Statements Submitted to the

Subcommittee on Government Operations,

Committee on Oversight and Government Reform,

House of Representatives

Oversight of the SIGTARP Report on Treasury's Role in the Delphi Pension Bailout

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SIGTARP

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM

ADVANCING ECONOMIC STABILITY THROUGH TRANSPARENCY, COORDINATED OVERSIGHT AND ROBUST ENFORCEMENT

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U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

WRITTEN TESTIMONY SUBMITTED BY

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(SIGTARP)

BEFORE THE
U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

September 11, 2013

Chairman Mica, Ranking Member Connolly and members of the subcommittee, I am honored to present the Office of the Special Inspector General for the Troubled Asset Relief Program's ("SIGTARP") August 15, 2013 audit report "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees." Please accept the full contents of the audit as my submitted written testimony for the hearing. I am happy to answer any questions you may have.

Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees

Special Inspector General for the Troubled Asset Relief Program

SIGTARP 13-003

August 15, 2013

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
1801 L STREET, NW, 4TH FLOOR
WASHINGTON, D.C. 20220

August 15, 2013

MEMORANDUM FOR: The Honorable Jacob J. Lew – Secretary of the Treasury

FROM: The Honorable Christy L. Romero – Special Inspector General for the Troubled Asset Relief Program

SUBJECT: Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees (SIGTARP 13-003)

We are providing this report for your information and use. It discusses the U.S. Department of the Treasury's ("Treasury") role in the decision for the General Motors Corporation to top up the pension payments of certain Delphi Corporation hourly employees.

The Office of the Special Inspector General for the Troubled Asset Relief Program conducted this audit (engagement code 024), under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended.

We considered comments from the Department of the Treasury when preparing the report. Treasury's comments are addressed in the report, where applicable, and a copy of Treasury's response is included in the Management Comments section in Appendix D.

We appreciate the courtesies extended to our staff. For additional information on this report, please contact me or Mr. Bruce S. Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation (Bruce.Gimbel@treasury.gov / 202-927-8978).

Summary

The U.S. Department of the Treasury's ("Treasury") injection of Troubled Asset Relief Program ("TARP") funds in General Motors Corporation ("GM") and Chrysler Group LLC ("Chrysler") was the only bailout with a President's Designee overseeing the companies' restructurings – the Presidential Task Force on the Auto Industry ("Auto Task Force"). The Auto Task Force delegated the responsibility for GM's restructuring to four primary officials who were part of an Auto Team led by Steven Rattner. GM's bankruptcy would be one of the largest and fastest bankruptcies in our nation's history. A new company, "New GM," emerged from GM's bankruptcy in July 2009, with Treasury owning 61% of its common stock. New GM purchased substantially all of GM's assets while leaving behind many of its liabilities. One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees paid an hourly wage and represented by certain unions, and who had worked in GM's automobile parts division that was spun off into Delphi Corporation ("Delphi"). The four Treasury Auto Team officials made it clear to SIGTARP that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring.

What SIGTARP Found

The existence of Treasury's Auto Team and the role these Treasury officials played sharply contrasted with the role played by Treasury officials under other TARP programs. The four Treasury Auto Team officials played a direct role in GM's decisions and operations up to and through GM's bankruptcy. As GM's only lender and later GM's largest investor, Treasury's Auto Team had significant leverage and influence on GM's decisions leading up to and through the bankruptcy, first exerted by replacing GM's then-chief executive officer ("CEO") Rick Wagoner with Treasury's choice, Fritz Henderson. According to Mr. Henderson, this sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations. After Treasury rejected GM's restructuring plan, GM developed a new plan with significant influence and leverage from the Auto Team. One GM official said, "Ultimately it was that GM is not in control. And GM is totally dependent."

Although the Auto Team's role was supposed to be advisory for matters not requiring Treasury's consent under the TARP loan agreement, in practice, it was more than advisory. The TARP loan agreement gave Treasury the explicit right to approve transactions over $100 million and new pension obligations, but the Auto Team's influence went far beyond that right. SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence GM to make decisions in areas that did not require Treasury's consent, in line with Treasury's preferences. Auto Team officials told SIGTARP that they "had to carefully manage GM," that "we, the Government, were ultimately holding the purse strings" and "GM realized that there was no other available source of money." When an Auto Team official was asked by SIGTARP how they conveyed their preference, given that ultimately GM could do its own thing, the official said, "Well they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Driven by broader concerns about the auto industry, Treasury's Auto Team directed GM's restructuring toward bankruptcy, first through replacing the CEO who opposed bankruptcy, second by "highly" suggesting to GM that they felt "pretty strongly" that a "Section 363" bankruptcy was the best approach. Third, although CEO Henderson hoped to avoid bankruptcy through a bond exchange, the Auto Team, who opposed the exchange, communicated to GM their preference for 90% bondholder participation, a "very high" level of acceptance making bankruptcy more likely. When the exchange

failed, Treasury agreed to fund GM's bankruptcy.

Treasury's Auto Team created a condition on funding GM's bankruptcy that would serve as pressure on GM and would drive pre-bankruptcy negotiations and decisions. Treasury conditioned giving GM $30.1 billion in TARP funds on a "quick-rinse bankruptcy" that would end in 40 days because Auto Team officials thought that was the best way to save the automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Neither Treasury nor GM believed that the company could survive a lengthy bankruptcy; however, GM thought that the 40-day timeline was not realistic, with its lawyer telling the Auto Team that it was "impossibly aggressive. It's never been done." Treasury had leverage to set a timeframe that did not seem realistic to GM, and had never been done before. If GM's bankruptcy was not completed in time, GM risked losing its only source of financing and its purchaser in bankruptcy.

Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. With their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. One Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation. GM's then-chief financial officer ("CFO") Ray Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." An Auto Team official stated, "it is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on. Treasury used its significant financial leverage to get GM to reach agreement with the two stakeholders that Treasury believed could hold up GM's bankruptcy – the bondholders and the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW").

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW and resulted in New GM taking on the liability to top up the pensions of UAW's members who had worked at Delphi at the time of its 1999 spinoff from GM, increasing their pension benefit payments to their full benefit level. The Auto Team made it clear to GM that they wanted an agreement with the UAW prior to bankruptcy (which had to be before a June 1, 2009, bond payment due date) and the Auto Team actively negotiated and made the overall deal. The UAW understood that GM could not walk away from the May 18-19 negotiations and had to reach an agreement to be able to survive, and those same facts put pressure on GM. GM only had a couple of weeks to come to agreement with the UAW, and if they did not come to agreement, GM risked the UAW objecting to and prolonging the bankruptcy beyond 40 days, which GM believed would lead to liquidation. The UAW came to the negotiations with a "hit list" of priority items including the top-up. The top-ups were never discussed in the negotiations.

The Auto Team's role in the decision to top up the pensions of Delphi's UAW workers was not advisory. Consistent with the Auto Team's practice, it would have been Treasury's decision as the buyer to assume or reject the top-up liability. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included in the Master Sale and Purchase Agreement selling assets to New GM. GM could not decide on its own to agree to the new collective bargaining agreement that included the top-up because Treasury's consent was required under the TARP loan agreement and Treasury was the purchaser in bankruptcy. The decision that

New GM would honor the top-up was a joint decision by Treasury and GM with Treasury deciding to approve the UAW collective bargaining agreement with the top-up.

Even though the top-up was never discussed in the negotiations with the UAW, it became a foregone conclusion that it would be included in the new UAW agreement. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring the top-up, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Auto Team leader Rattner and another Auto Team official told SIGTARP that, because the UAW included it on their list, it was clear that the UAW expected the top-up to be part of the overall deal. Treasury had the power to object to New GM taking on the top-up obligation as part of the larger UAW agreement, but had no desire to blow up the larger deal. Although the Auto Team was concerned about the threat of a strike, they were also concerned with the UAW prolonging the bankruptcy, calling not having an agreement like "shooting yourself in the head." Auto Team leader Rattner told SIGTARP that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure," adding "it was not a ridiculous request, and one that we could have honored and needed to honor." CEO Henderson told SIGTARP that the pressure to finish the negotiations resulted in no negotiation of the top-up, "the focus was on getting the deal done," and that if the top-up was not assumed, "it would have been 'mission impossible.'"

Treasury's Auto Team and GM did not agree to top up the pensions of other former GM employees at Delphi, which did not have active employees at GM, and therefore had no leverage to hold up GM's bankruptcy. This included Delphi employees who were paid a salary and employees who were paid an hourly wage who were members of the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers ("IUE") and the United Steelworkers of America ("USW"). Although in GM's bankruptcy New GM did not assume the other top-up agreements with Delphi IUE and USW employees because those unions did not have leverage, subsequently New GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive.

Lessons Learned

GM did not fail and the broader systemic consequences of a GM failure that Treasury feared were avoided. There are two important lessons to be learned from the role that Treasury played.

First, the Auto Team's deep involvement and significant influence on GM's decisions leading up to and through GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government. The Pension Benefit Guaranty Corporation ("PBGC"), a Government-backed insurer of pensions, had an expectation that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what might have normally occurred, and could potentially have saved PBGC billions of dollars with Treasury involved. Also contributing to this expectation was the fact that the Auto Team negotiated with PBGC on behalf of GM related to what GM would pay on the pensions. Delphi and its workers, who had been former GM employees, also had the expectation that the Government would ensure that GM treat the pensions of all former GM employees at Delphi the same out of fairness. Also contributing to this expectation was the fact that TARP funds were being used, and that GM had taken the position with Delphi (and PBGC) that taking on additional pension obligations violated the TARP loan agreement and required Treasury's consent. A PBGC document stated that Delphi believed GM may be looking to the "car czar" to mandate that GM assume Delphi pensions as part of GM's use of TARP funds. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government and make themselves into a commercial enterprise" and "it is wrong of our Government to take funds from everyone and give it to the few." However, Auto Team officials attempted to view top-ups as a private investor with one Auto Team official telling SIGTARP that the Government could not make everyone whole, saying, "I don't think that anybody thinks bankruptcy is fair."

Treasury's Auto Team did not always act as a private investor and at times acted as the Government to prevent GM from failing, concerned about financial stability in the auto industry. Although the Auto Team tried to view issues through a "commercially reasonable" lens like a private investor, they often did not act as a private investor, nor should they have. Without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns. For example, Treasury decided not to move GM's headquarters to save costs out of concerns over the impact on the city of Detroit. Treasury made other decisions based on broader concerns about the interconnectedness of the auto industry. No private investor holds the responsibility Treasury has to protect taxpayers and to promote financial stability in the economy. Treasury made the TARP injections in GM when no other private investor would lend or invest the money that GM needed, according to GM's then CFO. Concerned about too much debt on GM's balance sheet, Treasury funded GM's bankruptcy and converted what would be higher priority TARP debt to a lower priority equity ownership in New GM and, according to GM, paid more than GM's "Enterprise Value." Treasury's Auto Team took these actions based on concerns of the consequences of a GM failure on other companies in the American automotive industry, concerns not held by private investors. Even though the Auto Team tried to act as a private investor, they had considerations that no private investor would ever have had, blurring the lines between Treasury's role as the investor and as the Government.

Second, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. One Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held, but SIGTARP found that additional leverage was given by Treasury. The Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to GM's bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days. Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having leverage because they did not have current employees at GM and therefore could not hold up GM's bankruptcy.

Two liabilities that the Auto Team had already decided to assume in bankruptcy were new agreements with the UAW and bondholders. The UAW had leverage because it knew and understood from Treasury that it was committed to reorganize GM and not let GM fail. Treasury's 40-day bankruptcy condition gave the UAW and bondholders additional leverage to threaten to hold up GM's bankruptcy. They may have been able to obtain more concessions than in a traditional bankruptcy where the issues may be litigated. An Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept." With Treasury's dictate of a 40-day bankruptcy and no indication that Treasury would extend that timeframe, GM officials were under pressure, believing they had to reach agreements with the bondholders and UAW prior to bankruptcy or risk losing Treasury's funding and liquidating.

It is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities. Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in the economy. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

What SIGTARP Recommended

SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

Treasury provided an official written response, which is reproduced in full in Appendix D. A discussion of this response and SIGTARP's response can be found in the Management Comments and SIGTARP's Response section of this report.

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Introduction

General Motors Corporation's ("GM") bankruptcy was one of the largest and fastest bankruptcies in our nation's history. Having already invested $19.4 billion in GM under two Administrations through the Troubled Asset Relief Program ("TARP"), in June of 2009, the U.S. Department of the Treasury ("Treasury") loaned GM an additional $30.1 billion from TARP to fund GM's bankruptcy, and conditioned the money on the bankruptcy ending in 40 days. In exchange for its combined $49.5 billion TARP investment, Treasury would become the majority (61%) owner of a new company that would emerge from GM's bankruptcy ("New GM"), purchasing substantially all of GM's assets, and leaving behind many of its liabilities with the old company ("Old GM"). One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees who had worked in its automobile parts division Delphi Corporation ("Delphi"), when GM spun off Delphi into an independent company in 1999. The agreement ran to Delphi employees who were paid an hourly wage (an "hourly employee") and were represented by certain unions. Delphi employees who were paid a salary (a "salaried employee") did not have an agreement for GM to pay anything toward their pensions after the 1999 spinoff. Delphi, which was GM's largest supplier of parts, had been in bankruptcy since 2005 and did not have enough money to fund its pensions.

With the first TARP injection in GM, Treasury assigned responsibility for overseeing GM's restructuring to a "President's Designee" that was later formed, in February 2009 – the Presidential Task Force on the Auto Industry ("Auto Task Force"), which delegated the responsibility for GM's restructuring to a group of Treasury officials known as the Auto Team ("Auto Team"). The existence of the Auto Team and the role they would play with GM and Chrysler Group LLC ("Chrysler") sharply contrasted with the role played by Treasury officials under other TARP programs. The auto bailout was the only TARP program with a President's Designee responsible for the restructuring of the TARP recipient. Auto Team officials would play a direct role in the decisions and operations of GM until the Auto Team disbanded in the summer of 2009, soon after both automakers' bankruptcies.

Senator Roger Wicker and Congressman John Boehner sent a letter to the Government Accountability Office ("GAO") requesting a review of five questions related to the decision that GM would top up pension payments for Delphi hourly employees beyond what the Pension Benefit Guaranty Corporation ("PBGC"), a Government-backed insurer of pensions, would pay if the pension plans were terminated, but not top up pension payments for Delphi salaried employees and related to PBGC's termination of the Delphi pensions. Former Congressman Christopher J. Lee also requested that SIGTARP work with GAO and that SIGTARP issue a separate report from GAO on one of the five questions. Congressman Michael R. Turner also requested that SIGTARP conduct a similar review after Congressman Lee left office. GAO and SIGTARP coordinated, dividing the work into two parts that each office would address. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. To avoid duplicating GAO's work, SIGTARP did not review PBGC's decisions. The objectives of SIGTARP's audit were to determine:

- Treasury's role in the decision for GM to top up (pay the full cost of pensions less any PBGC payout) the pension plan; and
- whether the Administration or the Auto Task Force pressured GM to provide additional funding for the plan.

In December 2011, GAO issued a report that included the statement, "GM and Treasury officials stated that Treasury's role was advisory concerning GM's decisions not to take on additional Delphi pension liabilities but to honor the top-up agreements with some unions."[1] A GAO official subsequently testified before Congress in July 2012, that "the court filings, Treasury officials, PBGC officials, GM officials stated that Treasury only played an advisory role. I would note, however, in conducting our work, we coordinated with SIGTARP, and our report focused on a broad range of things, including PBGC issues, the events leading to the termination in Treasury's role. But we did not conduct an investigation, as SIGTARP is doing, and we did not interview the former [Treasury Auto Team] officials here today."[2]

SIGTARP conducted the audit from December 2010 through August 2013, in accordance with generally accepted government auditing standards as prescribed by the Comptroller General of the United States.[3] SIGTARP's work was significantly prolonged by the refusal of four key former Treasury Auto Team officials working on GM's restructuring to be interviewed by SIGTARP.[4] In July 2012, Congress held a hearing on the former Treasury officials' refusals to be interviewed. In the weeks prior to the hearing, the leader of the Auto Team, Steven Rattner, agreed to be interviewed by SIGTARP. At the Congressional hearing, SIGTARP learned for the first time that the other three former Treasury officials – Ron Bloom, Harry Wilson, and Matthew Feldman – had told Congress

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[1] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011.

[2] Hearing before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the Committee on Oversight and Government Reform, 7/10/2012.

[3] For a discussion of the audit's scope and methodology, see Appendix A.

[4] Three former Treasury Auto Team officials all include their roles in GM's restructuring in their professional biographies. Ron Bloom's biography states that "he helped lead the restructuring of GM and Chrysler, and then led Treasury's oversight of the companies thereafter." Harry Wilson's biography states that "he worked as one of the four leaders of the Auto Task Force, responsible for the Treasury's role in the restructuring of GM and Chrysler. Mr. Wilson led a team that was responsible for the business and financial work of the Task Force and also led a team overseeing the financial and operational restructuring of GM, the largest in American history." Matthew Feldman's biography states that he served as Chief Legal Advisor to the Auto Task Force "assembled to help develop the overall strategy to restructure and recapitalize General Motors Corporation and Chrysler LLC, a strategy which resulted in the groundbreaking legal proceedings that implemented a comprehensive financial solution for both companies. The Auto Team conducted complex negotiations with all major constituents of both companies, including Fiat SpA (which now runs Chrysler), the United Auto Workers and major creditors of both auto makers under a compressed timeline."

that they would agree to a SIGTARP interview. Those interviews served as a turning point in SIGTARP's work because SIGTARP could not fully determine Treasury's role without interviewing the Treasury officials involved. The former Treasury officials made it clear to SIGTARP that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring, which is what this report covers. SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

Background

According to testimony from Auto Team official Ron Bloom, in 2008, the U.S. auto industry lost 50% of its sales volume and over 400,000 jobs. Ray Young, GM executive vice president and chief financial officer ("CFO") in 2008 and 2009, told SIGTARP that in March 2008 GM started looking to identify sources of financing. Young told SIGTARP that by late 2008, it became clear that there was no source of financing and no parties were interested in investing in GM. In November 2008, GM sought Government financial support. In December 2008, Treasury, under the Bush Administration, announced TARP's Automotive Industry Financing Program with the stated goal to prevent a significant disruption to the American automotive industry that would pose a systemic risk to financial market stability and have a negative effect on the U.S. economy.

On December 31, 2008, Treasury provided $13.4 billion in TARP funds in a TARP loan to GM through the Automotive Industry Financing Program, and on January 2, 2009, Treasury provided $4 billion to Chrysler. Treasury's Loan and Security Agreement ("TARP loan agreement") required GM and Chrysler to each submit by February 17, 2009, for review and approval by the President's Designee a restructuring plan showing how they would use the TARP funds to achieve "long-term viability," which was defined as "positive net present value, taking into account all current and future costs, and can fully repay the government loan."

In summary, the TARP loan agreement with GM also laid out three conditions that needed to be met for GM to achieve and sustain long-term viability and that needed to be approved by Treasury by March 31, 2009: (1) GM was required to establish an agreement with the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"), which represented nearly all of GM's union employees, as well as an estimated 500,000 retirees, that would include reduced labor costs; (2) as part of the new agreement with the UAW, the UAW would agree that at least 50% of the approximately $20 billion obligation GM had to the UAW retiree health care trust, called the Voluntary Employee Beneficiary Association plan ("VEBA"), had to be funded with GM stock; and (3) GM would commence a voluntary offer to have its bondholders who held approximately $27 billion in debt exchange their debt for GM stock. President George W. Bush said that ensuring viability would require "meaningful concessions from all involved in the automotive industry."

On February 15, 2009, President Barack Obama convened the Auto Task Force and named Treasury Secretary Timothy F. Geithner and National Economic Council Director Dr. Lawrence Summers to serve as co-chairs.[5] Treasury created the Auto Team and the Auto Task Force delegated to it the responsibility of evaluating the auto companies' restructuring plans and negotiating the terms of

[5] The Auto Task Force had 21 members including several cabinet-level officials from across the Executive Branch.

any further assistance. Leading the Auto Team was Steven Rattner, co-founder of Quadrangle Group, a private equity firm. Ron Bloom, a former investment banker and former head of collective bargaining for the United Steelworkers of America ("USW"), served as his deputy and then the head of the Auto Team after Mr. Rattner left Treasury in July 2009. With a staff of 15 people, the other key members of the Auto Team who worked on GM's restructuring with Mr. Rattner and Mr. Bloom included Matthew Feldman, who told SIGTARP that he was brought in to be the bankruptcy lawyer for Treasury, and Harry Wilson, a former member of the hedge fund management firm Silver Point Capital. Mr. Bloom told SIGTARP that Dr. Summers and Secretary Geithner gave the Auto Team a fair amount of authority, but major decisions went to Dr. Summers and Secretary Geithner.[6]

These Auto Team officials told SIGTARP that they were directed by Treasury and the Administration to act in a "commercially reasonable" manner. There were no policies and procedures defining commercially reasonable; it was subject to interpretation.[7] Auto Team leader Rattner told SIGTARP that he interpreted the commercially reasonable approach as "if we would be doing this in the private sector and spending money on it." Auto Team official Wilson testified in a deposition that "our test had to be what a commercial buyer would do" adding, "We had a fiduciary duty to use taxpayer dollars in the most appropriate way." Auto Team official Bloom told SIGTARP that he interpreted the commercially reasonable approach as a way to "minimize taxpayer investment consistent with getting the job done and creating a viable enterprise."

Treasury's definition of long-term viability focused on GM repaying taxpayers. Auto Team officials Harry Wilson and Matthew Feldman told SIGTARP that they each believed it would take five years for GM to repay TARP. Auto Team leader Rattner told SIGTARP that the Auto Team spent a lot of time on this issue with Dr. Summers who wanted to exit as soon as possible. Auto Team Leader Rattner said the Auto Team did not know what that actually meant, but that it generally would take five to eight years to divest when a government takes a position. Former Secretary Geithner told SIGTARP that Treasury could not have a plan for how long it would own GM stock. More than four years later, GM has not fully repaid taxpayers and remains in TARP.[8]

GM's restructuring plan, submitted to Treasury in February 2009, did not plan for bankruptcy; instead it detailed the risks GM would face if it filed bankruptcy. GM's plan identified eight "key risks." One risk was that Delphi, GM's former

[6] When asked what authority was designated to the Auto Team related to GM's restructuring and what remained with Dr. Summers and him, Secretary Geithner told SIGTARP that he and Dr. Summers would sign off on consequential strategic decisions. Mr. Rattner told SIGTARP that he met with Dr. Summers and Secretary Geithner regularly, but he had little interaction or communication with the rest of the Auto Task Force.

[7] There were generally defined principles in a report from the Administration for GM to achieve greater profitability, strengthen its balance sheet, increase its competitiveness, and develop fuel-efficient cars.

[8] As of June 13, 2013, there is $9.87 billion outstanding on Treasury's TARP investment in GM. For that, Treasury owns 13.8% of GM common stock.

subsidiary and largest parts supplier, which had been in bankruptcy since 2005, had been unable to raise financing to exit bankruptcy and had underfunded the pension plans of employees who had worked at Delphi when it was part of GM.[9] GM's restructuring plan stated, "If Delphi is unsuccessful in addressing its underfunded pension plans and raising exit financing, it would represent a significant risk to the Company's revised plan."

Prior to Delphi's spinoff in 1999, all of its employees were covered by GM's pension plans, but GM had funded these pension plans at different levels. At the time of the spinoff, GM had fully funded (at 123%) the expected payments needed to cover the pension plan of Delphi salaried employees, but had underfunded (at 69%) the pension plan of Delphi hourly employees. In 1999, Delphi's three largest unions representing hourly employees negotiated pension benefit guarantees that, if Delphi could not fund its pensions, GM would "top up," or increase, pension benefit payments of the unions' hourly retirees to their full benefit levels under certain conditions (called "pension benefit guarantees," or "top-up agreements"). The three unions were the UAW, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers ("IUE"),[10] and the USW.[11] At the time, Delphi's salaried employees were not represented by a union or organized as a group or association, and they did not negotiate or receive top-up agreements.[12]

[9] Delphi was GM's largest supplier of automotive systems, components, and parts, and GM was Delphi's largest customer with annual purchases that ranged from approximately $6.5 billion to $10.2 billion from 2005 through 2008. The purpose of the spinoff, according to GM and Delphi executives, was to enable Delphi to establish a more competitive labor cost structure and to allow Delphi to manufacture and sell parts to other automakers.

[10] Effective October 1, 2000, the International Union of Electronic Workers merged with Communication Workers of America ("CWA"), becoming the IUE-CWA Industrial Division.

[11] When Delphi was spun off, unions represented about 95% of all Delphi hourly employees. The largest Delphi union in the U.S. was UAW, which represented roughly 72% of the hourly workforce. The other large unions were IUE and USW, which represented 24% and 4% of Delphi's unionized hourly workforce in the U.S., respectively. GM entered into a memorandum of understanding to extend the agreements with each of the unions – UAW, IUE, and USW – when they were set to expire in 2007. Through the memorandum of understanding, GM agreed effectively to extend the benefit guarantees indefinitely.

[12] Despite the fact that GM had fully funded the salaried pension plans when it spun off Delphi in 1999, by 2001, funding levels for both salaried and hourly pension plans were below 100%. From 2001 to 2005, Delphi suffered losses and the company filed for bankruptcy in October 2005. According to Delphi officials interviewed by SIGTARP, Delphi remained committed to funding the hourly and salaried pension plans in the early stages of Delphi's bankruptcy process between 2005 and 2007 and tried to preserve the plans. However, with the economic downturn in 2008, Delphi struggled to maintain the pension plans. According to the Delphi officials, various investors expressed interest in Delphi, but none wanted to purchase or invest in Delphi if it retained its pension liabilities.

Treasury Plans for GM's Bankruptcy, Replaces GM's CEO, and Rejects GM's Restructuring Plan

On February 17, 2009, the day they received GM's restructuring plan, the Auto Team sent a memo to Auto Task Force chairs Dr. Summers and Secretary Geithner with "first-blush impressions" of the auto companies' restructuring plans. As for GM, the memo listed four risks: (1) underfunding of pension plans; (2) foreign subsidiaries; (3) "GM's plan includes funding to purchase certain Delphi assets, but Delphi will require other funding to exit bankruptcy, address its pension liabilities and continue operations," and the "failure of Delphi to reorganize successfully will jeopardize GM's restructuring plan"; and (4) GM's plan to reduce its dealer base versus foreign automakers' dealer bases in North America. Secretary Geithner told SIGTARP that he had no recollection of costs related to Delphi or Delphi pension top-up issues and that the Auto Team could work through Delphi issues on its own. Auto Team leader Rattner told SIGTARP that there were no significant meetings between him and Dr. Summers or Secretary Geithner related to the Delphi pensions.[13]

Before and after GM submitted its restructuring plan in mid-February 2009, Treasury's Auto Team was assessing the need for GM to file bankruptcy. In his book *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* ("*Overhaul*"), Mr. Rattner stated that he thought bankruptcy was inevitable in December 2008, before he formally started at Treasury. Mr. Rattner stated in *Overhaul* that negotiations with unions, debt holders, and others to meet the conditions in the TARP loan agreement had "absolutely no chance of success." Internal Treasury documents indicate that most of the restructuring options under consideration by the Auto Team in February 2009 involved some form of bankruptcy. A February 2009 analysis conducted for the Auto Team by their financial consultant indicated that an out-of-court settlement had a low chance of success and that a prearranged bankruptcy had a moderate to high chance of success.

In his book *Overhaul*, Auto Team leader Rattner described briefing Secretary Geithner on February 11, 2009, on restructuring options, nearly all of which included bankruptcy. He recounted that Secretary Geithner thought bankruptcy was probably inevitable and said, "We need to put foam on the runway." An Auto Team official also told SIGTARP that when he started at Treasury, Secretary Geithner said the team should look at their role as laying "foam on the runway" during this tumultuous time, which the Auto Team official interpreted as looking for ways to soften the blow in the event of bankruptcy. Auto Team official Feldman, a bankruptcy lawyer who had key responsibility for GM bankruptcy planning, told SIGTARP, "By the end of February and beginning of

[13] An internal Treasury briefing agenda for a July 7, 2009, meeting with Dr. Summers and Secretary Geithner says "PBGC/pension," but Mr. Rattner did not recall the briefing. Secretary Geithner told SIGTARP he did not recall any discussions or briefings related to Delphi pensions.

