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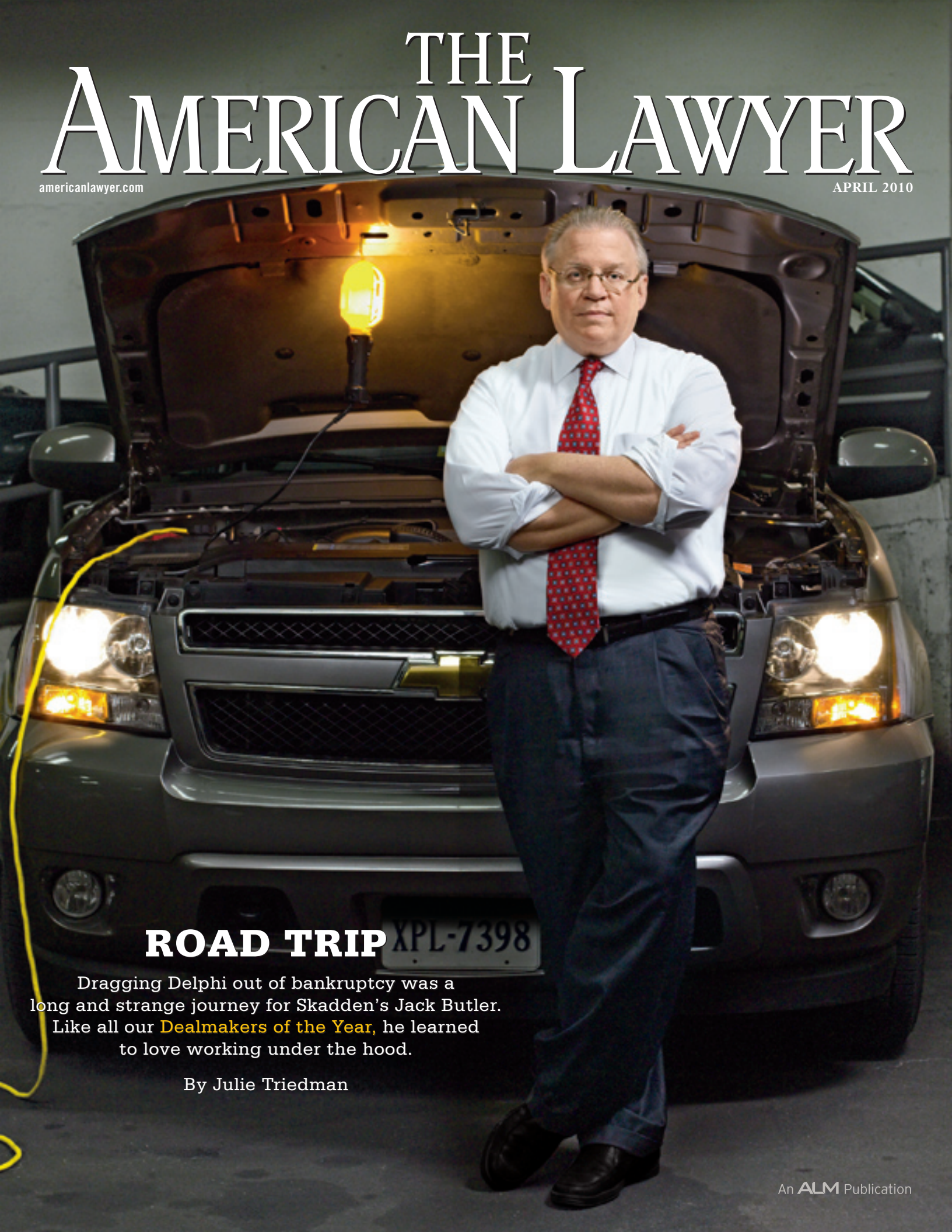


ROAD TRIP

Dragging Delphi out of bankruptcy was a long and strange journey for Skadden's Jack Butler. Like all our Dealmakers of the Year, he learned to love working under the hood.

By Julie Triedman

An ALM Publication

Delphi's nearly four-year struggle to emerge from bankruptcy has more plot twists and death-defying acts than a Hollywood thriller. The inside story of the auto parts maker's journey back to life.

ROAD TRIP

By Julie Triedman

At around 3 P.M. on October 6, 2009, roughly 100 lawyers and executives filed into a conference room in Skadden, Arps, Slate, Meagher & Flom's Manhattan office. It had taken three years, 11 months, and 29 days to get to this moment: Delphi Corporation was emerging from the depths of bankruptcy and passing into the hands of its former parent, General Motors Company, as well as two lenders. There was a palpable sense of exhaustion in the room; the close had been convened seven hours earlier. The Veuve Clicquot, selected by Delphi lead lawyer John "Jack" Butler, Jr., but poured prematurely, was flat.

Still, it was a signature Butler event. Rather than a standard bankruptcy close, Butler prefers extremely formal proceedings—to the point where participants at the Delphi close even read from a script that Butler, coleader of Skadden's corporate restructuring group, had written and negotiated with the various parties. A court reporter transcribed the affair. "You don't want people to bring up issues at this late a point," Butler explained.

