was

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1 always an interest, I mean, strategically
2 speaking. Always a company, especially a growing
3 company like Shiloh, always think, "So where do I
4 belong? Where is this fun box that I want to play
5 in?" And Mr. Grissinger continued to come to us.

6 And he was using the Board very
7 effectively to say, "Well, you know, I could grow
8 the company by 20 percent." And we would say -- I
9 would especially, I would say, "Bob, you have to
10 be careful because growing 20 percent a company
11 that is \$200 million in revenue is one thing,
12 growing 20 percent of company that would become
13 \$500 and \$600 million in revenue is a different
14 thing. So be careful about your vision.

15 In other words, your vision is going to
16 have to be tailored as you go forward.

17 Q. Could you take a look at Exhibit 14
18 before you, on Page 47?

19 A. Page 47?

20 Q. Correct.

21 A. Okay.

22 Q. It's the page that says "Case For
23 Combination" at the top.

24 A. Yes.

25 Q. And down at the bottom, there's a

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1 statement, "MTD Products, Inc.'s perception of
2 major objectives in Shiloh 2000 is as follows."

3 A. Uh-huh.

4 Q. Could you read through those bullet
5 points?

6 A. Right.

7 Q. And my question is: Is that a fair
8 characterization of the Shiloh 2000?

9 A. Okay. It says, "Continue to grow
10 revenues at the rate of approximately 20 percent
11 annually to achieve critical mass of \$1 billion",
12 minimum sales. "Continue to increase margin and
13 earnings," "Increased geographical market share,"
14 "Constantly improve product quality," "Continue to
15 develop a strong and diversified management team."

16 I would say that that is probably
17 representative of the -- what the intention was.

18 Q. And you knew what the Shiloh 2000 idea
19 was as a Director, right?

20 A. Yes.

21 Q. Is there anything that's missing from
22 that list that --

23 A. No. When a company grows to become, in
24 the automotive industry, \$1 billion company, you
25 have to admit you cannot do it and be a Tier-2

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1 supplier. The implication in that growth plan is
2 we will become a Tier-1, eventually. There's no
3 other way you can bring it, really, and be a
4 billion dollar company.

5 Q. So the -- You talked about a number of
6 acquisitions before the MTD acquisition. Could
7 you run through those again?

8 My question is really: Were those Tier-2
9 acquisitions?

10 A. The Greenfield Tool and Die, as you can
11 imagine from their definition, tool and die
12 company, they did have any tool relationships with
13 Ford and General Motors, but in the tooling
14 segment, not in the manufacturing segment.

15 When we -- We look at ourselves as a
16 supplier to the automotive industry, you can look
17 at it from maintenance, repairs, material, tooling
18 and primarily purchase parts, meaning components,
19 subsystems, modules, systems. Okay.

20 Well, we always think about the supplier
21 in terms of somebody that provides components,
22 modules, subsystems, systems more so than tools.
23 So, yeah, there were some small business, I'm
24 talking maybe ten, twenty million dollars, maybe,
25 worth on tooling sales, but nothing more than

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1 that.

2 Q. Okay. And you've said that moving into
3 Tier-1 in one way or another would be necessary to
4 sustain large-scale growth of Shiloh; is that
5 right?

6 A. That is probably as good as....

7 Q. Are there different -- Were there
8 different strategies for becoming a Tier-1
9 supplier?

10 A. Well, usually, the strength for becoming
11 Tier-1 are two, fundamentally.

12 One, you're going to develop your own
13 expertise in something very innovative to break
14 through, and the other is to simply acquire
15 someone that has already reached the tier.

16 Q. And as between those two, what was
17 Mr. Grissinger's plan?

18 A. There was no -- no capability at Shiloh,
19 objectively speaking really, to come in with any
20 breakthrough innovation. That was not what the
21 company was good at.

22 The company was a good high quality, low
23 cost producer without investing huge amounts of
24 time in assets and development. So, therefore,
25 the most plausible study would be become Tier-1

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1 through acquisition.

2 Q. Prior to the initial proposal for the MTD
3 Automotive acquisition, what other types of
4 acquisitions to become a Tier-1 supplier did
5 Shiloh pursue?

6 A. Well, it was kind of interesting because
7 what was happening was at that time, the
8 acquisitions, because of the background of the
9 Shiloh founders, the Fanello brothers was --
10 Shiloh was -- Remember, in 1950, Shiloh, Ohio was
11 developed as a Shiloh Tool and Die Manufacturing
12 Company.

13 So here's a little company that two
14 brothers developed, and their expertise was in
15 tool and die. So that's why they were a tool and
16 die company. So as they were growing, they were
17 acquiring more tool and die companies.

18 But with the association events with MTD,
19 they got into steel processing, some forming,
20 first operation blanking, and they started really
21 seeing the true automotive growth and the
22 possibility that could create.

23 Q. Now, the Fanello brothers were then
24 involved in MTD?

25 A. They were associated with MTD through

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1 business relationships from when Shiloh was coming
2 up and MTD was one of their customers. And then
3 the ownership of MTD appreciated the character of
4 the Fanello brothers, good, honorable people, hard
5 working, good ethic -- and this is the ethic of
6 MTD, by the way -- and they thought this is good
7 people to partner when the right opportunity
8 arrives.

9 Q. Would the -- Were -- The Fanello
10 brothers, did they become shareholders of MTD?

11 A. No. They were shareholders of Shiloh.
12 MTD, of course, then became a shareholder of
13 Shiloh.

14 Q. I understand. Okay.

15 Is it fair to say that prior to -- Well,
16 let me ask this: I believe that the Proxy
17 Statement -- and correct me if I'm wrong -- that
18 it was approximately the summer of 1998 when MTD
19 began proposing the acquisition of the automotive
20 unit?

21 A. In a more formal way, right?

22 Q. Were there discussions of that before --

23 A. Yeah. Well, actually, I recollect, and I
24 think the proxy reflects that, from mid-'96 to
25 mid-'98, there were informal discussions between

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1 Mr. Grissinger and some people at MTD about, yeah,
2 it might be, one day type of thing, but never
3 brought to the directors' attention in a serious
4 way; it was never a serious proposal.

5 Q. Was Mr. Grissinger a proponent or an
6 opponent of acquiring MTD?

7 A. I would say that he was a proponent
8 because he was the one ultimately that brought it
9 to our attention. It was his recommendation that
10 we should look at that.

11 Q. Are you aware that at any time from the
12 summer of 1998 through the time that the Asset
13 Purchase Agreement was actually put into force,
14 are you aware of any discussions between MTD and
15 any other potential buyer for the automotive unit?

16 A. MTD -- I know one thing, that MTD
17 strategically was considering doing something with
18 the automotive divisions for many reasons,
19 obviously.

20 And one of the reasons was that every
21 company comes to the crossroads, trust me.
22 Usually, every five years we have to review where
23 are we? What is going on? Where are we spending
24 our money, our human resources and capital? Are
25 we doing the right thing?

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1 MTD had business. Really, the
2 fundamental business was lawn and garden, and they
3 saw the opportunity to grow, they saw the
4 opportunity to really focus there big time.

5 And the automotive segment involved
6 full-service supplies with some of their
7 customers, which was absorbing a lot of energy, a
8 lot of resource.

9 So they had to make a decision. Either
10 they go on their own and acquire the size and the
11 geographic footprint, or they sell.

12 Q. So are you aware of any proposal by MTD
13 to entities other than Shiloh with a view to
14 selling off the automotive asset?

15 A. I'm personally not aware, but I wouldn't
16 be surprised if they continuously -- MTD
17 continuously would be looking around and seeing
18 what is going on and what -- if there's any target
19 or potential targeted sellers for their
20 automotive --

21 Q. But you have no specific knowledge --

22 A. No, I don't.

23 Q. Okay. At what point in time did you
24 become -- Strike that.

25 You became a Director in 1993; did there

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1 come a point in the time when it appeared to you
2 as a Director that MTD -- acquiring MTD's
3 automotive unit would be, at least in a general
4 way, a positive thing to do?

5 A. Yes.

6 Q. When was that?

7 A. Conceptually, it was by the Board meeting
8 of December 1998, when the formal presentation was
9 made to us at the Board level by the management of
10 MTD Automotive.

11 The management -- here's the president of
12 MTD and two, three vice presidents -- they came in
13 and they made an hour-and-a-half presentation of
14 all their strengths, their weaknesses, their
15 customer base, their automotive capability and
16 program management.

17 Very impressive stuff, but a
18 presentation.

19 Q. Okay. But during this entire time
20 period, Shiloh was not looking to purchase a
21 similar sort of automotive assets from some other
22 sellers, was it?

23 A. Shiloh, with their Vice President of
24 Strategic Planning, Mr. Burton, continuously they
25 were looking out. I mean, it was amazing. We had

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1 to restrain them, because we were running out of
2 money. I mean, our ability to generate cash flow
3 is one thing, but our ability to make acquisitions
4 that require \$20-, \$30-, \$40-, \$50 million is
5 another. So our job was to watch out, also, what
6 was the credit line we had with the banks and how
7 that credit line was narrowing, the liquidity
8 aspect of it.

9 But they had a Vice President of
10 Strategic Planning -- I don't have one now. I
11 don't need one now.

12 Q. So during -- As you described in your
13 direct testimony, during the period of time from
14 this proposal in May of 1998, a formal proposal to
15 the Board of Directors --

16 MR. STEINES: Excuse me a second. I
17 think you've got the dates wrong.

18 THE WITNESS: Yeah, it's not --

19 MR. STEINES: I think it's December of
20 1998.

21 THE WITNESS: Right.

22 MR. MAIER: I thought that's what I said.

23 BY MR. MAIER:

24 Q. December of 1998.

25 A. Right. This was the presentation of the

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1 Board.

2 Q. From that time forward, you, as a
3 disinterested -- what we've called a disinterested
4 director -- and let me just be clear about that.

5 When we say a "disinterested director",
6 we mean?

7 A. Independent director.

8 Q. And specifically in this context, the
9 disinterested director, such as yourselves, were
10 not shareholders or otherwise associated with MTD;
11 is that correct?

12 A. That is correct. We -- An independent
13 director, by SEC rules, is a person that might own
14 little shares of stock in the company at Shiloh,
15 because we had to. So we owned, at that time, a
16 couple thousand shares and showed some interest in
17 our shares. Other shareholders look at us, they
18 say, "Wow, they've got some credibility, they've
19 invested a little bit of their money."

0 But an as independent director, I have no
1 association, I'm not affiliated by any means to
2 one or the other party. One, meaning the MTD side
3 or Fanello brothers side, the Shiloh side. I'm an
4 independent director.

5 Q. And during this entire time, and as your

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1 testimony, I believe, revealed, you as a
2 disinterested director raised a lot of concerns --

3 A. A lot of concerns.

4 Q. -- about the purchase of this automotive
5 unit?

6 A. Yes.

7 Q. At any point during that time, did anyone
8 associated with MTD say, "Well, we can" -- "We
9 have some proposal or we can sell it to somebody
10 else for a certain amount, so you should consider
11 giving us that amount"?

12 A. I don't remember any time that MTD
13 suggested anything like that.

14 MTD was very professional about it. In
15 other words, here it is, here's what we have, you
16 guys don't have to buy it. If it fits in your
17 strategy, good; if it doesn't, we will do
18 something different.

19 Q. So it was not your perception as a
20 disinterested director of Shiloh that you were
21 bidding against anyone else to purchase MTD
22 Automotive Division?

23 A. No. But I knew one thing, that if we
24 really wanted, we better get busy because it's not
25 going to be out there for sale for too long. I

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1 had that feeling; you can see it.