March, I didn't know how GM would do in bankruptcy but couldn't see forward without bankruptcy."

The Auto Team worked independent of GM to prepare for a GM bankruptcy under Section 363 of the bankruptcy code. An Auto Team official testified in a deposition that 363 was selected because of speed, certainty, and the ability to leave behind liabilities that a commercial buyer would not want in the new company. Auto Team leader Rattner described the 363 sale in *Overhaul* as "the fastest possible bankruptcy," but he stated that they thought it would still take 6 to 15 months. Auto Team leader Rattner wrote in *Overhaul* that in March 2009, Auto Team official Feldman made a critical discovery to shorten GM's bankruptcy. Feldman determined that the "marketing period" typically used to identify potential asset purchasers in a 363 bankruptcy sale could be eliminated where there is only one source of financing available, which, in this instance, was the Government.

Mr. Rattner recounted in *Overhaul* that on March 19, 2009, while planning for bankruptcy, the Auto Team discovered that GM had a $1 billion payment to bondholders coming due June 1, 2009, but if Treasury allowed GM to make the payment, it would be awarding 100 cents on the dollar to bondholders who were only entitled to pennies.[14] Auto Team officials told SIGTARP that the upcoming payment would drive the date of GM's bankruptcy. Despite the Auto Team's bankruptcy planning, then-GM president and chief operating officer ("COO") Frederick "Fritz" Henderson told SIGTARP that bankruptcy was not discussed when GM met with Treasury in March 2009.

What followed was the Auto Team's direct involvement in the decisions affecting GM. Treasury's Auto Team used their financial leverage as GM's only lender to significantly influence the decisions GM made during the time period leading up to and through GM's bankruptcy.

Treasury's Auto Team Replaces GM's CEO

It was increasingly clear to the Auto Team that GM, under the leadership of then-chief executive officer ("CEO") Rick Wagoner, was unwilling to move toward bankruptcy. CEO Wagoner had been vocally and adamantly opposed to putting GM into bankruptcy and had done little to no planning for the possibility of bankruptcy. CEO Wagoner did not believe that the company could survive in bankruptcy because consumers would not purchase cars from an automaker in bankruptcy as there would be no guarantee that the company would be able to fulfill its long-term warranty obligations. CEO Wagoner believed that customers would view this as an unnecessary risk and avoid it by purchasing another

[14] Mr. Rattner stated in *Overhaul* that he told the *Detroit Free Press* that "bankruptcy is not our goal," while "all the while we were preparing for it." That interview took place March 16, 2009.

automaker's automobiles. He was concerned that a lack of consumer confidence would hurt sales needed for the company to continue to exist.

The Auto Team disagreed with Wagoner's view and believed that bankruptcy was the only path remaining for GM to succeed. On March 27, 2009, Auto Team leader Rattner called CEO Wagoner and GM then-president and COO Henderson to separate meetings. Mr. Henderson told SIGTARP that he felt Mr. Rattner was interviewing him. He was correct. Later that day, at Mr. Rattner's request, Wagoner resigned and Mr. Rattner asked Mr. Henderson to serve as CEO. Henderson told SIGTARP that GM's Board of Directors was upset by the replacement of Mr. Wagoner and felt that their authority to appoint the CEO had been usurped by Treasury. Mr. Henderson described his appointment as CEO as a "principal source of friction" between the board and Treasury. Mr. Henderson told SIGTARP that the Auto Team's decision to replace Mr. Wagoner with their selection sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations.

Treasury's Auto Team Rejects GM's Restructuring Plan

Three days later, on March 30, 2009, Treasury rejected GM's restructuring plan as not viable, stating in its Viability Determination Fact Sheet, "Their best chance at success may well require utilizing the bankruptcy code in a quick and surgical way." Treasury also stated in its Viability Determination that although GM had made meaningful progress in its turnaround plan over the last few years, the progress had been "far too slow." Treasury's Viability Determination stated that the deadline had nearly passed for the three TARP-required conditions: (1) establishing a new agreement with UAW to reduce labor costs; (2) obtaining all necessary approvals for changes to the VEBA retiree health care trust, which included UAW's approval; and (3) commencing an offer to bondholders to exchange debt for equity. The Auto Team viewed these conditions as a floor, not a ceiling. Treasury also indicated other "key factors" for GM's viability, such as reducing the number of brands and dealerships, and reducing the cash cost of legacy liabilities, including employee pensions and health care costs. These were key areas of focus for Treasury's Auto Team.[15]

Additionally, in its Viability Determination, Treasury stated that GM needed a "substantially more aggressive restructuring plan" to make GM viable, gave GM until June 1 to resubmit the plan, and gave GM an additional $6 billion in TARP funds – enough working capital to continue operations over the following 60 days. GM's then-CFO Young told SIGTARP that GM executives did not know how they would obtain the financing to restructure the company and they

[15] SIGTARP previously reported on the termination of dealerships in its audit, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce their Dealership Networks," released 7/19/2010.

did not know how they could shed the liabilities required by the TARP loan agreement, calling the situation "dire."

An Auto Team official told SIGTARP that broader economic considerations served as the catalyst for Treasury to offer GM the opportunity to develop a new restructuring plan. The Auto Team official told SIGTARP that GM's success or failure had "broader economic ramifications." According to that member and other Auto Team officials, the Auto Team was concerned that GM's collapse could have a cascading effect throughout the interconnected American automotive industry by causing automotive parts manufacturers and auto dealerships to fail, which could then threaten the stability of American automakers during an economic crisis. When announcing the additional TARP funds, President Obama stated, "We cannot, and must not, and we will not let our auto industry simply vanish."

Treasury's Auto Team and GM Develop a New GM Restructuring Plan

With only 60 days of funding from TARP, GM developed a new restructuring plan with significant influence and leverage from Treasury's Auto Team. Treasury's influence and leverage over GM went beyond Treasury's rights under the TARP loan agreement. Under the TARP loan agreement, Treasury had the right to approve or prohibit transactions over $100 million that were not in the ordinary course of GM's business or any increase in pension obligations. An Auto Team official stated in a deposition, "Obviously, under 100 million we didn't have any say, and we didn't have any ability to be asked for our consent or to stop it or do anything else." While this statement describes Treasury's legal rights, SIGTARP found that Treasury's Auto Team had significant influence over GM's decisions, even in the areas where Treasury's consent was not required under the TARP loan agreement. One GM official told SIGTARP, "Ultimately it was that GM is not in control. And GM is totally dependent."

Then-CEO Henderson told SIGTARP that the Auto Team was concerned about how to deleverage the company's balance sheet, and that they wanted to start from ground zero and build GM back up, restructuring everything. Then-CEO Henderson told SIGTARP, "The Auto Team from Day 1 looked at everything in detail. The Auto Team was uncomfortable with the balance sheet. Harry Wilson and the Auto Team were taking apart the plan step by step and rebuilding it step by step in Detroit."

An Auto Team official told SIGTARP the Auto Team's review was "very deep and very thorough." The same Auto Team official told SIGTARP that the Auto Team provided "direction not decisions. We were skeptical on all decisions. We had to approve the decisions, show us the data." The official told SIGTARP, "It wasn't a fight. It was a debate. We didn't involve ourselves in any day-to-day decisions." The Auto Team official told SIGTARP that he would have a call every evening at 10 p.m. with GM's then-CFO Young. The Auto Team official told SIGTARP, "There was a feeling that the Auto Team had to carefully manage GM, which would have given away Treasury's money without blinking."

Rather than merely providing advice, the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions. An Auto Team official told SIGTARP that Treasury was GM's largest lender and investor, GM's "only lifeline." Another Auto Team official testified before Congress, "While Treasury was closely involved in pressing GM management for the major changes needed to make the company profitable, we were very careful to never get involved in the specific decisions on plant closures, dealer closures, or the like. We would agree with GM on the broad strokes, which was to create a world-class auto business, and the key components of that, and they would make the detailed decisions that needed to be made to implement those broad strokes."[16] As SIGTARP has previously reported, in its Dealership Audit,[17] in response to the Auto Team's rejection of GM's restructuring plan and its explicit comment that GM's "pace" of dealership closings was too slow and an obstacle to its viability, GM substantially accelerated its dealership termination timelines. Instead of gradually reducing its network by approximately 300 dealerships per year through 2014, as GM had proposed in the plan submitted to Treasury, GM responded to the Auto Team's direction by terminating the ability of 1,454 dealerships to acquire new GM vehicles and giving them until October 2010 to wind down operations. Although the Auto Team did not tell GM which dealerships to close, GM made the decision to accelerate the dealership closings with significant Treasury influence.

As an Auto Team official explained to SIGTARP, Treasury did not want to start running the company, but when dealing with taxpayer resources, "We, the Government, were ultimately holding that purse string," and Treasury reserved the right to tell GM that they would not back them. Another Auto Team official told SIGTARP that there were no instances where the Auto Team "crammed" a decision on GM, "but we were investing a lot of money, and we had the opportunity to disagree." This same Auto Team official told SIGTARP that the Auto Team did not impose ultimatums on GM. As this official told SIGTARP, "GM realized that there was no other available source of money."

An Auto Team official told SIGTARP that the Auto Team's approach with GM was to "push them" and to "question them." Another Auto Team official told SIGTARP the Auto Team "pushed GM toward making the changes necessary to become a viable company." A GM official told SIGTARP, "They [the Auto Team] were pushing us to be tougher and take more significant actions other than what we would have done on our own volition." When one Auto Team official was asked by SIGTARP how the Auto Team conveyed their preference or nudged GM to see things the way the Auto Team saw them, given that ultimately GM could do its own thing, the Auto Team official said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Then-CFO Young told SIGTARP that the Auto Team was "being hard on GM and scrutinizing how much money GM needed." Mr. Young told SIGTARP that the Auto Team "was persistently pressing GM executives to cut costs." An Auto Team official told SIGTARP, "We thought GM could be viable on its own if it could reduce costs and liabilities." Auto Team leader Rattner told SIGTARP that GM officials had been too generous in the past and the Auto Team had to dial

[16] Hearing before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the Committee on Oversight and Government Reform, 7/10/2012.

[17] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce their Dealership Networks," 7/19/2010.

them back. The Auto Team specifically pressed GM to be less generous in relation to Delphi and pensions.

Cutting Costs Related to Delphi

Auto Team leader Rattner told SIGTARP that Delphi was an example of where the Auto Team was less generous than GM. According to one of the Auto Team members, Messrs. Matt Feldman and Harry Wilson took the lead on Delphi issues. Mr. Wilson testified before Congress, "Delphi was bleeding approximately $150 million in cash per month. GM was supporting Delphi because Delphi was the sole supplier for certain critical GM parts, so a Delphi liquidation would have shut down all of General Motors. This was an unsustainable proposition, both for GM, and for the American taxpayer." Mr. Wilson's view, according to an email he wrote, was that they would look to eliminate all obligations, given the staggering cost of supporting Delphi.

A GM official told SIGTARP the Auto Team's reaction was that Delphi was costly to GM, and that GM should not be assuming more liabilities than necessary. That same GM official told SIGTARP, "We did not have the leverage to tell them to pound sand." For example, in March 2009, Delphi wanted an additional $150 million from GM for operating costs and for GM to purchase Delphi's global steering business. Because this was above the $100 million threshold, Treasury's consent was required under the TARP loan agreement. The Auto Team did not consent. An Auto Team official told SIGTARP that Delphi was identified as a risk, but that "obviously we would continue to urge GM, you know, don't be irresponsible about it, be tough. Give as little as you have to, but try to help get Delphi done…you can't write a blank check." Auto Team leader Rattner told SIGTARP that GM would have continued to squander a huge amount of dollars on Delphi.

Cutting Pension Costs

According to Auto Team leader Rattner, pensions were another area where the Auto Team "encouraged" GM to cut costs. GM had a pay-as-you-go pension plan for salaried employees that was not funded and GM salaried employees and retirees wanted their full pensions, but Mr. Rattner told SIGTARP that the Auto Team wanted cuts to those benefits.

In addition to pension issues relating to GM employees, between February and May 2009, GM and the Auto Team officials discussed and analyzed GM's liabilities related to Delphi's pensions. GM officials told SIGTARP that GM needed PBGC to release liens on Delphi assets so Delphi could successfully emerge from bankruptcy.[18] According to one GM official interviewed by

[18] PBGC held liens on certain Delphi assets that, according to a Delphi official, an investor or purchaser of Delphi would want free and clear title.

SIGTARP, "Ultimately to get Delphi out of bankruptcy, we needed the [pension] plans to be terminated." PBGC officials told SIGTARP that PBGC advocated that GM go beyond the top-ups and take back (assume the full cost) of both Delphi's hourly and salaried pension plans. The Auto Team and GM identified at least three options: (1) for New GM to agree to the top-up for the Delphi hourly employees consistent with the preexisting agreements (full cost of pensions less PBGC payout) (at a projected cost of approximately $1-1.5 billion for the UAW, IUE, and USW hourly employees); (2) for New GM to take back (assume) all of Delphi's pension plans, paying all obligations under the plans without a payout from PBGC (at a projected cost of $5.4 billion); and (3) for New GM to take on no obligation to top up or take back any Delphi pension plans (zero cost).[19]

GM took the position that Treasury's consent was required. A PBGC email received by Auto Team officials stated, "In discussions with Delphi and directly with PBGC, GM has stated that it cannot assume responsibility for either the previously agreed-to hourly plan pension obligations or the Delphi's salaried plan pension obligations, as doing so would represent taking on additional pension obligations in violation of the pension covenant in GM's TARP loan." A February 2009 PBGC document stated, "Delphi believes that GM, in refusing to discuss further pension plan assumptions, may be looking to the to-be-appointed car czar [Rattner] to mandate that GM assume Delphi pensions as part of GM's continued use of TARP money."[20]

Auto Team official Feldman negotiated with PBGC on behalf of GM, which contributed to an expectation that the presence of Treasury could potentially change the outcome. Mr. Rattner told SIGTARP that having the Auto Team work directly with PBGC was viewed as more efficient because it was Government to Government. Additionally, at least one GM official told SIGTARP that GM thought there was some benefit to Treasury taking the lead on dealing with the PBGC because it was "Government agency to Government agency" and Treasury would get a better deal for GM. The presence of Treasury as a Government agency created expectations on PBGC's part that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what would have normally occurred in PBGC's negotiations with a private company and potentially save PBGC billions of dollars. A PBGC official told SIGTARP when discussing the likelihood of GM's absorption of the Delphi pension plans that "as [Treasury] got involved, we were more hopeful." In a deposition, Mr. Feldman stated that the PBGC "asked us whether we would force General Motors to take the plan on." If GM were to assume the full cost of the Delphi hourly plan, it would require Treasury's approval. There was a split

[19] This audit was conducted in coordination with GAO to avoid excessive duplication of efforts. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. The objectives of SIGTARP's audit did not involve a review of PBGC's termination of the Delphi pension plans.

[20] Later, an April 17, 2009, PBGC document makes it clear that Delphi wanted the pension plans to be transferred to GM ("with support from Treasury") but that "GM contends it cannot afford the Plans, and that covenants in the Treasury loan agreement prevent GM from taking on new pension liabilities."

within the Auto Team on whether GM should assume the Delphi hourly plan, with Mr. Feldman in favor of GM assuming the hourly plan (which would go beyond the top-up), and Mr. Wilson not in favor of assuming it. The PBGC official told SIGTARP, "As it relates to the possibility of GM sucking up the hourly plan…I knew what GM's position was. It didn't have to do anything with GM. If there was any possibility that it was going to happen, it was going to come from Treasury. It would be Treasury folks because they had the right of refusal and could dictate what was going to happen."

Delphi salaried retirees and Delphi officials also hoped Treasury's presence would make a difference in whether GM would take on obligations for Delphi pensions. Treasury's Auto Team met with representatives from the Delphi salaried retirees on more than one occasion. During those meetings, the salaried retirees asked the Auto Team to consider fairness in making their pensions whole. The Auto Team also met with Delphi officials. Delphi's then-CFO John Sheehan told SIGTARP that from his perspective, GM was deferring decision making on all subjects. He also told SIGTARP, "GM wasn't in a position to dictate. Harry [Wilson] and Matt [Feldman] were the decision makers and the drivers on how this would all occur – in my view."

Treasury's Role in the Decision for GM To File Bankruptcy

SIGTARP found that Treasury's Auto Team directed GM's restructuring efforts toward bankruptcy. An Auto Team official told SIGTARP, "We didn't decide to file a bankruptcy. We decided to support a bankruptcy." That same Auto Team official told SIGTARP that GM decided to file bankruptcy and GM came to the conclusion that it could not reorganize without bankruptcy, and the question for Treasury was "do we support a GM filing or not?" While it is technically true that GM had to decide to file bankruptcy, it was the Auto Team that took steps to signal to GM their strong preference for bankruptcy and bring significant influence over GM's decision to file bankruptcy.

GM and Treasury's Auto Team had different approaches as to how to proceed in order to create a sustainable GM. GM's executives continued to prefer a restructuring of the company outside of the bankruptcy process, while the Auto Team preferred bankruptcy. According to Auto Team leader Rattner in *Overhaul*, the Auto Team had already determined that there was no alternative to bankruptcy before rejecting GM's restructuring plan on March 30, 2009. The Auto Team's March 27, 2009, replacement of GM CEO Wagoner, who did not favor bankruptcy, and the choice of Mr. Henderson as CEO, signaled the Auto Team's preference for bankruptcy and directed GM's restructuring efforts toward bankruptcy. Mr. Henderson told SIGTARP that his view on bankruptcy for GM was different than Wagoner's. Once Treasury replaced Mr. Wagoner with Mr. Henderson as CEO, there was a greater willingness by GM to consider bankruptcy. On April 1, 2009, as one of his first acts as the new CEO, Mr. Henderson told GM employees that bankruptcy was likely. However, despite that statement, Mr. Henderson told SIGTARP that his preferred approach was to restructure GM by completing a voluntary bond exchange – an offer proposed to bondholders to convert their debt to equity – hoping to avoid bankruptcy.

Auto Team officials first raised the prospect of an expedited bankruptcy with GM during the first week of April 2009, according to then-CFO Young. In his interview with SIGTARP, Young said the Auto Team "highly suggested" and felt "pretty strongly" that a Section 363 bankruptcy was the "best approach" because it would be quicker to complete than a normal bankruptcy that could take 9 to 12 months. Then-CEO Henderson told SIGTARP the Auto Team began to outline the 363 process for GM, with GM's 363 planning being similar to what the Auto Team was doing with Chrysler, but Chrysler was much simpler.[21] Then-CEO Henderson told SIGTARP that Treasury's view was that speed had real power, and that to do a deal in a commercial and fast way could only be accomplished with a 363 sale.

[21] Chrysler filed a 363 bankruptcy on April 30, 2009.

Then-CFO Young told SIGTARP that GM thought of bankruptcy as "Plan B." Then-CEO Henderson described "Plan A" as the bond exchange. CFO Young told SIGTARP that with the right terms on the bond exchange, GM was hoping to reduce its liabilities enough to avoid bankruptcy. An Auto Team official told SIGTARP that the Auto Team did not support the bond exchange and felt that a bond exchange alone was unlikely to restructure GM's balance sheet sufficiently to make GM viable. In fact, at least one Auto Team official told SIGTARP that he opposed GM's decision to proceed with the bond exchange. This same Auto Team official told SIGTARP that by the third week of April it was clear that GM needed to be shepherded through a prepackaged bankruptcy. The Auto Team also directed GM's restructuring efforts toward bankruptcy by discussing with GM their preference that 90% of bondholders participate in the bond exchange, which commenced on April 27, 2009. Henderson told SIGTARP that Treasury set the "level of acceptance" of the bond exchange "very high," making bankruptcy more likely.

Then-CEO Henderson told SIGTARP that it was not clear that bankruptcy was the only option until the bond exchange failed. GM would need to file bankruptcy by June 1, 2009, when a $1 billion bond payment came due. GM's then-CFO Young told SIGTARP that Treasury did not want to loan GM $1 billion to make this payment.

Treasury Agreed To Fund GM's Bankruptcy with $30.1 Billion from TARP, but Only for 40 Days

Treasury determined that GM would need $30 billion, but the Auto Team was concerned about giving the TARP funds in a loan that would be too much debt on GM's balance sheet, so the Auto Team proposed to senior Treasury officials that Treasury fund GM's bankruptcy with a loan that would convert to common stock ownership in New GM – the purchaser of Old GM's assets in bankruptcy. This would mean that the Government would have a substantial ownership interest in a private company. According to Rattner in *Overhaul*, the Auto Team discussed it with Lawrence Summers on May 11, 2009. Dr. Summers, Secretary Geithner, and ultimately President Obama approved an additional $30.1 billion in a TARP loan (in the form of a debtor-in-possession ("DIP") loan) that, when combined with the $19.4 billion in prior TARP injections, totaled $49.5 billion in TARP funds in GM. The TARP investment in GM would convert to 61% Government ownership of common stock in New GM.

Treasury conditioned the TARP financing on GM exiting bankruptcy in 40 days, a requirement created by the Auto Team. The TARP loan, effective on June 1, 2009, provided that the loan would default if GM failed to obtain certain bankruptcy court orders acceptable to Treasury by July 10, 2009 (40 days later). Auto Team leader Rattner has referred to GM's bankruptcy as a "quick-rinse bankruptcy." A quick-rinse bankruptcy is structured to move through legal proceedings faster than the average bankruptcy. Mr. Rattner recounted in *Overhaul* that GM hired prominent bankruptcy attorney Harvey Miller, who told Auto Team official Wilson that the timeline was "impossibly aggressive" and that "it's never been done before." GM's then-CFO Young told SIGTARP that although GM agreed that a drawn-out bankruptcy would negatively impact consumers' perceptions about GM, GM thought it would take at least two to three months to complete bankruptcy and the 40 days did not seem realistic.

SIGTARP found that Treasury conditioned giving GM $30.1 billion in TARP funds on a quick-rinse bankruptcy that would end in 40 days because Auto Team officials thought it was the best way to save the American automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Treasury Auto Team officials were concerned that if GM's bankruptcy was prolonged, consumers would stop purchasing GM's automobiles, and GM would likely fail. As one Auto Team official explained to SIGTARP, consumers might be cautious about buying cars from a bankrupt automaker. He told SIGTARP that "…one of the things you worry about when you buy a car is getting the car serviced." Therefore, in a lengthy bankruptcy, GM would run the risk of consumers saying, "The heck with it, I'll buy someone else's car," the Auto Team official told SIGTARP. Once the decision to have GM go into bankruptcy was made, the same Auto Team official told SIGTARP, "It was in our interest to try to expedite the bankruptcy, if we could," given the risk of "getting in and getting stuck" in bankruptcy. Treasury had leverage to set conditions on TARP funds, even if it was a timeframe that did not seem realistic to GM and had never been done before. If GM's bankruptcy was not completed within the 40 days, GM risked losing its only source of financing. GM also risked losing its purchaser in bankruptcy, given that Treasury would become the majority owner of New GM. Treasury viewed the 40-day timeframe as a real deadline. One Auto Team official told SIGTARP that Treasury was willing to "walk away" rather than put in "a huge amount more. We advocated and put in a $30 billion DIP. If you let people believe you would have done anything, that number could have been multiples of that." That same Auto Team official said they tried to be "commercial." Another Auto Team official testified in a deposition that if the 40-day timeframe was not met, "We expect the company to liquidate" but "[GM] is always free to try to find alternative forms of financing."

"Cherry-picking" Assets and Liabilities

Although Treasury, through its Auto Team, had significant leverage and influence on GM's decisions and operations before the decision to file bankruptcy, Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. SIGTARP found that with their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. Then-CFO Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." One Auto Team official told SIGTARP that "We approve technically everything because we don't have to do the DIP [bankruptcy loan]. But no, not in the micro. I mean it wasn't, you know you bring us this, we approve this, we approve that. It was bring us a plan and we do a DIP or we don't do a DIP." Another Auto Team official testified in a deposition that the leverage Treasury had with Old GM was that Treasury was the only buyer for GM's assets. That same Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation.

As explained by an Auto Team official in a deposition, the 363 bankruptcy sale allowed New GM and the Auto Team to assume Old GM's assets and "cherry-pick" the liabilities that a "commercial buyer" would want and New GM would need. As that Auto Team official stated in a deposition, "It is up to the purchaser to exclude or assume liabilities." The Auto Team official further testified in the deposition, "It is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on. This same Auto Team official told SIGTARP that "our general perspective, and in general the right way to do a 363 sale as a buyer, is to assume all assets unless explicitly excluded, and to reject all – to leave behind all liabilities unless explicitly assumed." GM's then-CFO Young told SIGTARP that GM and the

Auto Team went down GM's balance sheet (including pensions and the supplier base), going over some line items in great detail.

Without policies, procedures, or guidelines interpreting how to make commercially reasonable decisions, Treasury's Auto Team made some decisions on which liabilities New GM would assume that were not commercially necessary, but the Auto Team called the decision "commercial" because it could factor into public relations and the image of New GM. One Auto Team official testified in a deposition that the Auto Team requested that GM identify "politically sensitive" liabilities. Then-CFO Young told SIGTARP that this exercise was about identifying liabilities that might present a public relations challenge if New GM did not assume them. He also told SIGTARP that assuming these liabilities conflicted with taking a strictly commercial approach because GM could operate without them. For example, the Auto Team official testified in the deposition that the Auto Team concluded that it was not commercially necessary for New GM to assume product liabilities. However, New GM assumed those liabilities because, according to the Auto Team official, failure to assume them would impact consumers' confidence in GM's products, which the Auto Team official said was a commercial basis.

In another instance, broader considerations, rather than just a commercially reasonable approach, were weighed by the Auto Team when they considered the possible closure of GM's headquarters in Detroit.[22] According to an Auto Team official, GM and the Auto Team considered moving GM's headquarters out of Detroit to its Technical Center located outside of the city because the move would consolidate GM's management operations and save money. According to Mr. Rattner's account in *Overhaul*, around May 2009, CEO Henderson told Mr. Rattner that the move would cut GM's costs and, therefore, Mr. Rattner initially supported the initiative. Nevertheless, Rattner wrote in *Overhaul* that White House and Treasury officials expressed concern about the economic impact of the move on the city of Detroit, and they retained the Detroit location.

Deals with Major Stakeholders Before Bankruptcy

According to an Auto Team official, as the buyer, Treasury determined which assets to buy and which liabilities to take on. The Auto Team established a hierarchy of importance of stakeholders and issues that had to be completed prior to GM's bankruptcy filing to ensure its success. Two liabilities that Treasury had already decided to assume were a new collective bargaining agreement with GM's union, the UAW, and an agreement with GM's bondholders. A quick-rinse bankruptcy necessitates that major stakeholders negotiate and reach consensus prior to the proceeding in order to prevent objections being filed in court by essential parties, which could delay the process. An Auto Team official told

[22] An Auto Team official told SIGTARP that the decision to retain GM's headquarters in Detroit was impacted by broader considerations.

SIGTARP that the two important stakeholders were the bondholders and the UAW. The only question was the terms of those liabilities for New GM.

An Auto Team official told SIGTARP that the strength of the negotiating parties during GM's bankruptcy and throughout labor negotiations was dictated by the leverage each group held. The looming June 1 bond payment and the 40-day time constraint on the bankruptcy limited the time for negotiation and sent a powerful message to GM and the major stakeholders. With no indication that Treasury would extend the 40 days, GM and its major stakeholders were required to reach a deal prior to bankruptcy or risk GM running out of funding and having to liquidate. Auto Team leader Rattner stated in *Overhaul* that the 40-day deadline was the financial equivalent of "putting a gun to the heads of the bankruptcy judge, GM's stakeholders, and of course Team Auto itself."

Negotiations took place on May 18-19 at Treasury headquarters and at the offices of Treasury's lawyers in Washington, D.C. According to one Auto Team official, the UAW and the bondholders were kept "in the dark" during "parallel negotiations" as deals were negotiated. According to Auto Team official Feldman's professional biography, "The Auto Team conducted complex negotiations with all major constituents of both companies [GM and Chrysler], including Fiat SpA (which now runs Chrysler), the United Auto Workers and major creditors of both auto makers under a compressed timeline." Another Auto Team official testified in a deposition that Treasury represented the owners of New GM in the negotiations. Mr. Wilson told SIGTARP that he and Mr. Bloom "set the tenor" for the talks with the UAW, while he and Mr. Feldman "set the tone" for the talks with bondholders.

