

[ORAL ARGUMENT SCHEDULED OCTOBER 27, 2017]
Nos. 17-5142, 17-5164

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES DEPARTMENT OF THE TREASURY,

Petitioner-Appellant,

v.

DENNIS BLACK; CHARLES CUNNINGHAM; KENNETH HOLLIS; DELPHI
SALARIED RETIREES ASSOCIATION,

Respondents-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX, VOLUME 2 of 3

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June 30, 2009

Mr. John L. DeMarco
Director, Pension and Welfare Benefits
Delphi Corporation
5825 Delphi Drive
M/C 480-410-104 Building C
Troy, MI 48098-2815

Subject: Delphi Corporation Retirement Program for Salaried Employees — 2008 Enrolled Actuary Certification of Adjusted Funding Target Attainment Percentage

Dear John:

This letter provides a certification of the Adjusted Funding Target Attainment Percentage (AFTAP) for the above referenced plan under §436(h) of the Internal Revenue Code for the plan year ending September 30, 2009. The information presented in this letter is consistent with our understanding of the requirements of §436(h) of the code and the proposed regulations thereunder. This certification report should not be used for other purposes, distributed to others outside Delphi Corporation or relied upon by any other person without prior written consent from Watson Wyatt Worldwide.

In summary, based on the valuation results that will be shown in the actuarial valuation report to determine funding requirements for the plan for the year beginning October 1, 2008, we have determined the 2008 AFTAP to be 85.62% as developed in the attached exhibit. The 2007 AFTAP was 86.9%.

Given Delphi's bankruptcy status and the AFTAP noted above, lump sums (or other accelerated benefit payments including Social Security Leveling options, installments, etc.) were fully restricted as of October 1, 2008. This restriction remains in force until Delphi exits bankruptcy or the plan is made 100% funded. The plan's 2009 AFTAP must be certified prior to January 1, 2010 (either through a range certification or a specific certification), or the plan's 2009 AFTAP will be deemed to be 10 percentage points lower than the 2008 AFTAP as of January 1, 2010. As long as Delphi is in bankruptcy, this does not have any impact. However, once Delphi emerges from bankruptcy, the AFTAP must be at least 80% in order for the plan to pay lump sums. Without significant funding, the plan is likely going to have an AFTAP below 80% for the plan year ending September 30, 2010. Keep in mind that participants must be notified of benefit restrictions within 30 days of the date that they become applicable.

The results presented above are based on the data, assumptions and methods outlined in the SFAS 35 actuarial valuation report for the plan for the plan year ending September 30, 2008 dated April 30, 2009 with the following exceptions:

- (i) The liabilities were determined using the October 1, 2008 full yield curve.
- (ii) The mortality assumption was based on the mandated static healthy lives mortality tables.

Therefore, the descriptions of the data, assumptions, methods and limitations of the valuation and its use should be considered part of this certification report. The undersigned consultants of Watson Wyatt Worldwide with actuarial credentials meet the Qualification Standards of the American Academy

Watson Wyatt & Company

i:\db\502766 delphi\09w100_funding\2008 srp aftap ltr.doc

One Northwestern Plaza \ Suite 500 \ 28411 Northwestern Highway \ Southfield, MI 48034 \ 248 936 7700 Telephone \ 248 936 7701 Fax

JA265

Mr. John L. DeMarco
June 30, 2009
Page 2



of Actuaries to render the actuarial opinions contained herein. There is no relationship between Delphi Corporation and Watson Wyatt Worldwide that impacts our objectivity.

We will be pleased to review this certification report with you at your convenience.

Sincerely,

Kevin A. House, F.S.A., E.A.
Consulting Actuary

Norman J. Campeau, A.S.A., E.A.
Consulting Actuary

caz

Enclosures: Development of 2008 Adjusted Funding Target Attainment Percentage
Summary of Benefit Restrictions under IRC §436

cc: Karen M. Cobb
Erik M. Dilland
James P. Whitson

Development of 2008 Adjusted Funding Target Attainment Percentage ¹

Plan year beginning	<u>October 1, 2008</u> <i>(\$000)</i>
 A. Valuation Assets	
1. Value of assets at 10/1/2008 ²	\$ 2,994,788
2. As adjusted for 90%/110% corridor	2,994,788
3. Credit balance/(funding deficiency)	(56,324)
4. As adjusted for credit balance/(funding deficiency) ³	2,994,788
5. As adjusted for annuity purchases ⁴	\$ 2,994,788
 B. Funding Target (Disregarding At-Risk Assumptions)	
1. Liability at 10/1/2008	\$ 3,497,701
2. As adjusted for annuity purchases ³	\$ 3,497,701
 C. Adjusted Funding Target Attainment Percentage	
1. A 5 / B 2	85.62%

¹ Our understanding of sponsor elections required under the Pension Protection Act with respect to interest rates, valuation assets and mortality table as confirmed in Sponsor's email dated June 26, 2009.

² The market value as of October 1, 2008 was \$2,994,788.

³ For the 2008 AFTAP, proposed IRS regulations generally provide for subtraction of the credit balance from adjusted valuation assets. Subtraction of the credit balance is not required if the value of plan assets (adjusted for the 90%/110% corridor, but prior to subtraction of the credit balance), is equal to or greater than 100% of the plan's target liability.

⁴ Annuity purchases for non-highly compensated employees for 2006 was \$0, and for 2007 was \$0, for a total adjustment of \$0.



Summary of Benefit Restrictions under IRC §436 for Sponsors Not in Bankruptcy

AFTAP ¹	Benefit Restriction
<80%	<ul style="list-style-type: none"> ▪ <u>Partial restrictions on lump sum distributions</u> – plan would be prohibited from paying lump sum distributions (or other accelerated benefit payments including Social Security Leveling options, installments) in excess of the lesser of 50% of the present value of the participant’s benefit or the present value of the participant’s maximum PBGC guaranteed benefit. ▪ <u>Restrictions on benefit improvements</u> – plan amendments increasing benefits are prohibited, unless plan sponsor makes a contribution equal to the increase in target liability or to increase the AFTAP to 80%, whichever is smaller.
<60%	<ul style="list-style-type: none"> ▪ <u>Plan is subject to complete lump sum distribution restriction</u> – no lump sum distributions or other accelerated benefit payments (such as Social Security Leveling options or installments) are allowed. ▪ <u>Accruals Frozen</u> – no further benefit accruals allowed. ▪ <u>Shutdown or unpredictable contingent event benefits</u> – payment of such benefits prohibited unless plan sponsor makes a contribution to pay for the increase in target liability or an amount to increase the AFTAP to 60%, whichever is smaller.

¹ Adjusted Funding Target Attainment Percentage (AFTAP) is determined as follows: (Value of Plan Assets – Credit Balance) / Target Liability and both the numerator and denominator are increased by the aggregate amount of annuity purchases made for NHCEs by the plan during the preceding two plan years.



From: Morris Karen <Morris.Karen@pbgc.gov>
Sent: Wednesday, July 15, 2009 10:57 AM
To: 'MStone@KelleyDrye.com'; 'JFrohman@KelleyDrye.com'; 'CWolfe@KelleyDrye.com'
Cc: Menke John <Menke.John@pbgc.gov>; Owen Wayne <Owen.Wayne@PBGC.GOV>
Subject: FW: Treasury/GM Counter -- Delphi status
Attach: Waterfall Proposals Compared.pdf

Current settlement numbers.

From: Menke John
Sent: Tuesday, July 14, 2009 5:17 PM
To: Morris Karen
Subject: FW: Treasury/GM Counter -- Delphi status

Karen: Though you probably cannot see this on your Bberry, suffice it to say that the Treasury counter is a fairly minor tweak of the waterfall proposal that Greenhill sent over yesterday afternoon. We get the \$70 million cash up front and then participate in the waterfall at slightly lower percentages, with a net loss of \$50 to \$70 million depending where the final recoverable value ends up years down the road. Terry, Joe and Greenhill seem inclined to tell Feldman that this does it for us; Terry is taking it up to Board reps meeting this afternoon and expecting to get a head nod, which he will then have Greenhill convey to Treasury. Feldman will then take it to GM and get their approval, which will either be a rubber stamp or one last chance to nick us on the deal.

I've just call Ron, who is meeting with Jack at 5:30 Eastern time to get a yes or no on our request to extend ballot and objection deadlines so this deal can get firmed up before we have to respond officially to the POR modifications. I have to leave here at 5:30 to go to my wife's birthday dinner (her birthday is today), and I must make that deadline. I've left my cell number for Ron to call me when he knows and I will then call you to fill you in. At worst, it seems that we may simply not vote our claim, which is better than having to vote "no", if there is no extension.

From: Deneen Terrence
Sent: Tuesday, July 14, 2009 4:40 PM
To: Rae Michael; Menke John
Subject: FW: Treasury/GM Counter

Here it is

From: David Burns [mailto:dburns@greenhill.com]
Sent: Tuesday, July 14, 2009 3:49 PM
To: House Joseph; Deneen Terrence; Cann Dana
Subject: FW: Treasury/GM Counter

Joe,

Brad asked me to send over the attached, which compares the counter-proposal Treasury sent over a little while ago to our proposal of Sunday.

Please let us know when you are free to discuss.

Thanks,

David E. Burns
Greenhill & Co.
300 Park Avenue (between East 49th and East 50th)
New York, New York 10022
(212) 389-1493 (T)
(212) 389-1693 (F)

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Thank you.
Greenhill & Co. LLC.

From: Butler, Jr., John (Jack) Wm <Jack.Butler@skadden.com>
Sent: Thursday, May 28, 2009 2:10 PM
To: Matthew.Feldman@do.treas.gov
Cc: Sherbin, David <david.sherbin@delphi.com>; Corcoran, Sean P <sean.p.corcoran@delphi.com>; Sheehan, John <xzfrbt@delphi.com>; Stipp, Keith <keith.stipp@delphi.com>; Marafioti, Kayalyn A <Kayalyn.Marafioti@skadden.com>; Meisler, Ron E <Ron.Meisler@skadden.com>; Cochran, Eric L <Eric.Cochran@skadden.com>
Subject: Delphi - PBGC Settlement

Matt --

I know that your plate is overflowing at the moment but Harry said yesterday to reach out to you on PBGC settlement issues. The PBGC representative at the mediation was:

John Menke
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026
Phone: +1 (202) 326-4020 x3059
Mobile: +1 (571) 235-1851
Fax: +1 (202) 326-4112

He needs to hear from you on what GM/UST plan to do with the HRP and SRP. My understanding from the mediation discussions (which remain subject to the mediation privilege) are that, in the event that GM takes the HRP and leaves behind the SRP, the PBGC will terminate the SRP and will waive ROW liens on the SRP if they can receive some reasonable settlement on the termination liabilities. While John was not authorized to give me a specific number, the strawman was something like 25% of the value of their SRP liens to date which would equate to a settlement of something under \$50 million.

We would appreciate it if you would give us guidance on how these discussions are proceeding and what your views are after you speak with the PBGC.

Thanks,

Jack

John Wm. ("Jack") Butler, Jr.
Partner and Co-Practice Leader, Corporate Restructuring
Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive | Chicago | Illinois | 60606-1285
O: 312.407.0730 | M: 312.498.6691 | F: 312.407.8501
jack.butler@skadden.com

Skadden

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====

From: Butler, Jr., John (Jack) Wm <Jack.Butler@skadden.com>
Sent: Friday, May 22, 2009 2:06 PM
To: Sheehan, John <xzfbt@delphi.com>; Stipp, Keith <keith.stipp@delphi.com>; Sherbin, David <david.sherbin@delphi.com>; Corcoran, Sean P <scan.p.corcoran@delphi.com>
Cc: Cochran, Eric L <Eric.Cochran@skadden.com>; Marafioti, Kayalyn A <Kayalyn.Marafioti@skadden.com>; Eisenberg, Randall <Randall.Eisenberg@FTIConsulting.com>; 'Shaw, William' <william.shaw@us.rothschild.com>
Subject: Delphi - Proposed Submissions to Judge Morris
Attach: Delphi Mediation Submission.pdf

Attached is the revised mediation submission. Please email me any comments that you may have by 4:00 p.m. EDT today. We will be making the submission late this afternoon.

Thanks,

Jack

John Wm. ("Jack") Butler, Jr.
Partner and Co-Practice Leader, Corporate Restructuring
Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive | Chicago | Illinois | 60606-1285
O: 312.407.0730 | M: 312.498.6691 | F: 312.407.8501
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Skadden

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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

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CONFIDENTIAL – SUBJECT TO MEDIATION PRIVILEGE – MAY 22, 2009

**Delphi Corporation and Affiliated Debtors
 Stakeholder Mediation – May 26, 2009
Debtors' Submission -- Perceived Stakeholders' Motivations**

<u>Stakeholder</u>	<u>Perceived Objectives</u>	<u>Perceived Concerns</u>
US Treasury Auto Task Force (Capital Provider)	<ul style="list-style-type: none"> • Continuation (protection) of supply for GM • Maximize feasibility and speed of execution of transaction • Minimize transaction economics • Induce PBGC to waive alleged "rest of world" liens against Delphi's non-debtor affiliates in order 	<ul style="list-style-type: none"> • Delphi's chapter 11 cases remain unresolved and interfere with GM restructuring (including launch of potential GM chapter 11 cases) • GM's parts supply is disrupted • Delphi solution "costs too much" or is perceived as direct support of automotive supplier base (as opposed to Chrysler/GM centric actions) • Criticized or sued for orchestrating a "government taking" of Delphi's assets
General Motors Corporation (Principal Customer)	<ul style="list-style-type: none"> • Continuation (protection) of supply even adopting new strategic alternatives to increase vertical integration (engineering and production) to insure supply in harsh economic climate • Mitigate GSA/MRA funding commitments agreed to in 2008 to procure Delphi releases • Minimize debt repayments to US Treasury (and therefore minimize payments to Delphi stakeholders) • Avoid Delphi assets being controlled by Delphi's Tranche C Lenders • Satisfy GM-side of dysfunctional Delphi-GM commercial relationship 	<ul style="list-style-type: none"> • Delphi loses liquidity and enters into uncontrolled liquidation/shutdown disrupting supply (at likely resourcing cost of several billion dollars to GM and production shutdown of up to 11 months or more) • Delphi's assets become controlled by recalcitrant Tranche C lenders and supply is held hostage for repayment of entire DIP outstandings • GM management is perceived by UST Auto Task Force as being "too weak" on Delphi's requests (remembering that the Auto Task Force has blocked the three most recent Delphi-GM agreements from becoming effective)

DELPHI CONFIDENTIAL

110224-050597

CONFIDENTIAL – SUBJECT TO MEDIATION PRIVILEGE – MAY 22, 2009

**Delphi Corporation and Affiliated Debtors
 Stakeholder Mediation – May 26, 2009
Debtors' Submission -- Perceived Stakeholders' Motivations**

<u>Stakeholder</u>	<u>Perceived Objectives</u>	<u>Perceived Concerns</u>
<p>Delphi Corporation (Debtors)</p>	<ul style="list-style-type: none"> • Maximize business enterprise value and related recoveries for Delphi's stakeholders • Maximize feasibility and speed of execution of transaction (including provision of sufficient interim liquidity runway) • Protect franchise value through continuation (protection) of supply for all customers, preservation of supplier tiers and protection of jobs / retention of human capital • Consummate transaction through POR modifications to achieve comprehensive resolution of Delphi's chapter 11 cases and consummate Delphi's transformation objectives (as modified by the transaction) 	<ul style="list-style-type: none"> • Delphi runs out of liquidity and is forced into uncontrolled liquidation • Delphi is pressured into transaction that does not maximize stakeholder recoveries (i.e., is not reasonably related to hypothetical liquidation outcome) and Ds&Os are sued • Delphi is pressured into a form of transaction (i.e., 363 sale) that "strips" assets away from Delphi's estates without taking administrative claims that have been incurred in "continuity of supply" arrangement with GM since October 2005 • GM uses Delphi's liquidity constraints to successfully mitigate approximately \$2 billion of future obligations under GSA/MRA that were the basis of GM releases from Delphi • Delphi's former and current salaried workforce are "thrown under the bus" and lose pensions, retiree healthcare, other benefits and severance even though they preserved continuity of supply for customers while successfully executing a portfolio rationalization that sold or closed \$5 billion in annual revenue businesses while also [maintaining] business enterprise value for stakeholders • Pressured to sell company at 30 year historical economic trough resulting is significant impairment to its stakeholders