He could be forgiven for a bit of overkill. It had been a death-defying few years. Four high-profile debt-for-equity deals for the postemergence company had failed to launch, due to strategic miscalculations and macroeconomic forces. (After each successive equity bid, the field of potential investors and the size of creditors' recovery shrank.)

But that wasn't all. When the auto industry collapsed, it had a traumatic effect, tipping Delphi into default on nearly $4 billion in postpetition loans—a shocker to the financial community, where such short-term loans, known as "debtor-in-possession" (DIP) financing, had long been considered the "T-bills" of bankruptcy. Finally, the DIP lenders played a historic role in the complicated proceedings—ultimately winning a bid, with GM, for the auto parts maker.

Delphi, of course, wasn't the only auto company to buckle under the economy. GM and Chrysler LLC filed for bankruptcy protection last year—two of the largest public company filings ever. While GM, Chrysler, and Delphi all sought help from the U.S. Auto Task Force, Ford Motor Company restructured and dramatically reduced its debt and pension obligations without federal aid [see "Ford Gets Tough," page 62]. For the lawyers who advised the automakers and their suppliers, lenders, and creditors, it was a year like no other.

While Delphi never would have emerged from Chapter 11 without the forbearance of bankruptcy court judge Robert Drain, or the financial support of GM (and its foster parent, the task force), Skadden's Butler also played a critical role. He wasn't a perfect tactician—a few of his decisions backfired. But his focus, client service, and tenacity were unparalleled. "Jack was presiding over a melting ice cube that was about to fail, in an unprecedented macroeconomic environment," says Willkie Farr & Gallagher's Marc Abrams [see box, page 59], who represented Delphi's largest DIP lender, "and he was literally racing to get to a result before the company went into liquidation."

Skadden's fees for Delphi were substantial: well north of $100 million. But for all the money the firm earned, there was an opportunity cost. For four years, Butler, a major rainmaker, was virtually captive to Delphi's troubles, spending most workdays in Delphi's home base in Troy, Michigan, and in New York, far from his four school-age children in Chicago. Butler, says one of his colleagues, "clearly suffered to get this thing done."

Delphi's story goes back to 1999, when it was carved out of GM, morphing overnight into the country's largest auto parts manufacturer. Unfortunately, the terms of the spin-off locked Delphi into the highest cost structure in the business. The company was handcuffed by contracts for money-losing product lines for which GM was the sole customer, and Delphi the sole supplier. GM had also committed Delphi to retaining the automaker's expensive contracts with its former workers. Delphi's union employees earned $65–$70 an hour, double to triple those of its rivals. GM, in turn, guaranteed its former workers' benefits.

Delphi relied on GM for 85 percent of its revenue, and in its first few years of independence, Delphi's management worked hard to diversify the company's customer base. But by 2001, Delphi had begun losing money. In 2004 it reported nearly $5 billion in losses on $29 billion in sales. Losses piled up in 2005 as it scrambled to deal with an accounting scandal; several top executives resigned.