Treasury's Role in Pre-Bankruptcy Deal with GM's Bondholders

SIGTARP found that Treasury made a deal with the bondholders prior to GM filing bankruptcy because of the bondholders' leverage to object to and prolong the bankruptcy. An Auto Team official told SIGTARP that establishing a deal with the bondholders would eliminate a major risk of delay in bankruptcy court. Auto Team officials told SIGTARP that GM's bondholders had the leverage to object to and prolong GM's bankruptcy. At the time of GM's bankruptcy, bondholders held approximately $27.2 billion of GM's unsecured debt, which, according to a GM public filing, "comprise[d] substantially all of Old GM's debt and a significant majority of the total unsecured claims against Old GM." An Auto Team official explained that the bonds were owned by millions of people around the world, some bonds were 100 years old, and without a settlement before bankruptcy, it would have been painstakingly difficult to try to solicit each bondholder to approve any bankruptcy plans, which would have taken at least nine months.

Mr. Feldman, who had primary responsibility within the Auto Team for negotiating with the bondholders, told SIGTARP he worked with representatives of GM's bondholders to reach the agreement that would reduce GM's indebtedness and clear the path for GM's quick-rinse bankruptcy, but he would not have given them everything simply to get a deal. Auto Team leader Rattner stated in *Overhaul*, "We valued the package at about 12 to 15 cents on the dollar, more than what they deserved (zero)..." CEO Henderson explained to SIGTARP that in the bankruptcy, Treasury was senior to the bondholders and the VEBA trust. If GM's bondholders agreed not to oppose GM's bankruptcy, Treasury would provide additional consideration to Old GM during the bankruptcy proceeding, to the benefit of GM's bondholders.[23] CEO Henderson told SIGTARP that Treasury was in a position to provide bondholders with a better recovery than under the bond exchange. This was because Treasury would own most of the equity of New GM, and, according to Henderson, equity was something only Treasury could provide. When asked whether GM was authorized to negotiate with bondholders for a larger slice of equity (stock), an Auto Team official testified in a deposition that, for matters about what capital (stock in New GM) Treasury would be willing to extend, the only one with authority was Treasury.

Treasury's Role in Pre-Bankruptcy Deal with UAW, Which Included New GM Assuming the Top-Up of Pensions

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW. The UAW had extensive leverage representing approximately 50,000 GM employees at the time of GM's restructuring – 99% of GM's unionized workforce (according to one Auto Team official). Other Delphi and GM executives, as well as Government and UAW officials, corroborated in separate interviews with SIGTARP that UAW had significant leverage due to the threat of a labor disruption. One GM official told SIGTARP, "You couldn't run this play without the agreement of the UAW." Another GM official told SIGTARP, "All you need is one missing part and it stops production. They had significant leverage... We needed the cooperation and enthusiasm of the UAW."

In addition to the traditional strike leverage, the requirement in the TARP loan agreement for a new collective bargaining agreement, and the upcoming deadline for GM to file bankruptcy, gave the UAW additional leverage. The UAW understood that GM had to reach an agreement with it to be able to survive, and those same facts put pressure on GM. Given the need for GM to file bankruptcy by June 1, 2009, GM only had a few weeks to come to an agreement with the UAW, and if they did not come to agreement, GM risked the UAW prolonging the bankruptcy beyond 40 days, which could lead to GM liquidating. An Auto

[23] Under the proposal, New GM would issue to Old GM 10% of the common equity of New GM and warrants to purchase an additional 15% of the equity of New GM.

Team official told SIGTARP that UAW was a very major constituency that could slow down and potentially block the entire sale. The time constraint of Treasury's financing was well known to the UAW and helped give it a bargaining advantage. An Auto Team official told SIGTARP the Auto Team had "a strong preference" that GM have "a deal in place with the UAW" prior to its bankruptcy filing, adding, "And we made that known to both sides."

The Negotiations

At the May 18-19, 2009 negotiations at Treasury's offices and at the offices of Treasury's lawyers in Washington, D.C., GM's CEO Henderson and UAW's President Ron Gettelfinger sat at opposite sides of a table, with Treasury's Auto Team at the end of the table. The UAW came to the negotiations with a "hit list" of priority items that included New GM assuming the pension benefit guarantee (top-up) for the former GM employees at Delphi represented by UAW. The same UAW official who had been involved in the 1999 negotiation for the top-up (and an extension of that agreement when it was scheduled to expire in 2007) was negotiating with GM in 2009.[24] That UAW official told SIGTARP that the top-up agreement had been strongly bargained for in 1999. Auto Team leader Rattner told SIGTARP the item on the term sheet showed that it was something that was important to the UAW. Mr. Rattner told SIGTARP that "the top-up was an integral item on the list of needs for the UAW." Another Auto Team official told SIGTARP that the UAW made it clear that it cared about the "Delphi matter" and so the UAW put out these "key terms" that it "expected to be part of the overall deal."

GM's then-CFO Young told SIGTARP that the UAW negotiations were only focused on those aspects of the GM-UAW relationship that were discussed in the TARP loan agreement. These were new labor costs and changing the UAW's health care trust (the VEBA) funding to be at least 50% in GM stock. An Auto Team official told SIGTARP that the 2008 TARP loan agreement gave Treasury leverage to get the UAW to the bargaining table, with Treasury's leverage as the only source of capital. Another Auto Team official told SIGTARP, "Since this was a financial matter that would eventually affect the interest of taxpayers, we had quite strong views." This same Auto Team official explained to SIGTARP that the consideration provided to the VEBA would impact the value of

[24] GM was significantly dependent on the automotive parts produced by Delphi and agreed in 2007 to assume Delphi's hourly pension plan in two tranches to help Delphi resolve its pension liability problem and facilitate its exit from bankruptcy. The initial agreement between GM and Delphi was entered into in 2007, but was "amended and restated" in September 2008. In September 2008, GM assumed the first tranche of Delphi's hourly plan participants amounting to $2.1 billion in pension liabilities. Those Delphi hourly employees whose pensions were transferred were no longer part of Delphi's hourly pension plan. GM was due to assume the second tranche, estimated at between $3.2 billion and $3.5 billion if Delphi substantially consummated its planned bankruptcy reorganization. However, because the reorganization was not consummated, the transfer did not occur. Afterward, Delphi froze and ceased funding the hourly pension plan in November 2008. Delphi froze and ceased to fund the Delphi salaried pension plan in September 2008.

Treasury's equity, "which was really what the taxpayers were going to get back for the money they put in."

Late in the negotiations, CEO Henderson broached the topic of pensions, as reported by Auto Team leader Rattner in *Overhaul*. Mr. Rattner wrote that such changes would be worth billions of dollars to GM, but that when CEO Henderson raised it, UAW's President Gettelfinger said, "We aren't going to sit in this room if pensions are on your list." Moreover, no person SIGTARP interviewed could recall any discussion of the top-up agreement at the negotiations. UAW's then-General Counsel Dan Sherrick confirmed that negotiations focused only on "big ticket items" and that "other prior agreements," including the top-up agreement, were not negotiated. Then-CEO Henderson told SIGTARP that the pressure to finish negotiations resulted in no negotiations that he could recall related to the top-up agreement.

Then-CEO Henderson told SIGTARP that the meetings with the UAW did not initially go well, and UAW turned down a Treasury-backed proposal at 11 p.m. the second day. Auto Team leader Rattner stated in *Overhaul* that the UAW rejected the proposal at 3 a.m. At the end of two days, the UAW left the negotiations at an impasse. The UAW had leverage because it knew and understood from Treasury's public statements that Treasury was committed to reorganizing GM and not letting GM fail. An Auto Team official said, "I think they thought their leverage was they knew we would prefer all things equal to reorganize GM." One GM official told SIGTARP that, when the Federal Government came into the picture, it clearly changed the dynamics because the terms of the TARP loan agreement were clearly understood by the unions and GM needed the money. According to CEO Henderson, UAW President Gettelfinger later called Auto Team official Bloom and "the deal got done." CEO Henderson thought that Mr. Bloom sweetened the deal with warrants (options to purchase stock). Auto Team leader Rattner stated in *Overhaul* that Mr. Bloom talked to Mr. Gettelfinger the next day (May 20, 2009), and two hours later, the UAW accepted the overall deal on the collective bargaining agreement.

<u>The Deal with UAW</u>

Consistent with Treasury's Auto Team's practice, as with any liability, it would have been Treasury's decision as the buyer to assume or reject the liability to top up the pensions of Delphi hourly UAW employees. The top-up was never discussed in the negotiation where both GM and Treasury were present and actively negotiating. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included under the Master Sale and Purchase Agreement selling assets to New GM.[25] GM could

[25] According to the UAW, it made a number of concessions in the negotiation including: elimination of performance bonuses and cost of living adjustments, reduced holidays, scaled-back overtime rules, and frozen wages for new entry

not agree to the new collective bargaining agreement (that included the top-up) on its own without Treasury's approval. The decision that New GM would honor the top-up was a joint decision by Treasury and GM, with Treasury deciding to approve the collective bargaining agreement with the UAW that included the top-up. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring its pension benefit guarantees in bankruptcy, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Mr. Rattner told SIGTARP, "It was not a ridiculous request. And one that we could have honored and needed to honor."

Then-GM CEO Fritz Henderson told SIGTARP that GM knew about the top-up, but that "the focus was on getting the deal done." He told SIGTARP that if the pension benefit guarantee was not assumed by New GM, there would have been a strike, and "we needed a workforce."[26] However, the pressure on GM was not only the threat of a strike, but the risk that the UAW would prolong the bankruptcy. CEO Henderson told SIGTARP that if the pension benefit guarantee with the UAW was not assumed by New GM, it would have been "mission impossible." CEO Henderson told SIGTARP that renegotiating the pensions in bankruptcy would have taken a long time and would have had a negative impact on the survival of GM. CEO Henderson told SIGTARP that he sought advice from bankruptcy attorney Harvey Miller regarding GM's ability to seek modifications to pensions in bankruptcy and was told that to do so would have extended GM's bankruptcy for at least six months. GM believed this was not a risk that GM could afford to take because Treasury had given no indication that it would extend financing beyond 40 days.

Treasury had the power to object to New GM taking over the top-up obligation as part of the larger agreement with the UAW, but like GM, had no desire to blow up the larger deal. Although Mr. Rattner told SIGTARP, "Left to our own devices, we would have not done the top-up," he said that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure." Although the Auto Team was concerned about the threat of the strike, they were also concerned with the UAW prolonging the bankruptcy.[27] When asked whether they could have been tougher on the UAW, an Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept" and "You do need employees to say yes and bondholders to say yes. No one thought they [GM] could survive an 18-month bankruptcy." In an interview with SIGTARP, another Auto Team official called UAW the "big dog"

employees. GM would also be allowed to use stock to replace debt for the VEBA health care trust and other concessions.

[26] UAW officials told SIGTARP that the top-up was a priority and if New GM had not honored the top-up agreement, the UAW would have objected to the bankruptcy sale and "they would have had a workforce stoppage." A UAW official indicated to SIGTARP that the threat of a strike was real.

[27] An Auto Team official told SIGTARP that Treasury assumed it would have ownership in the company and "we had to ask ourselves what is the value of an ownership stake in GM that is not making automobiles...If they don't come to work in the morning, it's tricky to make cars."

because the union represented most of GM's workforce and a failure to establish an agreement with UAW could have resulted in GM's liquidation, which the Auto Team did not want. The Auto Team official told SIGTARP, "I don't know what would have happened" and that not having an agreement with UAW would have been like "shooting yourself in the head," adding that it could have resulted in the liquidation of GM.

would provide them with a top-up. Delphi salaried retirees had no active employees at GM, a critical difference between them and the UAW. They were not creditors in GM's bankruptcy because they did not have a preexisting agreement with GM to provide the pension benefit guarantee as did the UAW and other unions. In 1999, the salaried workers were not organized and did not negotiate a top-up agreement because their pensions had been fully funded by GM. Aware that they did not negotiate a top-up agreement with GM, representatives of Delphi's salaried employees told SIGTARP that there should have been consistent treatment and that they would have no problem if nobody got a top-up.

GM had taken the position in February and March 2009 that it had no preexisting obligation to the salaried employees and that the TARP loan agreement prohibited it from increasing its pension benefits without Treasury's consent, and therefore GM alone could not authorize benefits for the salaried retirees. GM's then-CEO Henderson told SIGTARP that Treasury's consent would have been necessary. When asked whether Treasury's consent was necessary to top up the salaried workers, a GM executive told SIGTARP that ultimately Treasury had to agree. The cost was also over the $100 million threshold requiring Treasury's consent.

A Delphi salaried retiree told SIGTARP, "Unlike the UAW, the only leverage we had was political. The UAW had leverage because they were building parts." Therefore, Delphi salaried retirees have pushed for action to protect their pensions by appealing to the President, members of Congress, and Treasury officials for assistance. On June 6, 2009, after a Congressman sent a letter to the President and the Auto Team appealing on behalf of the Delphi salaried retirees, GM briefly considered what, if anything, could be done to top up the pensions of Delphi's salaried retirees. On June 6, 2009, Delphi salaried retirees forwarded to then-GM CEO Fritz Henderson an email with the subject, "Congressman Lee Makes Direct Appeal to President Obama Demanding Fairness for Delphi Salaried Retirees." Immediately, CEO Henderson got in touch with Mr. Rattner, forwarding him the email. Mr. Rattner promptly emailed other members of the Auto Team and Advisor to the President Brian Deese, saying that he had had a long conversation with CEO Henderson on this and other matters. He wrote, "With respect to the Delphi retirees, [then-GM Treasurer] Walter Borst is apparently preparing some kind of proposal for how to do something for them that is defensible. Fritz seems relaxed/ambivalent. We should be hearing more about this over the next 24 hours."

Auto Team leader Rattner told SIGTARP that GM came to the Auto Team because "GM wanted to do something for the [Delphi] salaried retirees." Mr. Rattner discussed it with then-GM CEO Henderson. Although Mr. Rattner could not remember the specifics of the conversation, he told SIGTARP that he thought there was nothing defensible from a commercial standpoint that could be done for the Delphi salaried retirees. Mr. Rattner told SIGTARP, "We didn't think there was anything defensible. We felt bad, but we didn't think it was justifiable."

GM's then-CEO Henderson told SIGTARP that he asked then-GM Treasurer Borst if there was anything that could be done for the Delphi salaried retirees. CEO Henderson told SIGTARP that Treasurer Borst told him that nothing could be done and the salaried plan was well funded when Delphi was spun off. Treasurer Borst told SIGTARP he informed CEO Henderson that GM was unable to take action. Treasurer Borst told SIGTARP, "We didn't have a benefit guarantee agreement [with the salaried retirees] like the one the hourlies had." According to CEO Henderson, the salaried plan had been fully funded at the time of the spinoff and that there was no preexisting agreement to provide the salaried retirees with a pension benefit guarantee. CEO Henderson told SIGTARP that Mr. Borst had explained that if GM found a way to fund the top-up during GM's bankruptcy, it would be as if GM had funded the plan twice. As CEO Henderson expressed to SIGTARP, "It was terrible for those who lost their benefits," but he explained that from a commercial standpoint GM had already fully funded Delphi's salaried pensions at the time of Delphi's spinoff and there was no basis to do so again. According to a Treasury document, it was estimated that Delphi salaried retirees would lose approximately $440 million in pension benefits. A top-up would be expected to cost an equivalent amount.

The presence of the Government changed the Delphi salaried retirees' expectations. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government and make themselves into a commercial enterprise." He continued, "It is wrong of our Government to take funds from everyone and give it to the few." After the decision was made not to provide a top-up for salaried employees, the President read a letter from a Delphi salaried retiree and asked his advisors for information. Lawrence Summers prepared a briefing memo to the President in August 2009; however, there was no further action.

Although Delphi salaried retirees had asked Auto Team official Bloom to consider preserving the pensions out of fairness, Auto Team official Bloom told SIGTARP that GM "did not provide a top-up to the salaried guys because I think [GM] concluded there was not a commercially reasonable reason to do it." Mr. Bloom added that GM's automotive parts suppliers "received a hundred cents on the dollar," the UAW's retirees received a number "less than a hundred, but more than the bondholders," and some got less than the bondholders. Mr. Bloom told SIGTARP that they could not make everyone whole and "That's not to say that people didn't lose a lot or [were] hurt or were treated in a way that – sort of in a human way you would say that's unfair. I don't think that anybody thinks bankruptcy is fair. It is what it is, though."

Delphi Hourly Employees Represented by Smaller Unions

SIGTARP found that although in GM's bankruptcy, GM did not assume the other top-up agreements for Delphi IUE and USW hourly employees because those unions did not have leverage, subsequently GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive. Then-CEO Henderson told SIGTARP that GM did not assume the IUE/USW pension benefit guarantees in GM's bankruptcy because there were no active IUE or USW employees at GM.[31] According to a representative of both unions, the IUE and USW knew that they had little chance of succeeding in holding up or affecting GM's bankruptcy. GM did not have any discussions with these unions prior to filing for bankruptcy. Although the unions filed objections in GM's bankruptcy, the GM bankruptcy judge dismissed their objections.[32]

From approximately July 10 to July 22, 2009, GM was negotiating with the IUE and USW, which had filed objections in Delphi's bankruptcy, had active workers at Delphi, and had told GM in the case of the IUE that representatives had asked that union to file for strike authorization.[33] Then-CEO Henderson told SIGTARP that after GM's 363 sale, there were residual issues with the IUE because the Auto Team had given parameters to GM to reduce by two-thirds post-employment benefits such as health care and pensions. Then-CEO Henderson told SIGTARP that GM had proposed a 62% reduction in employment benefits, but Mr. Rattner told them it had to be two-thirds. Given that these negotiations took place after New GM emerged from GM's bankruptcy, the Auto Team was not involved in the same way they had been, leading up to and through the bankruptcy.[34]

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[31] "They are just dramatically less relevant," Auto Team official Bloom told SIGTARP. "They didn't have nearly the same footprint and the drama that UAW had, the overwhelming majority of General Motors employees." Bloom told SIGTARP that as to those two unions, given his prior employment with USW, he made a conscious decision not to involve himself.

[32] The court ruled that New GM needed "a properly motivated work force" to succeed, which required that it "enter into satisfactory agreements with the UAW." In commenting on the other unions, the bankruptcy judge ruled, "And the Purchaser is not similarly motivated, in triaging its expenditures, to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM."

[33] An IUE official told SIGTARP that the union was prepared for a protracted conflict if GM had decided not to uphold IUE's top-up agreement: "Without a doubt, it would have been fought on the factory floors and in the district courts."

[34] Following the bankruptcy sale from Old GM to New GM on July 10, 2009, the Auto Team told SIGTARP that they began to shift from active daily contact with GM to a less hands-on approach. Members of the Auto Team indicated that Lawrence Summers was the principal advocate for a quick withdrawal of Government involvement in GM, an approach that was also strongly supported by Secretary Geithner. Nevertheless, Auto Team members acknowledged to SIGTARP that there were outstanding issues relating to GM that remained after the bankruptcy and for which the Auto Team still had some level of involvement. As Mr. Rattner said to SIGTARP regarding continued involvement, "We agreed with Larry Summers that there were some loose ends that we had not finished." Another Auto Team official described it as "clean up" telling SIGTARP, "While they were out, there was still stuff that needed to get finalized and implemented, *etc*...And then largely, although there was a bit of a transition period, largely we then moved into a monitoring role." Steven Rattner was one of the first to depart in late July 2009.

In July 2009, internal Government emails between the Auto Team and Advisor to the President Brian Deese discussed GM's need to address issues with Delphi's "splinter unions." Auto Team officials did not recall details related to the emails.[35] When Senator Charles Schumer took a position that GM should assume the Delphi salaried retiree pensions, Mr. Deese emailed Mr. Rattner this "may complicate the optics of doing anything for the splinters." Other emails from Mr. Deese stated, "We will continue to face intense scrutiny on this issue. The politics of terminations is quite intense" and "we need to work on a clear rationale for the outcomes we're moving toward, as well as an explanation of respective roles." Mr. Rattner emailed members of the Auto Team that he had spoken with Fritz Henderson about "our logic on the splinters, which he [Henderson] was fine with. [Auto Team Analyst] Sadiq [Malik] should speak to Janice [Uhlig][36] about the details, particularly how the reallocation of the $417mm would work." [37] Auto Team member Feldman emailed members of the Auto Team about health care/pension benefit changes for IUE and USW employees, and Mr. Deese responded that the company's organizing principle was parity between GM salaried and non-UAW hourlies. Mr. Deese referenced a discussion about health care costs and the "credible fairness arguments to augment the hourlies' recovery based on the pension disparity, but that for all the reasons we discussed that would not be possible. However, I think the logic of that conclusion strongly counsels in favor of bringing the top-up through. Otherwise, we're moving in the opposite direction from a position that we all agreed was itself on the edge of fairness."

In the emails from middle to late July 2009, Mr. Feldman told the Auto Team and Mr. Deese, "GM had separately concluded that as part of reaching a resolution with the splinters they needed to be prepared to honor the top-up." Mr. Deese later emailed the Auto Team that he told an IUE official that "this is GM's negotiation," that they should only engage in discussions if there is a "risk that GM would go substantially beyond what we had discussed with them," to which Mr. Feldman replied, "I continue to think we should stay out. We have given GM our input but this is up to GM." CEO Henderson told SIGTARP that the input Treasury gave was the two-thirds reduction.

[35] Mr. Deese may have been emailing about this matter because Mr. Bloom sent the splinter unions to Mr. Deese because of Mr. Bloom's prior employment with the USW. Also, the splinter unions met with the President on July 13, 2009, but pensions were not discussed. SIGTARP was unable to interview Mr. Deese about these emails and these events because the Administration declined to make him available for an interview because until just recently he was an advisor to the President. The Administration cited what it referred to as a long-standing practice. The Administration also did not grant SIGTARP's request for an interview with Dr. Summers, although White House Counsel advised SIGTARP that they contacted Dr. Summers and that he indicated to them that he had no specific recollection of, or involvement in, the issue of the Delphi pensions. Dr. Summers is not a current employee of the Administration.

[36] Janice Uhlig was a GM health care finance executive involved in the benefit analysis for GM.

[37] The $417 million figure related to health care costs related to the two-thirds reduction in certain costs for GM that Mr. Rattner had set for GM as a guideline during the GM bankruptcy.

Although the meaning of these Government emails is unclear, GM officials told SIGTARP that they did not know the views of Treasury or the White House. GM Associate General Counsel Frank Jaworski told SIGTARP that Mr. Feldman asked for updates on the progress of negotiations but did not express any views of the White House or Treasury. He told SIGTARP that there were no constraints or limitations placed by Treasury during the talks with the unions. Then-CEO Henderson told SIGTARP that he did not remember talking to anyone in the Administration about the top-up or that anyone put limitations or constraints on the negotiations. He told SIGTARP that he did not recall any suggestion that GM provide the top-up, or anyone at Treasury or the Administration (such as Mr. Deese) wanting GM to provide the top-up. CEO Henderson told SIGTARP that there was no pressure to provide the top-up from the Administration or Treasury.

On September 10, 2009, as part of a larger settlement agreement that also addressed retiree health care, New GM agreed to honor IUE's and USW's Delphi top-up agreements at an estimated cost of $350 million. CEO Henderson told SIGTARP that providing the top-up was necessary "to get the deal done," saying there was a clear inference that IUE could strike at Delphi, which would have shut down GM.[38] GM's then-CFO Young told SIGTARP, "If Delphi shut down, we shut down."[39] Then-CEO Henderson and another GM executive told SIGTARP that although Treasury knew about these top-ups and did not oppose them, GM did not seek Treasury's consent because the TARP loan agreement prohibiting GM from taking on new pension liabilities was between Treasury and Old GM, not New GM.

[38] One GM official told SIGTARP that the unions got the agreement because liquidation of Delphi would have been a disaster for GM.

[39] GM's former CFO Young told SIGTARP that if the Delphi bankruptcy had gone on longer, it would have been difficult for GM and GM would have had to develop an alternative means to obtain parts. Delphi exited bankruptcy in October 2009.

Conclusion

The U.S. Department of the Treasury's ("Treasury") injection of Troubled Asset Relief Program ("TARP") funds in General Motors Corporation ("GM") and Chrysler Group LLC ("Chrysler") was the only bailout with a President's Designee overseeing the companies' restructurings. With the first TARP injection of $13.4 billion in December 2008, Treasury assigned responsibility over GM's restructuring to the President's Designee. In February 2009, the President designated the Presidential Task Force on the Auto Industry ("Auto Task Force"), which delegated the responsibility for GM's restructuring to four primary officials who were part of an Auto Team ("Auto Team"), three of whom worked at Treasury from February 2009 to the summer of 2009,[40] led by Steven Rattner, who was called the "car czar."[41] The existence of the Auto Team and the role these Treasury officials played sharply contrasted with the role played by Treasury officials under other TARP programs. These four Auto Team officials played a direct role in GM's decisions and operations up to and through one of the largest and fastest bankruptcies in our nation's history. A new company referred to as New GM emerged from GM's bankruptcy in July 2009, with Treasury owning 61% of its common stock on behalf of taxpayers. New GM purchased substantially all of GM's assets while leaving behind many of its liabilities.

One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees who had worked in its automobile parts division Delphi Corporation ("Delphi"), when GM spun off Delphi into an independent company in 1999. The agreement ran to Delphi employees who were paid an hourly wage (an "hourly employee") and were represented by certain unions. Delphi employees who were paid a salary (a "salaried employee") did not have an agreement for GM to pay anything toward their pensions after the 1999 spinoff. Delphi, which was GM's largest supplier of parts, had been in bankruptcy since 2005 and did not have enough money to fund its pensions. When interviewed by SIGTARP, the four Treasury Auto Team officials made it clear that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring.

As GM's only lender and later GM's largest investor, Treasury, through its Auto Team, had significant leverage and influence on GM's decisions leading up to and through the bankruptcy. Before and after GM submitted its restructuring plan to Treasury, the Auto Team had been assessing bankruptcy, and in February was planning (but not discussing with GM) a GM bankruptcy that would sell assets to a buyer, leaving behind many of its liabilities. The Auto Team believed this type of bankruptcy (called a "363 sale" for a section of the bankruptcy code) would be quicker than a normal 9 to 12 months bankruptcy. They were also planning this

[40] The fourth primary official continued to work on the Auto Team until the fall of 2011.

[41] The Auto Task Force was co-chaired by former Treasury Secretary Timothy Geithner and former National Economic Council Director Lawrence Summers.

type of bankruptcy for Chrysler. The Auto Team first exerted their significant influence on GM by replacing GM's CEO Rick Wagoner (who adamantly opposed bankruptcy) with Treasury's choice, Fritz Henderson, a move that GM's Board of Directors viewed as Treasury usurping their power. Mr. Henderson told SIGTARP that the Auto Team's decision to replace Mr. Wagoner with their selection sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations.

Importantly, three days later, on March 30, 2009, Treasury rejected GM's restructuring plan that did not plan for bankruptcy, required a new plan signaling that GM may need bankruptcy, and injected $6 billion in TARP funds in GM – enough financial support to last 60 days. With only 60 days of funding, GM developed a new restructuring plan with significant influence and leverage from Treasury's Auto Team. The December 2008 TARP loan agreement gave Treasury the explicit right to approve transactions over $100 million and new pension obligations, but the Auto Team's influence went far beyond that legal right. One GM official told SIGTARP, "Ultimately it was that GM is not in control. And GM is totally dependent."

Although the Auto Team's role was supposed to be advisory for matters not requiring Treasury's consent under the TARP Loan Agreement, in practice it was more than advisory. SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions in areas that did not require Treasury consent. One Auto Team official described Treasury as GM's "only lifeline." The Auto Team exerted the influence that came with that position. According to numerous interviews of Auto Team and GM officials, the Auto Team "was persistently pressing" and "pushed" GM to take more significant actions than GM would have done on its own, actions in line with Treasury's preferences. As SIGTARP previously reported in its prior audit, in response to the Auto Team's rejection of GM's restructuring plan and its explicit comment that GM's "pace" of dealership closings was too slow and an obstacle to its viability, GM substantially accelerated its dealership termination timelines.[42] Although the Auto Team did not tell GM which dealerships to close, GM made the decision to accelerate the dealership closings with significant Treasury influence.