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110224-050598

CONFIDENTIAL – SUBJECT TO MEDIATION PRIVILEGE – MAY 22, 2009

**Delphi Corporation and Affiliated Debtors
 Stakeholder Mediation – May 26, 2009
Debtors' Submission -- Perceived Stakeholders' Motivations**

<u>Stakeholder</u>	<u>Perceived Objectives</u>	<u>Perceived Concerns</u>
DIP Tranche A/B Lenders (Original DIP Lenders)	<ul style="list-style-type: none"> • Tranche A/B outstandings are repaid in full in cash • Hedge obligations are repaid in full or cash collateralized (i.e., owned by Tranche A/B lenders) • Releases are obtained to protect Agent and Tranche A/B Lenders • Tranche C Lenders obtain reasonable settlement (given multiple A/B/C tranche ownership by various lenders including Agent) • Non-consensual foreclosure of assets can be avoided 	<ul style="list-style-type: none"> • Agent may be sued by Tranche C Lenders if non-consensual deal is forced on Tranche C • Non-consensual deal complicates Tranche A/B repayment because of adverse reactions of lenders holding multiple A/B/C tranche investments • Tranche A/B Lenders which are TARP recipients are perceived as acting contrary to US Treasury's goals and objectives and governmental relationship is damaged • Forced into foreclosure or pursuit of remedies to obtain repayment and there is substantial adverse publicity including direct criticism by Obama Administration and/or Congress
DIP Tranche C Lenders (Roll-Up DIP Lenders)	<ul style="list-style-type: none"> • Obtain adequate recovery (i.e., adequate total value and appropriate "composition" of elements in recovery package) • Obtain equity in the reorganized enterprise (even if sold) in order to participate in "upside" when industry stabilizes and, eventually, returns to more normalized production volumes 	<ul style="list-style-type: none"> • Delphi will enter into non-consensual transaction with GM and Tranche A/B Lenders that will be "forced on" Tranche C Lenders • Tranche C recovery will be below estimated value of recovery in "most likely" alternative consensual liquidation scenario • Forced into foreclosure or pursuit of remedies to obtain repayment and there is substantial adverse publicity including direct criticism by Obama Administration and/or Congress

DELPHI CONFIDENTIAL

110224-050599

CONFIDENTIAL – SUBJECT TO MEDIATION PRIVILEGE – MAY 22, 2009

**Delphi Corporation and Affiliated Debtors
 Stakeholder Mediation – May 26, 2009
Debtors' Submission -- Perceived Stakeholders' Motivations**

<u>Stakeholder</u>	<u>Perceived Objectives</u>	<u>Perceived Concerns</u>
Creditors' Committee (Prepetition Creditors)	<ul style="list-style-type: none"> Obtain warrant structure (or equivalent "hope certificate") that would pay out recoveries if business enterprise value returns to \$7.2 billion range estimated at time of September, 2008 settlement between UCC and GM 	<ul style="list-style-type: none"> Criticized or sued for being shut out of any recovery after having participated in Confirmed Plan that would have provided "par plus accrued" recovery at negotiated business enterprise value Forced into litigation against GM and others for fraudulent conduct arising out of Confirmed Plan and/or September 2008 GM Settlement
Pension Benefit Guaranty Corporation (Guarantor of HRP and SRP) [Note: GM is likely to assume HRP because of existing union benefit guaranties.]	<ul style="list-style-type: none"> Minimize exposure for potential termination of hourly and salaried defined benefit programs Obtain recovery on alleged "rest of world" liens against Delphi's non-debtor affiliates in order to reduce exposure and "legitimize" foreign liens as a major PBGC "program" objective Obtain "pro-rata" recovery with any Tranche C Lender recovery 	<ul style="list-style-type: none"> Obtain adverse litigation determination regarding enforceability of alleged "rest of world" liens against Delphi's non-debtor affiliates

DELPHI CONFIDENTIAL

From: Sheehan, John <john.sheehan@delphi.com>
Sent: Monday, January 26, 2009 7:58 PM
To: Corcoran, Sean P <sean.p.corcoran@delphi.com>
Subject: Fw: FW: Delphi DIP Lender Proposal

As requested.....

From: O'Neal, Rodney
To: Miller, Steve (CEO); 'david.resnick@us.rothschild.com'; 'Eisenberg, Randall'; Bertrand, James; Stipp, Keith; 'Butler, Jr., John (Jack) Wm'; Sherbin, David; Sheehan, John; Weber, Mark (Executive Vice President)
Sent: Mon Jan 26 17:29:13 2009
Subject: FW: FW: Delphi DIP Lender Proposal

Fritz's reply. Not surprising.

Rod

From: frederick.henderson@gm.com [mailto:frederick.henderson@gm.com]
Sent: Monday, January 26, 2009 5:27 PM
To: O'Neal, Rodney
Cc: grwjr@gm.com; walter.borst@gm.com; fred.fromm@gm.com
Subject: Re: FW: Delphi DIP Lender Proposal

Rod,

Thank you for your candid perspective on the status of the critical ongoing discussions between GM and Delphi. Rather than debate the various points referenced in your note, let me assure you that I have been and continue to be in regular contact with Walter, Rick, and the rest of the GM Team on these matters and that the most recent GM proposals to Delphi and the DIP lenders have both my guidance and full support. As Walter summarized in his note, GM has been very clear from the beginning of these most recent discussions that any additional liquidity support from GM must be part of a complete solution. As you know, both GM and Delphi's situations have changed with both companies facing significant challenges. As such, GM simply cannot and will not settle for anything less than a comprehensive solution that includes the prompt resolution of the status of the U.S. Keep Sites and associated operations.

In the spirit of mutual cooperation that you and I have always enjoyed, I will remain close to these discussions through regular updates from the GM Team and ask that you fully empower your team as I have mine to deal with the current DIP lender proposal and reach an overall final solution, so that this week's discussions can be the most productive as possible and lead to the comprehensive solution that both Delphi and GM need at this juncture.

Best regards,

Fritz

"O'Neal, Rodney" <rodney.o.neal@delphi.com>

To "Fritz Henderson" <Frederick.Henderson@gm.com>

cc

01/26/2009 12:57 AM

Subject FW: Delphi DIP Lender Proposal

JA277

110224-041074

Fritz,

I am reaching out to you directly to talk about how we move forward together following our teams' engagements over the past couple of weeks and especially what has transpired over this weekend. Your team's messages to us have been discouraging. We had understood that GM was committed to helping provide the "liquidity runway" to allow us to work with GM and our stakeholders to reach a consensual path for Delphi to emerge from chapter 11.

Instead, my team has been told that (1) GM would not provide any further interim liquidity support absent Delphi's agreement to transfer the US keep sites back to GM, (2) GM would not assist further with Delphi's legacy obligations, including taking the second tranche of the 414(l) transaction (unless Delphi could meet the GSA conditions as they currently exist) or addressing salaried pension or OPEB, (3) GM would not provide further assistance to Delphi's reorganization other than some unspecified payment for the US keep sites; (4) GM did not see a path for Delphi's emergence from chapter 11 under a reorganization plan and (5) GM had to perform substantial additional due diligence in order to make any proposals to Delphi and did not expect to be able to tell Delphi what GM would do until early February or perhaps even later.

We told your team that their comments were interpreted by Delphi as a departure by GM from our prior consensual discussions. We have made it clear to your team that, while we prefer to retain the US keep sites, Delphi would consider selling them back to GM for a fair price that results in a comprehensive solution allowing Delphi to emerge during the second quarter of this year.

This linkage is critical to Delphi because GM's renewed request to take back GMNA keep sites essentially eliminates the MRA that supported the settlement between GM and Delphi last fall. We estimate the net present value of GM's yet unfunded financial obligations under the MRA to be at least \$1.5 billion. Another data point is the \$200 million in annual cash flow that the US keep sites were to have generated under the business plans reviewed and supported by GM leading up to the Delphi-GM settlement last fall. Therefore, we need to make sure that we have solved for Delphi's consensual emergence from chapter 11.

A similar issue exists in connection with our recent ask to GM to help restore Delphi's liquidity runway through June 30th that was contemplated by the Accommodation Agreement and GM Arrangement amendment approved back on December 1st. The 2009 GMNA volume reductions taken by GM less than ten business days after those agreements were approved have deteriorated Delphi's 2009 revenue by approximately \$400 million and contribution margin by approximately \$150 million – not counting the adverse change in mix. This is in addition to GMNA volume reductions announced between the time our plan was confirmed and the Accommodation Agreement was put into place which had already deteriorated our 2009 revenue by about \$1.45 billion and our contribution margin by almost \$600 million.

We need to get GM and Delphi "back on track" and realigned with each others' interests. We have started that process by facilitating most of GM's new due diligence requests. I met with my team to make sure GM's supplemental due diligence process started smoothly. I need your help in reaffirming our prior personal discussion about GM "being there" for us; both by helping to restore the liquidity lost over the last six weeks based on GM's volume reductions since December 1st and by the two of us

directing our teams to problem solve a consensual emergence path for Delphi.

Delphi has created a proposal that has been agreed to by the DIP Steering Committee that they participate alongside GM in the supplemental liquidity bridge needed to enable Delphi, while on its emergence path, to continue to accept trade and other administrative claim support from employees, suppliers and other administrative creditors. Unfortunately, it is apparent based on Walter's attached response that GM is not willing to participate "without a complete solution involving the US keep sites". I am puzzled at Walter's response and the rejection of an enormous opportunity to provide Delphi with a sufficient liquidity bridge that is present today; for a solution that GM can provide no assurances of a complete resolution time-line or a price for the US Keep Sites (which Delphi prefers to retain). Fritz, I respectfully request that you become personally involved on the liquidity offer that is on the table and reconsider the GM position provided by Walter. We need to restore the "transparent liquidity highway" achieved back on December 1st as soon as possible to address the potential future shortfalls in the liquidity projections.

We then need to turn our attention to Delphi's emergence plan and agree to get a deal in place as soon as possible. That plan has to address the payment of administrative claims and an acceptable resolution of remaining pension and OPEB. We also believe that some form of warrant consideration should be made available to the UCC in order to obtain their support for the solution that GM seeks.

Our administrative creditors have provided the financial support necessary for Delphi to maintain continuity of supply to GM and maximize Delphi's business enterprise value – these third party creditors (not including GM) must be paid in full as applicable law requires.

We must find a pension plan solution in which GM participates. Your team has said that GM will not be permitted to address (or does not intend to address) legacy obligations relating to Delphi's SRP and OPEB or take the second tranche of the HRP. This does not make sense to us because, for example, if there is a distressed pension termination, both GM and Delphi have been told by the PBGC that it will assert liens against Delphi ROW and will sue GM for what the PBGC has told us it views as GM's prior unlawful follow-on plan at the time that the pension plans were split and transferred to Delphi. We will not be able to sort out a solution where GM takes the keep sites and the DIP lenders take the rest of world without a pension solution that, among other matters, eliminates any contingent PBGC claims and related PBGC liens both in the US and in the rest of the world.

As for the federal government's involvement in pension and TARP issues, we must work together here as well. We hope that GM will not seek to use the Presidential Designee review process as the basis for not negotiating with Delphi to a consensual resolution. Rather, we need to work together to problem solve a modified deal and together advocate its rationale to the Presidential Designee.

On a parallel path, we must work together immediately to negotiate and document arrangements between our companies in the event that GM files chapter 11. We must also have clear visibility into GM's out of court and chapter 11 discussions and preparations including reviewing draft pleadings. We raised this to your team in the second week of December, but no progress has been made to date. This visibility is critical if we are to successfully maintain our shared goal of continuity of supply.

Finally, we urge you to quickly come to a decision on Steering. Delphi has expended millions on IT systems separation as required by Platinum and given Platinum somewhat unrestricted access to our non-GM customer base and have been ready to close since the summer, but have been waiting on GM to conclude your negotiations with Platinum.

Fritz, in closing, I believe the proposed DIP Lender/GM liquidity bridge is an opportunity that must be seized now to ensure the runway we all need for Delphi to emerge. It is extremely important that

our respective teams remain aligned and continue working together in order to jointly problem solve the remaining emergence issues.

Take care,

Rod

From: walter.borst@gm.com [mailto:walter.borst@gm.com]

Sent: Sunday, January 25, 2009 10:59 PM

To: Sheehan, John; rick.westenberg@gm.com

Cc: Stipp, Keith ; O'Neal, Rodney

Subject: Re: Delphi DIP Lender Proposal

John,

We will give due consideration to the revised proposal and get back to you in the morning. While I respect your views, I believe GM and its advisors have been very clear that we are not in a position to provide Delphi additional liquidity without a complete solution involving the US keep sites. Unfortunately GM has its own liquidity constraints.

Regards, Walter

From: "Sheehan, John" [john.sheehan@delphi.com]

Sent: 01/25/2009 10:46 PM EST

To: Walter Borst; Rick Westenberg

Cc: "Stipp, Keith" <keith.stipp@delphi.com>; "O'Neal, Rodney" <rodney.o.neal@delphi.com>

Subject: RE: Delphi DIP Lender Proposal

Walter and Rick,

I wanted to follow-up with you as we have engaged in further discussions with JPM this evening to seek to reach an agreement to preserve Delphi's liquidity. The DIP Lenders will not entertain a reduction of the Liquidity Covenant in return for a pull ahead by GM of \$50 million of the receivables acceleration that was otherwise to occur in May, 2009. Rather the DIP Lenders may ["may" from the perspective that JPM would need to review with the full DIP Steering Committee] be willing to:

1. Reduce the Liquidity Covenant by \$50 million in return for GM increasing the amount of the GM/Delphi Liquidity Agreement by \$50 million.
2. Permit a new cash collateral basket of up to \$117M to be included in the borrowing base. Delphi will be required to apply the \$117M to pay down the DIP facility on February 27, 2009 unless GM agrees to provide an additional \$100M of GM liquidity under the Additional GM Liquidity Agreement by such date.
3. All of the other provisions in the Accommodation Agreement forwarded to GM today would remain in effect.

Further, I understand that one of the provisions of GM providing Delphi liquidity support was that the DIP Lenders receive no fee for the amendment. The DIP Lenders will not agree to this condition. The DIP Lenders have proposed a 75bps fee – which would amount to approximately \$9 million of fees to consenting lenders, if 100% of the consenting lenders agreed to the amendment. We believe this amendment fee to be reasonable in the circumstances.

Waller and Rick, I believe the foregoing proposal by the DIP Lenders represents both a fair compromise to reach agreement and as much as we are going to be able to get the DIP Lenders to agree to – we have pushed them very hard.

Accordingly, I very much ask that you give due consideration to this proposal, especially in light of the liquidity disclosure constraints Delphi will face on February 2 – as has been discussed with Rick and your advisors. The foregoing proposal would avoid the impending February 2 Delphi liquidity disclosure event.

Finally, the DIP Lender Steering Committee is not prepared to hold a DIP Lender meeting tomorrow without consensus between Delphi, GM and the DIP Lenders on the terms of the amendment. They are not prepared to repeat the process of changes that took place in Q4 in connection with the Accommodation Agreement. It is therefore necessary to reach agreement between us by noon tomorrow – such that we may hold the Lender Meeting tomorrow afternoon. Absent being able to reach agreement between us, Delphi will be obligated to repay \$90 million on the DIP tomorrow and an opportunity will be lost. This would be very unfortunate.

I appreciate that you will need to review the foregoing with Fritz Henderson. We appreciate your full consideration of the foregoing. I am available anytime to discuss.

John

From: Sheehan, John
Sent: Sunday, January 25, 2009 9:29 PM
To: 'walter.borst@gm.com'
Cc: Stipp, Keith ; 'rick.westenberg@gm.com'; O'Neal, Rodney
Subject: Delphi DIP Lender Proposal
Importance: High

Walter,

I have been in conversation this evening with Keith Stipp on GM's position relative to the Delphi DIP lender proposal. I wanted to follow up with you directly as I am concerned with your position and don't understand why GM would not want to take advantage of the additional Delphi liquidity opportunity presented by the Delphi's DIP lenders. From my perspective, the ability for Delphi to avoid the pay down of the DIP by \$117 million and to instead put the amount into a cash collateral account for use in the future when Delphi's borrowing base expands is a significant opportunity for Delphi to retain liquidity over the next several months while Delphi and GM work through our final discussions on the US sites.

