

## **House Committee on Oversight and Government Reform**

### **Subcommittee on Government Operations**

Chairman John Mica (R-FL)

## **The Delphi Pension Bailout: Unequal Treatment of Retirees**

Field Hearing – Monday June 10, 2013, 10:00 AM

Sinclair Community College in Dayton, OH

### **Testimonies**

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- Mary T. Miller – Delphi Salaried Retirees Association
- Bruce Gump – Delphi Salaried Retirees Association
- Tom Rose – Delphi Salaried Retirees Association

#### **Panel 2**

- Paul J. Dobosz – Delphi Salaried Retirees Association
- James Sherk – Senior Policy Analyst in Labor Economics - The Heritage Foundation

## **Testimony of Mary T. Miller**

Delphi Salaried Retirees Association

Monday, June 10, 2013

House Subcommittee on Government Operations

Thank you Congressmen for inviting me to testify today.

I am Mary Miller.

General Motors decided in 1999 to spin-off their component parts business. This spin-off became Delphi Corporation. Delphi Corporation, the largest automotive parts supplier in the world, was integral to GM's success. Most Delphi Retirees worked two-thirds or more of their careers in service to GM and only a small part of their career for Delphi. I worked 22 years for GM and only 9 years for Delphi. I was forced to retire in 2008 when Delphi decided to permanently close their Brake Operations in Dayton, Ohio, where I worked as an HR Manager.

All GM salary retirees are receiving their full pensions, all GM hourly retirees are receiving their full pensions, and all Delphi hourly retirees of major unions are receiving their full pensions. So what brings us together this morning if all of these retirees are receiving their full pensions? We're here today because one key group, who worked side-by-side with all these other people, isn't receiving their full pensions. The Delphi salaried retirees have lost up to 70 percent of our hard earned pensions. The Delphi salaried retirees' pensions were decimated in 2009 during the Auto Task Force's rush to settle GM's bankruptcy. This loss has been devastating for the salaried retirees and their families—causing home foreclosures, bankruptcies, family breakups, suicides, serious stress-related illnesses, and an on-going struggle to pay routine bills.

How can it be legal for the government to pick winners and losers amongst its own citizens? For me and many of my fellow retirees the burden of trying to figure out how to make ends meet gets heavier every day. We are real people suffering real hardships. And all the while many of our neighbors with whom we worked side-by-side for years are receiving their full pensions. The Delphi hourly retirees of major unions are receiving every pension dollar they earned. The American tax payers are paying for top-ups for all of the hourly retirees of major unions—top-ups that were won during the GM bankruptcy by politically connected individuals.

The PBGC was created to help save retirement plans and that is what I believe it tries to do. Just look at its efforts in the recent cases of American Airlines and Tower Automotive. What was different in our case? What was unique about our salaried

pensions that allowed the PBGC to do nothing to defend and protect our pensions; pensions that were well funded and very savable.

We've all heard over-and-over how proud the Administration is of the Auto Task Force's effort to save automotive jobs in America. We've heard time-after-time how everything the Auto Task Force, the Treasury and the PBGC did to help preserve those jobs was done normally and within the law. If they are so proud of everything they've done then why are they so secretive about giving us the records we've been asking for since 2010? They have thwarted us at every turn, denying our request for documents, not complying with our subpoena for their records and even going to a different court to quash this subpoena. It really makes you eager to know what they are so desperate to hide that a White House attorney indicated they would use Executive Privilege to keep from revealing their records, if subpoenaed. And this from the same administration that promised "Transparency and the rule of law will be the touchstones of this presidency."

The PBGC has stonewalled every request we've made. The Treasury has been downright non-participative regarding every record we've asked them to provide. The House Ways and Means Committee asked for Treasury records last fall—none have been provided to date. We are asking the House Oversight and Government Reform Committee to obtain the Treasury's records so the truth about our case can finally be uncovered.

Our Delphi Salaried Retirees have been brave in the face of adversity. In the midst of their financial losses our members have contributed from their greatly reduced resources to fund a legal battle to win back our full pensions.