2 Q. Well, you say that you wanted to do it,
3 but, in fact, it took a very long time to -- and a
4 lot of concerns had to be addressed at the time,
5 right?

6 A. Yes.

7 Q. Let me direct your attention to
8 Exhibit 1.

9 A. Okay. Page?

10 Q. Page 8.

11 A. Okay.

12 Q. And there's a bold face statement there
13 toward the bottom on Page 8. Do you see that, the
14 "Recommendation of Disinterested Directors"?

15 A. Yes.

16 Q. Okay. And there's a list of factors, and
17 you've testified a little bit about those
18 previously.

19 In essence, are these the factors, listed
20 at the bottom of Page 8, top of Page 9 of
21 Exhibit 1, that the disinterested directors did
22 consider in reaching their decision to approve and
23 recommend the asset purchase?

24 A. Yes. But -- We did, no question about
25 it. But after one year of hard negotiations and

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1 due diligence, we concluded that this was
2 satisfactorily this was the key reasons of why an
3 acquisition of this type was to the interest of
4 Shiloh and its shareholders.

5 Q. Let me direct your attention to the top
6 of Page 9.

7 A. Yes.

8 Q. To the one, two, three, four, fifth
9 bullet point down and it says the financial terms
10 and structure of a transaction including the
11 amount of purchase price relevant to the value of
12 assets acquired from MTD, that was a factor that
13 you considered as a disinterested director in
14 making a recommendation, right?

15 A. Okay. Okay. Here is this disinterested
16 director thing.

17 Q. That was a factor that you considered?

18 A. Right. But can I explain a little bit
19 what I mean by that?

20 Q. If you could give me an answer. Is the
21 answer "yes", and then you can explain?

22 A. Yes, sure.

23 Q. Go ahead.

24 A. An asset for a disinterested director is,
25 for instance, a contract that the MTD Automotive

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1 has with a key customer like Ford Motor Company,
2 and that contract can be for a vehicle that -- We
3 know it should have a reasonable life expectancy
4 and successful -- you know, successful acceptance
5 in the marketplace.

6 Okay. So to us, when we saw that finally
7 this new minivan business are coming in and MTD
8 Automotive is turning around financially and for
9 the first year, and several years now, was going
10 to have a profitable year, we see that that is an
11 opportunity in an asset to really capitalize,
12 hopefully, profitably and improve productivity and
13 quality, and sustaining that profitability.

14 Q. Okay. Mr. Zampetis, thank you. I have a
15 very specific question about that statement.

16 As a disinterested director, in
17 determining the financial terms and structures,
18 including the purchase price relevant to the value
19 of the assets acquired from MTD, what information
20 did you rely on in order to arrive at that?

21 A. Two types of things. Again, back to the
22 basics, what is it that is going to improve our
23 revenue line on a consistent basis?

24 In other words, what is the future
25 business contact that this company has with what

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1 customers, okay, so we can really dive deep into
2 it. And, two, what is the capability to convert
3 these revenues into bottom line profits.

4 Q. Okay. And with respect to specific
5 information the disinterested directors like
6 yourself looked at --

7 A. Right.

8 Q. -- in order to determine the amount of
9 purchase price relevant to the value of the
10 assets, you would look at what? What would you
11 look at?

12 A. At the contract that we have with Ford,
13 only Windstar Ford, and realize, now, that several
14 of the assets -- the mechanical assets that we
15 were focusing on, because I'm focusing -- As the
16 asset -- As the director, we are strategical
17 thinking, we are not practical thinking. We are
18 not looking at pieces of metal, okay, we are
19 looking at the business from the point of view of
20 saying, this is a valued creation opportunity for
21 the company.

22 Now, the metallic assets, okay, in the
23 automotive business -- and this is something
24 critical for you to understand -- is that they are
25 dedicated to a program, okay?

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1 So I go in and invest \$10,000,000 in MTD
2 or Shiloh or any company, and bring in 20
3 different robots and welders that are configured
4 for the Ford minivan program that last five years.
5 The replacement, I don't get it. Somebody else
6 gets because they are more competitive than I.

7 What happened to those assets? Gone.
8 Useless. Nothing. So I bring somebody to sell
9 the assets. Oh, sure, who's going to sell? These
10 are specific, unique assets.

11 Q. Okay. So the one thing that you looked
12 at was the contract with Ford relating to the
13 Windstar?

14 A. Right.

15 Q. Okay. Did you also look at information
16 concerning the business assets, liabilities,
17 financial performance of Shiloh and its division?

18 A. Sure.

19 Q. And specifically, did you look at the
20 financial statement for MTD?

21 A. Yes, we did.

22 Q. And so the financial statements for MTD,
23 to some degree --

24 MR. STEINES: Can I have a clarification?
25 We have MTD Products, Inc. and MTD Automotive

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1 Division, which one of those financial statements
2 are you referring to?

3 BY MR. MAIER:

4 Q. Okay. Did you look at any MTD financial
5 statements as part of determining your
6 recommendation that the financial terms and
7 structure of the transaction, including the amount
8 of purchase for metallic value, did you look at
9 that --

10 A. We looked at the so-called pro forma
11 statements that we tried to carve-out, in other
12 words, MTD Automotive Division out of the MTD
13 Products side. And they provided to us -- and we
14 started, obviously, you know, asking all the
15 questions.

16 Q. So part of your -- Let me make sure so
17 I'm clear on this. Part of your analysis as a
18 disinterested director of the relationship between
19 purchase price relevant to the value of assets was
20 looking at the breakout from MTD's financial
21 statements for the automotive assets, correct?

22 A. That's correct, yes.

23 Q. And that was part of what you were
24 relying on in making this statement in the Proxy
25 Statement, right?

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1 A. Yes.

2 MR. STEINES: When you say "this
3 statement in the Proxy Statement", what are you
4 referring to?

5 MR. MAIER: I'm referring to the
6 statement about financial terms and structures
7 bringing the amount of the relative purchase
8 price, which is relevant to the value of the
9 assets.

10 MR. STEINES: Okay.

11 BY MR. MAIER:

12 Q. Let me -- I believe it's Appendix -- I'm
13 using your exhibit instead of mine, so that we can
14 have continuity of the exhibit.

15 MR. STEINES: Which one are you looking
16 for?

17 MR. MAIER: I believe it's the Baird
18 Letter B, Appendix B.

19 THE WITNESS: Okay.

20 BY MR. MAIER:

21 Q. And the page number is B-1; so I'm
22 looking at Page B-1.

23 A. Okay.

24 Q. And I believe you identified this as the
25 letter from Baird -- R. W. -- Robert W. Baird

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1 & Co., correct?

2 A. Uh-huh.

3 Q. And as the Proxy Statement reflects, the
4 disinterested directors rely, in part, upon this
5 Baird letter in determining to recommend the
6 purchase of the automotive assets, right?

7 A. Uh-huh.

8 THE EXAMINER: Please state "yes".

9 THE WITNESS: Yes, sir.

10 MR. MAIER: We do need that on the
11 record. Thank you.

12 BY MR. MAIER:

13 Q. Looking at the bottom of Page B-1.

14 A. Okay.

15 Q. There's a list here in connection with
16 IT, among other things. And then there's a
17 statement of items that were considered by Baird
18 in reviewing the fairness of the transaction.

19 Do you see that list?

20 A. Where?

21 Q. The small Roman numeral, up to Roman
22 numeral VI?

23 A. Right.

24 Q. And you agree with me that in that list,
25 there's no statement of any kind of appraisal of

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1 & Co., correct?

2 A. Uh-huh.

3 Q. And as the Proxy Statement reflects, the
4 disinterested directors rely, in part, upon this
5 Baird letter in determining to recommend the
6 purchase of the automotive assets, right?

7 A. Uh-huh.

8 THE EXAMINER: Please state "yes".

9 THE WITNESS: Yes, sir.

10 MR. MAIER: We do need that on the
11 record. Thank you.

12 BY MR. MAIER:

13 Q. Looking at the bottom of Page B-1.

14 A. Okay.

15 Q. There's a list here in connection with
16 IT, among other things. And then there's a
17 statement of items that were considered by Baird
18 in reviewing the fairness of the transaction.

19 Do you see that list?

20 A. Where?

21 Q. The small Roman numeral, up to Roman
22 numeral VI?

23 A. Right.

24 Q. And you agree with me that in that list,
25 there's no statement of any kind of appraisal of

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1 the value of any particular assets, correct?

2 A. Right.

3 Q. And then if you flip the page over to
4 B-2 -- you have to excuse me because I'm not using
5 my exhibits, so it's taking me longer to find my
6 place -- you notice this item -- there's a little
7 Roman numeral V -- we're on Page B-2 -- and it
8 starts: "The cost savings of operating benefits
9 currently contemplated by the Company's management
10 to result from the Division's restructuring and
11 from the acquisition," et cetera, "will be
12 realized."

13 A. Uh-huh.

14 Q. And to your recollection, what does that
15 refer to?

16 A. To the reduction of 167 employees of MTD
17 Automotive and the costs associated with those.

18 Q. Okay. In this parenthetical, does it
19 include "(without limitation certain depreciation
20 expense reduction resulting from purchase
21 accounting adjustment)"?

22 To your recollection, what was the
23 compilation of that?

24 A. Between the financial advisor and the
25 accounting advisor, we had two, obviously,

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1 powerful -- Ernst and Young, as well as Baird, and
2 they were dealing with the existing regulations
3 and purchase accounting and all that adjustments
4 and -- This is why we bring them in.

5 This is the expertise advice. And if
6 they say there is -- within the law, there is a
7 certain amount of, you know, distance that we can
8 go, then we got to depend on them. And we are
9 not --

10 Q. I understand that. And, of course, you
11 need to rely on their expert opinion.

12 But in your capacity as a disinterested
13 director, you understood that to have a certain
14 meaning.

15 And my question is: What does that mean,
16 the item in the parenthetical? What is the
17 depreciation item that they're referring to?

18 A. Once you acquire a company, usually,
19 usually two things happen; you go through with a
20 good inventory of assets, including working
21 capital, as well as fixed assets, and you look at
22 them. You decide what is a useable asset and what
23 is not a useable asset. And what is considered to
24 be a non-useable asset, you write it off or take
25 it off your books so you don't have to worry about

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1 A. Uh-huh. It was a concern of mine in
2 terms of how it was projected in the pro forma
3 analysis.

4 Q. In other words, whether the information
5 acquired by MTD accurately reflected the impact of
6 those concessions, correct?

7 A. That is correct.

8 Q. Okay. And what steps were taken in the
9 actual Asset Purchase Agreement to deal with those
10 concerns?

11 A. What we've done, these are very, very
12 easy; very easy. Because either you have a
13 long-term agreement with the customer, or you
14 don't.

15 And if you have a long-term agreement, in
16 the purchase order that you have from Ford or from
17 General Motors, it clearly describes what are the
18 terms and conditions of them giving us this
19 contract. And they say, annual price reduction
20 three percent effective such and such a date --
21 January 1, you know, 2000 -- January 1, 2001,
22 January 1, 2003.

23 In other words, an agreed upon terms up
24 front, and they are reflected in the purchase
25 order. So --

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1 Q. I'm sorry. Isn't there a specific
2 provision? I believe we were looking at it
3 before; 4.4. And it's on Page A-24 of Exhibit 1?

4 A. Okay.

5 Q. It's the Section 4.4 (b) of the Asset
6 Purchase Agreement and in looking at that it's
7 fair to say that the actual impact of those
8 concessions was not known as of the time that the
9 Asset Purchase Agreement was entered into,
10 correct?