In response to our recent meeting with your team, the Delphi Restructuring and Treasury teams worked our lenders hard to find a liquidity solution that was not 100% GM's responsibility, and having crafted this solution I do not understand why GM would not want to fully participate. The lender proposal to cut the liquidity covenant to \$50 million and defer the DIP paydown is contingent on GM's agreement to provide additional funding in the future. Given the impact of GM's Q1 production cuts on Delphi's liquidity, it is not reasonable to expect that the DIP Lenders will provide Delphi with additional liquidity support without a contaminant contribution from GM.

If we reach agreement on the US sites, you and your advisors have previously told us that GM would provide additional funding support. It would seem to me that the DIP Lender proposal would reduce any future support that you may be willing to provide once we have a US site resolution.

I would really appreciate your reconsideration of your positions. I understand you will be discussing this matter tomorrow morning with Fritz Henderson – I hope that you will take the foregoing thoughts into your review with Fritz. Thanks.

John

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

Special Inspector General for the Troubled Asset Relief Program



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 *Christy L. Romero*

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).

SIGTARP 13-003

August 15, 2013

JA284

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



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

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



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

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



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

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



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

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



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.

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



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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

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 "PBG/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.

The Deal with UAW

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.

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,

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.

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 hourlyies 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

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 hourly employees. Mr. Deese referenced a discussion about health care costs and the "credible fairness arguments to augment the hourly employees' 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.

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 Auto Team	Presidential Task Force on the Auto Industry 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,



Timothy G. Massad
Assistant Secretary for Financial Stability

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.

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By *Phone*: Call toll free: (877) SIG-2009

By *Fax*: (202) 622-4559

By *Mail*:

**Hotline: Office of the Special Inspector General
for the Troubled Asset Relief Program**
1801 L Street., NW, 3rd Floor
Washington, D.C. 20220

Press Inquiries

If you have any inquiries, please contact our Press Office:

Troy Gravitt
Director of Communications
Troy.Gravitt@treasury.gov
202-927-8940

Legislative Affairs

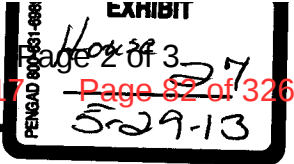
For Congressional inquiries, please contact our Legislative Affairs Office:

Joseph Cwiklinski
Director of Legislative Affairs
Joseph.Cwiklinski@treasury.gov
202-927-9159

Obtaining Copies of Testimony and Reports

To obtain copies of testimony and reports, please log on to our website at www.SIGTARP.gov.





From: Rae Michael
Sent: Tuesday, June 30, 2009 10:36 PM
To: House Joseph
Subject: Re: CONFIDENTIAL

Thanks.

Sent from my BlackBerry Wireless Handheld

From: House Joseph
To: Rae Michael
Sent: Tue Jun 30 22:30:52 2009
Subject: Re: CONFIDENTIAL

Feldman says that up to now, UST auto has consulted/deliberated exclusively amongst itself and WH/NEC. He promised to wait to call company, GM and UAW until after we've briefed our board reps. VKS and TD have a board rep call is at 10 am tomorrow. My expectation is that this goes "public" Thurs/Fri.

Sent from my BlackBerry Wireless Handheld

From: Rae Michael
To: House Joseph
Sent: Tue Jun 30 22:12:46 2009
Subject: Re: CONFIDENTIAL

Any hints on when this becomes public?

Sent from my BlackBerry Wireless Handheld

From: House Joseph
To: Rae Michael
Sent: Tue Jun 30 21:17:55 2009
Subject: Re: CONFIDENTIAL

Cost. They're totally tapped.

Sent from my BlackBerry Wireless Handheld

From: Rae Michael
To: House Joseph
Sent: Tue Jun 30 21:10:37 2009
Subject: Re: CONFIDENTIAL

what's the short answer to the question - why?

Sent from my BlackBerry Wireless Handheld

From: House Joseph

To: Rae Michael

Sent: Tue Jun 30 18:45:10 2009

Subject: FW: CONFIDENTIAL

FYI

From: House Joseph

Sent: Tuesday, June 30, 2009 6:41 PM

To: Goldowitz Israel; Morris Karen; Menke John

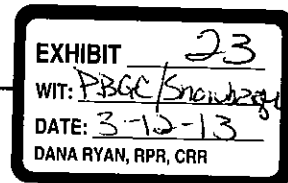
Cc: Cann Dana; Archeval Kristina; Ranade Neela

Subject: CONFIDENTIAL

Importance: High

Wanted to give this group an early heads up. For your eyes only, Terry and I just returned from a meeting over at UST. It is now clear that the Delphi Hourly plan will not be assumed by GM, and thus we will be terminating/trusteeding that pension plan along with the Salaried and the four small plans. Timing and next steps -- launching NOD and starting court action -- likely to occur sometime in the next 3-6 weeks. Obviously, there will be many details to iron out over the next couple of weeks. Please hold extremely close for now, as Vince and Terry will be briefing Board Reps tomorrow morning and the Auto Task Force will be briefing Delphi, GM and the UAW tomorrow afternoon/evening.

From: Snowbarger Vince </O=PBGC/OU=PROD/CN=RECIPIENTS/CN=OEXXA04>
Sent: Tuesday, June 30, 2009 5:36 PM
To: Starr Judith <Starr.Judith@pbgc.gov>
Subject: RE: Urgent phone call



Terry and Joe were called to Treasury this afternoon. Decisions have been made re Delphi.

From: Starr Judith
Sent: Tuesday, June 30, 2009 5:34 PM
To: Snowbarger Vince
Subject: Re: Urgent phone call

What's up?

Sent from my BlackBerry Wireless Handheld

From: Snowbarger Vince
To: Lebowitz, Alan - EBSA <Lebowitz.Alan@dol.gov>; Borzi, Phyllis - OSEC <Borzi.Phyllis@dol.gov>; Michael.Barr@do.treas.gov <Michael.Barr@do.treas.gov>; RBlank@doc.gov <RBlank@doc.gov>
Cc: Chestnut Melody; Deneen Terrence; House Joseph; Starr Judith; David Beede <david.beede@esa.doc.gov>; Eric Berger <Berger.eric@dol.gov>; Hilary Duke <duke.hilary@dol.gov>; jane.molloy@esa.doc.gov <jane.molloy@esa.doc.gov>; Philip Quinn <philip.quinn@do.treas.gov>
Sent: Tue Jun 30 17:26:55 2009
Subject: Urgent phone call

An issue has come up that I'd like to talk to all of you about. I am going to ask my assistant, Melody Chestnut, to work with you or your schedulers to find a time tomorrow morning. I hope you will make this a priority. It should only take about 15 minutes depending on the discussion that results.

Vince Snowbarger

Acting Director

PENSION BENEFIT GUARANTY CORPORATION

1200 K Street NW

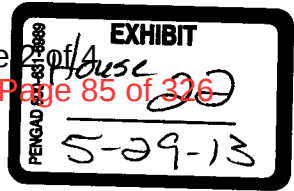
Washington, DC 20005-4026

Phone (202) 326-4010

Facsimile (202) 326-4016

PBGC-BL2-00161209

JA342



From: Walter Borst, GM
To: Wilson, Harry;
cc: Markowitz, David; Fred Fromm, GM; Feldman, Matthew;
Rick Westenberg, GM; Malik, Sadiq; Niharika Ramdev, GM
Subject: Re: PBGC - Delphi Plans
Date: Tuesday, June 02, 2009 10:15:27 PM

Good. Is there a time that works for Matt and you late tomorrow afternoon or early evening?

Regards, Walter

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

From: [Harry.Wilson@do.treas.gov]
Sent: 06/02/2009 09:34 PM AST
To: Walter Borst
Cc: <David.Markowitz@do.treas.gov>; Fred Fromm; <Matthew.Feldman@do.treas.gov>; Rick Westenberg; <Sadiq.Malik@do.treas.gov>; Niharika Ramdev
Subject: Re: PBGC - Delphi Plans

Perfect, thx

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

From: walter.borst@gm.com <walter.borst@gm.com>
To: Wilson, Harry
Cc: Markowitz, David; Fred Fromm, GM; Feldman, Matthew; Rick Westenberg, GM; Malik, Sadiq; Niharika Ramdev, GM
Sent: Tue Jun 02 21:14:01 2009
Subject: RE: PBGC - Delphi Plans

Harry,

Why don't you have the PBGC start with me. I will put together a team at GM from my Delphi and Pension groups. We will then pass on to Niharika to make sure it's properly folded into the forecast/budget.

I'd like to have a discussion with Matt and you in advance though so that I can better understand where you've left it with them and what you think from the UST perspective is expected from GM...and what isn't. We think

we understand the Salaried side but want to understand the Hourly options better.

Regards, Walter

<Harry.Wilson@do.treas.gov>
06/02/2009 07:22 PM

To
<Matthew.Feldman@do.treas.gov>, Rick Westenberg, GM
cc
<walter.borst@gm.com>, Fred Fromm, GM, <Sadiq.Malik@do.treas.gov>, <David.Markowitz@do.treas.gov>
Subject
RE: PBGC - Delphi Plans

Guys, who's the right person for the PBGC to call? After the call, I'd love for someone at GM to walk David and Sadiq (cc'ed here) through the deal so that we can make sure it's modeled correctly in the forecast/budget.

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

From: Feldman, Matthew
Sent: Tuesday, June 02, 2009 7:13 PM
To: Rick Westenberg, GM
Cc: Wilson, Harry; Walter Borst, GM; Fred Fromm, GM
Subject: Re: PBGC - Delphi Plans

I've told the PBGC to speak directly to you guys. I will ask them to do so again.

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

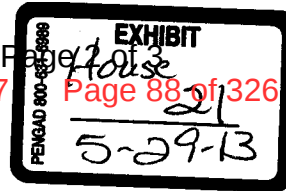
From: Rick Westenberg, GM
To: Feldman, Matthew
Cc: Wilson, Harry; Walter Borst, GM; Fred Fromm, GM

Sent: Tue Jun 02 19:00:29 2009
Subject: PBGC - Delphi Plans

Matt,

We were looking to understand the details of the settlement with the PBGC regarding Delphi's hourly and salaried plans. Has it been finalized? Could you please provide an overview for how the hourly and salaried plans will be treated/addressed? Would it be appropriate/helpful to have GM involved in any discussions?

Thanks,
Rick



From: Menke John
Sent: Friday, May 29, 2009 2:55:54 PM
To: Landy Ralph; Owen Wayne
Subject: FW: Delphi -- Outline of PBGC Proposal



From: House Joseph
Sent: Friday, May 29, 2009 1:21 PM
To: Deneen Terrence; Rae Michael
Cc: Cann Dana; Morris Karen; Menke John; Brad Robins; 'dburns@greenhill.com'
Subject: FW: Delphi -- Outline of PBGC Proposal

FYI

From: House Joseph
Sent: Friday, May 29, 2009 1:20 PM
To: 'Matthew.Feldman@do.treas.gov'
Subject: Delphi -- Outline of PBGC Proposal

Matt -

As discussed last night, here is an outline of PBGC's views regarding acceptable resolution of the issues surrounding Delphi's Hourly and Salaried pension plans (respectively, "HRP" and "SRP"). For purposes of this outline, PBGC does not dispute the position taken by Delphi that any reorganized company that emerges from the ongoing negotiations among the interested parties will not be able to afford to maintain either the HRP or the SRP going forward.

Outline of PBGC's proposed solution:

1. GM will assume Delphi's HRP and merge the HRP with GM's hourly pension plan.
2. PBGC staff will undertake its best efforts to commence termination and trusteeship of Delphi's SRP under section 4042 of ERISA. Upon PBGC's issuance of a notice of determination that the SRP should be terminated, Delphi agrees that it will promptly sign a trusteeship agreement.
3. Termination of Delphi's SRP will mature PBGC's joint and several claim against each of the members of Delphi's controlled group (both the debtors and Delphi's nondebtor foreign affiliates) for approximately \$3 billion in unfunded benefit liabilities in the SRP. In addition, PBGC currently has perfected on behalf of the SRP approximately \$165 million in liens under sections 412(n) and 430(k) of the Internal Revenue Code for missed minimum funding contributions. PBGC would agree to settle all of those claims and liens in exchange for the following consideration:
 - A. For its claims against the debtors: An allowed \$3 billion general unsecured claim in Delphi's consolidated bankruptcy case, which would share pari passu with the other general unsecured claims in any recoveries available to that class of creditors.
 - B. For its claims and liens against Delphi's nondebtor affiliates:
 1. A cash payment equal to the value that PBGC would receive if its liens were pari passu with the Tranche C DIP liens.
 2. A cash payment equal to one percent of PBGC's joint and several claims against nondebtor affiliates (i.e., one-percent of \$3 billion claim).

I hope this is helpful. Please do not hesitate to contact me with any questions/concerns.

Best,

Joe

PBGC-BL2-00767583

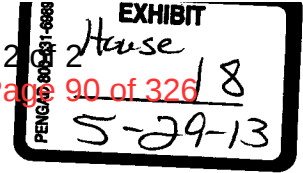
Joseph R. House
Director, Corporate Finance and Restructuring Group
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Suite 270
Washington, D.C. 20005-4026
house.joseph@pbgc.gov
direct: 202-326-4070 ext. 3516

PBGC-BL2-00767584

JA347

From: Matthew Feldman@do.treas.gov
Sent: Friday, May 22, 2009 11:57 AM
To: House Joseph <House.Joseph@pbgc.gov>
Subject: Delphi

USCA Case #17-5142 Document #1690342 Filed: 08/28/2017 Page 90 of 326

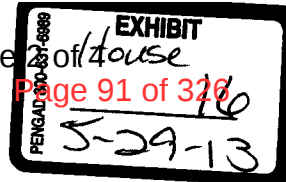


Can we talk later today or over the weekend. Spoke to Mediator and Delphi and what to update you.

PBGC-BL-0058140

JA348

From: Landy Ralph
 Sent: Wednesday, May 13, 2009 9:38:24 AM
 To: Menke John; Owen Wayne
 Subject: FW: Delphi: Today's meeting at Skadden's DC office



Attachments: Scan001.PDF; Scan001.PDF; Scan001.PDF; Scan001.PDF

If Treasury and PBGC have reached an agreement in principle on the treatment of Delphi's pension plans, this is the first time I heard about it.

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

From: Michael.Riela@lw.com [mailto:Michael.Riela@lw.com]

Sent: Tuesday, May 12, 2009 9:52 PM

To: andrew.yearley@lazard.com; bceccotti@cwsny.com; Bangert Beth; Blaire.Lomasky@lazard.com; brobins@greenhill.com; bsimon@cwsny.com; bruce.kaufman@ca-llp.com; blevine@cwsny.com; cwolfe@kelleydrye.com; Cann Dana; David.Stasse@freescale.com; Delphi@chanin.com; dsherrick@uaw.net; edward.fox@klgates.com; eileen.wiseman@ca-llp.com; eric.moser@klgates.com; ewilson@kelleydrye.com; fsmusick@aol.com; gabor.szabo@ca-llp.com; hkolko@msek.com; jmcginley@wilmingtontrust.com; jdclark@iue-cwa.org; jim.millstein@lazard.com; JKelly@uaw.net; segal.joan@pbgc.gov; JCBerry@tycoelectronics.com; Judah.Milunsky@ca-llp.com; Morris Karen; Archeval Kristina; Imagarik@kjmlabor.com; lasplen@iue-cwa.org; Mamta.Desai@ca-llp.com; msbaker@tycoelectronics.com; mbrereton@tycotelecom.com; Menke John; nganatra@uaw.net; phillip.siegel@ca-llp.com; Landy Ralph; rsuminsk@tycoelectronics.com; rcharles@lrlaw.com; Rsciotti@uaw.net; sriemer@phillipsnizer.com; slykins755@aol.com; scimalore@wilmingtontrust.com; sfreeman@lrlaw.com; sjennik@kjmlabor.com; tkennedy@kjmlabor.com; Owen Wayne; yvette.tan@ca-llp.com
 Cc: Delphi_Moelis@Moelis.com; delphi_warner@warnerstevens.com; delphi_jefferies@jefferies.com; DelphiLatham@lw.com; delphi_mesirov@mesirovfinancial.com
 Subject: Delphi: Today's meeting at Skadden's DC office

Today, Delphi and its advisors met separately with representatives of the DIP lenders and with the US Treasury at Skadden's office in Washington, DC. We attended the company's presentation to the DIP lenders in the morning, during which the company outlined the basic tenets of an emergence transaction that its board of directors could support. (During a meeting on May 3, the Treasury had asked the company to present it with an outline of an emergence transaction that the Delphi board could support. One of the purposes of the company's meeting with the Treasury this afternoon is for the company to provide its response to that request.) Attached to this email are the documents that the company provided to us, the DIP lenders and the Treasury. The first PDF is the document that the company discussed with the DIP lenders while we were present. After the company made this presentation to the DIP lenders, the company and the DIP lenders had further discussions in which we were asked not to participate.