While we will never give up our fight-- we do need your help to win. We need our congressional representatives to be our advocates; to use your power, given to make our government one of checks and balances, to demand this blatant wrong be righted immediately. Not later this year, not next year, not some time in the future but NOW. This fight has been going on for almost four years. It's time to end this disparate treatment and settle this egregious wrong while most of our retirees are still living.

This can be done today with no cost to the tax payers. The funds the PBGC received for our salaried pensions are more than enough to make our pensions whole. Join us in our brave fight to win back what is rightfully ours. Don't let anymore time slip by without pressing our case forward to resolve this shameful violation of the law. Help us move from being victims to victors.

Reassure us and millions of others that this is still America—the land of the free and the home of the brave. Thank you.

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## **Testimony of Bruce Gump**

Delphi Salaried Retirees Association

Monday, June 10, 2013

House Subcommittee on Government Operations

Chairman Mica, Congressman Turner and (other panel members)

Thank you for this opportunity to bring the committee up to date on our efforts to be treated by our government in a fair and equitable manner, something we have been denied thus far. My name is Bruce Gump and I am the Vice-Chairman of the Delphi Salaried Retirees Association. I was employed by GM for more than 22 years and then by GM's parts spin-off Delphi for 10 years as a Senior Engineer. I worked hard and played by the rules. I contributed greatly including creating 10 intellectual properties such that last November I was inducted into Delphi's Innovation Hall of Fame. Like many others who made GM and Delphi able to exist by working in thousands of salaried positions, we expected to be rewarded for our efforts, and not treated like yesterday's garbage by our government. You have heard some of the history and expectations; I would like to tell you what really happened.

When the President's Auto Task Force was formed, it quickly decided that in order for GM to be successful, it needed to secure GM's supply of critical Delphi parts so they looked at the roadblocks and worked to quickly eliminate them. Up to that point everyone involved recognized that there would be no way to resolve the Delphi situation without addressing the PBGC liens and claims that the PBGC had placed on Delphi's assets in connection with the Salaried Plan's missed contributions and underfunding. These liens and claims were worth billions, and as long as they were in place they ensured that neither Delphi nor GM could walk away from their long-standing pension obligations.

Because the PBGC had a number of legal tools at its disposal to force GM to take responsibility for the Salaried Plan's underfunding, including its liens and claims, in 2009 the PBGC started working with Delphi to persuade GM to assume the Salaried Plan. Then the Auto Task Force was formed, and took over the job of "facilitating" a resolution of the pension issues. Once this happened, any hope we had of the PBGC looking out for our interests was gone. Again, by statute, the PBGC Director reports to a three person board, each of whom is a political appointee of the president. Those appointees, the Secretaries of Labor, Treasury and Commerce, received regular briefings from the PBGC Director on important cases generally, and early in 2009 representatives from Labor and Treasury started receiving daily briefings from the PBGC.

From the outset, the Auto Task Force has testified that the Treasury was **“trying to facilitate an agreement where the salaried plan would get terminated and taken over by the PBGC,” and not surprisingly, this is exactly what happened. The shame of it is that the termination was entirely unnecessary. The Plan was well funded.** Just a few weeks prior to the PBGC choosing to terminate the salaried pension plan, the plan’s actuary completed an “AFTAP” analysis that determined the plan was about 86% funded, better than average at that time. The PBGC chose to entirely ignore this funding analysis.

Moreover, the PBGC’s own actuaries concluded that GM assumption of the Salaried Plan would have cost GM as little as \$400 million through 2018. Given that GM wound up giving the PBGC over \$600 million in return for releasing its liens and claims related to the Delphi Salaried Plan, the obvious question here is why didn’t the PBGC take a stronger stand to have GM assume the Salaried Plan?