11 A. They were known, as it pertains to the
12 purchase orders, because they are waiting. But
13 here's what happened. Again, another quack in the
14 automotive business because, unfortunately, this
15 is the world we live in.

16 Even though we agree with Ford or General
17 Motors on three percent price concession, 30-year,
18 General Motors and Ford arbitrarily, they have 30
19 days in the fine print, and they can change that
20 at their volition. And we, then, have 30 days to
21 meet it or not meet it.

22 If we don't meet it, the customer can
23 remove the business and give it to somebody else
24 that is willing to meet that. And, therefore,
25 because of my knowledge in this, I said, "Okay."

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1 So you can come in and say this, that and the
2 other, however, how do you know?"

3 And as it turned out, we were right.

4 Q. So let me rephrase my question.

5 My question is: Although you knew what
6 the contractual provision of the automobile
7 companies were, you did not know what the impact
8 of that would be on the profitability of the
9 business, correct?

10 A. Yes.

11 Q. And, therefore, there was a provision put
12 in to make adjustments of the purchase price with
13 respect to that impact in later years?

14 A. Above and beyond the known factors, yes.

15 Q. At any point in time -- And I understand
16 the testimony that you've given about the nature
17 of your reviews as a disinterested director, but
18 let me just ask as a matter of fact: At any point
19 in time, as a disinterested director, did you
20 consider any sort of actual appraisal of a fair
21 market value of the fixed assets of MTD
22 Automotive?

23 A. No. Because to be honest with you,
24 there's no such thing. There is no such thing in
25 our business. There's only used equipment prices.

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1 MR. MAIER: Could I have a moment?

2 THE EXAMINER: Sure.

3 MR. MAIER: At this time, that is all
4 questions I have for Mr. Zampetis.

5 THE EXAMINER: Any redirect?

6 MR. STEINES: Just give me one minute.

7 - - -

8 REDIRECT EXAMINATION

9 BY MR. STEINES:

10 Q. Mr. Zampetis, I just have one general
11 question.

12 In your view -- As of November 1999 when
13 the deal was closed, and, particularly, as of June
14 when it was approved, was it your view that the
15 amount paid by Shiloh for the asset of MTD
16 Automotive Division was more or less or equal to
17 the fair market value of the assets you were
18 acquiring?

19 A. Personally, I felt uncomfortable with
20 this deal from day one for many, many reasons.
21 And I think I was very forthcoming in explaining
22 things that -- I was worried about the facilities,
23 I was worried -- Okay. Keep in mind, there are
24 two plants, okay, the Parma facility --

25 Q. Setting aside your underlying reasoning,

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1 do you think you paid less than, more than or
2 equal to the value of the assets that you were
3 acquiring, the fair market of the assets you were
4 acquiring?

5 A. I think our general opinion was that we
6 paid a fair market value. However, personally --
7 and it turned out to be unfortunately correct -- I
8 thought we paid too much for what we purchased.

9 MR. STEINES: I have no more questions.

10 THE EXAMINER: The witness is excused.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 THE EXAMINER: Let's go off the record.

14 (Discussion held off the record.)

15 (Luncheon recess taken.)

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P R O C E E D I N G S

- - -
Tuesday, May 3, 2005

Afternoon Session

- - -
THE EXAMINER: While we are off therecord, Mr. Maier, you asked for a separation of
witnesses.

MR. MAIER: Of the remaining witnesses.

THE EXAMINER: Who is your --

MR. STEINES: Rick Steiner is the
company's representative.THE EXAMINER: And who's your next
witness?

MR. STEINES: Mr. Houser.

THE EXAMINER: Okay. Could I have you
two gentlemen please leave the room? And if you
could please close the door?

(Pause.)

THE EXAMINER: Mr. Steines, you may call
your next witness.

MR. STEINES: I call Ron Houser.

(Witness placed under oath.)

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1 RONALD HOUSER

2 of lawful age, being first duly placed under oath,
3 as prescribed by law, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. STEINES:

7 Q. Mr. Houser, you should have before you a
8 binder of documents in which you will find various
9 exhibits that I might refer you to from time to
10 time. There's also two vellum bound binders that
11 are the Statutory Transcript that are considered
12 by the Commissioner.

13 You can distinguish those two by the case
14 reference. One is 380, and the other one is
15 something other than 380.

16 Would you identify yourself, please?

17 A. My name is Ron Houser.

18 Q. By whom are you currently employed?

19 A. I'm currently employed by a company
20 called Learning Dimensions, LLC, doing business as
21 Learning RX.

22 Q. How long have you been affiliated with
23 that company?

24 A. A little less than three years.

25 Q. Since when?

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1 A. Since about June 2002.

2 Q. What's your current position with the
3 company?

4 A. I'm a partner.

5 Q. And how long have you held that position?

6 A. Since the founding of the company, in
7 that time frame.

8 Q. 6-2002?

9 A. Yes.

10 Q. Would you briefly explain your duties and
11 responsibilities in that position?

12 A. I'm one of three partners. The business
13 is basically a building -- or setting up new -- or
14 opening new franchises. It's a learning-related
15 business.

16 Q. Please review your employment history
17 prior to June of 2002, starting there and working
18 backgrounds in time.

19 A. Prior to that time, from 1996 through
20 2002, I was employed by MTD Products as an
21 Executive Vice President, Chief Financial Officer
22 and Board Member.

23 Prior to that time, from '96 back through
24 1973, I was employed in a number of different
25 positions with the Goodyear Tire & Rubber Company,

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1 the last of which was Assistant Corporate
2 Controller, responsibility for taxes, financial
3 reporting, internal reporting and strategic
4 planning. Prior to that time, I worked for
5 Pricewaterhouse & Co.

6 Q. From when to when?

7 A. From graduation of college in 1968
8 through 1973.

9 Q. Turn, if you would, to the binder of
10 documents and locate Exhibit 1, and, in
11 particular, Appendix A of Exhibit 1.

12 A. Okay.

13 Q. Do you recognize that document?

14 A. Yes.

15 Q. Can you tell us what it is?

16 A. It's the Asset Purchase Agreement dated
17 June 21, 1999 among Shiloh Industries and MTD
18 Products, Inc.

19 Q. Pursuant to that agreement, did Shiloh
20 Automotive purchase substantially all of MTD
21 Products' automotive division?

22 A. Yes.

23 Q. Were you directly and actively involved
24 in the negotiation of this transaction on behalf
25 of MTD?

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1 A. Yes.

2 Q. Prior to Shiloh Automotives' acquisition
3 of MTD Automotive Division, in what business was
4 MTD Products engaged?

5 A. MTD products had three separate lines of
6 business. The largest was its consumer products
7 business, which was essentially the manufacturer
8 of -- sale and distribution of outdoor power
9 equipment.

10 The second largest was the Tier-1
11 automotive business. And the third business was
12 mechanical systems group, which made transmissions
13 for OEM appliance manufacturers and transmissions
14 used in the manufacture of the outdoor power
15 equipment.

16 Q. Can you give us a sense of the relative
17 size of those three lines of business?

18 A. The outdoor -- The consumer product
19 group, or outdoor power equipment business was a
20 little bit more than one-and-a-quarter billion
21 dollars; approximately 80 percent or a little more
22 than 80 percent of the whole company.

23 The automotive division was in the
24 neighborhood of \$175,000,000, and approximately 10
25 to 15 percent. And the mechanical systems

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1 business was less than \$100,000,000, and would
2 have been about six or seven or eight percent.

3 Q. While I'm thinking of it, would you like
4 some water?

5 A. I'm okay for now.

6 Q. Okay. If you do, just let me know.

7 Exhibit 1, which is Shiloh's Proxy
8 Statement, provides that informal discussions
9 relating to its strategic benefits of employment
10 of Shiloh in the automotive division occurred as
11 early as mid-1997.

12 To your recollection, is that accurate?

13 A. Yes.

14 Q. And the Proxy Statement also provides
15 serious discussions for strategic benefits of
16 combining Shiloh in the automotive business
17 beginning in summer of 1998.

18 Is that also accurate?

19 A. Yes.

20 MR. MAIER: Can I, for the record, ask
21 which page you're referring to.

22 MR. STEINES: I don't know. Probably
23 Page 5. That is all I'm going to ask about it.

24 BY MR. STEINES:

25 Q. Which party was the moving force behind

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1 the more serious discussion?

2 A. MTD initiated the discussions with
3 Shiloh.

4 Q. And why was that?

5 A. MTD had -- Prior to those discussions,
6 MTD did a review of its three businesses, looking
7 at where they were positioned and where they
8 needed to go, what it was going to take.

9 The result of that review was that MTD
10 decided to sell its automotive division and focus
11 its resources, financial and human capital, on the
12 other two businesses that it had.

13 Q. Can you shed a little bit more light on
14 the process that led the company to conclude that
15 its best course of action was to sell the
16 automotive division?

17 A. Yes. In looking at the automotive
18 division, the issues that were going on --
19 particularly with Tier-1 automotive suppliers and,
20 I think, also, to some extent, similarly with
21 Tier-2 automotive suppliers; but my knowledge is
22 primarily with MTD a Tier-1 -- and the
23 relationship and the feedback that we were getting
24 from MTD's primary customer.

25 They were looking for, number one, the

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1 customers or the suppliers, the automotives, the
2 OEMs to be a -- what they call a full-service
3 supplier, which was to have significant
4 engineering design prototyping manufacturing and
5 program management capabilities, number one.

6 Number two, they were looking for
7 suppliers that had significant size. And without
8 ever saying to anybody a specific number, the
9 general target was that you had to be somewhere in
10 the neighborhood of a billion dollars.

11 And, thirdly, they were looking for
12 suppliers who also had a broad geographic
13 footprint so that they were able to -- capable of
14 delivering component systems to the assemblage or
15 assembly plants on a just-in-time-type basis so
16 that they didn't have to carry a lot of inventory.

17 So it meant that you had to have -- As
18 part of that billion dollar -- Approximately, as
19 part of the size, you had to have a broad
20 geographic footprint. It couldn't be a billion
21 dollars in just one or two central locations.

22 Q. At about this point in time, how many
23 competitors did MTD have for the automotive
24 division?

25 A. There were in the neighborhood of 200

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1 stampers of various sizes that were considered
2 Tier-1 suppliers to the OEM.

3 Q. Was that number increasing or decreasing?

4 A. Generally -- For instance, with Ford --
5 and that was the one that I was most familiar
6 with -- Ford's objective was to cut the number of
7 Tier-1 stamping suppliers to between five and ten.

8 And without knowing specific numbers of
9 the other large supplies -- General Motors,
10 Chrysler, Toyota, Nissan, Honda -- they were
11 generally following in the same patterns.

12 So they were looking for large suppliers,
13 and very few of them -- They were expecting them
14 to take over, not just the manufacturer of parts,
15 but also participate in the engineering, the
16 design right from the basic get-go of the concept
17 of the vehicles.

18 Q. And in the mid-to-late 1990s, did MTD
19 Automotive Division fit that profile?

20 A. No, not entirely. MTD Automotive
21 Division had developed engineering and design
22 capabilities and prototyping, but on a relatively
23 small scale. I mean, it fit the size of the
24 business for approximately \$175 million, but the
25 basic target of becoming approximately a billion

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1 dollar supplier fell way short.

2 Q. And what were your options, at that time?

3 A. The options, as we saw it at MTD, were,
4 essentially, to permit significant additional
5 capital to grow the business to that size, and
6 that would have been both in terms of acquiring
7 physical assets -- and, obviously, refund the
8 development of the engineering and design
9 capabilities and build that before you ever
10 participate in the programs and recover it.