John Sheehan and Jack began the presentation to the DIP lenders by comparing and contrasting the objectives of the US Treasury and the objectives of the company with respect to any emergence transaction. They noted that the Treasury's main objectives are protecting the supply for GM and providing for a feasible and speedy transaction (so that GM's Delphi exposure could be addressed promptly and completely). On the other hand, the company's main objectives are maximizing enterprise value and recoveries for stakeholders, preserving the company's relationships with all of its customers (not just GM), and preserving jobs. The company still prefers to complete a transaction through a revised plan of reorganization, which would achieve a comprehensive resolution of the chapter 11 cases and achieve Delphi's transformation objectives. The company also believes it is critical that somebody (i.e., the government) provide it with sufficient interim liquidity while a deal is being negotiated and consummated. As Jack previously mentioned in chambers conferences, the company is a "melting ice cube" and is expected to hit a "liquidity wall" in the third quarter because of production cuts by GM and other Delphi customers. That liquidity wall would be "insurmountable" without sufficient government support. Apparently, the government has expressed a willingness to provide interim liquidity support to Delphi, but it is unclear whether the government's claim on account of the additional support would be senior or junior to the DIP lenders' claims. The company believes that the government would agree to a junior claim, but the government did not specify its willingness to provide funds on that basis.

The company believes that the Treasury is preparing for a GM bankruptcy filing on or about May 29, and that the Treasury wants to resolve GM's "Delphi issues" prior to that filing. The company believes that GM would have more unresolved issues going into chapter

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11 than Chrysler did, and that the Treasury wants very much to minimize the number of those unresolved issues. To that end, the company understands that the Treasury and the PBGC have reached an agreement in principle about how Delphi's pension underfunding would be handled, but that the company did not know what that agreement is.

(The company's pension plans' underfunding is approximately \$5.1 billion on a FAS 87 basis. John did not know the amount of the underfunding on an ERISA basis). Jack also said that the Treasury is assuming that there will be no fully consensual deal with the DIP lenders (i.e., that there will be holdout Tranche C lenders), and that the Treasury wants to explore how to minimize any disruption a dissident lender group could create. Jack noted that the "collective action" concept of the DIP Credit Agreement would be useful in that regard.

Jack then described the recoveries that various stakeholders would receive under a Delphi board-sponsored transaction. The Tranche A and B lenders would be paid in full, and the secured hedging obligations would be satisfied either in cash or by the rollover of those obligations to another party on a secured basis. Jack told the DIP lenders that the company thinks that the Treasury's estimate of the recoveries Tranche C lenders should receive in a transaction is "unrealistically low," and the company urged the Treasury to be more realistic in its expectations. At the same time, Jack said that the Tranche C lenders should be realistic as well. Administrative claims would either be paid in the ordinary course or be assumed by a purchaser or by reorganized Delphi.

Importantly, Jack said that general unsecured claims should be satisfied by warrants. A proposal that was discussed during a meeting yesterday is that general unsecured creditors would receive warrants that would be "in the money" if Delphi's total enterprise value were to rise to its October 2008 level (approximately \$7 billion). Jack said that he hoped that if unsecured creditors received those warrants, the Committee would "affirmatively endorse" the transaction.

Jack did not express a view as to how or whether the pending avoidance actions would be prosecuted, except to note that avoidance actions against existing suppliers should be abandoned.

Keith Stipp then discussed issues surrounding the resolution of Delphi-GM commercial discussions. Lately, GM has indicated that it believes that it can completely renegotiate the GSA and the MRA from scratch. If GM were not to affirm its obligations under the GSA and MRA, then Delphi would have to withdraw its R-POR projections and the two potential buyers (Federal Mogul and Platinum) would likely walk away. This would create an even larger liquidity shortfall that the government may have to satisfy.

In the afternoon, we met briefly with the company and the US Treasury (Matt Feldman, Harry Wilson and John Rapisardi were present) and expressed our view that the Committee (consistent with its fiduciary duties) could not support a transaction in which general unsecured creditors receive nothing. We said that (with the caveat that we had not yet spoken with the Committee) we thought that the Committee would support a transaction in which general unsecured creditors receive warrants that are struck at a TEV of about \$7.2 billion and that are freely tradable. We think that this is a reasonable outcome for unsecured creditors under these circumstances, as at that level, the Tranche C lenders would not be paid in full. Thus, this would be a better outcome for general unsecured creditors than a strict application of the absolute priority rule. Harry pressed us for a more specific proposal (e.g., what would be the percentage of equity for which the warrants could be exchanged?), but we responded that it would be premature to discuss specific terms of the warrants now, because significant terms of the global deal have not been negotiated.

We also informed the Treasury of GM's apparent fraud/misconduct with respect to the amendments to the GSA and the MRA that the bankruptcy court approved last September. As you will probably recall, the amendments to the GSA provided for the section 414(l) liability transfers from Delphi's pension plans to GM's pension plans, for GM to receive an administrative expense claim of over \$2 billion, and for the estates to provide an immediate release to GM (rather than a release upon the effective date of a plan). The bankruptcy court approved the GSA amendments on September 26, 2008, and Delphi filed an amended plan of reorganization on October 3. Within 2 to 3 weeks after the court approved the GSA amendments, GM announced that its vehicle production volumes were going to drop precipitously. This caused the company's plan, as well as the GSA and MRA amendments that had just been approved, to be unworkable. We told the Treasury that it is difficult to fathom how GM could not have known prior to September 26 that the amended GSA and MRA could not be effectuated - yet GM received its release and allowed administrative expense claim.

Thus, there may be a viable basis to unravel the amendments to the GSA (including the release) and there may be causes of action against GM, its directors and its officers. The Treasury representatives had not heard about this before, and they listened intently.

Afterward, we left the conference room and the company and the Treasury continued their discussions.

We will report once we receive additional information. In the meantime, please contact with any questions.
Thanks.

Michael J. Riela

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Latham & Watkins LLP

PBGC-BL-0059063

JA351

In The Matter of:

DENNIS BLACK, ET AL

vs.

PENSION BENEFIT GUARANTY CORPORATION

JOSEPH R. HOUSE

May 29, 2013

MERRILL LAD

1325 G Street NW, Suite 200, Washington, DC
Phone: 800.292.4789 Fax: 202.861.3425

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

5 - - - - -X
6 DENNIS BLACK, et al., :
7 Plaintiffs, : Case No.:
8 vs. : 2:09-cv-13616
9 PENSION BENEFIT GUARANTY :
10 CORPORATION, :
11 Defendant. :

12 - - - - -X

13
14 Videotaped Deposition of JOSEPH R. HOUSE
15 Washington, D.C.
16 Wednesday, May 29, 2013
17 10:06 a.m.

18
19
20 Job No. 1-233721
21 Pages: 1 - 202
22 Reported by: Dana C. Ryan, RPR, CRR

Page 2	Page 4
1 Videotaped Deposition of JOSEPH R. 2 HOUSE, held at the law offices of: 3 4 Miller & Chevalier, Chartered 5 655 Fifteenth Street, Northwest 6 Suite 900 7 Washington, D.C. 20005 8 (202) 626-5800 9 10 11 12 13 14 15 Pursuant to agreement, before Dana C. Ryan, 16 Registered Professional Reporter, Certified 17 Realtime Reporter and Notary Public in and for the 18 District of Columbia. 19 20 21 22	1 A P P E A R A N C E S C O N T I N U E D 2 3 A L S O P R E S E N T : 4 Dana Campbell, Videographer 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22
Page 3	Page 5
1 A P P E A R A N C E S 2 O N B E H A L F O F T H E P L A I N T I F F S : 3 T I M O T H Y P . O ' T O O L E , E s q u i r e 4 M I C H A E L N . K H A L I L , E s q u i r e 5 A N T H O N Y F . S H E L L E Y , E s q u i r e 6 M i l l e r & C h e v a l i e r , C h a r t e r e d 7 6 5 5 F i f t e e n t h S t r e e t , N o r t h w e s t 8 S u i t e 9 0 0 9 W a s h i n g t o n , D . C . 2 0 0 0 5 1 0 T e l e p h o n e : (2 0 2) 6 2 6 - 5 8 0 0 1 1 1 2 O N B E H A L F O F T H E D E F E N D A N T : 1 3 J O H N A . M E N K E , E s q u i r e 1 4 K A R E N L . M O R R I S , E s q u i r e 1 5 C . W A Y N E O W E N , J R . , E s q u i r e 1 6 E R I N C . K I M , E s q u i r e 1 7 P e n s i o n B e n e f i t G u a r a n t y C o r p o r a t i o n 1 8 U n i t e d S t a t e s G o v e r n m e n t A g e n c y 1 9 1 2 0 0 K S t r e e t , N o r t h w e s t 2 0 S u i t e 3 4 0 2 1 W a s h i n g t o n , D . C . 2 0 0 0 5 2 2 T e l e p h o n e : (2 0 2) 3 2 6 - 4 0 2 0	1 C O N T E N T S 2 E X A M I N A T I O N O F J O S E P H R . H O U S E P A G E : 3 B y M r . O ' T o o l e 9 4 5 6 7 E X H I B I T S 8 (A t t a c h e d t o t h e T r a n s c r i p t) 9 H O U S E D E P O S I T I O N P A G E : 1 0 E x h i b i t 1 A u g u s t 4 , 2 0 0 8 S u m m a r y O f 4 7 1 1 C o n f e r e n c e C a l l 1 2 E x h i b i t 2 S e p t e m b e r 1 6 , 2 0 0 8 F r o m 5 7 1 3 D E L P H I P r o p o s a l T o P B G C 1 4 E x h i b i t 3 S e p t e m b e r 1 5 , 2 0 0 8 E m a i l 6 1 1 5 C h a i n 1 6 E x h i b i t 4 N o v e m b e r 1 1 , 2 0 0 8 E m a i l 6 6 1 7 E x h i b i t 5 J a n u a r y 2 0 0 9 E m a i l C h a i n 6 9 1 8 E x h i b i t 6 F e b r u a r y 2 0 0 9 E m a i l C h a i n 7 5 1 9 W i t h A t t a c h m e n t 2 0 E x h i b i t 7 F e b r u a r y 1 0 , 2 0 0 9 E m a i l 8 2 2 1 C h a i n 2 2

2 (Pages 2 to 5)

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<p>1 EXHIBITS CONTINUED 2 (Attached to the Transcript) 3 HOUSE DEPOSITION PAGE: 4 Exhibit 8 February 13, 2009 Email 83 5 With Attachment 6 Exhibit 9 February 2009 Email Chain 90 7 With Attachment 8 Exhibit 10 March 11, 2009 Email 102 9 Exhibit 11 March 2009 Email Chain 105 10 Exhibit 12 March 25, 2009 Email Chain 108 11 Exhibit 13 April 3, 2009 Email Chain 114 12 Exhibit 14 May 2009 Email Chain 128 13 Exhibit 15 May 5, 2009 Email Chain 129 14 With Attachment 15 Exhibit 16 May 2009 Email Chain 135 16 Exhibit 17 May 13, 2009 Email Chain 139 17 Exhibit 18 May 22, 2009 Email With 140 18 Attachment 19 20 21 22</p>	<p>1 PROCEEDINGS 2 THE VIDEOGRAPHER: We're going on 3 record. The time is 10:06:23. Here begins tape 4 number 1 in the deposition of Joseph R. House in 5 the matter of Dennis Black, et al. versus Pension 6 Benefit Guaranty Corporation in the United States 7 District Court for the District of Columbia, Civil 8 Action Number 2:09-cv-13616. 9 Today's date is May 29th, 2013. The 10 time is 10:06:50. The video operator today is 11 Dana Campbell of Merrill LAD. This video 12 deposition is taking place at the offices of 13 Miller & Chevalier, Chartered, 655 14 Fifteenth Street, Northwest, Suite 900, 15 Washington, D.C. and was noticed by Timothy P. 16 O'Toole, counsel for the plaintiff. 17 Would counsel please identify 18 themselves and state whom they represent? 19 MR. O'TOOLE: Timothy O'Toole on behalf 20 of the plaintiffs and with me are Anthony Shelley 21 and Michael Khalil. 22 MR. MENKE: And I'm John Menke,</p>
Page 7	Page 9
<p>1 EXHIBITS CONTINUED 2 (Attached to the Transcript) 3 HOUSE DEPOSITION PAGE: 4 Exhibit 19 Mediation Before The 142 5 Honorable Cecelia G. 6 Morris, United States 7 Bankruptcy Judge Southern 8 District Of New York, 9 May 26, 2009 10 Exhibit 20 May 28, 2009 Email 146 11 Exhibit 21 May 29, 2009 Email Chain 149 12 Exhibit 22 June 2, 2009 Email Chain 165 13 Exhibit 23 June 3, 2009 Email Chain 167 14 Exhibit 24 June 4, 2009 Email 169 15 Exhibit 25 June 25, 2009 Email Chain 171 16 Exhibit 26 June 30, 2009 Email Chain 174 17 Exhibit 27 June 30, 2009 Email Chain 175 18 19 20 21 22</p>	<p>1 assistant chief counsel with the Pension Benefit 2 Guaranty Corporation. With me are Karen Morris, 3 Wayne Owen and Erin Kim. 4 THE VIDEOGRAPHER: The court reporter 5 today is Dana Ryan of Merrill LAD. Would the 6 reporter please swear in the witness? 7 JOSEPH R. HOUSE, 8 having been duly sworn, testified as follows: 9 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS 10 BY MR. O'TOOLE: 11 Q Good morning. 12 A Morning. 13 Q In 2008 and 2009, you were the director 14 of the Department of Insurance Supervision and 15 Compliance at the Pension Benefit Guaranty 16 Corporation; is that correct? 17 A Yes. 18 Q And is it okay to refer to your 19 department as DISC? 20 A It's okay by me. 21 Q Okay. And how about the Pension 22 Benefit Guaranty Corporation as PBGC?</p>

3 (Pages 6 to 9)

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JA355

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1 A That works as well.
2 **Q Great. So, as I understand it, you**
3 **were the person at PBGC involved with -- or**
4 **charged with primary responsibility for conducting**
5 **negotiations for the United States Treasury, that**
6 **is, the auto task force, during that -- that**
7 **period of time, being 2008, 2009; is that correct?**
8 A Yes, that's correct.
9 **Q You hesitated a bit. What were -- what**
10 **were you thinking about?**
11 A The word "negotiation."
12 **Q Okay. Well, I guess you did say that**
13 **it was a negotiation; is that correct?**
14 A I -- I may have said that at some point
15 in time. It was a -- a negotiation; it was a
16 coordination; it was a collaboration.
17 **Q Okay. And in terms of working with the**
18 **Treasury in any of those ways, did some of the --**
19 **the contacts take place in calls, phone calls?**
20 A Yes.
21 **Q And then were there also in-person**
22 **meetings?**

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1 A Yes.
2 **Q And -- and then, obviously, you were**
3 **communicating by email as well?**
4 A Yes.
5 **Q And who were your counterparts at the**
6 **Treasury during this negotiation?**
7 A I'm -- I'm going to hesitate again
8 because the coordination with the Treasury began
9 in -- in earnest in 2008 with folks that were part
10 of the Bush Administration, Treasury officials
11 that were in their jobs in connection with the
12 Bush Administration, and then the cast of
13 characters changed in 2008 into 2009. So there
14 was an original set of folks that we coordinated
15 with, and then over time, you know, it was
16 different kind of players up until the point when
17 the President appointed his auto task force and
18 that -- that group became kind of the -- the --
19 the point entity for Treasury on all things auto
20 related.
21 **Q Well, let's start with the 2008 portion**
22 **of the negotiations before the administration**