For four years now we have been trying to gain access to records from the PBGC and Treasury so we can better understand why the salaried retirees were chosen by our government to lose everything while others received full protection from those losses. Yet in spite of promises from everybody from the President on down to the leadership of the PBGC we have been fought every step of the way as we tried to gain access to the records that will either show why we lost everything or why we shouldn’t have. Interestingly, the House Ways and Means Committee chairman recently requested records from the Treasury, and when denied suggested they could pursue those documents through the compulsory process. The response from the administration was to threaten to use Executive Privilege to keep them secret. The threatened use of Executive Privilege over a pension issue seems quite odd and a tacit agreement that those records would not support the Treasury’s position that they did not make the decisions that led to the termination of our pension plan. We would really appreciate the help of this committee to gain access to those records!

When our attorneys served Treasury with a subpoena for those records, rather than complying with the subpoena and providing the transparency the administration promised, the Treasury moved to quash the subpoena in a different Federal Court which has only served to further delay our efforts thereby denying us the justice we have sought.

In addition, the PBGC previously testified in a hearing of the Oversight and Government Reform Committee that they had provided all of their records related to their termination of our plan, but since then through the Federal Court we have gained more than a million pages of very relevant documents, and they are still withholding an estimated half-million pages!

One might ask how we know that the Treasury played a major role in the decision to terminate our pension plan. While there is ample evidence, in the form of emails and testimony, to show how deeply responsible a select few in the Treasury were for our situation, one need look no further than the Vice President's own words. Vice President Biden, who spoke in an interview with a Youngstown, Ohio television reporter on the subject, said: "We were able to protect the hourly workers. Some salaried workers got hurt, particularly the younger ones." The "We" in that sentence refers to the administration of which he is a member and confirms that the Auto Task Force under the US Treasury was deeply involved in the choice to "protect the hourly workers." Also, I would note that while the PBGC has stated numerous times that everything they did in the termination of the Delphi salaried pension plan was done according to standard procedure and that they are proud of the role they played in the auto bailout, they and Treasury have worked tirelessly to keep the records of their actions secret! If they are so proud and nothing inappropriate was done, then why would they work so hard to keep those records secret?

Several of the principle actors in the termination of our pension plan profited personally, some to a very large degree.

Harry Wilson had been a partner at Silver Point Capital which shared \$1.3 billion in profit with Elliot Capital Management from Delphi's bankruptcy exit. He was paid at least \$250,000 by Silver Point in 2009. After the bailout, he was appointed to the PBGC's advisory board. Mr. Wilson also used three different e-mail addresses including his own personal g-mail and Harvard addresses to conduct government business.

Matt Feldman came to the Treasury Department from Willkie Farr & Gallagher — the law firm that represented Silver Point Capital as it angled for a cut of the bankrupt Delphi's debt load. After the bailout in which Silver Point made so much money, he returned to the same law firm and remains there. Silver Point is presently among his clients.

Joshua Gotbaum was an operating partner at Blue Wolf Capital and represented that company in the bailout negotiations. After the bailout he was appointed Director of the PBGC.

There has been discussion about demands from the venture capital groups for the Delphi salaried pension plan to be terminated as the reason behind what happened to us. Our plan was the major obstacle because of its size, yet other pension plans which were less well funded were made whole by the infusion of funds from the taxpayers and so they were not considered liabilities that were subject to such demands.

We have had to deal with numerous and lengthy delays too. For example:

- PBGC produced what it called the “administrative record” but we found that it lacked information about the involvement of the Auto Task Force in spite of the fact that their Chief Negotiator was calling and e-mailing them on an almost daily basis regarding the Delphi pension plans. This required us to pursue a FOIA request which after a long delay resulted in heavily redacted material or entirely withheld materials.
- In spite of the Federal Judge denying multiple motions from the PBGC to have our lawsuit dismissed, and a discovery order from the court, PBGC refused to comply with the demand for documents from 2010 when the order was issued until 2012 and did so then only after forcing us to file and brief numerous motions, and only after the Court issued another FIVE orders explicitly stating our right to discovery.
- In the last order for discovery the court required PBGC to fully comply with our demands for records within 90 days, but supplied nothing until the 90<sup>th</sup> day and then was only forthcoming in dribs and drabs. It has now been more than a year and they are still withholding about 30,000 documents, and have not yet supplied a privilege log explaining why.
- We served the Treasury with a subpoena for their records regarding their involvement in the decisions to terminate our pensions. In response rather than living up to the promise of transparency made by the administration, they filed a motion to quash the subpoena and continued to keep those records secret. It should be noted that one of the arguments to quash was that the demand was “burdensome” but they had already compiled nearly all of the same information for the SIGTARP.
- Congressional attempts for much of the same information from Treasury have been met with shameful disregard and an implication that a subpoena would be met with a claim for executive privilege – over a pension issue!
- PBGC has offered misleading testimony while under oath regarding what information has been provided to the various committees and the Delphi Salaried Retiree Association. They simply lack any credibility.
- The SIGTARP investigation was so stymied by the refusal of Treasury to provide access to the principles from the Auto Task Force that a special hearing had to be held by the Oversight Committee to overcome it and get the investigation back on track.