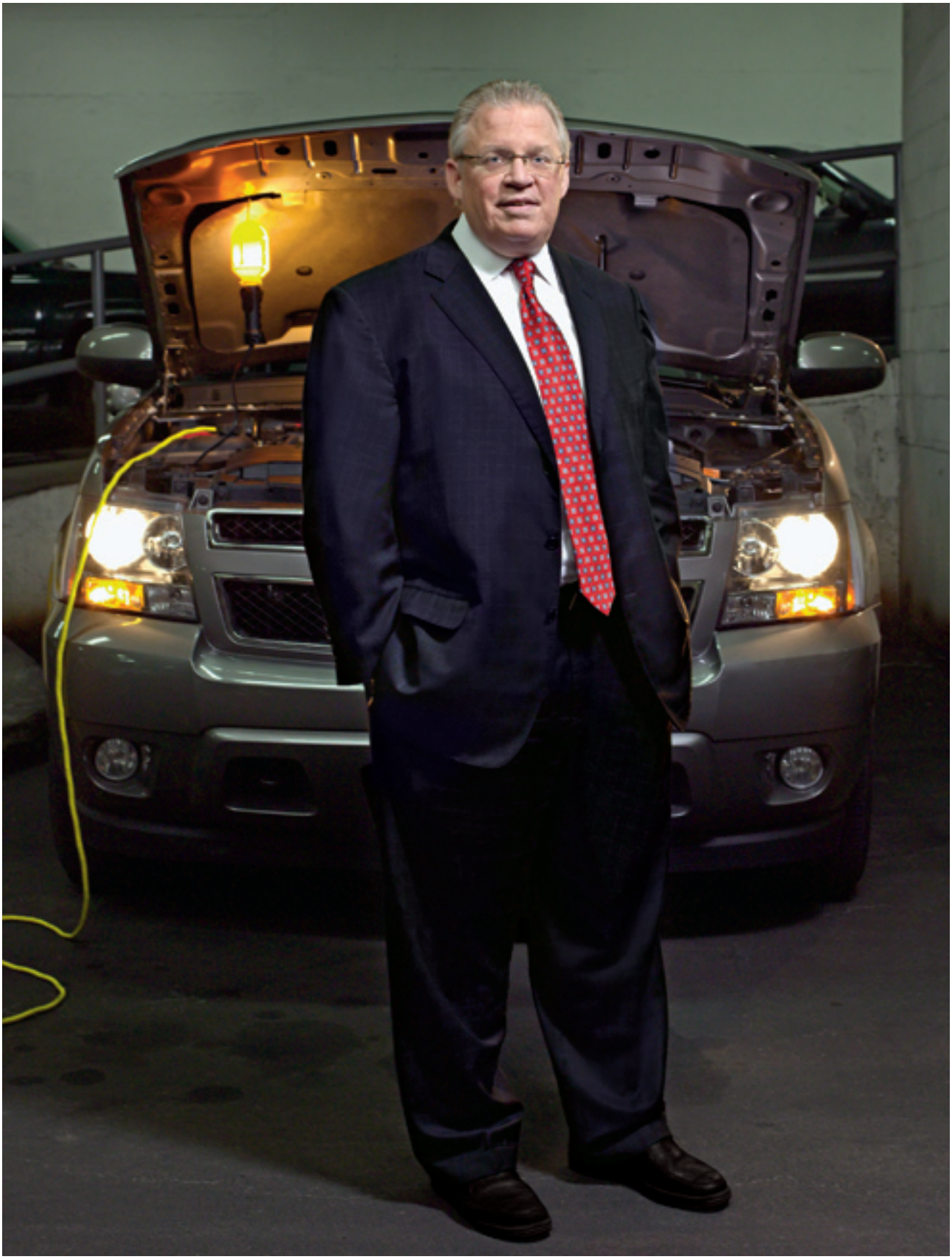
That June, Delphi's board, lacking a chair and chief executive, made a cold call to Robert "Steve" Miller, Jr. As Lee Iacocca's right-hand man, Miller had helped Chrysler Corporation obtain landmark federal loan guarantees in 1979, and then assisted in its restructuring. More recently, he led Bethlehem Steel Corporation into bankruptcy.

DEAL IN BRIEF *Delphi Corporation*

VALUE	$16.6 billion *(assets)*
ANNOUNCED	October 2005 *(completed October 2009)*
SKADDEN'S ROLE	Counsel to debtor
COUNSEL TO CREDITORS	Latham & Watkins

PROP STYLING BY LAUREN HUNTER

Photograph By Paul Godwin



Miller came out of retirement, telling anyone who would listen that Delphi was a test case for the U.S. auto industry, and promising to try to restructure Delphi out of court. Within days of his arrival, he moved to shore up Delphi's restructuring team, concluding that the company's longtime corporate counsel, Shearman & Sterling, didn't have the megacase experience. (Shearman continued to represent the board and cocounseled on DIP financing matters.)

Miller's investment banker, David Resnick at NM Rothschild & Sons Limited, recommended that he call Skadden's Peter Atkins and Butler. The latter was a natural choice. Butler, age 54, grew up just three miles from Delphi's headquarters. In 2003 he helped another Troy company, Kmart Corporation, emerge from bankruptcy ahead of schedule. And his credentials were stellar. After graduating from the University of Michigan Law School in 1980, just two years after the new federal bankruptcy code was enacted, he quickly made it his specialty. "Nobody in the country had more than two years of experience" with the new law, Butler recalls. "And I really believed in fixing businesses, in saving jobs, what was then called corporate renewal."

In a sign of how optimistic he was, Butler told Miller that a Delphi bankruptcy should last 18 months, two years on the outside. Miller knew how grueling a restructuring could be, so he asked Butler to sign an engagement letter with extraordinary terms: Butler would devote as much time to the matter as he was "physically capable" of doing. "You want to know who's going to be there at your side," explains Miller. "You don't want to have a conversation with a charming rainmaker, then have someone else do the work. And we knew it was going to be all-consuming."

Miller was right. Butler spent between 85 and 90 percent of his time over the next four years on Delphi. For the next roughly 200 Sunday evenings—with occasional holiday breaks—Butler would fly to Troy for a Monday Delphi "transformation" meeting with top executives, bankers, and restructuring consultants. "The deal was, [Delphi] got to see the sausage being made," notes Skadden's Eric Cochran, lead corporate partner on the restructuring. "But they also by the same token got to see our thoughts as we were thinking them, relatively unfiltered."

Often, Miller recalled, Butler's thoughts would arrive in e-mails time-stamped 3 A.M. "I do not know where Jack gets the stamina," Miller says. "I could not have tolerated physically the work he was put through."

Initially, Miller tried to win concessions from GM and the unions out of court. But GM didn't move far enough to ease the pension burden on Delphi, or renegotiate contracts that locked Delphi into money-losing product lines. The United Auto Workers and the other unions, for their part, wouldn't countenance the huge pay cuts that Miller was demanding. Meanwhile, Delphi was under increasing regulatory pressure to pump more money into its depleted pension fund.