An Auto Team official told SIGTARP that "There was a feeling that the Auto Team had to carefully manage GM, which would have given away Treasury's money without blinking." Another Auto Team official explained to SIGTARP that Treasury did not want to start running the company, but when dealing with taxpayer resources, "We, the Government, were ultimately holding that purse string," and Treasury reserved the right to tell GM that they would not back them. A third Auto Team official told SIGTARP that they did not cram down decisions

[42] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks," 7/19/2010.

on GM, "but we were investing a lot of money, and we had the opportunity to disagree." There was no need for ultimatums. As one Auto Team official told SIGTARP, "GM realized that there was no other available source of money." When an Auto Team official was asked by SIGTARP how the Auto Team conveyed their preference or nudged GM to see things the way the Auto Team saw them, given that ultimately GM could do its own thing, the Auto Team official said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Driven by broader concerns about the auto industry, Treasury's Auto Team directed GM's restructuring efforts toward filing for bankruptcy. The Auto Team took steps to signal to GM their strong preference for bankruptcy and bring significant influence over GM's decision to file bankruptcy. The Auto Team's replacement of GM CEO Wagoner, who did not favor bankruptcy, and the choice of Mr. Henderson as CEO, signaled the Auto Team's preference for bankruptcy and directed GM's restructuring efforts toward bankruptcy. GM CEO Henderson was open to bankruptcy but only as "Plan B." He hoped to avoid bankruptcy by getting bondholders to exchange their debt for GM stock. Despite the exchange being a condition under the TARP loan agreement, Treasury's Auto Team did not believe that the bond exchange alone would make GM viable and asserted their leverage as the primary financial support of GM. In the first week of April 2009, the Auto Team "highly suggested" to GM that they felt "pretty strongly" that a Section 363 bankruptcy was the "best approach." The Auto Team opposed GM's decision to proceed with the bond exchange and communicated to GM their preference that 90% of the bondholders participate in the exchange, a "level of acceptance" that was "very high," making bankruptcy more likely, according to then-CEO Henderson. CEO Henderson told SIGTARP that it was not clear that bankruptcy was the only option until the bond exchange failed. With a $1 billion bond payment coming due June 1, 2009, which Treasury would not fund, GM asked Treasury to fund GM's bankruptcy. Having already invested $19.4 billion in TARP funds and out of concern that a GM failure could have a cascading effect throughout the automobile industry by causing related companies to fail, Treasury agreed to fund GM's bankruptcy with a $30.1 billion TARP loan. Not wanting the TARP debt on GM's balance sheet, Treasury decided that its combined $49.5 billion in TARP loans would convert to 61% ownership of common stock in New GM, the purchaser in bankruptcy.

Treasury's Auto Team created a condition on funding GM's bankruptcy that would serve as pressure on GM and would drive pre-bankruptcy negotiations and decisions. Treasury conditioned giving GM $30.1 billion in TARP funds on a "quick-rinse bankruptcy" that would end in 40 days because Auto Team officials thought that was the best way to save the automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Treasury Auto Team officials deemed speed as essential and were concerned that if GM's bankruptcy was prolonged, consumers would stop purchasing GM's automobiles, and GM would likely fail. Neither Treasury nor GM believed that the company could survive a lengthy bankruptcy; however, GM thought that the 40-day timeframe was not realistic. GM's bankruptcy lawyer told the Auto Team that the timeline was "impossibly aggressive. It's never been done." Treasury had leverage to set conditions on TARP funds, even if it was a timeframe that did not seem realistic to GM and had never been done before. If GM's bankruptcy was not completed in time, GM risked losing its only source of financing and its purchaser in bankruptcy.

Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. With their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. GM's then-CFO Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." One Auto Team official told SIGTARP that "We approve technically everything because we don't have to do the DIP [debtor-in-possession bankruptcy loan]. But no, not in the micro. I mean it wasn't, you know you bring us this, we approve this, we approve that. It was bring us a plan and we do a DIP or we don't do a DIP." One Auto Team official testified in a deposition that the leverage Treasury had with Old GM was that Treasury was the only buyer for GM's assets. That same Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation. One reason why the Auto Team had chosen a 363 bankruptcy sale was the ability to "cherry-pick" assets and liabilities that New GM would take on. An Auto Team official stated in a deposition, "it is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on.

A quick-rinse bankruptcy requires consensus with major stakeholders, and Treasury used its significant financial leverage to get GM to reach agreement with the two stakeholders that Treasury believed could hold up GM's bankruptcy – the bondholders and the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"). The 2008 TARP loan agreement required new agreements with both of these groups. Treasury made a deal with the bondholders in the weeks prior to GM filing bankruptcy because of the bondholders' leverage to object to and prolong the bankruptcy. The Auto Team was actively involved in the negotiations out of concern that the bondholders were a major risk of delaying the bankruptcy if they objected. Treasury was in a position to provide bondholders with a better recovery than under the bond exchange. This was because Treasury would own most of the equity of New GM, and, according to Henderson, equity was something only Treasury could provide. In exchange for the bondholders agreeing not to oppose the bankruptcy, Treasury gave additional consideration to Old GM during the bankruptcy proceeding, to the benefit of GM's bondholders.

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW and resulted in New GM taking on the liability to top up the pensions of UAW's members who had worked at Delphi at the time of its 1999 spinoff from GM, increasing their pension benefit payments to their full benefit level.[43] Members of the Auto Team were actively involved in the negotiations with UAW that took place on May 18-19, 2009, at Treasury's offices and at the offices of Treasury's lawyers in Washington, D.C. One Auto Team official testified in a deposition that Treasury represented the owners of New GM in the negotiations. GM and Auto Team officials were concerned that the UAW, referred to as "the big dog" by an Auto Team official, represented 99% of GM's unionized employees and could stop production with a strike. In addition to the traditional strike leverage, the requirement in the TARP loan agreement for a new collective bargaining agreement and the Auto Team's 40-day timeframe for bankruptcy gave the UAW additional leverage. An Auto Team official told SIGTARP that the UAW was a very major constituency that could slow down and potentially block the entire sale. The Auto Team made it very clear to GM and the UAW that it was essential that they reach an agreement with UAW prior to GM's bankruptcy filing. The UAW understood that GM could not walk away from negotiations and had to reach an agreement with it to be able to survive, and those same facts put pressure on GM. Given the need for GM to file bankruptcy by June 1, 2009 when a $1 billion bond payment came due, GM only had a couple of weeks to come to an agreement with the UAW, and if they did not come to agreement, GM risked the UAW objecting to and prolonging the bankruptcy beyond 40 days, which GM believed would lead to liquidation.

The UAW came to the negotiations with a "hit list" of priority items that included New GM assuming the pension benefit guarantee ("top-up") for the former GM employees at Delphi represented by UAW. Since February 2009, the Auto Team had been analyzing options concerning the top-ups of Delphi employees and had been negotiating with the Pension Benefit Guaranty Corporation ("PBGC"), the Government entity that insures pensions. The May 2009 UAW negotiations only focused on those aspects that were discussed in the TARP loan agreement, which included GM funding retiree health care costs using New GM stock, with Treasury as the majority owner of New GM. According to Mr. Rattner's book, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* ("*Overhaul*"), when GM's CEO raised pensions, the UAW's president reportedly said, "We aren't going to sit in this room if pensions are on your list." At the end of two days, the UAW left the negotiations at an impasse. The UAW president called Auto Team official Ron Bloom the next day, and they made the overall deal for a new collective bargaining agreement. The

[43] Delphi was GM's largest supplier of auto parts and had been in bankruptcy since 2005.

top-up was never discussed in the negotiations where both GM and Treasury were present and actively negotiating.

The Auto Team's role in the decision to top up the pensions of Delphi's UAW workers was not advisory. Consistent with the Auto Team's practice, as with any liability, it would have been Treasury's decision as the buyer to assume or reject the liability to top up the pensions of Delphi hourly UAW employees. The Auto Team made it clear to GM that they wanted an agreement with the UAW prior to bankruptcy and the Auto Team actively negotiated and made the overall deal. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included in the Master Sale and Purchase Agreement selling assets to New GM.[44] GM could not decide on its own to agree to the new collective bargaining agreement that included the top-up because Treasury's consent was required under the TARP loan agreement and Treasury was the purchaser in bankruptcy. The decision that New GM would honor the top-up was a joint decision by Treasury and GM with Treasury deciding to approve the collective bargaining agreement with the UAW that included the top-up.

Even though the top-up was never discussed in the negotiations with the UAW, it became a foregone conclusion that it would be included in the new UAW collective bargaining agreement. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring its pension benefit guarantees in bankruptcy, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Auto Team leader Rattner and another Auto Team official told SIGTARP that, because the UAW included the top-up on their list, it was clear that the UAW expected the top-up to be part of the overall deal. Treasury had the power to object to New GM taking on the top-up obligation as part of the larger agreement with the UAW, but had no desire to blow up the larger deal. Although the Auto Team was concerned about the threat of the strike, they were also concerned with the UAW prolonging the bankruptcy. An Auto Team official told SIGTARP that not having an agreement with UAW would have been like "shooting yourself in the head," adding that it could have resulted in the liquidation of GM. Auto Team leader Rattner told SIGTARP that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure." Auto Team leader Rattner told SIGTARP, "It was not a ridiculous request. And one that we could have honored and needed to honor."

Then-GM CEO Henderson told SIGTARP that the pressure to finish the negotiations resulted in no negotiation on the top-up, and although GM knew about the top-up, "the focus was on getting the deal done." CEO Henderson told SIGTARP that renegotiating the pensions in bankruptcy would have taken a long

[44] According to the UAW, it made a number of concessions in the negotiation including: elimination of performance bonuses and cost of living adjustments, reduced holidays, scaled-back overtime rules, and frozen wages for new entry employees. GM would be allowed to use stock to replace debt for the VEBA health care trust, and other concessions.

time – a risk that GM did not believe it could afford to take because Treasury had given no indication that it would extend financing beyond 40 days. CEO Henderson told SIGTARP that if the pension benefit guarantee with the UAW was not assumed by GM, it would have been "mission impossible."

Treasury's Auto Team and GM did not agree to top up the pensions of other former GM employees at Delphi, which did not have active employees at GM, and therefore had no leverage to hold up GM's bankruptcy. This included Delphi employees who were paid a salary and employees who were paid an hourly wage who were members of the IUE and USW unions. These two groups of employees had pension plans that had become underfunded. Although the hourly employees at these unions had a preexisting top-up agreement, there were no discussions regarding the top-up agreement with GM and these unions prior to GM's bankruptcy. Although in GM's bankruptcy New GM did not assume the other top-up agreements with Delphi IUE and USW employees because those unions did not have leverage, subsequently New GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive.[45]

Delphi's salaried retirees had no leverage, other than what they hoped would be political leverage and that Treasury, as a Government agency, would provide them with a top-up. The Delphi salaried employees were not represented when Delphi was spun off. GM had fully funded (at 123%) the expected payments needed to cover the salaried employees' pension plan at the time of Delphi's spinoff and there was no top-up agreement in place. They did not have active employees at GM and were not creditors in GM's bankruptcy. They sought to use their only tool, political pressure, to improve their position in the hopes that Treasury would provide them with the same treatment as Delphi UAW employees. GM officials took the position with PBGC and Delphi, and confirmed in SIGTARP interviews, that GM did not believe it had the ability to provide a top-up for the salaried employees on its own because the TARP loan agreement prohibited GM from increasing pension benefits without Treasury's consent. The cost was also over the $100 million threshold requiring Treasury's consent. According to a Treasury document, it was estimated that Delphi salaried retirees' would lose approximately $440 million in pension benefits. A top-up would be expected to cost an equivalent amount.

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45 The interconnectedness of Delphi to GM provided the IUE and USW hourly employees leverage in Delphi's bankruptcy where these employees filed objections to the bankruptcy and threatened to strike. New GM began negotiations with the IUE and USW shortly after its emergence from GM's bankruptcy in an effort to resolve remaining issues. As part of a larger settlement, New GM agreed to top up the pensions of these workers at an estimated cost of $350 million. GM executives believed that a shutdown at Delphi could shut GM down. Given that these negotiations took place after New GM emerged from GM's bankruptcy and the Auto Team was disbanding, the Auto Team was not involved in the same way they had been leading up to and through the bankruptcy. According to then-CEO Henderson, GM did not seek Treasury's consent because the TARP loan agreement prohibiting GM from taking on new pension liabilities was between Treasury and Old GM, not New GM.

Ultimately, GM did not fail and the broader systemic consequences of a GM failure that Treasury had feared were avoided. There are two important lessons to be learned from the role that Treasury's Auto Team played.

First, the Auto Team's deep involvement and significant influence on GM's decisions leading up to and through GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government. PBGC had an expectation that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what might have normally occurred, and could potentially have saved PBGC billions of dollars with Treasury involved. Also contributing to this expectation was the fact that the Auto Team negotiated with PBGC on behalf of GM related to what GM would pay on the pensions. Delphi and its workers, who had been former GM employees, also had the expectation that the Government would ensure that GM treat the pensions of all former GM employees at Delphi the same out of fairness. Also contributing to this expectation was the fact that TARP funds were being used, and that GM had taken the position with Delphi (and PBGC) that taking on additional pension obligations violated the TARP loan agreement and required Treasury's consent. A PBGC document stated that Delphi believed GM may be looking to the "car czar" to mandate that GM assume Delphi pensions as part of GM's use of TARP funds. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government and make themselves into a commercial enterprise" and "it is wrong of our Government to take funds from everyone and give it to the few." However, Auto Team officials attempted to view top-ups as a private investor. An Auto Team official told SIGTARP that the Government could not make everyone whole, saying, "I don't think that anybody thinks bankruptcy is fair."

Treasury's Auto Team did not always act as a private investor and at times acted as the Government to prevent GM from failing, concerned about financial stability in the auto industry. Although the Auto Team tried to view issues through a "commercially reasonable" lens like a private investor, they often did not act as a private investor, nor should they have. Without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns. For example, Treasury decided not to move GM's headquarters to save costs out of concerns over the impact on the city of Detroit. Treasury made other decisions based on broader concerns about the interconnectedness of the auto industry. No private investor holds the responsibility Treasury has to protect taxpayers and to promote financial stability in the economy. Treasury made the TARP injections in GM when, according to GM's then CFO, no other private investor would lend or invest the money that GM needed. Concerned that the TARP loans would be too much debt on GM's balance sheet, Treasury funded GM's bankruptcy and converted what would be higher priority debt to a lower priority equity ownership in New GM and, according to GM, paid more than GM's "Enterprise Value." Treasury's Auto Team took these actions based on concerns of the consequences of a GM failure on other companies in the American automotive industry, concerns not held by private investors. Even though Treasury, through the Auto Team, tried to act as a private investor, they had considerations that no private investor would ever have had, blurring the lines between Treasury's role as the investor and as the Government.

Second, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. One Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held, but SIGTARP found that additional leverage was given by Treasury. The Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to GM's bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days. Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having leverage because they did not have current employees at GM and therefore could not hold up GM's bankruptcy.

Two liabilities that the Auto Team had already decided to assume in bankruptcy were a new agreement with the UAW and an agreement with the bondholders. The UAW had leverage because it knew and understood from Treasury that it was committed to reorganize GM and not let GM fail. Moreover, Treasury's 40-day bankruptcy condition gave the UAW and bondholders additional leverage to threaten to hold up GM's bankruptcy. They may have been able to obtain more concessions than in a traditional bankruptcy where the issues may be litigated. An Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept." With Treasury's dictate of a 40-day bankruptcy and no indication that Treasury would extend that timeframe, GM officials were under pressure, believing they had to reach agreements with the bondholders and UAW prior to a June 1 bankruptcy filing or risk losing Treasury's funding and liquidating.

It is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities. Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in the economy. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

Management Comments and SIGTARP's Response

Treasury provided an official written response in a letter dated August 9, 2013. (Full text in Appendix D). In its response, Treasury noted: (1) that the decision to top up pensions of certain hourly Delphi retirees, but not for salaried Delphi retirees, had sound commercial reasons; (2) that Treasury does not believe that the facts support the conclusions regarding the decision-making process and Treasury states that the report is based on interviews of the former Treasury [Auto Team] officials done without Treasury being present; and (3) Treasury was not given the executive summary of the report and therefore Treasury does not think they received the full draft report prior to publication.

The report highlights the multiple factors which affected the decision-making process leading up to and through the GM bankruptcy and Treasury's role in the decision to top up certain Delphi retirees. As the report makes clear, the consideration of commercial reasonableness was only one factor driving the decisions. The report's conclusions are well-supported. SIGTARP has a rigorous quality control system designed to ensure that audits are performed and reports are issued in accordance with professional standards and legal and regulatory requirements. SIGTARP's system of quality control was recently reviewed as part of the Council of the Inspectors General on Integrity and Efficiency external peer review program and assigned the highest rating. SIGTARP provided Treasury with a complete draft of the report including the conclusion. The executive summary is typically drafted after receiving Treasury's response, and is a summary of the conclusion provided to Treasury, with no new information. Therefore, Treasury was missing no information in the report.

Appendix A – Objectives, Scope, and Methodology

SIGTARP performed this audit under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. We initiated this audit as part of our continuing oversight of TARP and in response to a request from former Congressman Christopher J. Lee in a letter dated August 3, 2010. We later received an additional request to conduct the audit by Congressman Michael R. Turner on March 3, 2011. The requesters asked SIGTARP to conduct a review related to GM's decision to top up certain Delphi hourly retirees' pension benefits. In response, the audit's objectives were to review:

- Treasury's role in the decision for GM to top up the pension plan; and
- whether the Administration or the Auto Task Force pressured GM to provide additional funding for the plan.

The audit engagement was announced in November 2010 and we conducted our audit work from December 2010 through August 2013 in Washington, D.C., New York, N.Y., San Antonio, Texas, Chicago, Ill., Pittsburgh, Pa., and Detroit, Mich. This audit was conducted in coordination with GAO to avoid excessive duplication of efforts. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. The objectives of SIGTARP's audit did not involve a review of PBGC's termination of the Delphi pension plans.

SIGTARP interviewed current and former officials from GM, Delphi, UAW, IUE, USW, the Delphi Salaried Retirees Association, PBGC, and Treasury. In addition to testimonial evidence, SIGTARP reviewed documents concerning the Auto Team, GM, Delphi, UAW, IUE, USW, PBGC, and the Administration, including emails, contracts, calendar appointments, letters, memorandums, written policies, procedures, guiding principles, press releases, public announcements, and written analyses. SIGTARP also reviewed court documents, including depositions and motions, filed in the GM and Delphi bankruptcies and in litigation brought by the Delphi Salaried Retirees Association.

SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

SIGTARP conducted this audit in accordance with generally accepted government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. SIGTARP believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

Limitations on Data

SIGTARP generally relied upon Treasury to identify and provide relevant documentation, including email communications and other Treasury records. To the extent that the documentation provided to SIGTARP by Treasury did not reflect a comprehensive response to SIGTARP's documentation requests, SIGTARP's review may have been limited.

Use of Computer-Processed Data

SIGTARP did not use any computer-processed data to complete this audit.

Internal Controls

SIGTARP did not perform an assessment of internal controls because such an assessment was not relevant to accomplishing the audit's objectives.

Prior Coverage

SIGTARP previously performed an audit related to Treasury's Automotive Industry Financing Program and GM's restructuring, titled "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks."[46] The audit reviewed, among other things, the role the Auto Team played in GM and Chrysler's decision-making process regarding auto dealership closings.

GAO has issued two related reports. In March 2011, GAO issued a report outlining the timeline leading to the Delphi pension top-ups and in November 2011 GAO issued a testimony statement based on the March 2011 timeline.[47] In December 2011, GAO issued a report that addressed PBGC's termination of Delphi's hourly and salaried pension plans.[48] In July 2012, GAO issued an additional testimony statement.[49]

[46] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks," 7/19/2010.

[47] GAO-11-373R, "Key Events Leading to the Termination of the Delphi Defined Benefit Plans," 3/30/2011. GAO also published a testimony based on its March 2011 report, GAO-12-234T.

[48] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011.

[49] GAO also published a testimony based on its March 2011 and December 2011 reports, GAO-12-909T.

Appendix B – Acronyms and Abbreviations

Acronym or Abbreviation	Definition
Auto Task Force	Presidential Task Force on the Auto Industry
Auto Team	a group of Treasury officials responsible for overseeing GM's restructuring, who reported to the Auto Task Force
CEO	chief executive officer
CFO	chief financial officer
Chrysler	Chrysler Group LLC
COO	chief operating officer
Delphi	Delphi Corporation
DIP	debtor in possession
GAO	Government Accountability Office
GM	General Motors Corporation
IUE	International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers
New GM	General Motors Company – name of the company after GM's bankruptcy was completed in July 2009
Old GM	General Motors Corporation
PBGC	Pension Benefit Guaranty Corporation
SIGTARP	Office of the Special Inspector General for the Troubled Asset Relief Program
TARP	Troubled Asset Relief Program
TARP loan agreement	Treasury's Loan and Security Agreement
Treasury	U.S. Department of the Treasury
UAW	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America
USW	United Steelworkers of America
VEBA	Voluntary Employee Beneficiary Association plan

Appendix C – Audit Team Members

This audit was conducted and the report was prepared under the direction of Bruce S. Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation, Office of the Special Inspector General for the Troubled Asset Relief Program.

Staff members who conducted the audit and contributed to the report include Simon Galed, Jonathan Lebruto, Eric Mader, John Poirier, and Samuel Withers.

Appendix D – Management Comments

ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 9, 2013

Christy L. Romero
Special Inspector General
for the Troubled Asset Relief Program
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Response to SIGTARP's Draft Report: "Treasury's Role in GM's Decision To Provide Pension Payments to Delphi Employees"

Dear Ms. Romero:

Thank you for the opportunity to review the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) draft report of June 28, 2013 titled "Treasury's Role in GM's Decision To Provide Pension Payments to Delphi Employees." This letter provides Treasury's official response to the report.

The report makes clear that GM's decision to provide supplemental pension benefits, or "top-ups," to certain Delphi hourly retirees, but not to do so for salaried retirees, was driven by sound commercial reasons. The draft report highlights a number of important facts in this regard that we have previously noted. Specifically, the report confirms:

- In 1999 GM spun off Delphi, an important auto parts supplier, into a separate company.
- At that time, the Delphi hourly pension plan was underfunded, whereas the Delphi salaried plan was fully funded.
- Also at that time, certain Delphi hourly employees negotiated for, and GM agreed to provide, pension top-up benefit guarantees so that those hourly employees were entitled to full pension benefits regardless of whether Delphi could fund them.
- Delphi salaried employees did not negotiate for, nor did they ever receive similar top-up benefit guarantees from GM.
- Following the 1999 spin off, the participants in the Delphi salaried pension plan no longer worked for, nor had any other connection to, GM.
- The UAW, which represented many of the participants in the Delphi hourly pension plan,

represented the vast majority of GM's workforce in 2009 when GM was trying to complete a restructuring.

- GM negotiated a new collective bargaining agreement with the UAW as part of that restructuring in which the UAW agreed to a number of wage and benefit concessions.

Therefore, GM treated the participants in the Delphi hourly and salaried pension plans differently because they were differently situated:

- GM honored the 1999 contractual obligation to certain Delphi hourly employees who were represented by the UAW for sound commercial reasons—to achieve overall labor cost reductions and ensure that it had a properly motivated workforce.

- In contrast, GM never had a contractual obligation to top-up the salaried retirees' pension benefits and there was no valid commercial justification for granting one in 2009. Topping up the salaried pension plan would have been equivalent, as SIGTARP highlights, to GM paying for the salaried pension plan twice.

Nevertheless, the report makes a number of judgments and characterizations, particularly with regard to the decision-making process, that we do not believe to be supported by the facts stated above, or any others in the report. In this regard, much of the report is based upon interviews with individuals where no Treasury representative was present. Several of the former Treasury officials that you interviewed have told us that certain quotes attributed to them in the report are inaccurate or taken out of context, and that the report's characterizations of the decision making process are inconsistent with their recollections of what happened. Lastly, Treasury was not given the full draft report prior to publication—the executive summary was omitted, for example.

While the bankruptcies of GM and Delphi have required painful sacrifices from all stakeholders, including the employees and retirees of each company, this Administration – as well the prior Administration – made the right choice to support the American auto industry. The actions taken brought needed stability to the auto industry and helped save more than a million American jobs. In addition, all three U.S. auto manufacturers are now operating at a profit – something that had not occurred since prior to the financial crisis in 2004 – and the auto industry is now putting thousands of Americans back to work, reversing some of the employment declines in years past.

Thank you once again for the opportunity to review and comment on the report. We look forward to continue working with you in the future.

Sincerely,

Tim Massad

Timothy G. Massad
Assistant Secretary for Financial Stability

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SIGTARP Hotline

If you are aware of fraud, waste, abuse, mismanagement, or misrepresentations associated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline.

By Online Form: www.SIGTARP.gov

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GM Completes Bankruptcy in 40 Days Without Agreeing To Top Up Any Other Delphi Employee

During bankruptcy, the existing General Motors Corporation, Old GM, sold substantially all of its assets to a wholly new company, New GM, which emerged from GM's bankruptcy on July 10, 2009, with most of the company's debt and liabilities remaining with Old GM.[28] An Auto Team official told SIGTARP the quick-rinse bankruptcy was consistent with the Auto Team's commercially reasonable approach. However, GM CEO Henderson said to SIGTARP that, according to an assessment performed prior to the bankruptcy, Treasury overpaid for GM. GM's financial advisor determined that Treasury agreed to purchase New GM at more than New GM's "Enterprise Value." Auto Team leader Rattner acknowledged in a statement made to the press in December 2011 that Treasury may have overpaid. He reportedly stated, "We put more cash into GM than we probably needed to – and we knew this. It's part of why GM is so well-capitalized today."[29]

GM and Treasury had agreed that New GM would assume the liability for the top-up of pensions of UAW hourly retirees at Delphi. Treasury informed PBGC of the decision to top up rather than take back the full cost of the Delphi hourly pensions. According to a PBGC official, an Auto Team official notified PBGC, saying "We've done the math, and the liability associated with assumption is greater than the top-up."[30] According to an internal Treasury memorandum, on June 30, 2009, an Auto Team official informed PBGC that Treasury would not be able to provide financing support to GM in an amount sufficient to allow the continuation of Delphi's hourly pension plan, but that it was anticipated that GM's pension benefit guarantees to the hourly employees would be preserved. Treasury and GM did not agree to top up the pensions of any other Delphi retiree in GM's bankruptcy. However, after GM's bankruptcy, New GM decided to top up the pensions of certain Delphi "splinter unions" that had filed an objection to Delphi's bankruptcy.

Delphi Salaried Retirees

SIGTARP found that Delphi's salaried retirees had no leverage, other than what they hoped to be political leverage and that Treasury, as a Government agency,

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[28] On June 1, 2009, GM filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. §§ 1101-1174) and conducted a court-supervised asset sale (under 11 U.S.C. § 363), in which substantially all of the operating assets of the company were sold to General Motors Company, or New GM, and most of the company's debt and liabilities remained in the possession of Motors Liquidation Company, or Old GM, which is being addressed in bankruptcy court. New GM emerged from GM's bankruptcy on July 10, 2009.

[29] *The Detroit News*, "Rattner: Bailout a 'Success,'" 12/16/2011.

[30] An Auto Team official told SIGTARP that he wanted to include the Delphi hourly employees because he believed that it would help push the Delphi bankruptcy through more quickly. He told SIGTARP that when he attempted to get consensus from GM, GM pushed back and did not want to absorb this liability.

United States Government Accountability Office

Testimony

Before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

For Release on Delivery
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DELPHI PENSIONS

Key Events Leading to Plan Terminations

Statement of

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GAO-13-854T

GAO Highlights

Highlights of GAO-13-854T, a testimony before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

The Delphi Corporation was a global supplier of mobile electronics and transportation systems that began as part of GM and was spun off in 1999. Delphi filed for bankruptcy in 2005, and in July 2009, PBGC terminated Delphi's six defined benefit pension plans and assumed trusteeship of the plans. Because of the resulting differences in participant benefits, questions have been raised about how PBGC came to terminate the plans, whether treatment for certain Delphi workers was preferential, and the role of Treasury in these outcomes.

GAO's testimony describes 1) key events related to the termination of Delphi pension plans and the reasons for GM providing retirement benefit supplements to certain Delphi employees, and 2) Treasury's role in those events. The testimony is primarily based on GAO's March and December 2011 reports that examined these and other related issues. In preparing these reports, GAO relied on publicly available documents—such as GM and Delphi bankruptcy filings, Treasury officials' depositions, and company reports to the Securities and Exchange Commission—and on documents received from groups GAO interviewed, including Delphi, GM, the Delphi Salaried Retiree Association, PBGC, and Treasury.

