

Pursuant to 15 U.S.C. § 16(b), Williams International Co., LLC (“Williams International” or “Williams”)), by and through its undersigned counsel, submits its Comments to the Proposed Final Judgment (PFJ), filed in the above-captioned case on July 26, 2012.

INTRODUCTION

Williams International has been an interested third party throughout the investigative process conducted by the Department of Justice (DOJ) and the European Commission (EC) regarding the proposed acquisition of Goodrich Corporation (Goodrich) by United Technologies Corporation (UTC). Indeed, Williams International was in close contact with both DOJ and the EC and submitted substantial information at the request of those bodies.

Williams International is a manufacturer of small aircraft turbine engines. In 2001, it entered into a Long Term Agreement (LTA) with Goodrich Pump & Engine Control Systems, Inc. (GPECS), a wholly owned subsidiary of Goodrich. The LTA called for Goodrich to design and produce a line of engine control systems, to perform to specifications required by Williams International, for use in various of its small aircraft engines. The specific engine control systems required by Williams International are in the nature of Full Authority Digital Engine Controls (FADEC), comprised of a Fuel Delivery Unit and Electronic Control Unit.

As discussed in DOJ’s Complaint and Competitive Impact Statement filed in this case, there are an extremely limited number of companies capable of producing custom FADEC systems of the type required by Williams International. At this point, GPECS may, in fact, be the sole viable source of FADEC systems available to Williams International, at least for the next 3-5 years, which is the amount of time needed to gear up and gain necessary approvals for a new producer. Due to the fact that UTC is a direct competitor to Williams International in the manufacture of small aircraft engines, its proposed acquisition of Goodrich and its GPECS

subsidiary raised serious concerns for Williams International regarding the likely impact of the acquisition on both the pricing and continued availability to Williams International of GPECS FADEC systems.

Initially, Williams International indicated to DOJ and the EC that it was opposed to the proposed merger, based on its concerns that a viable solution to the antitrust concerns raised by the merger could not be adequately addressed and remedied were the merger to be approved. While the PFJ does not completely eliminate Williams International's concerns, it does appear to be a thoughtful, good faith attempt to deal with those concerns. Nonetheless, there are still a number of discrete issues that Williams International believes the PFJ does not fully and adequately address, and as to which Williams International feels the need to comment and submit proposed revisions of the PFJ for DOJ's and the Court's consideration.

Discussed below are the three remaining primary areas of concern. First, is the concern that the PFJ does not appear to fully protect the confidential and proprietary information of some Goodrich customers, such as Williams International, through the process of divestiture of the Engine Control Divestiture Assets (ECDA), which include GPECS.

Second, Williams International is concerned that the process for vetting and approving potential acquirers of the ECDA does not contemplate the input of any of the customers of the Goodrich ECDA, and is left to the sole discretion of DOJ. Clearly, the customers, including engine manufacturers, who rely on GPECS, have the direct experience with the marketplace and the greatest knowledge of the technical aspects of the products involved. Thus, their input is critical to finding an acquirer of the ECDA which is both able and willing to continue the operations at an adequate long-term level.

Finally, Williams International is concerned that GPECS may not be maintained during the divestiture process at a satisfactory level of operations pending its divestiture, as key personnel leave the company – some to transfer to the UTC side of operations – and that UTC has no substantial incentive to invest in maintaining GPECS's performance levels, other than to meet the bare minimums required by the PFJ. These points are discussed in more detail, as follows.

1. **Protection of Customer Confidential Information and Trade Secrets**

The DOJ expressly acknowledges in its Competitive Impact Statement (CIS) at 12:

An ECS, including the FADEC, is designed and developed to meet the specific performance requirements of the particular engine on which it will be installed. As a result, the ECS supplier has insight into the design and cost of not only its ECS, but also the customer's engine. ECS suppliers that provide the application software also have access to competitively sensitive confidential business information about the fuel efficiency and performance principle around which the customer's engine is designed.

Recognizing the highly sensitive and confidential nature of customer information possessed by the ECS supplier, one would have expected that the PFJ would include substantial provisions to protect such information from being divulged in any manner by Goodrich to either (1) UTC or (2) a potential Acquirer of the divestiture assets to whom a given customer of Goodrich may not want its proprietary information divulged. The reason for the first safeguard is obvious, at least in the case of Williams International. UTC is a direct competitor of Williams and must be prevented from obtaining any confidential Williams information. The second safeguard is justified by the fact that an ECS customer, such as Williams, has no way of knowing which companies may be seeking to acquire the divestiture assets, nor, of course, which company will ultimately acquire them.

It cannot be left to the discretion of the DOJ, Goodrich, or anyone else, to determine to whom Williams International's confidential information is to be given. The potential and/or actual acquirers may include companies that Williams perceives as actual or potential competitors in some respect, or simply as companies that could ever be capable of meeting Williams International's needs. Further, the actual Acquirer may be a company with which Williams International (or another ECS customer) may decide, for whatever reason, that it does not wish to do business. Therefore, there needs to be an unbreachable firewall around customer confidential information that will prevent it from reaching UTC or any potential acquirer, absent the express written authorization of Williams International (or other similarly situated ECS customers).

The documents promulgated by DOJ do not appear to provide for that level of protection. The Hold Separate Stipulation and Order, as it relates to the Engine Control Divestiture Assets, states only, as relevant to protection of confidential information:

UTC shall take all steps necessary to ensure that . . . (3) the books, records, competitively sensitive sales, marketing, and pricing information, and decision-making concerning design, development, manufacture, servicing, distribution, repair and sales of Engine Control Products will be kept separate and apart from UTC's other operations.

Hold Separate Stipulation and Order at 11. This provision does not make clear that it relates to information other than Goodrich's own information. Neither does it specifically include information relating to the customer's specifications, designs, plans, etc. relating to their engines other than, possibly, relating to Goodrich's "**decision-making** concerning, design, development, [etc.] of Engine Control Products." Documents relating to Goodrich's decision making may not comprise the same set of documents as those subsuming a customer's confidential information. This section provides little comfort that Williams International's confidential information would

not reach the hands of UTC. Moreover, it in no way specifically limits the divulging of information to any third parties other than UTC, such as potential acquirers of the divestiture assets.

The PFJ fares little better in protecting sensitive customer information. First, the PFJ makes clear that the Engine Control Divestiture Assets to be provided to the Acquirer include intangible assets such as all “contractual rights”; “technical information”; “blueprints”; “designs”; “design protocols”; “specifications for materials . . . parts and devices”; “research data concerning historic and current research and development efforts”; etc. This would appear to subsume confidential customer information falling within these and other relevant categories.

See PFJ, Definition M, at 4.

The PFJ further provides that:

Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the [ECDA] customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine.

See PJF IV.B. at 11.

First, it is unclear that this section refers to information other than Goodrich confidential information. Moreover, even if it were interpreted to apply to customer confidential information, the generic reference to “customary confidentiality assurances” is woefully inadequate. There appears to be no other reference to confidentiality concerns in the PFJ.

The DOJ may respond that requiring customary confidentiality assurances pursuant to the due diligence process is no different than what would generally apply in the case of any private contractor of Williams International being sold to a prospective buyer, and that this level of protection in the PFJ should be sufficient. The divestiture in this case, however, is not a simple,

private, free market transaction. The divestiture will be governed by the PFJ, and subject to the direct scrutiny of the DOJ, as the body with power to approve or object to any proposed divestiture. Due to the authority of the Final Judgment, which may take precedence over private non-disclosure agreements, as well as the power of the DOJ with regard to all proposed acquisitions, the PFJ should contain a belt and suspenders provision that clearly, in its own right, provides substantial safeguards against the divulging of customer confidential information.

Given the critical sensitivity of the type of information that would comprise customer confidential information in the context of aircraft turbine engines and components thereof, including ECS, and recognizing that once that horse is let out of the barn it is too late to close the gate, utmost care must be taken to ensure that each customer has the absolute ability to determine the extent to which any of its confidential information is divulged, and to whom.

Proposed Revision: The PFJ should clearly state that no customer confidential information is to be provided to (1) UTC or (2) any potential or actual acquirer of the ECDA, without the express written consent of the customer (to be obtained, in the case of (2), after the customer is informed of the identity of the potential or actual acquirer to whom the confidential information is proposed to be divulged).

2. **Selection of an Appropriate Acquirer**

The PFJ provides for Defendants to seek out potential acquirers of the ECDA that are “acceptable to the United States, in its sole discretion.” *See, e.g.*, PFJ sec. IV.A. at 10.

The PFJ also provides the protocol for approval of an Acquirer, by which UTC will provide notice to DOJ, along with material information, and DOJ will then either approve or object to the divestiture. Only DOJ, or UTC (under limited circumstances where a Divestiture Trustee has

designated an Acquirer), has the right to object to consummation of the divestiture. *See* PFJ sec. VIII at 33-34.

The DOJ has recognized, however, that the market for the production of Engine Control Systems is an extremely limited one. As observed in the CIS, there are only three producers of ECS for large aircraft turbine engines. *See* CIS at 20. Although not explicitly stated in the CIS, the number of producers of ECS for small aircraft turbine engines is also extremely small, approximately four in number, including Goodrich (and one of which is owned by UTC and is therefore a non-viable source for Williams International).

It is also well established that ECS are an essential component of all aircraft turbine engines. It is therefore critical to select an Acquirer of the ECDA that will remain a committed manufacturer of ECS and will maintain GPECS as a fully viable producer of ECS, at the very least over the years that would be required for Williams to gear up an alternate source of ECS.

Under these circumstances, to place the decision as to the identity of the Acquirer of the ECDA solely in the hands of DOJ, with no input from the engine manufacturers who will critically rely upon the products and services of the Acquirer, seems to be taking unwarranted risks as to the ongoing stability and viability of the market for production of ECS.

The PFJ states that the DOJ will seek an Acquirer that “in the United States’s sole judgment, has the intent and capability . . . of competing effectively . . .” in the Engine Control Products market. PFJ at 17. Mere intent and capability, however, do not necessarily translate into an actual long-term commitment to the market. There appears to be nothing in the PFJ that establishes any parameters for the DOJ to ascertain the actual likelihood of the proposed Acquirer becoming a suitable long-term business partner of the few engine manufacturers who will be directly affected by the acquisition.

Given the depth of knowledge of the aircraft engine manufacturers – both as to their own needs and the science of aircraft engine design and production in general – it seems imprudent to exclude them entirely from the process of vetting a prospective acquirer of the ECDA, who will in all likelihood become their *de facto* future supplier of ECS, given the lack of elasticity in the market.

Proposed Revision: The PFJ should be modified to provide for input from the aircraft engine manufacturers into the process for approving an Acquirer of the ECDA, to help ensure the selection of an Acquirer that will be an acceptable long-term supplier and business partner of the aircraft engine manufacturers.

3. **Maintaining the Quality and Viability of the ECDA (GPECS) Pending Divestiture**

As discussed in the previous section, and as noted repeatedly by the DOJ, it is essential to maintain the ongoing viability of the ECDA, and its ability to operate at least at the same level as it did pre-merger, so as not to deprive the aircraft turbine engine manufacturers of the ability to obtain ECS in the coming years, at least until alternate sources can be established. The PFJ, while, including many provisions related to UTC providing assistance and transition services to the ultimate Acquirer, contains virtually nothing relating to the level at which UTC must maintain the ECDA prior to the divestiture, particularly with respect to personnel.

The Hold Separate Stipulation and Order provides some very general requirements for UTC to maintain the quality of the ECDA. These include Sections V.(D) and V.(F), which require respectively that UTC “use all reasonable efforts to maintain and increase the sales and revenues of all products produced by or sold by the [ECDA]” . . . including the maintenance of current support levels in various areas (Sec. V.(D)) and that “UTC shall take all steps necessary

to ensure that the [ECDA] are fully maintained in operable condition at no less than current capacity and sales” (Sec. V. (F))

Whereas these provisions are extremely general and susceptible of subjective interpretation, with regard to employees and personnel of the ECDA the Hold Separate Order is more detailed, providing in Section V.(J):

Defendants’ employees with primary responsibility for the design, development, manufacture, marketing, servicing, distribution, repair and/or sale of any of the products produced with the [ECDA] . . . shall not be transferred or reassigned to other areas within Goodrich or UTC, except for transfer bids initiated by employees pursuant to Defendants’ regular, established job-posting policy. Defendants shall provide the United States with ten calendar days’ notice of such transfer. . . .

Despite the seeming protections this section affords against the transfer of key GPECS personnel within UTC, Williams International recently learned that Curtis Reusser, the President of GPECS (*see Exhibit A*, printout from Connecticut Secretary of State database) has been transferred within UTC to become President of UTC’s Aircraft Systems Group. (*See Exhibit B*, article showing organizational hierarchy of UTC.)

This being the case, it clearly suggests that both UTC and DOJ (if it was given the 10 days’ notice provided for in Section V.(J)) do not consider the transfer of the individual who is the President of both GPECS and of the Goodrich Segment subsuming GPECS to fall within the purview of the restrictions of Section V.(J). This is a highly problematic interpretation of Section V.(J), particularly considering that Curtis Reusser was directly involved in communications and discussions with Williams International regarding alleged failures of GPECS to perform satisfactorily under the parties’ Contract, as well as with all details of the parties’ business relationship, including commercial and technical issues. This is precisely the type of individual that the Hold Separate Order and the PFJ should be concerned about moving

into a leadership position in UTC's Aircraft Systems Group. It raises the obvious concern that UTC's porting over personnel – including the highest level personnel – from the Goodrich side to the UTC side of operations will increase the likelihood of customer confidential information and trade secrets being divulged to UTC. Apparently, however, the DOJ does not read that concern into those documents.

The illusory nature of the protections of Section V.(J) are further amplified by the carve-out to the proscription regarding transfer of key personnel; specifically, the exemption for “transfer bids initiated by employees pursuant to Defendants’ regular, established job-posting policy.” This clause is an invitation to UTC to evade provisions of Section V.(J) simply by posting jobs on the UTC side of operations internally, and then having Goodrich personnel put in transfer bids for those jobs. It is a gaping loophole that completely eviscerates the presumed protections of Section V.(J), and which would permit UTC to raid the GPECS employee roster and deplete it of its critical personnel. This would not only render GPECS non-viable, but would also port over to UTC employees with intimate knowledge of the Williams International projects and products being worked on by GPECS. This cannot be the intended consequences under the PFJ and Hold Separate Order, but it clearly appears to be the unintended consequences.

Finally, neither the PFJ nor the Hold Separate Order impose any obligations whatsoever upon UTC or GPECS to attempt to retain personnel who might be inclined to leave the company during the period pending divestiture. For example, Williams International has learned that Alan Oak, the Vice President and General Manager of GPECS, is leaving his position with the company. No information is known to Williams International as to whether the Defendants made any attempt, including the use of economic incentives, to retain Mr. Oak. The depopulating of the Goodrich organizational chart at the highest levels may be in UTC's interest,

but it is clearly not in the interest of maintaining GPECS as a viable producer of engine control systems going forward. A sale of the physical assets of the ECDA without the necessary personnel to effectively run the company will not protect the market, other than in the most illusory sense.

Proposed Revision: First, the PFJ and Hold Separate Order should be modified to strictly prohibit UTC from transferring Goodrich personnel to the UTC side of operations prior to the divestiture of the ECDA. Second, UTC should be required to use all commercially reasonable efforts, including economic incentives, to retain the Goodrich ECDA staff, particularly in the critical administrative and technical areas, pending divestiture.

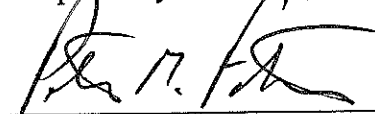
CONCLUSION

While the Proposed Final Judgment has the potential to effectively address most of the issues with which the DOJ was concerned, as regards the UTC/Goodrich merger, the PFJ (and documents ancillary thereto) leave a number of issues inadequately addressed and remedied. For all the reasons stated above, the Court should require the Proposed Final Judgment to be amended in accordance with the three Proposed Revisions recommended herein by Williams International.

Date: September 12, 2012

Respectfully submitted,

By:



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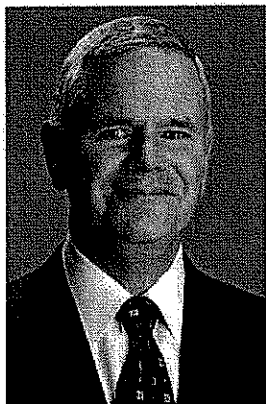
I CERTIFY that on September 12, 2012, I served a copy of the foregoing document on the following, by depositing a copy with Federal Express for overnight delivery to:

Maribeth Petrizzi
Chief, Litigation II Section, Antitrust Division
U.S. Department of Justice
Suite 8700
450 Fifth St., N.W.
Washington, D.C. 20530

Date: September 12, 2012

By: 
Jacqueline DeLevie

Exhibit A

[About UTC > Executive Leadership](#)**Curtis Reusser, President, UTC Aerospace Systems – Aircraft Systems**

Curtis Reusser became president of the Aircraft Systems business segment of UTC Aerospace Systems on July 26, 2012, reporting to Alain Bellemare, President & CEO of UTC Propulsion and Aerospace Systems. The Aircraft Systems business segment has seven business segments: Actuation Systems, Aerostructures, Air Management Systems, Interiors, Landing Gear, Propeller Systems and Wheels & Brakes.

Prior to this role, he was president of the Electronic Systems strategic business unit at the Goodrich Corporation. Reusser joined Goodrich in 1988 when it acquired TRAMCO, where he was manager of Engineering. He held roles of increasing responsibility in Goodrich's Maintenance, Repair and Overhaul (MRO) operations before being appointed general manager of Goodrich MRO Europe based in the UK. He returned to the U.S. as vice president and general manager, Product and Process Definition at the company's Aerostructures division in 1999.

He was appointed president of the Aerostructures division in 2002, and was named president, Electronic Systems in December 2007. Prior to joining Goodrich, Reusser worked in engineering roles at General Dynamics and Heath Tecna.

Reusser holds a bachelor's degree in industrial engineering degree from the University of Washington and a certificate in business management from the University of San Diego, California.

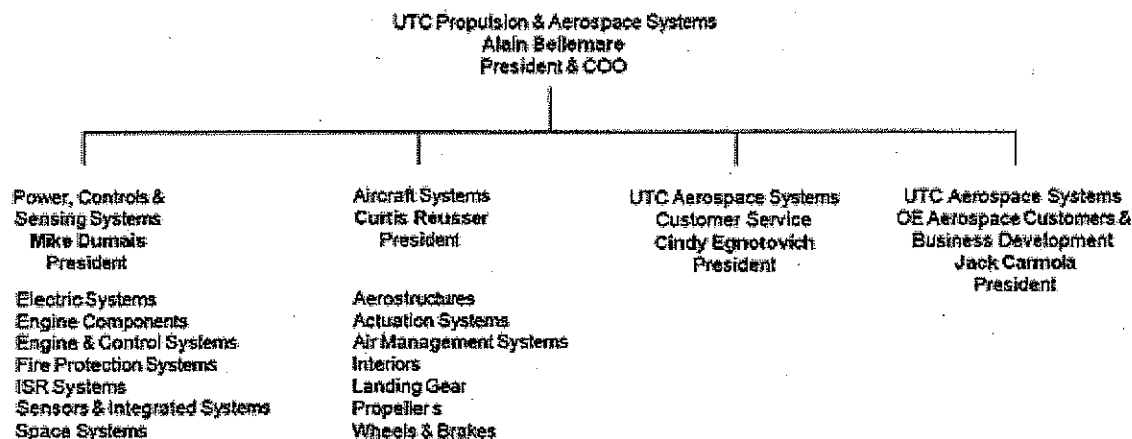
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Dear valued customer

I am pleased to announce that United Technologies Corp. has completed its acquisition of Goodrich Corp. and combined it with Hamilton Sundstrand to create UTC Aerospace Systems. We will provide innovative solutions, the highest-quality systems and services, and ensure everything we deliver is backed by global, world-class customer support. At the heart of our new organization is a deep commitment to putting customers first. Here is a high level view of our new organization.



UTC Aerospace Systems operates through two business segments: Aircraft Systems and Power, Controls & Sensing Systems. The Aircraft Systems segment is led by Curtis Reusser and the Power, Controls & Sensing Systems segment is led by Mike Dumais.

Customers in both segments are supported by a global, 24/7 Customer Service organization, led by Cindy Egnotovitch. Each segment will have a Customer Service leader with responsibility for overall performance and execution - Paul Snyder for Aircraft Systems and Jim Patrick for Power, Controls & Sensing Systems. Relationships with OE customers will be handled by an Aerospace Customers & Business Development team led by Jack Carmola.

As we transition to a combined organization, our goal is to provide world-class support and also ensure that our customers experience no disruption. With this in mind, you will not see any immediate change to your existing points of contact.

What does this mean to you?

Presently, the Customer Response Center will remain the focal point for all AOG and technical support inquiries for Hamilton Sundstrand products and services,

while the Goodrich 24-7 service will remain the focal point for AOG exchange and critical spares requirements for Goodrich products and services.

Customers should continue to use the myHS and Goodrich Customer Portal systems to search for parts and check order status.

Your current Goodrich and Hamilton Sundstrand customer support teams will be working with you throughout the transition to answer your questions.

We look forward to building upon our partnership with you and hope you share our enthusiasm about the company's exciting future. For more information we invite you to visit www.utcaerospacesystems.com

Thank you for your business and we look forward to continuing to offer you the best quality products and the highest level of service in our industry.

Sincerely,



Cindy Egnotovitch
President
Customer Service
UTC Aerospace Systems

Please rate this communication.

This email, including attachments, is private and confidential. If you have received this email in error please notify the sender and delete it from your system. Emails are not secure and may contain viruses. No liability can be accepted for viruses that might be transferred by this email or any attachment.

UTC Aerospace Systems
4 Coliseum Centre
2730 W. Tyvola Rd.
Charlotte, NC 28217

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Exhibit B

Business Inquiry

[HOME](#)[HELP](#)

Business Inquiry Details

Business Name:	GOODRICH PUMP & ENGINE CONTROL SYSTEMS, INC.	Business Id:	0782174
Business Address:	CHARTER OAK BOULEVARD, WEST HARTFORD, CT, 06110	Mailing Address:	C/O GOODRICH CORPORATION, 2730 WEST TYVOLA ROAD, CHARLOTTE, NC, 28217
Citizenship/State Inc:	Foreign/DE	Last Report Year:	2011
Business Type:	Stock	Business Status:	Active
Date Inc/Register:	Apr 22, 2004	Name in State of INC:	GOODRICH PUMP & ENGINE CONTROL SYSTEMS, INC.
Commence Business Date:	Apr 22, 2004		

Principals

Name/Title:	Business Address:	Residence Address:
KIM R. DELLINGER ASSISTANT SECRETARY	2730 W. TYVOLA ROAD, CHARLOTTE, NC, 28217	2730 W. TYVOLA RD., CHARLOTTE, NC, 28217
MICHAEL G. MCAULEY VICE PRESIDENT AND TREASURER	2730 W. TYVOLA RD., CHARLOTTE, NC, 28217	2730 W. TYVOLA RD., CHARLOTTE, NC, 28217
CURTIS C. REUSSER PRESIDENT	2730 W. TYVOLA RD., NONE, NONE, CHARLOTTE, NC, 28217	2730 W. TYVOLA RD., NONE, NONE, CHARLOTTE, NC, 28217

Business Summary

Agent Name: **C T CORPORATION SYSTEM**

Agent Business
Address: **ONE CORPORATE CENTER, HARTFORD, CT, 06103-3220**

Agent Residence
Address: **NONE**

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Joseph C. Jefferis (CPA- Inactive & CTP – Inactive)

648 Woods Road

Dayton, Ohio 45419

September 18, 2012

Maribeth Petrizzi

Chief, Litigation II Section

Anti Trust Division

US Department of Justice

450 East Fifth Street N.W., Suite 8700

Washington, D.C. 20530

RE: Public Interest: Case No. 1:12-CV-01230-RC United Technologies & Goodrich Corporation Merger

*Submission with appendices sent certified mail 9/18/12.
7011 1570 0000 6445 7426*

Please consider the facts and inside information presented in this comment letter as you evaluate the appropriateness of the merger between Goodrich Corporation and United Technologies Corporation. You and your colleagues have performed extensive work and must be congratulated for the efforts you have put into protecting the public thus far in the process. Hopefully, the information in this letter and the submissions of others will provide you with the information you need to protect the interests of USA citizens.

You may not have had access to all the current activities, inside information, immediate concerns, and risks which this newly combined global military industrial complex company creates. I have a unique "insider" perspective as a former Goodrich Corporation Risk and Control Specialist with Sarbanes-Oxley compliance responsibilities and as a citizen concerned who is active in the community and willing to take action when alerted. From my perspective this merger creates an issue of national security and presents potential troubles safeguarding the assets and intellectual property of the United States government. This letter will detail my actions over the past several years as I attempt to bring some disturbing facts into the disinfectant of USA daylight for evaluation. The information in this letter and its appendices may give you new information regarding the existence of certain disruptive technologies which may create additional new, immediate, and pressing anti-competitive circumstances.

Background and Details

Goodrich Corporation entered into a consent agreement with the US Department of State Bureau of Political-Military Affairs in March 2006 for violating International Traffic in Arms Regulations (ITAR). In June 2012 United Technologies pleaded guilty to crimes related to the export of software U.S.

Department of State Bureau of Political-Military Affairs says was used by China to develop China's first modern military attack helicopter. These two lapses in judgment related to national security issues

should be weighed in addition to the new information related to my experiences during my employment at Goodrich Corporation and the present circumstance. (Appendix Eleven and Twelve)

The two lapses in security and poor executive decision making events demonstrate risk and clear violations of public trust. What this letter will communicate and the purpose of this letter is to convey to you my grave concerns regarding national security which I believe this combined corporation creates. I will offer what may be new information to the Anti-Trust Division relevant to Large Engine Generator section of the DOJ complaint and share insight into new technology announced by the United States Department of Energy in April 2011. These two known and well documented lapses in judgment related to national security issues should be weighed in addition to the new information related to my insiders information experiences during my employment at Goodrich Corporation which you may not have been fully informed.

Goodrich Corporation employed me as a Risk and Compliance Specialist with Sarbanes-Oxley compliance responsibilities from September 2003 until June 2007. In August 2006 I filed for whistle bower protection status with the US Department of Labor. In response to the Goodrich Corporation State Department Consent Agreement, Marshall Larsen, CEO of Goodrich Corporation, put out a webcast which was mandatory for all Goodrich employees to watch. In that webcast Mr. Larsen asked employees to raise any concerns they may have regarding potential export compliance issues. Mr. Larsen assured employees that no retaliatory actions would be taken against employees willing to raise potential concerns with the internal export compliance reviewer positions that were being created throughout the company. My work experiences were awful from that point forward.

There was a specific transaction that had appearances of an export compliance issue or a potential violation of the Foreign Corrupt Practices Act. I brought my concerns to the attention of the export compliance manager, Mr. Dave Heffner, for the Troy, Ohio Goodrich facility soon after Mr. Larsen's webcast in March 2006. When I requested an update from Mr. Heffner six weeks later, he claimed to have no recollection of the January 2005 [REDACTED] wire transfer to [REDACTED] (Appendix One). The underlying invoice referenced a series of technical specifications which were being exported in addition to the cash wire transfer. I had no way to verify if the technical specifications were for controlled products or not. I resubmitted the paperwork and requested Mr. Heffner complete his review. This transaction may also have criminal Third Party Intermediary Foreign Corrupt Practices Act implications.

Upon the second submission to Mr. Dave Heffner my isolation, harassment, & discrimination started. By August 2006, I had little choice but to seek whistle bower protection from the US Department of Labor. The outcome of my whistle bower case was summarized in the book – *Whistle Blowers and the Law of*

Retaliatory Discharge (Appendix Two). Insider trading activities among senior Goodrich employees, the Goodrich investment club, was one of the items which I wanted investigated in addition to the specific export compliance issue/transaction. Based on the Administrative Law Judge's May 2008 dismissal, serious doubts linger as to whether the export compliance issue I raised was ever fully reviewed by the appropriate authorities - U.S. Department of State Bureau of Political-Military Affairs.

Another issue which I hoped that the US Department of Labor would investigate had to do with price-fixing, collusion, potential violations with Federal Acquisition Regulations with regard to a [REDACTED] dollar government contract in which Goodrich Corporation acted as a sub-contractor to [REDACTED] (Appendix Three).

Another issue I raised with the Department of Labor investigators had to do with a \$9.3 million dollar accounting irregularity associated with the same Goodrich location as the [REDACTED] dollar contract pricing issue. After my employment with Goodrich Corporation was terminated in June 2007, I reported details and specifics related to the \$9.3 million dollar accounting irregularity to the external auditors at Ernst & Young in addition to submitting a tip to the E&Y ethicpoint website. The outcome of the E&Y ethicpoint submission was very disappointing as Mr. Ron Hauben, E&Y Compliance Attorney, claimed a bogus "accountant-client privilege" (Appendix Four).

One final concern which you should be made aware is the claim I make against the Goodrich VP of Finance, Mr. Michael DeBolt. When my attorney was questioning Mr. Michael DeBolt during the discovery phase of my OSHA Sarbanes-Oxley Complain in April 2008 I allege that Mr. DeBolt clearly committed perjury by lying about my informing him about a series of dormant alternative fuel cell patents in response to what Mr. Michael DeBolt referred to as a "Community Action Alert". When I turned the patent list and information over to Mr. DeBolt, he insisted that I never speak of the exchange and made other suspicious declarations, directives, and instructions (Appendix Five) Appendix Five is the complete telephonic deposition of Michael W. DeBolt taking during Case No. 2007-SOX-0075 on April 10, 2008. (Insiders of Goordrich Corporation, CEO Marshall Larsen in particular, carried out a series of unplanned sales of Goodrich Common Staock soon thereafter).

