



**Friday
September 23, 2005
DAILY
BRIEFING**

Roundtable panel explores workplace discrimination

"Easing Discrimination at Work: Race Discrimination Today and Strategies for Combating It" will be the focus of a roundtable panel at WSU Law School on Thursday, September 29, from 6:30 to 8:30 pm in the Spencer M. Partrich Auditorium, 471 W. Palmer St., in Detroit.

A distinguished panel will discuss race discrimination and how it plays out in today's workplace. Strategies for combating discrimination and the EEOC's (Equal Employment Opportunity Commission) efforts to address discrimination will be the focus.

Panel participants will be:

- Ihsan Al Khatib, president, ADC Greater Detroit Chapter.
- Sue Ellen Eisenberg of Eisenberg & Bogas.
- Professor Saul Green, WSU Law School.
- James R. Neely, Jr., District director, EEOC Detroit.
- Mary Lou Olivarez-Mason, executive director of the Michigan Commission on Spanish Speaking Affairs.
- Heaster Wheeler, executive director, NAACP, Detroit Branch.
- Dean Frank H. Wu, WSU Law School.

The discussion will be moderated by Stuart J. Ishimaru, commissioner, EEOC. This is the 40th anniversary of the EEOC. The commission was established to enforce laws prohibiting workplace discrimination. At present, about 35% of the EEOC's cases relate to race discrimination.

This event is free and open to the public. For more information, contact Jesse A. Vidaurri, EEOC, (313) 226-7635 jesse.vidaurri@eccc.gov or the WSU Law School Dean's Office (313) 577-3933.

Court says repo firm must pay for watermelons

RALEIGH, N.C. (AP) — When Jackie L. Eley's pickup truck was repossessed, more than just her ride was taken away. The 130 watermelons in the truck bed also were repossessed.

Revenge, though, has been sweet. The state Court of Appeals has ruled that the repo firm, Mid-East Acceptance Corp., must pay Eley \$1,365 — three times the melons' value — as well as legal fees.

Eley's truck was repossessed July 29, 2002, a day when the temperature would reach 98 degrees with 89 percent humidity. She had missed two payments.

The men refused to let her unload the produce. And their boss refused to let Eley retrieve her melons later that day from the yard.

Two days later, the company had second thoughts.

"The watermelons are rotting, and the smell is polluting the storage lot," the company wrote to Eley, demanding that she take her melons or pay the cost of removing them.

Eley refused.

As she testified, "The melons were spoiled. They wouldn't do me any good. They took the truck, they took the melons. They were their melons then."

Notices of courts and public places

Pursuant to Administrative Order 2005-3, the 36th District Court will now be closed on the Fridays listed below. The order is issued in accordance with MCR 8.112(B).

The court will be closed for all functions except felony arraignments on Friday, September 23.

This action is being taken as a cost cutting measure to offset 2005-2006 budgetary restrictions.

Citizens may contact the court if they have any questions by calling (313) 965-2200. TTY users may dial (313) 965-4158 for information.

MARYLIN E. ATKINS

Chief Judge, 36th District Court

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All but a few budget items on the way to governor

BY AMY F. BAILEY
Associated Press Writer

LANSING (AP) — The bulk of next year's roughly \$40 billion state budget is on its way to Gov. Jennifer Granholm, but negotiations on a few unresolved items continued Wednesday.

Republican legislative leaders still are working with the Democratic administration to come up with a compromise spending plan for state police posts across the state.

Earlier this year, Granholm proposed saving \$1.1 million by closing posts in Grand Haven, Oakland County's Groveland Township and the Upper Peninsula's Iron River. The House voted to keep the posts open, the Senate voted to close them and lawmakers that represent those areas have strongly objected to their closing throughout the process.

Matt Resch, spokesman for Republican House Speaker Craig DeRoche of Novi, said the two sides are close to a deal on the state

police posts. A conference committee was scheduled to meet on the issue Thursday morning.

Greg Bird, spokesman for the state budget office, would not say Wednesday evening whether the governor is sticking by her proposed reduction. He also was vague about which areas of the budget might be vetoed when the spending plan makes it to Granholm's desk.