View GAO-13-854T. For more information, contact Barbara Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov or A. Nicole Clowers at (202) 512-8678 or clowersa@gao.gov.

September 11, 2013

DELPHI PENSIONS

Key Events Leading to Plan Terminations

What GAO Found

The termination of the six defined benefit plans that were sponsored by the Delphi Corporation (Delphi) and the provision of benefit protections to some Delphi employees, but not others, culminated from a complex series of events involving Delphi, the General Motors Corporation (GM), various unions, the U.S. Department of the Treasury (Treasury), and the Pension Benefit Guaranty Corporation (PBGC). When Delphi spun off from GM in 1999, three unions secured an agreement that GM would provide a retirement benefit supplement (referred to as "top-ups") for their members should their pension plans be frozen or terminated and they were to suffer a resulting loss in pension benefits. These three unions were: (1) the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); (2) the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE); and (3) the United Steelworkers of America (USWA). No other Delphi employees had a similar agreement to receive a top-up, including salaried workers and hourly workers belonging to other unions. Over the course of events that unfolded over the next decade, the agreements with these three unions ultimately were preserved through the resolution of the bankruptcies of both GM and Delphi. Because Delphi's pension plans were terminated with insufficient assets to pay all accrued benefits, and because PBGC must adhere to statutory limits on the benefits it guarantees, many Delphi employees will receive a reduced pension benefit from PBGC compared with the benefits promised by their defined benefit plans. Those Delphi employees receiving the top-ups will have their reduced PBGC benefit supplemented by GM while others will not.

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy. Treasury's effort to restructure GM included helping GM find the best resolution of the Delphi bankruptcy from GM's perspective. This effort was guided by the following principles: preserving GM's supply chain, resolving Delphi's bankruptcy as quickly as possible, and doing so with the least possible amount of investment by GM. However, court filings and statements from GM and Treasury officials suggest that Treasury deferred to GM's business judgment on decisions about the Delphi pension plans—that is, their sponsorship and the decision to honor existing top-up agreements. According to public records and Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of taking over sponsorship of the Delphi hourly plan, but that the company had solid commercial reasons to honor previously negotiated top-up agreements with some unions. According to court filings, Treasury officials said that Treasury did not explicitly approve or disapprove of GM's agreement to honor previously negotiated top-up agreements and PBGC officials stated that PBGC decided to terminate the plans independently of Treasury input. Nevertheless, as GAO has previously reported, Treasury's multiple roles created potential or perceived conflicts of interests. GAO has emphasized the importance of transparency and disclosures of Treasury's actions as a means to help mitigate potential or perceived conflicts related to these roles.

Chairman Mica, Ranking Member Connolly, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the termination of Delphi's pension plans. As you know, the Delphi Corporation (Delphi) was a global supplier of mobile electronics and transportation systems that began as part of the General Motors Corporation (GM) and was spun off as an independent company in 1999.[1] Following Delphi's bankruptcy, the Pension Benefit Guaranty Corporation (PBGC), the government corporation that insures private-sector defined benefit (DB) plans, terminated Delphi's six plans in July 2009. The plans were estimated to be underfunded by a combined $7.2 billion at termination, of which PBGC expected to cover about $6 billion.[2] Since the termination, there has been controversy over different pension benefit outcomes for certain unionized and non-unionized Delphi retirees. Further, the involvement of the U.S. Department of the Treasury (Treasury) in the bankruptcy of GM, Delphi's former parent company, raised questions for some about the role that Treasury played in PBGC's decision to terminate Delphi's pension plans, the decisions by GM to provide retirement benefit supplements ("top-ups") to certain Delphi employees, and the resulting outcomes for Delphi plan participants.

Our testimony discusses (1) key events related to the termination of Delphi pension plans and the reasons for GM providing top-ups to certain Delphi employees, and (2) Treasury's role in those events. Our comments are based on our March and December 2011 reports that examined these issues and on our body of work on the federal assistance provided to the

[1]At the time of the spinoff, Delphi established two pension plans, with assets and liabilities transferred from their GM counterparts: the Delphi Hourly-Rate Employees Pension Plan (hourly plan) and the Delphi Retirement Program for Salaried Employees (salaried plan). Delphi acquired four more plans after the spin-off from GM. Before bankruptcy reorganization, GM's legal name was General Motors Corporation. The legal name of the new entity created in the bankruptcy process is General Motors Company (the entity that purchased the operating assets of the pre-reorganization corporation, which we discuss later in this statement). As of October 19, 2009, General Motors Company became General Motors LLC. Throughout this statement, in cases where a distinction is important, we refer to the pre-reorganization corporation as "old GM" and the post-reorganization company as "new GM."

[2]A DB plan promises a benefit that is generally based on an employee's final pay and years of service. The employer is generally responsible for funding all or most of the benefit, investing and managing plan assets, and bearing the investment risk.

automakers through the Automotive Industry Financing Program.[3] To construct a timeline of events and identify Treasury's role in those events for our reports, we relied on publicly available documents, such as bankruptcy filings by GM and Delphi, Treasury officials' depositions, company reports to the Securities and Exchange Commission, press releases; and documents received from groups we interviewed, including Delphi, GM, the Delphi Salaried Retiree Association (DSRA), PBGC, and Treasury. We also reviewed the August 2013 report from Special Inspector General for the Troubled Asset Relief Program (SIGTARP) that examined Treasury's role in GM's decision to provide top-ups for certain hourly workers, including whether the Administration or Treasury pressured GM to provide additional funding for the hourly plan.[4] Our review differed from SIGTARP's review in terms of focus, scope, and methodology.[5]

We performed the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained

[3]See GAO, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans*, GAO-11-373R (Washington, D.C.: Mar. 30, 2011); *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits*, GAO-12-168 (Washington, D.C.: Dec. 15, 2011); *Troubled Asset Relief Program: Automaker Pension Funding and Multiple Federal Roles Pose Challenges for the Future,* GAO-10-492 (Washington, D.C.: Apr. 6, 2010*); Troubled Asset Relief Program: Continued Stewardship Needed as Treasury Develops Strategies for Monitoring and Divesting Financial Interests in Chrysler and GM*, GAO-10-151 (Washington, D.C.: Nov. 2, 2009).These products provide details on the scope and methodology of this work.

[4]Special Inspector General for the Troubled Asset Relief Program, *Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees*, SIGTARP 13-003 (Washington, D.C.: Aug. 15, 2013).

[5]Both GAO and SIGTARP were asked to examine various issues surrounding the termination of the Delphi pension plans. To mitigate potential overlap between our efforts, we agreed to focus on different aspects of the termination. For example, the two 2011 GAO reports focused primarily on PBGC's decision to terminate the Delphi defined benefit plans and how benefits were determined for different Delphi retirees, including the events leading to the payment of top-ups to certain Delphi employees, and how the termination of the plans compared to the termination of other large pension plans. In contrast, SIGTARP focused on whether GM's decision to provide additional funding for the hourly plan was influenced by Treasury or the Administration.

provides a reasonable basis for findings and conclusions based on our audit objectives.[6]

Key Events Leading to the Termination of Delphi's Pension Plans

Three Unions Secured Top-Up Agreements in Negotiations Following Delphi's Spin-Off from GM

As part of Delphi's spin-off from GM in 1999, GM was required to collectively bargain with the unions affected by the spin-off—including the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE); and the United Steelworkers of America (USWA), as well as other "splinter" unions.[7] As a result of these negotiations, GM agreed to pay top-ups to "covered employees" with UAW, IUE, or USWA if the Delphi pension plans were terminated or frozen at a later date, covering any difference between the amount PBGC would pay them and the benefit amount promised by the Delphi plans.[8] Also, on December 22, 1999, Delphi agreed to indemnify GM for all benefits provided by GM under the UAW benefit guarantee.[9] At the time GM entered into these agreements, Delphi's salaried plan was fully funded while Delphi's hourly plan was not

[6]For additional information on scope and methodology, see GAO-11-373R, GAO-12-168, GAO-10-492, and GAO-10-151.

[7]The splinter unions include the International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Michigan Regional Council of Carpenters, Local 687 and Interior Systems, Local 1045; International Brotherhood of Painters and Allied Trades of the United States and Canada, Sign and Display Union Local 59; International Brotherhood of Teamsters; International Brotherhood of Boilermakers; International Union of Operating Engineers; and United Catering Restaurant Bar and Hotel Workers.

[8]"Covered employees" were generally defined as those who had been represented by these unions as GM workers and now as Delphi workers with no break in employment or seniority as of May 28, 1999.

[9]This indemnification would allow GM to have a claim against Delphi for any expenses incurred by GM for coverage of guaranteed benefits.

fully funded.[10] GM officials said that because the salaried plan was fully funded at the time of the spinoff, Delphi recognized that the plan was Delphi's responsibility; Treasury officials would also later note, in a legal brief commenting on GM's decision to pay top-ups, that the salaried plan was fully funded at the time GM transferred it to Delphi.

After Delphi Filed for Bankruptcy, Delphi and GM Agreed to Extend the Top-Up Agreements with the Three Unions

From 2001 to 2005, Delphi suffered large losses, and the company filed for bankruptcy in October 2005. After Delphi filed for bankruptcy, Delphi and GM agreed to extend the top-up agreements with UAW, IUE, and USWA.[11] The splinter unions negotiated for other benefits at this time, but were not guaranteed top-ups. No other agreements were reached in relation to top-ups for salaried workers.

In September 2007, GM and Delphi entered into a global settlement agreement that included a plan to transfer assets and liabilities from Delphi's hourly pension plan to the GM hourly pension plan, and for Delphi to freeze new accruals to its hourly plan. The agreement did not establish a specific effective date, but listed various conditions that had to be met for it to become effective. Before becoming effective, the agreement was modified in September 2008, based on further negotiations described below.

Under Delphi's initial reorganization plan, the company planned to emerge from bankruptcy without terminating its pension plans. However, in April 2008, the deal with investors that would have made this possible fell through. Five months later, in September 2008, Delphi and GM amended their September 2007 global settlement agreement to specify

[10]According to data provided by Delphi, based on a fair market valuation of plan assets the Delphi salaried plan was 108.8 percent funded as of year-end 1998 and 122.7 percent funded as of year-end 1999 while the Delphi hourly plan was 69.1 percent funded as of year-end 1999. A plan is fully funded if as of a particular date, plan assets equal or exceed the relevant measure of plan obligations. However, for the typical pension plan invested in a mix of stocks and bonds, measures of funded status can be highly volatile, so that a plan that is fully funded on one date could be substantially less than fully funded on a subsequent date.

[11]In June 2007, GM, Delphi, and UAW entered into a memorandum of understanding (MOU) extending the GM benefit guarantee for Delphi UAW workers, which would be enforceable if benefit accruals for future credited service in the Delphi hourly plan were frozen and if the plan were terminated. On August 5, 2007, GM and Delphi entered into a MOU with Delphi IUE, and on August 16, 2007, with Delphi USWA, providing the same top-up guarantee as the Delphi UAW MOU.

that GM would take responsibility for approximately $3.4 billion of net liabilities in Delphi's hourly plan in two phases. In the first phase, GM would assume a portion of Delphi's hourly plan with net liabilities of $2.1 billion. This transfer took place on September 29, 2008. In the second phase, upon "substantial consummation" of Delphi's reorganization, the remaining assets and liabilities in Delphi's hourly plan would be transferred to GM. No comparable arrangements were made for a transfer of assets and liabilities for Delphi's salaried plan or other smaller plans. In September 2008, Delphi froze its salaried plan and three of its smaller plans, and in November 2008, Delphi froze its hourly plan.[12]

Losses throughout the Automotive Industry Pushed Delphi Near Liquidation and GM to Seek Assistance from Treasury

Beginning in the fall of 2008, economic conditions deteriorated throughout the automotive industry. Delphi experienced declining revenues as GM and other manufacturers sharply reduced production in response to rapidly falling sales. According to documents provided by PBGC, when Delphi's financing agreement with its debtor-in-possession (DIP) lenders expired on April 21, 2009, Delphi's operations were threatened by the prospect of imminent liquidation. At that point, PBGC determined that it would seek termination of the Delphi salaried and hourly pension plans to avoid the losses that would result if the DIP lenders were to foreclose on their collateral and break up Delphi's controlled group. However, at the request of Delphi and the DIP lenders, PBGC agreed not to proceed with the termination in order to allow the parties to continue negotiating. In exchange, the DIP lenders agreed to give PBGC advance notice of any decision to foreclose so that PBGC could commence termination of the Delphi pension plans in time to protect PBGC's claims.

Meanwhile, GM's losses in the fall of 2008 led the company to seek assistance from Treasury through the Automotive Industry Financing

[12]A freeze is an amendment to a DB plan to limit some or all future pension accruals for some or all participants. For more information on types of freezes and their effects, see GAO, *Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, GAO-08-817 (Washington, D.C.: July 21, 2008).

Program (AIFP).[13] As a condition of receiving this assistance, GM was required to develop a restructuring plan to identify how the company planned to achieve and sustain long-term financial viability. In April and May 2009, Treasury worked with GM to develop a restructuring plan through the Presidential Task Force on the Auto Industry (Auto Task Force) and its staff (auto team).[14] On June 1, 2009, GM filed for bankruptcy and sought the approval of the bankruptcy court for the sale of substantially all of the company's assets to a new entity ("new GM").[15] In court documents, a Treasury official stated that Treasury was mandated by the President to act in a "commercially reasonable manner" as it related to GM's restructuring and ensure that the new GM assumed only those liabilities of the old company that were thought to be "commercially necessary" for the new company to operate.[16] As GM's primary lender, Treasury was concerned about GM's overall exposure to risks related to

[13]In December 2008, Treasury established AIFP under the Troubled Asset Relief Program (TARP) to help stabilize the U.S. automotive industry and avoid disruptions that would pose systemic risk to the nation's economy. TARP was originally authorized under the Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110-343, div. A, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261). EESA originally authorized Treasury to purchase or guarantee up to $700 billion in troubled assets. The Helping Families Save Their Homes Act of 2009 amended EESA to reduce the maximum allowable amount of outstanding troubled assets under EESA by almost $1.3 billion, from $700 billion to $698.741 billion. Pub. L. No. 111-22, div A, § 402(f),123 Stat. 1632, 1658. Under EESA the appropriate committees of Congress must be notified in writing when the Secretary of the Treasury, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines that it is necessary to purchase other financial instruments to promote financial market stability. § 3(9)(B), 122 Stat. 3767 (codified at 12 U.S.C. § 5202(9)(B)). The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, (1) reduced Treasury's authority to purchase or insure troubled assets to $475 billion and (2) prohibited Treasury from using its authority under EESA to incur any additional obligations for a program or initiative unless the program or initiative already had begun before June 25, 2010. Pub. L. No. 111-203, § 1302, 124 Stat. 1376, 2133 (2010).

[14]Treasury established an internal working group—the auto team—to oversee AIFP and provide analysis in support of the Auto Task Force.

[15]On June 1, 2009, GM filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. §§ 1101-1174) and conducted a court-supervised asset sale (under 11 U.S.C. § 363), in which substantially all of the operating assets of the company were sold to General Motors Company, or "new GM," and most of the company's debt and liabilities remained in the possession of Motors Liquidation Company, or "old GM," to be addressed in bankruptcy court. New GM emerged on July 10, 2009.

[16]Deposition of Treasury Official at 185, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009) and Motion of Defendants U.S. Department of the Treasury et al. at 10, No. 2:09-cv-13616 (E.D. Mich. Feb. 16, 2010).

distressed suppliers, including Delphi. Specifically, Treasury was concerned about how GM's Delphi liabilities would fit within the new company's business plan. According to a Treasury official's deposition, Treasury's mandate to restructure GM included helping GM determine the "best resolution" of the Delphi bankruptcy from GM's perspective, which was guided by three principles (see table 1). However, according to Treasury's February 2010 court motion, the Auto Task Force did not dictate what should be done with the Delphi pensions.

Table 1: Treasury's Guiding Principles for Resolving GM's Liabilities Related to Delphi

Principle	Treasury rationale
Development of a resolution that guaranteed the "sanctity" of GM's supply chain	Treasury did not want GM's attention, which was focused on its own restructuring, to be diverted to finding suppliers for the products provided by Delphi.
Quick resolution of the Delphi bankruptcy	Treasury wanted Delphi's bankruptcy to conclude sooner rather than later, given that Delphi already had been in bankruptcy for 3 years.
A resolution that required the least possible amount of investment by GM	Because GM already had invested billions of dollars in Delphi during Delphi's bankruptcy process, Treasury believed that GM should not provide additional money to Delphi absent an overall resolution of the Delphi bankruptcy.

Source: Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

In May 2009, Treasury had anticipated that Delphi's salaried pensions would be terminated, but that GM would assume additional liabilities for the Delphi hourly plan, as called for in the second phase of the September 2008 agreement. Additionally, on June 1, 2009, Delphi announced that its hourly plan would be "addressed by GM." However, the second phase transfer called for Delphi to pay a $2.055 billion administrative claim to GM, which it could not do. In the Treasury official's deposition, it was noted that shortly after GM's bankruptcy filing, GM notified Treasury that it had not built sufficient funding into its restructuring plan to take on the hourly plan, but that it had built in the assumption that it would provide the top-up for Delphi UAW retirees. The second phase of the transfer of hourly plan liabilities from Delphi to GM was not in GM's reorganization plan and never took place.

GM's Reorganization Maintained Delphi UAW Top-Ups Based on UAW's Continued Relationship with GM

As part of the sale of the assets of old GM to new GM, GM negotiated with UAW—which represented its largest employee group—to modify wages, benefits, and work rules to be more cost competitive. As a result of these negotiations, GM and UAW agreed that new GM would assume all employment-related obligations and liabilities under any assumed employee benefit plan relating to employees who are or were covered by UAW collective bargaining agreements in its master sale and purchase agreement, which included GM's obligation to provide top-ups to Delphi UAW retirees.[17] No other negotiations took place that resulted in comparable obligations concerning top-ups for members of the two other unions, IUE and USWA (although they had previously secured top-up agreements with GM) or for the splinter unions or the salaried employees who had no previous top-up agreements with GM.

On June 19, 2009, IUE and USWA objected to the proposed sale of GM's assets because retirees of Delphi represented by IUE and USWA would not receive the same benefits as retirees of Delphi represented by UAW.[18] The court overruled these unions' objection to the sale, stating that new GM needed a "properly motivated workforce to enable [new GM] to succeed," requiring it to enter into "satisfactory agreements with the UAW" and was not "similarly motivated in triaging its expenditures to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM."[19] Accordingly, the bankruptcy court approved the sale of GM's assets on July 5, 2009, and those assets were conveyed to new GM on July 10, 2009.

Delphi Publicly Stated That It Was Unable to Fund Its Plans and the Plans Were Terminated

On June 1, 2009, Delphi, citing its inability to fund its plans and a lack of feasible alternatives, publicly stated that PBGC "may initiate an involuntary termination" of the Delphi salaried plan. Delphi and GM entered into agreements with PBGC that provided PBGC an unsecured claim in Delphi's bankruptcy and released PBGC's current claims and

[17]The master sale and purchase agreement outlined, among other things, the assets being sold by old GM to new GM and the liabilities being assumed by new GM from old GM. In re GMC, 407 B.R. 463, 481 (Bankr. S.D.N.Y. 2009) (Decision on debtor's motion for approval of (1) sale of assets to Vehicle Acquisitions Holdings LLC; (2) assumption and assignment of related executory contracts; and (3) entry into UAW retiree settlement agreement).

[18]Objection to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k) and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (II) Schedule Sale Approval Hearing, In re General Motors Corporation, No. 09-50026(REG) (Bankr. S.D.N.Y. June 19, 2009).

[19]407 B.R. 512.

foreign liens on Delphi's assets on July 21, 2009.[20] On July 22, 2009—12 days after the sale of old GM's assets to new GM—PBGC announced the termination of all six of Delphi's qualified DB plans, and on August 10, 2009, PBGC assumed trusteeship of the plans. PBGC determined that the Delphi pension plans were underfunded by $7 billion when they were terminated. PBGC estimated that it would need to make up about $6 billion of that shortfall using PBGC funds,[21] leaving plan participants to bear the loss of the $1 billion difference through reduced benefit amounts provided by PBGC, consistent with statutory limitations.[22]

New GM Ultimately Agreed to Provide Top-Ups for IUE and USWA to Help Finalize Delphi's Bankruptcy

The approval of the sale of old GM did not resolve IUE's and USWA's claims that new GM was required to continue to provide the pension benefit guarantees in accordance with collectively bargained agreements. Both old GM and new GM denied these claims. According to a company filing, new GM maintained that it was not obligated to assume or to continue to abide by old GM's collective bargaining agreements with IUE and USWA, while old GM maintained that it was entitled to cancel or terminate all obligations arising from collective bargaining agreements between old GM and IUE or USWA. In the summer of 2009, IUE and USWA shifted the focus of their objections from the GM bankruptcy settlement to the Delphi bankruptcy settlement. On July 9 and July 15,

[20]PBGC agreed to release its $196 million of foreign liens (foreign subsidiaries had not filed for bankruptcy) and other termination claims in exchange for a $3 billion unsecured claim in Delphi's bankruptcy, a $70 million cash contribution from GM, and 10 percent of the first $7.2 billion of distributions from Delphi Automotive LLP, the newly created British partnership that purchased most of Delphi's assets.

[21]GM also assumed about $2 billion in net liabilities when it accepted the transfer of about a fourth of Delphi's hourly plan in September 2008. In addition, GM expects to pay an estimated $1 billion in top-up benefits to Delphi hourly employees.

[22]PBGC pays participant benefits only up to certain limits set forth by the Employee Retirement Income Security Act of 1974. 29 U.S.C. §§ 1322 and 1322a. Participants whose benefits under the plan would otherwise exceed these statutory limits may have their benefits reduced to the guaranteed amount, unless the plan has sufficient assets to pay the nonguaranteed portion of their benefits, either in part or in full.

2009, IUE and USWA, along with some of the splinter unions, filed objections against Delphi's proposed reorganization plan and sale.[23]

While new GM maintained that it was not obligated to provide top-ups to Delphi IUE and USWA retirees, it did have reason to want to resolve Delphi's bankruptcy, given GM's reliance on Delphi for parts.[24] Moreover, IUE and USWA, which still represented part of Delphi's workforce, needed to give their consent to finalize the sale of assets in Delphi's bankruptcy.[25] According to a GM official's court declaration, a prolonged cessation in the supply of parts from Delphi to GM would have had a "devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts

[23]Preliminary Objection of IUE-CWA to Motion for Order Authorizing and Approving the Equity Purchase and Commitment Agreement Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code, No. 05-44481 (RDD), (Bankr. S.D.N.Y. July 9, 2009) and Joinder of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union to Preliminary Objection of IOUE Locals and IBEW and IAM to Debtors' Motion for Order Authorizing and Approving Modified Plan of Reorganization, No. 05-44481 (RDD), (Bankr. S.D.N.Y. July. 15, 2009). Objection to Debtors' Proposed Modifications to Debtors' First Amended Plan of Reorganization (As Modified) at 2, No. 05-44481 (RDD) (Bankr. S.D.N.Y. July 15, 2009).

[24]According to a July 2009 declaration of a GM official, since the spin-off from GM, Delphi was GM's largest component parts supplier, accounting for approximately 11.3 percent of GM's North American purchases and 9.6 percent of GM's global purchases in 2008. Declaration of Randall L. Pappal in Support of Debtors' Motion for Entry of Order Approving (I) Master Disposition Agreement for Purchase of Certain Assets of Delphi Corp., (II) Related Agreements, (III) Assumption and Assignment of Executory Contracts, (IV) Agreement with PBGC, and (V) Entry into Alternative Transaction in Lieu Thereof, at 4, In re General Motors Corp., No. 09-50026 (Bankr. S.D.N.Y. July 8, 2009).

[25]Master Disposition Agreement among Delphi Corp.; GM Components Holdings, LLC; Gen. Motors Co., Motors Liquidation Co.; DIP Holdco3, LLC; and the Other Sellers and Other Buyers Party Hereto at 96 (July 26, 2009).

suppliers."[26] As a result, new GM signed a settlement agreement in September 2009 that, among other things, required new GM to provide top-ups to retirees of Delphi represented by IUE or USWA who were covered by the benefit guarantee agreements that GM had entered with IUE and USWA in 1999.[27] As part of the settlement agreement, IUE and USWA agreed to withdraw their objections against Delphi's bankruptcy, resulting in the completion of Delphi's reorganization on October 6, 2009, with the sale of its assets.

GM's agreements with certain unions gave rise to differences in participant benefits. Because Delphi's pension plans were terminated with insufficient assets to pay all accrued benefits in July 2009, and because PBGC must adhere to statutory limits on the amount of benefits it guarantees to individuals, many Delphi retirees will receive less from PBGC than their full benefit promised by Delphi. Based on PBGC's review of cases as of June 2011, when we conducted our December 2011 study, just under half of both the hourly and salaried plan retirees had received reductions in their promised benefits due to the application of statutory benefit limits. However, those participants in the hourly plan receiving the top-ups were protected from such benefit reductions because GM had agreed to supplement their PBGC benefit to replace any benefit loss, while other hourly employees as well as employees in Delphi's salaried plan and the other smaller plans were not protected from such losses.

[26]The July 2009 declaration of a GM official stated that Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts that are used in almost every GM product line in North America and identified several ways in which a cessation of parts delivery by Delphi could affect GM, including that (1) most parts that Delphi manufactures for GM are not readily available from an alternate source, and while GM could accelerate efforts to re-source Delphi parts in the event of a supply interruption, the sheer magnitude of the parts to be re-sourced and revalidation required would take at least several months to achieve; (2) because GM operates on a just-in-time inventory delivery system, GM plants relying on just-in-time shipments may run out of inventory of such parts and have to shut down within a matter of days, if Delphi ever ceased shipping even a small fraction of production parts to GM; and (3) the shutdown of GM plants as a result of termination of deliveries of affected parts from Delphi could idle tens of thousands of GM workers, significantly decrease GM's revenues, and increase GM's costs to expedite resourcing efforts.

[27]Settlement Agreement Between and Among GMCO/MLC-IUE-CWA and USWA Regarding Retiree Health Care, Life Insurance, Pension Top-Up, and Modification and GMCO Assumption of MLC-IUE-CWA CBA, dated Sept. 10, 2009.

Treasury Worked with GM to Resolve the Delphi Bankruptcy

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy in terms of GM's interests. However, court filings and statements from GM and Treasury officials suggest that Treasury deferred to GM's business judgment about the Delphi pension plans—that is, their sponsorship and the decision to honor existing top-up agreements. According to public records and Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of sponsoring the Delphi hourly plan. Additionally, PBGC officials have maintained that their agency's decision to terminate the Delphi plans was made independent from Treasury's input. As we reported in 2011, Treasury officials said that while Treasury did not explicitly approve or disapprove of GM's agreeing to honor previously negotiated top-up agreements with some unions, it agreed that GM had solid commercial reasons to enter into such an agreement.

Decisions Related to Plan Sponsorship

From Treasury's initial discussions with PBGC about Delphi's pensions in April 2009 until after GM's bankruptcy filing on June 1, 2009, Treasury had anticipated that PBGC would terminate Delphi's salaried pension plan but that GM would assume the remaining portion of Delphi's hourly plan, as called for in the second phase of the September 2008 agreement.[28] According to a Treasury official's deposition and our interviews with Treasury officials, Treasury agreed with GM's rationale not to assume the now underfunded Delphi salaried plan, because that plan had been fully funded when GM transferred it to Delphi in 1999. However, the Treasury official's deposition indicated that Treasury thought it was reasonable for GM to assume the Delphi hourly plan for UAW-represented workers, because of UAW's continuing role with the new GM and because the hourly plan, which covered both the UAW and other union-represented workers, had not been fully funded at the time the plan was transferred from GM to Delphi in 1999.[29]

According to our review of the records, Treasury was involved in discussions with PBGC and GM on how to address Delphi's pensions before GM's bankruptcy filing. Specifically, according to a Treasury official's deposition, initial discussions with PBGC, GM, and Treasury in

[28]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

[29]According to the deposition, Treasury was not focused on the other unions' plans at this time but was concerned about UAW because of UAW's role for new GM.