11 So it was a huge investment in both
12 physical capital and also human capital, or
13 alternatively, look to try to harvest the assets,
14 which meant selling it.

15 Q. And the company opted for the latter
16 strategy?

17 A. Correct.

18 Q. When did MTD begin to seriously consider
19 selling its automotive division?

20 A. It was in the mid -- late 1997 time
21 frame, sort of. As that strategic review -- that
22 I just previously commented on -- was winding
23 down, and it started to develop, even on a broad
24 basis, what kind of capital and resources it would
25 take to stay in it, it became pretty clear that

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1 the only viable option at that point was to
2 consider selling it.

3 Q. What, if any, steps were taken in the
4 early part of 1998 to position MTD to sell the
5 automotive division?

6 A. The primary initial -- The initial and
7 primary step that we took was to go through what's
8 called a carve-out process in accounting terms.

9 The MTD Automotive Group was just a
10 division of the entire company. And the carve-out
11 process meant going on back in and reworking all
12 of the financial statements so as to recast the
13 results -- the financial results of the automotive
14 group as though it were a separate company.

15 We began that process, which was
16 ultimately completed later in the 1998 time frame.

17 Q. Was that being done specifically for
18 Shiloh?

19 A. No. It was done because we recognized
20 that to be -- to be able to sell the division to
21 anybody, we'd have to have separate financial
22 statements to be able to talk about the percentage
23 of the suppliers.

24 Q. As far as you know, was Shiloh even aware
25 that it was being done?

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1 A. Not to my knowledge, at that point.

2 Q. Based on this carved-out financial
3 information, did MTD draw any conclusions with
4 regard to the amount that it said it received from
5 the automotive division?

6 A. Not any financial conclusions. But as we
7 began carving out the separate information and
8 recasting the financial statements, we came up
9 with the basic measurements -- which everybody
10 used as a valuation of businesses -- to get to
11 pro forma EBITDA number that was in the \$10- to
12 \$11 million annual range.

13 And that -- that started to establish the
14 value. And then applying what was a common
15 multiple at that level of performance in the
16 neighborhood of high fours or low fives, if you
17 took five as an average, you'd been in the \$50 to
18 \$55 million with that kind of EBITDA, or cash flow
19 even.

20 Q. And that was just a kind of gleam in your
21 eye at that point in time?

22 A. Yes, that was just a process that was
23 being refined. But those were kind informal
24 preliminary numbers that we were coming up with.

25 Q. Mr. Houser, Shiloh's Proxy Statement, and

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1 again that's Exhibit 1, provides that MTD retained
2 PWC subsidiaries to assist them on the sale of the
3 automotive division and in the preparation of the
4 proffered memorandum; is that an accurate
5 statement?

6 A. Yes.

7 Q. How widely was the operating memorandum
8 circulated?

9 A. Initially, it was only circulated to
10 Shiloh.

11 Q. And why was that?

12 A. In looking at both the core capability in
13 the MTD automotive business and, also, based on
14 discussions that myself and other senior managers
15 at MTD had with Shiloh, we knew some general
16 thoughts about what Shiloh's strategic plan was.
17 In addition, we were certainly aware of, and had
18 knowledge of the Shiloh 2000 strategic growth
19 plan.

20 When we looked at the Shiloh strategic
21 growth plan and the core capability of the MTD
22 automotive division, it was our view that there
23 was a very good complementary fit between the two
24 businesses, with very little overlap or
25 duplication of common capabilities.

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1 So that -- As you looked at it, you had a
2 very, very good vertical integration fit with very
3 little overlap. And because of that, the view at
4 MTD was given Shiloh's strategic direction and the
5 core capabilities of the MTD automotive assets,
6 the best fit was probably for Shiloh because the
7 MTD Automotive Division possessed a lot of
8 capabilities, particularly, in areas A being a
9 Tier-1 supplier having a relationship that it had
10 with the key OEMs, particularly Ford and also
11 Chrysler and to a less extent Nume, prior to GM's
12 venture.

13 Having those capabilities, having the
14 capabilities of program management, engineering,
15 design of components were things that Shiloh
16 possess. And, obviously, the knowledge that if --
17 of Shiloh's strategic objective to grow to
18 approximately a billion dollar company, that it
19 was going to have to move up the scale and become
20 a Tier-1 supplier; it would never be able to
21 accomplish any strategic objective that it had as
22 a Tier-2.

23 Q. Is the case, the combination of Shiloh,
24 set forth in Exhibit 14 on Pages 47 through 52?

25 A. I'm sorry, which?

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1 Q. Exhibit 14.

2 A. Exhibit 14. And which pages, please?

3 Q. Pages 47 through 52. This is the
4 Offering Memorandum.

5 A. Yeah. Roman Numeral IV says -- It's
6 entitled "Case For Combination". It looks like it
7 runs through -- yeah, Page 52.

8 Q. To a certain extent, and you may have
9 already touched on it, the items listed in Part 4
10 of this document, but would you generally scan and
11 use it to jog your memory, if there's any items
12 you'd like to talk about?

13 A. Yes. First, as I commented before,
14 the -- knowing what the perceived strategy of
15 Shiloh was, and looking at the capabilities of MTD
16 Automotive Group, there was a good
17 vertical-integration combination opportunity with
18 very little overlap.

19 And, clearly, adding the approximate
20 \$175,000,000 of shares to Shiloh would help it
21 accomplish one of its goals in growing toward a
22 billion dollar company.

23 Beyond that, there were very significant
24 operating synergies that we saw. One being,
25 again, the combination of vertical-integration so

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1 that it became a more full-service supplier to the
2 automotive industry with Shiloh's basic profit
3 capabilities all the way through the program
4 management.

5 In addition to that, when you look at the
6 primary customers of the two companies, they
7 were -- there was not a significant amount of
8 overlap. General Motors was the primary customer
9 of Shiloh.

10 MTD's relationships were primarily with
11 Ford, and somewhat to a lesser extent Chrysler,
12 and then Nume, which was an individual plant with
13 a joint venture with Toyota and General Motors.
14 MTD Automotive had also established some
15 affiliation relationships with some foreign
16 suppliers.

17 So we had the opportunities to
18 participate jointly with product development in
19 Europe, as well as development activities that
20 would have been going on in the United States.

21 There was a complementary fit in terms of
22 where the plant locations were; again, not an
23 overlap. MTD plants were not located necessarily
24 where some of the Shiloh plants were; although,
25 there was an excess for flow of material.

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1 Again, complementary product line was
2 commented on the tier. Shiloh's processes were
3 the initial part of steel processing and first
4 operation blank. That, in fact, became a -- and
5 was a complied source to the MTD Automotive.

6 Combination with synergy that should be
7 gained through purchasing activities, and in those
8 regards, because you had a larger company,
9 improved purchasing, synergies, technology
10 transfer that was anticipated.

11 And another benefit based on MTD's view,
12 MTD purchased, oh, maybe in the neighborhood of
13 \$20 million worth of products from Shiloh as part
14 of its manufacturing. So we saw that -- that that
15 was -- in effect, became a part of a defensive
16 mechanism for Shiloh.

17 If that were to migrate someplace else,
18 Shiloh would potentially lose that business and it
19 would go to somebody else. So, again, we thought
20 there was an opportunity for greater value.

21 Q. Based on all those considerations, did
22 you consider Shiloh to be more likely -- Let me
23 rephrase that.

24 Did you consider it more likely that
25 Shiloh would be interested in acquiring MTD

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1 Automotive Division than any other potential
2 suitor?

3 A. Yes. Again, when you looked at the
4 combination of companies, there was very little
5 overlap or duplication. And MTD Automotive
6 provided some core capabilities, particularly with
7 respect to the engineering and design that Shiloh
8 didn't have.

9 Q. Was that not also true with regard to
10 other potential suitors?

11 A. Other potential suitors, and they were
12 one -- some of the companies there was, we
13 considered particularly the Magna Division of
14 Cosma, Oxford Automotive and Tower Automotive,
15 were significantly larger supplies. I think the
16 smallest of those three was maybe \$500,000,000 and
17 Magna is, I think, north of \$2,000,000,000.

18 They had all those capabilities. So to
19 the extent that MTD had them, they were just --
20 would just be an add-on, or duplication of what
21 these other companies had. And our perception, at
22 least at that point, was that they wouldn't be of
23 much -- of any value to the larger customers.

24 Q. Okay. Did your conclusion that Shiloh
25 would be the most interested potential suitor for

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1 MTD automotive extend to the amount they might be
2 willing to pay as compared to what some other
3 potential suitor might be willing to pay?

4 A. Not specifically at that point in time,
5 no. I mean, it was just -- As I commented
6 earlier, separate exercises. We were going
7 through the pro formas and trying to show what the
8 values were. Based on the pro forma, we came up
9 with an independent number that way.

10 In looking at it, if we -- I looked at it
11 based on the perspective right now, as I did at
12 that point in time, I would have probably had been
13 forced to acknowledge that there was a lot of
14 duplications. If I were looking to any one of
15 these other people and would have degraded --

16 Q. People meaning companies?

17 A. Companies, potential acquirers, and would
18 have degraded that EBITDA carve-out component and
19 most likely generated a significantly lesser
20 value.

21 Q. Explain that just a little bit more.

22 A. Well, if there were duplications, for
23 instance, all the other companies, for instance,
24 had the engineering design, prototyping
25 capabilities and MTD already had it, it was of no

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1 additional value to them, and so there's no
2 revenue to be gained from those dreams.

3 So maybe instead of a \$10 million EBITDA,
4 you might have had to acknowledge a \$1 million
5 degradation and EBITDA might have gone down to
6 \$9 million. So then you applied the same multiple
7 to it which maybe you wouldn't have, you might
8 have applied a lesser one, then the value would
9 have gone to nine times maybe four-and-a-half
10 instead of ten times five.

11 Q. At the point in time that we're
12 discussing, late 1998 through mid-1999, did the
13 company form a view as to which entity would be
14 most likely to pay the top dollar for MTD
15 Automotive Division?

16 A. Yes. As -- I think in Page 51 of the
17 Offering Memorandum, we went through the exercise
18 of looking at the core capabilities of Shiloh, the
19 capabilities of MTD, and then merged them together
20 and formed a view there.

21 And when we looked at that compared to
22 the other major Tier-1 dampers, you came out of it
23 with a company -- albeit smaller than some of the
24 other ones -- a company that had most, if not all,
25 of the same capabilities.

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1 And because of what MTD Automotive added
2 to Shiloh and its strategic objective, we felt
3 that it was going to be the company that would
4 have been most willing to pay top dollars for the
5 assets because it was acquiring things that it did
6 not have at that point in time, and these were not
7 things that it could easily internally develop or
8 get.

9 Q. Mr. Houser, would you turn to the chart
10 on Page 51 for us?

11 A. Yes. The -- It's several columns, and
12 it's identified down the left-hand side.

13 The key characteristics of what we viewed
14 to be the requirements for, based on our
15 understanding of what the OEMs were requiring of
16 their Tier-1 suppliers that I talked to, are
17 global presence, having varied OEM relationships,
18 platform exposure, breadth of product offerings,
19 systems integration, alternative technology,
20 materials capabilities, tool and die capabilities,
21 a strong financial position and then engineering
22 and design prototyping.

23 And then the chart goes through and
24 identifies, based on our assessment, individuals
25 for Shiloh, MTD Automotive, the capabilities,

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1 have been significant, it would have been
2 difficult for them to acquire. And for them to
3 grow, they were going to acquire. So value -- the
4 view of the value there was high.