As a concerned citizen, I wrote to Senator George Voinovich about my role in the Community Action Alert patent exchange. Senator Voinovich had the US Department of Energy review the patent list and in September 2006 I received startling information (Appendix Six). This information directly contradicted Mr. DeBolt's declarations, directives, and instructions which put me in a very difficult ethical and legal dilemma.

I wrote various scientific organizations around the nation offering the secretive prior art patent information for study and encouraging further study and development of the prior art patented technologies. The owner of the patents was deceased and the attorney or legal custodian working on the estate agreed to stop paying the annual patent renewal fees and let the patents fall into the public domain at my urging and request. Having the patents public domain opened the doors for the scientific community to study without fear of infringing on the intellectual property rights of others.

In April 2011 the US DOE issued a press release which announced a discovery and claims very similar to those contained on the patents I surrendered to Mr. DeBolt (**Appendix Seven**). It is my worry and concern that while employed at Goodrich Corporation I engaged in a form of corporate espionage and may have inadvertently aided enemies to the USA. The credibility of these scientific discoveries (or rediscoveries as the case may be) was recognized by the Journal of American Chemical Society in May 2011 (**Appendix Eight**).

United Technologies touts its leadership in catalysts and hydrogen fuel cells on its www.UTCPower.com website. United Technologies also brags about have a close relationship with the US Department of Energy on its website. My worry and concern is that dormant patent information I obtained during the secretive "Community Action Alert" scheme that Goodrich's Mr. Michael DeBolt engaged me in was given to United Technologies unbeknownst to Goodrich Corporation shareholders and the positive outcome of the scientific studies of the patent information I provided resulted in the favorable terms of the merger agreement. The existence of a "Community Action Alert" was subsequently validated by my local police department, City of Oakwood, Ohio.

JP Morgan Chase Bank, as Administrative Agent and J.P. Morgan Securities LLC, HSBC Securities (USA) Inc. and Merrill Lynch Pierce Fenner & Smith Incorporated as Joint Lead Arrangers and Joint Bookrunners along with Bank of America, HSBC Bank USA, Citibank, Deutsche Bank Securities Inc., BNP Paribas, Goldman Sachs Bank USA & the Royal Bank of Scotland PLC may have been misled when they approved the Bridge Credit Agreement on November 8, 2011 which put this merger into motion. These financial institutions may have been lead to believe that the combined corporation would retain the exclusive field of use license currently being negotiated and per Licensing Agent may conclude by the end of September 2012 (**Appendix Nine**)

The technology is disruptive and has been disruptive to my life. Denying my role via perjury should be unacceptable to the United States Department of Justice Anti-Trust Division authorities. I cannot stand by and let a monopoly be created around this technology. A monopoly may become irreversible and may deny the commercialization of this technology in favor of the status quo.

It is my worry and concern that a combined Goodrich Corporation and United Technologies poses significant risks to national security given their history of export compliance violations, the unresolved export compliance issues I raised, the corporate espionage I may have engaged in, the bizarre handling of my reporting accounting concerns to the external audit firm, the perjury of Mr. DeBolt, the secrecy surrounding the Community Action Alert patents, and now the "reinvention" using the prior art information.

Recent correspondence with the US Department of Energy's Technology Transfer Office is attached for your reference (**Appendix Ten**). You will note the timing of public comment period for this anti-trust plan's approval and the expiration of the existing field of use license happen concurrently. While I cannot prove who the existing field of use licensee is, I suspect it to be either Goodrich Corporation or United Technologies or an affiliate of one or the other or the financial institutions which support them.

Conclusion

My experiences as a whistle blower attempting to expose corrupt practices at Goodrich should give you and the Anti-Trust Department reason to postpone approval of the terms of this merger agreement until such time that a thorough and complete review of all the allegations of criminal behaviors is completed (~~Appendix Eleven, Appendix Twelve, & Appendix Thirteen~~)

I am in current communication with the US Department of Energy regarding the status of the innovative approach to hydrogen fuel manufacture and hydrogen fuel cells. Perhaps your office should contact the USDOE officials with whom I have been communicating to ascertain whether in fact, Goodrich Corporation or United Technologies are currently negotiating for control of the technology –to create a monopoly. Monopoly control of this new technology is not in the best interest of the United States. My fear is that the exclusivity may allow the technology to be shelved and never commercialized for the benefit of the USA citizens.

Marshall Larsen seems to be the center of all these issues. Marshall Larsen has gained financially as he coordinated a diabolical scheme for which the citizens of the USA are collective victims. Both companies have a well documented history of non-compliance with exporting technology to enemies of the USA.

It is not too late for the truth about all this to be made public. It is not too late for the Anti-Trust Division to perform a thorough examination of the facts and prosecute the wrong doers. It is not too late to protect the intelligence, assets, and intellectual property of many.

Sincerely,



Joseph C. Jefferis

CPA (Inactive)
CTP (Inactive)

APPENDIX ONE

**Aircraft Wheels & Brakes
Goodrich Corporation**101 Waco Street
PO Box 340
Troy, Ohio 45373

Request for Wire Transfer

Fax No. 937-440-3607
Phone No. 937-440-2125*Handwritten:*
T/A/1/18/05
Angie confirmed
wire was sent 1/24/05
phase 2:05 hoursDATE : 1/18/2005
TO: Angie Powell
FAX #: 704-423-7075COVER SHEET + 1 PAGE(S)
COMPANY: Goodrich-Cash Management

FROM: Jean Karnehm

Please issue a WIRE transfer for the following:

Value Date: _____
Rate: _____
USD: _____

Banking Information:

Beneficiary Bank

[Redacted]

Account Name:

[Redacted]

Acct No:

Swift Code:

Chaps Code

Intermediary Bank:

[Redacted]

Swift Code:

FedWire ABA #

Chips/ UID:

REMIT REFERENCE:

[Redacted]

[Redacted]

G/L Distribution:

TROY REFERENCE ONLY

G/L Account #

Amount USD

[Redacted]

[Redacted]

Originator's Signature Jean Karnehm Date 1-18-2005Approval Michael W. DeBolt Date 1-18-05Approval Jennifer Pollino Date 1/18/05

* Wires over \$25,000 require two signatures.

Handwritten:
5- 1/26
JEAN

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 2703
 CONNECTION TEL 917044237075
 SUBADDRESS
 CONNECTION ID
 ST. TIME 01/24 08:57
 USAGE T 00'17
 PGS. SENT 1
 RESULT OK

**Aircraft Wheels & Brakes
 Goodrich Corporation**

101 Waco Street
 PO Box 340
 Troy, Ohio 45373

Request for Wire Transfer

Fax No. 937-440-3607
 Phone No. 937-440-2125

DATE : 1/18/2005
 TO: Angie Powell

COVER SHEET + 1 PAGE(S)
 COMPANY: Goodrich-Cash Management

FAX #: 704-423-7075

FROM: Jean Karnehm

Please issue a WIRE transfer for the following:

Value Date: _____
 Rate: _____
 USD: _____

Banking Information:

Beneficiary Bank

[REDACTED]

Account Name:

[REDACTED]

Acct No:
 Swift Code:
 Chaps Code

[REDACTED]

Intermediary Bank:

[REDACTED]

Swift Code:
 FedWire ABA #
 Chips/ UID:

[REDACTED]

REMIT REFERENCE:

[REDACTED]

[REDACTED]

20130118

FROM REFERENCE ONLY

Pollino, Jennifer

From: Snyder, Paul
Sent: Tuesday, January 18, 2005 7:25 AM
To: Pollino, Jennifer
Cc: Stapp, Nancy; Brock, Chuck; DeBolt, Mike; Domagala, Tadry
Subject: [REDACTED]
Importance: High

Jennifer,

Please recall my e-mail from last week regarding making a progress payment to [REDACTED] to cover work accomplished to date in certifying our new wheels and brakes. I articulated to [REDACTED] last week our intention to make this payment and I request your approval for us to proceed with wiring them the funds outlined below.

If you have any questions or require further information --

Thanks,

Paul Snyder

-----Original Message-----

From: Stapp, Nancy
Sent: Monday, January 17, 2005 9:49 AM
To: Snyder, Paul
Cc: DeBolt, Mike
Subject: [REDACTED]
Importance: High

Paul,

I have not processed anything to [REDACTED] and will wait until you and Jennifer approve before sending anything on to Corporate cash.

Thanks,

Nancy

-----Original Message-----

From: Domagala, Tadry
Sent: Monday, January 17, 2005 7:52 AM
To: Stapp, Nancy
Cc: Snyder, Paul; Brock, Chuck
Subject: [REDACTED]
Importance: High

Nancy -

Here is the electronic wire transfer information for [REDACTED]. At this time we would like to pay them [REDACTED] USD (of the total \$1.5M) toward the [REDACTED] program certification. This amount covers the following milestones:

[REDACTED]	US\$	[REDACTED]
	US\$	[REDACTED]
	US\$	[REDACTED]
	US\$	[REDACTED]
	US\$	[REDACTED]
TOTAL	US\$	[REDACTED]

1

Mike -
 I need to
 discuss w/ you
 this AM. The go

OK to pay
 [Signature] 1/18/05

OK to pay
 Michael W. DeBolt 1/18/05
 Document / letter to [REDACTED] in
 advance of wire needs to remind
 them of our right to all actual expenses
 against them & if they are proven, they
 owe us a refund! Jennifer Pollino

1/18/05

Please advise when this payment will be made so that I can advise [REDACTED].

If you have any questions, please contact me.

Thanks
Tad

-----Original Message-----

From: [REDACTED]
Sent: Monday, January 17, 2005 4:27 AM
To: Domagala, Tadry
[REDACTED]

Tadry,

Pls find below the bank details. As soon as you have the confirmation of the wire transfer, pls let us know.

Best Regards
[REDACTED]

PAYMENT INSTRUCTIONS:

Beneficiary Name: Beneficiary Bank: Account Number: Swift code: Address:	[REDACTED]
Intermediary Bank: Swift code: FedWire ABA number: CHIPS/ UID: Address:	[REDACTED]

----- Forwarded by [REDACTED] on 14/01/2005 09:51

[REDACTED]

14/01/2005 09:47

[REDACTED]

I've tried to call you this morning but your line has been busy. Could you provide an update as soon as possible regarding:

- 1) Payment Information: We spoke on Wednesday and I need your wire transfer information so that we can make our certification payment. We are ready to proceed with this but need your information. Please advise.
- 2) [REDACTED] I have a Program Review this morning at 9:00 our time and I would like to be able to provide our senior management with a status. [REDACTED] was supposed to have received CTA approval in December but I can understand that the holidays probably slowed that effort down.
- 3) [REDACTED] We understand that this activity is supposed to take place in early January. Can you update?

Please advise at your earliest opportunity.

Thank You.

Tad

This message is intended solely for the use of its addressee and may contain privileged or confidential information. If you are not the addressee you should not distribute, copy or file this message. In this case, please notify the sender and destroy its contents immediately.

Esta mensagem é para uso exclusivo de seu destinatário e pode conter informações privilegiadas e confidenciais. Se você não é o destinatário não deve distribuir, copiar ou arquivar a mensagem. Neste caso, por favor, notifique o remetente da mesma e destrua imediatamente a mensagem.

Pollino, Jennifer

From: Domagala, Tadry
Sent: Tuesday, January 11, 2005 5:07 PM
To: Snyder, Paul; Brock, Chuck
Subject: [REDACTED]

Paul / Chuck,

Per our conversation, the [REDACTED] certification milestone payments that we have been agreed to with [REDACTED] are as follows:

[REDACTED]

[REDACTED]

Based on the current completion of these milestones, we are should pay the following::

[REDACTED]

GRAND TOTAL

[REDACTED]

If [REDACTED] has completed the [REDACTED] then this total will increase to [REDACTED]

I hope that this is helpful. If you have any additional questions, please contact me.

Regards,
Tad

10 JAN. 2005 18:12 P1

January 10, 2005.

DSU-001/2005

Mr. Paul Snyder
Vice President
Civil Aircraft Wheels & Brakes
Goodrich Corporation
101 Waco Street
Troy, OH

Subject: New Brake Development and Spare Parts Commercial Conditions

References: (1) Goodrich's letter dated November 12th, 2003 from Mr. Tadry Domagala to Mr. [REDACTED]
(2) Goodrich's letter dated November 16th, 2004 from Mr. Tadry Domagala to Mr. [REDACTED]

Dear Mr. Snyder,

It has been some time now that our two companies have been exhaustively discussing the development of new brakes for the [REDACTED] Platform, including the reimbursement by Goodrich of US\$ [REDACTED] to compensate the costs incurred by [REDACTED] as a result of such activity -- see reference (1) above.

More recently, Goodrich has requested [REDACTED] to also change the commercial conditions agreed in our contract D19-CPA/96 in order to reflect a reduction of 10% in the spare parts discount [REDACTED] has rights to use -- see reference (2) above.

The intent of this letter is to emphasize the previous position given to your company that this proposal is contradictory to [REDACTED] policy and would hurt both our business model as well as our image in front of our customers, with whom we are very proud of the relationship established. Therefore, we cannot accept your request. Any discussion related to our aftermarket business model must be held separately from the brake development and must be in line with the interests of both our companies.

It has always been [REDACTED] intention to close this issue in an expedited manner in order to not jeopardize the activities currently in place. However, the lack of agreement in the commercial discussions has brought significant risks to [REDACTED]. In order to avoid any jeopardy to the development schedule, it is imperative that Goodrich agrees to keep its commitments first outlined in reference (1) above, bringing this to a closure.

We are looking forward to receiving your acceptance to the above written before January 12th.

Best Regards,



Aircraft Wheels and Brakes
Goodrich Corporation
101 Waco Street
P.O. Box 340
Troy, OH 45373
Tel: 937 339 3811
www.aerospace.goodrich.com

November 12, 2003

[REDACTED]

Attention:

[REDACTED]

Subject:

[REDACTED]

Dear

[REDACTED]

We would like to thank you and the various [REDACTED] representatives for your participation in our teleconference last week regarding the [REDACTED] brake life improvement program. We would like to summarize the commitment Goodrich made during the call, along with what we need from [REDACTED] to ensure program success.

Goodrich fully evaluated [REDACTED] brake life improvement options and is recommending we introduce both an improved main wheel and brake. While this option is more costly to Goodrich, it provides the best long term solution to satisfying our mutual airline customers by providing the most competitive carbon brake operating cost possible. As defined in the revised technical specification, the improved [REDACTED] main wheel and brake will attain a 1,750 LPO minimum fleet average brake life.

Goodrich commits to the following:

- Payment of [REDACTED] USD to [REDACTED] for all aircraft certification activities related to the [REDACTED] product improvement programs. This includes but is not limited to all labor and travel costs, drawing revisions, on aircraft flight tests, documentation revisions, analysis, and airworthiness approvals required to demonstrate compatibility with all aircraft systems, intermix-ability of carbon materials, and interchangeability of the new main wheels and existing brakes.
- Enter into discussions to reach a mutually agreed resolution if the new main wheel and brake are not compatible with any aircraft system (ie. BCS and BTMS).

Goodrich Proprietary

Page 2

November 12, 2003

- Mutually agreed quantity of free of charge hardware for flight test activities.

commits to the following:

- certification costs to Goodrich will not exceed
- Establish a not to exceed flight test certification schedule. If the schedule is not met, the certification payment will be subject to pro-rated reductions.
- Provide updated technical requirements for the wheels and brakes to determine new equipment impact and feasibility

Goodrich's request for

is intended to minimize logistic concerns during the fleet retrofit programs. Per our discussions, we will leave the method for certification up to In other words, we are agreeable to certifying this through performance analysis rather than testing, but if aircraft testing is required then we expect will conduct any testing required.

In recent months we have renegotiated the service contracts with many of the operators. These new contracts include agreements with adjustable CPBL programs that will decrease the operator cost automatically as their LPO increases. Operators with fixed overhaul or Single Unit Price (SUP) agreements will see an immediate decrease in their operating costs which are merely the result of the overhaul cost divided by the LPO. Our investment to date in the program is substantial and the additional investment in the improvement programs is fully focused on meeting customer brake operating cost expectations and maintaining market share. At this point, we cannot make a firm commitment to regarding how each operator agreement for the new main wheel and brake will be structured because we must ensure maximum flexibility to meet individual operator requirements and expectations. Please keep in mind that we are partners with program and are fully committed to satisfying all customer expectations when the improved main wheel and brake products enters service.

During our discussions, we touched on the program briefly. We would like to offer a solution at this time that includes the program, but do not have a complete understanding of the impact to brake life if we design our hardware to meet the program performance requirements. We recommend this decision is deferred until completion of engineering assessment.

[REDACTED]
Page 3

November 12, 2003

Finally, it is our intention to incorporate all [REDACTED] items into the 4th Amendment to our agreement. The draft of this document was recently received by Goodrich and is under review.

We appreciate the opportunity to further enhance our partnership in the [REDACTED] and look forward to a quick agreement regarding the direction of the [REDACTED] brake life improvement program. If you have any questions regarding the content of this letter, please do not hesitate to contact us.

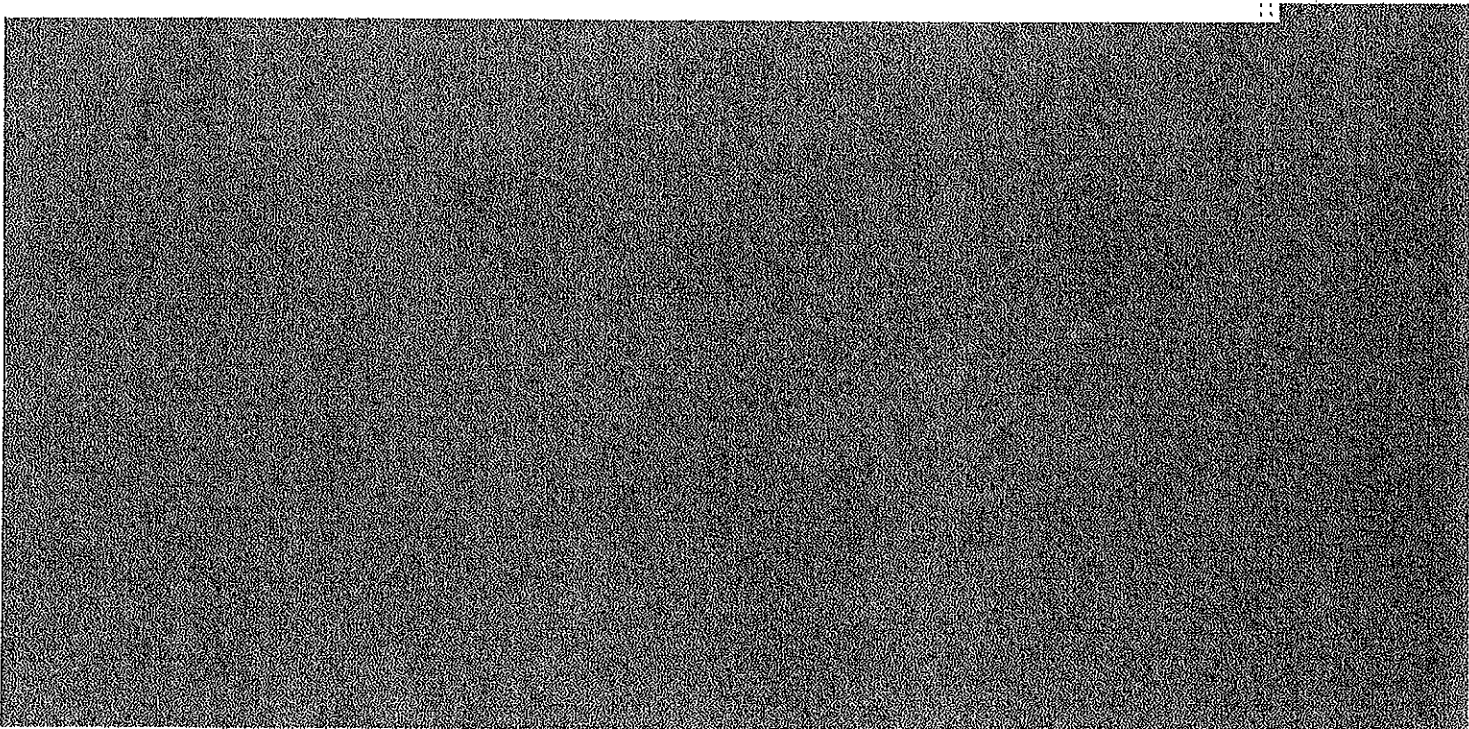
Sincerely,

Tadry A. Domagala Jr.

Tadry A. Domagala Jr.
Account Manager

Cc: [REDACTED]

GR: T. Dumbauld, C. Brock, R. Gibbs, S. McCrillis, M. Homan, [REDACTED]



Invoice # : 00173328

Order type:

Packing List #:

Date: JAN.28.2005

Page: 1/ 2

Bill to 501090

BFGOODRICH WHEELS AND BRAKES

AEROSAPACE AIRCRAFT

101 Waci Street

Troy - OH

45373 - USA

Shipping Instructions:

Payment Terms : Collect on Delivery (C.O.D)

Currency: USD

Part Number Description / Comments	Country of Origin	Stock Type	Unit	Qty Shipped	Unit Price	Extended Price
<p>Customer P.O.: 01/2005</p> <p>SERVICE DESCRIPTION RENDERED SERVICE REFERRING TO Non Recurring Costs related to the development and qualification of new wheels and brakes for the [REDACTED] and [REDACTED], including, but not limited to, engineering, revision of drawings, flight tests, revision of catalogs and manuals, certification analysis, travels</p> <p>[REDACTED]</p>			EA	1	[REDACTED]	[REDACTED]
PAID						
<p>Net weight: KG Gross weight: KG</p> <p>[REDACTED]</p>					<p>Sub Total</p> <p>Freight</p> <p>Insurance</p> <p>TAX</p>	[REDACTED]
					Grand Total	[REDACTED]

APPENDIX TWO



WHISTLEBLOWING

The Law of Retaliatory Discharge

Second Edition

2008 Cumulative Supplement

(current through July 15, 2008)

Daniel P. Westman
Nancy M. Modesitt

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The Bureau of National Affairs, Inc.
Arlington, VA

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condition of the company was not misrepresented because the cash inflows were reflected elsewhere. Because the objective element of the reasonable belief test may be decided as a matter of law, the ALJ was found to have erred in its interpretation of the objective belief element. Accordingly, the ARB dismissed the complaint on appeal, a result that was affirmed by the Fourth Circuit.

An employee may not speculate about future violations, but rather must provide information about a violation he reasonably believes is occurring in the present, or has occurred in the past. In *Livingston v. Wyeth*,¹³³ an employee expressed concern about possible misrepresentations to the FDA. The employee's concerns rested on various assumptions and the occurrence of a number of events in the future, such as the assumption that a new system would not be implemented by a specified date, that the company would fail to develop a plan to cover any compliance gaps, and that the company would misrepresent or conceal the true status of the program. The Fourth Circuit reasoned that "the statute requires [the complainant] to have held a reasonable belief" that a violation "has happened" or is "in progress."¹³⁴ The court affirmed summary judgment for the employer because a reasonable belief premised on speculative future contingencies is not sufficient to qualify an employee's conduct as protected activity.¹³⁵

Similarly, the ARB has noted that "the [Act] does not require that an employee provide information about an actual violation of Section 1341 to be protected. Rather, the employee only has to show that he reasonably believed that there was a violation."¹³⁶ "Speculation or a mere possibility that shareholders would be defrauded... does not satisfy the reasonable belief requirement."¹³⁷ Even if the complainant's speculative violation does in fact occur, this "does not retroactively" protect the complainant's activity.¹³⁸

Insider trading can form the basis for a reasonable belief about a violation of the enumerated categories of protected activity. In *Jeffers v. Goodrich Corp.*,¹³⁹ the complainant wrote a letter to the com-

¹³³520 F.3d 344, 353-54 (4th Cir. 2008).

¹³⁴*Id.* at 352.

¹³⁵*Id.*

¹³⁶*Nixon v. Stewart & Stevenson Servs., Inc.*, ARB No. 05-066 (ARB Sept. 28, 2007).

¹³⁷*Reed v. MCI, Inc.*, ARB No. 06-126, at 5 (ARB Apr. 30, 2008); *see also* *Joy v. Robbins & Meyers, Inc.*, 2007-SOX-74, at 8 (ALJ Jan. 30 2008) (a complainant's belief about possible violations of federal export laws due to lack of an export compliance program was not a reasonable belief).

¹³⁸ARB No. 05-066, at 11 (ARB Sept. 28, 2007).

¹³⁹2007-SOX-75 (ALJ May 09, 2008).

CH. 6.I.A.2.a.

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of law, the ALJ
objective belief
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violations, but
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concerns rested
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CH. 6.I.A.2.a.

THE SARBANES-OXLEY PROVISIONS

101

pany's ethics officer documenting three incidents suggesting that two corporate officers who signed quarterly letters were engaging in insider trading. In the first incident, one corporate officer told the complainant that he had been able to make money by trading in the company's stock. Later, the complainant overheard that same corporate officer discussing trading company stock with another employee. Finally, a different corporate officer told the complainant that he had been able to achieve ten percent returns by buying and selling company stock at the right times. The ALJ found that the complainant engaged in protected activity because he provided sufficient evidence that he reasonably believed that insider trading violations had occurred at the company.¹⁴⁰

The reasonableness of a complainant's belief may be validated by his employer's response to the whistleblowing. In *Johnson v. Stein Mart, Inc.*,¹⁴¹ the complainant protested against his employer's practice of collecting markdown allowances from vendors and its method of accounting for inventory, both of which could cause inaccuracies on financial statements. The company investigated the employee's complaints but found no wrongdoing. The court found that the employer's decision to launch an internal investigation demonstrated that the employee's beliefs were reasonable. Thus, the court concluded that the employee engaged in protected activity.¹⁴²

An employee who has an objectively reasonable belief is not required to eliminate all other possible non-fraudulent explanations for possible fraud stemming from non-disclosure of information. In *Van Asdale v. International Game Technology*,¹⁴³ an attorney for the company believed that non-disclosure of critical information in a merger could be fraud against the company's shareholders. The company argued that the plaintiff "could not, as a matter of law, have an objectively reasonable belief unless they ruled out other non-fraudulent explanations for the non-disclosure."¹⁴⁴ The court rejected this theory, stating that neither the statute nor case law imposes such a requirement.¹⁴⁵

The Fifth Circuit has also noted that "an employee's reasonable but mistaken belief that an employer engaged in conduct that

5 (ARB Sept. 28,

8); see also *Joy v.*
complainant's belief
rt compliance pro-

¹⁴⁰*Id.* at 9.

¹⁴¹2007 U.S. Dist. LEXIS 44579 (M.D. Fla. June 20, 2007).

¹⁴²*Id.* at *4.

¹⁴³498 F. Supp. 2d 1321, 1330-31 (D. Nev. 2007).

¹⁴⁴*Id.* at 1333.

¹⁴⁵*Id.*

Windows Live Hotmail Print Message

Page 1 of 1

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From: **Timothy Darby** (TDarby@bna.com)

Sent: Tue 9/08/09 1:56 PM

To: joejefferis@hotmail.com

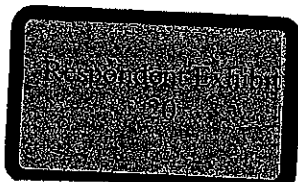
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email: tdarby@bna.com

APPENDIX THREE

5/15/06 IAD REPORT ON HTC LIMITED HEALTH CHECK



GOOD/ALJ000148


GOODRICH

Internal Audit Department
AUDIT REPORT #408
GOODRICH RESTRICTED

Overall Summary			
Material	Significant	Minor	Compliance
			1

May 15, 2006

Ms. Julie Tran, Controller
High Temperature Composites
Carbon Operations
Wheel & Brake Systems Division
11120 South Norwalk Boulevard
Santa Fe Springs, CA 90670

Re: Limited Government Compliance Health Check of High Temperature Composites (HTC)
- Santa Fe Springs, CA

Dear Ms. Tran:

PURPOSE

In support of the Internal Audit Department's (IAD) government contract compliance program, a Limited Health Check was performed from February 13 through February 15, 2006, at the HTC facility in Santa Fe Springs, CA. The Government Compliance Health Check is a general review and assessment of applicable systems designed to ascertain whether the related internal controls are adequate to reasonably ensure compliance with U.S. Government procurement laws and regulations. Mr. Arlin Tueller of Deloitte & Touche, LLP, Government Contracting Services performed the review.

BACKGROUND

HTC was developed as a separate profit and loss center residing within the Wheel and Brakes' Santa Fe Springs, CA business unit. HTC designs and manufactures specialty carbon and ceramic composites for high temperature and friction applications for key military and commercial customers. The operation in Santa Fe Springs was acquired by Goodrich in 1978.

SCOPE

In line with a risk assessment performed as a requirement of the Sarbanes-Oxley Act and as prescribed by the COSO Internal Controls Framework relative to compliance with laws and regulations, the scope of the audit included testing of selected accounts, interviews with management responsible for the various business systems, reconciliations, analyses, and other

GOOD/ALJ000149

documentation supporting HTC's compliance with Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), Cost Accounting Standards (CAS) and other applicable public laws and regulations.

The Health Check review employs a topical approach using internal control questionnaires supplemented by interviews with key personnel and limited testing. The areas covered in our evaluation included limited assessment of key aspects of the following:

- (A) General Business Overview and Self-Governance Policies
- (B) Cost Accounting Systems
- (C) Pricing and Estimating System
- (D) Compliance with Certifications

Our procedures were performed at the Santa Fe Springs, CA facility.

RESULTS

Our findings have been categorized based on the completion of our SOX 404 deficiency evaluation form (DEF). For purposes of complying with SOX 404 reporting and disclosure requirements, all assessments are preliminary until reviewed with Goodrich's Deficiency Evaluation Committee and Disclosure Review Committee.

DEFINITIONS:

I. FINANCIAL REPORTING:

Section 1 – Potential Material Weakness. Likelihood of occurrence is greater than remote (>5% to 10%) and materiality could equal or exceed \$10 million.