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1 **changed.**
2 **Who were your counterparts at Treasury**
3 **at that point in time?**
4 A I'm going to hesitate again because the
5 word "negotiation" doesn't really describe the
6 nature of the liaising. It was much more of a --
7 a coordination exercise.
8 **Q And was this in 2008 --**
9 A Yes.
10 **Q -- or was this all the way through?**
11 A Both.
12 **Q Okay. In 2008, who were your**
13 **counterparts at Treasury in the liaising,**
14 **negotiating, interacting?**
15 A Pri -- primarily at that point,
16 because PBGC has as a -- a board member the
17 Department of Treasury, Treasury has designees
18 that are the primary liaisons for PBGC business.
19 So in 2008 those designees were our primary sort
20 of points of contact.
21 The gentleman -- one gentleman is Phil
22 Quinn and another gentleman is Mario -- I don't

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1 remember his last name now.
2 **Q Okay.**
3 A And there were other folks who -- whose
4 names escape me that were responsible for
5 negotiating with the auto companies around the
6 loans that the federal government provided General
7 Motors and Chrysler in the December 2008,
8 January 2009 time frame. And I -- I'm sure if I
9 went back and looked at email or looked at, you
10 know, records, I could remember who those -- those
11 folks were, but, you know, it was two or three
12 people that -- that were part of that
13 coordination.
14 **Q And then you said that it changed when**
15 **the administration changed. How did it change?**
16 A So those folks -- all -- everybody
17 associated with the Bush Administra- --
18 Administration vacated for the most part in
19 January 2009. There was a staff person whose name
20 is Michael Tae, T-A-E, I think, that I know we had
21 some coordination with. And the point person at
22 Treasury for auto matters at that point was a

4 (Pages 10 to 13)

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1 stand-in gentleman by the name of James Albright.
2 **Q Okay. And at some point you said the**
3 **President appointed an auto task force. Now,**
4 **was -- was that within the Treasury Department?**
5 A I think so.
6 **Q Okay. And who -- who became your**
7 **contacts at that point once the auto task force**
8 **was appointed and up and running?**
9 A The primary contacts were Ron Bloom and
10 Matthew Feldman.
11 **Q Okay. And anybody else that you had**
12 **contact with in the Treasury Department?**
13 A At points in time there was interface
14 with staff folks that were supporting the task
15 force effort that included Michael Tae and then
16 some other names that, again, if I went back and
17 looked at the email and, you know, dug out the
18 coordination, those staff names would -- would --
19 would definitely appear. Also met with Harry
20 Wilson, had one meeting that Steve Rattner
21 attended.
22 **Q Now, during these discussions at some**

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1 **point, did you have the opportunity to discuss --**
2 **and -- and -- and we're talking from August '08**
3 **to, say, August '09. Did you have the opportunity**
4 **to discuss the Delphi pension plans?**
5 A Yes.
6 **Q And what was PBGC's position in these**
7 **negotiations, coordinations, however you want to**
8 **describe it -- what was PBGC's stated position**
9 **with respect to the pension plans?**
10 A The stated position . . .
11 MR. MENKE: I'm going to object to the
12 question as vague. Are -- are you suggesting that
13 it -- there was one stated -- PBGC had one
14 stated --
15 MR. O'TOOLE: Well, let's --
16 MR. MENKE: -- position throughout the
17 whole time period, or are you -- are you focusing
18 on a particular point during --
19 BY MR. O'TOOLE:
20 **Q Well, let's start with August 2008.**
21 A Okay.
22 **Q In August 2008, PBGC, as I understand**

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1 **it, was -- was advocating to preserve the pension**
2 **plans, both the hour -- hour -- hourly plan and**
3 **the salaried plan; is that correct?**
4 A Yes, that's correct.
5 **Q Okay. And by January 2009 PBGC was**
6 **still advocating to save both the hourly and the**
7 **salaried plan; is that correct?**
8 A Yes.
9 **Q And -- and why is that?**
10 A As -- because it's consistent with the
11 agency's mission.
12 **Q Okay. And -- and -- and what's the**
13 **agency's mission?**
14 A There are three enumerated goals that
15 the agency is -- you know, sort of part of --
16 it -- its mission statement, one of which is the
17 continuation and preservation of -- of pension
18 plans.
19 **Q And -- and in doing that, you -- you --**
20 **you have substantial experience; is that correct?**
21 A Yes.
22 **Q And -- and by "doing that," I mean in**

Page 17

1 **protecting and preserving pension plans; is that**
2 **correct?**
3 A PBGC does and I have some experience as
4 well.
5 **Q Okay. And in protecting and preserving**
6 **pension plans, what are the sorts of leverage that**
7 **PBGC can bring to the table to protect pension**
8 **plans or save pension plans when the sponsor does**
9 **not want to continue on with the pension plan?**
10 MR. MENKE: I'm going to object. Vague
11 in the absence of any factual background.
12 BY MR. O'TOOLE:
13 **Q Okay. Well, let's talk about some of**
14 **the plans that perhaps you were involved in**
15 **saving.**
16 **The Federal-Mogul plan was a plan that**
17 **was potentially going to be terminated; is that**
18 **correct?**
19 MR. MENKE: Objection: irrelevant.
20 This is a deposition about the termination of the
21 Delphi pension plans and there's not -- not a
22 survey of PBGC's work over the last ten years.

5 (Pages 14 to 17)

Page 18

1 BY MR. O'TOOLE:
2 **Q You can answer the question if you know**
3 **the answer.**
4 A I didn't have anything to do with
5 Federal-Mogul.
6 **Q But have you -- are you familiar --**
7 **familiar with it?**
8 A I'm aware that the case -- I'm aware of
9 the name of the case and -- and the outcome.
10 **Q Okay. What about Tower Automotive?**
11 A I didn't have anything to do with Tower
12 either.
13 **Q Well, in conducting negotiations with a**
14 **plan sponsor or with a potential acquirer of a**
15 **plan, the PBGC has several forms of leverage that**
16 **it can bring to bear; is that correct?**
17 MR. MENKE: Objection: foundation;
18 assumes testimony not in evidence.
19 BY MR. O'TOOLE:
20 **Q You can answer.**
21 A I'm having a hard time with "leverage."
22 **Q Okay. So let's say you have a plan**

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1 **sponsor that is talking, making noises about**
2 **terminating a pension plan that PBGC wants to**
3 **preserve.**
4 **Is that a scenario with which you're**
5 **familiar?**
6 A Yes.
7 **Q And in that context, the PBGC has a**
8 **number of tools that it can use to persuade the**
9 **sponsor to keep the plan or a potential acquirer**
10 **to keep the plan; is that correct?**
11 A Yes.
12 **Q And those tools include placing liens**
13 **on missed payments?**
14 A Yes.
15 **Q Okay. So -- and how do the -- do you**
16 **understand the lien process and how it works?**
17 A I'm familiar with the way that the
18 liens arise, yes.
19 **Q And can you describe that?**
20 A If a plan sponsor misses contributions
21 in excess of a million dollars, a lien in the
22 nature of a tax lien arises by operation of

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1 statute, and then PBGC has the right to go perfect
2 that lien against whatever property, real and
3 otherwise, that sponsor possesses, that the
4 sponsor and -- and its control group possesses.
5 **Q And those were for -- are for missed**
6 **payments; is that correct?**
7 A Yes.
8 **Q And the payments are the payments to**
9 **the PBGC by the sponsor in -- in -- in exchange**
10 **for the pension insurance that PBGC provides; is**
11 **that right?**
12 A No.
13 **Q Well, how -- describe how that works.**
14 A The -- the payments belong to the
15 plan --
16 **Q Okay.**
17 A -- not to PBGC.
18 **Q Okay. But PBGC places liens on the**
19 **missed -- for the amount of the missed payments**
20 **and could do that as a way to convince the sponsor**
21 **to keep the plan because they're essentially not**
22 **making any gain by missing the payment because**

Page 21

1 **they get a lien for the amount of the missed**
2 **payment; is that right?**
3 MR. MENKE: Objection: assumes facts
4 not in evidence; vague.
5 THE WITNESS: If a sponsor misses
6 payments in excess of a million dollars and the
7 liens arise, then PBGC perfects the liens and the
8 parties are in whatever position they're in.
9 BY MR. O'TOOLE:
10 **Q Right. And, so, if you're negotiating**
11 **with a plan sponsor who wants to terminate the**
12 **plan -- "you" meaning the PBGC -- you can use the**
13 **liens as one way to convince them to keep the plan**
14 **because they're not going to -- it's not going to**
15 **be a profitable transaction if they have to pay**
16 **off the liens or if the lien -- PBGC takes their**
17 **property and the plan still stays in place; is**
18 **that right?**
19 MR. MENKE: Objection: hypothetical;
20 vague.
21 BY MR. O'TOOLE:
22 **Q You can answer.**

6 (Pages 18 to 21)

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1 A Yeah, it's really hard to answer the
2 question because the situations are so
3 extraordinarily fact and circumstance dependent
4 and the particular levers that -- that are
5 available to the parties at any given point in
6 time really depend on the -- the facts of the
7 situation.
8 **Q Okay. Well, let's talk about the**
9 **Delphi pension plan. With the Delphi pension**
10 **plan, PBGC had actually put liens for missed**
11 **payments on the Delphi pension plan; is that**
12 **correct?**
13 A No.
14 **Q What did PBGC do in terms of liens?**
15 A It perfected liens in the relevant
16 jurisdictions in commensurate amounts equivalent
17 to the amounts of missed payments that -- that
18 Delphi had committed while in bankruptcy.
19 **Q Okay. So -- and -- and had -- those**
20 **liens were on Delphi's assets that were not**
21 **protected by the bankruptcy court; is that**
22 **correct?**

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1 A That's my understanding.
2 **Q And I think often they're referred to**
3 **in the emails and discussions about the Delphi**
4 **pension plan is foreign liens; is that right?**
5 A I'm familiar with that terminology.
6 **Q Okay. So -- so PBGC had foreign -- had**
7 **liens on Delphi's foreign assets commensurate with**
8 **the amount of missed payments by Delphi; is that**
9 **correct?**
10 A Yes.
11 **Q And you're familiar with those liens;**
12 **is that right?**
13 A Yes.
14 **Q Okay. And that was one form of**
15 **leverage that PBGC had in connection with Delphi**
16 **when Delphi said they don't want to keep the plan.**
17 **Those liens were actually important to Delphi,**
18 **weren't they?**
19 MR. MENKE: Objection: assumes facts
20 not in evidence. The witness can answer if -- if
21 he knows.
22 THE WITNESS: I -- I'm confused by the

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1 way that you put that.
2 BY MR. O'TOOLE:
3 **Q Okay. The liens, the foreign liens**
4 **that we just discussed --**
5 A Yes.
6 **Q -- those liens were of great concern to**
7 **Delphi in terms of its decision whether or not to**
8 **continue to sponsor the pension plan?**
9 MR. MENKE: Objection: foundation; no
10 evidence in this record that this witness is aware
11 of how Delphi feels about it. What we've
12 established, he works for PBGC not for Delphi.
13 BY MR. O'TOOLE:
14 **Q You can answer the question, and if**
15 **you'd like, I'll rephrase it.**
16 A I think it makes sense to rephrase it.
17 **Q Okay. When you were -- when you were**
18 **at P -- bless you.**
19 **When you -- when you were working at**
20 **PBGC in the 2008 to 2009 time frame --**
21 A Yes.
22 **Q -- you had numerous interactions with**

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1 **people at Delphi with respect to the pension**
2 **plans; is that correct?**
3 A Correct.
4 **Q And those -- the people at Delphi you**
5 **interacted with include John Sheehan?**
6 A Yes.
7 **Q Okay. Who was John Sheehan?**
8 A He was the CFO at the time.
9 **Q And those -- those interactions include**
10 **Karen -- Karen Cobb?**
11 A Yes, to some extent.
12 **Q Okay. And in your interactions with**
13 **Delphi, when you were talking about pension**
14 **issues, did the liens ever come up?**
15 A Yes.
16 **Q And -- and what did Delphi say, the --**
17 **the people that you interacted with at Delphi say**
18 **about their -- their position with respect to the**
19 **liens?**
20 A I don't recall.
21 **Q Okay. Well, let's talk about other**
22 **forms of potential tools that PBGC has in dealing**

7 (Pages 22 to 25)

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1 with plan sponsors.
2 Another potential tool is that when
3 PBGC issues a notice of determ- -- determination
4 that the plan is going to be terminated, or a
5 notice of termination, PBGC can then immediately
6 place claims on the plan sponsor for any amount
7 that the plan is underfunded; is that correct?
8 A I'm having trouble with "immediately
9 place claims."
10 Q Well, can you describe for me the --
11 the claims that PBGC can place on the amount
12 that's underfunded for a plan sponsor when a plan
13 is terminated?
14 A I believe PBGC can seek to impose those
15 claims upon the issuance of the notice of the
16 termination.
17 Q And did PBGC, in fact, impose those
18 claims against Delphi?
19 A Yes.
20 Q So that's another tool that the PBGC
21 has in dealing with plan sponsors in terms of
22 persuading plan sponsors to -- to keep plans that

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1 maybe they don't want to keep?
2 A Yes.
3 Q Okay. What about the IRS waiver
4 process; are you familiar with that process?
5 A I'm -- I haven't worked at PBGC since
6 2010, but I'm generally familiar -- familiar with
7 the -- the waiver process.
8 Q So could you describe that process
9 generally for us?
10 A The idea is that a sponsor that's
11 encountered a temporary business hardship and can
12 make a showing sufficient to the satisfaction of
13 in the first instance, the IRS, and then if a
14 sponsor is seeking a waiver in -- in excess of a
15 million dollars, they can -- they also have to
16 make that showing to PBGC.
17 And if they make a showing that's
18 satisfactory to both PBGC and the IRS, the sponsor
19 is permitted to take one year's worth of annual
20 contributions and amortize over five years. In an
21 instance where the sponsor is looking to -- to
22 waive an amount in excess of a million, they have

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1 to negotiate collateral with PBGC.
2 Q And is the purpose of that to
3 essentially give the sponsor a break so that they
4 can make the payments, but they would do it over a
5 longer time than the law would otherwise allow?
6 A I don't know that I'm qualified to talk
7 about the purpose of the waiver process.
8 Q Well, when -- had plan sponsors come to
9 you asking for a waiver?
10 A Yes.
11 Q And -- and why are they generally doing
12 that?
13 A You're using the present tense.
14 Q Why were they generally doing that?
15 A To ob- -- obtain temporary relief from
16 the -- the funding obligation they were confronted
17 with.
18 Q And this -- the sponsors generally view
19 this as -- as something that helps them; is that
20 right?
21 A That's my experience.
22 Q Now, what about -- have you ever been

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1 involved with the -- with -- with legal challenges
2 to what are called abusive follow-on plans?
3 MR. MENKE: I want to object to that as
4 vague. What -- what do you mean by "legal
5 challenges"?
6 MR. O'TOOLE: Well, let's --
7 MR. MENKE: Are you talking about court
8 suits --
9 MR. O'TOOLE: Sure. I'll --
10 MR. MENKE: -- or bankruptcy?
11 MR. O'TOOLE: I'll rephrase it.
12 MR. MENKE: What are you referring to?
13 BY MR. O'TOOLE:
14 Q Let's -- let's say that you're -- you
15 at -- when you're working at PBGC -- so this is in
16 the past -- there's a -- there is a proposal that
17 is laid out in terms of a plan that is going to be
18 terminated, but there's some proposal that
19 includes some sort of benefits to the participants
20 that PBGC views as an abusive follow-on plan.
21 Has -- has PBGC -- have you ever been
22 involved in a situation where PBGC has either

8 (Pages 26 to 29)

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1 **challenged or threatened to challenge this sort of**
2 **arrangement as an -- as an abusive follow-on plan?**
3 A I don't believe I was ever involved in
4 any such challenge.
5 **Q Did any happen in your department while**
6 **you were working there?**
7 A John may punch me for --
8 MR. MENKE: No, no, I assure you John
9 won't punch you.
10 THE WITNESS: -- more talking than not,
11 but I started in PBGC in the legal department and
12 then moved over to the -- to the business side.
13 So when I was in the legal department, I was aware
14 of there being dialogue with plan sponsors about
15 so-called follow-on plans.
16 When I moved over to the corporate
17 finance side of things, that was not something
18 that was a primary focus of that department.
19 BY MR. O'TOOLE:
20 **Q But that -- you're familiar enough with**
21 **that tool that -- to -- to know that that's**
22 **something that if PBGC does not approve of the way**