Filing for bankruptcy seemed to be Delphi's best option. The bankruptcy code would strengthen the company's hand with GM and labor. It would also stop the clock on pension contributions. But a filing for the largest industrial bankruptcy in history would be daunting in its size and complexity.

Behind the scenes, Butler had been readying the raft of documents needed to take Delphi and its 41 subsidiaries into bankruptcy. The company would also require a huge capital cushion to keep its factories running during that time. So Delphi drew down a $2.5 billion credit line, and in early October obtained commitments for $2 billion in DIP financing from commercial banks, hedge funds, and other investors. Under the DIP contracts, Delphi was bound to repay its lenders in full. If Delphi defaulted, the DIP lenders alone among its creditors had the right to seize the company's assets.

Eventually, the $2.5 billion prepetition credit line was refinanced as another DIP loan, with all the contractual security that status provided. But in exchange for the upgrade, Butler and the original $2 billion DIP group had obtained a key concession: The new DIP lenders, unlike the original ones, wouldn't have the right to vote on future decisions to foreclose. That concession didn't seem like much at the time: Of the nearly 297 DIP loans that Moody's Investors Service has tracked since 1988, only two small ones had ever defaulted. But in the end, that concession would be critical to Delphi's emergence.

On October 8, 2005, Butler filed Delphi's petition for bankruptcy in New York. The case was assigned to Judge Drain, who had been appointed to the bench three years earlier after a career at Paul, Weiss, Rifkind, Wharton & Garrison. Butler told Judge Drain that his

CROSSING TO SAFETY *Delphi's emergence from bankruptcy.*

OCTOBER 2005

Delphi files for Chapter 11, becoming the then-largest industrial company in U.S. history to seek creditor protection. To fund its operations during bankruptcy, Delphi obtains some $2 billion in debtor-in-possession (DIP) financing, putting those lenders first in line for repayment.

APRIL 2008

A group led by private equity firm Appaloosa Management balks at closing on a planned $2.55 billion equity investment deal to control Delphi after it emerges from bankruptcy—leaving the auto parts company with diminished prospects. (Delphi later sues Appaloosa.)

JANUARY 2009

With the auto industry in a tailspin, Delphi defaults on some $3.6 billion in DIP financing, the first time a default in this market has occurred on such a large scale. Four months later, talks begin with the U.S. Auto Task Force about providing financial aid through General Motors.

JUNE 2009

False alarm: Delphi announces surprise plans to emerge from bankruptcy via a deal with GM and a private equity buyout partner, Platinum Equity. DIP lenders protest, prompting bankruptcy judge Robert Drain to order the auto parts maker to put its assets up for auction in July.

OCTOBER 2009

Delphi's DIP lenders quickly morph into equity investors. At the July auction, GM and a consortium of DIP lenders successfully bid for the troubled company. After Judge Drain approves the plan, a streamlined Delphi finally emerges from bankruptcy on October 6, 2009.

client would seek labor concessions and, failing that, would ask the judge to impose new terms.

Over the next few years, Delphi radically retooled itself, closing scores of plants and shedding less profitable businesses—brakes, car interiors, suspension, catalyst, and wheel bearing units. It retained its higher-margin lines and businesses critical to GM, but continued to whittle down its reliance on its largest customer, until by mid-2007 the automaker accounted for just a third of its sales.

Negotiations with GM and the unions, however, proved tougher and slower going than Butler expected. On the surface, Delphi had a trump card: "They could have shut GM down in a day," notes Latham & Watkins's Robert Rosenberg, counsel for the official unsecured creditors committee. But Delphi never exercised that power: In 2006 Miller had made a handshake agreement with GM CEO G. Richard Wagoner, Jr., that Delphi would keep GM's supply lines running if Wagoner continued to extend financial support.

That handshake agreement underscored a central tension throughout the bankruptcy: GM wasn't just a creditor, but a codependent. As a result, GM's lawyer, Jeffrey Tanenbaum of Weil, Gotshal & Manges [see box, page 61], found himself working as often for Delphi's interests as for GM's. With Tanenbaum's help, in September 2007, after nearly two years of talks, most longtime Delphi workers accepted GM–funded buyouts. Delphi could now staff its assembly lines with new workers at $14–$18 an hour.

The new, slimmer Delphi looked attractive to private equity investors, whose equity investment was necessary to pay off DIP lenders and to fund Delphi's emergent business. In December 2006 Butler's team signed a deal with Cerberus Capital Management, L.P., and Appaloosa Management L.P. The two agreed to provide $3.4 billion to Delphi in exchange for equity control. (A few months later, Butler had to negotiate a new $2.55 billion deal with the Appaloosa-led group after Cerberus, saddled with its new Chrysler obligations, signaled that it wanted out.)