Section 2 – Potential Significant Deficiency. Likelihood of occurrence is greater than remote (>5% to 10%) and materiality could equal or exceed \$2 million. If an IT general controls deficiency, 1) the deficiency is pervasive through-out the process and is not adequately mitigated or 2) the number of deficient application controls potentially impacted is significant or 3) there has been a history of misstatements related to the applications affected by the IT deficiency.

Section 3A – Minor Control Deficiency. Likelihood of occurrence is remote (<5% to 10%) and/or materiality is less than \$2 million. If an IT general control deficiency, the deficiency does not affect the entire process and/or is not related to any significant application controls that were also found to be deficient. Based on the nature of the finding, its significance to the division and/or the potential for aggregation with similar deficiencies at other Goodrich locations, this finding must be remediated within three (3) months or October 31st, whichever is earlier.

Section 3B – Minor Control Deficiency. Likelihood of occurrence is remote (<5% to 10%) and/or materiality is less than \$2 million. Based on the nature of the finding (e.g. documentation only or compensating and/or complimentary controls exist), this finding must be remediated within six (6) months or year-end, whichever is earlier.

II. COMPLIANCE:

These items have an effect on a business unit's compliance with applicable laws and regulations but do not have a direct impact on the company's financial reporting responsibilities under the Sarbanes Oxley Act of 2002. Compliance matters that could have an impact on the company's financial reporting would be contained under the heading above and would be noted with a "GOV" indicia. Based on the nature of the finding (e.g. documentation only or compensating and/or complimentary controls exist), this finding must be remediated within six (6) months or year-end, whichever is earlier.

Space Flight Systems	Significant	Minor A	Minor B	Compliance
General Business Overview and Self-Governance Policies				-
Cost Accounting Systems				-
Pricing and Estimating System				-
Compliance with Certifications				1
Totals				1

DISCUSSIONS

This report was reviewed with you, Paul Walsh, and Jim Tallon on April 19, 2006. Please provide the Internal Audit Department with a written corrective action plan regarding the issues noted above by June 15, 2006. This information is to be submitted using Team Central located at <http://nhc0ap02/teamcentral>. Instructions for Team Central use can be found at <http://orsharepoint/audit/compliance>. Your corrective action plan should note the action to be performed, the responsible party and date of completion.

If you have any questions regarding any of the above, please do not hesitate to contact me by telephone at (704) 423-3463 or by e-mail at michael.laney@goodrich.com.

Respectfully submitted,

M.G. Laney, CIA, CISA, CFE

CC: Marshall Larsen (e-mail)
Jack Carmola (e-mail)
Scott Kuechle (e-mail)
Brian Brandewie (e-mail)
Mike McAuley (e-mail)
Mike Debolt (e-mail)
Paul Walsh (e-mail)

Page 3

CONFIDENTIAL

GOOD/ALJ000151

→ Jim Tallon (e-mail)
Joe Jefferis (e-mail)
Scott Cottrill (e-mail)
Toni Drda (e-mail)
Shelley Schiff (e-mail)
Ernst & Young (e-mail)

} List of
insiders continued
Jef/1/12

I. FINANCIAL REPORTING:

Section 1: Potential Major Deficiencies (Must be Remediated Within 3 Months or October 31st)

None

Section 2: Potential Significant Deficiencies (Must be Remediated Within 3 Months or October 31st)

None

Section 3A: Minor Control Deficiencies (Must be Remediated Within 3 Months or October 31st)

None

Section 3B: Minor Control Deficiencies (Must be Remediated Within 6 Months or year end)

None

II. COMPLIANCE:

Compliance: Minor Control Deficiencies (Must be Remediated Within 6 Months or year end)

Compliance with Certifications

Operating Deficiency	<p>Currently, HTC is performing a government-related subcontract for [REDACTED]. The subcontract, which was awarded in 2002, is firm-fixed-price and has an approximate contract value of [REDACTED]. It is understood that HTC claimed a commercial item exemption from Truth in Negotiation Act (TINA) cost or pricing data submission requirements based on FAR 15.403-1(b)(3) and made such representations to [REDACTED] during initial pricing; however, to date, the contract price has not been definitized with [REDACTED] due to [REDACTED] disagreement on the applicability of this exemption. Mr. Tueller was informed that consistent with the commercial item exemption, no certificate of cost or pricing data was submitted to [REDACTED] however, FAR 52.215-10, Price</p>

Reduction for Defective Cost or Pricing Data clause is included in the subcontract. [REDACTED] requested additional documentation to support commercial item status. A definitization proposal and accompanying presentation to support the commercial item status was prepared with the assistance of Mr. David White, a Goodrich retiree who had been instrumental in establishing commercial pricing for all AWB military brake programs. Starting in September 2002, a series of reviews on the issue was held with [REDACTED] the last of which was held on 1/12/05. [REDACTED] and HTC have not directly discussed this issue since this date.

We understand that HTC has delivered product to [REDACTED] and has received payment based on the subcontract prices invoiced over a four year period. HTC has requested at least two price increases over the contract term due to [REDACTED] changed requirements and [REDACTED] has accordingly adjusted the contract price. We further understand that this subcontract is due to expire in November 2006, and it is anticipated that a bid for three more years of production is expected to be proposed by HTC.

Due to the undefinitized price of the HTC subcontract with [REDACTED] there could be some potential financial risk. Whether [REDACTED] would have a contractual basis under the circumstances to request cost or pricing data appears to be a legal matter.

Recommendation

The following recommendations are offered:

- 1) Regarding the subcontract with [REDACTED] it is recommended that (i) management consult with their division counsel on the potential risks associated with the undefinitized subcontract; (ii) assemble all relevant documentation on the subcontract including the terms and conditions, correspondence, and HTC pricing representations to further document the basis for a commerciality pricing exemption; (iii) re-assess the basis to claim a commercial exemption, if applicable, on the anticipated new bid opportunity in November 2006.
- 2) Augment HTC policies and procedures to clarify the application of the commercial pricing TINA exemption, identify roles and responsibilities for approving the exemption, and identify necessary documentation to support the exemption for inclusion in specified proposal and/or contract folders.
- 3) Continue to monitor HTC's practices for application of commerciality exemptions applicable to both TINA and CAS, and monitor the contract management process to assess timely price definitization on government contracts and subcontracts.

Remediation Plan	http://nhc0ap02/teamcentral
------------------	---

APPENDIX FOUR

Thank you for your e-mail and the attached materials -- which we will consider, and take such actions as are appropriate and consistent with our role as independent auditors of Goodrich Corporation.

Ronald B. Hauben

Associate General Counsel
Ernst & Young LLP
5 Times Square
New York, New York 10036-6530
ron.hauben@ey.com

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Goodrich Matter

From: **Ron.Hauben@ey.com**
Sent: Tue 10/09/07 3:59 PM
To: JOE JEFFERIS (joejefferis@hotmail.com)

Mr. Jefferis -

Thank you for your call this morning.

Given our professional obligations of confidentiality as independent auditors, I am not at liberty to disclose to you the outcome of our investigation into the matters you raised. However, please be assured that your concerns have at this point been thoroughly evaluated both by Goodrich Corporation and by Ernst & Young.

As such, we have closed our file relating to your submission to the Ernst & Young EthicsPoint website.

Thank you for bringing these matters to our attention.

Ronald B. Hauben

Associate General Counsel
Ernst & Young LLP
ron.hauben@ey.com

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Your E-mail of August 17, 2012

From: **Ron.Hauben@ey.com**
Sent: Fri 8/24/12 10:34 AM
To: JOE JEFFERIS (joejefferis@hotmail.com)

Mr. Jefferis -

I am writing to acknowledge receipt of your e-mail of August 17, 2012 entitled "E&Y - National Security Scandal".

Please be advised that, as publicly reported, on July 26, 2012, Goodrich Corporation completed its previously announced merger with United Technologies Corporation. I understand that, with the completion of the merger, Ernst & Young LLP no longer serves as independent auditors of Goodrich Corporation; PricewaterhouseCoopers LLP serves as independent auditors of the successor entity.

Thank you for contacting us.



Ronald B. Hauben | Deputy General Counsel

Ernst & Young LLP

5 Times Square, New York, NY 10036-6530, USA

Office: 212 773 2379 | Fax: 866 840 0487 | Cell: 914 263 9198

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primary purpose is to advertise or promote a commercial product or service. You may choose not to receive advertising and promotional messages from Ernst & Young LLP (except for Ernst & Young Online and the ey.com website, which track e-mail preferences through a separate process) at this e-mail address by forwarding this message to no-more-mail@ey.com. If you do so, the sender of this message will be notified promptly. Our principal postal address is 5 Times Square, New York, NY 10036. Thank you. Ernst & Young LLP

APPENDIX FIVE

Appendix Five

UNITED STATES DEPARTMENT OF LABOR

-----X
In the Matter of:) Case No. 2007-SOX-0075
)
JOSEPH C. JEFFERIS,)
)
Complainant,)
)
v.)
)
GOODRICH CORPORATION,)
)
Respondent.)
-----X

 ORIGINAL

TELEPHONIC DEPOSITION OF MICHAEL W. DEBOLT
(Taken by the Complainant)
Charlotte, North Carolina
April 10, 2008

Reported by: Dayna H. Lowe
Court Reporter
Notary Public

Joseph C. Jefferis v. Goodrich Corporation
Michael W. DeBolt

2007-SOX-0075
April 10, 2008

Page 1

UNITED STATES DEPARTMENT OF LABOR

-----X
In the Matter of:) Case No. 2007-SOX-0075
)
JOSEPH C. JEFFERIS,)
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v.)
)
GOODRICH CORPORATION,)
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Respondent.)
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Joseph C. Jefferis v. Goodrich Corporation
Michael W. DeBolt

2007-SOX-0075
April 10, 2008

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A P P E A R A N C E S

For the Complainant:

JASON P. MATTHEWS, Esq. (Via Telephone)
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27 South Edwin C. Moses Boulevard, Suite 2-C
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(937) 228-3731
E-mail: jason@silversteinlaw.com

For the Respondent:

LORI ZANCOURIDES, Esq. (Via Telephone)
Squire, Sanders & Dempsey LLP
41 South High Street
Columbus, Ohio 43215
(614) 365-2700
E-mail: lzancourides@ssd.com

Also Present:

Pamela G. Parsons, Esq.
Senior Counsel
Goodrich Corporation

Telephonic deposition of MICHAEL W. DEBOLT,
taken by the Complainant, at Goodrich Corporation, Four
Coliseum Centre, 2730 West Tyvola Road, Charlotte, North
Carolina, on the 10th day of April, 2008, at 10:05 a.m.,
before Dayna H. Lowe, Court Reporter and Notary Public.

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Michael W. DeBolt

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P R O C E E D I N G S

Whereupon,

MICHAEL W. DEBOLT,

having been duly sworn,

was examined and testified as follows:

EXAMINATION BY COUNSEL FOR COMPLAINANT

BY MR. MATTHEWS:

Q. Good morning, Mr. DeBolt. My name is Jason Matthews, and I'm an attorney who represents Joe Jefferis in a matter before the U.S. Department of Labor.

Could you please state and spell your name for the record?

A. Michael W, middle initial, DeBolt,
M-I-C-H-A-E-L --

MS. ZANCOURIDES: I'm sorry. I'm going to ask Mike can you get closer to the phone?

(Off-the-record discussion.)

MS. PARSONS: You were spelling your name.

A. Yes. M-I-C-H-A-E-L, middle initial W, last name D-E, capital B, O-L-T.

BY MR. MATTHEWS:

Q. Okay. And, Mr. DeBolt, other than Ms. Parsons and the court reporter, is anybody else in the room with you?

A. No.

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1 Q. Have you ever had your deposition taken before?

2 A. No.

3 Q. Just a couple of ground rules which will make
4 things go a little bit more smoothly. First of all, it's
5 extremely important to provide an oral response to my
6 questions. Especially since we're doing this over the
7 phone, things such as head nods or head shakes -- first
8 of all, they don't translate very well to the record and,
9 second, I really don't have any idea whether or not
10 you're responding to my question.

11 The second -- the second thing is if you could
12 try to give a response to my question in the form of a
13 yes or a no as opposed to uh-huh or huh-uh, again because
14 they don't translate well on the record and they can make
15 a response unclear as the court reporter takes down the
16 response.

17 Are you okay with that?

18 A. Yes.

19 Q. Okay. Can you think of any reason why you
20 cannot answer my questions truthfully and accurately
21 today?

22 A. No.

23 Q. Okay. And I am going to be asking you some
24 questions regarding some events which took place in 2004,
25 2005, 2006. I understand that you might not have a

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Michael W. DeBolt

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1 crystal clear memory of everything that was said or
2 everything that was heard, but if you could provide the
3 best answer to your recollection in response to my
4 questions. Can you do that for me today?

5 A. Yes.

6 Q. Okay. Are you currently employed?

7 A. Yes.

8 Q. And by whom are you employed?

9 A. Goodrich Corporation.

10 Q. How long have you been employed by Goodrich?

11 A. Over five years.

12 Q. Did you begin your employment sometime in 2002?

13 A. No.

14 Q. Okay. When did you begin your employment, if
15 you know?

16 A. January 2003 with Goodrich.

17 Q. Do you know if Joe Jefferis was employed by the
18 company when you started with Goodrich?

19 A. Can you repeat that, please?

20 Q. Yes. Do you know if Joe Jefferis was employed
21 by the company when you began your employment there?

22 A. No, he was not.

23 Q. And what position were you hired into in
24 January of 2003?

25 A. Vice president of Goodrich Corporation's wheels

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Michael W. DeBolt

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1 and brakes business unit.

2 Q. And where was the physical location of your
3 office at that time?

4 A. Troy, Ohio.

5 Q. What is your current position with Goodrich?

6 A. Vice president of the actuation and landing
7 systems segment for Goodrich Corporation.

8 Q. And currently where is your position based out
9 of? The geographic location.

10 A. Charlotte, North Carolina.

11 Q. How long did you hold the position of vice
12 president of wheels and brakes business unit?

13 A. Almost five years.

14 Q. And was your next position with the company
15 your current position?

16 A. Yes.

17 Q. Okay. And during the time that you served as
18 vice president of the wheels and brakes business unit
19 were you based in Troy, Ohio that entire time period?

20 A. Yes.

21 Q. Did you have any input in the decision to hire
22 Joe Jefferis for employment with Goodrich?

23 A. Yes.

24 Q. And do you recall the first position that
25 Mr. Jefferis held with the company?

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1 A. Yes.

2 Q. What was that position?

3 A. I'm not sure of the title but I know the
4 responsibilities.

5 Q. Okay.

6 A. It was with the wheels and brakes services
7 business based in Troy, Ohio, and I believe his
8 responsibilities were in managing our payroll, payables,
9 and some general accounting responsibilities for that
10 portion of the wheels and brakes business unit.

11 Q. Did Mr. Jefferis receive any promotions during
12 the course of his employment with Goodrich?

13 A. No.

14 Q. Did he receive any position changes or were
15 there any changes in his job title or position?

16 A. Yes.

17 Q. And what other positions, to your knowledge,
18 did he hold with Goodrich?

19 A. The other position that he had
20 responsibility -- or the responsibilities he had
21 following the services organization was a result of a
22 reorganization of the services in the OE wheels and
23 brakes business unit, so the finance organization was
24 consolidated. He was responsible for our payables,
25 payroll activities for the business unit, primarily North

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1 America activities.

2 And then the next position would have been his
3 last position he had, the risk and control specialist
4 responsibilities. Those are the three I guess areas
5 of --

6 MS. ZANCOURIDES: Mike, I'm going to ask you to
7 speak up again.

8 A. Those are the three areas of responsibilities
9 he had at the wheels and brakes position.

10 BY MR. MATTHEWS:

11 Q. Okay. And do you recall when Mr. Jefferis
12 received the position of risk and control specialist?

13 A. Yes. It was July 2006, plus or minus a few
14 weeks.

15 Q. And were you involved in the decision to place
16 Mr. Jefferis in that position?

17 A. Yes.

18 Q. Did you consider Mr. Jefferis to be a good fit
19 for that position?

20 A. Yes.

21 Q. Okay. And why did you consider him to be a
22 good fit for the risk and control specialist position?

23 A. He had demonstrated an aptitude for that type
24 activity in previous events.

25 Q. Could you be more specific, if possible, as far

Joseph C. Jefferis v. Goodrich Corporation
Michael W. DeBolt

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1 as what you mean by demonstrated an aptitude for that
2 type of activity in previous events?

3 A. Mr. Jefferis was involved in Sarbanes Oxley
4 activity for the Goodrich Corporation's wheels and brakes
5 business unit and he had assisted not only the Troy
6 location but also our carbon locations in their
7 development of documentation, testing activities, as well
8 as participated in some other special assignments in the
9 area of risk and control type testing activities. As a
10 result of those experiences it seemed to be a good fit.

11 Q. Okay. There's -- there are some documents
12 which the court reporter has in front of her, and the
13 first set of documents is -- there's a large number one
14 down in the right-hand corner, and it's a five-page
15 document with the Goodrich logo at the top. Could you
16 please take a look at that document, Mr. DeBolt?

17 A. Okay.

18 Q. Have you ever seen this document before?

19 MS. ZANCOURIDES: And the witness can go ahead
20 and review this entire document.

21 A. That's what I'm doing. It looks like a
22 position profile for the risk and control specialist at
23 wheels and brakes position.

24 BY MR. MATTHEWS:

25 Q. Okay. And is this a document that's regularly

Joseph C. Jefferis v. Goodrich Corporation
Michael W. DeBolt

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1 maintained in the course of business by Goodrich
2 Corporation?

3 A. A document like this, yes. I don't know if
4 it's the document but --

5 Q. Okay. If I could direct your attention to near
6 the top of the document. It states position purpose,
7 slash, objective, and then down below that there's a box,
8 and inside that box it states ensure that the SBU fully
9 complies with Sarbanes Oxley and Goodrich reporting
10 requirements through the identification of financial
11 risk, and it continues.

12 Is that an accurate description as to the
13 purpose or the objective OF Mr. Jefferis's position as
14 risk and control specialist?

15 MS. ZANCOURIDES: Jason, just to be clear, are
16 you asking if the box itself and all of the words in it
17 or just the portion you quoted is a clear description?

18 MR. MATTHEWS: The portion that I quoted.

19 MS. ZANCOURIDES: Okay. Well you didn't read
20 the entire thing so I'm going to object.

21 MR. MATTHEWS: Okay... You can object.

22 BY MR. MATTHEWS:

23 Q. Mr. DeBolt, could you please answer the
24 question?

25 A. Repeat your question, please.

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1 Q. Okay. Actually let me just simplify the
2 question. Do you see the box I'm referring to and that I
3 had read earlier some of the language from?

4 A. Yes.

5 Q. Do the words inside that box, all of those
6 words, do those accurately reflect the purpose or the
7 objective of Mr. Jefferis's position as risk and control
8 specialist?

9 MS. ZANCOURIDES: And, Jason, just to be clear,
10 now you are referring to the entire language that's
11 contained within the box?

12 MR. MATTHEWS: Yes. That's correct.

13 MS. ZANCOURIDES: Okay.

14 A. Yes.

15 BY MR. MATTHEWS:

16 Q. Okay. Now during the course of Mr. Jefferis's
17 employment as the risk and control specialist, did you
18 serve as his immediate supervisor or manager during that
19 time period? Was he -- I'm sorry, was he a direct report
20 to you at any time when he served in the risk and control
21 specialist position?

22 A. Yes.

23 Q. Do you recall during what period of time he
24 would have been a direct report?

25 A. Yes.

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1 Q. What period of time would that be or have been?

2 A. I believe March 2006 to the time he left.

3 Q. Prior to March 2006 was he within your line of
4 supervision?

5 A. Can you be more specific with your definition
6 of line of supervision?

7 Q. Yes. Did his supervisor -- was his immediate
8 supervisor a direct report to you?

9 A. Yes.

10 Q. Okay. And do you recall who his immediate
11 supervisor was prior to you -- prior to him becoming a
12 direct report to you?

13 A. There would have been more than one.

14 Q. Do you recall who those individuals were?

15 A. Yes.

16 Q. Who were they?

17 A. Mr. Steve Monnier, Mr. Mark Sjobakken. Would
18 you like me to spell that?

19 Q. Actually, for the court reporter's benefit it
20 probably would be a good idea.

21 A. S-J-O-B-A-K-K-E-N.

22 Q. Thank you. Do you recall during what period of
23 time Steve Monnier supervised Mr. Jefferis in the risk
24 and control specialist position?

25 A. Steve Monnier would not have supervised

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Michael W. DeBolt

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1 Mr. Jefferis as a risk and control specialist.

2 Q. Okay. So Mark Sjobakken was the only person
3 other than you who supervised Mr. Jefferis when he served
4 as a risk and control specialist, is that correct?

5 A. Yes.

6 Q. And Mark was your direct report?

7 A. Yes.

8 Q. Okay. And prior to Mr. Jefferis receiving the
9 risk and control specialist position he had reported to
10 Steve Monnier, is that correct?

11 A. Yes.

12 Q. But Steve was also a direct report to you
13 during that period of time?

14 A. Yes.

15 Q. Okay. Now prior to Mr. Jefferis being offered
16 the risk and control specialist position, did you have
17 any meetings with him to discuss the position?

18 A. Yes.

19 Q. Do you recall how many meetings you had?

20 A. No.

21 Q. Do you recall whether or not salary was ever
22 discussed in any of those meetings?

23 A. Yes.

24 Q. Do you recall whether or not Mr. Jefferis was
25 informed that there would be a potential that his salary

Joseph C. Jefferis v. Goodrich Corporation
Michael W. DeBolt

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1 would increase if he accepted the position?

2 A. No.

3 Q. Was the grading or the coding for the position
4 ever discussed in any of your meetings with Mr. Jefferis?

5 A. Yes.

6 Q. Do you recall what specifically was discussed
7 about the grading and the coding for the position?

8 A. Yes.

9 Q. Okay. Could you explain what you discussed
10 with Mr. Jefferis about the grading and the coding?

11 A. Yes. This was a new position for the wheels
12 and brakes business unit. We had stated, as a result of
13 a new position, we would ask our human resources group to
14 evaluate the job description that we were to develop and
15 see what the position grade and salary would be
16 appropriate for that level of responsibility, and if
17 there was a change from the current grade it would be
18 addressed at that time.

19 Q. And just so that I'm clear, are you referring
20 to his current grade in the position that he held prior
21 to the risk and control specialist position?

22 A. Yes.

23 Q. Okay. Because the risk and control specialist
24 position at that time had yet to be rated or graded or
25 coded?

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1 A. Correct.

2 Q. Now was there any indication that he would have
3 to take any type of salary cut if he accepted this risk
4 and control specialist position?

5 A. No.

6 Q. Do you know ultimately when the position was
7 rated or coded?

8 A. No. I do not recall.

9 Q. Do you know if it would have been before he
10 accepted the position?

11 A. No.

12 Q. And just to clarify, is your response no that
13 you don't know or no that it wasn't rated and graded
14 before he accepted?

15 A. No, it was not rated or graded prior to his
16 acceptance.

17 Q. Okay. Thank you. Was Mr. Jefferis ever
18 informed that he could possibly be accepting a demotion
19 if he accepted the risk and control specialist position?

20 A. No.

21 MS. ZANCOURIDES: I'm going to object to the
22 question to the extent you're assuming facts not in
23 evidence. I'm not sure if you're asking if that happened
24 or stating it did, so --

25 MR. MATTHEWS: I'm asking whether or not he was

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1 ever -- whether or not that was ever discussed, that the
2 position could be a demotion.

3 BY MR. MATTHEWS:

4 Q. Mr. DeBolt, was it ever discussed with
5 Mr. Jefferis that the position could be a demotion?

6 A. No.

7 Q. Are you aware of any documents in
8 Mr. Jefferis's personnel file that indicate that the
9 position of risk and control specialist was a demotion
10 from the position that he previously held?

11 MS. ZANCOURIDES: And again I'm not sure we've
12 established that he has personal knowledge of everything
13 in Mr. Jefferis's personnel file.

14 BY MR. MATTHEWS:

15 Q. Okay. You can still answer the question,
16 Mr. DeBolt.

17 A. No.

18 Q. Do you know if Joe ever complained that there
19 was a reference in his personnel file indicating that the
20 risk and control specialist position was a demotion from
21 the position that he previously held?

22 MS. ZANCOURIDES: And you're asking if he knows
23 that now?

24 MR. MATTHEWS: Yes.

25 MS. ZANCOURIDES: Okay. Well, obviously, to

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1 the extent that his knowledge of that information comes
2 from any attorney-client communications, I would instruct
3 my client not to answer with respect to that.

4 BY MR. MATTHEWS:

5 Q. Mr. DeBolt, other than information that you
6 obtained from an attorney representing Goodrich, do you
7 have any knowledge that Mr. Jefferis complained that
8 there's references in his personnel file indicating that
9 the position of risk and control specialist is a demotion
10 or was a demotion from the position that he previously
11 held?

12 A. I'm sorry. I do not know.

13 Q. Okay. Did Joe -- during Joe's employment did
14 he ever bring any concerns to your attention that he saw
15 something in his personnel file which indicated that the
16 risk and control specialist position was a demotion?

17 A. No.

18 Q. Are you aware of whether or not Goodrich has
19 any policies which prohibit employees from engaging in
20 insider trading?

21 A. Can you repeat the question, please?

22 Q. Yes. Are you aware of whether or not Goodrich
23 has any policies which prohibit employees from engaging
24 in insider trading?

25 A. Yes.

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1 Q. And have you ever -- have you ever seen any
2 policies contained in Goodyear's Business Code of Conduct
3 which address insider trading?

4 MS. ZANCOURIDES: I'm going to object. I think
5 you mean Goodrich.

6 BY MR. MATTHEWS:

7 Q. Yeah. Goodrich.

8 A. Can you repeat the question, please?

9 Q. Sure. Well let me -- let me strike that
10 previous question.

11 Do you know whether or not Goodrich has a
12 Business Code of Conduct, a booklet entitled Business
13 Code of Conduct?

14 A. No.

15 Q. No? Okay. Have you -- well --

16 A. Can I -- there is a Business Code of Conduct
17 but it's online.

18 Q. Okay.

19 A. It's -- I don't know if they print it or not.
20 I think when it's printed it's considered an uncontrolled
21 document.

22 Q. Okay. If you could look at what's been marked
23 with a large number two in the upper right-hand corner.
24 The court reporter has a document which was presented
25 during Mr. Jefferis's deposition.

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1 MS. ZANCOURIDES: And I'm going to object to
2 use of this exhibit as it's not the complete document.

3 MR. MATTHEWS: Okay.

4 MS. ZANCOURIDES: So it certainly is not a
5 thorough presentation of the entire Business Code of
6 Conduct.

7 MR. MATTHEWS: But for purposes of this
8 deposition we've got the cover, we've got the table of
9 contents, and we've got the specific page and policy
10 which is relevant to this particular action.

11 BY MR. MATTHEWS:

12 Q. Mr. DeBolt, could you take a look at the
13 document which has been marked with the large number two
14 in the corner, the upper right-hand corner?

15 A. Okay.

16 Q. Mr. DeBolt, have you had time to look through
17 this document?

18 A. No.

19 Q. Okay. Can you please let me know once you've
20 completed looking through it?

21 MS. ZANCOURIDES: Take your time.

22 A. Okay. I'm done.

23 BY MR. MATTHEWS:

24 Q. Okay. Have you ever seen -- I'm going to
25 direct your attention to the fourth page, which is

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1 actually page number 22 of the Business Code of Conduct,
2 the power of integrity. Have you ever seen the statement
3 towards the top of the page regarding trading on company
4 securities?

5 A. I've seen this today and I've read something
6 similar in the online information.

7 Q. Okay. And with respect to the trading on
8 company securities, it defines -- it has a definition for
9 insider trading or insider information. Could you
10 explain to me what your understanding of insider trading
11 is?

12 A. Are you asking me my opinion of insider trading
13 versus the definition that's stated in this page that was
14 provided?

15 Q. Yeah. As far as your understanding of what
16 insider trading is.

17 MS. ZANCOURIDES: Obviously Mr. DeBolt is not
18 an attorney, so to the extent that you're asking for a
19 legal conclusion he's not in a position to give that to
20 you.

21 BY MR. MATTHEWS:

22 Q. Okay. And I'm not asking for you to give a
23 legal conclusion, Mr. DeBolt. I'm just asking for your
24 definition of insider trading.

25 A. I would agree with the statement made in this

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1 document, information not generally available to the
2 investing public, and using it for trading or buying or
3 selling would be my definition of insider trading.

4 Q. Okay. And what's the harm of insider trading?

5 MS. ZANCOURIDES: I object to the extent it's,
6 you know, within your personal knowledge.

7 BY MR. MATTHEWS:

8 Q. Mr. DeBolt, are you aware of any harm of
9 insider trading?

10 MS. ZANCOURIDES: Again, I'm going to object to
11 the extent you're asking him to give you an opinion.
12 He's not an expert here.

13 BY MR. MATTHEWS:

14 Q. Okay. Well can you give me your lay opinion,
15 Mr. DeBolt, of what insider trading -- if in fact it's
16 harmful at all?

17 MS. ZANCOURIDES: Again I'm going to object
18 that a lay witness is not generally permitted to give an
19 opinion.

20 BY MR. MATTHEWS:

21 Q. Mr. DeBolt, you can still answer the question.

22 A. My lay opinion of the harm of insider trading
23 is someone gaining profit with using information not
24 available to the general public. That's unethical.

25 Q. Okay. Now in your opinion does insider trading

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1 harm anyone?

2 MS. ZANCOURIDES: Again I'm going to object to
3 your calling for a lay opinion.

4 BY MR. MATTHEWS:

5 Q. You can still answer the question, Mr. DeBolt.

6 A. Repeat the question, please.

7 Q. Sure. In your opinion does insider trading
8 harm anyone?

9 A. Yes.

10 Q. Okay. Who's harmed by the practice?

11 MS. ZANCOURIDES: And, again, we're still
12 asking for an opinion so I'm objecting to that.

13 MR. MATTHEWS: If you want to just make a
14 continuing objection I'm fine with that.

15 MS. ZANCOURIDES: I'll continue to object.
16 Thanks.

17 MR. MATTHEWS: I'm just saying if you want to
18 go ahead and make a continuing objection on the record
19 just so that we can kind of get through this line of
20 questioning, I have no problem with that.