- The PBGC has refused to supply legally required census information even after the DSRA agreed to a confidentiality process and also agreed that personally identifiable information was not required.
- After more than a year of effort requesting a meeting with the Director of Recovery for Auto Communities and Workers from the Department of Labor, who also happened to be the previous Mayor of Youngstown, Ohio, a meeting was finally held where there was a review and a proposal for resolution provided by the DSRA. The Director promised a response within three weeks, but only after repeated contacts and requests for a response and after three months had past was a response received that essentially said “go get a job...”

The point is that the administration has taken advantage of every opportunity to drag out and increase the cost of pursuing the justice we are entitled to. They have misrepresented their actions and mislead the committee for nearly four years now. It is time to bring this to an end and do what should have been done to begin with – treat the salaried retirees in a fair and equitable manner by restoring the full pension they earned over decades of service.

Finally there is the economic impact of the decisions that left the salaried retirees without their full pensions and no health care insurance. According to an extended Youngstown State University study the cost to Ohio in terms of economic activity was nearly \$500,000,000 per year, and nearly 15,000 additional jobs lost – at the bottom of a major recession. After four years that amounts to nearly \$2 billion lost to the economy so far. Furthermore all of that income could have been taxed, and each transaction would have caused a sales tax that would have supported communities across the state. All of that has been lost but much of it can be recovered by returning the full pensions to the retirees.

In summary, what really happened is very different than what has been described by the PBGC and the Treasury. We are still trying to learn more and won't ever give up, but all we really want is what we earned just as was provided to our coworkers. Real people are suffering because of this horrible treatment by our government. There is no question that it looks like politically connected people forced GM to top up the hourly pensions but not the salaried pensions, even when some hourly groups had and still have no contract with New GM! At the end of the day, all of these decisions were made, vetted, encouraged and determined by the President's Auto Task Force. They played god. They played with people's lives and hurt tens of thousands of American citizens in the process.

Please help us force transparency into this issue by pursuing the records from Treasury and PBGC. Hold them accountable for their actions – good or bad. Show that



American Citizens deserve to be treated equally regardless of who they associate with or what groups or clubs they belong to. Help the administration to live up to their promises of transparency and pension protection. Help us regain the pensions we earned without the use of any taxpayer funds, and help the economy to recover more quickly.

Thank you.

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## Testimony of Tom Rose

Delphi Salaried Retirees Association

Monday, June 10, 2013

House Subcommittee on Government Operations

Thank you, Chairman Mica, Representatives \_\_\_\_\_, and Congressman Turner for holding this important hearing. Delphi salaried retirees continue to seek the truth about our pension termination; a termination that was absolutely unnecessary and - we believe - illegal.

My name is Tom Rose. After college and two years of military service, including a year in Vietnam, my automotive career began with GM and continued for 30 years. I spent an additional nine years with Delphi. I certainly felt that I contributed a small piece to the powerful GM that had to be bailed out in 2009. I also expected to receive my health care and pension that was earned and promised as part of my employment. After the dust of the frantic 44-day GM bankruptcy had settled, I found myself with zero health care and – in my case – a 40% pension reduction. My carefully planned retirement was blown apart at a point in my life when recovery time and opportunities were limited. I look back and wonder what I did wrong. I now realize that I first trusted GM/Delphi, and then I trusted the Auto Task Force that guided the bailout under the direction of Treasury. In the end, this trust was misplaced as myself and 20,000 Delphi salaried retirees were abandoned by GM and the Auto Task Force.