In December 2007 Butler took a calculated risk. He asked Judge Drain to approve the Appaloosa deal, even though there was a catch. The investment required Delphi to obtain $6.1 billion in additional exit financing to close. Lending to bankrupt companies had dried up following the collapse of two Bear Stearns Companies, Inc., hedge funds the previous summer, but the Delphi restructuring team was so confident that the market would return that they had decided to "go naked," in bankruptcy parlance, filing for approval of a deal ahead of financing commitments. Presciently, some creditors were critical of the aggressive strategy, but they failed to get the judge to delay approval. "Butler was anxious to get the ball rolling," says one participant. "And the judge ultimately agreed that the [deal] was feasible."

The next month, Butler filed an amended reorganization plan spelling out an unusually broad recovery for stakeholders. DIP lenders were expected to be repaid; unsecured creditors would receive shares worth 100 percent of their claims plus interest; and even shareholders, generally out of the money in Chapter 11, would get millions of dollars in shares and a right to purchase billions more down the line.

In January 2008, 81 percent of Delphi's creditors voted to accept the plan. Delphi was finally set to emerge.

But Butler's attempt to lock up court approval ahead of financing backfired. Credit of the sort needed by emerging companies stayed frozen. GM, which had already been providing operating funds and credit lines under previous agreements, offered to step up once again, this time as a lender of exit capital. However, Appaloosa, whose commitment appeared to be wavering as the economy foundered, argued that its deal with Delphi didn't allow GM to play a greater financing role. Judge Drain overruled Appaloosa's objection.

With GM funding commitments in hand, the close was set for April 4. That morning, roughly 100 people assembled at Skadden. They were greeted with a one-line fax from Appaloosa's lawyer, White & Case's Thomas Lauria: The deal was off. (Six weeks later, Delphi sued the investment group led by Appaloosa; the suit settled last October under undisclosed terms.)

Delphi was stranded, and the clock to default was ticking down. Almost $4 billion in DIP financing, after being extended an additional six months from its July maturity, was due to be repaid

MARC ABRAMS *Willkie Farr*

MARC ABRAMS, cochair of Willkie Farr & Gallagher's restructuring group, was involved in just the final chapter of Delphi's bankruptcy. But participants say that he played an outsize role in its emergence.

Abrams was tapped by a group of disaffected postpetition creditors—debtor-in-possession (DIP) lenders, in bankruptcy lingo—who stood to lose billions in a deal that Delphi and its largest customer, General Motors, had struck to sell a controlling stake in Delphi to Platinum Equity, LLC. Abrams convinced DIP lenders with widely divergent goals to break free from their historically passive role and take control of the process. In the end, the DIP group actually acquired Delphi out of bankruptcy, a first in a major filing.

The group's inclusion as a bidder was not assured, say Abrams's clients. But his argument that GM should not be allowed to squash creditors' rights hit home with the bankruptcy judge, says Andrew Herenstein, managing principal of a major DIP lender, Monarch Alternative Capital LP. "The government thought our credit bid strategy was a hollow threat," he says. "Marc came in and convinced the judge that we had a right to do it, and we were going to do it." —J.T.

by December 31. GM stepped in again, committing to provide exit capital and to be Delphi's sole equity investor—essentially, to take its former subsidiary back into the GM fold. On October 3 Butler filed a newly amended plan. While paying off the DIP debt, it promised vastly smaller returns to creditors.

But then that plan started to unravel. Within a few hours of the filing, GM announced massive cuts in production. The auto giant was clearly too deeply in the hole to offer any help. "That was one of the 'oh, shit' moments," says Butler. Delphi now faced an imminent default. In a default, Delphi's DIP lenders could grab its assets—a move neither Butler nor a bankruptcy judge could prevent. For Butler and Delphi's management, such a loss of control was unthinkable.

Butler dove into round-the-clock, months-long negotiations with Davis Polk & Wardwell's Karin Day, a lawyer for the DIP administrative agent JPMorgan Chase & Co., and other members of the DIP steering committee. Day's client had the legal authority to act for the 200-odd DIP lenders.

Most senior, voting DIP lenders supported giving Delphi more time. A liquidation at the nadir of the auto industry collapse guaranteed abysmally low returns. And because it could have triggered a wider industrial shutdown, liquidation would have been a political minefield for the DIP lenders, some of which, like JPMorgan Chase, were recipients of government TARP loans themselves.

On the other side were the junior, nonvoting lenders—who collectively held four-fifths of the debt—and who largely opposed any accommodation. Some wanted to use their contractual leverage to impose their will on Delphi's management, who they felt were burning up their cash too fast.

In a precedent-setting decision, Judge Drain sided with giving the voting senior lenders control over the nonvoting majority. The ruling would become a legal linchpin in the U.S. government's strategy in the GM and Chrysler bankruptcies, where a plan was put in place over minority DIP lender objections.

On January 1, 2009, Delphi defaulted on some $3.6 billion in debt, the largest such default in history; the DIP lenders, for the moment, sat on their hands.