21 MS. ZANCOURIDES: Okay.

22 BY MR. MATTHEWS:

23 Q. Mr. DeBolt, who's harmed by insider trading?

24 A. Investors.

25 Q. And how are investors harmed by insider

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1 trading?

2 MS. ZANCOURIDES: Again I'm continuing my
3 objection.

4 A. Taking gain that's not due them.

5 BY MR. MATTHEWS:

6 Q. I'm sorry. Was your response taking gain?

7 A. Correct.

8 Q. Okay. So basically the inside people with the
9 knowledge are taking profit which would otherwise go to
10 the investor once the information became public?

11 MS. ZANCOURIDES: Well I think you're restating
12 his testimony.

13 MR. MATTHEWS: I'm just asking him if that --
14 if that would be an accurate description of what you mean
15 by taking gain.

16 A. No. Taking gain not due that individual by
17 having access not generally available to the public.

18 BY MR. MATTHEWS:

19 Q. Do the outside investors or do the investors
20 lose money by the insiders engaging in insider trading?

21 MS. ZANCOURIDES: Objection. Calls for
22 opinion. Calls for speculation.

23 BY MR. MATTHEWS:

24 Q. You can still answer the question, Mr. DeBolt.

25 A. I can't answer that question.

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1 Q. You can't answer because you don't know or you
2 can't answer it because of some other reason?

3 A. I can't answer because I don't know.

4 Q. Okay. Did Mr. Jefferis ever report to you that
5 he had concerns about Steve Monnier engaging in insider
6 trading?

7 A. No.

8 Q. Did Mr. Jefferis ever report to you that he had
9 concerns about Mark Sjobakken engaging in insider
10 trading?

11 A. No.

12 Q. At any point during the course of
13 Mr. Jefferis's employment with Goodrich did any other
14 person make you aware that Mr. Jefferis had reported that
15 he had concerns about Steve Monnier and/or Mark Sjobakken
16 engaging in insider trading?

17 MS. ZANCOURIDES: Objection. Compound
18 question.

19 BY MR. MATTHEWS:

20 Q. Okay. First Steve Monnier.

21 A. No.

22 Q. What about Mark Sjobakken?

23 A. No.

24 Q. During the course of your employment were you
25 aware that -- I'm sorry. During the course of

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1 Mr. Jefferis's employment with Goodrich were you aware
2 that he had made a complaint to Don Tighe regarding
3 potential issues of insider trading by Steve Monnier?

4 A. No.

5 Q. What about a report to Don Tighe about
6 potential insider trading by Mark Sjobakken?

7 MS. ZANCOURIDES: And, again, you're talking
8 during the time Jefferis was employed?

9 MR. MATTHEWS: Yeah. During Jefferis's
10 employment.

11 A. No.

12 BY MR. MATTHEWS:

13 Q. If I could direct your attention to the
14 ten-page document which is marked with a large number
15 three in the bottom right-hand corner.

16 MR. MATTHEWS: And, I'm sorry, I didn't -- when
17 we went through the first two documents I didn't ask the
18 court reporter to mark those as Exhibits 1 and 2, but
19 could you please do that at this time.

20 (Exhibit No. 1 was marked for identification.)

21 (Exhibit No. 2 was marked for identification.)

22 MR. MATTHEWS: And with respect to the third
23 document, could we mark this as Exhibit 3 now.

24 (Exhibit No. 3 was marked for identification.)

25 THE COURT REPORTER: They have been marked.

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1 BY MR. MATTHEWS:

2 Q. Are you still reviewing the document,
3 Mr. DeBolt?

4 A. Yes.

5 Q. Okay. Could you just let me know once you've
6 completed your review? Thanks.

7 A. I've completed my review.

8 Q. Okay. And does this appear to be
9 Mr. Jefferis's 2006 performance review from Goodrich?

10 A. I can't say for certainty. I don't know where
11 this document was created from but if it's -- it appears
12 similar to the one that was given to him.

13 Q. Okay. Now with respect to manager comments,
14 did you have any input into the manager comments which
15 were made on Mr. Jefferis's 2006 performance evaluation?

16 A. Yes.

17 Q. And did anybody else have input into those
18 comments?

19 A. Yes.

20 MS. ZANCOURIDES: To the extent you know.

21 MR. MATTHEWS: I'm sorry?

22 MS. ZANCOURIDES: I said obviously he can
23 answer to the extent he knows.

24 MR. MATTHEWS: Yes.

25 MS. PARSONS: She said you can answer to the

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1 extent that you know.

2 A. Oh. Yeah. Yes.

3 BY MR. MATTHEWS:

4 Q. Mr. DeBolt, do you know if anybody else had any
5 input into those manager comments?

6 MS. PARSONS: He said yes.

7 A. Yes.

8 BY MR. MATTHEWS:

9 Q. Okay. And who else had input?

10 A. Mark Sjobakken.

11 Q. Do you know if anybody else other than you and
12 Mark Sjobakken had input?

13 A. Bill Huber.

14 Q. Anybody else to your knowledge?

15 A. No.

16 Q. Was Mark Sjobakken the person primarily
17 responsible for rating Mr. Jefferis?

18 A. Yes.

19 Q. And do you know if Mr. Sjobakken completed this
20 review prior to submitting his letter of resignation with
21 the company?

22 A. Yes.

23 Q. Do you know the date that, or aware of anywhere
24 on this document, the date in which Mark Sjobakken would
25 have completed this performance review for Mr. Jefferis?

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1 A. No.

2 Q. And to your knowledge did Mark Sjobakken resign
3 from his position with Goodrich?

4 A. Yes.

5 Q. Do you know when he resigned from his position?

6 A. I'm sorry. I do not recall the specific date.

7 Q. Do you know -- do you know the month and the
8 year that he resigned?

9 A. Spring 2006.

10 Q. And do you know if he continued working for
11 Goodrich for a period of time after submitting his intent
12 to resign?

13 A. Yes.

14 Q. Okay. Do you know how long he continued to
15 work for the company?

16 A. I do not recall the length of time he gave
17 advance notice.

18 Q. Do you know if it was more than the typical
19 14-day notice?

20 A. I'm sorry. I do not recall.

21 Q. Did you eventually sign off on a performance
22 evaluation for Mr. Jefferis in 2006?

23 MS. ZANCOURIDES: In 2006?

24 BY MR. MATTHEWS:

25 Q. For the -- did you eventually sign off on

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1 Mr. Goodrich's 2006 -- let me see -- Goodrich performance
2 review, 2006 year end?

3 A. I did not sign off on Mr. Goodrich's
4 performance review that you just stated.

5 Q. Okay. Let me rephrase that. Did you sign off
6 on the Goodrich performance review 2006 year end for
7 Joseph C. Jefferis?

8 A. Yes.

9 Q. Okay. And do you know if -- and prior to
10 signing off did you review the manager comments which
11 were stated on the performance review?

12 A. Yes.

13 Q. And did you agree with those manager comments?

14 A. Yes. Can I go back to a response I had
15 earlier?

16 Q. Sure.

17 A. Your question of when Mark Sjobakken resigned.

18 Q. Yes.

19 A. As I said, I didn't recall the date. I guess
20 it would have been spring of 2007, not spring of 2006 I
21 think is what I stated.

22 Q. Okay.

23 A. Sorry.

24 Q. Oh that's no problem. Thanks for the
25 correction.

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1 I'd like to refer your attention to the
2 document which has a large number four in the bottom
3 right-hand corner.

4 MR. MATTHEWS: If we could mark this as Exhibit
5 No. 4.

6 (Exhibit No. 4 was marked for identification.)

7 BY MR. MATTHEWS:

8 Q. Mr. DeBolt, could you please let me know when
9 you've had an opportunity to review each of these three
10 pages. And in the bottom right-hand corner the first
11 page is 188, the next one is 189, and the third one is
12 190.

13 A. Okay. I'm done.

14 Q. Do you know what these documents are or what
15 this computer screen -- it appears to be a printout of a
16 computer screen. Do you know where -- do you know what
17 this computer screen is or what it refers to?

18 MS. PARSONS: I would just comment that the
19 document that we have is not very clear.

20 MR. MATTHEWS: Okay. And --

21 MS. PARSONS: I mean, just so you know. We
22 printed it out the same as the other ones but it's got
23 some shading and stuff, so I just wanted to let you know.

24 MR. MATTHEWS: Okay. I appreciate that.

25 BY MR. MATTHEWS:

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1 Q. And my document's not very clear either so --
2 and I guess what -- and I -- and if you can't identify
3 them or you don't have any idea what they are because
4 of -- because of the shading, please let me know that,
5 you know. If you have a general idea of what they are,
6 if you could let me know I would appreciate that.

7 A. I do have a general idea of what they are, but
8 they are very, as Pam stated, illegible.

9 Q. Okay. Let me go ahead and ask the question,
10 and if you can read it let me know; if you can't
11 understand it based on the shading, let me know that as
12 well.

13 I'm looking at page 188, and in the middle of
14 that page, almost dead in the middle, it has a check mark
15 by second level manager signs review and -- or, I'm
16 sorry, it says second level manager signs review, and
17 then it says second level manager, then it has a check
18 mark there. Can you see that on your form on your
19 document?

20 A. No.

21 Q. Okay. The next document, 189, again towards
22 the middle of that document it says second level manager
23 signs review. Can you see that on your document?

24 A. Yes.

25 Q. Okay. And it has a zero percent there. Can

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1 you make that out?

2 A. Yes.

3 Q. Do you know why there would be a zero percent
4 in that -- in that box for Joe Jefferis's 2006
5 performance review?

6 A. Yes.

7 Q. What would be the reason for that?

8 A. Joe Jefferis's review was conducted on
9 Mr. Sjobakken's last day of work and Mr. Sjobakken did
10 not have access to electronically sign off on his
11 performance review. That was delegated to me.

12 Q. Okay.

13 A. And that's why it shows second level zero.

14 Q. All right. We can move beyond that document
15 now. Are you aware of -- let's strike that.

16 During Joe's employment with Goodrich did he
17 bring an issue regarding a \$9.3 million reconciliation
18 issue out of Santa Fe Springs to your attention?

19 A. Yes.

20 Q. Okay. And at any point did he express concern
21 to you that he believed that there was some fraud
22 involved with this \$9.3 million?

23 A. Can you repeat the question, please?

24 Q. Yes. Did Joe express concern to you that he
25 believed that there was some form of fraud involved and

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1 that's what created that \$9.3 million issue?

2 MS. ZANCOURIDES: Objection to the extent it's
3 ambiguous of what you mean by fraud.

4 BY MR. MATTHEWS:

5 Q. Okay. You can answer the question, Mr. DeBolt.

6 A. Joe raised the question of a \$9.3 million
7 reconciliation exception. That's -- you have to repeat
8 your question. I'm not sure I can answer your question
9 the way you phrased it.

10 Q. Okay. Did Joe ever -- did Joe ever indicate to
11 you that he believed that the \$9.3 million reconciliation
12 issue existed because of some type of fraud within
13 Goodrich?

14 A. Yes.

15 Q. Do you recall specifically what he discussed
16 with you as to the extent of the fraud involved?

17 A. No.

18 Q. Do you recall -- do you recall whether or not
19 Joe proposed any ideas for reconciling this \$9.3 million
20 issue or I guess irregularity?

21 A. No.

22 Q. Once Joe brought this \$9.3 million to your
23 attention did you take any actions to investigate the
24 matter?

25 A. Yes.

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1 Q. What did you do to investigate?

2 A. Requested the RCTS specialist, Joe Jefferis, to
3 investigate with the managers at Santa Fe Springs and
4 Troy, Ohio who would have been involved in the
5 reconciliation process and to come with a conclusion and
6 recommendations for changes was one.

7 Second, Mr. Sjobakken and the Santa Fe Springs
8 teams were asked to investigate the reconciliation and to
9 come with their conclusions and recommendations.

10 Q. Okay.

11 A. And, third, internal audit was requested by me
12 to conduct their independent investigation of this
13 reconciliation item and to come with their conclusions
14 and recommendations.

15 Q. Okay. Are you familiar with an employee by the
16 name of Richard Newboults?

17 A. Yes.

18 Q. Do you know what Mr. Newboults's position is
19 with Goodrich or his position was at the time that
20 Mr. Jefferis served as the risk and control specialist?

21 A. I do not know his title but I know of his
22 responsibilities.

23 Q. And what was his responsibilities at that time?

24 A. Mr. Newboults is responsible, or was, is and was
25 responsible for the risk and control tracking process for

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1 Goodrich Corporation, both international and North
2 America, as well as the responsibility for shared
3 services over our European group of companies.

4 Q. And correct me if I'm wrong or if I'm
5 overstating things, but Richard Newbould was kind of --
6 on the corporate level overall of Goodrich he was -- he
7 did more or less the same thing that Joe did, just in
8 Troy. Would that be correct? Would that be a good
9 analogy?

10 A. That would be incorrect.

11 Q. Okay. Was Richard the top risk and control
12 specialist within the company or risk and control person
13 within the company?

14 A. That would be incorrect.

15 Q. Would there be any reason to involve Richard in
16 this Santa Fe Springs issue in light of his position in
17 the company?

18 MS. ZANCOURIDES: And, again, I'm going to
19 object that you're asking for an opinion and speculation.

20 BY MR. MATTHEWS:

21 Q. Okay. In your opinion, Mr. DeBolt, was there
22 any reason to involve Richard?

23 A. In my opinion, no.

24 Q. Do you know if Joe was ever discouraged from --
25 let me strike that.

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1 Do you know if Mark Sjobakken ever instructed
2 Joe not to contact Richard Newboults regarding the Santa
3 Fe Springs matter?

4 A. To the best of my knowledge, no.

5 Q. Now earlier you identified three
6 recommendations or three courses of action that you took
7 to investigate the \$9.3 million Santa Fe Springs issue.
8 Is that correct?

9 A. Correct.

10 Q. And was that issue ultimately resolved at some
11 point?

12 A. Yes.

13 Q. Okay. How was the issue resolved?

14 MS. ZANCOURIDES: And the witness can only
15 testify, obviously, as to his own personal knowledge.

16 A. The issue was resolved in accordance with Mark
17 Sjobakken and the carbon team's recommendations and
18 validated by our internal audit group at Goodrich
19 Corporation.

20 BY MR. MATTHEWS:

21 Q. Okay. What was Mark Sjobakken's and the carbon
22 team's recommendation?

23 A. I'm not sure I can answer that question because
24 of the level of accounting detail that we would have to
25 get into, nor do I recall what the specific entries

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1 required to resolve the issue included.

2 Q. Were you aware of there being any problems when
3 Mark Sjobakken and the carbon team's recommendation was
4 tested at the end of November of 2006?

5 A. I'm not sure who you're referring to who tested
6 it to answer your question.

7 Q. Okay. Are you familiar with the -- with a CSA
8 test?

9 A. Can you be more specific?

10 Q. Well let me refer you to a document which has
11 been marked as number six.

12 MR. MATTHEWS: And if we could mark this as
13 Exhibit No. 5.

14 (Exhibit No. 5 was marked for identification.)

15 BY MR. MATTHEWS:

16 Q. If you could please take a look at this
17 document and let me know once you've had chance to review
18 it, Mr. DeBolt.

19 A. Okay. I'm done reviewing.

20 Q. Okay. And this is an e-mail message which was
21 sent by Mark Sjobakken, and you were copied on the
22 message, is that correct?

23 A. Yes.

24 Q. And do you recall -- do you recall what was
25 being discussed in this e-mail message?

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1 A. Yes.

2 Q. And do you know if any other action was taken
3 by Mark Sjobakken and the carbon team as to their
4 recommendation after December 4th of 2006?

5 MS. ZANCOURIDES: I'm sorry. Jason, can you
6 repeat that for me?

7 MR. MATTHEWS: Could you please read the
8 question back?

9 (Question read.)

10 MS. ZANCOURIDES: Okay. I'm going to object to
11 the extent that it's ambiguous to who the carbon team is.

12 MR. MATTHEWS: Mr. DeBolt just referenced the
13 carbon team, Mark Sjobakken and the carbon team, when he
14 was describing the issue but --

15 BY MR. MATTHEWS:

16 Q. Mr. DeBolt, if you could go ahead and answer
17 the question.

18 A. Yes.

19 Q. And do you know what additional action was
20 taken?

21 A. Yes.

22 Q. Okay. What was that action?

23 A. They're referring to an upload of one type
24 general ledger information into another financial
25 reporting system called HFM. In this process in any

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1 system there can be out-of-balance circumstances and
2 control totals that identify those out-of-balance of
3 which are corrected, and then the final upload is
4 completed for financial reporting.

5 What is referred in this e-mail is in any
6 month-end process, this is an interim review, an
7 exception was noted and as a result of this Jim Crain,
8 Matt Besecker, Mark Sjobakken made note of the exception
9 and took steps to identify that prior to submitting their
10 financial upload from the carbon sites to Troy for the
11 HFM upload.

12 Q. Okay. And did you receive a memorandum in
13 March of 2007 from Michael Leon and Jim Fleming regarding
14 the \$9.3 million reconciliation issue?

15 A. When you say memorandum, can you be more
16 specific?

17 Q. Yeah. If you could look at the document that's
18 been marked as -- it's been marked with a number seven.
19 If we could mark this as Exhibit No. 6. It's a -- looks
20 like a five-page -- five-page letter to you dated
21 March 6, 2007 on Goodrich letterhead.

22 (Exhibit No. 6 was marked for identification.)

23 A. I'm done reviewing it and I do recall this
24 letter.

25 BY MR. MATTHEWS:

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1 Q. I'm sorry. You do recall the letter?

2 A. I do recall this letter.

3 Q. Okay. And do you recall receiving it around
4 this time period of March 6, 2007?

5 A. Yes.

6 Q. And was this letter -- did you share this
7 letter with Mr. Jefferis at any point?

8 A. Yes.

9 Q. Do you recall when you shared it with him?

10 A. Not specifically.

11 Q. Do you know if it was within a couple weeks of
12 this date of March 6, 2007?

13 A. No.

14 Q. No you don't remember or you know that you
15 didn't share it with him within a couple weeks of that
16 time period?

17 A. No, I do not remember.

18 Q. Do you know -- do you know if the decision --
19 Mark Sjobakken's decision to resign had anything to do
20 with Mr. Jefferis raising the \$9.3 million Santa Fe
21 Springs issue?

22 A. No, not to my knowledge.

23 Q. Did Mark Sjobakken say anything or write to
24 you -- write anything to you which would indicate that
25 the \$9.3 million Santa Fe Springs issue was a factor in

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1 his decision to leave the company?

2 A. No.

3 Q. Do you know if anybody asked Mark Sjobakken to
4 submit a letter of resignation?

5 A. No.

6 Q. Okay. If I could direct your attention to
7 what's been marked as number eight, which I would like to
8 mark as Exhibit No. 7. And, Mr. DeBolt, if you could
9 take a look at this document and let me know once you've
10 had a chance to review it.

11 (Exhibit No. 7 was marked for identification.)

12 A. Okay. I'm done.

13 BY MR. MATTHEWS:

14 Q. Okay. And is that your signature on the second
15 page of the document, on the bottom where it says
16 supervisor signature?

17 A. Yes.

18 Q. And was it your decision to place Mr. Jefferis
19 on a marginal employee plan of action?

20 A. Yes.

21 Q. Anybody else involved in that decision?

22 A. Yes.

23 Q. Anybody else recommend that marginal employee
24 plan of action for Mr. Jefferis?

25 A. Yes.

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1 Q. Okay. Who else recommended that he be placed
2 on a plan of action?

3 MS. ZANCOURIDES: I'm going to object to the
4 extent there was any consultation with counsel that
5 that's not part of Mr. DeBolt's response.

6 BY MR. MATTHEWS:

7 Q. Yeah, and I don't want to know anything that
8 you might have discussed with either in-house or outside
9 counsel regarding this decision, Mr. DeBolt.

10 MS. PARSONS: Is there a question pending? I
11 kind of lost track.

12 BY MR. MATTHEWS:

13 Q. Yeah. The question was did anybody else
14 recommend that Mr. Jefferis be put on this plan of
15 action, and then with the -- and then, just for
16 clarification, I don't want to know whether or not
17 there's any input from any of Goodrich's attorneys or
18 outside counsel on the issue, just what non-attorneys
19 were involved in the decision.

20 A. Bill Huber.

21 Q. And Bill Huber was the only other person other
22 than you?

23 A. Mark Sjobakken.

24 Q. Okay. Anybody else other than Bill and Mark?

25 A. No.

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1 Q. Did -- sorry. Strike that.

2 Do you typically place an employee who's having
3 performance problems on a marginal employee plan of
4 action prior to terminating their employment?

5 A. You had multiple questions. Can you please
6 rephrase that?

7 Q. I believe that there's only one question. It
8 might not -- before terminating an employee for
9 performance problems, do you typically place that
10 employee on a marginal employee plan of action?

11 A. I'm sorry. The way you phrased that question I
12 can't respond to it.

13 Q. Why can't you respond?

14 A. You reference terminating employees and then
15 marginal action plan. Those --

16 Q. Okay. Let me ask this. Have you ever
17 terminated an employee without first placing that
18 employee on a marginal action plan?

19 A. Yes.

20 Q. And you've terminated that employee for
21 performance problems?

22 A. Yes.

23 Q. And do you recall the specifics relating to
24 when you've terminated employees for job performance
25 problems without first placing them on a marginal plan of

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1 action?

2 A. Can you repeat the question again, please?

3 Q. Sure. Let me strike that question and ask
4 another question.

5 Do you know how many employees you've
6 terminated during your employment with Goodrich?

7 A. Zero.

8 Q. Okay. Do you know how many employees you've
9 recommended to be terminated during your employment with
10 Goodrich?

11 A. Zero.

12 Q. Have you ever had any input into a decision to
13 terminate an employee during your employment with
14 Goodrich?

15 A. Yes.

16 Q. Okay. How many -- how many different employees
17 have you had input into the decision to terminate?

18 A. One.

19 Q. And was that employee ultimately terminated?

20 A. Yes.

21 Q. Do you recall the reason for that employee's
22 termination?

23 A. Yes.

24 Q. What was that reason?

25 A. Not meeting performance objectives.

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1 Q. Okay. And do you know whether or not that
2 employee was first placed on a marginal employee plan of
3 action prior to the termination?

4 A. Yes.

5 Q. Do you recall at any time during Mr. Jefferis's
6 employment of notifying Joe of a community action alert?

7 A. No.

8 Q. Okay. Do you recall a situation in which Joe
9 brought to your attention a contact that he had received
10 about a Stanley Meyer water fuel patent?

11 A. No.

12 Q. Okay. Do you recall any situations in which
13 Joe brought information to your attention about a contact
14 that he had received about a patent?

15 A. No.

16 Q. During your employment at Goodrich do you
17 recall any incidences in which you made employees aware
18 of a community action alert?

19 A. No.

20 Q. During the time that Joe was still employed
21 with Goodrich were you aware that he had filed a
22 complaint with the Department of Labor, the Occupational
23 Safety and Health Administration?

24 A. Yes.

25 Q. Do you know when you became aware of Joe's

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1 complaint?

2 A. Yes.

3 Q. When was that?

4 A. When their investigators arrived at the Troy
5 facility to begin their investigation efforts.

6 Q. Okay. Do you recall the date of that?

7 A. I'm sorry. I do not recall.

8 Q. Do you recall the month and the year?

9 A. I'm sorry. I do not recall.

10 Q. Do you recall whether or not that investigator
11 arrived before Joe was placed on the marginal plan of
12 action?

13 MS. PARSONS: Did we establish that Joe was
14 placed on the action plan?

15 BY MR. MATTHEWS:

16 Q. Okay. Well let me rephrase the question. Do
17 you know if the investigator arrived prior to -- prior to
18 Joe receiving his 2006 performance review?

19 A. Yes.

20 MS. PARSONS: Just for the clarity of the
21 record, I'm not clear -- since you asked him does he
22 recall if it was before, I'm not sure if he's saying he
23 does recall or it was before. I mean, he answered your
24 question but the strict answer would be that he does
25 recall.

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1 BY MR. MATTHEWS:

2 Q. Okay. Let me -- yeah, let me rephrase that.
3 Did the OSHA investigator arrive prior to the 2006
4 performance review being conducted?

5 A. Yes.

6 Q. Okay. Did you have the authority to terminate
7 Joe's employment?

8 MS. ZANCOURIDES: I'm going to object to the
9 extent that you're assuming facts not in evidence.

10 MR. MATTHEWS: I'm not asking whether he did
11 terminate or -- I'm just asking whether or not he had the
12 authority in his position.

13 BY MR. MATTHEWS:

14 Q. And you can answer that question, Mr. DeBolt.

15 A. To the extent of my knowledge, no.

16 Q. Did you have the authority to recommend Joe's
17 termination?

18 MS. ZANCOURIDES: And, again, you're asking
19 theoretically if that would have happened?

20 MR. MATTHEWS: I'm asking whether or not he had
21 the authority to terminate a person in the -- let me
22 just -- let me rephrase the question this way.

23 BY MR. MATTHEWS:

24 Q. Do you have the authority to terminate an
25 employee in the position of risk and control specialist?

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1 A. No, I do not have the authority to recommend
2 terminating a risk and control specialist.

3 Q. Okay. Now --

4 MS. PARSONS: Jason --

5 A. Maybe I need to clarify.

6 BY MR. MATTHEWS:

7 Q. Sure.

8 A. You asked the question do I have. That gives
9 me present tense. That's how I answered that question.

10 BY MR. MATTHEWS:

11 Q. Okay. During your employment as the vice
12 president of wheels and brakes business unit did you have
13 the authority to control the -- or did you have the
14 authority to terminate the risk and control specialist at
15 the facility in Troy, Ohio?

16 A. No.

17 Q. Did you have the authority to recommend the
18 termination of the risk and control specialist during
19 your employment as the vice president of wheels and
20 brakes business unit?

21 A. Yes.

22 Q. And who did you have the authority to make that
23 recommendation to?

24 A. Through our hierarchy of responsibility, the VP
25 of human resources and our general manager and --

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1 Q. And do you recall in June of 2006 who the VP of
2 human resources was?

3 A. I believe it was Bill Huber.

4 Q. Okay. And do you recall in 2006 who the
5 general manager was?

6 A. Brian Brandewie.

7 Q. Now going back to what was marked as Exhibit
8 No. 7, which is the marginal employee plan of action
9 which was signed by you on June 11th, were you the person
10 responsible for determining whether or not Joe complied
11 with the marginal employee plan of action?

12 A. Yes, I would have had responsibility.

13 Q. Okay. If I could direct your attention to the
14 document that's a two-page document, it has -- the first
15 page has a number nine in the bottom right-hand corner.

16 MR. MATTHEWS: If we can mark this as Exhibit
17 No. 8.

18 (Exhibit No. 8 was marked for identification.)

19 BY MR. MATTHEWS:

20 Q. Once you've had the chance to look over both of
21 these pages if you could let me know, Mr. DeBolt.

22 A. Okay.

23 Q. And is that your signature on the -- towards
24 the bottom of the first page on the line that's marked
25 approval, the first line that's marked approval?

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1 A. Yes.

2 Q. And do you recall -- well strike that.

3 Do you know if Joe Jefferis raised concerns
4 about this [REDACTED] wire transfer during his employment
5 with Goodrich?

6 MS. ZANCOURIDES: You're asking him if he knows
7 that now?

8 BY MR. MATTHEWS:

9 Q. During Joe's employment at Goodrich were you
10 aware of Joe raising concerns about the [REDACTED] wire
11 transfer?

12 A. No, I do not recall.

13 Q. Did you have any discussions with Joe regarding
14 this [REDACTED] wire transfer during his employment with
15 Goodrich?

16 A. I'm sorry. I do not recall.

17 Q. Okay. If I could direct your attention to
18 what's been marked as number ten. It's a two-page
19 document.

20 MR. MATTHEWS: If we could mark this as Exhibit
21 No. 9.

22 (Exhibit No. 9 was marked for identification.)

23 BY MR. MATTHEWS:

24 Q. And if you can please let me know once you've
25 had a chance to review the document, Mr. DeBolt.

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1 A. Okay. I'm done.

2 Q. Okay. During Mr. Jefferis's employment with
3 Goodrich did you ever see this document?

4 A. Not that I recall.

5 Q. Do you recall whether or not you had any input
6 into the decision to issue Mr. Jefferis this written
7 warning?

8 A. Yes.

9 Q. Okay. And did you in fact have input into that
10 decision?

11 A. Yes.

12 Q. Did you recommend that he receive this written
13 warning?

14 A. Yes.

15 Q. I want to direct your attention to the second
16 paragraph of this document which begins with "the first
17 incident." Do you see where I am?

18 A. Yes.

19 Q. And with respect to that first incident that's
20 referenced in the second paragraph, do you recall that
21 meeting?

22 A. Yes.

23 Q. Okay. And that was a meeting or a discussion
24 between you, Steve Monnier, and Joe Jefferis, is that
25 correct?

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1 A. Yes.

2 Q. Do you recall whether or not anybody else was
3 present during that meeting?

4 A. No, there was no one else present at that
5 meeting.

6 Q. Okay. Do you know what the topic of the
7 discussion was?

8 A. Not specifically.

9 Q. Do you know if an issue regarding a company by
10 the name of Hitchner was involved?

11 A. That could have been one of the topics, yes.

12 Q. And do you recall Joe raising concerns about a
13 Hitchner purchase order during his employment with
14 Goodrich?

15 A. Yes.

16 Q. And did Joe indicate to you that he considered
17 that the purchase order was treated improperly under GAAP
18 standards, or Generally Accepted Accounting Practices?