We are glad that the union retirees have their full health care and pensions – they earned it, they deserve it, but so do we. They received their full pensions, not from obsolete union contracts as alleged, but were topped up per direction of the Auto Task Force. As Vice President Biden stated “(The PBGC is) an independent agency. We can’t direct them to make good on all pensions .... we were able to protect the hourly workers. Some salaried workers got hurt, particularly the younger ones.” Speaking for myself, I simply fail to understand how two groups of employees, working for the same company, in the identical situation, could be treated so distinctly different by our own government. The preferential treatment given the union is blatantly obvious. Were salaried retirees wrong to expect fair and equitable treatment from our own government?

Matthew Feldman, a member of the Auto Task Force, stated that “we were trying to facilitate an agreement where the salaried plan would get terminated and taken over by the PBGC and General Motors would assume liability for the hourly plans.” They were certainly successful in terminating our pension, in spite of the fact that our plan was considered to be fully funded by third party actuaries. They were also successful in having the taxpayers pick up the tab to fully fund hourly pensions. This reinforces my

belief that Treasury and the Auto Task Force were calling the shots, and the PBGC was simply a pawn in our pension termination.

The PBGC's role is "to protect the retirement income of pension plan beneficiaries." Let me recap how they have protected us:

- The PBGC's administrative record, which should clarify what happened, only serves to interject confusion. Despite the PBGC acknowledging almost daily coordination with the Auto Task Force, the administrative record was almost entirely stripped of references to this coordination.
- FOIA requests to obtain information were answered by providing hundreds of pages of redacted material or just withholding information. Again, this obscured the details of PBGC's actions.
- DSRA's lawsuit was brought in September, 2009, and, after numerous objections, Judge Tarnow, of the U.S. District Court for the Eastern District of Michigan, ordered discovery in 2010. The PBGC did not produce a single document until June, 2012, and only then after the Court issued another five Orders explicitly stating our right to discovery.
- The last of these orders was issued in March, 2012 with a requirement to be completed within 90 days. After 15 months, the PBGC has still not fully complied.
- Treasury has never participated in discovery .... Why not? Isn't the current administration the alleged most open and transparent ever? I don't mean to be critical. After all, the DSRA consists of both Republicans and Democrats. But the huge disconnect between words and actions is shameful.
- As you know, the PBGC has also stonewalled numerous Congressional requests for information.
- Recently, the PBGC announced that final benefit determination for our pensions could not occur until 2015, thus forcing continued financial uncertainty on salaried retirees. So I ask .... Is this how the PBGC protects the participants of terminated pension plans?
- I could go on, but in summary, justice delayed is justice denied.

How long must this continue? Sadly, with the dual negative impact of loss of health care and full pensions, many salaried retirees find themselves living below federal poverty level guidelines. This has created many hardships, as Mary Miller testified.

Finally, some good news! A solution exists for the salaried pension plan. In recent meetings with Treasury and PBGC, a proposal have been presented that fully funds the salaried pension plan, both retroactively and going forward. This proposal can be implemented immediately and with zero taxpayer money required. This would also fulfill the political solution as suggested by Judge Tarnow.

Congressmen, today we ask for your help in requiring Treasury and PBGC to end the harm that was needlessly inflicted upon this group of American citizens. After almost four years, one Senate hearing, six House hearings, continuous PBGC delays and no Treasury participation, this has gone on long enough. A solution exists, and the time to implement it .... is now!

Thank you.

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## **Testimony of Paul J. Dobosz**

Delphi Salaried Retirees Association

Monday, June 10, 2013

House Subcommittee on Government Operations

Chairman Mica, Congressman Turner, and distinguished members of the committee

Thank you for the opportunity to address you on a matter that has profoundly altered the lives and financial futures of over 20,000 Delphi salaried employees, retirees, and their families.