5 In looking at the other potential suitors
6 that might have been there, they already had those
7 capabilities. They weren't going to see it as a
8 very valuable asset. And, essentially, it would
9 have just looked at the MTD Automotive Division as
10 kind of a commodity, and not seeing any additional
11 value. So we perceived the value to Shiloh to be
12 significantly higher than anybody else.

13 Q. If Shiloh was unwilling to purchase the
14 automotive division, or if it would do so only
15 from an amount that was unacceptably low to MTD,
16 was MTD prepared to shop the division for other
17 potential?

18 A. Yes, we would have.

19 Q. Had you, in fact, investigated the
20 interest of other potential buyers in general
21 during this time frame?

22 A. We had not talked to anybody else, but we
23 had kind of a secondary fall-back plan if we're
24 not able to put together an acceptable deal with
25 the directors of Shiloh.

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1 Q. In your business career, have you been
2 involved in the mergers and acquisition business
3 to any significant extent?

4 A. Quite a bit. Both with Goodyear.

5 Q. The process you described in this case,
6 is it unusual?

7 A. No. In fact, it's -- Despite what I
8 think people see in the public view -- the
9 transactions, merges, acquisitions that you hear
10 about in the public view -- you hear about the
11 sensational ones where there's either a
12 competitive bid or a hostile takeover or something
13 like that.

14 To my general knowledge, probably 75 or
15 80 percent of the transactions are done on a
16 friendly, quiet basis, very similar to what MTD
17 Automotive-Shiloh is being done, where one party
18 approaches the other and they talk about a deal.

19 And getting it done, you hear about it
20 when it's announced, after it's completed.
21 There's probably four to five times the number of
22 transactions that are completed that way versus
23 the ones that get all the public notoriety that
24 you see about. By far, a huge number is done that
25 way.

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1 financial capability, as well as ongoing business,
2 to be able to support that. So just by the nature
3 of it, it was limited to a few large suppliers.

4 Q. With regard to those three or four large
5 suppliers that you've identified, what was your
6 expectation with regard to the amount that they
7 might be willing to pay for the automotive
8 division to acquire the company?

9 A. I never got to the point where I
10 developed a specific number, for instance. But
11 starting with the approximate \$10- to \$11 billion
12 of EBITDA/cash flow, based on MTD Automotive being
13 on a stand-alone basis, our view would have been
14 that there would have been a significant
15 degradation of that.

16 A lot of that was developed because of
17 the synergies that would have been available in
18 the MTD-Shiloh combination that wouldn't have
19 existed in the other combinations.

20 So, A, the EBITDA would have been less; I
21 don't know how much, but in my view, was
22 significantly less. And then secondly, to the
23 extent that you had an asset business that was
24 generating relatively low cash flow at that point
25 in time, the multiple that would have been applied

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1 to it would have been a reduced multiple. So, A,
2 you have a lower cash flow and a lower multiple.

3 So if you had an \$8,000,000, for
4 instance, EBITDA instead of \$10,000,000 and all of
5 a sudden because of that your multiple is now
6 three-and-a-half or four, you might end up with a
7 \$32,000,000 asset as opposed to a \$50,000,000
8 asset.

9 Q. For purposes of negotiating the sale of
10 its automotive division, did MTD obtain outside
11 legal counsel?

12 A. Yes, it did.

13 Q. Mr. Houser, Mr. Zampetis previously
14 testified that \$48,340,478 was the amount paid to
15 have assets of MTD Automotive Division, as
16 determined under Section 2.2 and 2.3 of the Asset
17 Purchase Agreement, before any adjustments were
18 made under other sections of the agreement.

19 Let me ask you: First of all, are you
20 familiar with the Section 2.2 and 2.3 of the
21 agreement?

22 A. Yes.

23 Q. Does -- And just to refresh your
24 recollection, 2.2 was the initial purchase price
25 and 2.3 was the working capital adjustment?

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1 A. Right.

2 Q. Is that \$48,000,000 figure reflecting the
3 amount MTD products initially sought for its
4 automotive division?

5 A. Not initially. We thought the value
6 should have been higher.

7 Q. Okay. In the low 50s, right?

8 A. Yes.

9 Q. When you were focusing on a price in the
10 low-50 range, were you also taking into account
11 any adjustments -- or factoring in any
12 adjustments, plus or minus, because of the terms,
13 or did that come later?

14 A. That came later.

15 Q. At the time you were focusing on the
16 low-50s range, were you also assuming that certain
17 liabilities would be assumed as part of the deal?

18 A. Correct.

19 Q. Did the \$48,000,000 figure that I
20 mentioned just a moment ago reflect the amount
21 Shiloh initially attributed to the MTD Automotive
22 Division?

23 A. No.

24 Q. Was it higher or lower?

25 A. It was significantly higher.

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1 Q. Do you recall what price range Shiloh was
2 initially talking about?

3 A. My recollection is that in the initial
4 conversation we had, they were talking about a
5 number that was in the \$25,000,000 range.

6 Q. The parties eventually agreed to a
7 pricing formula that provided a base purchase
8 price, roughly \$40,000,000-plus, assuming
9 liabilities, but that included a purchase price
10 adjustment that would increase or decrease the
11 price in the event --

12 MR. MAIER: I'm going to object to --

13 MR. STEINES: I can read the entire thing
14 in the record, but the question was just
15 paraphrasing it.

16 MR. MAIER: If we had the document with
17 the instructions showing the page and what it
18 says --

19 MR. STEINES: Okay. I can refer you to
20 Sections 2.2, 2.3, 2.8, 4.4, Subsection (b) and
21 (d) and have him read it into the record. I
22 thought that paraphrasing it would be easier.

23 MR. MAIER: Okay. Go ahead. I withdraw
24 the objection.

25 THE EXAMINER: Thank you.

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1 BY MR. STEINES:

2 Q. Let me start over.

3 The parties eventually agreed to a
4 pricing formula, provided a base purchase price of
5 roughly \$40,000,000 plus assumed liabilities, but
6 they included purchase price adjustments that
7 would increase or decrease the product's wholesale
8 profits that the division had proceeded above
9 their expectation; do you agree with that?

10 A. Yes.

11 Q. How would you characterize it? Was that
12 some kind of middle ground negotiated by the
13 parties?

14 A. Yes; essentially it was a compromise.
15 Again, the view of MTD was that the value should
16 have been higher than the \$40,000,000, and that
17 was based on, again, MTD's view of what some of
18 the pro forma adjustments that were included in
19 the build-up of the \$10- to \$11,000,000 EBITDA
20 number that we had.

21 Shiloh's view was that those things
22 hadn't happened yet and there wasn't any assurance
23 that they would happen and consequently that they
24 shouldn't pay for them.

25 So in the negotiation, the compromise we

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1 reached said, "Well, okay, if they are delivered,
2 then we should -- MTD should get paid for them.
3 And if they're not, then Shiloh shouldn't have to
4 pay for them."

5 And that -- The way that that compromised
6 out was to have that increase/decrease price
7 adjustment in there. It was a fair compromise in
8 terms of getting it.

9 Q. Mr. Zampetis previously testified that
10 \$49,483,784 was the amount paid for the assets of
11 the MTD Automotive Division after all adjustments
12 were made under the agreement.

13 My question is this: Given MTD's
14 ownership interest at Shiloh Industries at the
15 time of this sale, was the pricing formula that
16 led to the \$49,000,000 amount designed to produce
17 a discount price for MTD Automotive Division?

18 A. No.

19 Q. How would you describe the negotiations
20 between the companies during that year or so that
21 that took place?

22 A. They were professional, amicable, but
23 open negotiations between a buyer and seller; with
24 different parties on opposite sides, with
25 different views, with a number of different issues

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1 that all of which ultimately got compromised out
2 to reach an agreement.

3 So it was back and forth, give and take
4 across the board.

5 Q. Compared to other transactions which
6 you've been involved in, is the course of this
7 transaction different at all?

8 A. Not -- No, not in terms of what was
9 ultimately accomplished. About the only thing
10 that may have been different is the length of time
11 it took to get there. This was a somewhat longer
12 negotiation than you might have otherwise
13 typically seen.

14 Q. And what do you attribute that additional
15 length of time to?

16 A. I think it was two perspectives.

17 Number one, in the later stages of it,
18 there was a significant difference of opinion as
19 to what the cash flows coming out of the business
20 was going to be.

21 As we previously discussed, Shiloh saw
22 the cash flow as being approximately \$5,000,000 on
23 a pro forma basis; MTD saw it being a \$10-plus
24 million range. So there was a huge difference
25 there of approximately \$25,000,000.

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1 And then the other parts of it were some
2 of the issues that, you know, we saw as being
3 synergies. But it was a move-up scale in strategy
4 by Shiloh to move from a Tier-2 supplier to
5 becoming a Tier-1 supplier and moving into a
6 relatively different business area.

7 So I know that there were a number of
8 questions from the Shiloh management that we got
9 asked. I also know that there were many cases
10 coming from the independent directors of the
11 Shiloh board, just for everybody to reassure
12 themselves, A, that both the Shiloh people had the
13 capability to accomplish that acquisition and
14 integrate it, number one.

15 And, secondly, there was a lot of due
16 diligence done with regard to the various
17 contracts and businesses that MTD Automotive had,
18 and also the capabilities and relationships that
19 the MTD Automotive people had with their OEM
20 counterparts in Detroit.

21 Q. Just a few more questions.

22 Focusing on the \$40,000,000-plus amount
23 that was ultimately the purchasing price for MTD
24 Automotive Division, did you have any expectation
25 that any other potential suitor would have been

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1 willing to pay anywhere near that amount in assets
2 of the company back in 1999?

3 A. No, I did not. My view was that anybody
4 else that we would have had any discussions with
5 would have viewed the value as determined -- both
6 the amount of the cash flow and the multiple that
7 they had been willing to pay as less than what we
8 ultimately used to value the business and the
9 transaction of Shiloh. So the value would have
10 been significantly lower.

11 Q. Is that why you targeted Shiloh in the
12 first place?

13 A. Yes.

14 Q. Did MTD Products enter into a loan
15 agreement with certain unrelated financial
16 institutions dated December 23, 1997?

17 A. Yes.

18 Q. I'd like you to locate the document
19 marked for identification as Exhibit 21.

20 A. This is MTD Products' subsidiary loan
21 agreement dated December 23, 1997.

22 Is that the one you're referring to?

23 Q. Yes.

24 A. Okay.

25 Q. Do you recognize this document to be a

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1 copy of the cover page in Section 6.12 of that
2 loan agreement?

3 A. Yes.

4 Q. Was the master loan agreement amended
5 pursuant to a later agreement dated January 9,
6 1998, April 17, 1998, July 28, 1998 and
7 November 5, 1998?

8 A. Yes.

9 Q. Was this loan agreement the only loan
10 agreement MTD had with outside lenders in 1998 and
11 1999?

12 A. Yes. This loan agreement represented
13 MTD's entire credit facility.

14 Q. And approximately how much money was
15 borrowed under this loan agreement?

16 A. My recollection is the agreement, at that
17 point, was in the neighborhood of \$500,000,000.

18 Q. Please locate the document marked for
19 identification as Exhibit 22.

20 A. First amendment to the loan agreement?

21 Q. Yes. Do you recognize this document to
22 be a June 19, 1999 first amendment to the
23 December 23, 1997 loan agreement?

24 A. Yes.

25 Q. Turn, if you would, to Section 1.9 of

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1 Exhibit 22, which you'll find at the bottom of
2 Page 3.

3 A. Okay.

4 Q. Under the terms of Section 1.9, could MTD
5 sell its automotive division for less than fair
6 market value without certain consequences?