"We've got to read all the budgets through before we make any of those determinations," Bird said.

"At this point it's too early to say definitively what we will and won't do."

Lawmakers wanted to get all of the budget passed this week. The fiscal year begins on Oct. 1 and the Michigan Constitution requires a balanced budget.

The House finished work on a handful of spending plans on Wednesday, including the overall \$2.9 billion budget that covers the Legislature, governor's office and other elect-

ed officials, including attorney general and secretary of state.

The House voted 94-12 to approve the general government budget, which includes a \$2.5 million increase for the Legislature, which would get \$124.7 million. It also sets aside an additional \$170,000 for executive office operations, boosting its total budget to \$5.4 million.

The state's general fund contribution to the general government budget is up \$256 million from the fiscal year that ends Sept. 30 because rent payments for state buildings were transferred to it from capital outlay.

Earlier Wednesday, the Senate voted 27-11 on a large budget bill that provides funding for a number of interests and departments, including higher education and the Department of Corrections.

A number of Republican senators applauded funding set aside to keep open a private youth prison in Lake County. Several of them, including some from northwestern Michigan,

wrote a letter to Granholm on Wednesday encouraging her to continue funding for the Michigan Youth Correctional Facility in next year's budget.

It appears, however, that Granholm will veto the funding for the youth prison.

The Senate also unanimously approved funding for the Department of Labor and Economic Growth, which includes a \$3 million cut below Granholm's proposed funding for the Michigan Economic Development Corp., the state's job creation agency. The bill requires the agency to work with state auditors to review claims that tax credits and economic incentives create a guaranteed number of jobs.

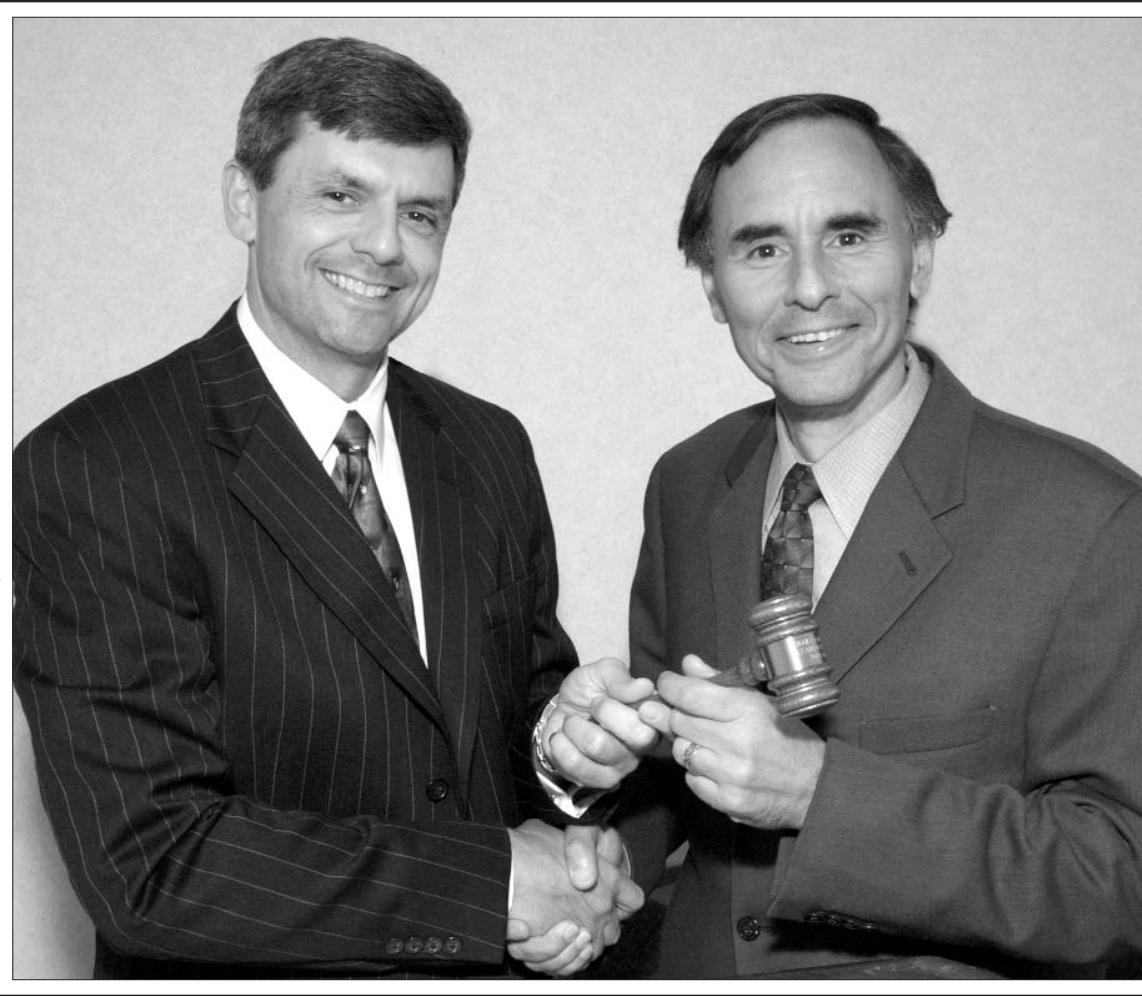
Associated Press Writer David Eggert contributed to this report.