My name is Paul Dobosz. I am a retired GM and Delphi engineer who served those companies loyally for 37 years; the last 9 of those years of employment were with Delphi. Like my colleague Bruce Gump, I have received Delphi's highest engineering honors for numerous patents and other intellectual property contributions that helped to make Delphi a technology leader and enabled the company to win nearly half a billion dollars in new business.

At the time I retired in December of 2008, my wife and I had carefully planned for financial self sufficiency with a retirement plan built around a 3 legged stool of personal savings, my Delphi pension, and someday, Social Security benefits. I never imagined that just 7 months later I would see that stool kicked out from under me by Federal government institutions charged with defending and preserving pension plans such as mine.

As I sat in the courtroom of Federal Judge Arthur Tarnow, I could scarcely believe my ears as I heard the PBGC's attorney tell the judge it was the obligation of the PBGC to protect the PBGC and its assets. When Judge Tarnow asked him who was looking out for the interests of the pensioners, the attorney was speechless.

In the short time I have to address the committee this morning, I would like to share how unnecessary the termination of our already frozen pension plan was, especially in light of actuarial data the PBGC had in hand concerning the assets and liabilities of our plan. The salaried pension plan had already been frozen in October of 2008 which meant it was no longer accruing additional liabilities. The plan had also been closed to new hires since January of 2001. These new employees received a defined contribution benefit in its place.

The PBGC was acutely aware the economy was in a trough and that financial markets were in the beginning stages of recovery. The decreased valuation of the plan's assets represented a snapshot in time rather than a realistic determination of their ability to pay

benefits and their long term viability. At the time of termination the Dow was hovering around 9000 but 4 years later, the Dow is at 15,000, an increase of 67%. A market recovery of that proportion has grown the value of the plan assets but unfortunately for retirees, it makes no difference because the PBGC's valuation of those assets, for purposes of benefit computation, is frozen in time at the July 2009 numbers.

That raises the obvious question, if the Delphi salaried plan's assets were merely experiencing the effects of a dip in the financial markets, why was the PBGC so agreeable to terminating a plan to its own financial detriment? The answer to that question lies in the political influence Delphi's hedge fund Debtor in Possession lenders and other politically influential players in the GM Bailout were able to exert on the PBGC via the US Treasury and Auto Task Force to clear all pension liabilities from Delphi's balance sheet.

With the knowledge gained from discovery, we now know that despite its public insistence that the Delphi salaried plans were severely underfunded, the PBGC's own internal analysis of potential scenarios to preserve the Delphi salaried plan showed that very modest additional funding would be required to fully meet the plan's obligations. Actuarial reports in the PBGC's possession showed the real asset to liability ratio at 75% or greater utilizing even the most pessimistic economic assumptions. Meanwhile the PBGC continued justifying its termination by citing asset to liability ratios of around 46%. Independent actuaries who benchmarked the Delphi salaried plan against peer plans that they deemed adequately funded judged that the Delphi Salaried plan funding was on a par with those plans.

All of the uncertainty and conflicting numbers continues to hang over the heads of retirees who, four years after plan termination, are still waiting for an accurate accounting of assets and liabilities seized by the PBGC, and their final PBGC benefit amount. In a response to an inquiry by Congressman Turner, the PBGC recently stated they are unlikely to have this task completed before 2015, six years after the termination took place. There is no credible excuse for taking 6 years to account for assets and liabilities and to compute benefit amounts according to a set formula.

I could dive deeper into what we have learned in this arduous four year battle to recover pensions that were seized to benefit the politically powerful but time severely limits what can be shared in this forum. Delphi salaried retirees aren't asking for a handout, we are just asking our government to behave in an open and honest manner and to apply laws and regulations without regard to political influence or power. This issue may not garner the widespread attention and front page headlines the IRS scandals have generated, but it represents an equally blatant abuse of political power.

I thank you for this opportunity to testify before the committee and I would be happy to answer any questions you might have.

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