19 A. No.

20 Q. Okay. What do you recall about the concerns
21 that Joe brought to your attention regarding Hitchner?

22 A. My recollection of Joe's comments regarding the
23 Hitchner purchase order was associated with the manager's
24 approval authority and whether he had the level of
25 authority to approve the purchase order.

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1 Q. Now this was a purchase order which involved --
2 which didn't involve the delivery of goods but involved a
3 retroactive price increase, is that correct?

4 A. That is correct.

5 Q. And during this meeting did Joe indicate that
6 the correct -- that the correct method would have been to
7 expense the retroactive price increase as opposed to
8 handling it through a purchase order?

9 A. No. Not that I recall.

10 Q. During this meeting did you tell Joe to get
11 comfortable with the way that the matter was handled?

12 A. No.

13 Q. Did you use the words "get comfortable with it"
14 at all?

15 A. No. Not that I recall.

16 Q. Do you recall what prompted -- did Joe in fact
17 leave the office and slam the door behind him?

18 A. Yes.

19 Q. Do you recall what prompted him to do that?

20 A. Yes.

21 Q. What happened immediately before he got up and
22 left the office?

23 A. Joe was explaining to Steve Monnier and myself
24 his observation of a payment made to Hitchner that was
25 above the authority limit of the purchasing manager and

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1 his concerns that there was something more than just
2 authority level issues surrounding this transaction.

3 Steve Monnier and I had requested Joe to talk
4 to the purchasing manager to get more factual information
5 regarding the transaction, such as the original purchase
6 requisition, copies of the purchase order, documents
7 supplied by the supplier Hitchner in support of the
8 transactions, before we jumped to conclusions. Joe
9 refused to do so and at that point the discussion most
10 likely continued and some time he got up and walked out
11 and slammed the door behind him.

12 Q. Okay. So your recollection of that meeting,
13 whether or not moneys were treated properly or improperly
14 under Generally Accepted Accounting Practices, that was
15 not part of the discussion?

16 A. Correct.

17 Q. Now were you involved in any type of
18 investigation into the Hitchner concerns which Joe
19 raised?

20 A. Yes.

21 Q. And what did you do to investigate Joe's
22 concerns?

23 A. As a result of Joe's not following through with
24 the request Steve Monnier and I had made, Steve Monnier
25 was asked to talk to the purchasing manager, gather the

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1 documents in support of the transaction with those pieces
2 of information, come to a conclusion and a
3 recommendation, and Steve Monnier completed that effort
4 on his own and provided me with that information, along
5 with the purchasing manager and the recommendation.

6 Q. Okay. Now at any point do you recall
7 requesting from Joe a password for the Hitchner -- for
8 the Hitchner file or Hitchner document?

9 A. No.

10 Q. Okay. Do you know why a password would have
11 been needed or whether or not a password would be needed
12 for any of your purposes dealing with the Hitchner issue?

13 A. No.

14 Q. If I could direct your attention -- there's a
15 document that's been marked as number 11.

16 MR. MATTHEWS: If we could mark it as Exhibit
17 No. 10.

18 (Exhibit No. 10 was marked for identification.)

19 A. Okay.

20 BY MR. MATTHEWS:

21 Q. Have you had a chance to look over this
22 document, Mr. DeBolt?

23 A. Yes.

24 Q. Okay. Do you know -- do you know what this --
25 it appears to be an e-mail message which was sent from

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1 you to Joe, is that right?

2 MS. ZANCOURIDES: Well I'm going to object as
3 it mischaracterizes what the complete document is.

4 MR. MATTHEWS: I guess I don't understand.

5 MS. ZANCOURIDES: I think there's more to the
6 chain than just an e-mail between Mike and Joe.

7 BY MR. MATTHEWS:

8 Q. Okay. Mike -- or, Mr. DeBolt, do you recall
9 what this is referencing here, this e-mail message? And
10 the one I'm looking at is the one Joe, what is the
11 password, Michael DeBolt.

12 A. I do not recall, but it references Hitchner
13 inventory so it's most likely a summary of their
14 inventory and that's -- and some Word document, so --

15 Q. Okay.

16 A. Sorry. I just do not recall.

17 Q. Okay. Earlier I'd asked you whether or not you
18 recalled an export -- I guess it was an export compliance
19 issue involving the \$825,000 wire transfer, and I believe
20 that you indicated that you didn't recall Joe bringing
21 that issue to your attention. Is that a correct
22 characterization of your testimony?

23 A. That's incorrect. You asked me if I had a
24 conversation with Joe regarding that transaction. That's
25 all you asked.

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1 Q. Okay. Well do you recall Joe bringing an issue
2 regarding a \$825,000 wire transfer to your attention?

3 A. No, I do not recall.

4 MR. MATTHEWS: If we could take just a short
5 break and go off the record for a minute -- I don't know
6 if you need a restroom break or anything, Mr. DeBolt --
7 and I just have a couple of questions when we come back.
8 If we could maybe plan on taking about five minutes.

9 (Off-the-record discussion.)

10 (Recess from 12:14 p.m. to 12:26 p.m.)

11 BY MR. MATTHEWS:

12 Q. Mr. DeBolt, during the time that Mr. Jefferis
13 raised the \$9.3 million Santa Fe Springs issue, in any of
14 his discussions with you did he indicate a concern that
15 the financial statements were misleading in the way that
16 they reflected this \$9.3 million sum?

17 MS. ZANCOURIDES: I'm just going to ask for
18 clarification, Jason, when you refer to financial
19 statements what it is you're talking about.

20 MR. MATTHEWS: Basically what I'm talking about
21 would be Goodrich's financial statements, you know,
22 essentially their financial statements.

23 MS. ZANCOURIDES: I still think that term is
24 ambiguous but --

25 MR. MATTHEWS: Okay.

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1 MS. ZANCOURIDES: So I'm going to object to
2 that.

3 BY MR. MATTHEWS:

4 Q. Okay. You can answer the question, Mr. DeBolt.

5 A. I'm not sure I can answer your question because
6 you reference Goodrich financial statements. That's too
7 broad. I'd have to ask that you be more specific as to
8 what Mr. Jefferis was referencing as being misstated or
9 whatever your question was.

10 Q. Okay. Did he ever indicate that he felt that
11 the way that the \$9.3 million was reflected in -- is the
12 money reflected in some documents maintained by Goodrich?

13 MS. ZANCOURIDES: Again I think it's very
14 ambiguous, but to the extent the witness can understand
15 what you're asking.

16 MR. MATTHEWS: Okay. Well I don't -- and I
17 guess what I can do is I can go through a line of
18 questioning as far as, you know, what type of documents
19 are maintained by Goodrich that would reflect the
20 \$9.3 million, but I think it would be a lot simpler if we
21 could just get a forthright response as to, you know,
22 whether or not the -- whether or not the money is
23 reflected in any type of financial statements that are
24 maintained by Goodrich.

25 MS. ZANCOURIDES: Well, I mean, again, I think

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1 that Mr. DeBolt will answer the question if he can
2 understand what you're asking, and if it's ambiguous then
3 he can't answer the question.

4 BY MR. MATTHEWS:

5 Q. Mr. DeBolt, what type of financial statements
6 are maintained by Goodrich?

7 A. There are a hundred different locations across
8 the Goodrich Corporation and over 50 different ERP
9 systems, and the wheels and brakes business unit happened
10 to be one of those groups of businesses, so when you ask
11 the question of what types of financial statements,
12 they're maintained by each of the business units in
13 support of their activity and recording of their
14 transactions.

15 Q. Okay. Does Goodrich Corporation as a whole
16 have a general ledger?

17 A. Goodrich Corporation as a whole has many
18 general ledgers, as I stated before, with the over a
19 hundred locations and multiple ERP systems.

20 Q. Okay. Did Mr. Jefferis ever indicate to you
21 that he believed that the way that the \$9.3 million was
22 being represented on any company documents was
23 misleading?

24 A. Yes.

25 Q. And did he express any concerns to you that the

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1 way that the \$9.3 million was reflected in company
2 documents could be misleading to shareholders?

3 A. In his opinion, yes.

4 Q. Did he explain the basis for his opinion as to
5 why that amount, the 9.3 million, on those company
6 documents could be misleading to shareholders?

7 A. No.

8 Q. All right. Going back to what was marked as
9 Exhibit No. 9, which is the warning dated July 5th, 2006.
10 Do you have that document back in front of you,
11 Mr. DeBolt?

12 A. Yes.

13 Q. Okay. In that second paragraph of that
14 document it references -- I guess it's the second
15 sentence of the second paragraph. It states: In the
16 second incident, which occurred around March 31st, 2006,
17 during a meeting with your manager Mark Sjobakken and
18 coworker Matt Besecker, you abruptly stood up and in a
19 loud voice alleged Matt assaulted you.

20 MS. ZANCOURIDES: And, Jason, I'm just going to
21 interject. It says May 31st. I believe you said March.

22 MR. MATTHEWS: Okay. Thank you. May 31st,
23 2006.

24 BY MR. MATTHEWS:

25 Q. Were you aware of this -- of this incident

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1 occurring during the course of Mr. Jefferis's employment
2 with Goodrich?

3 A. Yes.

4 Q. Okay. Do you know when you became aware of the
5 incident?

6 A. Yes.

7 Q. And when was that?

8 A. Shortly after it occurred.

9 Q. And who made you aware of the incident?

10 A. I'm sorry. I do not recall.

11 Q. Were you personally involved in any type of
12 investigation of the incident between Matt and Joe?

13 A. Can you define personally involved?

14 Q. Yes. Did you talk to any witnesses or did you
15 talk to either Matt or Joe about what happened?

16 A. No.

17 Q. Did you direct anybody, any of your
18 subordinates, to investigate the matter further?

19 A. Yes.

20 Q. And who did you direct to do the investigation?

21 A. Mr. Mark Sjobakken.

22 Q. Do you know if any type of disciplinary action
23 was issued to Matt Besecker?

24 A. For?

25 Q. For either his -- for his conduct toward

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1 Mr. Jefferis on May 31st of 2006.

2 A. No.

3 Q. Okay. You don't know or there was no action
4 issued?

5 A. No, I don't know.

6 Q. Did Mark Sjobakken make you aware of instances
7 in which he disciplined employees working under his
8 supervision?

9 A. Yes.

10 Q. And did he have to get your approval in order
11 to issue an employee a written warning?

12 A. No.

13 Q. Did you ever see anything in writing which
14 would indicate that Matt Besecker was disciplined as a
15 result of his conduct towards Mr. Jefferis?

16 A. Can you repeat the question, please?

17 Q. Yeah. Do you recall ever seeing anything in
18 writing which would indicate that Mr. Besecker was
19 disciplined for his conduct towards Mr. Jefferis on
20 May 31st of 2006?

21 A. No.

22 MR. MATTHEWS: Okay. I believe that's all that
23 I have.

24 MS. ZANCOURIDES: I actually have just one
25 point to clarify if I could. It's just one thing.

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1 EXAMINATION BY COUNSEL FOR RESPONDENT

2 BY MS. ZANCOURIDES:

3 Q. Mr. DeBolt?

4 A. Yes.

5 Q. You'll recall that earlier Mr. Matthews asked
6 you some questions about if Mr. Jefferis ever reported
7 directly to you. Do you recall that testimony?

8 A. Yes.

9 Q. Okay. And I believe that you had responded and
10 said that Mr. Jefferis began directly reporting to you in
11 March of 2006. I just want to clarify that point, if you
12 recall the circumstances surrounding when Mr. Jefferis
13 began reporting to you directly.

14 A. Mr. Jefferis reported to me upon Mark
15 Sjobakken's resigning and going to another job. It would
16 have been I guess -- you're right -- instead of 2006, it
17 would have been in spring of 2007. I was a year off in
18 my calendar.

19 Q. Thank you. I just wanted to clarify that for
20 the record.

21 A. Yeah. That's correct.

22 MS. ZANCOURIDES: That's all.

23 MR. MATTHEWS: I have nothing further. If you
24 want to go ahead and instruct on signature.

25 MS. ZANCOURIDES: We will read.

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1 (Signature reserved.)
2 (Whereupon, at 12:40 p.m., the taking of the
3 instant deposition ceased.)
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1 I have read the foregoing transcript and find
2 that it contains an accurate transcription of the answers
3 made by me on April 10, 2008, with the exception of any
4 corrections I have listed on a separate errata sheet.

5

6

Michael W. DeBolt

7

MICHAEL W. DEBOLT

8

STATE OF North Carolina

9

COUNTY OF Mecklenburg

10

11 SWORN TO and SUBSCRIBED before me this 30th day of

12

April, 2008.

13

14

K. R. Jelly

NOTARY PUBLIC

15

My commission expires: 8-23-2009

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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF CABARRUS)

I, Dayna H. Lowe, the officer before whom the foregoing deposition was taken, do hereby certify that MICHAEL W. DEBOLT was duly sworn by me prior to the taking of the foregoing deposition; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 18th day of April, 2008.



DAYNA H. LOWE

Notary Public #19971830009

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Michael W. DeBolt**2007-SOX-0075****April 10, 2008****Page 83**

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APPENDIX SIX

OHIO

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senator_voinovich@voinovich.senate.gov
http://voinovich.senate.gov

United States Senate

WASHINGTON, DC 20510-3504

September 29, 2006

Mr. Joe Jefferis

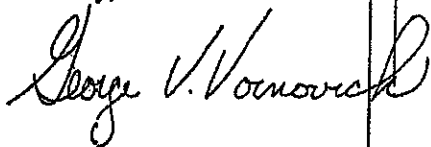
Dayton, Ohio

Dear Joe:

Earlier this year you contacted my office regarding alternative energy. Subsequently, I contacted the Department of Energy, and they have now responded to my inquiry on your behalf. Enclosed is a copy of their response.

Thank you again for contacting me. As a fellow Ohioan, I genuinely appreciate hearing from you. Please feel free to contact me again regarding this or any other issue that concerns you.

Sincerely,



George V. Voinovich
United States Senator

GVV/sma

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Department of Energy

Washington, DC 20585

September 19, 2006

The Honorable George V. Voinovich
United States Senate
Washington, DC 20510

Dear Senator Voinovich:

Thank you for your August 11, 2006, letter to the U.S. Department of Energy (DOE) on behalf of your constituent, Mr. Joe Jefferis, regarding his interest in technologies on hydrogen production and the controlled use of hydrogen in an internal combustion engine.

Mr. Jefferis correspondence refers to several patents by Mr. Stanley Meyer. We have reviewed the patents and concur that the technologies described may be of value for the production and use of hydrogen.

There are several potential opportunities for funding support. One such source is the Department's Inventions and Innovation Program (I&I), which is designed to evaluate and support scientifically-accepted energy-related concepts and inventions. Selections for financial assistance under I&I are made on a competitive basis. Mr. Jefferis may visit the I&I website at www.eere.energy.gov/inventions for further program information and announcements for future solicitations.

Another possible source of support is DOE's Small Business Innovation Research Program (SBIR), which provides funds to support technical innovation, research, and development by small research companies. Mr. Jefferis may visit the SBIR website at <http://sbir.er.doe.gov/sbir> or call the SBIR hotline at (301) 903-5707 for further information.

The Office of Energy Efficiency and Renewable Energy's (EERE) Hydrogen, Fuel Cells and Infrastructure Technologies Program (www.energy.eere.gov/hydrogenandfuelcells) periodically issues solicitations. Pending fiscal year 2007 congressional appropriations, this program is planning on issuing a solicitation in the next six months that would include a topic specific to hydrogen production through the use of electrolysis, a technology area relevant to Mr. Meyer's hydrogen production concept. Also, EERE's FreedomCAR and Vehicle Technologies Program (www.eere.energy.gov/vehiclesandfuels) issues solicitations periodically. This program's efforts include the development of improved technology for vehicle internal combustion engines. Further information on DOE's Hydrogen and FreedomCAR Programs can be found on their respective websites.



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Mr. Jefferis may view additional potential DOE funding sources by visiting our e-Center website at <http://www.pr.doe.gov>. At this website, he can learn of solicitations that are active in any of our programs.

If you have any further questions, please contact me or have a member of your staff contact Mr. Christopher Guith, Deputy Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 586-5337.

Sincerely,

A handwritten signature in black ink, appearing to read "DER", with a long horizontal flourish extending to the right.

David E. Rodgers
Acting Deputy Assistant Secretary
Technology Development
Energy Efficiency and Renewable Energy

APPENDIX SEVEN



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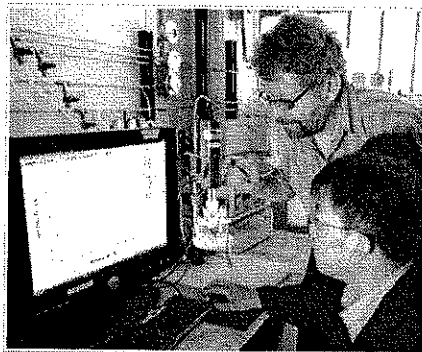
Say hello to cheaper hydrogen fuel cells

Los Alamos scientists document utility of non-precious-metal catalysts

SHARE

LOS ALAMOS, New Mexico, April 22, 2011—Los Alamos National Laboratory scientists have developed a way to avoid the use of expensive platinum in hydrogen fuel cells, the environmentally friendly devices that might replace current power sources in everything from personal data devices to automobiles.

In a paper published today in *Science*, Los Alamos researchers Gang Wu, Christina Johnston, and Piotr Zelenay, joined by researcher Karren More of Oak Ridge National Laboratory, describe the use of a platinum-free catalyst in the cathode of a hydrogen fuel cell. Eliminating platinum—a precious metal more expensive than gold—would solve a significant economic challenge that has thwarted widespread use of large-scale hydrogen fuel cell systems.



Polymer-electrolyte hydrogen fuel cells convert hydrogen and oxygen into electricity. The cells can be enlarged and combined in series for high-power applications, including automobiles. Under optimal conditions, the hydrogen fuel cell produces water as a "waste" product and does not emit greenhouse gasses. However, because the use of platinum in catalysts is necessary to facilitate the reactions that produce electricity within a fuel cell, widespread use of fuel cells in common applications has been cost prohibitive. An increase in the demand for platinum-based catalysts could drive up the cost of platinum even higher than its current value of nearly \$1,800 an ounce.

The Los Alamos researchers developed non-precious-metal catalysts for the part of the fuel cell that reacts with oxygen. The catalysts—which use carbon (partially derived from polyaniline in a high-temperature process), and inexpensive iron and cobalt instead of platinum—yielded high power output, good efficiency, and promising longevity. The researchers found that fuel cells containing the carbon-iron-cobalt catalyst synthesized by Wu not only generated currents comparable to the output of precious-metal-catalyst fuel cells, but held up favorably when cycled on and off—a condition that can damage inferior catalysts relatively quickly.

Moreover, the carbon-iron-cobalt catalyst fuel cells effectively completed the conversion of hydrogen and oxygen into water, rather than producing large amounts of undesirable hydrogen peroxide. Inefficient conversion of the fuels, which generates hydrogen peroxide, can reduce power output by up to 50 percent, and also has the potential to destroy fuel cell membranes. Fortunately, the carbon-iron-cobalt catalysts synthesized at Los Alamos create extremely small amounts of hydrogen peroxide, even when compared with state-of-the-art platinum-based oxygen-reduction catalysts.

Because of the successful performance of the new catalyst, the Los Alamos researchers have filed a patent for it.

"The encouraging point is that we have found a catalyst with a good durability and life cycle relative to platinum-based catalysts," said Zelenay, corresponding author for the paper. "For all intents and purposes, this is a zero-cost catalyst in comparison to platinum, so it directly addresses one of the main barriers to hydrogen fuel cells."

The next step in the team's research will be to better understand the mechanism underlying the carbon-iron-cobalt catalyst. Micrographic images of portions of the catalyst by researcher More have provided some insight into how it functions, but further work must be done to confirm theories by the research team. Such an understanding could lead to improvements in non-precious-metal catalysts, further increasing their efficiency and lifespan.

Project funding for the Los Alamos research came from the U.S. Department of Energy's Energy

Fast Facts

People

11,127 total employees
Los Alamos National Security, LLC 8,683
SOC Los Alamos (Guard Force) 419
Contractors 606
Students 1,101

Place

Located 35 miles northwest of Santa Fe, New Mexico, on 36 square miles of DOE-owned property.

More than 2,000 individual facilities, including 47 technical areas with 8 million square feet under roof.

Replacement value of \$5.9 billion
Budget FY 2012: Approx \$2.2 billion
57% Weapons programs
9% Nonproliferation programs
7% Safeguards and Security
8% Environmental Management
4% DOE Office of Science
4% Energy and other programs
11% Work for Others

Workforce Demographics (LANL and students only)

34% of employees live in Los Alamos, the remainder commute from Santa Fe, Española, Taos, and Albuquerque.

Average Age: 46
70% male, 30% female
43% minorities
63% university degrees
23% hold undergraduate degrees
16% hold graduate degrees
24% have earned a Ph.D.

Major Awards

121 R&D100 awards since 1978
31 E.O. Lawrence Awards
The Seaborg Medal
The Edward Teller Medal
The Nobel Prize in Physics, Frederick Reines

Efficiency and Renewable Energy (EERE) Office as well as from Los Alamos National Laboratory's Laboratory-Directed Research and Development program. Microscopy research was done at Oak Ridge National Laboratory's SHaRE user facility with support from the DOE's Office of Basic Energy Sciences.

About Los Alamos National Laboratory

Los Alamos National Laboratory, a multidisciplinary research institution engaged in strategic science on behalf of national security, is operated by Los Alamos National Security, LLC, a team composed of Bechtel National, the University of California, The Babcock & Wilcox Company, and URS for the Department of Energy's National Nuclear Security Administration.

Los Alamos enhances national security by ensuring the safety and reliability of the U.S. nuclear stockpile, developing technologies to reduce threats from weapons of mass destruction, and solving problems related to energy, environment, infrastructure, health, and global security concerns.

LANL news media contact: Jeff Berger, (505) 665-9178, jhberger@lanl.gov

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APPENDIX EIGHT

Molecular Cobalt Pentapyridine Catalysts for Generating Hydrogen from Water

Yujie Sun,^{†,§} Julian P. Bigi,^{†,§} Nicholas A. Piro,^{†,§} Ming Lee Tang,^{†,⊥} Jeffrey R. Long,^{*,†,⊥} and Christopher J. Chang^{*,†,§}

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 Supporting Information

ABSTRACT: A set of robust molecular cobalt catalysts for the generation of hydrogen from water is reported. The cobalt complex supported by the parent pentadentate polypyridyl ligand PY5Me₂ features high stability and activity and 100% Faradaic efficiency for the electrocatalytic production of hydrogen from neutral water, with a turnover number reaching 5.5×10^4 mol of H₂ per mole of catalyst with no loss in activity over 60 h. Control experiments establish that simple Co(II) salts, the free PY5Me₂ ligand, and an isostructural PY5Me₂ complex containing redox-inactive Zn(II) are all ineffective for this reaction. Further experiments demonstrate that the overpotential for H₂ evolution can be tuned by systematic substitutions on the ancillary PY5Me₂ scaffold, presaging opportunities to further optimize this first-generation platform by molecular design.

Growing global energy demand and concerns over climate change mediated by greenhouse gases released upon burning fossil fuels are driving the development of alternative and sustainable energy sources. Hydrogen, when derived from carbon-neutral processes, is an attractive clean fuel candidate for renewable energy storage and transport.^{1–6} In this regard, well-defined molecular catalysts, particularly those that utilize cheap and earth-abundant metals, provide an appealing approach toward H₂ production owing to the potential to understand and tune performance through chemical design. Nature has evolved iron- and/or nickel-dependent hydrogenase enzymes for producing H₂ from aqueous media with high efficiency and activity, but the large size and relative instability of these molecules under aerobic conditions present challenges for their use in artificial devices.^{7–10} Whereas many beautiful examples of H₂-evolution catalysts that mimic the inner workings of such enzymes have been developed, most require the use of organic acids and fairly negative potentials.^{11–21} In addition, abiotic earth-abundant metal complexes featuring cobalt,^{22–26} nickel,^{27–31} and molybdenum^{32,33} have been shown to generate H₂ at less extreme potentials, but many of these catalysts still utilize organic solvents, acids, and/or additives that result in organic byproducts. Thus, creating molecules for H₂ generation from water that are based upon earth-abundant elements, require no organic additives, and maintain high efficiency and activity in aqueous

media remains a significant challenge. Here, we demonstrate that a pentapyridine ligand with adjustable donor properties can provide new molecular cobalt complexes for robust, efficient, and active electrocatalytic H₂ generation from neutral pH water without organic additives.

We have initiated a program aimed at developing molecular catalysts for reactions relevant to sustainable energy cycles, with specific efforts focusing on the use of polypyridyl ancillary ligands to support reactive earth-abundant metal complexes that are stable and maintain their activity in benign aqueous media. Recently, a cobalt complex supported by the tetradentate ligand 2-bis(2-pyridyl)(methoxy)methyl-6-pyridylpyridine (PY4) was shown to catalyze the reduction of protons to H₂ in 50% aqueous media,²⁶ whereas a molybdenum-oxo complex ligated by the pentadentate platform 2,6-bis(1,1-bis(2-pyridyl)ethyl)pyridine (PY5Me₂) was demonstrated to facilitate the generation of H₂ from neutral pH water or even seawater.³⁴ Encouraged by these findings and related work on biomimetic PYS oxidation chemistry,^{35–41} we reasoned that exploring first-row transition metal complexes supported by PY5Me₂ and related platforms could afford systems for reductive catalysis with aqueous compatibility.

Metalation of PY5Me₂ with Co(CF₃SO₃)₂(MeCN)₂ in acetonitrile proceeds smoothly at room temperature to afford [(PY5Me₂)Co(MeCN)](CF₃SO₃)₂ (**1**, Figure 1). Consistent with the structure of the PF₆[−] analogue,^{42–44} the Co(II) center in [(PY5Me₂)Co(MeCN)]²⁺ resides in a slightly distorted octahedral geometry with acetonitrile bound at the apical site. The cyclic voltammogram of **1** in acetonitrile solution features a reversible redox couple at $E_{1/2} = -0.83$ V vs SHE assigned to a metal-based Co(II)/Co(I) reduction, with a second irreversible reduction peak arising at -1.72 V vs SHE (Supporting Information Figure S1). A quasi-reversible oxidative wave at $+0.88$ V vs SHE can further be assigned to a Co(II)/Co(III) oxidation event. The free PY5Me₂ ligand is electrochemically silent in this potential range (Figure S2). When the cyclic voltammogram of **1** is measured in dichloromethane, the Co(II)/Co(I) reduction appears as an electrochemically irreversible peak at -0.96 V vs SHE (Figure S3).

To avoid any possible influence from acetonitrile when investigating the electrochemistry in water, the metalation of PY5Me₂ was carried also out with Co(CF₃SO₃)₂(MeCN)₂ in a 9:1 acetone/water mixture, resulting in the isolation of

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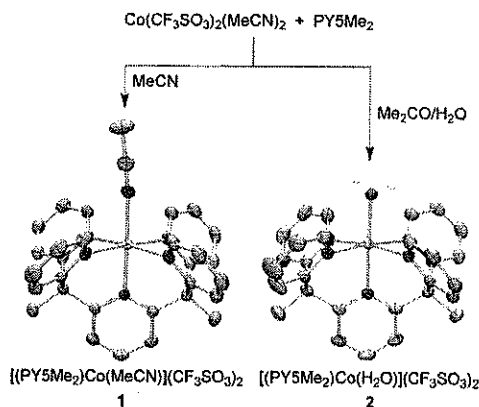


Figure 1. Synthesis of compounds 1 and 2, and crystal structures of the complexes $[(\text{PY5Me}_2)\text{Co}(\text{MeCN})]^{2+}$ and $[(\text{PY5Me}_2)\text{Co}(\text{H}_2\text{O})]^{2+}$ with thermal ellipsoids drawn at the 50% probability level. Selected interatomic distances (Å) and angles (deg): for 1, $\text{Co}-\text{N}_{\text{Py}}$ 2.095(3)–2.142(3), $\text{Co}-\text{N}_{\text{MeCN}}$ 2.123(3), $\text{N}_{\text{Py}}-\text{Co}-\text{N}_{\text{Py}}$ 80.4(1)–99.6(1), $\text{N}_{\text{Py}}-\text{Co}-\text{N}_{\text{MeCN}}$ 91.8(1)–94.3(1); for 2, $\text{Co}-\text{N}$ 2.103(2)–2.150(1), $\text{Co}-\text{O}$ 2.055(2), $\text{N}-\text{Co}-\text{N}$ 80.83(8)–101.59(8), $\text{N}-\text{Co}-\text{O}$ 91.12(7)–96.30(8).

$[(\text{PY5Me}_2)\text{Co}(\text{H}_2\text{O})](\text{CF}_3\text{SO}_3)_2$ (2, Figure 1). The crystal structure of 2 confirms the expected octahedral geometry for $[(\text{PY5Me}_2)\text{Co}(\text{H}_2\text{O})]^{2+}$ with a coordinated apical water ligand. The cyclic voltammogram of 2 in dichloromethane is qualitatively similar to that observed for 1, with the irreversible reductive peak shifted by +0.05 to -0.91 V vs SHE (Figure S4). A quasi-reversible oxidative wave is also observed at $+0.93$ V vs SHE with a peak shape suggestive of an electrochemical stripping process.⁴⁵ Here again, the observed features can be assigned to Co(II)/Co(I) and Co(II)/Co(III) redox changes, respectively. To check that these processes are indeed associated with metal-centered instead of ligand-based redox changes, the compound $[(\text{PY5Me}_2)\text{Zn}(\text{H}_2\text{O})](\text{CF}_3\text{SO}_3)_2$ (3) was synthesized for comparison (see SI). The crystal structure of 3 is shown in Figure S5. The absence of any redox processes for the analogous octahedral complex of the redox-inactive Zn(II) ion within the potential window of dichloromethane (Figure S6) confirms that the ligand alone is not responsible for the redox chemistry observed for 2.