Over the next several months, Butler grasped at potential lifelines—and deal partners—for his client. One sole source of potential new funding remained: the U.S. government. "If the government didn't intervene," says Butler, "we were sunk." On December 19, 2008, President George Bush had announced a $17.4 billion temporary bailout for GM and Chrysler. At that point, "I knew there was a road out for Delphi," says Butler, "because Delphi was indispensable to the industry."

But it would be a few white-knuckle months before the government figured that out. On April 5, 2009, Treasury's new U.S. Auto Task Force notified Delphi that it would not authorize GM to send Delphi additional promised support unless the funds were part of a global resolution for the parts company. The next day, frustrated DIP lenders, who were watching Delphi burn through some $100–200 million in collateral each month since its default, told Butler that they would not provide more funds. The company, they warned, should prepare for liquidation.

Increasingly, Butler was forced into a more passive role as the two parties with the real power over Delphi's future locked horns: a few hedge fund DIP lenders holding a contractual death grip on Delphi, and the U.S. government, via the task force, as the real, albeit indirect, provider of capital. The lenders thought that the task force undervalued Delphi's assets. The task force, for its part, viewed Delphi as relevant only to the extent that it affected GM. "The goal was to bring [Delphi] to a quick conclusion," says then–task force member Matthew Feldman [see "Four on the Floor," page 64], "and GM was not going to be an open faucet."

Butler and Tanenbaum increasingly played the role of mediator due to the appearance of multiple conflicts. Willkie Farr and the hedge fund Silver Point Capital, which is among the largest nonbank lenders to distressed companies, were at the center of those overlapping relationships: The previous December, Silver Point had tapped Willkie's Marc Abrams to represent it as the largest DIP lender to Delphi. But the task force's number two official, Harry Wilson, had been a partner at Silver Point. And Feldman, a prominent bankruptcy lawyer, had just taken leave from Willkie to work with Wilson on the task force.

To avoid any whiff of impropriety, Treasury banned direct contact between the two sides. The process was particularly uncomfortable for the DIP lenders. "The most important party to the Delphi negotiations was never even in the room," Abrams said. By mid-April, Delphi and GM had convinced the task force that it needed to help out the auto parts company. On April 19 the task force and the automaker made an offer to the DIP lenders: a controlling stake in an emerging Delphi for the value of their debt, but no additional cash recovery. The lenders, who said they wanted $1 billion as well as control, rejected the deal.

Behind the scenes, Butler began assisting Delphi in parallel negotiations with two potential white-knight investors, Platinum Equity, LLC, a private equity firm, and Federal-Mogul Corporation, a parts supplier controlled by financier Carl Icahn.

But any potential suitor also had to pass muster with GM and the task force. Both initially favored Federal-Mogul as the party most able to ensure a supply chain for GM. But Icahn would only agree to acquire the assets through a section 363 sale (bankruptcy's version of a private buyout) that would have left billions of dollars in old Delphi obligations unresolved.

Butler "was presiding over a melting ice cube that was about to fail, in an unprecedented macroeconomic environment," says Willkie Farr's Abrams.

Butler fervently opposed such a sale Only a full-bore, traditional plan, he argued, would tie up all the outstanding loose ends, including billions in pension liabilities. Ultimately, Butler had to concede on the issue: If he wasn't able to get a plan through, the deal would proceed as a 363.

Quietly, two DIP lenders, Silver Point and Elliott Management L.P., were also launching a Plan B. They had been buying up the most senior DIP debt—from bondholders who wanted out of Delphi—at a steep discount to face value since January. These new holdings gave them enough votes to control the entire DIP debt—power they had lacked as junior lenders five months earlier. Now the question was how best to use that control to maximize their returns.

Willkie's Abrams, representing Silver Point, was appointed head of this new activist DIP "collective," and he convinced Judge Drain to order all the parties into mediation. But by Friday, May 29, after days of talks, the two sides were still far apart. That evening, Butler faxed over a new, much less generous offer than the April one: GM, with the auto task force's support, would pay back senior voting DIP lenders in full, but the larger junior group would get just 10–20 cents on the dollar, a shocking discount. Neither group would get equity. The DIP lenders had an

hour to take it or leave it; subsequently the offer price would drop.

The DIP group had not yet responded when hours later Butler dropped a bomb. He told the lead lawyer for the DIP administrative agent, Davis Polk's Donald Bernstein, that Delphi had just struck an eleventh-hour deal with Platinum. The terms for the DIP lenders would be the same, but Platinum would get most of the equity. Moreover, Platinum would contribute just $500 million in cash and credit lines for its 50 percent stake. The U.S. Treasury would help GM provide Delphi with $3.6 billion in financing and emergence capital; in return, GM would get the U.S. plants it needed to keep its own supply lines protected.

If Delphi failed to get sufficient votes from its lenders at a sale hearing on the Platinum deal, the company intended to do the deal anyway—as a 363 transaction.