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1 **that the plan -- that the -- the plan set of**
2 **problems has been resolved, that PBGC can sue**
3 **the -- sue the plan or sue the resolution --**
4 **challenge the resolution?**
5 MR. MENKE: Objection: assumes facts
6 not in evidence; assumes legal conclusions that
7 may or may not be accurate; vague.
8 But the witness can answer if he can.
9 THE WITNESS: I'm aware of the LTV
10 Supreme Court decision.
11 BY MR. O'TOOLE:
12 **Q Which gives PBGC the power to sue plan**
13 **sponsors for what they believe -- for what PBGC**
14 **believes is an abusive follow-on plan?**
15 MR. MENKE: Objection: misstates the
16 holding and outcome of the LTV Supreme Court
17 decision.
18 BY MR. O'TOOLE:
19 **Q All right. You're -- you're a lawyer;**
20 **is that correct, Mr. House?**
21 A I'm hesitating because I'm a lawyer by
22 training --

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1 **Q Right.**
2 A -- but I haven't practiced since 2006.
3 **Q Well, you said you were familiar with**
4 **the LTV decision.**
5 A Yes.
6 **Q What's your understanding of the LTV**
7 **decision?**
8 A The Supreme Court upheld PBGC's efforts
9 in that situation to restore principal
10 responsibility for the LTV defined benefit pension
11 arrangements to the company.
12 **Q On the ground that PBGC was allowed to**
13 **challenge the er- -- the -- the proposed**
14 **resolution as a follow-on plan; right?**
15 MR. MENKE: Ob- -- objection. Again,
16 misstates the holding in that case.
17 But the witness can answer if he can.
18 THE WITNESS: I -- my understanding of
19 LTV is it essentially affirmed PBGC's construction
20 of Section 4047 of -- of ERISA.
21 BY MR. O'TOOLE:
22 **Q And that's another power that PBGC has**

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1 **after the LTV decision, that is, to restore plans**
2 **that it believes are unlawful?**
3 A I'm only hesitating because I think
4 PBGC might -- might say that power existed by
5 virtue of the statute before the LTV decision, but
6 that the --
7 **Q But --**
8 A -- LTV decision endorsed PBGC's
9 construction of that element of the statute.
10 **Q And wherever it comes from, that's one**
11 **of PBGC's powers?**
12 A Yes.
13 **Q Okay. So those are -- I guess what**
14 **we've gone through is the -- the sorts of things**
15 **that PBGC can use in a negotiation with a plan**
16 **sponsor or a potential acquirer in terms of**
17 **leverage in the negotiation, things that PBGC can**
18 **use to get its way in the negotiation; is that**
19 **fair?**
20 MR. MENKE: I'm -- I'm going to object.
21 I -- we've talked about several things. I know
22 nothing that has touched on potential acquirers,

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1 so I'm going to say it's lack of foundation.
2 BY MR. O'TOOLE:
3 **Q Well, let's talk about potential**
4 **acquirers. So --**
5 MR. MENKE: Sorry.
6 BY MR. O'TOOLE:
7 **Q Let's talk about potential acquirers.**
8 **So have you ever been, when you were at PBGC,**
9 **involved with or observed a situation where there**
10 **was a plan that was in trouble and the plan**
11 **sponsor was proposing to sell assets to a**
12 **potential acquirer and the question was presented**
13 **whether the potential acquire -- acquirer would**
14 **keep the plan?**
15 MR. MENKE: Objection: vague and
16 compound and hypothetical.
17 But the -- the witness can answer.
18 THE WITNESS: I'm -- I'm generally
19 familiar with that fact pattern that you've just
20 described.
21 BY MR. O'TOOLE:
22 **Q So the potential acquirer is**

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1 **negotiating with the PBGC about whether or not it**
2 **has to keep the plan as part of the purchase of**
3 **the assets of the current plan sponsor; is that**
4 **the scenario?**
5 A I would say that can be a scenario.
6 **Q Okay. And you're familiar with that**
7 **scenario?**
8 A Yes.
9 **Q Okay. And in that scenario, what are**
10 **the sorts of things that PBGC would do or has done**
11 **to persuade the potential acquirer to keep the**
12 **plan?**
13 MR. MENKE: Objection. It's not a
14 question falsely stating his -- his own
15 hypothetical. It's not a question of the acquirer
16 keeping the plan. It's a question of the acquirer
17 assuming the plan from a purchaser or a third
18 party, so --
19 BY MR. O'TOOLE:
20 **Q Assuming the plan.**
21 A Can you rephrase the question?
22 **Q Okay. What are the sorts of tools -- I**

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1 **called them leverage; I believe Dana Cann, one of**
2 **your colleagues, called them leverage -- the sorts**
3 **of tools that PBGC can use for leverage in the**
4 **situation where you have a potential acquirer that**
5 **PBGC wants to receive the plan, but the potential**
6 **acquirer is balking?**
7 MR. MENKE: Objection. I'm not aware
8 of any such testimony from Mr. Cann, but I'll
9 allow the witness to answer if he can.
10 THE COURT REPORTER: What was your last
11 word of the question, is what? I just --
12 MR. O'TOOLE: Balking.
13 THE WITNESS: In the -- the primary
14 form of persuasion that I'm familiar with that --
15 that PBGC would employ in such a situation is --
16 is affordability.
17 BY MR. O'TOOLE:
18 **Q And -- and what do you mean by**
19 **"affordability"?**
20 A A dialogue with the potential acquirer
21 around the annual funding costs of the pension
22 plan.

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1 **Q And would that dialogue involve a**
2 **discussion of any liens that PBGC had on the --**
3 **the assets of the current plan sponsor?**
4 MR. MENKE: Objection: vague and
5 unclear hypothetical.
6 But I'll allow the witness to answer if
7 he can.
8 THE WITNESS: There's no particular
9 situation that's leaping to mind that fits that --
10 that scenario.
11 BY MR. O'TOOLE:
12 **Q Well, let's talk about the -- the**
13 **Delphi plan. PBGC, as you mentioned, had liens on**
14 **Delphi's foreign assets; is that correct?**
15 A Yes.
16 **Q And had perfected those liens on the**
17 **assets in PBGC's view; is that correct?**
18 A Yes.
19 **Q And at some point, let's say April,**
20 **May 2009, a -- a number of acquirers -- potential**
21 **acquirers had expressed interest in purchasing**
22 **Delphi's foreign assets; is that correct?**

10 (Pages 34 to 37)

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1 A I'm -- I'm familiar with entities with
2 an interest in acquiring Delphi.
3 **Q Okay. And that -- Delphi included the**
4 **foreign assets; is that correct?**
5 A I believe so.
6 **Q Okay. And if those entities were to**
7 **come to PBGC -- and PBGC -- you said PBGC's stated**
8 **goal was to preserve the Delphi pension plans --**
9 **and say to PBGC, we want to purchase the assets**
10 **but we don't want to assume the pension plans,**
11 **what sort of leverage in that discussion would**
12 **PBGC have to say, well, you -- you need to**
13 **understand that if you are to do that, here is**
14 **what -- the position PBGC would take?**
15 MR. MENKE: Objection: hypothetical;
16 assumes facts not in evidence.
17 The witness can answer if he can.
18 THE WITNESS: It's -- I'm having a hard
19 time with the hypothetical.
20 BY MR. O'TOOLE:
21 **Q Well, how would you persuade a**
22 **potential acquirer to assume the plan?**

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1 MR. MENKE: Objection. Are we talking
2 specifically about a particular plan or plans
3 generally?
4 MR. O'TOOLE: Any plan.
5 BY MR. O'TOOLE:
6 **Q What -- what sorts of leverage would**
7 **PBGC have if it wanted to persuade the acquirer**
8 **to -- to assume the plan?**
9 MR. MENKE: Objection: assumes that
10 PBGC has such leverage at all; assumes facts not
11 in evidence.
12 But I'll allow the witness to answer if
13 he can.
14 THE WITNESS: The primary thrust of
15 such -- such persuasion is the affordability of
16 the obligation.
17 BY MR. O'TOOLE:
18 **Q And what factors go into affordability?**
19 A Projections relating to the annual
20 funding obligation and projections relating to the
21 so-called unfunded benefit liability.
22 **Q Now, if the acquirer acquires the --**

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1 **the -- the company or the assets, what happens to**
2 **the liens if there are liens on them -- if PBGC**
3 **has the liens?**
4 MR. MENKE: Objection: hypothetical;
5 requires the witness to make factual assumptions
6 that are unspecified.
7 You can answer if you can.
8 THE WITNESS: Yeah, I'm going to say I
9 don't know.
10 BY MR. O'TOOLE:
11 **Q Okay. Well -- so you don't know what**
12 **happens to the liens?**
13 A No.
14 **Q Well, let's make it more specific with**
15 **Delphi and -- and the foreign liens. If an**
16 **acquirer came in and wanted to purchase Delphi,**
17 **what would happen to the PBGC liens?**
18 A I don't know how to answer that.
19 **Q Okay. Well, let's -- let's talk about**
20 **your negotiations with -- well, you -- you**
21 **mentioned that there were discussions with a**
22 **number of entities with respect to the Delphi**

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1 **pension plans.**
2 MR. MENKE: Objection. I don't -- I
3 don't recall there being testimony --
4 THE COURT REPORTER: I'm sorry. I
5 can't hear you.
6 MR. MENKE: I said, objection; I don't
7 recall there being testimony to that effect.
8 BY MR. O'TOOLE:
9 **Q Okay. Who did you negotiate with with**
10 **respect to the Delphi pension plans?**
11 MR. MENKE: It's -- objection: vague.
12 What time period with respect to what aspect of
13 the plans? You're talking over a multiyear period
14 of time, and I -- I -- I guess a question of who
15 PBGC was talking with, as -- as Mr. House has
16 indicated even with respect to just the Treasury
17 Department, varied greatly depending on the time
18 period that we're talking about. So I think we
19 need more specificity.
20 BY MR. O'TOOLE:
21 **Q Let's assume for all my questions that**
22 **the time frame is 2008-2009 unless I give you a**

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1 more specific time frame. Is that okay?
2 A Okay.
3 Q Okay. So during that time frame, PBGC
4 was negotiating or interacting with Treasury; is
5 that correct?
6 A Yes.
7 Q And when we talked about Treasury
8 earlier, we mentioned Treasury, and then the Bush
9 Administration went out in January of 2009. There
10 still were discussions with Treasury, but
11 ultimately the discussions with Treasury focused
12 after about February 2009 on the auto task force;
13 is that correct?
14 A Yes.
15 Q There were discussions with what had
16 been called in the documents the DIP lenders; is
17 that correct?
18 A Yes.
19 Q Who were the DIP lenders?
20 A I don't recall.
21 Q Okay. But do you recall generally what
22 the DIP lenders consisted of?

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1 MR. MENKE: Objection: vague.
2 The witness can answer.
3 THE WITNESS: It would be a guess.
4 BY MR. O'TOOLE:
5 Q Well, I -- I'm not necessarily looking
6 for names. I mean, what's just the concept of a
7 DIP lender?
8 A Okay. The -- the -- a DIP lender is
9 essentially the financier of the operations of the
10 debtor in possession in a Chapter 11 matter.
11 Q Okay. So after Delphi went into
12 bankruptcy, these were people who loaned Delphi
13 money and got in exchange first priority for
14 their -- their loans; is that right?
15 MR. MENKE: Objection: vague. I
16 guess -- it's not -- it's not consistent with the
17 facts in the Delphi case. The witness can answer
18 if he can.
19 THE WITNESS: I think that's generally
20 correct.
21 BY MR. O'TOOLE:
22 Q Okay. And what about potential

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1 purchasers? Were you ever involved or was PBGC to
2 your knowledge ever involved in discussions with
3 potential purchasers of Delphi, either Delphi as a
4 company or Delphi as assets?
5 A I don't remember.
6 Q Okay. Can you just generally -- and,
7 again, we're talking about the 2008 and 2009 time
8 frame -- describe what PBGC did and you did in
9 particular in their discussions, negotiations with
10 the Treasury to persuade Treasury to keep the
11 Delphi hourly and/or salaried plans?
12 MR. MENKE: Objection. The question
13 misstates the fact. There was never any question
14 about Treasury keeping pension plans. Treasury
15 never had pension plans.
16 MR. O'TOOLE: I'll rephrase.
17 MR. MENKE: The pension plans were held
18 by Delphi.
19 MR. O'TOOLE: I'll rephrase.
20 BY MR. O'TOOLE:
21 Q What PBGC did during that time frame in
22 order to persuade Treasury to work towards

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1 preserving in some form, not termination, the
2 Delphi salaried and/or the Delphi hourly plans?
3 MR. MENKE: Objection: vague.
4 But the witness can answer if he's
5 able.
6 THE WITNESS: I don't have any
7 recollection of trying to persuade Treasury of
8 anything.
9 BY MR. O'TOOLE:
10 Q Okay. Now -- but you agreed that it
11 was PBGC's goal to preserve these plans; is that
12 correct?
13 A Yes.
14 Q What about the DIP lenders, for
15 example? Do -- do you recall you or PBGC doing
16 anything to persuade the DIP lenders to preserve
17 the salaried and/or hourly plans?
18 MR. MENKE: Objection: assumes that --
19 facts not in evidence; assumes the DIP lenders had
20 any interest in preserving pension plans at all.
21 I'll allow the witness to answer if he
22 can.

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1 THE WITNESS: I don't recall anything
2 like that.
3 BY MR. O'TOOLE:
4 **Q And just so we can tie that up with the**
5 **objection, the DIP lenders, as I understand it,**
6 **ultimately purchased Delphi; is that correct?**
7 MR. MENKE: Objection: misstates facts
8 in the record -- or misstates the record;
9 misstates the facts.
10 The witness can answer.
11 THE WITNESS: I -- I don't recall.
12 BY MR. O'TOOLE:
13 **Q Do you know who purchased Delphi?**
14 A No.
15 **Q Okay. All right. Well, why don't we**
16 **go to some documents.**
17 **MR. O'TOOLE: Well, actually, is it**
18 **okay to take a break?**
19 THE WITNESS: Yeah, because I was going
20 to ask if I could get water.
21 MR. O'TOOLE: That would be great.
22 THE VIDEOGRAPHER: Going off record at

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1 10:44:17.
2 (Recess -- 10:44 a.m.)
3 (After recess -- 10:54 a.m.)
4 THE VIDEOGRAPHER: We're back on record
5 at 10:54:27.
6 BY MR. O'TOOLE:
7 **Q Mr. House, it sounds like your**
8 **recollection is a little bit fuzzy on some of**
9 **these matters since they took place three, four**
10 **years ago; is -- is that fair?**
11 A Yes.
12 **Q Would it help to show you some of the**
13 **documents from the time period so that they can**
14 **refresh your recollection?**
15 A Sure.
16 **Q Okay. What I'm going to show you first**
17 **and we're going to mark as Exhibit 1 is a document**
18 **that I believe was prepared by PBGC.**
19 **Could you take a look at that document?**
20 **(House Deposition Exhibit 1 was marked**
21 **for identification and attached to the**
22 **transcript.)**

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1 **BY MR. O'TOOLE:**
2 **Q Have you seen this document before?**
3 A (Witness reviews document.) I don't
4 recall having seen it before.
5 **Q Okay. The document at the top**
6 **describes -- is -- is titled Summary of Conference**
7 **Call, Delphi Corporation, August 4, 2008; is that**
8 **correct?**
9 A Yes.
10 **Q And what it appears to describe is a**
11 **conversation between you and Dana Cann and John**
12 **Sheehan and Karen Cobb regarding the status of**
13 **negotiations with General Motors on liquidity**
14 **support for Delphi.**
15 **Do you have any recollection of that**
16 **telephone call?**
17 A No.
18 **Q Okay. I'm going to go to -- be- -- and**
19 **I guess before I go to the back of the memo, does**
20 **this appear to be a memo in the PBGC format?**
21 A No.
22 **Q No, it does not.**

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1 **Well, what -- what -- what's different,**
2 **if anything, about this memo than other ones that**
3 **you've seen?**
4 A In the first place I don't have a
5 strong recollection of there being memos that
6 capture conference calls.
7 **Q So you're not familiar with PBGC memos**
8 **capturing conference calls at all?**
9 A Right.
10 **Q So you don't have any idea who would**
11 **have prepared this memo, do you?**
12 A No.
13 **Q I'm going to direct your attention to**
14 **the back page, the last paragraph. And in that**
15 **paragraph it describes Joe House --**
16 **Which is you; is that correct?**
17 A Yes.
18 **Q -- making Sheehan aware of two**
19 **additional de- -- developments, and the first is**
20 **that PBGC is in the process of hiring Greenhill.**
21 **Do you see that paragraph?**
22 A I do.