The omnibus budget is House Bill 4831; the general government budget is Senate Bill 272.

Taxation Section hosts annual meeting

THE TAXATION SECTION of the State Bar of Michigan hosted its 2005 Annual Meeting on Thursday, September 8, at the Skyline Club in Southfield. Outgoing Chairperson Eric M. Nemeth (left) with Raymond & Prokop, P.C. in Southfield passes the gavel to 2005-2006 Chairperson Charles M. Lax with Maddin Hauser Warfell Roth & Heller, P.C. in Southfield.

Photo by John Meiu



House votes to ban Canadian trash after approval

BY AMY F. BAILEY
Associated Press Writer

LANSING (AP) — Legislation approved Wednesday by the state House would prohibit Canadian trash from being dumped in Michigan landfills once the federal government gives the state authority to ban foreign refuse.

The chamber voted 105-3 to approve the main bill in the three-bill package.

Only two Democrats voted against the bill, but several said the legislation did not go far enough. They said the state should not wait for the federal government to ban foreign trash and said the measure limits only a portion of out-of-state waste because it doesn't limit garbage coming in from other states.

Rep. Kathleen Law, D-Gibraltar, failed to win support for an amendment that would have increased the dumping fee on trash from 21 cents per ton to \$7.50 if Congress does not

allow state trash regulation by Nov. 1. Democrats say that only by making Michigan an expensive place to dump trash will out-of-state trash decrease.

"Citizens in Michigan don't want us to wait anymore," Law said, noting the GOP plan won't take effect until Congress acts.

The Republican-controlled House also defeated amendments to ban the construction of new landfills until 2010 and increase penalties for trash-related violations.

Democrats Alexander Lipsey of Kalamazoo and Bill McConico of Detroit voted against the main bill, as did Republican Leon Drolet of Macomb County's Clinton Township. Two representatives didn't vote: Democrat Marsha Cheeks of Detroit and John Garfield of Rochester.

House Republicans, who long have resisted an outright ban on Canadian trash, said they are moving the bills forward because the U.S.

House is expected to take up a measure in the coming weeks that would allow states to regulate foreign trash.

It is unclear, however, when the bill will be taken up by the U.S. Senate.

Republicans say the Democrats' plan is a bad idea because it will cost Michigan residents more for trash disposal.

They also noted that U.S. Supreme Court decisions have said that the federal constitution's interstate commerce clause allows only Congress, not the states, to regulate the trash trade.

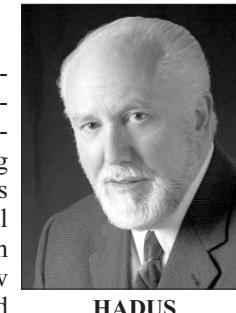
"Our hands are tied from a federal perspective and will continue to be tied until the federal government acts," said Rep. David Palisro, a Republican from Manistee who sponsored one of the bills in the package.