April and May 2009 centered on trying to reach an agreement under which, among other things, the Delphi salaried plan would be terminated and GM would assume the hourly pension plan. According to PBGC officials, discussions in April and May 2009 revolved around how to deal with Delphi's pension plans in light of the collapse of the automotive market, growing concerns about Delphi's imminent liquidation and inability to maintain its pension plans, and GM's own financial difficulties and impending bankruptcy. However, PBGC officials told us that they had not yet reached any agreement with GM or Delphi about the future of the Delphi pension plans.

According to court filings, GM officials first informed Treasury on June 3, 2009, (shortly after GM's bankruptcy filing) that they had concerns about taking on the hourly plan and had not built the cost of doing so into their restructuring plan. In June 2009, GM developed and provided Treasury with an assessment of the costs of Delphi's pensions, which explained that the restructuring plan did not assume the transfer of remaining Delphi hourly or salaried plans. The assessment also stated that, subject to certain conditions, GM was obligated to absorb the second transfer of Delphi's hourly plan but did not expect Delphi to meet those conditions.[30] GM also noted that it was not obligated to absorb Delphi's salaried plans. After reviewing GM's calculations and engaging in discussions with GM's pension team, Treasury agreed with GM's assessment that taking on the Delphi hourly plan was a "3 billion dollar liability that GM could not afford."[31] In a legal brief, Treasury asserted that the department did not dictate what should be done with the Delphi pensions and that Treasury agreed with GM's decisions.[32]

As we reported in 2011, according to PBGC, Treasury did not play an active role in PBGC's decision to terminate the Delphi plans, although by statute the Secretary of the Treasury is one of PBGC's three board

[30]The assessment added that since the first transfer in September 2008, the unfunded liability for the remainder of Delphi's hourly plan had increased from $1.5 billion to approximately $3.2 to 3.5 billion as of March 31, 2009.

[31]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009). Upon termination in July 2009, PBGC calculated that the underfunding of the hourly plan totaled $4.4 billion.

[32]Motion of Defendants U.S. Dep't of the Treasury et al. to Dismiss or, in the Alternative, for Summary Judgment at 24, No. 2:09-CV-13616 (E.D. Mich. Feb. 16, 2010).

members.[33] According to PBGC officials, PBGC's director at the time informed the board of PBGC's decision to seek termination of the Delphi plans, gave the board advance notice of subsequent implementation of that decision, and routinely kept the board informed of the agency's actions in the Delphi bankruptcy case, consistent with PBGC's practice in other large cases. The law gives the board responsibility to establish and oversee PBGC policies, but according to PBGC, the board decides broad policy issues that may arise from cases without getting involved directly in those cases.[34] For their part, Treasury officials acknowledged that the department had multiple roles in this process by virtue of its roles in PBGC oversight and in managing the U.S. investment in new GM, but noted that Treasury does not communicate with PBGC about its GM investment activities.[35] Moreover, in response to questions from Congress, the Treasury Secretary stated that Treasury did not make the decision to terminate Delphi's pension plans.[36]

Decisions Related to Top-Up Agreements

Although GM decided not to assume the second installment of Delphi's hourly plan, GM did decide to honor existing top-up agreements for commercial reasons that Treasury found reasonable. As noted in a Treasury official's deposition, during GM's bankruptcy process, GM was prepared to honor the obligation of providing top-ups to Delphi UAW retirees, while the situation was less clear in relation to comparable agreements with IUE and USWA. GM officials told us that the company agreed to honor the top-up agreement with UAW during its restructuring because of its dependence on the union, whose members made up a substantial part of GM's workforce. As previously noted, GM agreed to

[33]29 U.S.C. § 1302(d). As we reported in GAO-12-168, PBGC's decision to terminate the plans was ultimately precipitated by the apparent lack of a viable sponsor, impending foreclosure on Delphi's assets, and the prospect of increased losses for PBGC and the plans that would occur upon liquidation. Our examination of PBGC termination decisions for nine of its ten largest insurance claims (Delphi's being the tenth) shows the agency making assessments similar to those it made for the Delphi pension plans. See GAO-12-168 for more details on this work.

[34]29 U.S.C. § 1302(d) and (f).

[35]GAO-10-492.

[36]The Federal Bailout of AIG: Hearing before the H. Comm. on Oversight and Government Reform, 111th Cong. 310 (2010) (answers to questions for the record from Timothy Geithner, Secretary of the Treasury).

provide top-ups to the Delphi UAW retirees as part of GM's master sale and purchase agreement, to which Treasury gave its approval.

According to a Treasury official's deposition, Treasury was kept apprised of GM's ongoing bargaining with IUE and USWA on a variety of issues, including the top-ups.[37] According to Treasury officials, Treasury's consent for transactions greater than $100 million, which had been required before GM's bankruptcy, was not required of new GM. Therefore, Treasury's consent was not required when the settlement agreement was signed 2 months after new GM began operations. Negotiations resulted in the September 2009 settlement agreement between new GM, old GM, IUE, and USWA. According to the agreement, the parties entered into it after consideration of the "factual and legal arguments regarding these issues, as well as the costs, risks, and delays associated with litigating these issues."[38]

As we reported in 2011, although Treasury officials said Treasury did not explicitly approve or disapprove of GM providing top-ups to the Delphi UAW, USWA, and IUE retirees, Treasury subsequently commented on GM's decision. In its legal brief, Treasury stated that GM had solid commercial reasons for providing the top-ups.[39] Specifically, Treasury stated that its aim in negotiating the details of GM's reorganization plan was to ensure that new GM would assume only those liabilities of old GM that were "commercially necessary" for new GM to operate. Treasury noted in the brief that because of new GM's dependence on the UAW workforce and the costs, risks, and delays associated with litigating USWA's and IUE's claims related to the Delphi bankruptcy, new GM had solid commercial reasons to agree to provide the top-ups to the Delphi UAW, USWA, and IUE retirees. Additionally, Treasury officials noted that, unlike the hourly plan, the salaried plan was fully funded at the time GM transferred it to Delphi. Also, because GM was never obligated to provide top-ups to the salaried or other retirees not represented by UAW, IUE,

[37]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

[38]Settlement Agreement Between and Among GMCO/MLC-IUE-CWA and USWA Regarding Retiree Health Care, Life Insurance, Pension Top-Up, and Modification and GMCO Assumption of MLC-IUE-CWA CBA, dated Sept. 10, 2009.

[39]Motion of Defendants U.S. Dep't of the Treasury et al. at 28, No. 2:09-cv-13616 (E.D. Mich. Feb. 16, 2010).

and USWA, GM did not have any legal obligation to agree to provide top-ups to these groups.

Treasury's Multiple Roles Created Perceived or Potential Conflicts

The termination of Delphi's pension plans culminated from a complicated and intertwined set of events involving Delphi, GM, various unions, and Treasury, as well as PBGC. That some participants will not get the full benefits promised to them by their employer is not unusual when companies go bankrupt and leave their plans with large unfunded liabilities. At the same time, the role that GM and Treasury played in the events leading up to termination caused the process to be unusual in several respects. As we have reported previously, Treasury's multiple roles in situations involving the auto industry and workers' pensions created potential tensions and challenges.[40] These roles include shareholder, creditor, investor, regulator and policymaker. For example, with regard to its roles in the termination of the Delphi pension plans, Treasury, as a policymaker, had an interest in safeguarding taxpayer investment. However, as a regulator—through the Secretary of the Treasury's role on PBGC's board—its role was to protect the financial viability of workers' pension plans. These roles created perceived or potential conflicts as decisions were made about the timing of the termination of the plans.

In examining lessons learned from the government's assistance to private companies, we have also previously reported that being both a creditor and a shareholder in private companies—as Treasury was for a period time for GM—created another conflict for the government.[41] For instance, as a major creditor, the government was more likely to be involved in an entity's operations than it was when acting only as a shareholder, and operational decisions that it imposed could affect returns on taxpayer investments. Additionally, the varied and sometimes conflicting roles of the government as a shareholder, creditor, regulator, and policymaker potentially subjected private companies to greater government scrutiny and pressure than they might have otherwise experienced. In particular, the government's investments in these companies increased the level of

[40]See, GAO-10-492 and GAO, *Financial Assistance: Ongoing Challenges and Guiding Principles Related to Government Assistance For Private Sector Companies,* GAO-10-719 (Washington, D.C.: Aug. 3, 2010).

[41]GAO-10-719.

government and public oversight and scrutiny these companies received, as policymakers, elected officials, and regulators worked to ensure that taxpayer interests were protected. The companies may also have been subjected to pressure from government officials to reconsider or alter business decisions that affected the companies' bottom lines. For example, Chrysler and GM faced pressure to reinstate many of the auto dealerships they had slated for closure.[42]

Although Treasury has established policies to separate these interests, and various parties told us that Treasury did not play an active role in decisions regarding Delphi's plans, potential tensions due to these multiple roles remained. Treasury established various structures to mitigate any potential or perceived conflicts of interest related to its investment in the automakers. For example, Treasury developed core principles to guide its oversight of its investments: (1) acting as reluctant shareholder, for example, by not owning equity stakes in companies any longer than necessary; (2) not interfering in the day-to-day management decisions; (3) ensuring a strong board of directors; and (4) exercising limited voting rights. As we reported in 2010, according to Treasury officials, the use of these core principles helped limit the reach and ability of the government to exert its powerful influence on the business and operational matters of the companies. In addition, Treasury established a protective barrier between the Treasury officials (beneath the Secretary level) who made policy-related decisions with respect to investments in GM and the Treasury officials who were responsible for regulating pensions or overseeing the operations of PBGC. Despite these efforts, we noted in 2010 that tensions among the multiple roles remained. To help mitigate the potential or perceived tensions, we emphasized the importance of Treasury regularly communicating with Congress about its oversight and activities related to its investments in the automakers.[43] In response to a previous recommendation, Treasury implemented a revised reporting policy, attempting to balance concerns about publicly disclosing proprietary information in a competitive market with the need for greater transparency.

[42] GAO-10-151.

[43] GAO-10-492.

This concludes our prepared statement. We would be pleased to answer any questions you may have.

GAO Contacts and Staff Acknowledgments

For further information on this testimony or GAO's March and December 2011 reports on the termination of Delphi's pension plans, please contact me at (202) 512-7215 or bovbjergb@gao.gov, or A. Nicole Clowers, Director, Financial Markets and Community Investment Issues at (202) 512-8678 or clowersa@gao.gov. Other key contributors to this statement include Mark M. Glickman, Heather Krause, Raymond Sendejas, and Margie Shields. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement.

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STATEMENT OF MATTHEW FELDMAN

TO

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF RESPRESENTATIVES

September 11, 2013

Mr. Chairman and Members of the Subcommittee, I understand that I have been invited to appear before you today to discuss my role with the Treasury Department's Auto Team, which I joined in March 2009 as Chief Legal Advisor and on which I served until August 2009. The Treasury Department recruited me to join the Auto Team from my career as an attorney in private practice, where I specialize in reorganizing and restructuring large businesses not unlike the American automobile manufacturers that were in significant financial distress at that time. I believe that the work of the Auto Team contributed to a successful effort to avert disastrous consequences to both the American automobile industry and the American economy as a whole. Now, just four years after emerging from bankruptcy both General Motors and Chrysler are selling cars and adding jobs at a pace most thought unachievable. I remain proud of my service and I am prepared today to assist the Subcommittee in reaching a complete understanding of the Auto Team's work with respect to General Motors and in particular its relationship with its critical supplier Delphi Corporation during what was a difficult time and an unprecedented challenge for all involved.

Although it is wonderful to see the dramatic recovery of the automobile manufactures, and the thousands of American jobs that were saved and have been created as a result of our work, I am mindful that the restructurings that the Auto Team worked on required many Americans to make great personal sacrifices. As a result of the Delphi Corporation bankruptcy, for example, Delphi's lenders, some of which had purchased Delphi's debt at a steep discount exerted significant influence over Delphi and ultimately the Pension Benefit Guarantee Corporation (PBGC) which forced the PBGC to terminate Delphi's pension plans. As a result of what occurred during the Delphi bankruptcy, there are Delphi retirees who unfortunately will collect less than their full pension benefits.

As stated by the Special Inspector General for the Troubled Asset Relief Program (TARP) in her August 15, 2013 Report to Treasury Secretary Lew, in 1999 when General Motors spun out Delphi as a separate company, Delphi's pension plan for its salaried employees was significantly overfunded (at 123% of expected payments needed to cover Delphi's salaried employees), but pension plan for hourly workers was significantly underfunded (at 69% of the expected payments needed to cover hourly retirees). To garner support and consent from the United Auto Workers (UAW) and other unions for the Delphi spin off and to avoid having to make a significant payment in 1999, General Motors and the UAW entered into a "top-up" agreement whereby General Motors agreed to make whole hourly employees being transferred to Delphi on their pension obligations in the unlikely, but ultimately real, event that Delphi defaulted on its pension obligations.

Following years of mismanagement and malfeasance, Delphi was forced to file for bankruptcy in 2005, after having allowed both its salaried and hourly pension plans to become underfunded, a situation that ultimately led the PBGC to conclude it needed to take action to terminate both plans. As stated by the GAO in its March 30, 2011 report to Congress on this topic, the PBGC reached its own conclusion to terminate the Delphi pension plans presumably after concluding that this was proper action to take under applicable law and that among the limited options available for these plans, the termination and takeover by the PBGC was the best choice available. While I can understand why all parties involved would have preferred if General Motors had assumed these Delphi pension plans, taking on these liabilities in full would have threatened General Motors' future success as it exited from its own bankruptcy.

While General Motors was not willing to assume all of the pension plans, as the August 2013 SIGTARP Report makes clear, because General Motors viewed a well-motivated workforce at its own facilities and at its largest supplier as critical to ensuring an uninterrupted supply chain, General Motors made the commercially reasonable and necessary decision to honor its legal obligation memorialized in the "top-up" agreement with the UAW which it had entered into in 1999. The decision to assume the UAW top-up agreement was bargained for by the UAW and agreed to by General Motors after having been extended once by the parties in 2007. As this Subcommittee is aware, unfortunately many of Delphi's employees did not have similar top-up agreements with General Motors, and some of those employees will face a shortfall in their pension payments.

While the Auto Team agreed that honoring the top-up agreement was a prudent business decision, and we believed that doing so would protect both General Motors and the American taxpayers' collective investment in the company, the decision to honor the top-up agreement was wholly General Motors'. Our agenda was simple; the Auto Team was focused primarily on limiting the number of days General Motors spent in bankruptcy and ensuring a continuing supply of parts from Delphi.

The desire to limit General Motors' stay in bankruptcy was purely economic. Every week of bankruptcy where General Motors continued to carry all of its costs, but generated little or no revenue would cost the American taxpayers hundreds of millions if not billions of dollars. The need for General Motors to complete its 363 sale within the 40-day[1] time period was intended, among other benefits, to limit the costs being borne by the taxpayers. We worked tirelessly with General Motors and its key constituents prior to its filing for bankruptcy to line up support and consensus in order to try to avoid delays to the 363 process.[2] Delay would cost enormous sums of money that would more than outweigh the potential savings and imperil the ultimate goals of preserving General Motors and the auto industry as a whole.

With respect to the preservation of the supply chain, Delphi parts where used in literally every car assembled by General Motors at that time. Moreover, Delphi supplied parts to nearly every other auto manufacturer both domestic and foreign. A complete shutdown of Delphi by its creditors which was being threatened, even before the Auto Team was formed, would have had a material negative impact across an industry that was already staring into a financial abyss. It would have been costly and ultimately unconscionable to encourage General Motors to emerge from bankruptcy, but have Delphi continue to point an economic gun to its head. As a result, in the Spring of 2009 Delphi also needed to find a path to emerge. Ultimately, that path included the PBGC terminating its various pension plans. If the Delphi creditors had agreed to continue to honor those plans that would have been a far preferable outcome. Unfortunately, those creditors refused to consider that path. As a result and as set forth in both

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1 The TARP Report states incorrectly that a 40 day sale was unique or unprecedented. Neither is true. For example, the 363 sale of Lehman Brothers which was both larger and more complex than General Motors and took place during the first four days of the Lehman chapter 11 case.

2 The TARP report suggests that the Auto Team only viewed the UAW and bondholders as key constituents. This was not the case. Another example not cited in the TARP Report was the Attorneys General for nearly 20 states who had organized to oppose a sale that did not respect states' lemon laws and certain state successor liability laws. Rather than fight the Attorneys General which would have taken time and caused delay, General Motors assumed these obligations.

the GAO and TARP Reports, the PBGC took the actions it believed were necessary and appropriate.

While I am pleased that General Motors and other American automobile manufacturers have become successful, profitable contributors to our economy, I recognize that the restructuring process imposed by the statutory schemes created by Congress have resulted in painful but necessary sacrifices on many of Delphi's stakeholders. As a bankruptcy practitioner and restructuring specialist, I have seen similar circumstances all too often; it is without a doubt one of the most difficult, disheartening aspects of my job, and I have only the deepest sympathies for everyone affected.

I am here today prepared to answer any questions the Subcommittee has concerning my role on the Auto Team.

Statement of Steven Rattner

Before the Subcommittee on Government Operations,
House Oversight and Government Reform Committee

September 11, 2013

Chairman Mica, Ranking Member Connolly, and members of the Subcommittee, good afternoon and thank you for the opportunity to speak to you today about the extraordinary and successful effort, which spanned two Administrations, to save the American auto industry. As you know, I served in the Treasury Department from February to July 2009 as lead auto advisor, reporting to the Secretary of the Treasury and the Director of the National Economic Council. Because I left government service in July 2009, I want to remind the Subcommittee that I am not in a position to discuss events that occurred after that date nor current policy.

It is sometimes difficult to recall that just five years ago, the American auto industry was in a severe crisis that threatened its very existence and the broader American economy. It is incontrovertible that absent government intervention, both General Motors and Chrysler would have been forced to cease production, close their doors, and lay off virtually all workers. Those shutdowns would have reverberated through the entire auto sector, causing innumerable suppliers to almost immediately also stop operating. More than a million jobs would have been lost, at least for a time. Michigan and the entire industrial Midwest would have been devastated.

Everything we in the government did at that time was driven by our profound desire to prevent such an economic calamity, while honoring our responsibilities to the taxpayers. And by any objective measure, I believe our efforts were a success.

Today GM is once again profitable and healthy. It has gone from a company that was hemorrhaging money before the financial crisis to one that turned a $1.2 billion profit in its most recent quarter, driven by strong North American sales. The restructuring of GM’s contract with the United Auto Workers provided the company with new flexibility to use its work force efficiently and expanded its ability to hire new workers at considerably lower costs. And GM has vastly improved its product lineup, so that it is once again selling the kinds of cars consumers want to buy and demonstrating the power of American ingenuity, engineering, and manufacturing.

At the same time, the government is successfully winding down its ownership stake in GM and returning it to private hands. Of the $51 billion that the taxpayers invested in GM, more than $34 billion has been repaid to the Treasury. And Treasury has stated that further GM stock sales are planned in the coming year. This makes clear that the government’s actions were a necessary and prudent emergency measure to get GM back on its feet, not a permanent government takeover of private industry, as some at the time feared.

This remarkable turnaround could not have occurred without significant restructuring at GM—a restructuring that regrettably, but inevitably, involved painful sacrifices from all of GM’s stakeholders, but particularly its bondholders, dealers, suppliers, employees, and retirees. It is not easy to make these kinds of decisions under any circumstances; it was particularly challenging in the crisis atmosphere GM was facing at the time. No one wants to get cents on the dollar of their investment, or have their dealership closed, or see their incomes or benefits reduced. These are personal, pocketbook issues for those affected, and unfair almost by definition.

To understand the decisions that were made, I believe it is important to appreciate that the Auto Task Force had two overriding goals: to restore a viable and thriving auto industry while acting as a prudent custodian of taxpayer funds. To achieve these goals, we were guided by the principle that Treasury, as GM's investor and partner in bankruptcy, was entitled to set parameters and provide guidance to GM that was consistent with what would be commercially reasonable. In accordance with that principle, the Auto Task Force helped GM determine the broad strategic policies that would return the company to competitiveness at the least cost and risk to taxpayers. Day-to-day management remained the responsibility of GM.

I know that the Subcommittee is interested in one of those decisions in particular, which was GM's decision to honor a pre-existing commitment to provide supplemental pension benefits, or "top-ups," to certain hourly employees at Delphi, a critical GM parts supplier that was itself in bankruptcy. Other hourly employees and salaried employees at Delphi were not provided similar top-ups. Although I fully understand that it was painful for the salaried employees who saw their pensions cut—and perhaps made more painful by the fact that some of their hourly colleagues did receive top-ups—I believe the Special Inspector General's report makes clear that GM's decision to honor its top-up agreement in bankruptcy was consistent with a commercially reasonable approach.

The Delphi hourly employees who received top-ups were differently situated from the salaried employees who did not, for reasons that pre-dated GM's bankruptcy and the work of the Auto Task Force. GM had fully funded the salaried employees' pensions, but not the hourly employees' pensions, before the Delphi spin-off in 1999. At that time, the hourly employees negotiated for a top-up agreement from GM but the salaried employees, who were fully funded, did not. As the Special Inspector General's report explains, GM was therefore under no obligation to top-up the salaried employees' pensions, and indeed, doing so on its own initiative would have been like paying for the pensions twice. Such an action, while generous, would not have been consistent with the goals of restoring GM to viability or protecting U.S. taxpayers' investment.

It is certainly true that in bankruptcy, GM had the option of refusing to honor its agreement to top-up the hourly workers' pensions as well. Again, I think the Special Inspector General's report makes clear that its decision to honor the prior agreement was consistent with what was commercially reasonable. Those employees were represented by the UAW, the same union that represents 99% of GM's unionized workforce. The UAW was an absolutely critical party to bring to the negotiating table. They had the power to hold up a deal in bankruptcy or to strike, either of which could have been devastating to GM's efforts to get back on its feet and in turn, to the U.S. economy. This disparity in bargaining leverage may not seem fair, but it was the reality. And as I mentioned earlier, GM extracted considerable concessions from the UAW in order to reduce GM's labor costs going forward and get it on a sustainable, profitable path.

Five years later, I think it is clear that the government's extraordinary intervention into the auto industry has been a success. Today, the Big Three are alive and well, turning consistent profits, and helping to anchor the recovery of the American economy and lead a renaissance in American manufacturing. A million jobs were saved and more are being added. It is important to remember that this outcome was not inevitable. It involved creativity and shared sacrifice and a considerable investment by the American people. I deeply wish that the actions we took did not have to be taken, but I am proud we avoided a devastating dissolution of this vital sector of the economy and gave the American auto industry the opportunity to once again lead and succeed.

Thank you, and I am happy to answer any of your questions.

Written Testimony of Harry Wilson, Former Senior Advisor to the Secretary of the Treasury
Before the House Subcommittee on Government Operations

September 11, 2013

Chairman Mica, Ranking Member Connolly and members of the Subcommittee, thank you for the opportunity to testify before you today. I am here to report, at your request, on the government's efforts in 2009 to avoid a catastrophic collapse of the U.S. automotive industry and specifically the recent SIGTARP report entitled, "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees."

My testimony today is in my capacity as a former Treasury official. I left Treasury in early August 2009, so that is the limit of my direct knowledge.

First, some brief background on myself. I have spent the vast majority of my career in the private sector, working at some of the best financial firms in the country, with a focus on fixing troubled businesses.

As the late 2008 financial crisis deepened, and the Bush and then Obama administrations began to intervene through TARP, I felt it was critical that Treasury had people with the restructuring skills that I had in order to maximize the prospects for success and minimize the cost to taxpayers.

So though I am a lifelong Republican, I joined the Auto Team in early March 2009 and focused primarily on the General Motors rescue. After General Motors exited bankruptcy, I wrapped up my work and left the Treasury. I currently run a turnaround and transformation firm I founded, The MAEVA Group, LLC.

Let me turn to the subject of today's hearing, the recent SIGTARP report. I would like to provide comments in several respects.

First, I believe the body of the report makes clear that General Motors management acted in a commercially reasonable manner in determining how they would treat various groups of Delphi retirees.

General Motors had a choice. Option A, they could choose to not provide any funding at all for Delphi's underfunded pension plans. Option B, they could choose to fully fund ("top up") or even assume all of Delphi's underfunded pension plans. Or, Option C, they could choose to fund/"top up" only the plans they needed to preserve the viability of GM's own reorganization process.

As the SIGTARP report clearly shows, Option A was not a viable option. GM's CEO at the time, Fritz Henderson, indicated that if the pension benefit guarantee with the UAW was not assumed by New GM, there would have been a strike and thus it was "mission impossible."[1]

GM management believed there was no commercial justification for Option B, which would have involved assuming or "topping up" the pensions of nearly 70,000 salaried and hourly pensioners,[2] a majority (20,203 salaried, 18,675 hourly and 2,209 retirees in smaller plans)[3] of whom GM had never committed to support after the 1999 Delphi spin-off[4] (with the salaried plan being substantially overfunded at the time of the spin-off)[5] and who had no ongoing commercial relationship with General Motors. At Delphi itself, none of the prospective investors in Delphi had indicated a willingness to maintain its pension funds.[6] Unfortunately, there was no contractual or market-based support for Option B.

That left only Option C, the path GM ultimately pursued, where they agreed to assume existing "top up" agreements only in cases where they felt they needed to in order to successfully emerge from bankruptcy and operate successfully thereafter.

The record clearly supports these facts.

However, I need to disagree with, and correct for the record, several incorrect characterizations made in the summary and conclusion sections of the SIGTARP report.

First, the report makes several points criticizing the commercial approach which the Auto Team was tasked to utilize. For example, SIGTARP implies the Auto Team worked too closely with GM management in developing a viable plan for GM's restructuring.[7] However, the facts at the time and the results since repudiate this criticism. When the Auto Team was first formed, GM had already failed multiple times to develop a viable plan on its own and the Treasury, and thus the American taxpayer, was funding multi-billion dollar monthly losses. Time was of the essence. In that spirit, the Auto Team worked closely with GM management as they developed their revised viability plan, offering real-time feedback (rather than waiting weeks for a new plan and squandering precious time at great cost) and helping speed along a process that would

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[1] SIGTARP 13-003, "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees," 7/15/2013, p. 25. Similar comments from multiple GM officials on p. 22 and from UAW officials on page 25. While one Delphi salaried retiree acknowledged the UAW's leverage on page 28, representatives of Delphi's salaried retirees told SIGTARP that "they would have no problem if nobody got a top-up" – but what if the logical extension of that position led to the liquidation of General Motors and Delphi?

[2] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011, p. 6.

[3] GAO-12-168, p. 34.

[4] GAO-12-168, p. 19.

[5] GAO-12-168, p. 14.

[6] SIGTARP 13-003, p. 6: "According to the Delphi officials, various investors expressed interest in Delphi, but none wanted to purchase or invest in Delphi if it retained its pension liabilities."

[7] SIGTARP 13-003, pp. 9 (Wagoner resignation "an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations"), 11 ("Treasury's influence and leverage over GM went beyond Treasury's rights under the TARP loan agreement"), 34 ("SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions in areas that did not require Treasury consent").

normally take months and would have cost tens of billions of dollars more than it did. Counter to SIGTARP's assertion that such work, among other similar examples, was "not advisory in nature," this was exactly the type of work which the Auto Team had been created to do: determine if there was a path to viability for General Motors and, if so, work with management to achieve that path.

The commercial success of General Motors since this work was completed in 2009 is beyond dispute. Just last week, a Bloomberg article on the resurgence of the American auto industry stated, "Detroit has come full circle, from bankruptcy to boom . . . Those fatter profits come from trimmer companies that radically restructured operations, shed debts and overhauled their lineups . . . [John Casesa, senior managing director at Guggenheim Partners LLC, added,]'It's a fundamentally different industry.'"[8]

SIGTARP also argues that Treasury inadvertently created negotiating leverage for the UAW due to its aggressive timeline for the restructuring process.[9] Nothing could be further from the truth. The UAW had enormous leverage because they represented nearly 100% of the GM hourly workers with the skills to manufacture cars, and they were prepared to use that clout to press certain key issues. Nothing else in the restructuring process provided them any additional leverage, nor did they need more. The enormous time pressure that GM's operating losses and impending maturities placed on the overall restructuring process had an impact on all stakeholders – from Treasury to management to investors to the UAW -- and pressed each stakeholder similarly towards the eventual deal.