13 (Pages 46 to 49)

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1 **Q Is this consistent with your**
2 **recollection of the August 2008 time frame and**
3 **PBGC hiring Greenhill to work on the Delphi**
4 **matter?**
5 A Yes.
6 **Q And -- and who is Greenhill?**
7 A Greenhill is many things to me. As it
8 applies to this situation they were a financial
9 advisory firm that was part of a contract
10 arrangement that PBG had -- PBGC had with a number
11 of firms -- financial advisory firms like
12 Greenhill that had a particular expertise in
13 complat -- complex distress and restructuring
14 matters.
15 **Q And -- and PBGC retained Greenhill to**
16 **work on the Delphi matter because of this**
17 **expertise; is that right?**
18 A Yes.
19 **Q Okay. I'm going to direct your**
20 **attention now back up to paragraph B of this memo**
21 **on the same page, so it's the page that's 0177757.**
22 **The Bates stamp is at the bottom.**

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1 **Do you see paragraph B?**
2 A Yes.
3 **Q And in this paragraph --**
4 MR. MENKE: For -- for clarity for the
5 record, is that the paragraph that starts with the
6 underlying phrase, Salary Plan? Is that the one
7 you're talking about?
8 MR. O'TOOLE: That's correct.
9 MR. MENKE: Okay. Thank you.
10 BY MR. O'TOOLE:
11 **Q And the portion -- in -- in this**
12 **paragraph the memo states that GM is still**
13 **disinclined to take Delphi's salaried plan.**
14 **Is that consistent with your**
15 **recollection of the August 2008 time frame?**
16 MR. MENKE: Objection. The document
17 speaks for itself, and it was misquoted, but
18 the -- the document will speak for itself.
19 MR. O'TOOLE: I -- I -- I didn't ask
20 him about the document. I asked about his
21 recollection of the 2008 time frame.
22 MR. MENKE: But I'm -- I'm saying you

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1 appeared to start to read part of the document and
2 you -- you didn't read the sentence accurately, so
3 you misquoted the document.
4 But he can answer the question if he
5 can.
6 THE WITNESS: I think it's consistent
7 with what was happening at the time.
8 BY MR. O'TOOLE:
9 **Q And the paragraph goes on to state,**
10 **Mr. Sheehan --**
11 **And he's Delphi's CFO at the time; is**
12 **that right?**
13 A I believe so.
14 **Q -- that he believed Delphi can satisfy**
15 **the salaried plan contributions due at emergence,**
16 **less than 1 million, that there may -- that he**
17 **believes that they could satisfy them at that**
18 **point in time.**
19 **Is that consistent with your**
20 **recollection of what Mr. Sheehans [sic] was saying**
21 **about Delphi's ability to make emergence payments**
22 **at that time frame?**

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1 A Having a document in front of me helps
2 enormously with putting a time frame and a context
3 to discussions that were occurring over the time
4 period that -- that you've kind of specified as
5 the relevant time period here. So I think the
6 answer to your question is yes.
7 **Q And that -- it -- that -- that was**
8 **Mr. Sheehan's position at that point in -- in --**
9 **in -- in -- in your recollection?**
10 A It was -- I understood it to be
11 Delphi's position.
12 **Q Okay. That was Delphi's position and**
13 **that's your recollection of Delphi's position,**
14 **too; is that correct?**
15 A Yes.
16 **Q Okay. Now, this memo pur- -- purports**
17 **to describe a call that you were on with the**
18 **relevant players at Delphi.**
19 **Did you have regular calls with Delphi**
20 **personnel and -- and mainly John Sheehan and Karen**
21 **Cobb?**
22 A Can you clarify what you mean by

14 (Pages 50 to 53)

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1 "regular"?

2 **Q Monthly, weekly.**

3 A Yes.

4 **Q How often -- about how often if you**

5 **remember?**

6 A I would say about every couple weeks.

7 **Q Okay. And what was the general**

8 **substance of these calls?**

9 A I'm going to have to -- have to answer

10 generally because I don't have any specific

11 recollection. They were almost always generally

12 in the nature of updates, situation updates.

13 **Q And in August 2008, one of the things**

14 **that was being discussed was what has been called**

15 **in the documents a 414(l) transfer of some of**

16 **Delphi's pension obligations to -- to General**

17 **Motors.**

18 **Is that consistent with your**

19 **recollection?**

20 A Yes.

21 **Q Okay. And can you describe generally**

22 **what those -- what those transfers consisted of?**

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1 A A -- again, generally, my recollection

2 is that GM and -- and Delphi had negotiated kind

3 of a global settlement that preceded this time

4 frame; and the global settlement contemplated GM

5 as part of its support for -- for Delphi and

6 its -- what I understood to be its goal of -- of

7 facilitating Delphi's emergence from bankruptcy.

8 One of the elements of that financial

9 support consisted of General Motors agreeing to

10 assume the Delphi hourly pension plan and merge it

11 into the General Motors hourly pension plan.

12 **Q And do you recall any of those**

13 **transfers being completed?**

14 A Yes.

15 **Q Okay. Which ones do you recall of**

16 **them?**

17 A My recollection is that it was

18 structured in -- in two parts, and I don't

19 remember the particulars of what the sort of line

20 of demarcation was between the two parts, but

21 GM -- the first part was -- was consummated.

22 That's -- that's what I recall.

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1 **Q And if I said -- if I put that time**

2 **frame around September 2008, would that be**

3 **consistent with your recollection?**

4 A Yes.

5 **Q Okay. One other question about**

6 **Exhibit 1. This memo describes you making**

7 **Mr. Sheehan aware of the fact that the PBGC**

8 **director may be making a public statement at some**

9 **point urging the parties to strike a deal on**

10 **pensions.**

11 **Do you recall having said that to John**

12 **Sheehan?**

13 A I -- I don't recall saying it.

14 **Q But is that consistent with your**

15 **recollection of the sorts of things you were**

16 **saying to John Sheehan at the time?**

17 A Yes.

18 **Q Do you know who the public statement**

19 **was going to be directed towards?**

20 A No.

21 **Q Okay. And at that point were you**

22 **having a dialogue with General Motors about Delphi**

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1 **pension issues?**

2 MR. MENKE: Objection: vague. What do

3 you mean by the term "dialogue"?

4 MR. O'TOOLE: I just --

5 MR. MENKE: The witness can answer if

6 he can.

7 THE WITNESS: I don't -- I don't

8 remember.

9 BY MR. O'TOOLE:

10 **Q Okay. Let's move to Exhibit 2.**

11 **(House Deposition Exhibit 2 was marked**

12 **for identification and attached to the**

13 **transcript.)**

14 BY MR. O'TOOLE:

15 **Q I'm showing you a document that we've**

16 **marked as Exhibit 2. Would you like some time to**

17 **review that document?**

18 A If you're going to ask me questions

19 about it --

20 **Q I'd -- I'd be happy to. So what that**

21 **document purports to describe is a proposal that**

22 **Delphi made to PBGC.**

15 (Pages 54 to 57)

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1 MR. MENKE: Excuse me. Be- -- before
2 we go on, was the witness going to say if you're
3 going to ask questions, he would like a chance to
4 review, or does he want to go directly to the
5 question?
6 THE WITNESS: I'm happy to proceed
7 either way. I don't recognize this document.
8 BY MR. O'TOOLE:
9 Q You don't -- you've never seen this
10 document?
11 A I don't know.
12 Q Okay. Well, let me ask you some
13 questions generally about the -- the transaction
14 the document purports to describe.
15 So you mentioned earlier in your
16 testimony a 414(l) transaction in which Delphi
17 pension obligations were transferred to GM in
18 September of 2008; is that fair?
19 A Yes.
20 Q In connection with that transfer, do
21 you recall Delphi making a proposal to PBGC in
22 connection with PBGC's liens?

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1 A I don't.
2 Q And what this purports to describe is
3 that upon consummation of the first 414(l)
4 transaction, PBGC will withdraw its notice of
5 liens filed with the D.C. recorder's office.
6 Are you not familiar with that
7 transaction at all?
8 MR. MENKE: Ob- -- objection. What
9 transaction or -- point of clarification, what --
10 BY MR. O'TOOLE:
11 Q Let's rephrase. Are you -- are you
12 familiar with that proposal?
13 MR. MENKE: Okay. Thank you.
14 THE WITNESS: I don't recall it.
15 BY MR. O'TOOLE:
16 Q Okay. Let's go to page 4 of the
17 document. On page 4 of the document, the second
18 bullet point from the bottom -- so the one that
19 begins, The amount of the purported liens -- it's
20 the -- the proposal from Delphi describes
21 purported liens asserted on behalf of the SRP.
22 And -- and I'm assuming that means salaried

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1 retirees plan.
2 Is that consistent with your
3 recollection of the way that the salaried retirees
4 plan was described?
5 A Sure.
6 Q Approximates 4 -- approximates
7 \$450 million and the amount of -- is -- is that
8 consistent with the amount of liens that you
9 recall?
10 A I don't -- I don't recall.
11 Q Okay. It also describes some sort of
12 transaction with respect to repatriated cash. Are
13 you familiar with protections or interest that the
14 PBGC acquired in repatriated cash?
15 A I recall PBGC taking legal steps in the
16 bankruptcy case to assert an interest in the
17 re- -- repatriated cash.
18 Q Okay. And do you recall what PBGC did
19 in order to acquire that interest?
20 A I -- I don't recall.
21 Q But the -- the -- the fact that PBGC
22 gained protection liens on repe- -- repatriated

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1 cash is consistent with your recollection?
2 A Yes.
3 Q Okay. Anything else about this
4 proposal that is jogging your recollection at all
5 with respect to the proposal?
6 A I -- I -- I just don't recall it.
7 Q Okay. Let's go to Exhibit 3.
8 (House Deposition Exhibit 3 was marked
9 for identification and attached to the
10 transcript.)
11 THE WITNESS: (Reviews document.)
12 BY MR. O'TOOLE:
13 Q Have you had a chance to review
14 Exhibit 3?
15 A Yes.
16 Q As -- as I understand it, Exhibit 3 is
17 an email chain from Steve Miller. It begins with
18 an email from -- from Steve Miller.
19 And do you know who Steve Miller was at
20 the time?
21 A Well, almost. He was -- I think he was
22 chair of the board at the time.

16 (Pages 58 to 61)

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1 **Q Okay. And that's for Delphi?**
2 A Yes --
3 **Q Okay.**
4 A -- I believe.
5 **Q And then to Charles Millard. Who was**
6 **Charles Millard at the time?**
7 A Charles Millard at that point in time
8 was the director of the Pension Benefit Guaranty
9 Corporation.
10 **Q And the -- the portion of this email I**
11 **wanted to focus on was that the email appears to**
12 **be attaching a request to -- for the PBGC to**
13 **relinquish certain liens assuming that the 414(l)**
14 **transaction was effected.**
15 **Does this email refresh your**
16 **recollection at all with respect to the proposal**
17 **to the PBGC?**
18 A No.
19 **Q Okay. And you're not on this email**
20 **chain; is that correct?**
21 A Correct.
22 **Q At the top of the email chain, there is**

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1 **a response from Dana Cann. Who -- who was Dana**
2 **Cann at the time?**
3 A Dana Cann at that point in time was a
4 senior financial analyst in the department of
5 insurance supervision and compliance, and he was
6 the primary analyst responsible for Delphi.
7 **Q So he's -- he's in the loop on this,**
8 **but it appeared that you were not in the loop on**
9 **this; is that correct?**
10 A Yes.
11 **Q Okay. And the other thing in the email**
12 **that I wanted to ask you about was that the**
13 **purpose of Mr. Miller's proposal appears to be**
14 **concerned with calming our nervous overseas**
15 **suppliers and creditors who appear, he seems to be**
16 **saying, to be nervous about the liens themselves.**
17 **Do you have any -- did you have any**
18 **observations at the time about the feelings of**
19 **the -- or the -- let me strike that.**
20 **Were you aware of at the time or did**
21 **you observe at the time how the overseas creditors**
22 **and suppliers of Delphi were responding to PBGC's**

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1 **liens?**
2 MR. MENKE: I'm going to object to that
3 question; misstates the document, which speaks for
4 itself.
5 The witness can answer if he can.
6 THE WITNESS: No.
7 BY MR. O'TOOLE:
8 **Q Okay. And, so, no understanding of --**
9 **of how the liens were potentially affecting**
10 **Delphi's market for exit filings?**
11 A No.
12 **Q So at this point in time -- and we're**
13 **talking about now September 2008, that -- the fall**
14 **of 2008 -- what is going on in the auto industry**
15 **with respect to finances?**
16 MR. MENKE: Objection: vague.
17 THE WITNESS: What do you mean, "with
18 respect to finances"?
19 BY MR. O'TOOLE:
20 **Q Well, what is the financial situation**
21 **of, for example, General Motors in the fall of**
22 **2008?**

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1 MR. MENKE: Objection: vague;
2 irrelevant; assumes facts not in evidence.
3 The witness can try to answer.
4 THE WITNESS: My recollection is that
5 General Motors was encountering financial distress
6 in that time period.
7 BY MR. O'TOOLE:
8 **Q And in that same time period, are you**
9 **familiar with the acronym TARP?**
10 A Yes.
11 **Q The Troubled Assets Relief Program?**
12 A Yes.
13 **Q And when was that created, if you know?**
14 A That time period.
15 **Q And -- and how did the TARP interact**
16 **with GM's financial distress during that time**
17 **period?**
18 A I don't know.
19 **Q Did GM eventually seek money from the**
20 **Troubled Assets Review Program to help with its**
21 **financial distress?**
22 A I don't know.

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1 (House Deposition Exhibit 4 was marked
2 for identification and attached to the
3 transcript.)
4 BY MR. O'TOOLE:
5 Q Okay. I'm going to show you a document
6 we've marked as Exhibit 4.
7 A (Witness reviews document.)
8 Q Exhibit 4 is an email that you wrote in
9 November of 2008; is that correct?
10 A It definitely looks like it.
11 Q Do you have any recollection of this
12 email?
13 A No.
14 Q The email reports on a call that you
15 had with John Sheehan. Do you have any
16 recollection of that telephone call with John
17 Sheehan?
18 A No.
19 Q And it describes a discussion that
20 Mr. Sheehan had with General Motors apparently
21 that same day.
22 Do you recall hearing a report about

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1 the discussion with General Motors?
2 A No.
3 Q What Sheehan reports is on the --
4 apparently what he -- what the email describes is
5 a surprising level of receptiveness to the idea of
6 taking on Delphi's Salaried Plan.
7 Do you recall GM expressing any level
8 of receptiveness during this time period to taking
9 on Delphi's Salaried Plan?
10 A No.
11 Q And when you're saying you don't
12 recall, that doesn't mean it didn't happen; it's
13 just that you don't recall?
14 A Correct.
15 Q And this email was written at the time;
16 is that correct?
17 A Yes.
18 Q And you were trying to describe the
19 conversation as accurately as possible; is that
20 correct?
21 A Yes.
22 Q And you were sending it to Mr. Millard,

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1 and that was the head of the PBGC at the time; is
2 that correct?
3 A Yes.
4 Q And -- and who are Terrence Deneen
5 and -- and Michael Rae?
6 A Terrence Deneen at the time was the
7 chief insurance program officer, which made him
8 the chief executive responsible for my operation
9 and the chief counsel's office. And Michael Rae
10 was Terry's deputy. So Terry was my boss and
11 Michael was Terry's deputy, who I also treated
12 like a boss.
13 Q Okay. Now, in this email Mr. --
14 according to this email, Mr. Sheehan apparently
15 asked -- Sheehan apparently asked you about
16 whether and what level relevant federal agencies
17 were co- -- coordinating amongst each other.
18 Do you have any understanding of -- of
19 what you meant by that?
20 A I don't remember.
21 Q Okay. And you report that you told
22 Mr. Sheehan that, quote, we are coordinating, but

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1 that you weren't at liberty to say much beyond
2 that.
3 Why weren't you at liberty to say much
4 beyond that?
5 A I -- I -- I -- I don't remember.
6 Q Okay. And, as far as you know, was
7 there any prohibition on discussing PBGC's
8 coordination with federal agencies on -- on
9 pension issues?
10 A No.
11 Q Let's go to Exhibit 5.
12 (House Deposition Exhibit 5 was marked
13 for identification and attached to the
14 transcript.)
15 BY MR. O'TOOLE:
16 Q I'm showing you now what's been marked
17 as Exhibit 5. And what I'm most interested in in
18 Exhibit 5 is the email in this chain that goes
19 from Frederick Henderson to Rodney O'Neal. And
20 the date is January 26th, and the time is
21 5:27 p.m.
22 Do you see that email?