The state ban on foreign municipal waste would kick in 90 days after a new federal law

(See TRASH, Page Two)

Structured Settlements: Avoiding pitfalls — embracing opportunities

BY J. HADUS



This is a continuation of a series of articles on structured settlements addressing areas of concern as expressed by the legal community, along with an emphasis on new developments and opportunities for the practitioner.

The present value v. cost game

Experienced personal injury practitioners will recall that early on in structured settlements (about 1980), the defense refused to disclose the cost, arguing that to do so would constitute constructive receipt with resulting

adverse tax consequence for the plaintiff. This aided the defense in a continuation of the "mystery" of structures, thereby maintaining control of the process. However, the statement had no basis in fact. Case in point, the IRS ruled in PLR 8333034 (May 15, 1983) that "knowledge of the cost of the annuity was not determinable in determining constructive receipt." However, playing the present value game by its very nature can lead to conflict between client and attorney and there is the possibility for abuse. Some structured settlement brokers have incorrectly referred to present value and cost in the same context. Present value can be anything depending on what discount (interest) factor is used. Cost is the actual cost to the defendant/insurer to purchase the annuity policy. The two should not be confused and if an inflated value is used,

the client's recovery is likely being decreased and possibly you've taken an excessive fee. Use of an economist or actuary to determine cost is not valid for a variety of reasons, including their not having access to court settlement annuity rates or being able to take into consideration medical age ratings. Practitioners experienced in the appropriate use of structured settlements will insist on actual cost being revealed as part of any agreement. It is becoming more commonplace and certainly advisable that plaintiff attorneys retain their own structured settlement consultant to protect against error or worse.

As a safeguard, the attorney can insert a clause in the settlement agreement and release confirming the annuity cost and verifying that it is net of any medical age ratings, rate (See STRUCTURED SETTLEMENTS, Page Two)

"It was very clear that sometimes, regardless of how many fights you can win in the legislative process, if you don't pay attention to who is in the judicial branch, your victories could be fleeting," he said.

Engler has urged his 13,000-member organization to press senators to confirm Roberts.

Interest groups backing the conservative judge say Engler has been ahead of the curve in recognizing the role that the Supreme Court can have on business and industry.

"For a long time, businessmen believed the battle over the courts was about abortion and social issues confined to the socially conservative wing of the Republican coalition," said Sean Rushton, executive director of the Committee for Justice. "But there are more and more cases that have come up" affecting business, Rushton said, pointing to regulatory and liability issues.

In Michigan, however, Engler's critics say the judges he appointed while governor — including three of the current seven state (See NOMINATION, Page Two)

Official Newspaper: City of Detroit • Wayne Circuit Court • U.S. District Court • U.S. Bankruptcy Court

Record Profits

Club Keno sales fuel record state lottery profits.

Page Two

WorldCom Settlements

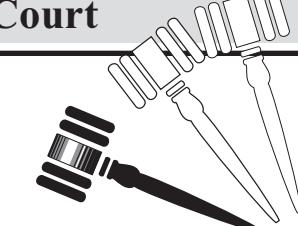
Judge approves \$6.1 billion in WorldCom settlements.

Page Three

Vacancy Suggestions

Senators offer suggestions to Bush for second court vacancy.

Back Page



STRUCTURED SETTLEMENTS: Avoiding pitfalls – embracing opportunities

(Continued from page 1)
improvements, discounts, or any other factors that might reduce the actual cost to the defense.

Be mindful also that when placing the Settlement and Distribution of the Proceeds on the record for court approval of minors or protected persons, the actual cost must be revealed otherwise you can find yourself in the embarrassing and uncomfortable position of explaining an excessive fee. There have been more than a couple cases in recent memory where either the GAL or probate judge has refused to approve and sent the parties back for recalculation. Beyond this, it is basically an ethical issue that should be dealt with up front with your client's best interest foremost in mind.

The appropriate use of structures

Structured settlements should be designed around the needs of the damaged plaintiff. Sometimes, particularly with high damage cases and limited settlement funds involving minors, the payments are structured out to start at the age of majority. This provides a larger payout. However, when the need is of a more immediate nature, then the plan should be designed accordingly with payments starting when they can do the most good. A conservatorship might have to be established and there would be probate court involvement, but this gets back to doing what's in the client's best interest.