The DIP lenders "were slack-jawed" at the news that they had been cut out so completely, recalls one lawyer who was present. Without getting a share of ownership in the new Delphi, the DIP lenders' recovery would be capped at a pittance of what they believed Delphi was really worth. At a hearing on June 10, Abrams demanded an open auction, slamming the Platinum deal as a sweetheart sale orchestrated by the task force and GM, and rammed down lenders' throats. Dechert's Glenn Siegel, representing Elliott Management, told Drain that a critical mass of DIP lenders, including Elliott and Silver Point, were ready to prepare a competing bid—a "pure credit" bid, where the lenders offer no new cash, just the $3.5 billion value of their debt—if he would allow it. If another bidder topped their bid at auction, well, that was fine, too.

When Judge Drain was presented with the Platinum deal, he seemed taken aback. "What's so special about Platinum?" he asked. "They're just guys in suits. Why can't the other guys in suits just pay more?" With less than two weeks till the scheduled sale hearing, Drain ordered up an open auction. Critically, he also signaled approval of a credit bid.

The Silver Point–led DIP collective now had a much stronger hand to play vis-à-vis GM. But to win an actual credit bid for the new Delphi, the DIP group needed to do more: It had to go out and recruit a new management team for Delphi acceptable to GM—and to pull it all off in four weeks. They succeeded: On July 27 Delphi announced that the DIP collective (backed by GM) had beaten rival bidder Platinum with a $3.5 billion credit bid.

At long last, Delphi and Butler had a deal that looked feasible. But first, Butler had to drive the deal through to approval, responding to a raft of objections to the judge's approval. Some 1,900 had been filed, the most that many restructuring lawyers could recall having seen. The vast majority were by retirees who stood to see pensions and benefits slashed.

Just past midday on July 30, Judge Drain approved modifications to a plan that was almost unrecognizable from the one filed in 2007. Drain had praise for both sides. "The debtors, led by an extremely active board, have consistently dealt with problems . . . in a good-faith manner," he said. The DIP lenders, for their part, "properly moderated the urge to obtain the last dollar through destruction by proposing what's on the table." Delphi emerged in October $19.5 billion lighter in debt than when it went in—and with the auto industry experiencing a moderate resurgence, its prospects look bright.

In the end, the DIP lenders clearly look like the biggest winners: By mid-February, just five months postemergence, the distributions that the DIP lenders received in lieu of their debt were trading at roughly $1.45 on the dollar—ten times what they would have been paid in the Platinum deal.

Delphi creditors ended up the biggest losers, with a potential recovery of $300 million for the $7 billion they were owed.

JEFFREY TANENBAUM *Weil, Gotshal*

AS COUNSEL FOR GENERAL MOTORS in the Delphi bankruptcy, Weil, Gotshal & Manges's Jeffrey Tanenbaum had as much interest in keeping Delphi—a major supplier to GM—from liquidation as Delphi's own management did.

Early on, Tanenbaum helped broker a key compromise between GM, its unions, and Delphi that allowed the auto parts company to slash labor costs and pension obligations. And last April, Tanenbaum convinced the Treasury Department's Auto Task Force that it needed to move quickly to help Delphi.

For four years, Tanenbaum, like Delphi's lead counsel, Skadden, Arps, Slate, Meagher & Flom's Jack Butler, devoted more than three-quarters of his billable time to Delphi. "Jeff and I both believed we had—it sounds kind of corny—a higher moral purpose, that if we didn't do this well, it would have catastrophic consequences," Butler says. "Anything other than a deal was never possible."

For Tanenbaum, 58, the deal was also one of his last as a partner. In January, after 31 years of practice, he announced his retirement. "This was a long haul," he says. "I decided it was time for a respite." —J.T.

GM, for its part, finally put its Delphi troubles behind it, though at a cumulative cost of an estimated $12.5 billion in loans and contributions. As part of Delphi's emergence, GM got four North American factories, as well as a key Delphi unit that made steering technology.

And Butler, whose aggressive preaching for a comprehensive plan—rather than a bare- bones private sale or, worse, a liquidation—had been a constant refrain through Delphi's endless crises, had finally steered his client to a successful close. "You make a decision, you go to bed, you wake up the next morning and make another. That's the essence of restructuring," he says. "You always have to have a plan."