Furthermore, the SIGTARP report is silent on what viable alternatives (if any) there might have been to the path GM pursued. Like all choices in the real world, all of the difficult decisions made during the auto rescues were about a series of trade-offs. For example, SIGTARP implies that the Auto Team should not have established such an aggressive restructuring timeline.[10] However, all industry commentators, GM management and the Auto Team itself were universally convinced that GM could not survive a prolonged bankruptcy; as a result, there was no viable procedural alternative to a very rapid Section 363 sale. Moreover, Section 363 sales like this have been done at times in the past for exactly these reasons, where the business could not sustain a prolonged bankruptcy process.

Similarly, SIGTARP implies that Treasury could have reversed the decision by GM management to honor the UAW top-up,[11] while citing throughout the report uncontradicted testimony from GM, the UAW and the Auto Team that such an action would likely have led to a UAW strike and thus the shuttering of General Motors! This striking inconsistency is not explained adequately in the report and is thus an unfair assertion.

In reality, neither GM management nor Treasury had a practical alternative, unfortunately, to the course that was followed with the Delphi retirees.

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[8] Bloomberg News, "American Auto Profits Showing Signs of Beating 1990s' Best: Cars," by Keith Naughton and Craig Trudell, 9/5/2013.
[9] SIGTARP 13-003, Summary and p. 37.
[10] SIGTARP 13-003, Summary and p. 36.
[11] SIGTARP 13-003, p. 38.

This is not to say that these choices were at all satisfactory. Sadly, the costs inherent in a restructuring as difficult as General Motors' are massive and tragic: reduced pensions, uncompensated product liability victims, billions of investor dollars lost, tens of thousands of lost jobs and, importantly, the moral hazard resulting from such government intervention. In a better world, none of these difficult and painful actions would have been necessary; however, it is equally clear that, for General Motors and its interaction with Delphi in 2009, there was not a viable alternative path available to it, and far greater costs and tragedies were avoided as a result of the work that was done by a large group of people at both companies, their many advisors, the Bush and Obama Administrations and the US Treasury.

I look forward to discussing these issues with you today.

Testimony of

Harvey R. Miller [1]

before the

Subcommittee on Government Operations

of the

House of Representatives Committee on Oversight and Government Reform

113th Congress, 1st Session

for Hearing on

"Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees"

September 11, 2013

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[1] Senior Partner, Weil, Gotshal & Manges LLP, New York, New York. The views expressed in this testimony are expressed solely on behalf of myself and not on behalf of any other person or entity.

I greatly appreciate the opportunity to testify in these oversight hearings as to the role of the United States Department of the Treasury (the "U.S. Treasury") and the Presidential Task Force on the Auto Industry appointed by President Barack Obama in February 2009 (the "Auto Team") in the decision and actions taken by General Motors Corporation ("GM") in connection with its reorganization pursuant to chapter 11 of the United States Bankruptcy Code in 2008/2009 and its relationship to its former subsidiary and major parts supplier, Delphi Corporation ("Delphi").

I am a practicing attorney and senior member of the international law firm of Weil, Gotshal & Manges LLP ("Weil") that maintains its principal office in New York, New York. For the past 50 years, I have specialized in matters relating to debtor-creditor relationships with an emphasis on restructuring, rehabilitating, and reorganizing distressed business entities. I created the Business Finance and Restructuring group at Weil. Over the course of my professional career, I have represented debtors, secured and unsecured creditors, trustees, and creditors' committees and have served as a trustee in bankruptcy cases and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*).[2]

I am currently an Adjunct Professor of Law at the New York University School of Law, where I have taught a seminar on chapter 11 bankruptcy and reorganization law since 1975. I also am an Adjunct Lecturer in Law at Columbia Law School, Columbia University, where I have taught a course on Corporate Reorganization and Bankruptcy Law for the past 13 years.

I served as lead restructuring counsel to GM in connection with its historic chapter 11 case. In addition, during the period of September 1, 2002 to March, 2007, I was a Vice Chairman and Managing Director of Greenhill & Co., LLC ("Greenhill"), an investment

[2] Since approximately 1973, I have been a conferee and member of the National Bankruptcy Conference and I also am a fellow of the American College of Bankruptcy.

banking firm located in New York, New York. During that time, Greenhill was engaged to advise GM in connection with the chapter 11 cases initiated by Delphi and its affiliates. I was the Greenhill team leader relative to that engagement.

It is my understanding that the Subcommittee is desirous of understanding the circumstances concerning GM's relationships with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers-Communication Workers of America (the "IUE-CWA") and the United Steel Workers (the "USW"), the agreements made with those collective bargaining agents as part of the reorganization of GM that provided for certain pension benefits for Delphi hourly employees, and the U.S. Treasury's role in that process. A review of the economic realities and circumstances that precipitated the commencement of GM's chapter 11 cases and GM's reorganization pursuant to a sale of substantially all of its economically viable assets to an entity sponsored and financed by the U.S. Treasury and Export Development Canada ("EDC") pursuant to section 363(b) of the Bankruptcy Code will demonstrate that GM's actions with respect to the unionized hourly employees and pensioners and the role of the U.S. Treasury and Auto Team and EDC were all motivated by the mutual desire to successfully reorganize and rehabilitate GM so that it would be economically viable and continue to be a major commercial and manufacturing business for the U.S. and Canada employing many thousands of persons, as well as enabling the preservation of the domestic automotive supply business. This was accomplished in the most dire of economic circumstances. The fiscal crisis of 2008 had resulted in virtual cessation of ordinary commercial transactions. Essentially, credit markets had closed down as the world faced the real probability of a depression that might exceed the Great Depression of the 1930s.

The Epic Saga of the Reorganization and Rehabilitation of GM

The events that led to the commencement of chapter 11 cases by GM and the prosecution of the chapter 11 cases are set forth in detail in the attached paper that I presented in various legal conferences.[3] The paper describes the circumstances that precipitated the financial distress of GM, as well as its efforts to avoid resorting to the protections afforded by chapter 11. It also sets out the evolution of the rehabilitation negotiations and the pursuit of a credible plan that would save the American automotive industry.

The Chapter 11 Process and the 363 Transaction

The essence of restructuring is to preserve going concern values and create a viable economic unit. This process typically involves the contraction of the overall business enterprise of a chapter 11 debtor to its core business and the concomitant elimination of costs, operations, facilities, executory contracts, and unexpired leases that provide no benefit or contribution to ongoing future viability. This is the normal process that occurs in the restructuring and reorganizing of a chapter 11 debtor.

GM's chapter 11 cases were more complex and difficult given the size and nature of GM's business and its dependency on adequate financing and consumers. Essentially, it was concluded that a traditional or classic chapter 11 case would not be successful as consumers would be resistant and ultimately not purchase vehicles from a company in chapter 11. To preserve going concern value and instill confidence on the part of consumers, speed was of the essence. The only source of financing for a reorganization was the U.S. Treasury and EDC, as described in the attachment.

[3] General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry

As noted in the attached, the purchaser of assets pursuant to a section 363(b) sale typically plays a dominant role in the development of the planned sale. The purchaser is intent on purchasing a viable business and desirous of protecting its investment and return. Typically the purchaser determines which assets it will purchase and which liabilities it will assume that are necessary to assure the future success of the business to be created. Section 363(b) sales are the daily grist of bankruptcy courts. In today's economic environment, secured creditors dominate the sale process as, generally, they provide the financing to achieve the completion of the transaction. The U.S. Treasury, as GM's largest secured creditor as well as GM's post-chapter 11 financier to the extent of $33.3 billion, acted in the same manner as other secured creditors would act in selecting the assets it would purchase and liabilities it would assume, and the terms and conditions under which it would purchase the assets. In the case of GM, the U.S. Treasury and EDC were motivated by the desire to preserve the going concern but yet protect the taxpayers' money by requiring a feasible plan post the section 363 sale. In connection with an ongoing commercial enterprise, it is necessary that the purchaser be assured that the business be able to operate with the appropriate workforce.

As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 (69%) were hourly employees and 72,000 (31%) were salaried. Approximately 68% of GM's total of approximately 91,000 U.S.-based employees were represented by unions as of March 31, 2009. The UAW represented the largest portion of the unionized employees. In addition, the UAW was also GM's largest unsecured creditor because of the prior restructuring of GM's healthcare obligations through the use of voluntary employee beneficiary associations under section 501(c)(9) of the Internal Revenue Code of 1986. The claim totaled approximately $20.6 billion.

In order to successfully reorganize GM's business and operations, the UAW's collective bargaining agreement and GM's retiree benefit plans needed to be restructured; plants needed to be closed; and the UAW needed to share in the sacrifice. But, GM and the Auto Team had to balance these objectives against the reality that without a continuing experienced labor force, the objective of the purchase could not be achieved. In that perspective, the organized labor representatives had a degree of leverage in the negotiations.

Delphi

A significant aspect of GM's reorganization in 2009 was the resolution of GM's relationship with Delphi and GM's related purchase of certain Delphi assets used primarily to manufacture parts for GM in order to stabilize and secure the supply of essential parts for New GM (the "Delphi Transaction"). GM and Delphi had a long and complex history arising from their interdependent relationship. Delphi originally consisted of divisions and subsidiaries of GM until GM's spin-off of Delphi in 1999. The objective of the spin-off was to reduce the interdependence of both entities and enable Delphi to attract business from other equipment manufactures. As part of the spin-off, GM continued to be responsible for certain obligations to unionized employees that were transferred to Delphi. The process was not completed by 2006 and Delphi continued to be one of GM's largest component parts supplier and Delphi's largest customer. In 2008, Delphi accounted for approximately 11.3% of GM's North American purchases and 9.6% of GM's global purchases. Indeed, Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts used in essentially every GM product line in North America.

Consistent with industry practice, GM operated on a "just-in-time" inventory delivery system, under which component parts from suppliers are typically assembled onto vehicles by GM within a few hours of the delivery of the parts to the vehicle assembly facility. Under the "just-in-time" system, GM generally maintained little or no inventory of parts on site; instead, it relied upon frequent and regular shipments of parts from its suppliers, such as Delphi. Most parts that Delphi manufactured for GM were not readily available from an alternate source due to, among other things, capacity issues within the automotive parts supply industry, the length of time needed to validate and obtain safety regulatory approval of a new supplier's parts, and lead time to develop and build tools for manufacture. If Delphi ever ceased shipping even a small fraction of production parts to GM, the GM plants relying on such shipments may have run out of inventory of such parts and, thus, shut down production. The shutdown of GM plants as a result of termination of deliveries of automotive parts from Delphi would have endangered the recovery by the purchaser, i.e., the U.S. Treasury and EDC. Accordingly, in the same fashion as private secured lenders and purchasers participate in the development of the sale process to achieve the desired objective, the Auto Team was a participant.

At the time of the Delphi Transaction, Delphi itself was struggling in its own complicated and contentious chapter 11 cases that had been pending for four years. GM was an active participant in the Delphi cases. Because of the symbiotic relationship, GM was anxious to see the reorganization of Delphi be successful. Nonetheless, the relationship was adversarial, as Delphi attempted to extract concessions and financing from GM.

It is important to note that in connection with any chapter 11 reorganization of a unionized commercial enterprise, organized labor occupies a position of economic leverage. Without the unionized employees continuing to work, the reorganization as a going concern will fail. That leverage, and the principles of the national labor laws, make unions and their pensions a critical force in the reorganization process. Salaried employees do not have the same protection or leverage. Their claims will simply fall into the class of general unsecured creditors. In most cases, they are easily replaceable. During Delphi's chapter 11 cases, GM did expend billions of dollars and incurred additional liabilities in connection with Delphi's unionized employees to protect its supply base. For example, GM made several critical contributions to facilitate Delphi's implementation of new agreements with its unions in 2006, 2007 and 2009, including the transfer of significant pension and post-retirement health care obligations to GM, and also provided liquidity to Delphi by committing to extend financing to Delphi of up to $500 million and accelerating the payment of $300 million in trade payables to Delphi. However, GM's efforts were insufficient to restore Delphi's capital position and stabilize its operations, as the economy began its decline in 2007 and into the financial crisis of 2008/2009.

To ensure the continued and uninterrupted supply of its auto parts, pursuant to the Delphi Transaction, New GM purchased Delphi's global steering business and Delphi's U.S. plants that supplied parts primarily to GM. At the time of the Delphi Transaction, Delphi's hourly and salaried pension plans were significantly underfunded (by $3.2 billion with respect to the hourly plan and $2.1 billion with respect to the salaried plan). The PBGC had asserted liens against the assets of Delphi's non-debtor affiliates, including those that were being sold to GM, to attempt to secure certain of the PBGC's pension-related claims against Delphi's ERISA control group. GM was not willing to purchase the assets while they were subject to the threat of the PBGC liens and required the removal of the PBGC's alleged liens as a condition to closing the Delphi Transaction.

To resolve the PBGC's asserted liens, GM, Delphi, the PBGC and the Auto Team engaged in internal negotiations regarding an agreement to satisfy the PBGC's asserted liens. As part of that agreement, GM could make a cash payment to the PBGC and/or assume all or some portion of the net underfunded liability of Delphi's hourly pension plan if such contributions were necessary to enable the Delphi Transaction (or an acceptable alternative) to proceed and the contributions were outweighed by the benefits New GM would receive from the Delphi Transaction. As noted in the Report of the Special Inspector General for the Troubled Asset Relief Program, New GM agreed to honor the IUE's and USW's agreements with Delphi concerning the pension protections in order to complete the Delphi Transaction, which was critical to GM's rehabilitation and the protection of the investments and financings to be made by the U.S. Treasury and EDC.

Conclusion

Chapter 11 is complex and stressful process. It results in losses and hardships to many constituencies. But, as Congress recognized when it enacted the United States Bankruptcy Code, it is in the best interests of the nation to provide a process for distressed businesses to preserve and protect going concern values and enable restructured businesses to go on as economically viable and able to compete in its marketplace. The decisions made in dealing with the pension plans of the Delphi employees represented by the UAW, IUE and the USW were necessary to protect taxpayer money and achieve the objective of preserving an American manufacturing base that would continue to provide employment opportunities and serve the communities in which the business operated. Unfortunately, salaried employees and other constituencies did not possess the same bargaining power and leverage as organized labor/pensioners. The U.S. Treasury and EDC acted with the objective of protecting their investment in the same manner as private investors and lenders in New GM. The objectives of the section 363 GM sale and the Delphi Transaction have been largely achieved. An industry was rescued and is more stable and contributing to the welfare of the nation. It was a worthwhile solution and achievement.

Thank you, again, for the opportunity to testify at this important Hearing.

ATTACHMENT 1

General Motors Corporation, *et al.*
The Epic That Preserved Large Segments of the U.S. Automotive Industry

Harvey R. Miller
Senior Partner
Weil Gotshal & Manges LLP
Presented at the William J. O'Neill Regional Bankruptcy Institute
June 6, 2013

General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry
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Memorandum

Weil

September 10, 2012

To
Distribution

From
Harvey R. Miller

Re General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry

This memorandum sets forth the circumstances that resulted in the rehabilitation and reorganization of General Motors Corporation and its subsidiaries and affiliates ("**GM**") that preserved significant portions of the American automotive industry and helped alleviate a global financial crisis. GM was rehabilitated through the traditional use of chapter 11 of title 11 of the United States Code ("**Bankruptcy Code**"). The GM chapter 11 cases followed established procedures under the Bankruptcy Code to resuscitate a distressed business entity and thereby preserve employment opportunities and sustain the interests of communities in which the entity operated and maintained its businesses. Because of the economic chaos resulting from the subprime mortgage crisis and the failure of Lehman Brothers Holdings Inc. on September 15, 2008, which caused the collapse of global financial markets, and given the size of GM, GM had no access to financing other than from the United States. Thus, in order to save the U.S. automotive industry, including hundreds of automotive parts suppliers and the hundreds of thousands of jobs involved, the United States Government, initially under President George W. Bush and, thereafter, under President Barack Obama, together with the Canadian EDC, became the financiers of GM and, ultimately, the purchasers of GM's core assets. These actions enabled the rehabilitation and reorganization of GM as an ongoing viable business.

The facts and circumstances that led to and resulted in the GM reorganization were:

I. The GM Business Prior to the Commencement of the Chapter 11 Reorganization Case on June 1, 2009

A. For over one hundred years, GM, inclusive of its approximately 463 direct and indirect wholly-owned subsidiaries, was a major component of the U.S. manufacturing and industrial base, as well as the market leader in the automotive industry. Its brands were the standard bearer in the development of the American automotive industry. Over many years, GM supplied one in every five vehicles sold in the United States. It was the largest original equipment manufacturer ("**OEM**") in the country and the second largest in the world.

B. In 2007 GM's global revenues were approximately $181 billion. Global revenues recorded for fiscal year 2008 aggregated approximately $150 billion. As of March 31, 2009, GM had consolidated global recorded assets and liabilities of approximately $82.29 billion and $172.81 billion, respectively.

C. GM over 100 years grew into a worldwide leader in products and services related to the development, manufacture, and marketing of cars and trucks under various brands, including Buick, Cadillac, Chevrolet, GMC, Daewoo, Holden, HUMMER, Opel, Pontiac, Saab, Saturn, Vauxhall, and Wuling. It produced nearly 450 million vehicles globally and operated in virtually every country in the world.

1. GM's automotive operations included four automotive segments – GM North America, GM Europe, GM Latin America/Africa/Mid-East, and GM Asia Pacific – each of which functioned as independent business units with coordinated product development and functional support.

2. Substantially all of GM's worldwide car and truck deliveries (totaling 8.4 million in 2008) were marketed through retail dealers in North America and distributors and dealers outside North America, most of whom were independently owned.

3. In addition to products sold to dealers for consumer retail sales, GM sold cars and trucks to fleet customers, including rental car companies, commercial fleet companies, leasing companies, and governmental units.

D. GM's Dealer Network

1. GM used an extensive dealer network. Substantially all retail sales occurred through its network of independent retail dealers and distributors.

2. As of April 30, 2009, there were 6,099 GM vehicle dealers throughout the United States. The dealers made the primary sales and service interface with consumers of GM products. Dealers not only sold new cars, but also provided service and parts for vehicle maintenance and a market for trade-ins of used vehicles in connection with new vehicle purchases.

3. GM and dealers provided extensive warranties in connection with vehicle sales that extended over long periods and were critical elements in the sales.

E. GM's Vendors and Suppliers

1. GM and its vendors and suppliers had a symbiotic relationship, with each depending on the other for survival.

2. As the nation's largest automobile OEM, GM used the services of thousands of vendors and suppliers, resulting in approximately $50 billion in annual supplier payments.

   a. In North America, GM used a network of approximately 11,500 suppliers. There were over 600 suppliers whose sales to GM represented over 30% of their annual revenues.

   b. Many automotive suppliers depended, in whole or in part, on GM for survival.

3. GM relied on its vendors and suppliers for continuity in operations.

   a. Approximately 75% to 85% of every GM automobile consisted of components made by entities other than GM. Any interruption in the flow of such components, even a temporary one, would be disruptive and costly.

   b. Consistent with industry practice, GM operated on a "just-in-time" parts and inventory delivery system. Component parts from numerous vendors and suppliers typically were assembled onto vehicles within a few hours of the delivery of the parts and components to GM assembly facilities. Consequently, even if one supplier ceased shipping production parts and components, the GM plants relying on such shipments would be materially and adversely affected and could be forced to shut down.

   c. Most parts that a given vendor or supplier manufactured for GM were not readily available from alternate sources because of, among other things, (i) capacity constraints within the automotive parts supply industry (including the practice of "sole source suppliers" of many parts and components), (ii) the significant length of time (up to 36 months) required to validate safety and environmental regulatory compliance of a new supplier's parts, and (iii) the lead time required to develop and build tools for manufacture of particular parts and components.

      (i) For example, Delphi Corporation, which had been struggling as a chapter 11 debtor in possession since October 2005, had provided over 60% of GM's North American steering columns – almost 3 million per year. That volume simply could not be replaced quickly as there was not enough excess capacity to accommodate GM's needs or time to validate the parts. The Delphi situation confirmed the critical implications to GM of a shutdown of a major supplier.

F. GM's Employees

1. As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 (69%) were hourly employees and 72,000 (31%) were salaried employees.

2. Approximately 68% of GM's total of approximately 91,000 U.S.-based employees were represented by unions as of March 31, 2009.

3. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("**UAW**") represented the largest portion of U.S. unionized employees. The UAW also was GM's largest unsecured creditor because of the prior restructuring of GM's healthcare obligations through the use of voluntary employee beneficiary associations ("**VEBAs**") under section 501(c)(9) of the Internal Revenue Code of 1986. The claim totaled approximately $20.6 billion.

II. Significant Factors Leading Up to the Financial Distress and Lack of Liquidity at GM and the Commencement of the Chapter 11 Reorganization

A. Worldwide Financial Crisis; Increased Fuel Prices; International Competition

1. The global economic collapse and deterioration of the financial markets abetted a liquidity crisis at GM that began to surface during the end of 2007 and exploded in 2008. It materially affected the automotive sector as vehicle sales declined and foreign carmakers intensified competitive efforts.

2. GM's financial distress was exacerbated by substantial increases in the price of crude oil to nearly $150 per barrel during 2008. This precipitated a sharp downturn in driving and sales in the large vehicle segments of the automobile market in which GM was dominant and most profitable.

3. The negative business aspects were further exacerbated by a sharp decline in the global economy, including substantial increases in unemployment and a freeze-up of consumer and business lending.

4. The resulting drop in new vehicle sales led to a steep erosion in GM revenues and, in turn, significant operating losses.

5. As a result, between early May and the middle of June 2008, GM's common stock price declined from over $23 per share to under $15 per share and its long-term bonds traded down from the mid-70s to the high 60s.

B. Instability in Financial Markets

1. Even as fuel prices stabilized and moderated to some degree during the fall of 2008, GM faced sharply deteriorating U.S. economic conditions during the second half of 2008 and the first quarter of 2009, constituting the worst economic downturn and credit market environment since the Great Depression of the 1930s.

2. The continuing economic contraction and the crisis in the financial markets as 2008 proceeded severely affected consumers, as both income and financing for buyers and lessees of automobiles evaporated. Access to credit significantly contracted or became nonexistent.

3. The contraction in vehicle sales and purchase orders from OEMs began to cause the bankruptcies of major auto parts suppliers, including Delphi Corporation, Dana Corporation, Collins & Aikman Corporation, Tower Automotive, Inc., and Dura Automotive Systems, Inc., among others.

4. As the general economy continued to deteriorate, GM explored programs to conserve and raise cash through various capital markets actions, such as

   a. Anticipating a liquidity crunch, in the summer of 2008, GM explored raising as much as $3 billion through a public offering of common and mandatory convertible preferred stock. Because of the rapidly and severely contracting financial and public markets, the prospects for such equity offerings faded by June 2008.

   b. GM's Treasury Office engaged independent financial advisors to assist in exploring a variety of alternative strategies, including a liquidity preservation plan and the possible issuance of secured debt.

   c. GM's financial advisors indicated that the market capacity for such a financing as of July 2008 was approximately $2 to $4 billion. However, GM's ability to raise additional secured borrowing was constrained by its existing secured loans and restrictive provisions in various public bond indentures. Nevertheless, GM attempted to pursue secured financing until early September 2008, when the global financial markets totally collapsed.

5. During the early part of September 2008, the U.S. Treasury announced the conservatorships of Fannie Mae and Freddie Mac. It caused further financial turmoil.

6. On September 15, 2008, Lehman Brothers Holdings Inc., the fourth largest U.S. investment bank, commenced a chapter 11 reorganization case. In the weeks that

followed, it became clear that there were no prospects for GM to launch any debt offering, even on a secured basis.

7. GM also had explored selling a variety of core and noncore assets. Such transactions were not able to be consummated on reasonable terms given the contracting credit markets, the expanding recession, and increasing concerns as to the financial viability of GM.

8. The combination of the sharp run-up of gasoline prices with its direct impact on GM's most profitable vehicle segments, rapid declines in the housing/mortgage/credit sectors, the freeze-up of equity and debt capital markets, and the lowest levels of consumer confidence in nearly thirty years, had an unprecedented effect on the automotive industry generally, and GM in particular.

9. During 2008 new vehicle sales fell to their lowest per capita levels in half a century, putting automakers under enormous financial stress. Sales of GM's products dropped as its market share in the largest single market for its products, the United States, steadily declined. The automobile market was flooded with imports from foreign OEMs with far lower cost structures and dramatically lower legacy benefit obligations.

10. GM's U.S. market share had steadily declined from 45% in 1980 to 22% in 2008.

11. GM's sales were materially affected by the overall decline in domestic automobile sales, which continued unabated given the deteriorating economy and financial markets. The Seasonally Adjusted Annual Rate ("**SAAR**") of automobile sales for the United States industry declined from 15.6 million units in January 2008 to 9.8 million units in January 2009, which was the lowest level since 1982. This affected all domestic OEMs, but GM in particular, as well as automotive parts suppliers. For the fourth quarter of 2008, GM's domestic automobile sales were down 36% compared to the corresponding period in 2007.

12. The extraordinary conditions and exogenous events of 2008 and 2009 caused GM's liquidity to rapidly erode to a level below what was necessary to operate its business. GM was compelled to reach out to the U.S. Government for financial assistance to sustain its operations.

III. U.S. Government Financial Assistance

A. The administration of President George W. Bush and its Secretary of the Treasury, Henry M. Paulson, recognized the draconian consequences of a GM failure, e.g., the loss of hundreds of thousands of jobs and the sequential shutdown of hundreds of ancillary and related businesses.

B. Viability Plan I

1. On November 21, 2008, the Speaker of the House of Representatives, Nancy Pelosi, and the Senate Majority Leader, Harry Reid, released a letter to the chief executive officers of GM, Chrysler LLC ("**Chrysler**"), and Ford Motor Company outlining a framework for the domestic OEMs to request government loans, which required, among other things, submission of additional information demonstrating future economic viability of the particular OEM.

2. In response, on December 2, 2008, GM submitted to the Senate Banking Committee and the House of Representatives Financial Services Committee a proposed viability plan ("**Viability Plan I**"), pursuant to which GM committed to using proposed government financing exclusively to sustain and restructure its operations in the United States and aggressively retool its products.

   a. Viability Plan I also requested that the Bush Administration provide an immediate loan of $4 billion to insure minimum liquidity through the end of 2008, a second $4 billion draw in January 2009, a third $2 billion draw in February 2009, and a fourth $2 billion draw, at an unstated date in 2009, for a total secured term loan of $12 billion.

   b. GM also requested access to an incremental $6 billion secured line of credit, for a total of $18 billion in projected government loans.

3. Congress elected not to enact enabling legislation.

4. GM then was compelled to seek immediate direct financial support from the U.S. Treasury or confront suspension of operations.

C. U.S. Treasury Facility and Viability Plan II

1. On December 19, 2008, President George W. Bush, recognizing the potential consequences of GM ceasing operations, announced that the U.S. Treasury would make short-term, emergency funding available to GM and Chrysler under the Troubled Asset Relief Program ("**TARP**") to prevent both companies from failing and closing.

2. On December 31, 2008, GM and the U.S. Treasury entered into an agreement (the "**U.S. Treasury Loan Agreement**") that provided GM with emergency financing of up to an initial $13.4 billion pursuant to a secured term loan facility (the "**U.S. Treasury Facility**").

3. GM borrowed $4 billion from the U.S. Treasury on December 31, 2008 and an additional $5.4 billion on January 21, 2009. The remaining $4 billion was borrowed on February 17, 2009.

4. A number of GM's domestic subsidiaries guaranteed GM's obligations under the U.S. Treasury Facility. The U.S. Treasury Facility also was secured by a lien on substantially all the unencumbered assets of GM and the guarantors, as well as a junior lien on encumbered assets, subject to certain exceptions. The U.S. Treasury Facility was also secured by a pledge of the equity interests held by GM and the guarantors in certain foreign subsidiaries, subject to certain exceptions.

5. In consideration for the loans provided under the U.S. Treasury Loan Agreement, GM also issued to the U.S. Treasury (i) a warrant to purchase up to 133,035,597 shares of GM common stock (subject to adjustment) and (ii) a related promissory note in the principal amount of approximately $749 million, due on December 30, 2011 (together with other similar notes, the "**Warrant Notes**").

6. The U.S. Treasury Facility required that GM develop a business plan proposal to demonstrate future viability. Subsequent to December 2, 2008, when GM submitted Viability Plan I, however, economic conditions had continued to erode globally, which, combined with increased public speculation about GM's future and survival, negatively affected GM's sales, volume, revenues, and cash flow.