Structured Settlements within the requirements of Amended MCR 2.420

Under MCR 2.420(B)(4)(a) and (b) a conservator must be appointed by the probate court if there is payment of more than \$5,000 in any one year during

minority, either in a lump sum or installments. For minors or legally incapacitated individuals, factors to be considered by the judge at the approval hearing include age and life expectancy, current and future financial needs, income and estate tax implications, the structure's present value (cost), and impact on eligibility for government benefits. There was a discussion in the April 16, 2005, column relating to Medicaid eligibility and special needs trusts. Again, establishing a conservatorship and obtaining court approval are time consuming with an expense involved, but consider the alternative of a settlement that turns out to be not legally binding, as was the case in *Bowden v. Harper Hospital* wherein the court of appeals overturned approval of a \$1,250,000 settlement involving a minor and his parents and remanded the matter to a hearing in conformity with MCR 2.420(B). Also under MCR 2.420(B)(5) the probate court is to approve the special needs trust prior to funding.

Due diligence

In 1991 a medical malpractice case in Terrence County, Texas, involving a severely injured plaintiff was settled for \$2.5 million and the funds went into a Section 142 Trust and non-tax-free annuities were purchased. Ten years later in March of 2001 all the money was gone. A malpractice case against the plaintiff attorney was settled for \$1.6 million and for \$2.5 million against the guardian ad litem. The allegation was that her attorney failed to inform the family of a structured settlement offer from the hospital during the negotiations and also failed to inform them of the option of a tax-free structured settlement including the advantages

Joseph Hadus has more than 30 years of experience in the casualty insurance/structured settlement area and is the president and founder of J. Hadus & Associates, Inc. which has its corporate office in Farmington Hills. He can be reached at jhadus@aol.com.

Club Keno sales fuel record state lottery profits

LANSING (AP) — Club Keno is a winner, at least for the state treasury.

The 2-year-old lottery game has bumped Michigan Lottery revenues past the \$2 billion mark for the first time in its 33 years. Last year, the lottery took in \$1.97 billion.

Club Keno will gross about \$330 million in the fiscal year ending Sept. 30, says Lottery Commissioner Gary Peters.

That is 16 percent of total lottery sales.

Net lottery profits for the fiscal year will top last year's record \$645 million, Peters told the Detroit Free Press for a recent

Michigan and 10 other states allow Keno in bars, restaurants, bowling alleys and horse racing tracks that serve alcohol.

TRASH: House votes to ban Canadian trash after fed approval

(Continued from page 1)

takes effect. Other bills in the package would make it a felony to dump foreign trash in Michigan, punishable by up to two years in prison and a \$5,000 fine.

Landfill owner Waste Management of Michigan said the state legislature would incorrectly ban Canadian trash instead of responsibly regulating it as required in the federal measure being considered by Congress.

The federal measure "does not call for a flat ban on Canadian waste shipments, but ensures that nothing 'affects, replaces or amends prior law relating to the need for consistency with international trade obligations,'" said Tom Horton, government affairs manager for Waste Management. "Canadian waste is a form of commerce, like cars and clothing."

Lawmakers are trying to stop Canadian trash from coming into the state because the country is the largest source of trash dumped in Michigan landfills, according to a Department of Environmental Quality report that covered Oct. 1.

The Canadian trash ban bills are House Bills 5176-78.

NOTICE OF THIRD CIRCUIT COURT

CELL PHONES BANNED FROM COURT BUILDINGS

Effective September 1, 2005, the general public cannot bring cell phones into the following Wayne County Third Judicial Court locations: Coleman A. Young Municipal Center; Frank Murphy Hall of Justice; Lincoln Hall of Justice; and Penobscot Building.