Cyclic voltammetry experiments were performed on an aqueous solution of compound 2 maintained at pH 7 using phosphate buffer. A mercury pool electrode was employed in these measurements, owing to its low activity for water reduction and correspondingly large reductive window. For the buffered electrolyte alone, no catalytic current arises until the potential is scanned beyond -1.6 V vs SHE (Figure 2). Upon addition of 2, however, a peak at -1.00 V vs SHE, corresponding to the Co(II)/Co(I) reduction, is followed by a sharp increase in current beginning at -1.20 V vs SHE. This rise in current, which coincides with the evolution of bubbles, can be attributed to the catalytic generation of H_2 from neutral water.³⁴ Using a controlled growth mercury drop electrode as the working electrode owing to its smaller background current, we scanned the cyclic voltammogram of 2 to more negative potentials (Figure S7). In addition to the first reduction peak at -1.00 V vs SHE, which is partially proton coupled based on the pH dependence studies (Figure S8), a second reduction peak (-1.21 V vs SHE) appears at the rise of the catalytic current and is pH independent (Figures S7 and S8). Furthermore, it was found that the catalytic current

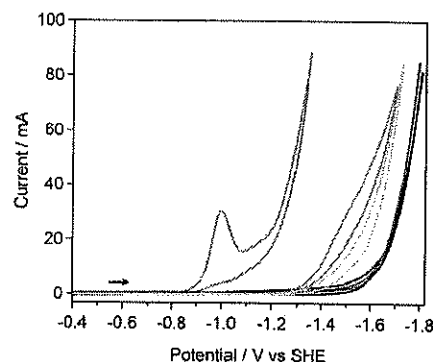


Figure 2. Cyclic voltammograms of $71 \mu\text{M}$ Co(II)-PY5Me_2 complex 2 (red), $67 \mu\text{M}$ Zn(II)-PY5Me_2 complex 3 (orange), $16 \mu\text{M}$ PY5Me_2 (green), $93 \mu\text{M}$ CoCl_2 (blue), and blank control (black) measured in aqueous solution buffered to neutral pH (1.0 M phosphate, pH 7). Only the Co(II)-PY5Me_2 complex 2 markedly lowers the overpotential for generating H_2 from water compared to the bare electrode.

maximum of 2 is dependent on catalyst concentration (Figure S9) and pH (Figure S10) but independent of scan rate (Figures S11 and 12), indicating the catalyst is functioning in a diffusion-controlled regime and is molecular in nature.

A number of control experiments were carried out to verify that $[(\text{PY5Me}_2)\text{Co}(\text{H}_2\text{O})]^{2+}$ is responsible for the catalysis. In particular, the free PY5Me_2 ligand, CoCl_2 , and compound 3, featuring the analogous complex of the redox-inactive Zn(II) ion, were each measured under identical conditions. As shown in Figure 2, the catalytic competency achieved with 2 is not matched by just PY5Me_2 or $[\text{Co}(\text{H}_2\text{O})_6]^{2+}$, as might arise from dissociation of the ligand, nor can it be accomplished with the PY5Me_2 ligand bound to a redox-inactive metal. Thus, a combination of the redox-active cobalt ion and the ancillary ligand is essential for catalytic activity.

To assess the overpotential⁴⁶ required for electrochemical production of H_2 from water in the presence of 2, controlled potential electrolysis (CPE) experiments were performed using a custom-made double-compartment cell (Figure S13). Charge buildup at various applied potentials was monitored over the course of 1-min electrolyses performed on a $38 \mu\text{M}$ solution of 2 in water buffered at pH 7. As shown in Figure S13, the total charge consumed is negligible for overpotentials below -0.52 V and increases approximately linearly with time at more negative applied potentials. Importantly, the onset of the catalytic current occurs at an overpotential of -0.66 V (-1.07 V vs SHE), which is just slightly more negative than the Co(II)/Co(I) reduction potential.

To estimate the Faradaic efficiency for H_2 production by the catalyst, a 2-h CPE experiment was performed in a 1.0 M aqueous potassium chloride solution (Figure S14).³⁴ The evolution of H_2 during the experiment was confirmed by mass spectral analysis. For each H_2 molecule liberated, two OH^- anions are left behind, resulting in an increase in the pH of the solutions and providing a simple means of quantifying the amount of H_2 produced. The observed rise in pH during the course of the CPE measurement closely matches that calculated based on the amount of charge consumed. The generated H_2 volume was also directly measured via gas chromatography and overlaps well with the amount calculated from consumed charge (Figure S15). The data from both methods establish that catalyst 2 operates at close to 100% Faradaic efficiency, meaning that every electron goes toward H_2 production without generation of wasteful organic byproducts.

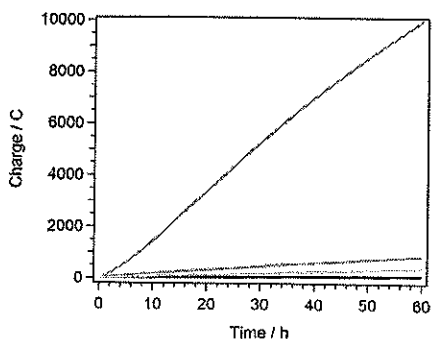


Figure 3. Extended controlled potential electrolysis of $4.7 \mu\text{M}$ Co(II)-PY5Me₂ complex **2** (red), $8.9 \mu\text{M}$ Zn(II)-PY5Me₂ complex **3** (orange), $6.2 \mu\text{M}$ PY5Me₂ (green), and blank control (black) in aqueous solution buffered to neutral pH (2.0 M phosphate, pH 7), showing charge build-up versus time with an applied potential of -1.30 V vs SHE. Only the Co(II)-PY5Me₂ complex **2** is active for generating H₂ from water.

The durability of catalyst **2** was assessed in an extended CPE experiment performed in water and maintained at pH 7 with a 2.0 M phosphate buffer. To ensure a rapid turnover rate during the electrolysis, a potential of -1.30 V vs SHE was employed for the measurement. As depicted in Figure 3, the catalyst affords a robust and essentially linear charge build-up over time, with no substantial loss in activity over the course of 60 h. Significantly, control experiments employing either the free PY5Me₂ ligand or the analogous Zn(II) compound **3** show little or no activity under the same conditions. Based on the bulk concentration of **2** ($4.7 \mu\text{M}$) used in the experiment, a turnover number (TON) of $5.5 \times 10^4 \text{ mol}$ of H₂ per mole of catalyst is calculated. This value is significantly greater than has been reported for other molecular cobalt catalysts for electrochemical H₂ production in neutral water.^{22–26} It is important to note that the TON obtained for **2** is a conservative underestimate, since only the small fraction of catalyst molecules interacting with the electrode are contributing to H₂ production. Indeed, a series of 12-h CPE experiments indicated that the calculated TON and associated turnover frequency (TOF) depend upon the concentration of **2** used in the experiment, with the latter reaching a maximum value of 0.3 mol of H₂ per mole of catalyst per second (Figure S16). In addition, the CPE experiment was terminated after 60 h only due to depletion of the buffer capacity at high concentrations of hydroxide ions, as we observe no degradation of the Co catalyst within this time frame. Taken together, these data establish compound **2** as a robust and active catalyst for H₂ generation from neutral water.

A key advantage of a well-defined molecular catalyst lies in the possibility of tuning its performance via synthetic chemistry. The parent [(PY5Me₂)Co(H₂O)]²⁺ is indeed a highly robust and active catalyst based upon an earth-abundant metal, but it is still necessary to lower the overpotential at which it operates. As an initial test of the tunability of this system, two new derivatives of PY5Me₂ with substituents placed at the *para* position of the central pyridine ring were synthesized (Figure 4): 4-trifluoromethyl-2,6-bis(1,1-di(pyridin-2-yl)ethyl)pyridine (CF₃PY5Me₂), featuring an electron-withdrawing CF₃ group, and 4-dimethylamino-2,6-bis(1,1-di(pyridin-2-yl)ethyl)pyridine (NMe₂PY5Me₂), featuring an electron-donating NMe₂ group. A metalation procedure directly analogous to that employed in the preparation of **2** afforded the compounds [(CF₃PY5Me₂)Co(H₂O)](CF₃SO₃)₂ (**4**) and [(NMe₂PY5Me₂)Co(CF₃SO₃)](CF₃SO₃) (**5**). Single-crystal X-ray analysis for the compounds revealed the

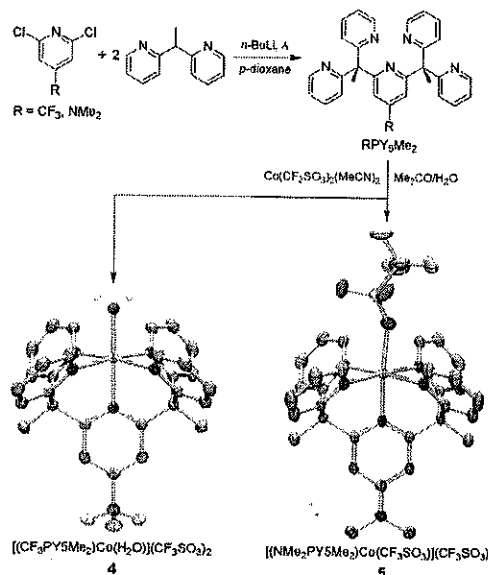


Figure 4. Syntheses of the new pentapyridine ligands RPY5Me₂ (R = CF₃, NMe₂) and compounds **4** and **5**, and the crystal structures of the resulting complexes [(CF₃PY5Me₂)Co(H₂O)]²⁺ and [(NMe₂PY5Me₂)Co(CF₃SO₃)]⁺, with thermal ellipsoids drawn at the 75% and 50% probability level, respectively. Selected interatomic distances (Å) and angles (deg) for **4** and **5**, respectively: Co–N 2.124(2)–2.133(2) and 2.065(4)–2.133(3); Co–O 2.050(3) and 2.118(5); N–Co–N 81.06(8)–98.96(8) and 81.34(10)–99.54(14); N–Co–O 92.7(1)–94.0(1) and 87.2(6)–96.9(6).

structures of the octahedral [(RPY5Me₂)CoX]ⁿ⁺ (X = H₂O and $n = 2$ for **2** and **4**, CF₃SO₃[−] and $n = 1$ for **5**) complexes to be nearly congruent. It is anticipated that the bound CF₃SO₃[−] anion in **5** will be easily replaced by a H₂O molecule when **5** is dissolved in an aqueous solution, resulting in the formation of [(NMe₂PY5Me₂)Co(H₂O)]²⁺.

Electrochemical measurements show that indeed the Co-PY5Me₂ catalyst is highly tunable, with even these substitutions on a single pyridine ring leading to significant shifts in the reduction potentials. The cyclic voltammograms of compounds **2**, **4**, and **5** in CH₂Cl₂ are compared in Figure S17. As expected, the primary Co(II)/Co(I) reduction potentials track systematically with the electronic nature of the substituent. Thus, the complex with the electron-withdrawing CF₃ group exhibits the most positive reduction potential (-0.76 V vs SHE) compared to the parent complex (-0.91 V vs SHE), while the congener with the electron-donating NMe₂ group is shifted to more negative potentials (-1.07 V vs SHE). As shown in Figure 5, similar shifts are apparent for experiments conducted in neutral aqueous media, with the Co(II)/Co(I) reduction peaks occurring at -0.84 , -1.00 , and -1.12 V vs SHE for **4**, **2**, and **5**, respectively (Figure S18). Most importantly, the subsequent sharp rise in current shifts in the same manner, indicating that the substitutions do in fact adjust the potential at which catalysis arises.

The foregoing results demonstrate [(PY5Me₂)Co(H₂O)]²⁺ to be an active and long-lived catalyst for the generation of hydrogen from neutral water. Significantly, peripheral substitutions on the PY5Me₂ ligand are seen to shift the potential required for catalysis in a logical manner, opening the way to the design of analogues that operate at much lower overpotentials. Future work will focus on the synthesis of variants of the

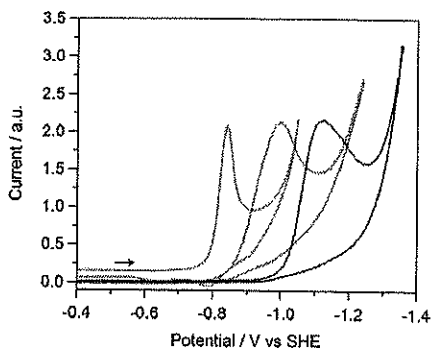


Figure 5. Normalized cyclic voltammograms of Co-PY5Me₂ derivatives, showing the parent **2** (red), CF₃-substituted **4** (green), and NMe₂-substituted **5** (blue) versions in aqueous solution maintained at pH 7 with a 1.0 M phosphate buffer.

complex bearing additional electron-withdrawing substituents, and on establishing the mechanism by which the new catalysts are functioning. Light-driven hydrogen generation by these catalysts in the presence of photosensitizers is also under investigation.

■ ASSOCIATED CONTENT

Supporting Information. Details of syntheses and electrochemistry experiments, supporting figures, and X-ray structure information (CIF). This material is available free of charge via the Internet at <http://pubs.acs.org>.

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■ ACKNOWLEDGMENT

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- (46) Overpotential = applied potential - E(pH), where E(pH) = -0.059pH, which is -0.413 V vs SHE at pH 7.

APPENDIX NINE

EX-10.33 2 d286821dex1033.htm BRIDGE CREDIT AGREEMENT

EXHIBIT 10.33

J.P.Morgan

BRIDGE CREDIT AGREEMENT

dated as of

November 8, 2011,

among

UNITED TECHNOLOGIES CORPORATION,

the LENDERS party hereto,

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent

and

J.P. MORGAN SECURITIES LLC,

HSBC SECURITIES (USA) INC.

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

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and

THE ROYAL BANK OF SCOTLAND PLC,

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APPENDIX TEN

ARPA-E Energy Innovation Summit: Showcase information request

From: **Mott, John B** (jmott@lanl.gov)
Sent: Thu 3/08/12 2:52 PM
To: joejefferis@hotmail.com (joejefferis@hotmail.com)

Mr. Jefferis

The ARPA-E organizers informed me that you are interested in more information on one of the three technologies we submitted to the Technology Showcase, but they didn't tell me which technology.

Please send me an email describing your interest. With that information in hand, I'll give you a call so that we can discuss your interest further.

Best Regards,

John

John B. Mott, Ph.D
Technology Transfer Division
Los Alamos National Laboratory
Mail Stop C334
Los Alamos, NM 87545
tel: 505-665-0883
Blackberry: 505-412-5740
fax: 505-665-0154
jmott@lanl.gov
<http://www.lanl.gov/partnerships/>

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-----Original Message-----

From: Sarah Wenning [mailto:wenning@techconnect.org]
Sent: Monday, February 27, 2012 6:17 PM
To: Mott, John B
Subject: ARPA-E Energy Innovation Summit: Showcase information request

Dear John Mott,

The following person has submitted an online form requesting additional information from you:

Name: Joe Jefferis

E-mail: joejefferis@hotmail.com

Phone: (937) 689-4937

Please contact them at your convenience.

Sincerely,

Sarah Wenning
Vice President, Operations
ARPA-E Energy Innovation Summit
Phone: (512) 697-8849
[http://www.energyinnovationsummit.com/
wenning@techconnect.org](http://www.energyinnovationsummit.com/wenning@techconnect.org)

RE: Federally owned invention?

From: **Lucero, Marcus A** (marcus@lanl.gov)
Sent: Tue 9/11/12 2:09 PM
To: JOE JEFFERIS (joejefferis@hotmail.com)
Cc: Mott, John B (jmott@lanl.gov)
1 attachment
Licensee Data Form.doc (70.0 KB)

Joe,

I cannot give you the specifics behind a license negotiation with another company. We should have a better idea of the negotiation status by the end of September, see email below.

In addition, should the negotiations be unsuccessful with our current partner, we will need you complete the attached License Data Form in order to be consider for a possible license.

In the meantime, please let me know if you have any questions.

Regards,

Marcus

Marcus A. Lucero
Business Development/Licensing Executive
Technology Transfer Division
Los Alamos National Laboratory
PO Box 1663 MS C334
Los Alamos, NM 87545
<http://www.lanl.gov/partnerships/>

Phone: 505-665-6569
Fax: 505-665-0154
Email: marcus@lanl.gov

RE: Technology Transfer

From: **Mott, John B** (jmott@lanl.gov)
Sent: Thu 8/30/12 6:15 PM
To: **JOE JEFFERIS** (joejefferis@hotmail.com)

Joe,

The non-precious metal catalyst for fuel cells technology is currently under option to a company with which we in license negotiations.

Please contact Marcus Lucero (marcus@lanl.gov) at the end of September, when we expect these negotiations to be concluded one way or another. If a license is granted, the technology may not be available.

Meantime, you might be interested in the following information on our licensing program.

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- LANL's typical exclusive license also requires an up-front, nonrefundable issue fee; royalty payments based on products sold; an annual maintenance fee that may convert to a minimum annual royalty and due diligence performance milestones. Often, the grant is limited to a field-of-use. Exclusive licensing is preferred when a technology is in its early stages of development

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Licensees requesting an exclusive or exclusive field-of-use license are required to submit a "commercialization plan," a reasonably detailed document describing the general market and business opportunity the start-up expects to address and a set of commercialization milestones and the associated budgeting and personnel requirements to achieve those milestones.

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Regards,

John

John B. Mott, Ph.D

Technology Transfer Division
Los Alamos National Laboratory
Mail Stop C334
Los Alamos, NM 87545
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From: JOE JEFFERIS [mailto:joejefferis@hotmail.com]
Sent: Thursday, August 30, 2012 1:28 PM
To: Mott, John B
Subject: RE: Technology Transfer

John,

Thank you for the follow up. Awareness is growing. These are exciting times to be in the renewable energy business.

Best regards,

Joe Jefferis

From: jmott@lanl.gov
To: joejefferis@hotmail.com
Subject: RE: Technology Transfer
Date: Thu, 30 Aug 2012 18:43:23 +0000

Mr. Jefferis:

I just wanted to confirm that I received your voice mail regarding your inability to get information about our non-precious metal catalyst for fuel cells technology. Once I've had the opportunity to talk to the licensing officer responsible for the technology, I'll get back to you.

John

John B. Mott, Ph.D

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APPENDIX ELEVEN

Two sided
Paper

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)
United States Department of Justice)
Antitrust Division)
450 Fifth Street, N.W., Suite 8700)
Washington, D.C. 20530)
)
Plaintiff)
)
v.)
)
UNITED TECHNOLOGIES CORPORATION)
United Technologies Building)
Hartford, Connecticut 06101)
)
and)
)
GOODRICH CORPORATION)
Four Coliseum Centre)
2730 West Tyvola Road)
Charlotte, North Carolina 28217)
)
Defendants)

COMPLAINT

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants United Technologies Corporation ("UTC") and Goodrich Corporation ("Goodrich") to enjoin UTC's proposed acquisition of Goodrich. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an asset purchase agreement dated September 21, 2011, UTC proposes to acquire all the shares of Goodrich. The transaction is valued at approximately \$18.4 billion. If consummated, the acquisition would constitute the largest aerospace acquisition in history.

2. UTC and Goodrich are the only two significant suppliers in the worldwide market for large main engine generators. The proposed acquisition would eliminate competition between UTC and Goodrich for large main engine generators.

3. UTC is one of only a few producers of aircraft turbine engines in the world. Either on its own or through a partnership, Goodrich produces and services engine control systems, a critical component on such engines, for several of UTC's leading competitors. Following the acquisition, UTC could disadvantage its engine competitors by withholding or delaying delivery, increasing prices, or reducing the quality of its servicing of engine control systems for competitors' engines. UTC also could exploit confidential information gained through its work on those engine control systems to disadvantage its competitors. The proposed acquisition therefore is likely to reduce competition substantially for aircraft turbine engines.

4. UTC and a joint venture in which Goodrich has a fifty percent share are two of the world's three leading producers of engine control systems for large aircraft turbine engines. The proposed acquisition likely would reduce competition substantially for engine control systems for large aircraft turbine engines.

5. As a result, the proposed acquisition likely would substantially lessen competition in the worldwide markets for the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

6. UTC is incorporated in Delaware and has its headquarters in Hartford, Connecticut. UTC produces a wide range of products for the aerospace industry and other industries, including, among other products, aircraft generators, aircraft engine control systems

and components, aircraft engines, and helicopters. UTC's main aerospace divisions are Pratt & Whitney, Hamilton Sundstrand, and Sikorsky. In 2010, UTC had revenues of approximately \$54 billion.

7. Goodrich is incorporated in New York and has its headquarters in Charlotte, North Carolina. Goodrich manufactures a variety of products for the aerospace industry, including, among other products, aircraft generators, aircraft engine control systems and components, landing gear, and actuation systems. In 2010, Goodrich had revenues of approximately \$7.2 billion. In 2001, Goodrich began a joint venture with Thales Avionics Electrical Systems SA called TRW-Thales Aerolec SAS ("Aerolec") for the purpose of collaborating on the development of variable-frequency main engine generators for large aircraft. References to Goodrich throughout the remainder of this Complaint also refer to Aerolec.

III. JURISDICTION AND VENUE

8. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

9. Defendants develop, manufacture, and sell aircraft systems and components and other products in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

IV. LARGE MAIN ENGINE GENERATORS

A. Background

11. An electrical generator is a device that converts mechanical energy into electrical energy. The main engine of an aircraft generates mechanical energy. The main engine has a generator, which through electromagnetic induction converts the mechanical energy created by the engine to electrical energy.

12. The generator is responsible for generating power for all the in-flight systems that run on electricity, including pumping breathable air into the fuselage, operating the lights, and running the navigation and communication equipment in the cockpit.

13. To operate, the generator depends on the motion of the main engine. As the engine turns, it rotates a shaft leading to the generator, which generates electric power through electromagnetic induction.. The outgoing electricity flows into the primary electrical distribution system, which routes it through the aircraft to the lighting system, environmental control systems, and other systems requiring electric power.

14. Aircraft power generation is a complicated process because aircraft engines change speed, according to the rate of acceleration or deceleration, the density of the air through which the aircraft is flying, and the angle of flight. Such variations require the generator to smooth out the peaks and valleys of propulsion to deliver the consistent power required by the aircraft's electrical systems.

15. The specifications of the main engine generator vary based on the size of the aircraft on which it is used. That aircraft size – large or small – determines the amount of power required from the generator. Large aircraft include primarily aircraft that seat 100 passengers or more, such as commercial aircraft like the Airbus A380 and A320 or the Boeing 777 and 737.

Aircraft that do not qualify as large aircraft include regional jets, business jets, and helicopters, which are smaller and have considerably fewer seats than large aircraft.

16. Electrical systems on large aircraft are significantly different from those used on smaller aircraft. Large aircraft require more power than smaller aircraft. In addition, large aircraft and smaller aircraft have substantial differences in terms of power rating, voltage, speed, and cooling system. Further, large aircraft systematically use alternating current ("AC"), but smaller aircraft can use either AC or direct current ("DC"). AC generators can produce variable frequency or constant frequency electrical power. The generators that are able to power large aircraft generally have outputs above approximately 75 thousand volt-amps ("Kva"). Hereinafter, main engine generators with outputs of 75Kva or more will be referred to as "large main engine generators."

17. Designing a large main engine generator is generally more difficult than designing a main engine generator for a smaller aircraft because of the need to operate large main engine generators efficiently at high rotation speeds. Design engineering staff must be experienced with the impact of operating at higher speeds, which requires a more complex cooling system, more complex controls, and mechanically sizing the generator to fit the plane.

18. The friction created by the heavier rotor operating at faster speeds in a large main engine generator also requires a more complex cooling system. Main engine generators for smaller aircraft, generating 30 to 45Kva or less, are cooled sufficiently by air circulated within the generator chamber. Large main engine generators, however, require a system of tubing and gears to deliver mists of oil around the rotor to avoid over-heating. Oil-cooling systems are more complex and challenging to design.

19. The need for a heavier rotor and a more complex cooling system also makes it difficult to minimize the size and weight of a generator. Therefore, large main engine generators are designed to more demanding specifications than main engine generators for smaller aircraft.

20. Using two generators designed for smaller aircraft in place of one large main engine generator with the same total output would weigh more, take more space, require more connections to the electrical distribution system and the gearbox, and would be more costly. Weight and space, in particular, are important factors in generator selection and likely would dissuade a customer from approving such a design.

21. A generator used in an auxiliary power unit ("APU") cannot be used in place of a main engine generator. APU generators are designed to perform a function different from main engine generators and, therefore, differ in mechanical design, electrical design, and cooling technique.

B. Relevant Markets

1. Product Market

22. Large main engine generators have specific applications, for which other products cannot be employed. An aircraft needs a main engine generator and cannot operate without one. In addition, main engine generators for use on smaller aircraft, such as regional or business jets, cannot be used in large aircraft because they do not provide sufficient output to power the aircraft and have other different specifications. Further, generators for other parts of an aircraft, such as the APU, cannot be used on a main engine for a large aircraft because they do not have the same performance characteristics as main engine generators.

23. A small but significant increase in the price of large main engine generators would not cause customers of those generators to substitute a smaller generator, a generator for

an APU, or any other product, or to reduce purchases of large main engine generators, in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of large main engine generators is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

24. Aircraft manufacturers purchase large main engine generators primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver.

25. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

26. UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the market for the development, manufacture, and sale of large main engine generators. UTC and Goodrich are the only significant competitors for large main engine generators. For the past twelve years, either UTC or Goodrich has won every competition for large main engine generators. Indeed, UTC and Goodrich were the top two bidders in almost every one of those competitions. UTC and Goodrich have been each other's closest competitor based on technical and commercial considerations.

27. UTC's and Goodrich's bidding behaviors often have been constrained by the possibility of losing sales of large main engine generators to the other. Each firm has often

considered the other company's offering when planning bids and research and development activities.

28. Customers have benefited from the competition between UTC and Goodrich for sales of large main engine generators by receiving lower prices, more favorable contractual terms, more innovative products, and shorter delivery times. The combination of UTC and Goodrich would eliminate this competition and its future benefits to customers. Post-acquisition, UTC likely would have the incentive and the ability profitably to increase prices and reduce innovation.

29. UTC and Goodrich invest significantly to remain the two leading suppliers of large main engine generators in the future, and customers expect them to remain the leading suppliers. Future product development for large main engine generators likely would benefit from vigorous innovation competition between UTC and Goodrich.

30. Other companies that have some capability to develop large main engine generators are not close competitors to UTC and Goodrich. For example, no other company has an installed base of large main engine generators. Any other firm would need substantial time and expense to achieve UTC's or Goodrich's record of experience, flight time, and reliability. UTC's and Goodrich's installed base of large main engine generators also provides them the ability to develop new large main engine generators more efficiently and at a lower cost than other companies.

31. Companies that manufacture main engine generators for small aircraft do not compete effectively with UTC and Goodrich for large main engine generators because those companies' experiences with main engine generators for smaller aircraft do not provide them the ability to design and manufacture large main engine generators, which are more complicated

products. Similarly, companies that make generators for APUs do not compete effectively with UTC and Goodrich for large main engine generators because those companies' experiences with APU generators do not provide them the ability to design and manufacture large main engine generators, which again are more complicated products.

32. The proposed acquisition, therefore, likely would substantially lessen competition for the development, manufacture, and sale of large main engine generators. This likely would lead to higher prices, less favorable contractual terms, and less innovation in violation of Section 7 of the Clayton Act.

D. Difficulty of Entry

33. Sufficient, timely entry of additional competitors into the market for large main engine generators is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by the elimination of Goodrich as a supplier of these products.

34. Firms attempting to enter into the market for the development, manufacture, and sale of large main engine generators face several barriers to entry. Main engine generators perform critical functions on the aircraft and likely will be used throughout the life of the aircraft program, which may be twenty or thirty years. As a result, aircraft manufacturers are reluctant to purchase a product from a supplier not already known for its expertise in large main engine generators. A manufacturer must be able to demonstrate that its large main engine generator meets the necessary specifications and need for reliability. While some companies may have demonstrated experience in other types of generators, such experience is not considered by customers to be as relevant as experience specifically in large main generators.

35. UTC and Goodrich emphasize to customers their prior experience in large main engine generators to demonstrate reliability. Moreover, this experience allows them to develop a new large main engine generator at an initial development cost lower than that of companies that do not already have similar generators in operation. They also are able to demonstrate the technical and financial ability successfully to manage production, aftermarket service, and warranty work for large main engine generators, which companies trying to enter this market would not be able to do.

36. Developing a large main engine generator is technically difficult. Manufacturers of main engine generators for smaller aircraft or generators for other parts of the aircraft, such as APUs, face significant technical hurdles in designing and developing large main engine generators. Large main engine generators present unique technical challenges relating to the preservation of power quality at speeds much higher than those reached in main engine generators for smaller aircraft and generators for APUs. Large main engine generators also generate higher current levels than other generators, and require an oil cooling system. The manufacturer of main engine generators for smaller aircraft and APU generators cannot design and produce a large main engine generator simply by making a main engine generator for a smaller aircraft or an APU generator proportionately larger, but must instead completely redesign the generator.

37. Further, substantial time and significant financial investment would be required for a company to design and develop a large main engine generator. Even companies that already make other types of generators, or that already are attempting to develop a large main engine generator, would require up to five years or more and an investment of over \$50 million to develop a product that is competitive with those offered by UTC and Goodrich.

38. As a result of these barriers, entry into the market for large main engine generators would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

V. AIRCRAFT TURBINE ENGINES

A. Background

39. Most modern commercial, business, and military aircraft are powered by turbine engines. These engines operate by burning a fuel-and-air mixture in a combustion chamber, with the resulting combustion products turning a propeller blade on a turboprop engine, a rotor shaft on a turboshaft engine, or a fan in front of a turbofan engine.

40. Turbofan engines power most commercial transport aircraft, business jets, and many military aircraft. Generally, large commercial aircraft, regional jets, and military aircraft use the most powerful turbofan engines, while business jets use turbofan engines of lower power. The power delivered by a turbofan engine is measured in terms of pounds of thrust ("pounds thrust"), and such engines are generally categorized by their thrust class.