7 A. No.

8 Q. If it had done so, what would the adverse
9 consequences have been?

10 A. The consequences would have been that MTD
11 would have been in breach of its loan agreement.
12 The lenders would have had the option to call the
13 agreement, and require immediate payment of it and
14 essentially would have effectively put MTD out of
15 business at that point in time.

16 Q. Under the terms in Section 1.9 of
17 Exhibit 22, did the unrelated financial
18 institutions specifically require that Shiloh
19 obtain a fairness opinion from an investment
20 banking firm acceptable to the financial
21 institutions indicating that MTD Products' sale of
22 the automotive division was for fair market value?

23 A. Yes.

24 Q. Did the fairness opinion Shiloh received
25 from Baird & Associates satisfy this requirement?

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1 A. Yes, it did.

2 Q. Apart from the loan agreement, if MTD
3 received less than fair market for its automotive
4 division, would it realize a financial benefit of
5 such a financial detriment?

6 A. It would have been a detriment.

7 Q. Could you explain how you draw that
8 conclusion?

9 A. Well, at a point in time, MTD owned
10 approximately 51 percent of Shiloh. So whatever
11 transactions it did with Shiloh, any reduced price
12 below fair market value it would have expected, it
13 would have effectively been giving forty-nine
14 cents out of every dollar to an independent
15 third-party group of shareholders as opposed to
16 retaining it for itself.

17 MR. STEINES: I have no further
18 questions.

19 THE EXAMINER: Cross-examination.

20 MR. MAIER: Yes, your Honor.

21 THE EXAMINER: Let's go off the record.

22 (Recess taken.)

23 - - -

24

25

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1 CROSS-EXAMINATION

2 BY MR. MAIER:

3 Q. Thank you. Mr. Houser?

4 A. Yes.

5 Q. I want to make sure I got your name
6 right.

7 Can I direct your attention, please, to
8 Exhibit 1, and I believe it's Appendix E?

9 A. E?

10 Q. E beginning on Page E-1 right near the
11 end, almost near the F tab; two back at Exhibit 1?

12 A. E-1, MTD Automotive Division.

13 Q. Correct, financial statement.

14 A. Okay.

15 Q. And flipping through Pages E-1, E-2, E-3.
16 Let me ask you a question about these.

17 You're familiar with these?

18 A. Yes, sir.

19 Q. Okay. Were they -- What role did you
20 play in generating these things?

21 A. I had commissioned PricewaterhouseCoopers
22 to help me and my staff carve-out these financial
23 statements. Also, I asked PricewaterhouseCoopers
24 to go through and do an audit and issue an opinion
25 on it.

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1 Q. So these official statements in
2 Appendix E in the Proxy Statement here, they
3 reflect the carve-out that you were testifying
4 about before?

5 A. Right. These were -- are, in effect, the
6 auditor's financial statement of carving out MTD
7 Automotive Division and presenting it as though it
8 were a stand-alone.

9 Q. Okay. And I believe your testimony was
10 that the process of carving out began as early as
11 1997?

12 A. I think it was either late -- late '97 or
13 early '98, that time frame.

14 Q. Was it before the summer of '98?

15 A. Yes.

16 Q. Okay. To your recollection, was it
17 before there was an initial informal presentation
18 to the Shiloh Board, I believe, in the summer of
19 '98? Was it before that occurred?

20 A. Yes.

21 MR. STEINES: I have a presentation to
22 Shiloh's Board -- The record says --

23 MR. MAIER: By MTD?

24 MR. STEINES: That didn't occur until
25 December.

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1 MR. MAIER: Okay.

2 THE WITNESS: I think MTD made a
3 presentation to Shiloh's Board in December of '98.
4 I think Shiloh's employees may have taken some of
5 the preliminary information and made
6 presentations.

7 BY MR. MAIER:

8 Q. Okay. Let's see. We're in Exhibit 1.
9 Let me clear this up.

10 On Page 5 of Exhibit 1 --

11 A. Page 5 of Exhibit 1?

12 Q. Yes.

13 A. Okay.

14 Q. In the first paragraph under "The
15 Transactions" -- segment of "The Transactions", in
16 reference to July 1998 in a presentation of -- to
17 the Board, the first sentence of this section
18 says, "...members of management and MTD informally
19 discussed the strategic benefits of combining the
20 operation of the Division and Shiloh."

21 And then its says, "However, until the
22 summer and fall of 1998, Shiloh and MTD did not
23 engage in any formal discussions," and then it
24 speaks of a board -- Shiloh's Board presentation
25 in July of 1998.

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1 MR. STEINES: And then it goes on to say,
2 "In 1998, in light of certain trends affecting the
3 automotive industry, Richard L. Grissinger,
4 Shiloh's Chairman of the Board..." --

5 MR. MAIER: It doesn't say that MTD did,
6 and neither did I.

7 MR. STEINES: It doesn't make reference
8 to any presentation to the Board.

9 MR. MAIER: Well, I understand that MTD
10 did not make a formal presentation to the Board.

11 MR. STEINES: Nobody did in July of 1998.
12 That's not what it says.

13 BY MR. MAIER:

14 Q. Okay. Let me go back to my original
15 question.

16 In terms of the carve-out, were you
17 already engaged in this process of doing the
18 carve-out by July 1998?

19 A. Yes.

20 Q. Okay. And by July 1998 there were
21 already thoughts that Shiloh might be a company
22 that the automotive division would be shopped out
23 to those, so to speak; is that right?

24 A. Correct.

25 Q. Okay. Do you know Dave J. Hessler?

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1 A. Yes.

2 Q. Okay. Did he have -- Did he, at this
3 time, have an association with MTD?

4 A. Yes.

5 Q. And what was that?

6 A. David Hessler was the Director of
7 Shiloh -- one of the MTD appointed directors. So
8 he had an association because he was a director
9 appointed by -- a Shiloh director appointed by
10 MTD. He was also the Secretary of the Board of
11 Directors of MTD.

12 Q. Okay. And to the best of your
13 recollection, what is -- what was Mr. Hessler's
14 role in shopping the automotive division to Shiloh
15 for purchase?

16 A. To my knowledge, Mr. Hessler and
17 Mr. Grissinger just engaged in a conversation --
18 general conversation about the strategic merits of
19 a combination of the two conditions.

20 Q. Okay. Now, when the carve-out that we
21 talked about as being done, and that is reflected
22 Appendix E to Exhibit 1 --

23 A. Uh-huh.

24 Q. -- when this work was being performed,
25 what -- Strike that.

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1 Was the carve-out that was being
2 performed and under the rules -- I wasn't clear on
3 this from your testimony. Was the carve-out
4 directed specifically to Shiloh, or was the
5 carve-out being valid for any other potential
6 buyer of the automotive division?

7 A. Well, it would have been valid for, A,
8 either any other potential buyer -- any potential
9 buyer, Shiloh or anybody else, or anybody else who
10 wanted to have an auditing financial statement of
11 MTD Automotive.

12 It was just simply that the mechanical
13 exercise of segregating out as a separate company
14 the financial statements of the company, and
15 ultimately to the point of getting a certified
16 opinion of the financial statement.

17 Q. Okay. So no -- In preparing -- In doing
18 the carve-out that resulted in the financial
19 statements that are Exhibit E -- or attachment E
20 to Exhibit 1, those are not specific to Shiloh.

21 A. No. I mean that's -- Really, if you look
22 at the opinion dated May 21, 1999, and the
23 statement through April 30th, it's an unqualified
24 opinion on the financial statement by
25 PricewaterhouseCoopers.

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1 Q. Okay. Now, that carve-out, was that ever
2 supplied as part of an offering memorandum or
3 otherwise with any other companies that might --
4 that might be interested in purchasing an
5 automotive division?

6 A. No.

7 Q. Okay. And I believe you also testified
8 that there were certain elements -- and this was
9 connected somehow with your carve-out testimony
10 about the EBITDA -- that would be specific to a
11 particular company that was purchased -- that
12 would or would not purchase the automotive
13 division.

14 Could you explain that part?

15 A. The starting point -- The starting point
16 to develop a pro forma EBITDA and presentation
17 would be audited financial statements for actual
18 historic recommendation of financial operations.

19 So the carved-out financial statement
20 would have been the starting point. And then from
21 there, you're looking at individual situations and
22 doing pro forma what-if type adjustments,
23 depending on specific circumstances that are
24 outside of what's included in the audits.

25 Q. So any potential buyers in the automotive

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1 division looking at the financial -- carve-out
2 financials, could look at them with some degree of
3 reliance on them to state the value of the assets
4 of the automotive division; is that right?

5 A. No.

6 Q. Okay. Why not?

7 A. It's audited. They're just simply
8 audited financials. They represent the historic
9 operating results in the income statement and the
10 balances included on the balance sheet based on
11 depreciation, conventions, costs and other things,
12 but are -- in no way can be directly related to
13 value.

14 Q. So it's very often the case -- What
15 you're saying is that the accounting conventions
16 lead to statements about assets on balance sheets
17 and financial statements that are not related to
18 an appraisal type of value to the assets; is that
19 right?

20 A. I don't think I agree with that statement
21 at all.

22 The accounting conventions simply reflect
23 historic cost paid for assets and the results of
24 operations, all historic; okay? That's all it
25 does up to a point in time. And it's all looked

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1 at backwards. That's all the financial statements
2 do.

3 An appraisal -- To your question, an
4 appraisal is some independent party's view based
5 on certain identified circumstances of what you
6 might sell an asset for under certain sets of
7 circumstances. But there's no connection at all
8 between the two.

9 Q. Okay. With respect to the financials
10 that we're discussing here Appendix E, those are
11 simply audited financial statements for the
12 automotive division --

13 A. Correct.

14 Q. -- is that right?

15 A. That is correct.

16 Q. And they were intended to be able to be
17 relied upon by a third party; is that right?

18 A. Yes. They, in effect, would have been
19 required -- Anybody that would have acquired any
20 public company, or anybody who had to have audited
21 financial statements even for -- Like in the case
22 of MTD, it was a private company, but it still had
23 to have audited financial statements.

24 If you made an acquisition, you'd have to
25 have audited financials of that acquisition so

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1 that you could go show what the combined results
2 were.

3 So this exercise is simply to prepare
4 those audited financials and get that part of the
5 history documented.

6 Q. Could you turn to Exhibit 14, please?

7 A. Yes, sir.

8 Q. And I want to direct your attention just
9 to the front page of this exhibit. It says,
10 "Descriptive Memorandum," and then it says,
11 "Confidential."

12 A. Uh-huh.

13 Q. Why does it say "confidential"?

14 A. I think, certainly, to my knowledge,
15 either that was the recommendation of
16 PricewaterhouseCoopers. But to my general
17 knowledge, any offering memorandum that was
18 prepared by anybody is always labeled confidential
19 so that it can't be put out into public record.

20 Q. And what are some of the concerns for
21 keeping it confidential?

22 A. Virtually everything. First of all, from
23 MTD's perspective, MTD was a private company and
24 didn't have any of its financial information in
25 the public domain and this would have been part of

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1 it. So just for that reason alone.

2 Q. So that would be a confidential business
3 or trading type information?

4 A. Yeah.

5 Q. Correct?

6 A. Correct.

7 Q. Okay. What about any strategic plans
8 that MTD would have, would those be confidential
9 business conversation?

10 A. Generally true, yes.

11 Q. And what about confidential -- What about
12 strategic plans of Shiloh?

13 MR. STEINES: I'm going to object. Are
14 we making an assumption that those strategic plans
15 of Shiloh last mentioned are actually part of this
16 document, or are you just talking general?