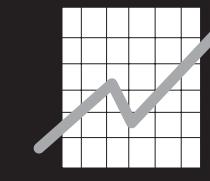
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Third Judicial Circuit Court*

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Taking Stock

by Malcolm Berk



Getting oriented on Far East investments

Dear Mr. Berk:

I believe I should invest about 10 percent to 15 percent of my Individual Retirement Account in China, Japan and Korea. Americans lump all these people into a group called Asians. But I'm sure the people of these countries are as different as are the French and English. Can you explain the difference between these people and their countries for me and recommend some investments? I have just about \$310,000 in my IRA (most of it is from a rollover) and want to invest about \$30,000 to \$40,000 in the equities of these countries. Can you recommend five or six stocks or five or six mutual funds specializing in this area?

E.P., Indianapolis

Dear E.P.:

These three cultures are as different as grapes and gravel. Each is an industrious group willing to sacrifice individuality for the greater good.

Since I don't read income statements in Mandarin, balance sheets in Japanese or footnotes in Korean, I will not invest in individually traded issues. And while I believe their economies will prosper even better than ours, I'm a reluctant investor in Asia. However, if you must, then I believe your money would be more safely invested in some of the Asian mutual funds managed by Goldman Sachs, Fidelity, Eaton Vance and T. Rowe Price, than in individual public issues. So consider the following funds.

AIM Asia Pacific (ASIAX-\$18.17) is a \$147 million three-star fund with a 5.5 percent front-end load and a 2.23 percent annual expense ratio. This large-cap growth fund invests about 80 percent of its assets in Asian companies (excluding Japan) and the remaining 20 percent of assets in non-Asian-Pacific companies. The year-to-date return is 5.1 percent and so far in 2005 AIMAX is plus 10.1 percent.

Fidelity China Region (FHKCX-\$18.60) is a \$400 million two-star fund with a 1.2 percent expense ratio and has no sales charge. The managers typically invest about 80 percent of

the assets in the securities of Hong Kong, Taiwanese and Chinese issuers. This large-cap growth fund has a five-year average return of 2.92 percent and so far this year the fund is plus 9.26 percent.

Eaton Vance Asian Small Company Fund (EVASX-\$37.95) is a medium-cap growth fund with just \$46 million in assets. The management defines small companies as those with market capitalization of less than \$1.5 billion. This four-star-rated fund has a 5.75 percent front-end load and an annual expense ratio of 2.5 percent. So far this year, EVASX has a year-to-date return of 17.17 percent and a five-year average return of 14.20 percent.

T. Rowe Price New Asia Fund (PRASX-\$11.77) is a three-star \$1.2 billion large cap growth fund. Management invests in the securities of China, Hong Kong, India, Pakistan, Korea, Vietnam, Malaysia, Indonesia, Thailand and Singapore. This no-load fund with a 1.09 percent expense ratio has a year-to-date return of 15.14 percent and a five-year average return of 6.22 percent.

Goldman Sachs Asia Growth (GSAGX-\$14.60) is a two-star, large cap growth fund with \$49 million in assets. GSAGX has a 5.5 percent sales charge, an expense ratio of 1.79 percent, a year-to date return of 13.09 percent and a five-year average return of 4.44 percent.

Finally, Matthews Pacific Tiger (MAPTX-\$17.81) is a \$1.3 billion in assets is a no-load fund with a 1.48 percent expense ratio. This large-cap growth fund is four-star rated, has a year-to-date return of 11.82 percent and a five-year average return of 10.89 percent.

Management invests the portfolio in the securities of Korea, Singapore, China, Hong Kong and Taiwan.

Take your choice.

Please address your financial questions to Malcolm Berk, P.O. Box 1416, Boca Raton, FL 33429 or e-mail him at malber@adelphia.net. Visit Copley News Service at www.copleynews.com.

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Weekend/Holiday Arraignment on Warrants for Wayne County

Court begins at 12 p.m. at both 34th and 36th District Court:

Cases originating outside the City of Detroit, but within Wayne County, will be held at:

Thirty-Fourth District Court
11131 S. Wayne Road
Romulus, MI 48174

Cases originating within the City of Detroit will be held at:

Thirty-Sixth District Court
421 Madison
Detroit, MI 48226

Bernard J. Kost
Executive Court Administrator

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Delphi up on CEO comments, credit draw denial

By JOHN STOLL
Dow Jones Newsweek

DETROIT (Dow Jones/AP) — Shares and bonds in Delphi Corp. climbed Wednesday, following comments by the auto-parts supplier's chief executive suggesting he would prefer to avoid bankruptcy.