41. Turboprop engines primarily are used to power smaller aircraft, such as commuter aircraft. Turboshaft engines power helicopters. The power delivered by turboprop and turboshaft engines is measured in terms of shaft horsepower (shp).

42. Due to their complexity and the degree of expertise and skill required for their design, development and production, few companies produce aircraft turbine engines.

43. Aircraft turbine engines typically continue in service for decades and require regular maintenance, repair, and overhaul. When selecting an engine, customers take into account the difficulty and cost of servicing the engine. Engines that require more frequent

servicing or are otherwise more difficult or costly to own and operate are less attractive to customers and therefore less competitive.

44. There are only three main producers of aircraft turbine engines of greater than 10,000 pounds thrust. (Hereinafter the term “large aircraft turbine engines” will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce Group plc (“Rolls-Royce”) are two of these three producers. UTC manufactures turbine engines of up to 90,000 pounds thrust, while Rolls-Royce manufactures turbine engines of up to 97,000 pounds thrust.

45. There are only a few producers of aircraft turbine engines of 10,000 pounds thrust or less. (Hereinafter the term “small aircraft turbine engines” will refer to engines of this thrust range.) UTC, through its Pratt & Whitney subsidiary, is one of these producers.

46. It is critical that fuel be fed into aircraft turbine engines in a precise manner, so that the engine responds to the pilot’s instructions in the most efficient manner possible. The system that accomplishes this is the engine control system, or ECS. The core of the ECS is a computer, usually called an electronic engine control, or EEC, that receives information from multiple sensors in the engine and from the pilot’s controls, and calculates the amount of fuel to be sent to the engine. The ECS also includes the engine’s main fuel pump and a fuel metering unit, or FMU, which controls the amount of fuel coming into the engine from the main fuel pump.

47. In virtually all modern aircraft turbine engines, the EEC within the ECS is a full-authority digital engine control, or FADEC. The FADEC consists of hardware and two types of software: the operating system and the application software. The operating system is provided by

the FADEC supplier. The application software contains sensitive performance data relating to the particular engine and is usually provided by the engine manufacturer.

48. An ECS, including the FADEC, is designed and developed to meet the specific performance requirements for the particular engine on which it will be installed. As a result, the ECS supplier has insight into the design and cost of not only its ECS, but also the customer's engine. Some ECS suppliers also provide the application software on the FADEC. Such suppliers have access to competitively sensitive confidential business information about the fuel efficiency and performance principles around which the customer's engine is designed.

49. In 2008, Goodrich and Rolls-Royce formed Aero Engine Controls (AEC), a joint venture to produce ECSs. The AEC joint venture agreement requires Rolls-Royce to purchase all of its ECSs for engines of over 4000 pounds thrust or 2000 shp from AEC. Therefore, there are no alternative suppliers of ECSs for Rolls-Royce large aircraft turbine engines.

50. The AEC joint venture agreement gives Goodrich the exclusive right to provide replacement parts and undertake maintenance, repair and overhaul of ECSs for Rolls-Royce large aircraft turbine engines. Because the volume of commerce for aftermarket service of any given ECS is quite small, there are no secondary suppliers for ECS replacement parts or service. Aftermarket parts and service for ECSs must be provided by the original ECS manufacturer or a reseller designated by that manufacturer. Therefore, it would not be possible for purchasers of these Rolls-Royce engines to obtain parts or service for these ECSs from any supplier other than Goodrich.

B. Relevant Markets

1. Product Markets

a. Aircraft Turbine Engines

51. To a large extent, each aircraft platform is limited in the type and size of engine with which it may be powered. The choice of a turbofan, turboprop or turboshaft engine is dictated by aircraft type, range and speed, and is specified by the manufacturer. The engine must provide the amount of power needed for that particular aircraft to perform properly and safely, while at the same time being as light as possible. Thus, only a limited range of engine sizes is considered for any particular aircraft.

52. For any given aircraft, a small but significant increase in the price of an aircraft turbine engine of the required type and thrust would not cause sufficient purchases of such engines to be shifted to engines of a different type or significantly higher or lower thrust so as to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of the turbine engine required for each type of aircraft is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

53. Although the engine required for each such aircraft thus may be deemed a separate product market, in each such market there are few competitors.

54. The proposed acquisition of Goodrich by UTC would affect competition in each large aircraft turbine engine market in the same manner. It is therefore appropriate to aggregate large aircraft turbine engine markets for purposes of analyzing the effects of the acquisition.

55. The proposed acquisition of Goodrich by UTC would affect competition in each small aircraft turbine engine market in the same manner. It is therefore appropriate to aggregate small aircraft turbine engine markets for purposes of analyzing the effects of the acquisition.

b. ECSs for Aircraft Turbine Engines

56. All aircraft turbine engines require an ECS in order to operate properly. No aircraft engine can be sold or operated without an ECS. There are no other products that perform the functions of an ECS in receiving and analyzing data from sensors and pilot controls, calculating the optimal flow rate of fuel into the engine combustion chamber, and feeding the proper amount of fuel into the engine combustion chamber.

57. Each ECS is designed to work on a specific engine, and one ECS cannot be substituted for an ECS on another engine. Therefore, a small but significant increase in the price of the ECS designed for a particular engine would not cause enough purchases to be shifted to a different ECS so as to make such a price increase unprofitable. Accordingly, the development, manufacture, sale, and aftermarket service of the ECS for each aircraft turbine engine is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

58. Although the ECS required for each particular engine thus may be deemed a separate product market, the AEC joint venture agreement requires Rolls-Royce to purchase all ECSs for large aircraft turbine engines from AEC and grants exclusive aftermarket rights to such ECSs to Goodrich. Thus the proposed acquisition would affect competition in each such market in the same manner. It is therefore appropriate to aggregate the markets for ECSs for large aircraft turbine engines for purposes of analyzing the effects of the acquisition.

59. The proposed acquisition would have the same effect in each market for ECSs for small aircraft turbine engines. It is therefore appropriate to aggregate the markets for ECSs for small aircraft turbine engines for purposes of analyzing the effects of the acquisition.

2. Geographic Market

60. Aircraft manufacturers purchase aircraft turbine engines and the ECSs for those engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. Customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver.

61. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Acquisition

1. Large Aircraft Turbine Engines

62. As discussed in paragraph 43 above, there are only three primary competitors in the markets for the development, manufacture, and sale of large aircraft turbine engines. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of those competitors. Goodrich is a partner in AEC, from which Rolls-Royce must obtain its ECSs for most such engines. If UTC were to purchase Goodrich, and thus Goodrich's share of AEC, UTC would be both a producer of large aircraft turbine engines and the sole-source supplier of ECSs to one of its leading engine competitors.

63. After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to cause AEC to withhold or delay delivery of ECSs to its competitor, Rolls-Royce, resulting in the inability of Rolls-Royce to deliver engines on the schedule required by customers.

64. In addition, after the acquisition UTC, through its position as the exclusive supplier of aftermarket parts and services for ECSs on Rolls-Royce large aircraft turbine engines,

would have the incentive and ability to raise the costs of such parts and services, or to lower the availability of such parts and services, making Rolls-Royce a less reliable supplier of large aircraft large turbine engines.

65. Such strategies to raise Rolls-Royce's costs and reduce its reliability would be profitable to UTC post-merger because the sale of large aircraft turbine engines provides much more revenue and profit than the sale of ECSs or the aftermarket service of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by causing AEC to withhold or delay delivery of ECSs for Rolls-Royce engines, or by increasing the cost or difficulty of obtaining aftermarket service on such ECSs, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of or aftermarket service on such ECSs.

66. These actions by UTC likely would harm purchasers of large aircraft turbine engines because UTC and Rolls-Royce have been, and likely will continue to be, in some competitions the two best-positioned suppliers of large aircraft turbine engines. By making Rolls-Royce unable to deliver engines or by raising its costs, UTC may substantially affect competition and gain the ability to raise prices or reduce quality.

67. In addition, because AEC produces the ECSs for Rolls-Royce engines, AEC has accurate information concerning the cost of the ECS and each of the ECS components used on each Rolls-Royce engine covered by the AEC agreement. Moreover, because AEC provides the application software for the FADECs for these Rolls-Royce engines, it has access to competitively-sensitive confidential business information concerning the engine itself, including the fuel efficiency and performance principles around which each engine is designed.

68. Following the acquisition of Goodrich and its share of AEC, UTC would have the incentive and ability to use this information to its advantage in bidding on large aircraft turbine engines. For example, such information would reveal to UTC when it could offer higher pricing or less innovative solutions without risk of losing a large aircraft turbine engine sale.

69. Therefore, UTC's acquisition of Goodrich would give UTC both the ability and the incentive to reduce the competitiveness of Rolls-Royce in the supply of large aircraft turbine engines. If UTC were to reduce the competitiveness of Rolls-Royce in the markets for these engines, customers for those engines would have significantly fewer choices, and competition thus would be lessened substantially.

2. Small Aircraft Turbine Engines

70. As discussed in paragraph 44 above, UTC, through its Pratt & Whitney subsidiary, is one of a small number of significant competitors in the markets for the development, manufacture, and sale of small aircraft turbine engines. Several of UTC's competitors purchase the ECSs for certain of their small aircraft turbine engines from Goodrich. Therefore, if UTC were to purchase Goodrich, UTC would be both a producer of small aircraft turbine engines and a supplier of ECSs to its competitors.

71. At least three years are required to design and develop an ECS for a small aircraft turbine engine. Therefore, if an engine manufacturer must replace the supplier of the ECS on a specific engine, at least three years will pass before the engine manufacturer can deliver an engine with a replacement ECS. Aircraft manufacturers often demand delivery of an engine in less than three years.

72. If, after the acquisition, UTC were to withhold or delay delivery of Goodrich ECSs to companies that compete with UTC for the design, development, manufacture, and sale

of small aircraft turbine engines, those companies might be unable to deliver engines on the schedule required by their customers. Such customers likely would have to turn to a different engine supplier.

73. In such circumstances, UTC might be the best positioned alternative engine supplier. As a result, customers that would otherwise choose a competing engine could be forced to purchase an engine from UTC.

74. The sale of small aircraft turbine engines provides much more revenue and profit than the sale of ECSs for those engines. Therefore, if UTC were able to gain additional engine sales by withholding or delaying delivery of ECSs to its engine competitors, the additional engine sales would result in considerably more revenue and profit to UTC than the revenue and profit lost from any decrease in sales of such ECSs.

75. UTC's acquisition of Goodrich therefore would give UTC both the ability and the incentive to make its competitors unable to compete effectively to supply small aircraft turbine engines. If UTC were to make its competitors unable to compete effectively in the development, manufacture, and sale of small aircraft turbine engines, customers for those engines would have significantly fewer choices, and competition would be lessened substantially.

D. Difficulty of Entry

76. Sufficient, timely entry of additional competitors into the markets for aircraft turbine engines is unlikely to prevent the harm to competition in the markets for aircraft turbine engines that is likely to occur as a result of the proposed acquisition.

77. Entry of any new competitor into the development, manufacture, and sale of aircraft turbine engines is unlikely and cannot happen in a time period that would prevent significant competitive harm. The primary purchasers of aircraft turbine engines are aircraft

manufacturers, of which there are very few in the world. Aircraft manufacturers are extremely hesitant to purchase components from unproven sources, particularly such major components as engines. A firm seeking to enter this business would need many years and an enormous financial investment to design and develop a new aircraft turbine engine. No firm has successfully entered this business in decades.

78. Such entry is unlikely to occur in a timeframe sufficient to prevent competitive harm. Engine purchasers typically expect delivery of the first engine for a new aircraft from one to five years after contract award. A new entrant into any market for aircraft turbine engines, even a firm already manufacturing other aircraft turbine engines, would require much more time to develop and market a new engine.

79. As a result of these barriers, entry into the markets for aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that is likely to result from UTC's acquisition of Goodrich.

VI. ENGINE CONTROL SYSTEMS FOR LARGE AIRCRAFT TURBINE ENGINES

A. Background

80. The ECS in a large aircraft turbine engine is a major determinant of key engine performance parameters including fuel economy, safe operation, and thrust in different situations. In order to maximize engine performance, the ECS must be closely integrated with the engine during both the design stage and the assembly process. Changes in an engine design can necessitate changes in an ECS design, and vice versa.

81. As a result, large aircraft turbine engines and the ECSs for those engines are not sold separately to engine purchasers. It would not be practical for even the most sophisticated

engine purchasers to integrate an ECS and an engine. All large aircraft turbine engines are sold with an ECS installed by the ECS producer and the engine manufacturer.

82. In large part because of the highly integrated nature of engines and ECSs, each of the three major producers of large aircraft turbine engines has a preferred supplier for the ECSs used on its engines. Each engine manufacturer purchases the great majority of the ECSs used on its engines from its preferred supplier.

83. Because of these preferred supplier relationships, there are only three significant suppliers of ECSs for large aircraft turbine engines, one for each engine producer. UTC and AEC, the Goodrich-Rolls-Royce joint venture, are two of the three suppliers. UTC, through its Hamilton Sundstrand subsidiary, supplies the ECSs used on most of its own engines. AEC supplies the ECSs used on most Rolls-Royce engines.

B. Relevant Markets

1. Product Market

84. As discussed in paragraphs 56 to 58 above, the development, manufacture, sale, and aftermarket service of the ECS for large aircraft turbine engines is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

2. Geographic Market

85. Aircraft manufacturers purchase ECSs for large aircraft turbine engines primarily from companies located in the United States or Europe. However, suppliers typically offer a worldwide organization to support the provision of maintenance and repair services. ECS customers do not consider transportation costs, a small proportion of the cost of the finished aircraft, to be a significant cost driver.

86. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Proposed Transaction

87. UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the market for ECSs for large aircraft turbine engines. UTC and AEC are two of the three producers of such ECSs. If UTC were to purchase Goodrich and thus Goodrich's share of AEC, UTC would control fifty percent of one of its two leading competitors for such ECSs.

88. Although an ECS for a large aircraft turbine engine is generally purchased by an engine builder from its preferred supplier, independent source selections can and do take place. For example, an aircraft manufacturer may purchase a replacement ECS from an ECS manufacturer other than its preferred supplier to upgrade the ECS on an engine already in service. This occurs when an existing ECS becomes difficult to repair due to parts obsolescence issues. In addition, engine manufacturers occasionally form teams to compete for new large aircraft turbine engine projects. In either of these situations, an ECS supplier may be selected by competition rather than on the basis of an existing preferred supplier arrangement. After the acquisition UTC, through its position as a partner in the AEC joint venture, would have the incentive and ability to impede AEC's pursuit of such projects in competition with UTC. Competition for ECSs for large aircraft turbine engines thus would be lessened substantially.

89. UTC, through its Pratt & Whitney subsidiary, and Rolls-Royce are two of the world's three primary manufacturers of large aircraft turbine engines. The companies conduct independent work into the research, development and design of new ECSs for such engines, UTC through its Hamilton Sundstrand subsidiary and Rolls-Royce through AEC. After UTC acquires Goodrich, UTC and Rolls-Royce would share control of AEC, and UTC has explored

using AEC as a vehicle to combine its ECS business with that of Rolls-Royce, to share intellectual property and research and development results, and to eliminate some product lines, rather than competing with Rolls-Royce to independently develop innovative and cost-effective ECS solutions. Competition for ECSs for large aircraft turbine engines thus would be lessened substantially, as engine customers would be offered two engines from UTC and Rolls-Royce, but only a single ECS. This loss of competition would result in less innovative and cost-effective ECSs for large aircraft turbine engines.

D. Difficulty of Entry

90. Sufficient, timely entry of additional competitors into the market for ECSs for large aircraft turbine engines is unlikely. Therefore, entry or the threat of entry into this market would not prevent the harm to competition caused by UTC's acquisition of Goodrich and its share of AEC.

91. A firm seeking to enter this market would need substantial time and a significant financial investment to design and develop a new ECS for a large aircraft turbine engine. Even those firms that produce ECSs for smaller engines would need at least five years and an investment of \$50 million or more to develop an ECS for a large aircraft turbine engine that is competitive with those produced today by UTC and AEC.

92. A firm attempting to enter this market would be unlikely to obtain sufficient sales to be economically viable. Because most of these products are purchased by the three primary engine manufacturers from their existing preferred suppliers, a new entrant would have few opportunities to recover the considerable investment required to develop a new ECS for large aircraft turbine engines. Independent competitions are unlikely to occur with sufficient frequency to permit an entrant to recover its costs.

93. As a result of these barriers, entry into the market for ECSs for large aircraft turbine engines would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from UTC's acquisition of Goodrich.

VII. VIOLATIONS ALLEGED

94. UTC's proposed acquisition of Goodrich likely would lessen competition substantially in the development, manufacture, and sale of large main engine generators, aircraft turbine engines, and engine control systems for large aircraft turbine engines, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

95. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to large main engine generators, among others:

- (a) actual and potential competition between UTC and Goodrich would be eliminated;
- (b) competition likely would be substantially lessened;
- (c) prices likely would increase, contractual terms likely would be less favorable to the customers, and innovation likely would decrease.

96. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to aircraft turbine engines, among others:

- (a) competition likely would be substantially lessened;
- (b) prices would likely increase, contractual terms likely would be less favorable to the customers, and innovation likely would decrease.

97. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects relating to ECSs for large aircraft turbine engines, among others:

(a) actual and potential competition between UTC and Goodrich would be eliminated;

(b) competition likely would be substantially lessened;

(c) prices would likely increase, contractual terms likely would be less favorable to the customers, and innovation likely would decrease.

VIII. REQUESTED RELIEF

98. The United States requests that this Court:

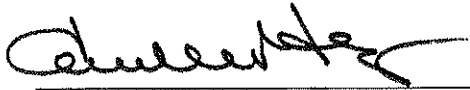
(a) adjudge and decree that UTC's acquisition of Goodrich would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed acquisition of Goodrich by UTC, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine UTC with Goodrich;

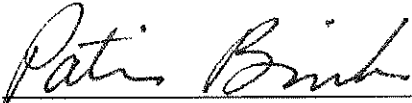
(c) award the United States its costs for this action; and

(d) award the United States such other and further relief as the Court deems just and proper.

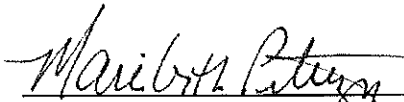
FOR PLAINTIFF UNITED STATES OF AMERICA:



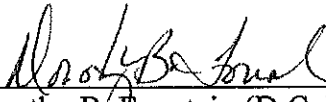
Jamillia Ferris (D.C. Bar # 493479)
Acting Assistant Attorney General



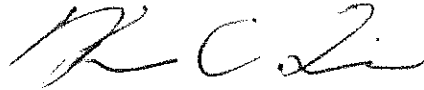
Patricia A. Brink
Director of Civil Enforcement



Maribeth Petrizzi (D.C. Bar #435204)
Chief, Litigation II Section



Dorothy B. Fountain (D.C. Bar #439469)
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United States Department of Justice
Antitrust Division

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Washington, D.C. 20530
(202) 307-0922

Dated: July 26, 2012

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

Plaintiff

v.

UNITED TECHNOLOGIES CORPORATION

and

GOODRICH CORPORATION

Defendants

CASE NO. 1:12-CV-01230-RC

MOTION OF THE UNITED STATES TO APPOINT MONITORING TRUSTEE

Pursuant to the Hold Separate Stipulation and Order entered by the Court on July 26, 2012 and the terms of the Proposed Final Judgment filed the same day, Plaintiff United States of America hereby moves for approval of the appointment of ING Financial Markets LLC as Monitoring Trustee. Attached is a Proposed Order.

Dated: August 16, 2012

Respectfully submitted,

/s/ Kevin C. Quin

Kevin C. Quin (D.C. Bar #415268)
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APPENDIX TWELVE

UNITED STATES DEPARTMENT OF STATE
BUREAU OF POLITICAL-MILITARY AFFAIRS
WASHINGTON, D.C. 20520

In the Matter of:

United Technologies Corporation

JUN 19 2012

A Delaware Corporation

Respondent

CONSENT AGREEMENT

WHEREAS, the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified United Technologies Corporation ("Respondent") of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. §2778), and the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. pts. 120-130);

WHEREAS, the Department acknowledges that Respondent described many of these matters in voluntary disclosures submitted to the Department, and cooperated with the Department's review of these matters;

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WHEREAS, Respondent and certain of Respondent's subsidiaries have entered into a Deferred Prosecution Agreement, and Respondent's subsidiary Pratt & Whitney Canada Corporation (P&W Canada) has entered into a Plea Agreement, with the U.S. Department of Justice;

WHEREAS, Respondent has reviewed the Proposed Charging Letter and this Consent Agreement, fully understands these documents, and enters into this Consent Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Respondent wishes to settle and dispose of all potential civil charges, penalties and sanctions arising from the Proposed Charging Letter, and the facts that Respondent has disclosed in writing to the Department in its disclosures as identified in the Proposed Charging Letter, the facts identified in the Deferred Prosecution Agreement, and the facts identified in the Plea Agreement, by entering into this Consent Agreement;

WHEREAS, Respondent agrees that this Consent Agreement will remain in effect for a period of four (4) years, subject to the terms and conditions set forth below;

WHEREAS, Respondent represents and assures that it will continue the remedial measures implemented as a result of this Consent Agreement, and self-implemented prior thereto, as reasonably warranted and amended subsequent to the completion of the term of this Consent Agreement;

WHEREAS, Respondent understands that a violation of this Consent Agreement is considered a violation of the related administrative order ("Order"), and agrees that if the Department finds that this Consent Agreement was negotiated based on Respondent's knowingly providing materially false or misleading information to the Department, the Department may revoke this Consent Agreement and the Order and bring additional charges against Respondent; and

WHEREAS, the Department and Respondent agree to be bound by this Consent Agreement and the Order to be entered by the Assistant Secretary of State for Political-Military Affairs.

Now, WHEREFORE, the Department and Respondent agree as follows:

Parties

(1) The Parties to this Consent Agreement are the Department and Respondent, including Respondent's operating divisions, subsidiaries, and business units engaged in activities regulated under the ITAR, and their assignees and successors, and in the event of reorganization, the terms of this agreement will follow and apply to all affected entities or units.

Jurisdiction

(2) The Department has jurisdiction over Respondent under the AECA and the ITAR in connection with the matters identified in the Proposed Charging Letter.

General Remedial Measures

(3) Respondent, reflecting its commitment to conduct its business in full compliance with the AECA and ITAR, and in order to ensure, in particular, that there are no unauthorized exports of ITAR-controlled defense articles, or technical data, and that all transactions and submissions to the Department in accordance with section 127.12 of the ITAR are compliant, transparent and without omissions or misrepresentations, agrees to implement the following remedial measures and such additional measures as may be mutually agreed upon by Respondent and the Director, Office of Defense Trade Controls Compliance ("DTCC"), and agrees further that these measures will remain in effect for four (4) years, subject to the terms and conditions below, as part of this Consent Agreement entered into with the Department.

(4) Further, Respondent agrees that these measures will be incorporated into any of Respondent's future business acquisitions that are involved

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in the design, manufacture, sale, export, brokering, or re-export or re-transfer of ITAR-controlled defense articles, technical data, and defense services. Within one hundred twenty (120) days of each such acquisition, Respondent will conduct a review of the acquired business and submit to DTCC an implementation plan for incorporating remedial measures, subject to amendment or approval by the Director, DTCC.

(5) Further, if Respondent sells any of its ITAR-regulated operating divisions, subsidiaries, or business units, Respondent agrees to notify DTCC sixty (60) days prior to such sale if such sale will be to a foreign person and thirty (30) days prior to such sale if such sale will be to a U.S. person; and further to notify the purchaser in writing, and to require the purchaser to acknowledge in writing prior to the sale, that the purchaser will be bound by the terms and conditions of this Consent Agreement, unless the Director, DTCC approves an exception to this requirement.

(6) Respondent acknowledges and accepts its obligation to maintain effective export control oversight, infrastructure, policies and procedures for its AECA/ITAR-regulated activities.

(7) Under this Consent Agreement, Respondent shall ensure that adequate resources are dedicated to ITAR compliance throughout the Respondent's ITAR-regulated operating divisions, subsidiaries and business units. Respondent will establish policies and procedures for all Respondent employees with responsibility for AECA and ITAR compliance to address lines of authority, staffing increases, performance evaluations, career paths, promotions and compensation.

(8) Within one hundred twenty (120) days of the date of the Order, Respondent, in coordination with the Special Compliance Official ("SCO" – see below), will conduct an internal review of AECA and ITAR compliance resources throughout its ITAR-regulated operating divisions, subsidiaries, and business units and establish the necessary actions to ensure that sufficient resources are dedicated to compliance, including the use of compliance cross-trained employees on a full or part-time basis to perform specified compliance functions.

(9) Respondent will provide to the Director, DTCC within six (6) months from the date of the Order, and then semi-annually thereafter,

status reports (see paragraph 10(n)(3)(ii) below), by ITAR-regulated operating divisions, subsidiaries, and business units on ITAR compliance program enhancements and resource levels and their effect on ensuring ITAR compliance. Respondent shall provide AECA and ITAR compliance oversight and ensure that best practices learned are implemented throughout all of its ITAR-regulated businesses.

Official Designated for Consent Agreement Compliance and Oversight

(10) Respondent shall appoint, in consultation with and at the approval of the Director, DTCC, a qualified individual from outside Respondent to serve as a Special Compliance Official ("SCO"). The term, authorities, and responsibilities of the SCO are described below:

(a) The SCO shall not have been employed in any prior capacity by or previously represented in any capacity Respondent, or any of Respondent's operating divisions, subsidiaries or business units, past or present. As a condition of appointment as SCO, he/she shall agree to forsake for a period of five (5) years from the date of termination of this Consent Agreement any such employment or representation. Respondent shall nominate a person to serve as SCO within sixty (60) days from the date of the Order, and the nomination shall be subject to the written approval of the Director, DTCC. Within fifteen (15) days following the date of the approval of the nomination by the Director, DTCC, Respondent shall appoint the person to the position of SCO.

(b) Within thirty (30) days of appointment of the SCO or ISCO (see below), Respondent shall empower him/her with a written delegation of authority, and statement of work approved by DTCC, to permit him/her to monitor, oversee, and promote Respondent's AECA and ITAR compliance with the terms of this Consent Agreement in a manner consistent with the purpose of this Consent Agreement and the Order, its specific terms and conditions, and other activities subject to the ITAR and the AECA. The SCO or ISCO will report to Respondent's Senior Vice President and General Counsel and the Director, DTCC as

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set forth herein. The SCO or ISCO shall perform his/her duties in consultation with DTCC.

(c) The SCO shall serve for the duration of the Consent Agreement, unless at any point following two (2) years from the appointment of the SCO the Director, DTCC determines a shorter period of service in accordance with the following: upon a written request from Respondent, and recommendation by the SCO, the Director, DTCC may approve one of Respondent's employees to succeed the SCO as an Internal Special Compliance Official ("ISCO"). Respondent shall appoint the approved individual to the position of ISCO and the ISCO shall serve for the remaining term of the Consent Agreement. The ISCO shall be fully empowered and capable of performing the responsibilities of the SCO. Upon appointment of the ISCO by Respondent, the term of the SCO shall cease.

(d) The SCO or ISCO may also be requested to perform additional export oversight, monitoring and coordination of activities as agreed to by Respondent and the Director, DTCC.

(e) In fulfilling the responsibilities set forth in this Consent Agreement, the SCO or ISCO may, at his/her sole discretion, present any export compliance-related issue directly to any or all among Respondent's Chief Executive Officer, the Senior Vice President and General Counsel, and if necessary the Director, DTCC.

(f) The Respondent's Senior Vice President and General Counsel will brief the Board of Directors, or appropriate committee thereof, at least annually concerning any findings and recommendations by the SCO or ISCO, Respondent's response and implementation of the same, and the status of AECA and ITAR compliance generally within Respondent.

(g) Respondent's Senior Vice President and General Counsel shall notify the Board of Directors of the appointment of the SCO or ISCO. Such notification shall include a description of the SCO's or ISCO's powers, duties, authorities and responsibilities.

Respondent shall post this notice on Respondent's internal website for the duration of this Consent Agreement.

(h) If for any reason the appointed SCO or ISCO is unable to serve the full period of his/her appointment, or temporarily is unable to carry out the responsibilities described herein greater than thirty (30) days, or if the Director, DTCC decides that the SCO or ISCO shall be removed for failure to satisfactorily perform his/her duties, Respondent's Senior Vice President and General Counsel shall recommend a successor acceptable to the Director, DTCC. Agreement to the replacement by the Director, DTCC shall be confirmed in writing to Respondent. Such recommendation shall be made at least thirty (30) days in advance of a new appointment unless a shorter period is agreed to by the Director, DTCC. If a successor SCO or ISCO is not appointed within forty-five (45) days of the termination or removal of the appointed SCO or ISCO, this Consent Agreement will be extended for the period of time equal to the period of time Respondent was without an approved appointed SCO or ISCO. Respondent will not be without an SCO for more than one hundred twenty (120) days unless the Director, DTCC grants an extension. If the SCO or ISCO for any reason is unable to carry out the responsibilities described herein on a temporary basis, not to exceed thirty (30) days, then Respondent's Senior Vice President and General Counsel, or the senior official within the Office of the General Counsel responsible for AECA and ITAR compliance, shall assume the duties and authorities of the SCO or ISCO in the interim, subject to the approval of the Director, DTCC. The written delegation of authority and statement of work described in subparagraph (b) above shall make provision for this event.

(i) With the understanding that nothing in this Consent Agreement shall be interpreted to compel waiver of applicable attorney-client or work product protections, the SCO or ISCO shall have full and complete access to all personnel, books, records, documents, audits, reports, facilities and technical information relating to compliance with this Consent Agreement and the Order, and to all munitions authorizations, licenses, and Respondent's guidance relating to the export of defense articles and defense services.