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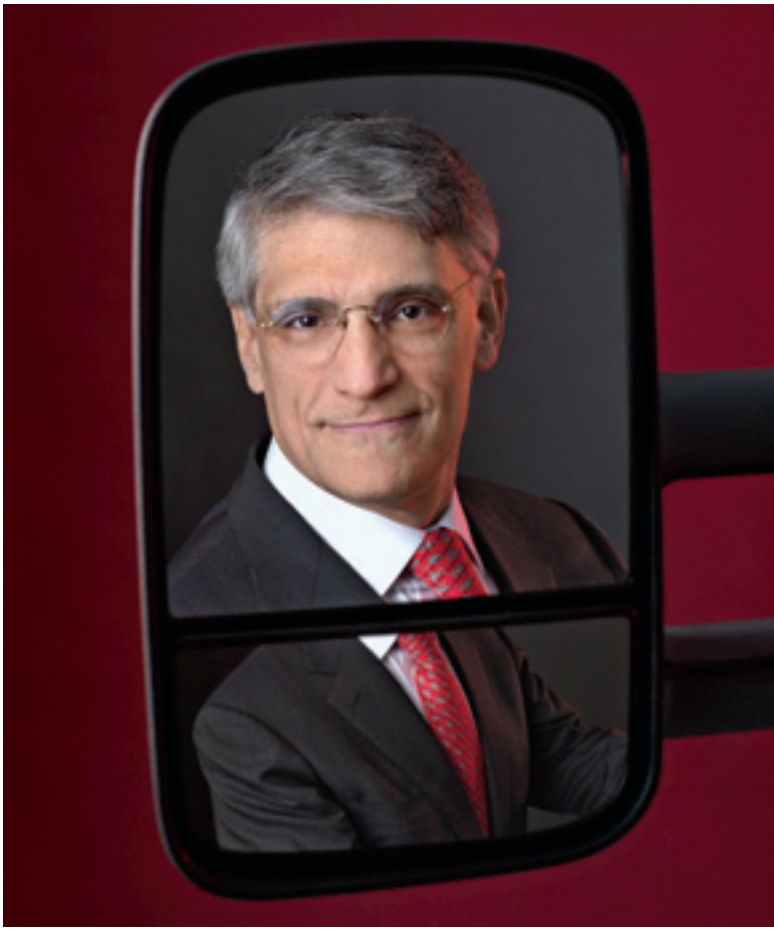
DONALD BERNSTEIN *Davis Polk*

Hardball tactics helped the troubled Big Three automaker avoid bankruptcy.

By Richard Lloyd

FORD GETS TOUGH



JACK BUTLER IS CLEAR on the role that Donald Bernstein played in the rescue of Delphi. "He was instrumental in creating an environment that allowed for the deal to happen," the Skadden, Arps, Slate, Meagher & Flom bankruptcy veteran says of the Davis Polk & Wardwell partner.

As adviser to JPMorgan Chase & Co., administrative agent to the debtor in possession (DIP) lenders, Bernstein—along with Willkie Farr & Gallagher's Marc Abrams [page 59]—assumed a crucial role in convincing U.S. bankruptcy court judge Robert Drain to open up the bidding for Delphi after Platinum Equity, LLC, had initially agreed in late May 2009 to take control of the auto parts supplier. When Drain gave a green light to an open auction process, he cleared the way for a competing credit bid and, ultimately, to the DIP lenders taking control of the core of Delphi's businesses.

"It was unfair to allow a private deal without the possibility of a credit bid," Bernstein says. "One of the criticisms of the Chrysler auction was that it wasn't sufficiently open, and I think the judge may have been aware of that."

Delphi wasn't Bernstein's only brush with the auto industry in 2009. The Davis Polk partner was center stage in the restructuring of Ford Motor Company in a set of deals that saw the carmaker reduce its debt burden by more than $10 billion and renegotiate its pension obligations with the United Auto Workers union (UAW)—and ultimately avoid going to the U.S. government for financial support.

In early 2009 Ford's future—like that of its Big Three siblings, Chrysler and General Motors—looked bleak. The company reported a $14.6 billion loss for 2008, the largest in its history, but crucially had the cushion of a $26 billion line of credit that it had arranged in 2006. That gave Ford and its advisers breathing room, but there was the threat that Ford would be hit by the panic sweeping through the auto industry. "The concern was that Chrysler and GM would go into freefall, creating a ripple effect hitting the industry and the supply chain," Bernstein says.

At the beginning of March, Ford announced a broad restructuring of its debt, effectively comprising three different transactions—a $4.3 billion exchange offer for Ford's outstanding convertible debt, a cash tender offer for $3.4 billion of the company's outstanding unsecured bonds, and a Dutch auction tender offer to repurchase $2.2 billion of senior secured term loans.

With the risk that one tranche of debt holders might refuse Ford's offer, Bernstein's co–lead counsel at Davis Polk, capital markets specialist Michael Kaplan, devised a plan to induce them to take the offer. If some didn't like the offer, Ford would simply take the cash it had allocated for that tranche and use it to increase its offer to the other two and not sell the tranche. The strategy clearly worked. On April 6 Ford announced that it had retired $9.9 billion of its $25.8 billion in debt and sliced $500 million off its annual interest expenses.

In addition, Bernstein, Kaplan, and fellow Davis Polk partner Mark Mendez advised Ford on an agreement with the UAW that enables Ford to use stock to pay up to 50 percent of future payments to the Voluntary Employee Beneficiary Association health care trust.

Through the summer of 2009, the firm completed a remarkable run of deals for Ford, advising it on a $1.6 billion registered offering of common stock (the first underwritten equity offering in the company's history); taking the lead on a $2.875 billion convertible notes offering (the largest equity-linked offering by a U.S. issuer in 2009); and handling the amendment and extension of maturity on its $11 billion revolving credit facility. Bernstein describes the restructuring as "one of the biggest execution challenges of my career."

In January, Ford announced a $2.7 billion profit for 2009, its first since 2005. For Bernstein, saving Ford was Job One.

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