17 MR. MAIER: No, I'm just asking
18 generally.

19 BY MR. MAIER:

20 Q. By the same token that you've already
21 testified, any strategic plans of Shiloh would
22 ordinarily be regarded as confidential by Shiloh?

23 A. None. Not a --

24 MR. STEINES: I'm going to object to
25 relevance.

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1 MR. MAIER: I'm planning to go into the
2 document and talk about the strategic --

3 MR. STEINES: I thought we just said it
4 wasn't part of the document, it was considered
5 confidential for one reason or another.

6 THE EXAMINER: I'm concerned about
7 Shiloh's strategic plans.

8 MR. MAIER: I understand. I'll withdraw
9 the question.

10 BY MR. MAIER:

11 Q. Let's turn to page 47.

12 A. I'm sorry?

13 Q. Page 47 of Exhibit 14.

14 A. Okay. Okay.

15 Q. Down at the bottom of the page, there's
16 MTD Products' perception of major objectives of
17 Shiloh 2000. What is Shiloh 2000?

18 A. Shiloh 2000 is a nameplate for Shiloh's
19 general strategic plan.

20 Q. Okay. And when did you become aware of
21 Shiloh 2000 being the strategic plan of Shiloh?

22 A. Sometime in the, maybe -- certainly in
23 the '97 time frame. It may have been even as
24 early as the late '96 time frame.

25 Q. Okay. In what context did you learn

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1 about that?

2 A. Through a couple different contexts. One
3 with different meetings that I might have
4 participated in. But the Shiloh 2000 plan was
5 also included as part of the 10(k) that Shiloh
6 filed for its strategic plan.

7 Q. So you learned those from public
8 documents?

9 A. I can't remember whether I learned them
10 through public or through private meetings. I was
11 doing both.

12 Q. Okay. So you were, during the time frame
13 of 1997, learning of some things about Shiloh's
14 plans from people at Shiloh; is that true?

15 A. Correct.

16 Q. Let's turn to Page 51 of Exhibit 14.

17 A. Okay.

18 Q. Were you aware of the strategic plans?
19 There's a number of companies listed here. I'm
20 going over to the right-hand corner of the chart.

21 MR. STEINES: I have an objection. It
22 hasn't been established that he's aware of these
23 strategic plans, other than Shiloh; so I'll
24 object.

25 MR. MAIER: Well, I'm simply asking him

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1 whether he's aware of whether they --

2 THE EXAMINER: You may ask the question.

3 MR. STEINES: The question has a premise
4 that he was aware --

5 MR. MAIER: Let me rephrase the question.

6 BY MR. MAIER:

7 Q. Do you know -- or did you know, in the
8 1997, 1998 time frame, whether Aetna-Schedt had a
9 strategic plan and what it was?

10 A. I did not know whether they had a plan or
11 not.

12 Q. What about Benteler? Were you aware
13 during 1997 and 1998 whether Benteler had a
14 strategic plan?

15 A. I was not aware of whether or not they
16 had a strategic plan.

17 Q. Did you know or were you aware in 1997
18 and 1998 whether Cosma had a strategic plan, and
19 if you did, what it was?

20 A. I was not aware of whether or not -- as
21 to whether or not they actually had a strategic
22 plan.

23 Q. Were you aware during 1997 whether Oxford
24 had a strategic plan; and if so, what it was?

25 A. I was not aware of whether or not a

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1 strategic plan for Oxford existed.

2 Q. And, finally, during 1997, were you aware
3 of any strategic plan -- whether Tower had any
4 strategic; and if so, what it was?

5 A. I was not aware as to whether or not
6 Tower had a strategic plan.

7 Q. So when you say that MTD considered --
8 considered the possibility of shopping the
9 automotive division out to other people, MTD was
10 in position of knowledge about Shiloh's strategic
11 plan but not in position of knowledge about the
12 strategic plan of other potential suitors?

13 MR. STEINES: Objection. The question
14 assumes that there is a strategic plan. Nobody
15 here has testified that one even existed. He did
16 not testify that he wasn't aware of whether or not
17 they had one. That doesn't say that they did have
18 one and he was aware of it.

19 MR. MAIER: I'll withdraw the question.

20 BY MR. MAIER:

21 Q. Let me ask this: What research did you
22 perform during 1997 to ascertain whether there was
23 a strategic plan of Aetna-Schedt?

24 A. The information that's contained in here
25 is information that was gained out of public

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1 documents, the 10(k)s, other public filings,
2 public press releases, again, with the assistance
3 of PricewaterhouseCoopers.

4 And it potentially was MTD's review of
5 the strategic directions as best we could discern
6 it of five companies listed here.

7 Q. Okay.

8 A. It wasn't from a strategic plan document.
9 I didn't have Shiloh's strategic plan document.

10 The information that I had here from
11 these other five companies, was the same general
12 type information about where they were located,
13 what their businesses were, where their plants
14 were, what the facilities -- what the size are,
15 what the core capability.

16 It was all stuff that was general
17 accumulated out of SEC filings, 10(k)s, 10-Qs and
18 things like that, plus other public press releases
19 and annual reports and so on.

20 Q. Okay. During the entire -- and you
21 testified -- Well, strike that. Let me -- I want
22 to understand the chart on Page 51 a little
23 better.

24 It looks as though there's three kinds of
25 circles. Is one a circle that's black, another is

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1 a circle that's filled in with shading, and
2 another is a circle that is half shaded and half
3 black; is that a fair statement?

4 A. Yes.

5 Q. Okay. And what does the circle that's
6 filled in signify?

7 A. The circle that's filled in, based on the
8 legend below, indicates high satisfaction, I
9 think. If you look at the heading above that, I
10 think that's the assessment as to that core
11 capability.

12 For instance, "Global Presence." And
13 under the heading of the company, the view of MTD,
14 and the PricewaterhouseCoopers people who
15 assist -- helped us put this together, our
16 collective views of that company's capabilities
17 with respect to that category and its -- the
18 legend below, completely filled in is high
19 satisfaction, partially filled in is a medium
20 satisfaction and blank is low satisfaction.

21 Q. Okay. In that middle column,
22 "Shiloh-MTD," does that reflect, as I understand
23 it, the projection of the level of satisfaction
24 with the purchase of the automotive division by
25 Shiloh; is that correct?

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1 A. Correct.

2 Q. Okay. With respect to the other one,
3 two, three, four, five columns, does that
4 reflect -- do the circles there reflect what the
5 level of satisfaction of those companies currently
6 constituted, or does it reflect the projected
7 level of satisfaction that they acquire of the
8 automotive divisions?

9 A. It reflects the view of what those
10 companies' capabilities were without regard to
11 acquiring MTD Automotive --

12 Q. Okay.

13 A. -- because the capabilities had already
14 existed with those companies.

15 Q. So in looking at this chart, what would I
16 look for in the Shiloh column, or in the five
17 columns over on the right, to determine whether
18 that suitor would be a good suitor with someone
19 that would profit greatly from purchasing the
20 automotive unit? How do I evaluate that looking
21 at the chart?

22 A. I'm not sure I understand the question.

23 Q. Okay. On the left, there's Shiloh,
24 correct --

25 A. Uh-huh.

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1 Q. -- level of satisfaction? And that
2 represents Shiloh as a free-standing entity
3 without the automotive unit?

4 A. Correct.

5 Q. On the right-hand side there's five
6 columns. And I believe your testimony is they
7 reflect the level of satisfaction of those
8 entities without the MTD Automotive Division?

9 A. Right.

10 Q. Okay. In looking at the Shiloh and the
11 other columns, how do I compare -- How do I
12 determine which is the better suitor in looking at
13 the circles and shades and so forth?

14 A. The purpose of the chart wasn't to do
15 that at all. The purpose of the chart was simply
16 to show what the combined entity, Shiloh and MTD
17 Automotive, how it stacked up as a competitor
18 against the other major competitors.

19 So in terms of a comparative look, you
20 see the capabilities of the individual companies,
21 but the key column to look at is the one that's
22 labeled Shiloh-MTD you have compared to the other
23 ones and compare those two.

24 Q. I see. So nothing in this chart purports
25 to suggest how good it would be -- earnings of

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1 these five other entities on the right-hand side
2 to obtain MTD Automotive Division, right?

3 A. That's correct.

4 Q. Okay. And, in fact -- And, in fact, that
5 particular research, which was done for Shiloh,
6 was not performed for those other entities,
7 correct?

8 A. No, I don't think that's correct at all.

9 You could do the same exercise by taking
10 the MTD capabilities and going through the
11 capabilities.

12 But if, for instance, you look -- Let's
13 take the example of Cosma, Magna International,
14 it's got there one, two, three, four, five, six,
15 seven, eight, nine, ten blocks in there. Eight of
16 them are fully darkened which says they're high
17 satisfaction. The other two are partially
18 darkened, so any combination would add very little
19 to that, for instance.

20 It's already -- It's essentially a full
21 service complete supplier. There's nothing
22 that -- anything that MTD -- probably the only
23 capability that you could -- you might argue, for
24 instance, would be to take Shiloh's alternative
25 materials capability, and you might shade part of

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1 Cosma's block a little fuller; and maybe that's
2 it. Essentially --

3 Q. Well, let's take Aetna-Schedt, there's a
4 lot of empty circles in that column, correct?

5 A. Yes.

6 Q. And so by the same logic that you've just
7 applied in the Cosma column, the purchase of the
8 MTD Automotive Division would help shade a lot of
9 circles in it, correct?

10 MR. STEINES: Objection.

11 THE WITNESS: Might have, yes.

12 BY MR. MAIER:

13 Q. Okay. But that was never pursued,
14 correct?

15 A. That's correct.

16 Q. Okay. And there was never an offering
17 memorandum for it, correct?

18 A. Correct.

19 Q. Similarly in the Oxford column, there's a
20 number of, let's see, alternative materials
21 category that you point out to the MTD
22 Automotive's had a fully shaded circle, high
23 satisfaction, right?

24 A. Uh-huh.

25 Q. The Oxford column has a completely

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1 Q. Fifty to fifty-five million. And then
2 there were these lengthy negotiations and, in
3 fact, the compromise figure was what?

4 A. Well, the base compromise figure came out
5 with a purchase price, I believe, of \$40,000,000
6 with some subsequent either price adjustments --
7 positive or negative price adjustments based on
8 subsequent realization of things to happen in the
9 future.

10 Q. At one time you testified about
11 performance factors.

12 A. Uh-huh.

13 Q. And you testified about -- there was low
14 50s figure that you testified about. Could you
15 explain that?

16 MR. STEINES: I think we need a little
17 bit more question there.

18 THE WITNESS: The low 50s figure was just
19 simply a number. It was MTD's view that the
20 automotive division had an EBITDA of -- in the
21 range of \$10- to \$11,000,000. Applying a five
22 multiple to it, it gives you a price in the \$50-
23 to \$55,000,000 range.

24 BY MR. MAIER:

25 Q. Okay.

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1 A. It didn't have anything to do with any of
2 the other --

3 Q. And you also testified about a figure of
4 \$25,000,000; I wasn't clear about what that was.

5 A. That's -- Shiloh's view of the EBITDA of
6 the automotive division was approximately
7 \$5,000,000. And applying a five multiple to it
8 from Shiloh's view, you got a value of
9 \$25,000,000.

10 Q. Okay. And -- So going into this, MTD
11 expected to get -- to be able to extract, so to
12 speak, a higher purchase price for the automotive
13 division at the outset of the negotiation,
14 correct?