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(j) Respondent, including its ITAR-regulated operating divisions and subsidiaries, shall cooperate with all reasonable requests of the SCO or ISCO, including requests for assistance to obtain necessary security clearances, and shall take no action to interfere with or impede the SCO's or ISCO's ability to monitor Respondent's compliance with this Consent Agreement, the Order, and the AECA and the ITAR, or to carry out the SCO's or ISCO's other responsibilities set forth in this Consent Agreement. The SCO or ISCO shall notify DTCC whenever the SCO or ISCO encounters any difficulties in exercising the duties and responsibilities assigned under this Consent Agreement.

(k) The SCO shall, with the approval of the Director, DTCC and the concurrence of Respondent, have the authority to employ in a support capacity at the expense of Respondent such assistants and other professional staff as are reasonably necessary for the SCO to carry out the SCO duties and responsibilities.

(l) In the event Respondent has a demonstrable rationale for requesting the removal of the SCO, such information shall be presented to the Director, DTCC, along with recommendations for a replacement, pursuant to the conditions of this paragraph (10). Any determination as to the removal of the SCO shall be at the sole discretion of the Director, DTCC.

(m) The Director, DTCC shall on his/her own initiative or at the request of the SCO or ISCO issue such guidance as may be necessary or appropriate to help ensure strict compliance with the AECA and ITAR.

(n) The SCO or ISCO shall have three (3) principal areas of responsibility regarding the future conduct of Respondent and Respondent's operating divisions, subsidiaries or business units engaged in activities regulated under the ITAR:

(1) Policy and Procedure: The SCO or ISCO shall monitor Respondent's AECA and ITAR compliance programs with specific attention to the following areas associated with the offenses alleged in the Proposed Charging Letter:

- i. Policies and procedures for the identification, including export control jurisdiction determination, and marking of defense articles and defense services;
- ii. Policies and procedures for the identification of ITAR-controlled technical data, to include the use of derivative drawings or derivative technical data, and marking thereof;
- iii. Policies and procedures for maintenance and protection of and access to technical data on Respondent's computer networks or other electronic methods of storage and transfer;
- iv. Policies and procedures for the export, re-transfer and re-export of defense articles and services;
- v. Policies and procedures for the transfer and re-transfer of technical data;
- vi. Policies and procedures for the management and handling of Department authorized agreements;
- vii. Policies and procedures for incorporating AECA and ITAR compliance into Respondent's management business plans at the senior executive level;
- viii. Policies and procedures for preventing, detecting and reporting AECA and ITAR violations;
- ix. Policies and procedures for encouraging Respondent's employees to report ITAR compliance problems without fear of reprisal. These policies and procedures should promote Respondent's existing programs (Ombudsman/DIALOG, Business Practices Office, and other channels) as reporting mechanisms safe from reprisals and as a means to document the issue to be looked at, management's action, and the result of any action taken by management in resolving the issue;

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- x. Policies and procedures for tracking research and development work to ensure that all such work on defense articles, including technical data, is in compliance with the AECA and ITAR from conception to completion of the project;
- xi. Policies and procedures for ensuring that exports of classified technical data and classified defense articles are in full compliance with section 125.3 of the ITAR; and
- xii. Policies and procedures identified as necessary by the Respondent or SCO or ISCO during the course of this Consent Agreement, as approved by Director, DTCC.

(2) Specific Duties: The SCO or ISCO shall oversee the following specific areas:

- i. The Respondent's implementation of the compliance measures required by this Consent Agreement;
- ii. Respondent's corporate oversight of ITAR compliance for performance of its responsibilities under this Consent Agreement and the Order in a timely and satisfactory manner;
- iii. The adequate allocation of resources to ITAR compliance, including the maintenance of adequate compliance staffing levels at Respondent and all operating divisions, subsidiaries, and business units that involve ITAR-related activities;
- iv. Account expenditures for remedial compliance measures in coordination with Respondent's Chief Financial Officer ("CFO");
- v. Enhancing incorporation of ITAR compliance into the Respondent's management business plans at the senior executive level;
- vi. Respondent's measures for reporting violations and potential violations of the AECA and ITAR to

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DTCC either through voluntary disclosure or in response to a directed disclosure, including decision making processes regarding,¹ and drafting of, submissions of same; and

- vii. Implementation of policies and procedures encouraging Respondent's employees to report ITAR compliance problems without fear of reprisal.

(3) Reporting: The SCO or ISCO is responsible for the following reporting requirements:

- i. Tracking, evaluating and reporting on Respondent's review of ITAR violations and compliance resources;
- ii. Providing to the Director, DTCC within six (6) months from the date of the Order, and then semi-annually thereafter, status reports on ITAR compliance program enhancements and resource levels and their impact on or benefit to ensuring ITAR compliance (see paragraph (9) above) throughout Respondent. The reports will include status updates regarding Respondent's automated export compliance system described in paragraph (13);
- iii. Providing a yearly accounting report certified as correct by the CFO of these expenditures to Respondent's Senior Vice President and General Counsel or other senior official as appropriate, and Director, DTCC; and
- iv. Providing reports to the Board of Directors or appropriate committee thereof, the Senior Vice President and General Counsel, and the Director, DTCC, concerning Respondent's compliance with this Consent Agreement and the Order, as well as with such other pertinent U.S. Government munitions authorizations and licenses, as well as

¹ Respondent shall grant the SCO complete access to these processes (including attendance as an observer at all relevant meetings).

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resource allocation, guidance, and the like then in force pertaining to Respondent's ITAR-regulated activities. These reports shall include findings, conclusions and any recommendations necessary to ensure strict compliance with the ITAR and describe the status of implementation of previous recommendations advanced by the SCO or ISCO. These reports may, in a separate annex, also include any relevant comments or input by Respondent. Any such reports shall not affect Respondent's use of the Voluntary Disclosure procedures set forth in section 127.12 of the ITAR and any benefits gained therefrom. The first report shall be provided six months from the date of the Order, and semiannually thereafter during the remainder of the SCO's or ISCO's period of appointment.

Employee Reporting

(11) Respondent will continue to promote and publicize the availability of Respondent's existing employee reporting mechanisms (Ombudsman/DIALOG, Business Practices Office, and other channels) for reporting allegations of violations of the AECA and the ITAR to ensure that violations may be readily reported via these channels without fear of recrimination or retaliation. Complaints or concerns about the adequacy of Respondent's response to reported allegations, questions or similar matters involving compliance with the AECA and the ITAR will be reported to the Senior Vice President and General Counsel, or the senior official within the Office of the General Counsel responsible for AECA and ITAR compliance, and the SCO or ISCO. The Senior Vice President and General Counsel, or the senior official within the Office of the General Counsel responsible for AECA and ITAR compliance, will be responsible for resolving such matters. If the Senior Vice President and General Counsel, or the senior official within the Office of the General Counsel responsible for AECA and ITAR compliance, is the subject of the complaint or concern involving the AECA and the ITAR, the matter will be referred to the CEO for resolution. The General Counsel shall submit to the Board of Directors, or the appropriate

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committee thereof, a semiannual report assessing the effectiveness of Respondent's existing employee reporting mechanisms relating to export matters and will provide a copy to the Director, DTCC.

Strengthened Compliance Policies, Procedures, Infrastructure, Training

(12) Within twelve (12) months of the date of the Order, Respondent will have instituted strengthened and uniform corporate export compliance procedures focused principally on Respondent's business operations such that: (a) all Respondent employees engaged in ITAR-regulated activities are familiar with the AECA and the ITAR, and their own and Respondent's responsibilities thereunder; (b) all persons responsible for supervising those employees, including senior managers of those units, are knowledgeable about the underlying policies and principles of the AECA and the ITAR; and (c) there are records indicating the names of employees, trainers, and level and area of training received (e.g., identification, classification, and provision of technical data, applicability of ITAR to foreign origin defense articles, export, re-export, and re-transfer requirements, etc.).

(13) Respondent agrees to continue to implement a comprehensive and reasonably uniform automated export compliance system throughout Respondent's operating divisions, subsidiaries and business units engaged in ITAR-regulated activity to strengthen Respondent's internal controls for ensuring compliance with the AECA and the ITAR, unless for certain operating divisions, subsidiaries and business units involved in limited ITAR-regulated activity the Director, DTCC approves an exception. This system will track the decision process from the initiation of a request for potential export authorization or clarification of an existing authorization to its conclusion that will reflect Respondent's ability to oversee and monitor export activity. This system will cover the initial identification of all technical data and technical assistance in any form proposed to be disclosed to any foreign persons. This system will also provide for automated management of compliance with ITAR Part 124 agreements. Respondent will enable DTCC to access the system when on site or be provided information from the system upon request or both. Respondent understands that DTCC may, in its sole discretion, not authorize use of exemptions for shipments of unclassified

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technical data in furtherance of a technical assistance agreement and that DTCC may exercise this authority pending the institution of this system.

(14) Respondent will develop and implement policies, procedures, and training to ensure accurate identification and tracking of ITAR-controlled technical data that is transferred electronically via Respondent's information technology infrastructure, including by email, or through tangible transfers outside of Respondent's information technology networks. These measures will also control the movement of laptops and portable storage devices containing ITAR-controlled technical data.

(15) Respondent will conduct a study to identify feasible enterprise improvements to maximize automation of the identification and tracking of ITAR-controlled technical data throughout Respondent's information technology infrastructure and otherwise safeguard ITAR-controlled data against unauthorized access within that infrastructure. On the basis of this study, Respondent will propose a plan to implement measures that will track, control, and record access to ITAR-controlled technical data by all users, including transfers onto laptops and portable storage devices, consistent with foreign privacy laws and any other technology or legal limitations. In drafting the proposed implementation plan, Respondent will seek to creatively minimize the impact of such limitations and will consult with the Director, DTCC prior to substantially circumscribing the scope of measures in the plan based on such limitations. Within one hundred twenty (120) days of the date of the Order, Respondent will submit the study results and its proposed plan for the implementation of such measures for approval by the Director, DTCC.

Classification Review

(16) Respondent shall review and verify the export control jurisdiction of all hardware that Respondent's ITAR-regulated operating divisions, subsidiaries and business units have exported in the past five years, and any defense services, technical data, including software, directly related to such hardware. Respondent may certify to DTCC that the jurisdiction of certain items was previously and accurately determined and/or verified after January 1, 2010 (or earlier date as approved by DTCC),

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and exclude such items from the review. Respondent shall conclude the jurisdiction review no later than twenty-four (24) months after the date of the Order. Prior to export, re-export and/or retransfer, Respondent shall review and verify the export control jurisdiction of each hardware item (and any defense services, technical data, including software, directly related to such hardware item) for which such jurisdiction was not previously and accurately determined and/or verified after January 1, 2010 (or earlier date as approved by DTCC).

Audits

(17) Two (2) audits will be performed during the term of the Consent Agreement. Respondent shall have the first audit conducted by an outside consultant with expertise in AECA/ITAR matters, approved by the Director, DTCC. The audit will be conducted under the supervision of the SCO. The audit shall provide a thorough assessment of the effectiveness of the Respondent's implementation of all measures set forth in this Consent Agreement with focus on those actions undertaken to address the compliance problems identified in the Proposed Charging Letter, the policies, procedures and training established by Respondent, and such other areas as may be identified by the SCO or the Director, DTCC. Additionally, the audit will assess the overall effectiveness of Respondent's ITAR compliance programs.

(18) Within six (6) months after the date of the Order, a draft audit plan for the first audit will be submitted to the Director, DTCC for review and comment. Within twelve (12) months after the date of the Order, the audit will be completed and a written report containing recommendations for improvements with respect to Consent Agreement measures or compliance with the AECA or the ITAR more generally. The report will be submitted by Respondent to the Director, DTCC along with Respondent's plan on how it will address those recommendations.

(19) Subsequently, Respondent shall have a second audit conducted by an outside consultant with expertise in AECA/ITAR matters, approved by the Director, DTCC to confirm whether Respondent addressed the compliance recommendations from the initial audit report. The second audit will be conducted under the supervision of the SCO or ISCO.

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Within thirty-six months (36) after the date of the Order, a draft audit plan for the second audit will be submitted to the Director, DTCC for review and comment. Within forty-two (42) months after the date of the Order, the second audit will be completed and a written report confirming whether Respondent addressed the compliance recommendations from the initial audit report as well as his/her recommendations where there were any deficiencies. The report will be submitted by Respondent to the Director, DTCC along with Respondent's plan on how it will address those recommendations.

Penalty

(20) Respondent agrees that it shall pay in fines and in remedial compliance measures an aggregate civil penalty of fifty-five million dollars (\$55,000,000) in complete settlement of alleged civil violations pursuant to Section 38 of the AECA and the ITAR as set forth in the Proposed Charging Letter. Respondent agrees to waive its rights to raise the defense of Statute of Limitations with regard to the collection of the civil penalty imposed by this Consent Agreement and that the Statute of Limitations shall be tolled until the last payment is made. Respondent also agrees that such civil penalty shall be a nondischargeable debt in accordance with Section 523(a)(7) of the Federal Bankruptcy Code. The civil penalty shall be payable as follows:

- a) Thirty-five million dollars (\$35,000,000) shall be paid through several installments as follows:
 - 1) Seven million dollars (\$7,000,000) within ten (10) days from the date of the Order.
 - 2) Seven million dollars (\$7,000,000) is to be paid within one year from the date of the Order and then seven million dollars (\$7,000,000) no later than each of the second, third and fourth anniversaries of the date of the Order.
 - 3) The Department and Respondent agree that no interest shall accrue or be due on the unpaid portion of the civil penalty if timely payments are made as set forth in paragraphs (20)(a)(1) and (20)(a)(2) above.

- b) The remaining penalty of twenty million dollars (\$20,000,000) is hereby assessed for remedial compliance measures, but this amount will be suspended so long as the certifications in paragraph (21) can be made and in accordance with the following:
 - 1) Five million dollars (\$5,000,000) will be suspended on the condition that Respondent has applied this amount to self-initiated, pre-Consent Agreement remedial compliance measures, determined by DTCC as set forth in paragraph (20)(c) below.
 - 2) Fifteen million dollars (\$15,000,000) will be suspended on the condition that Respondent applies this amount to Consent Agreement-authorized remedial compliance costs, determined by DTCC as set forth in paragraph (20)(c) below, over the term of this Consent Agreement for the purpose of defraying a portion of the costs associated with the remedial compliance measures specified in this Consent Agreement.
- c) In accordance with paragraph (20)(b), Respondent's Chief Financial Officer ("CFO") in consultation with the SCO, will conduct a review of Respondent's expenditures for the compliance measures referenced in paragraph (20)(b)(1) and (2), and provide the results of the review, no later than six (6) months from the date of the Order, certified as correct by the CFO, to DTCC. DTCC will determine from that review if the expenditures claimed by Respondent to date were spent for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs. To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs, that amount will be credited against the suspended penalty amount outlined in paragraphs (20)(b)(1) and (2), respectively.

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Respondent's CFO in consultation with the SCO will provide to DTCC no later than one (1) year from the date of this Consent Agreement, and then annually thereafter, for verification and approval an itemized accounting, certified as correct by the CFO, of all Consent Agreement-authorized remedial compliance expenditures, to include those expenditures claimed against suspended penalties, showing specifics of how money was used to strengthen compliance within the terms of this Consent Agreement. To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for Consent Agreement-authorized remedial compliance costs, that amount will be credited against the suspended penalty amount outlined in paragraph (20)(b)(2).

- d) Any remaining portion of the suspended penalty unutilized at the conclusion of the term of the Consent Agreement will no longer be suspended and shall be paid within thirty (30) days.

(21) From the date of the Order, Respondent is precluded from applying any portion of the fifty-five million dollar (\$55,000,000) penalty set forth in paragraph (20) as costs in any contract with any agency of the U.S. Government or any other contract where the result would be the application of any portion of the penalty as costs in any contract with any agency of the U.S. Government. Respondent agrees and shall certify in each written accounting report that the penalty or any portion thereof: (a) will be treated as expressly unallowable costs under the Federal Acquisition Regulations; (b) will not be recovered or sought to be recovered as allowable costs, either directly or indirectly under any federal prime contract, grant or subcontract; and (c) will not be taken as a federal tax deduction for any year following the date of the Order. In the event Respondent violates these prohibitions, the Department may deem it a "failure to apply funds appropriately for the required purpose."

(22) Any failure to apply funds appropriately for the required purpose or to provide a satisfactory accounting shall result in a lifting of the suspension, in which case Respondent shall be required to pay immediately to the Department the amount of the suspended portion of the penalty, less any amounts the Department deems to have been

properly applied and accounted for expenditures in compliance with this Consent Agreement.

Defense Services and Defense Articles

(23) Respondent and its ITAR-regulated operating divisions, subsidiaries, and business units acknowledge and accept the authority of the Department to designate what is a defense article, and that the ITAR requires written authorization before such articles are exported, re-exported, or retransferred, regardless of whether the underlying defense article is used in a commercial system or product. Respondent further acknowledges that the Commodity Jurisdiction process, set forth in section 120.4 of the ITAR, is the only official mechanism by which questions regarding jurisdiction and categorization may be addressed. Respondent and its ITAR-regulated operating divisions, subsidiaries, and business units acknowledge and accept that unless and until there is an amendment to the ITAR regarding defense services: (1) the definition of “defense services” in the ITAR is well established and clearly understood by them as setting out responsibilities and requirements which are binding as a matter of law and regulation on them; (2) the furnishing of defense services to foreign persons – regardless of whether the underlying defense article(s) is of U.S. or foreign origin – is appropriately subject to the Department’s control under the ITAR, even when no technical data is involved (e.g., all the information relied upon in furnishing defense services to a foreign government or foreign person is in the public domain); (3) the law and regulations governing “defense services” and proposals to foreign persons are sufficiently clear and specific as to be enforceable by the U.S. Government on civil grounds; and (4) Respondent is responsible and obligated as a matter of law and regulation to comply with the requirements of such laws and regulations as they pertain to “defense services” and related matters.

Debarment

(24) Respondent has acknowledged the seriousness of the violations cited in the Proposed Charging Letter. Respondent has cooperated with the Department’s review, expressed regret for these activities and taken steps to improve its compliance programs. It has also undertaken to

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make amends by paying a cash penalty and implementing the significant additional remedial compliance actions specified in this Consent Agreement. For these reasons, the Department has determined not to impose an administrative debarment of Respondent based on the civil charges in the Proposed Charging Letter at this time. However, based on entry of a plea of guilty by P&W Canada in U.S. District Court for the District of Connecticut in conjunction with a Deferred Prosecution Agreement between the U.S. Department of Justice and Respondent, and a subsequent criminal conviction of subsidiary P&W Canada for violation of the AECA, separate from this Consent Agreement and pursuant to the authority in ITAR section 127.7(b)(1), the Department will impose a statutory debarment on the subsidiary P&W Canada, with certain exceptions as outlined in a notice of statutory debarment to be published in the Federal Register. In the event of any other criminal conviction for a violation of or conspiracy to violate the AECA of Respondent (or any of its operating divisions, subsidiaries, and business units over which Respondent exercises control) arising from the activities described in the Proposed Charging Letter, a statutory debarment of the Respondent (or the operating division, subsidiary, or business unit subject to criminal conviction) may be imposed in accordance with section 127.7 of the ITAR. The Department also reserves all rights to impose additional sanctions, including debarment under the ITAR, against Respondent, any subsidiary, division, or other affiliate over which Respondent exercises control, if it does not fulfill the provisions of the Consent Agreement or is responsible for other compliance or law enforcement issues under the AECA or under other statutes enumerated in section 120.27 of the ITAR.

Legal Department Support

(25) Respondent's General Counsel's office will continue to provide support in all ITAR-regulated operating divisions, subsidiaries, and business units for all matters involving the AECA and the ITAR. This support will be structured to achieve consistent application of the AECA and the ITAR by Respondent. Additionally, Respondent's General Counsel's office shall ensure that in each ITAR-regulated operating division, subsidiary, and business unit appropriate legal support is made available as necessary to the principal personnel responsible for

compliance with the AECA and the ITAR, and appropriate legal support is provided with respect to such matters.

On-site Reviews by the Department

(26) For the purpose of assessing compliance with the provisions of the AECA, the ITAR and future munitions licenses and other authorizations, Respondent agrees to arrange and facilitate, with minimum advance notice, on-site reviews by the Department while this Consent Agreement remains in effect.

Understandings:

(27) No agreement, understanding, representation, or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed in the Proposed Charging Letter. Respondent acknowledges and accepts that there is no understanding expressed or implied through this Consent Agreement with respect to a final decision by the Department of State concerning export licenses or other U.S. Government authorizations.

(28) Respondent acknowledges the nature and seriousness of the offenses charged in the Proposed Charging Letter, including the potential risk of harm to the security and foreign policy interests of the United States. If this Consent Agreement is not approved pursuant to an Order entered by the Assistant Secretary for Political-Military Affairs, the Department and Respondent agree that they may not use this Consent Agreement in any administrative or judicial proceeding, and that the parties shall not be bound by the terms contained in this Consent Agreement.

(29) The Department agrees that upon signing of the Order, this Consent Agreement resolves with respect to Respondent the civil penalties or administrative sanctions with respect to violations of section 38 of the AECA or the ITAR arising from facts Respondent has disclosed in

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writing to the Department in its voluntary and directed disclosures assigned DTCC case numbers 01-069, 04-130, 06-0000094, 06-0000443, 06-0000526, 07-0000225, 07-0000351, 07-0000699, 08-0000079, 08-0000103, 08-0000275, 08-0000431, 08-0000460/652, 08-0000559, 08-0000736, 09-0000132, 09-0000208, 09-0000416, 09-0000847, 09-0000932, 09-0000938, 09-0001232, 09-0001347, 09-0001392, 10-0000176, 10-0000539, 10-0000626, 10-0001245, 10-0001331, 10-0001460, 10-0001505, 11-0000139, 11-0000125, 11-0000209, 11-0000255, 11-0000324, 11-0000444, 11-0000620, 11-0000726, 11-0001357, 11-0001396, 11-0001399, 11-0001531, and 12-0000791, or that have been identified in the Proposed Charging Letter, except that in the event of a criminal conviction of Respondent (or any of its subsidiaries, divisions, or other affiliates over which Respondent exercises control) for a violation of or conspiracy to violate the AECA, arising from any of the activities described in the Proposed Charging Letter or otherwise, the Department will follow the requirements of section 38(g)(4) of the AECA and reserves the discretion to impose a statutory debarment in accordance with section 127.7 of the ITAR.

Waiver

(30) Respondent waives upon the signing of the Order all rights to seek any further steps in this matter, including an administrative hearing pursuant to Part 128 of the ITAR. Respondent also waives any such rights with respect to any additional monetary penalty assessed by the Director, DTCC in connection with an alleged material violation of this Consent Agreement (any such additional monetary penalty imposed will be limited to three million dollars (\$3,000,000) or less) except as follows: In the event that the Director, DTCC determines that Respondent has materially violated this Consent Agreement and imposes such additional monetary penalty and Respondent disputes such determination, Respondent may appeal such determination to the Assistant Secretary for Political-Military Affairs, and the decision of the Assistant Secretary for Political-Military Affairs shall be the final determination in the matter, which may not be appealed. Respondent also agrees that any such additional monetary penalty shall be nondischargeable under Section 523(a)(7) of the Federal Bankruptcy Code, and subject to the conditions of paragraph (21). Respondent also

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waives the right to contest the validity of this Consent Agreement or the Order, including in any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

Certification

(31) Three (3) months prior to the four (4) year anniversary of the date of the Order, Respondent shall submit to the Director, DTCC a written certification as to whether all aspects of this Consent Agreement have been implemented and Respondent's export compliance program has been assessed and whether Respondent's export compliance program is adequate to identify, prevent, detect, correct, and report violations of the AECA and the ITAR. The Consent Agreement shall remain in force beyond the four (4) year term until such certification is submitted and the Director, DTCC determines based on this certification and other factors that all compliance measures set forth in this Consent Agreement have been implemented and that Respondent's ITAR compliance program appears to be adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR.

Documents to be made public

(32) Respondent understands that the Department will make this Consent Agreement, the Proposed Charging Letter, and the Order, when entered, available to the public.

When Order Becomes Effective

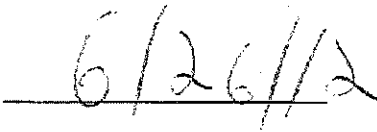
(33) This Consent Agreement shall become binding on the Department only when the Assistant Secretary for Political-Military Affairs approves it by entering the Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

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U.S. Department of State

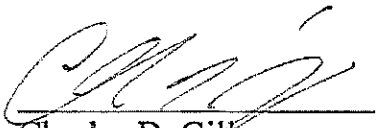


Andrew J. Shapiro
Assistant Secretary for
Political-Military Affairs

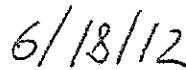


Date

United Technologies Corporation



Charles D. Gill
Senior Vice President and
General Counsel



Date

APPENDIX THIRTEEN



THE COMMON LAW IS THE WILL OF *Mankind* ISSUING FROM THE *Life* OF THE *People*

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FOR IMMEDIATE RELEASE

Thursday, July 26, 2012

Justice Department Requires Divestitures in Order for United Technologies Corporation to Proceed with Its Acquisition of Goodrich Corporation

Divestitures Will Preserve Competition for Large Main Engine Generators, Aircraft Turbine Engines and Engine Control Systems for Large Aircraft Turbine Engines

WASHINGTON — The Department of Justice announced today that it will require United Technologies Corporation (UTC) to divest certain assets used in the production of electrical power systems and aircraft engine control systems in order to proceed with its acquisition of Goodrich Corporation. At approximately \$18.4 billion, the acquisition is the largest merger in the history of the aircraft industry. The department said that the acquisition, as originally proposed, likely would have resulted in higher prices, less favorable contractual terms and less innovation for several critical aircraft components, including generators, engines and engine control systems.

The department's Antitrust Division filed a civil antitrust lawsuit today in the U.S. District Court for the District of Columbia to block the proposed acquisition. At the same time, the department filed a proposed settlement that, if approved by the court, would resolve the competitive concerns alleged in the lawsuit.

"The acquisition as originally proposed would have lessened the vigorous competition that currently exists among manufacturers of large main engine generators, aircraft turbine engines and engine control systems for large aircraft turbine engines," said Jamillia Ferris, Chief of Staff and Counsel at the Department of Justice's Antitrust Division.

The department's Antitrust Division, the European Commission and the Canadian Competition Bureau cooperated closely throughout the course of their respective investigations, with frequent contact among the agencies. In addition, the Antitrust Division had discussions with other competition agencies, including the Federal Competition Commission in Mexico and the Administrative Council for Economic Defense in Brazil.

"The Antitrust Division's dialogue with our international counterparts around the world facilitated our investigation," said Ferris. "In particular, the division's close cooperation with the European Commission and Canadian Competition Bureau resulted in a coordinated remedy that will preserve competition in the United States and internationally."

The department's complaint alleges that the proposed acquisition would lessen competition substantially in the worldwide markets for the development, manufacture and sale of large main engine generators, aircraft turbine engines and engine control systems for large aircraft turbine engines. The department said that the acquisition, as originally proposed, would combine the only two significant suppliers of large main engine generators for aircraft in the world. UTC also would acquire Goodrich's engine control systems business, which supplies critical components to several of UTC's leading competitors for aircraft turbine engines. Finally, UTC, which is currently one of three leading suppliers of engine control systems for large aircraft turbine engines, would acquire Goodrich's 50 percent share in a joint venture that forms one of the other two producers of such engine control systems.

Aircraft main engine generators produce the electrical power used by communication and navigation equipment, environmental control systems, interior and exterior lighting and other aircraft systems. Large main engine generators are complex mechanical devices that are difficult to produce, and for which there are no substitutes. Turbine engines power virtually all modern commercial, business and military aircraft. UTC is one of the few firms worldwide that produce aircraft turbine engines. Engine control systems, consisting of electronic engine controls, pumps, fuel metering units and related components, control the flow of fuel into an aircraft turbine engine such that the engine performs in a safe and efficient manner. It would be difficult and time-consuming for an engine producer to switch to an alternative supplier of engine control systems.

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The proposed settlement requires UTC to divest the following assets:

- Goodrich's business that designs, develops and manufactures large main engine generators for aircraft, including Goodrich's shares in TRW-Thales Aerolec SAS (Aerolec);
- Goodrich's business that designs, develops and manufactures engine control systems; and
- Goodrich's shares in Aero Engine Controls (AEC), a joint venture to manufacture engine control systems for large aircraft turbine engines.

In addition, the proposed settlement provides:

- UTC must extend the term of certain contracts held by customers of Goodrich's engine control systems business for a period of 30 days after the divestiture of the engine control systems business;
- UTC must provide various supply and transition services agreements to the acquirers of the assets being divested in order to assist in the transition of the businesses and allow the acquirers to continue to fulfill obligations of the divested businesses; and
- UTC must extend the period for its joint venture partner, Rolls-Royce Group plc (Rolls Royce), to exercise its option to acquire the Goodrich business that provides aftermarket services for Rolls-Royce engines equipped with AEC engine control systems.

The extension of Rolls-Royce's option to acquire the Goodrich aftermarket business will ensure that Rolls-Royce has sufficient control over the AEC aftermarket business. The extension of the customer contracts for the engine control systems business will ensure that Goodrich's engine control systems customers have a reliable source of supply during the divestiture period.

UTC is a Delaware-based company that produces a wide range of products for the aerospace industry and other industries, including, among other products, aircraft generators, aircraft engine control systems and components, aircraft engines and helicopters. UTC's main aerospace divisions are Pratt & Whitney, Hamilton Sundstrand and Sikorsky. In 2010, UTC had revenues of approximately \$54 billion.

Goodrich is a New York-based company that produces a variety of products for the aerospace industry, including, among other products, aircraft generators, aircraft engine control systems and components, landing gear and actuation systems. In 2010, Goodrich had revenues of approximately \$7.2 billion.

As required by the Tunney Act, the proposed settlement, along with a competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed settlement during a 60-day comment period to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court for the District of Columbia may approve the proposed settlement upon finding it is in the public interest.

12-925

Antitrust Division

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