The company also Wednesday denied it had drawn down the remaining \$300 million of its \$1.8 billion revolving credit facility, putting to rest a rumor that had contributed to a rough day Tuesday on Wall Street for the country's largest auto supplier.

Delphi's shares rose 46 cents, or 15 percent, to close at \$3.48 on the New York Stock Exchange. Volume was heavy. On a 52-week basis, there was a high of \$9.63 last Oct. 4 and a low of \$2.68 on Tuesday.

Bonds of the Troy, Mich.-based company gained across the board, with the 6.55 percent notes due 2006 adding 4.75 points, or cents on the dollar, to 74.

On Tuesday, Delphi saw its share price fall to a record low of \$2.68, after a Debtwire news service report suggested Delphi had been looking for participants for debtor-in-possession financing as well as talk that it had drawn down the remainder of its credit facility — which Delphi denied in a filing with the Securities and Exchange Commission Wednesday. The company had previously disclosed that in August 2005 it drew down \$1.5 billion under the same facility.

The market also took some comfort from comments by Chief Executive Robert S. "Steve" Miller, who told The Wall Street Journal in an interview published Wednesday that "not going into Chapter 11 is much to be pre-

fared." Miller has said Delphi may be forced to file for bankruptcy protection by Oct. 17 — when new bankruptcy regulations come into force — if it doesn't receive bailout help from its top customer and former parent General Motors Corp. and the United Auto Workers union.

At least one auto analyst is bullish on the prospect of Delphi receiving help from GM and the union, but there are still worries that Miller's Chapter 11 suggestions, which were reiterated in comments made to the paper, are getting more serious.

"Some form of GM bailout outside of a Delphi bankruptcy still the most likely outcome, but we see the possibility of a Delphi filing as higher than we did last month," Prudential auto analyst Michael Bruynesteyn wrote in a research report Wednesday.

Bruynesteyn grades Delphi stock with a "neutral" rating and has set a \$5 target price.

Delphi spokesman Dave Bodkin said Tuesday evening in an interview that Delphi is still making contingency plans for a Chapter 11 filing if it doesn't see adequate progress in talks with GM and the union, including \$2.5 billion in immediate labor concessions from the UAW, according to reports.

The auto supplier, with \$28.6 billion in annual revenue the world's No. 1, has struggled in North America due to high material and labor costs and decreased business with U.S. auto makers which are seeing reduced demand for certain vehicles. Delphi, which posted a massive \$4.75 billion loss in 2004, has been criticized for overly relying on business with domestic auto makers.

NOMINATION: Engler takes group into Roberts nomination fray

(Continued from page 1)

Supreme Court justices — have overruled dozens of precedents and served as activists who frequently issue pro-business rulings.

"If Justice Roberts is anything like John Engler's appointees to the Michigan Supreme Court, he will be the most activist justice in the United States Supreme Court history — period," said Lee Tilson, a Southfield trial attorney.

Engler has been active in a number of policy areas. On health care, he has sought ways to help manufacturers deal with skyrocketing costs. He met recently with Sen. Hillary Rodham Clinton, D-N.Y., and former House Speaker Newt Gingrich, R-Ga., on a measure that would put health records into electronic databases that could be accessed quickly in an emergency.

He also has looked for ways to reduce the nation's soaring trade deficit with China and to push China to move away from linking its currency to the U.S. dollar. U.S. manufacturers say the practice makes Chinese goods cheaper in the U.S. than they would be if China didn't artificially control its currency rate.

Looking to the future, Engler hopes to get Congress to boost science education so manufacturers will have a larger pool of engineers and technically skilled workers to draw on for hard-to-fill positions.

He also supports a bill in Congress to reform asbestos litigation, which the NAM says has caused more than 70 business bankruptcies and cost at least 60,000 jobs.

The measure would create a trust fund to compensate people made ill by exposure to asbestos

and to return to a government job.

He and his wife, Michelle, have 10-year-old triplet daughters who will begin incurring college costs in the not-too-distant future.

"They may want some help from dad, so I've got to make up for all these years in public service," Engler said.

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