15 A. Higher than what?

16 Q. Higher than what's actually ultimately
17 achieved.

18 MR. STEINES: What ultimately actually
19 achieved was \$49,000,000.

20 THE WITNESS: Yeah. I guess if you want
21 to say -- Yeah, our expectation of \$51,000,000 is
22 higher than \$49,000,000.

23 BY MR. MAIER:

24 Q. During this lengthy negotiation process
25 between Shiloh and MTD, at no time did MTD attempt

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1 to present any kind of offering or proposal to any
2 other alternative suitor, did it?

3 A. No, it did not.

4 Q. Let me direct your attention to
5 Exhibit 22.

6 A. Uh-huh.

7 (Pause.)

8 Q. I believe you testified about "Clause" --
9 Section 1.9, bottom of Page 3, top of Page 4?

10 A. Uh-huh.

11 Q. Do you see that where it says, "The MTD
12 Automotive sale shall be for fair market value?"
13 Do you see that?

14 A. No.

15 Q. Okay. Exhibit 22, bottom of Page 3 --

16 A. I've got that, yeah.

17 Q. -- at the very bottom. "The MTD
18 Automotive sales shall be," and it goes on to the
19 top of Page 4?

20 A. "...shall be for fair market value."

21 Q. Correct.

22 A. I misunderstood you. I thought you said
23 before as one word. Now I see. I'm sorry.

24 Q. I'm sorry. If you go down a few lines,
25 you see that item "(C)" here --

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1 A. Right.

2 Q. -- it says, "...the sale shall be for
3 approximately \$40,000,000 in initial consideration
4 paid at closing..." --

5 A. Right.

6 Q. -- do you see that?

7 A. Yes.

8 Q. Is that approximately the consideration
9 that was actually contemplated by this Asset
10 Purchase Agreement?

11 A. Yes.

12 MR. STEINES: There's more to the
13 sentence.

14 THE WITNESS: Yeah. The base price is
15 \$40,000,000 plus the adjustments provided for
16 either the up side or down side.

17 BY MR. MAIER:

18 Q. Correct. And my point is this: This
19 amendment to the loan agreement contemplates the
20 very figures that Shiloh and MTD were working out
21 as being the asset purchase price, correct?

22 A. Uh-huh.

23 Q. Okay. So as long -- There would be no --
24 There would be no bad events occurring under this
25 loan agreement as long as this Section C were met?

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1 A. The loan agreement provisions here were
2 negotiated after this -- the Asset Purchase
3 Agreement with Shiloh was negotiated.

4 Q. Correct.

5 A. And the loan agreement is then
6 subsequently renegotiated to reflect, obviously,
7 after discussions and negotiations with the
8 lenders, here's the proposed transaction.

9 They either say, we will agree,
10 generally, with the proposed transaction and then
11 the amendment documents it that way, or they would
12 have said, no, we would not agree with it and we
13 would never have gotten the amendment.

14 Q. And so you got the amendment by having
15 the lender accept these figures that are set forth
16 in Exhibit 22?

17 A. Yeah, which, obviously, matched the Asset
18 Sale Agreement.

19 Q. Right.

20 A. Right.

21 Q. Correct.

22 A. That's the way any amendment to any loan
23 agreement is generated; you have a whole series of
24 potential changes that might occur. It's the
25 reason for the amendment.

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1 My recollection is that prior to this
2 time, we would -- without the proposal of the
3 lenders to sale the assets at fair market value,
4 we would not have been able to sell it at all.

5 Q. And the lenders -- again, just to be
6 clear about that -- were accepting those figures
7 as satisfactory to meet that obligation under the
8 agreement?

9 A. Right. But the reason that the language
10 is in there that the lenders accept it at fair
11 market value, because under the terms of the
12 agreement the lenders had all of MTD's assets as
13 collateral.

14 Q. I understand.

15 A. And -- So, obviously, to sell those
16 assets, they were not going to permit us to sell
17 them for less than fair market value. So the
18 provision would typically have been written, as
19 this one was, here are the terms of sale and it's
20 at fair market value.

21 Q. And the bank accepted the result of the
22 negotiations between Shiloh and MTD to satisfy
23 that obligation, right?

24 A. That's correct.

25 MR. MAIER: Okay. At this time, that's

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1 all the questions I have for you, Mr. Houser.

2 THE EXAMINER: Any redirect?

3 MR. STEINES: Just three.

4

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5

REDIRECT EXAMINATION

6 BY MR. STEINES:

7 Q. Mr. Houser, following up on that last
8 series of questions relating to Section 1.9, Roman
9 numeral IV of Exhibit 22, there are A through G
10 subparts of IV. The word preceding the letter G
11 is "and". In other words, A through G are
12 conjunctive.

13 A. Uh-huh.

14 Q. Had you satisfied B through G, but not
15 gotten an actual approval, would you then have
16 pursued your loan agreement?

17 A. Yes.

18 Q. If you thought back in 1998, when this
19 process began, that any other potential suitor
20 would be likely to have been willing to pay more
21 for the assets of the automotive division than you
22 thought Shiloh would, would you have approached
23 that other entity before Shiloh?

24 A. Yes.

25 Q. Mr. Maier noted that you didn't extend

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1 the offering memorandum to Aetna-Schedt, if that's
2 how you pronounce it, or Oxford, or, for that
3 matter, to anybody else. Why not?

4 A. Well, two reasons.

5 Number one, the primary reason was that
6 in our view -- our collective view at MTD, we
7 thought that the MTD Automotive property has an
8 integrated asset as its highest value to Shiloh.

9 To present it to other people, would have
10 been -- would have created a much more complex
11 process in that MTD would have had to go to
12 significant additional expense to hire an
13 investment banker and prepare a more comprehensive
14 offering memorandum, number one.

15 When you do that kind of processing --
16 and again, this goes back to my comment about why
17 a number of transactions are done as "friendly
18 deals" that are sort of behind the scenes and only
19 announced at the final negotiation.

20 You have a tremendous amount of turmoil
21 and distraction that goes on inside the business.
22 And, typically, the operating performance for that
23 business would suffer as a result of that.

24 So you would have to go through a process
25 similar to all of the due diligence financials

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1 that Shiloh was doing with all five of those other
2 people if we were to give an offering memorandum
3 to all five of the others. So you would have five
4 times the amount of distraction that was going on.

5 In the case of MTD and Shiloh, again,
6 that distraction was minimized because there was a
7 normal working relationship as a customer and
8 supplier between Shiloh and MTD Automotive. So to
9 have people in and out doing some of this stuff,
10 appeared more or less in the normal cause of
11 business.

12 And, in fact, there's only a small
13 handful of people in the MTD Automotive Group that
14 were aware of the potential to the transaction.
15 Had you done that with other people, it would have
16 been a broad open-book kind of thing that you
17 would have significantly negatively impacted the
18 performance of the group.

19 Q. Is it fair to say the process is
20 sequential? And by that I mean, identify the best
21 potential suitor, in your view, and explore the
22 possibility with that company first. If it
23 succeeds, that's the end of the process. If it
24 doesn't succeed, you move on to plan B -- or
25 company B?

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1 A. Exactly. I mean, you could use as a
2 current comparable, for instance, the transactions
3 that's been in the public business domain here
4 recently of -- with Verizon acquiring MCI and
5 West, even though presumably making the higher
6 bid.

7 MR. MAIER: I'm going to ask that the
8 testimony not proceed further.

9 THE EXAMINER: It doesn't relate to the
10 hearing.

11 THE WITNESS: That's an example of the
12 kind of things that can go on.

13 MR. STEINES: I have no further
14 questions.

15 MR. MAIER: Can I just follow up on
16 recross?

17 THE EXAMINER: I think we've had enough.
18 The witness is excused.

19 (Witness excused.)

20 THE EXAMINER: Let's take a ten-minute
21 break.

22 (Recess taken.)

23 THE EXAMINER: We are back on the record.
24 Mr. Steines, I am assuming this is your next
25 witness?

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MR. STEINES: Yes, ma'am.

THE EXAMINER: And his name?

MR. STEINES: Steven Graham.

THE EXAMINER: Mr. Graham, please raise
your right hand.

(Witness placed under oath.)

THE EXAMINER: You may proceed.

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1 STEVEN GRAHAM

2 of lawful age, being first duly placed under oath,
3 as prescribed by law, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. STEINES:

7 Q. Mr. Graham, before you, you have a copy
8 of all of the exhibits that we've been talking
9 about during the course of this hearing, which are
10 in a black binder. You also have a Statutory
11 Transcript of -- at least in case ending in
12 No. 383, and another one for the case ending in
13 1238.

14 From time to time, I may refer to those,
15 so be advised that they're up there.

16 Would you please identify yourself?

17 A. Steven Graham.

18 Q. Mr. Graham, have you attended college?

19 A. Yes.

20 Q. Could you tell us where and when you
21 attended and any degrees you've earned?

22 A. University of Toronto; I graduate in
23 1979, Bachelor of Arts.

24 Q. Do you have any professional
25 designations?

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1 A. I'm a Chartered Accountant.

2 Q. And by who are you currently employed?

3 A. I'm currently employed with Shiloh
4 Industries.

5 Q. How long have you been an employee of
6 that company?

7 A. I began in October of 2001.

8 Q. What's your current position with the
9 company?

10 A. Chief Financial Officer.

11 Q. Before I go any further, would you like
12 some water?

13 A. No, I'm fine.

14 Q. How long have you held the position of
15 Chief Financial Officer?

16 A. Since I started with the company in
17 October of 2001.

18 Q. Briefly, explain your duties and
19 responsibilities.

20 A. I'm responsible for all of the financial
21 functions of the company and some additional
22 administrative functions. That includes insuring
23 the proper recording -- reporting of financial
24 information as per the regulations of the SEC and
25 also in accordance with GAAP, General Accepted

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1 Accounting Principles.

2 I'm responsible for all safeguarding of
3 the assets which means making sure that the
4 policies and procedures and making sure the
5 policies and procedures that are appropriate be
6 followed.

7 Under the administration, I have the
8 accounting functions under me, treasury,
9 budgeting, taxation and purchase.

10 Q. Please review your employment history
11 prior to October 2001 starting then and working
12 back in time.

13 A. Could I start back and go forward? It
14 would be easier for me.

15 Q. Go ahead.

16 A. Thank you. I actually emigrated to the
17 U.S. in October of 1994 and took on a job of Chief
18 Financial Officer for a company called Truck
19 Components, Inc. I stayed with them until the
20 following August of 1995.

21 I went from there to Cambridge
22 Industries. At Cambridge Industries, I was there
23 until February of 2006. And from -- I was Chief
24 Financial Officer with them, as well.

25 And I went from Cambridge --

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1 THE EXAMINER: I think you meant
2 February 1996.

3 THE WITNESS: '96. I apologize. And
4 then from there I went from Cambridge to Dure
5 Automotive. I was Chief Financial Officer there
6 until February of 2000.

7 I went from there to Republic Technology
8 International where I was Chief Financial Officer
9 until October of 2001 when I joined Shiloh
10 Industries.

11 BY MR. STEINES:

12 Q. Were your duties as Chief Financial
13 Officer of those various companies essentially the
14 same as they are now at Shiloh?

15 A. Yeah, they're essentially the same. Some
16 of the companies were publicly traded, that was
17 Dure Automotive. Shiloh is also publicly traded,
18 and Truck Components is publicly traded. So that
19 also included shareholder-investors relationship,
20 that kind of thing.

21 Q. What I'd like you to do is locate in the
22 binder Exhibit 4. Do you recognize this exhibit?

23 A. Yes, I do.

24 Q. Briefly describe what it is.

25 A. This is a spreadsheet that was prepared