7. After the national election, in February 2009 President Barack Obama appointed the Presidential Task Force on the Auto Industry, which included cabinet level officials, to evaluate available options (the "**Presidential Task Force**").

   a. The members of the Presidential Task Force were: the Secretary of the U.S. Department of the Treasury, Timothy F. Geithner; the Director of the National Economic Council, Lawrence H. Summers, the Secretaries of Transportation, Commerce, Labor, and Energy; the Chair of the President's Council of Economic Advisers; the Director of the Office of Management and Budget; the Environmental Protection Agency Administrator; and the Director of the White House Office of Energy and Climate Change.

   b. The Presidential Task Force advisors (Team Auto) included Ron Bloom, Senior Advisor to the U.S. Treasury; Steven L. Rattner, Counselor to the U.S. Treasury; Harry Wilson, an investment banker; and Matthew A. Feldman, a restructuring attorney.

8. On February 17, 2009, GM submitted to the Presidential Task Force its revised business plan to achieve and sustain GM's long-term viability, international competitiveness, and energy efficiency ("**Viability Plan II**"). It was intended to comprehensively address GM's revenues, costs, and balance sheet for its U.S. and

foreign operations, as well as GM's plan to reduce petroleum dependency and greenhouse gas emissions.

9. After review of Viability Plan II by Team Auto, on March 30, 2009, President Obama announced that Viability Plan II was not satisfactory and did not justify a substantial new investment of taxpayer dollars. The President outlined a series of actions that GM needed to take to receive additional federal assistance, including reaching an agreement with the UAW and GM's bondholders regarding debt reduction and the submission of a revised business plan that was more realistic and aggressive in terms of scope and timing.

10. President Obama indicated that the U.S. Treasury, as the largest secured creditor of GM, would extend additional limited working capital loans to sustain GM for another sixty days to enable GM to continue operations and develop and implement a more aggressive and comprehensive viability plan satisfactory to the U.S. Government that would include a model to not only survive, but also succeed in the competitive, global markets and repay its obligations.

11. The U.S. Government set a deadline of June 1, 2009 for GM to demonstrate that its viability plan would fundamentally transform GM into a profitable and competitive OEM.

12. On April 22, 2009, the U.S. Treasury Loan Agreement was amended to increase the U.S. Treasury Facility by $2 billion to $15.4 billion. GM borrowed the additional $2 billion of secured working capital loans on April 24, 2009.

13. On May 8, 2009, GM announced its first quarter 2009 results. Its total net revenues had decreased by $20 billion (or 47.1%) in the first three months of 2009. Operating losses increased by $5.1 billion from the prior quarter. During this same period, GM had negative cash usage of $9.4 billion and available liquidity deteriorated by $2.6 billion due, in large part, to lower sales volumes. Sales by GM's dealers in the United States fell to approximately 413,000 vehicles in the three months ended March 31, 2009, a decline of approximately 49% compared to the corresponding period in 2008.

14. To protect its claims against GM and avoid the cessation of operations with attendant consequences to the global economy, on May 20, 2009, the U.S. Treasury Loan Agreement was amended to increase the U.S. Treasury Facility by $4 billion. GM borrowed the additional $4 billion of secured working capital loans on May 22, 2009.

15. On April 27, 2009, as part of the continued effort to achieve long-term viability and avoid bankruptcy, GM launched a public exchange offer for the approximately $27 billion of its outstanding unsecured bonds (the "**Exchange Offer**").

a. GM viewed the Exchange Offer as a means to continue operations and avoid the precipitous decline in revenues that would result from a prolonged bankruptcy case.

b. At the time the Exchange Offer was announced, GM disclosed that, if it did not receive enough tenders to consummate the Exchange Offer, it would expect to commence a chapter 11 case to preserve the going concern value of the business.

c. The terms of the Exchange Offer were the subject of extensive negotiations between GM and the U.S. Treasury, as consummation of the Exchange Offer required the satisfaction or waiver of several conditions imposed by the U.S. Treasury as the largest secured creditor and potential contributor to GM's deleveraging.

(i) Among such conditions, the results of the Exchange Offer had to be acceptable to the U.S. Treasury, including the overall level of participation by bondholders in the Exchange Offer.

(ii) Consummation of the Exchange Offer was also conditioned on, among other things, the conversion to equity of (a) at least 50% of GM's outstanding U.S. Treasury debt at June 1, 2009 (approximately $10 billion) and (b) at least 50% (approximately $10 billion) of GM's future financial obligations to a new VEBA, for a total projected additional debt reduction of approximately $20 billion.

16. The Exchange Offer expired on May 26, 2009 without achieving the threshold of required tendered acceptances from GM bondholders.

17. No other private or public financing was available to GM. Access to credit was nonexistent.

IV. The Onset of the Chapter 11 Reorganization Case and the 363 Transaction

A. It became clear in the Spring of 2009 that an out-of-court restructuring was not possible. The only alternative to preserving going concern values and provide a means to save jobs and repay the U.S. Treasury was the reorganization process under the Bankruptcy Code.

B. In that context, it became obvious that the only feasible source of financing of a reorganization case was the U.S. Treasury. The parties entered into intensive negotiations that resulted in agreement to implement a transaction under which substantially all the major core assets of GM would be purchased by a U.S. Treasury-sponsored purchaser (subject to any higher or better offer) in an expedited process under section 363 of the Bankruptcy Code (the "**363 Transaction**").

C. Under this scenario, the purchaser would create a "New GM" that would purchase assets selected by it. Those purchased assets would constitute the new reorganized GM. New GM would then immediately operate free of the liabilities of the bankrupt Old GM and, thereby, preserve the going concern values, avoid systemic failure, provide employment, protect the many communities dependent on the continuation of the business, and restore consumer confidence, as well as provide for potential recovery by the U.S. Treasury of its claims.

D. The chapter 11 process selected and pursued in providing for a sale under section 363 of the Bankruptcy Code was consistent with generally-accepted practices and procedures followed in bankruptcy and chapter 11 cases to preserve going concern values and businesses through expeditious sales. In such proceedings the purchaser would be privately financed and, pending the implementation of the sale, the secured creditor of the debtor would provide debtor-in-possession (DIP) financing to bridge the sale. Because of the size of GM and the outstanding secured indebtedness held by the U.S. Treasury, as well as the severe economic conditions that prevailed in 2009, there existed no available financing from any nongovernmental source. The process developed complied with the accepted practice for such sales that had been approved and effected during the years preceding the GM chapter 11 cases. The U.S. Treasury, as the secured creditor, agreed that it would provide DIP financing through the chapter 11 process – but only if the sale occurred on an expedited basis.

E. Both the Government of Canada and the Government of Ontario, through Export Development Canada ("**EDC**"), Canada's export trading agency, agreed to participate in the DIP financing (discussed below) to assure the long-term viability of GM's North American enterprise and to (i) preserve value of the business, restore consumer confidence, and mitigate the devastating damage that GM and the industry would suffer if GM's major business operations were to remain in bankruptcy for any extended period and (ii) avoid the enormous costs of financing a lengthy chapter 11 case. The U.S. Treasury also agreed that it would provide New GM with adequate postacquisition financing that would further its long-term viability.

F. The 363 Transaction was embodied in a Master Sale and Purchase Agreement among GM and its debtor subsidiaries (the "**Sellers**" or the "**Debtors**") and Vehicle Acquisition Holdings LLC, a purchaser sponsored by the U.S. Treasury (the "**Purchaser**"), dated as of June 1, 2009 (the "**MSPA**").

G. The 363 Transaction was a material element of the U.S. Treasury program to revitalize the domestic automotive industry. It contemplated that substantially all of GM's core operating assets, which were essential for New GM to be a profitable and competitive operating entity (including the capital stock of the majority of its subsidiaries), would be sold and transferred to the Purchaser, which would immediately begin operations.

H. A fundamental premise of the U.S. Treasury program was to revive consumer confidence in GM products and services for the benefit of GM's employees, its extended vendor and supplier and dealer network, and the families and communities that depend on GM operations.

1. Knowing that GM's business would exist and be supported in the form of New GM, consumers would have confidence that if they purchased a GM vehicle, there would be a dealer network and U.S. Government support to assure parts, warranty service, and a market for future used GM vehicle trade-ins and vehicle recovery.

2. A viable company would help preserve and support jobs and benefits, not only for GM's employees, but also for the employees of GM's suppliers and dealers, all of which would help support the market for GM vehicles with attendant benefit to the economy as a whole.

I. The purchase price paid by the Purchaser was equal to the sum of

1. a credit bid by the Purchaser in an amount equal to the amount of indebtedness owed to the Purchaser as of the closing pursuant to the UST Credit Facilities (as defined in the MSPA) and the DIP Facility, less approximately $7.7 billion of indebtedness under the DIP Facility (estimated to be $48.7 billion at July 31, 2009);

2. the Warrant Notes previously issued by GM to the U.S. Treasury;

3. the issuance by the Purchaser to the Debtors of 10% of the common stock of the Purchaser as of the closing;

4. the issuance by the Purchaser to the Debtors of New GM Warrants to purchase up to 15% of the shares of common stock of the Purchaser on a fully-diluted basis, with the initial exercise prices for equal amounts of the New GM Warrants based on $15 billion and $30 billion equity values of the Purchaser; the warrants would be exercisable through the seventh and tenth anniversaries of issuance, respectively, and the Debtors could elect partial and cashless exercises; and

5. the assumption by the Purchaser of the Assumed Liabilities (as defined in the MSPA).

J. In addition, it was provided that if the Bankruptcy Court determined that the estimated amount of allowed general unsecured claims and allowed asbestos personal injury claims collectively exceeded $35 billion, then the Purchaser would issue up to an additional 2% of the outstanding common stock of the Purchaser as of the closing of the 363 Transaction.

K. The assets excluded from the 363 Transaction, as well as the proceeds of the sale, were to be administered in the continuing chapter 11 cases to support the liquidation of such assets, wind-down, or other disposition of the chapter 11 cases and to provide distributions to holders of allowed claims against the Debtors.

L. The proposed 363 Transaction addressed GM's debt obligations and significantly restructured GM's future legacy obligations to its employees through a settlement with the UAW. Under the UAW Retiree Settlement Agreement, the Purchaser, from the assets it acquired, agreed to provide to the UAW VEBA, among other things,

1. shares of common stock of the Purchaser representing 17.5% of the Purchaser's total outstanding common stock;
2. a note of the Purchaser in the principal amount of $2.5 billion;
3. shares of cumulative perpetual preferred stock of the Purchaser in the amount of $6.5 billion;
4. warrants to acquire 2.5% of the Purchaser's equity; and
5. the assets held in the GM VEBA to be transferred to the Purchaser as part of the 363 Transaction.

M. Resolution of the legacy retirement benefit issues and work rules for a refocused employer was a gating issue.

1. Concessions were necessary to ensure future viability. Because the Bankruptcy Code contains provisions that limit a debtor's ability to modify retiree benefits and collective bargaining agreements without protracted negotiations and possible litigation that, in GM's case, would have jeopardized an expeditious exit from bankruptcy for the operating assets, the consensual arrangement with the UAW was critical to the preservation of going concern values and the creation of an entity that could repay the U.S. Government financing. Without a continuing experienced labor force, the value of the acquired assets would have equated to liquidation values.
2. Team Auto actively participated in negotiating the amended collective bargaining agreement with the UAW that was essential to make New GM a viable investment for the Purchaser.

N. Team Auto, with input from the U.S. Treasury, the Presidential Task Force, and the Canadian EDC, fully negotiated the MSPA and completed its due diligence as to the assets to be acquired and contracts to be assigned to the Purchaser.

O. In sum, under the 363 Transaction, the equity of the Purchaser, i.e., New GM, was distributed initially as follows:

1. U.S. Treasury received 60.8% of New GM Common Stock and $2.1 billion of Series A Preferred Stock;

2. Canadian EDC received 11.7% of New GM Common Stock and $400 billion of Series A Preferred Stock;

3. UAW's new VEBA received 17.5% of the Purchaser's New Common Stock, $6.5 billion of Series A Preferred Stock, and 6-year warrants to acquire 2.5% of New GM Common Stock with an exercise price based on $75 billion total equity value; and

4. The Debtors (Old GM) received 10% of New GM Common Stock plus up to an additional 2% of New GM Common Stock if general unsecured claims exceed $35 billion and two sets of warrants, each to acquire 7.5% of outstanding New GM Common Stock with exercise prices of $15 billion and $30 billion total equity value.

P. The 363 Transaction had the following benefits:

1. preserved the value of GM core assets and businesses as an operating enterprise (i.e., going concern value, not liquidation value);

2. avoided the domino effect upon other OEMs and Tier I suppliers that would have followed a GM liquidation;

3. continued employment for hundreds of thousands of persons at GM as well as employees of those entities that relied upon GM as their source of business and revenues;

4. protected the many communities dependent on the continuation of the business;

5. restored consumer confidence in GM and its products and dealers;

6. established an automotive manufacturing business that would be viable, competitive, and reliable, as well as a standard bearer and bellweather industry considered essential for the United States; and

7. avoided exacerbating the economic recession that engulfed the United States in 2009.

V. The General Motors Chapter 11 Case

A. GM commenced the chapter 11 case on June 1, 2009 in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**").

B. Implementing the 363 Transaction

1. Concurrently with the filing of its voluntary chapter 11 petitions, GM filed a motion with the Bankruptcy Court seeking approval of the 363 Transaction, under which the Debtors would sell their core operating assets to the U.S.-sponsored Purchaser in exchange for a package of cash and noncash consideration valued at over $90 billion, subject to higher or better offers.

2. On June 2, 2009, the Bankruptcy Court, after notice and a hearing, approved the notice and related procedures and set June 19, 2009 as the deadline for parties to object to the 363 Transaction; June 22, 2009 as the deadline to submit any higher or better bids; and June 30, 2009 as the date for a hearing to consider approval of the 363 Transaction.

3. Although hundreds of objections to the 363 Transaction were filed, GM did not receive any meaningful bids nor any alternative proposals to the 363 Transaction. No objector argued that the 363 Transaction was not in the best interests of GM and its economic stakeholders.

4. In connection with certain objections, the parties in interest engaged in ten days of expedited discovery. GM produced several hundred thousand pages of documents, responded to extensive interrogatories, and submitted its CEO and others to depositions. A three-day evidentiary hearing was held before the Bankruptcy Court from June 30 to July 2, 2009, during which five witnesses testified and affidavits and declarations were submitted and considered.

5. The evidentiary record was undisputed and established that the 363 Transaction was a sound exercise of GM's business judgment and was the only viable alternative to a liquidation that would severely diminish values and, further, that the sale would avoid cataclysmic ramifications to the national economy. It also found that the U.S. Treasury, with the support of the Canadian EDC, was the only entity prepared to finance the chapter 11 case and such financing was conditioned on the satisfaction of certain milestones for completion of the sale transaction.

6. On July 5, 2009, the Bankruptcy Court entered an order (the "**Sale Order**") overruling all remaining objections and authorizing the 363 Transaction. The Bankruptcy Court issued an 87-page written decision in support of the Sale Order, *In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009). The Sale Order was affirmed by the United States District Court for the Southern District of New York in two decisions, *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010) and *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010).

7. The sale of GM's continuing businesses and related core assets closed on July 10, 2009. On the closing date, the Purchaser took on the name General Motors Company, i.e., New GM, and the entity formerly known as General Motors Corporation changed its name to Motors Liquidation Company ("**MLC**").

8. Less than eighteen months later, in November 2010, New GM conducted an initial public offering of shares of common stock acquired by the U.S. Treasury and Canadian EDC and returned as a listed corporation on the New York Stock Exchange. The U.S. Treasury and the Canadian EDC recovered approximately $11.7 billion and $1.2 billion, respectively, from the sales proceeds. Currently, the U.S. Treasury and the Canadian EDC only holds 500,065,254 and 140,084,746 shares of New GM Common Stock, respectively, with the U.S. Treasury holding 30% and the Canadian EDC holding 8.4% of New GM Common Stock.

9. MLC prosecuted the chapter 11 cases following the sale to manage the liquidation and wind-down of the noncore assets as well as the resolution of all claims against it (i.e., those liabilities not assumed by New GM), including environmental issues and disposition of closed plants.

10. On December 8, 2010, MLC proposed its chapter 11 plan, which provided for the establishment of four trusts whose primary objective was to liquidate the noncore assets over time and resolve the outstanding liabilities transferred to the respective trusts. The chapter 11 plan was overwhelmingly accepted by MLC's creditors (97% of creditors entitled to vote in number and 85% in dollar amount of claims) and became effective on March 31, 2011.

11. MLC's chapter 11 plan provided for the distribution of the proceeds of the 363 Transaction, i.e., 150 million shares of New GM Common Stock; warrants to acquire 136,363,635 newly issued shares of New GM Common Stock, with an exercise price set at $10.00 per share; and warrants to acquire 136,363,635 newly issued shares of New GM Common Stock with an exercise price of $18.33 per share.

12. Today, the chapter 11 plan has been fully consummated as the shares issued by New GM have been distributed to the Motors Liquidation Company General Unsecured Claims (GUC) Trust to hold, administer, and direct the distribution of such shares for the benefit of holders of allowed general unsecured claims against MLC. The Motors Liquidation Company GUC Trust itself has distributed over 120 million shares of New GM Common Stock, and over 220 million shares of New GM Common Stock in connection with the New GM Warrants, to the holders of allowed general unsecured claims against MLC. Because creditors who received distributions were free to sell their shares or hold them, the precise recovery for MLC's creditors is difficult to ascertain. However, depending on the

price of New GM Common Stock, creditor recovery has ranged from approximately 12% to 20%.

VI. Addressing Criticisms of GM as a "Bailout"

A. The GM "bailout" has been the subject of many criticisms, including

1. Government ownership of a commercial business is improper and could not be successful;

2. Certain creditors, namely the UAW, received preferential treatment in the chapter 11 cases and as part of the 363 Transaction; and

3. President Obama and his administration abused their power and constitutional obligations by sponsoring the reorganization of GM.

B. The Structure of the GM Reorganization

1. <u>Criticisms</u>

a. During the planning stages of the "bailout," it was argued that the U.S. Government could not take effective control of GM without becoming a failed political exercise.

b. The reorganization would be used by President Obama to achieve parochial political objectives to control not only whether GM and Chrysler could reorganize, but also to dictate how a reorganization or liquidation would occur (e.g., which plants to close, which vendor and supplier contracts to assume, which brand names to retire) to the prejudice of certain creditors and other parties.

2. <u>Responses</u>

a. GM's restructuring was unaffected by political objectives other than a universal desire to prevent the shutdown of the U.S. automotive manufacturing sector and the systemic failures that would result.

b. Presidential Task Force and Team Auto

(i) The organization and utilization of the Presidential Task Force and Team Auto separated the negotiation of the actual terms of the 363 Transaction from the political arena.

(ii) Team Auto was not the product of partisan politics, and its members and workforce covered the political spectrum. They were recruited largely from the financial community and Wall

Street law firms. They were persons of outstanding expertise enlisted without regard to political affiliation. They understood distressed investing restructuring and managed the process as if it was a nongovernmental restructuring and reorganization.

(iii) The Presidential Task Force mandated that Team Auto conduct due diligence, make reasonable business judgments, and assist in designing a transaction directed to saving the industry and maximizing value of the reorganized enterprise rather than satisfying noneconomic objectives.

(iv) The momentum and speed of the 363 Transaction and the identity of the negotiators enabled the restructuring process to stay on track.

(v) The Presidential Task Force required New GM to objectively project a business plan to succeed in the competitive global automotive market by creating accountability to generate positive cash flow and maintain a competitive balance with other OEMs.

(vi) The MSPA did not contain any conditions favoring specific constituencies. The MSPA was free of political influences. The guiding principle included the development of a feasible, performable business plan that would produce a viable OEM capable of competing in the marketplace and provide the basis to repay the government loans and investments.

c. Need for Speed

(i) The speed of GM's bankruptcy case was necessary to meet business concerns and was not designed to squelch opposition.

(ii) GM had completed negotiating the 363 Transaction with the U.S. Treasury by the time it commenced its chapter 11 case on June 1, 2009. GM, with the oversight of Team Auto, reached agreements with an ad hoc group of bondholders and the UAW that assured New GM of the ability to immediately and in a seamless fashion reenter the automotive market as a viable, competitive OEM.

(iii) The Bankruptcy Court approved the 363 Transaction, and the sale was consummated, 39 days after the commencement of the chapter 11 case, a process that implemented the objectives of preventing systemic failures that would have aggravated the depressed economy.

d. Liquidation would have eliminated the possibility that unsecured creditors would receive any distributions and could have exacted a greater toll on taxpayers through a substantial loss on the existing loans to GM, as well as lost jobs, decreased tax revenues, and increased expenditures for unemployment assistance, healthcare, and environmental remediation.

C. Preferential Treatment of the UAW

1. Criticism

a. The UAW obtained preferential treatment in the 363 Transaction over other creditors pursuant to an allegedly sweetheart transaction and for political reasons.

2. Response

a. The settlement agreement between New GM and the UAW is an example of the realistic economic approach taken in all 363 transactions, i.e., labor always presents a crucial issue if a work force is necessary to the success of the purchased business. The provisions of the National Labor Relations Act and the Bankruptcy Code gave the UAW significant leverage.

(i) The sale of the core assets of GM only made sense if the business could continue and going concern values were maintained. To attain that objective, the Purchaser must be assured that it has the requisite workforce. The NLRA requires a purchaser of a unionized business to negotiate in good faith a successor agreement with an existing union. Given the precarious nature of GM at the time, it is unlikely that GM could have survived a protracted renegotiation.

(ii) Section 1113 of the Bankruptcy Code enables rejection of a collective bargaining agreement a lengthy, difficult statutory process. Compliance with section 1113 would have been impossible in the time frame that was available with respect to the 363 Transaction. Section 1114 of the Bankruptcy Code similarly makes modifications of retiree benefits a lengthy, difficult process. Even if successfully prosecuted, the Bankruptcy Court cannot compel union members to return to work. After rejection pursuant to the NLRA, the parties must resume negotiations in good faith and unions may resort to self-help, i.e., strike.

b. The U.S. Government at the outset conditioned any funding of GM on the resolution of legacy obligations to employees and a streamlining of production to reduce costs. The UAW's collective bargaining agreement and GM's retiree benefit plans needed to be restructured; plants needed to be closed; and the UAW needed to share in the sacrifice.

c. In connection with the 363 Transaction, the UAW made significant concessions, including reductions in overtime pay, bonuses, and benefits to induce the Purchaser to go forward. The revised collective bargaining agreement with New GM created greater competitive flexibility to increase and decrease production capacity as necessary by permitting temporary flex employees, suspending the job security program, and creating new special attrition plans to reduce head count. Also, a number of retiree benefits were reduced or eliminated.

D. Need for Speed

1. <u>Criticism</u>

a. The speed of the 363 Transaction was unnecessary and potentially sacrificed the rights of creditors.

b. The 363 Transaction constituted a sub rosa plan of reorganization that proceeded without the protections of plan development, confirmation, and consummation under the Bankruptcy Code.

2. <u>Response</u>

a. The timing of the 363 Transaction was dictated by numerous factors, including the lack of financing, the concern over erosion in value, and, most critically, the almost universal conclusion that the operations could not be sustained during a protracted chapter 11 process. The timing was in line with other expedited sales under section 363(b) of the Bankruptcy Code, such as in the chapter 11 case of Lehman Brothers Holdings Inc.

b. No other realistic alternatives were available. No credible party expressed an interest in funding an alternative transaction. There were no merger partners, acquirers, or investors willing and able to purchase GM's assets and businesses. The U.S. Treasury and Canadian EDC were the only lenders willing and able to finance continued operations. No debtor in possession financing was available from private sources. The U.S. Treasury was the only entity that had the wherewithal and the inclination to provide such financing and, then, only on the premise that going concern value would be preserved. The only means of reasonably accomplishing that objective was the expedited sale process pursuant section 363 of the Bankruptcy Code.

c. Surveys taken prior to the GM chapter 11 reflected that consumers needed to have confidence in GM's products, i.e., that a GM would exist in the future to stand behind its products. GM and the U.S. Treasury were aware that consumers would not purchase vehicles from an OEM in a bankruptcy case.

d. The 363 Transaction enabled objectors to voice their opposition in a meaningful way. The Bankruptcy Court held extended hearings over three days to consider all objections and GM's affirmative case. Over 850 objections and responses were filed.

e. The 363 Transaction did not dictate the terms of a plan of reorganization, as determined by the judicial decisions. MLC subsequently did propose a chapter 11 plan that was accepted by claimants and confirmed by the Bankruptcy Court on March 29, 2011 and, thereafter, consummated on March 31, 2011.

E. Failure of Due Process

1. Criticism

a. The speed of the 363 Transaction and of the chapter 11 case deprived creditors of due process.

2. Response

a. All aspects of GM's chapter 11 case, including the 363 Transaction, were fully transparent and subject to notice and an opportunity to be heard by a neutral third party tribunal—the Bankruptcy Court.

b. The substantial discovery that was made on an expedited basis was made available to all opponents of the 363 Transaction.

VII. Accomplishments of the 363 Transaction

A. The 363 Transaction prevented the collapse of manufacturing in the Midwest, with New GM positioning itself again as a strong contender in the automotive manufacturing sector.

1. Today, the Big Three (i.e.., Chrysler, GM, and Ford) are all profitable for the first time in seven years, adding shifts and facilities across the United States.

2. Before commencing its chapter 11 case, GM had lost its position as the world's top-selling automaker to Japanese rival Toyota. Three years after its chapter 11 case, New GM regained its title as top-selling automaker.

3. New GM has posted a net profit for the past ten straight quarters, posting its largest-ever annual profit in 2011.

4. New GM's strongest global region in terms of finances and vehicles sold is North America, where it has remained the market leader.

5. GM and Chrysler sold 3.8 million vehicles in the United States in 2011, up 14% and 26% respectively from 2010.

6. New GM is a public reporting company under Section 12(b) of the Securities and Exchange Act of 1934. Its shares of common stock, par value $0.01, are publicly traded under the symbol "GM" on the New York Stock Exchange. As of June 30, 2012, there were 1,565,941,048 shares of common stock outstanding. New GM's current market recapitalization is approximately $36.6 billion, and the average daily volume of shares traded is approximately 7.8 million. As of June 20, 2012, New GM had consolidated reported global assets and liabilities of approximately $151,987,000,000 and $110,377,000,000, respectively.

B. The 363 Transaction preserved jobs and income

1. Direct job losses that would have resulted from a disorderly bankruptcy and closing of GM would have been tremendous. *See* "A Look Back at GM, Chrysler and the American Auto Industry," Executive Office of the President of the United States, Apr. 21, 2010 (explaining that, according to certain studies, the direct and indirect jobs at risk were estimated to be up to 3.3 million, yet recognizing that none of the studies accounted for jobs that would have been created at other companies, like Ford or Toyota, had GM and Chrysler no longer been competing in the marketplace). Between March 2008 and March 2009, the automobile industry shed 410,000 jobs. Analysts have estimated that at least one million jobs could have been lost had GM and Chrysler liquidated.

2. Since the consummation of the 363 Transaction, the automobile industry has added approximately 230,000 jobs – the most growth in a decade. The industry expects to add 167,000 jobs by 2015.

3. In addition to saving more than 1 million jobs, the 363 Transaction prevented the loss of over $96 billion in personal income.

4. New GM has added shifts at several U.S. facilities since the fall of 2009 to meet growing demand, adding several thousands of direct jobs and reopening at least one plant.

C. The 363 Transaction allowed a substantial majority of GM dealerships to continue operations while providing a compassionate wind-down period for terminated and discontinued dealers.

D. The 363 Transaction helped stabilize the U.S. and global economies.

1. Absent the 363 Transaction, a GM liquidation would have had a catastrophic impact on the U.S. economy.

   a. Hundreds of thousands of persons would have been thrown out of work, along with the termination of health benefits and retirement benefits for current and former employees and their families, adding to the burden of the federal, state, and local governments to provide relief to such persons.

   b. There would have been a worldwide shutdown of GM's suppliers and dealers with similar consequences.

2. The failure of GM might have resulted in the failure of Chrysler or Ford because of shared single-source suppliers that would have failed without volume purchases from one of the big three. This would have triggered a further cascade of failures throughout the auto manufacturing industry among part suppliers.