18 (Pages 66 to 69)

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1 A Yes.
2 **Q All right. First of all, who is**
3 **Frederick Henderson or who was Frederick Henderson**
4 **at the time?**
5 A I'm going to guess he was the CEO of GM
6 at the time.
7 **Q Okay. And were you familiar with**
8 **Mr. Henderson?**
9 A Familiar, yes.
10 **Q Did -- did you ever meet him?**
11 A I don't think so.
12 **Q Okay. How about Rodney O'Neal?**
13 A I did at some point meet Rod O'Neal.
14 **Q Okay. And this appears to be -- this**
15 **email appears to be -- and -- and who -- who was**
16 **Mr. O'Neal?**
17 A I'm almost positive he was the CEO of
18 Delphi at the time.
19 **Q Okay. And this appears to be a**
20 **response, this -- this email from Mr. Henderson**
21 **who signs it as Fritz, to Mr. O'Neal for a letter**
22 **that Mr. O'Neal has sent.**

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1 **Is that a fair characterization?**
2 MR. MENKE: Objection. Could -- could
3 I have that question read back -- I'm sorry; I
4 lost it -- if you would?
5 (The Record was read as requested.)
6 MR. MENKE: Okay. Thank you.
7 THE COURT REPORTER: Sure.
8 MR. MENKE: I guess I'm going to object
9 and say the document speaks for itself, but I'll
10 allow the witness to answer if he can.
11 THE WITNESS: I -- I'm reading it right
12 now --
13 BY MR. O'TOOLE:
14 **Q Okay.**
15 A -- and I think the way you described
16 it, it -- it appears to be accurate.
17 **Q Okay. Let's go to the third page of**
18 **that, of Exhibit 5.**
19 MR. MENKE: That would be -- for --
20 for --
21 MR. O'TOOLE: It would be --
22 MR. MENKE: -- the record, the

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1 (inaudible) number, the last two digits of that
2 number on that page are 76?
3 MR. O'TOOLE: That's correct.
4 MR. MENKE: Thank you.
5 BY MR. O'TOOLE:
6 **Q And I'm looking at the middle**
7 **paragraph. And can you just read from -- and --**
8 **and you don't have to read out loud, but the --**
9 **the paragraph that begins, We must find a pension**
10 **plan solution?**
11 A (Witness reviews document.) Okay.
12 **Q So one thing that this letter claims is**
13 **that PBGC had threatened to sue GM for what PBGC**
14 **has told us -- and by "us" I'm assuming it means**
15 **Delphi -- it views as GM's prior unlawful**
16 **follow-on plan at the time the pension plans were**
17 **split and transferred to Delphi.**
18 **Are -- are you familiar with any threat**
19 **by the PBGC to that effect?**
20 A No.
21 **Q Is -- is that inconsistent with your**
22 **recollection, or you just don't remember?**

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1 A I don't have any recollection.
2 **Q Okay. So if there was such a threat,**
3 **it might have existed, but you just don't remember**
4 **it?**
5 A That's right.
6 **Q What about PBGC's threat to assert**
7 **liens against Delphi -- and it says ROW here. I'm**
8 **assuming that means Delphi rest of world.**
9 **Is that consistent with your**
10 **recollection?**
11 A I -- I don't have a recollection, but
12 it's spelled out further in the paragraph that
13 way, so I think that that conclusion makes sense.
14 **Q Okay. Do you recall any sort of**
15 **threats that PBGC would assert liens against**
16 **Delphi rest of world?**
17 MR. MENKE: Objection: misstates the
18 document. I don't believe there's any reference
19 to PBGC threats anywhere in this document.
20 BY MR. O'TOOLE:
21 **Q Well, let's -- let's change it from**
22 **threats. Do you remember PBGC telling GM or**

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1 **Delphi that it would assert liens against Delphi**
2 **rest of world?**
3 A I -- I -- I'm hesitating because I --
4 I'm a little confused by the "it will assert" part
5 of this. And the reason I'm con- -- confused is
6 because my -- my recollection sort of generally at
7 the time preceding this, those liens -- I -- were
8 already asserted.
9 **Q They -- they were already asserted. So**
10 **that's what -- but you remember the liens; you**
11 **just think they were asserted earlier; is that**
12 **right?**
13 A That's how I remember it.
14 **Q And that's consistent with -- I believe**
15 **it was Exhibit 3 that we looked at where Delphi**
16 **was asking in September of 2008 that PBGC remove**
17 **the liens --**
18 A Right.
19 **Q -- is that correct?**
20 A That makes sense.
21 **Q Okay. So you re- -- you recall PBGC's**
22 **discussions of the liens, but you don't re- --**

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1 **recall anything from PBGC about suing GM for a**
2 **follow-on plan?**
3 A No.
4 **Q Okay. Let's go to Exhibit 6.**
5 **(House Deposition Exhibit 6 was marked**
6 **for identification and attached to the**
7 **transcript.)**
8 **BY MR. O'TOOLE:**
9 **Q Exhibit 6 on the cover page purports to**
10 **be a -- an email from you to Todd Snyder attaching**
11 **with -- what's called a Treasury memo and the**
12 **subject line is Memo to Treasury; is that correct?**
13 A Yes.
14 **Q Who is Todd Snyder?**
15 A Todd Snyder is -- I don't know what his
16 title is. He -- he -- he works with Rothschild.
17 **Q And in February 2009, what was Todd**
18 **Snyder doing for Rothschild, if you know?**
19 A What I'm familiar with in terms of what
20 Todd and Rothschild were doing at that point in
21 time was working with or on behalf of the -- I
22 think it was Treasury --

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1 **Q Okay.**
2 A -- as their -- as a financial
3 advisory -- financial advisor to Treasury.
4 **Q Now, had -- to your knowledge had Todd**
5 **Snyder worked for PBGC at some point in time?**
6 A Yes.
7 **Q Do you recall what he did?**
8 A Provided financial advisory support and
9 analysis on complex restructuring situations.
10 **Q Do you know if that included in the**
11 **auto industry?**
12 A Maybe.
13 **Q And do you know -- were you involved in**
14 **the process by -- by which Mr. Snyder was hired by**
15 **the auto task force?**
16 MR. MENKE: Objection: assumes facts
17 not in evidence.
18 There's really nothing in this document
19 so far to suggest that he was an employee of the
20 task force.
21 BY MR. O'TOOLE:
22 **Q He was a consultant working for the**

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1 **task force; is that your understanding?**
2 A That -- that may have been the case.
3 **Q And were -- did you recommend**
4 **Mr. Snyder to the auto task force?**
5 A I -- I'm hesitating. I don't -- no, I
6 didn't -- I don't recall recommending Snyder to
7 the task force.
8 **Q Did you -- but you did work with him at**
9 **PBGC?**
10 A Yes.
11 **Q And, so, you knew Mr. Snyder from his**
12 **work at PBGC?**
13 A Yes.
14 **Q At -- about how often did you work with**
15 **him, on a daily basis, monthly basis? How well**
16 **did you know him?**
17 A There's two parts to that question.
18 I'm going to answer the second part first --
19 **Q Okay.**
20 A -- which is how well did I know
21 Mr. Snyder. So Rothschild was the financial
22 advisor to United Airlines in the United Airlines

20 (Pages 74 to 77)

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1 bankruptcy, and that's where I first encountered
2 him. And over -- I had a very limited role in --
3 in that bankruptcy and its ultimate resolution,
4 but I -- I had met Todd and knew Todd from that,
5 and that time frame was mid-2000s.
6 And then subsequent to that, PBGC hired
7 Rothschild -- I don't remember -- I do remember --
8 in connection with other airline cases. He was
9 the financial advisor to PB -- well, not he.
10 Rothschild was the financial advisor to PBGC in
11 the -- definitely Northwest bankruptcy, yes.
12 **Q And, so, how well did you know him?**
13 **A** By 2009, I knew him well.
14 **Q Okay. This email attaches what appears**
15 **to be a -- a draft memorandum to Mr. Rothschild;**
16 **is that -- pardon me, I'm sorry, to -- to**
17 **Mr. Snyder. I'm sorry.**
18 **Is that correct?**
19 **A** Say that again.
20 **Q The attachment to your email to**
21 **Mr. Snyder appears to be a draft of a memorandum**
22 **from PBGC to Treasury; is that correct?**

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1 **A** It looks like it, yes.
2 **Q Do you recall this memorandum?**
3 **A** No.
4 **Q Do you know -- do you have any idea who**
5 **would have prepared this memorandum?**
6 **A** I have an idea.
7 **Q Okay. And -- and who do you think**
8 **prepared it?**
9 **A** A combination of folks that worked for
10 me, like Dana Cann and/or Kristina Archeval and
11 counsel, PBGC counsel.
12 **Q Now, at this -- and -- and do you know**
13 **if a final version of this memorandum was ever**
14 **prepared?**
15 **A** I have -- no.
16 **Q Okay. At the introduction it says --**
17 **says that the purpose of the memo is to follow up**
18 **on an in-person meeting held between TARP and PBGC**
19 **staff on January 28, 2009.**
20 **Do you have any recollection of this --**
21 **this meeting in -- in late January 2009?**
22 **A** Yes.

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1 **Q Can you describe the meeting?**
2 **A** This was a meeting with, I think -- I'm
3 not -- but I think this was a meeting with Jim
4 Lambright and Michael Tae, who were at Treasury,
5 and I think this is the period that -- that
6 so-called bridge period that I described earlier
7 between administrations.
8 **Q Okay. And the last sentence in the**
9 **first paragraph says, Given that the Secretary of**
10 **Treasury serves on PBGC's board, PBGC wishes to**
11 **coordinate with the Treasury on these matters.**
12 **Is that consistent with your**
13 **recollection?**
14 **A** Yes.
15 **Q So PBGC wanted to coordinate with**
16 **Treasury because Treasury served on PBGC's board?**
17 **A** Yes.
18 **Q Now, I'm going to direct your attention**
19 **to the third page of this document and the last**
20 **paragraph on the third page, which is just before**
21 **the -- the heading that says, Chrysler, so the one**
22 **that begins, PBGC expects that GM's viability**

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1 **plan.**
2 **Do you see that paragraph?**
3 **A** I do.
4 **Q One sentence in this paragraph says**
5 **that, If GM's assumptions do not include absorbing**
6 **Delphi's pension liabilities, Treasury should**
7 **recognize that the cost to the government will**
8 **increase by billions more as PBGC will likely need**
9 **to trustee the plans.**
10 **Can you describe what you're trying to**
11 **persuade Treasury of in this paragraph?**
12 **MR. MENKE:** Objection: no indication
13 that we're trying to persuade Treasury of
14 anything; misstates the document which speaks for
15 itself.
16 **MR. O'TOOLE:** Okay.
17 **BY MR. O'TOOLE:**
18 **Q Well, is it your observation that if GM**
19 **did not assume the Delphi pension plans, that the**
20 **cost to the government would increase by billions**
21 **because PBGC would need to trustee the Delphi**
22 **pension plans?**

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1 A That's not inconsistent with my -- my
2 recollection of the situation.
3 **Q So that's your understanding of the**
4 **situation at the time?**
5 A I think so.
6 **Q Okay. Let's go to Exhibit 7.**
7 **(House Deposition Exhibit 7 was marked**
8 **for identification and attached to the**
9 **transcript.)**
10 **BY MR. O'TOOLE:**
11 **Q Now, what I've shown you in Exhibit 7**
12 **is an email that you sent originally to**
13 **Mr. Lambright and Mr. Tae, who have Treasury email**
14 **addresses and appear to be the people that you**
15 **described meeting with at Treasury; is that**
16 **correct?**
17 A Yes.
18 **Q And then after you sent the email, you**
19 **forwarded it to a number of people at PBGC in DISC**
20 **and also in the legal department; is that correct?**
21 A Yes.
22 **Q Okay. Now, if I can show you the last**

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1 **bullet point, again, what you're describing**
2 **that is -- is if GM doesn't absorb Delphi's**
3 **pension liabilities, the cost to the government --**
4 **and there you're saying Treasury and PBGC -- for**
5 **resolving GM/Delphi may increase by almost**
6 **6 billion.**
7 **So, essentially, the cost to the**
8 **government would be 6 billion if GM doesn't absorb**
9 **Delphi's pension liabilities; is that right?**
10 A Yes.
11 **Q Let's go to Exhibit 8.**
12 **(House Deposition Exhibit 8 was marked**
13 **for identification and attached to the**
14 **transcript.)**
15 **BY MR. O'TOOLE:**
16 **Q Now, Exhibit 8 is a memo from Phillip**
17 **Siegel, Compass Advisers, to Kristina Archeval and**
18 **Dana Cann dated February 13, 2009; is that**
19 **correct?**
20 A Yes.
21 **Q Okay. Who is Compass Advisers?**
22 A They were a financial advisor to PBGC

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1 on the Delphi matter.
2 **Q Do you know what they did?**
3 A They provided analysis and support of
4 the agency's -- PBGC's situation vis-a-vis Delphi.
5 **Q But you're not -- beyond that, do you**
6 **have any more specifics?**
7 A They're -- they're like -- they're in
8 the same vein as what I described Greenhill's role
9 was to PBGC.
10 **Q Okay. So that -- that actually was**
11 **going to be my next question. What are they doing**
12 **that's different than Greenhill, if anything?**
13 A I think -- my recollection is at this
14 point in time Compass was providing support to the
15 DISC team on the sort of daily iterations of what
16 was happening in the bankruptcy case.
17 **Q Okay. And I'm going to direct your**
18 **attention now to page 8 under the heading at the**
19 **end of the memo that says, Compass Comments.**
20 **Do you see that section?**
21 A I do.
22 **Q If you could go to the last bullet**

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1 **point where in the Compass Comments one of them is**
2 **that PBGC should continue their full court press**
3 **to convince GM and government officials that the**
4 **414(l) transfer is in everyone's best interest.**
5 **Is that consistent with your**
6 **recollection of what PBGC was doing in February of**
7 **2009?**
8 A (Witness reviews document.) I don't
9 recall.
10 **Q So when -- when Compass describes a**
11 **full court press to convince GM and government**
12 **officials that the 414(l) transfer, that is -- and**
13 **by 414(l) transfer, am I reading this correctly**
14 **that would be a transfer from Delphi to GM like**
15 **the one we described in September of 2008?**
16 A I think so.
17 **Q And that -- that PBGC apparently was --**
18 **according to Compass was making a full court press**
19 **to convince GM and government officials that that**
20 **sort of transfer was in everyone's best interest.**
21 **You -- you don't recall that sort of**
22 **effort, or is it inconsistent with your**

22 (Pages 82 to 85)

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1 **recollection?**
2 A I -- I'm only hesitating because of the
3 way this is con- -- this is expressed.
4 **Q Okay.**
5 A This is Compass' words.
6 **Q Right. What -- what, if anything,**
7 **don't you agree with?**
8 A It's not that I disagree. My
9 recollection is we were advocating -- "we," PBGC,
10 were advocating for the -- the complete transfer
11 from the moment the first transfer was completed
12 all the way up until the moment that PBGC took
13 responsibility for that -- that portion of the
14 hourly plan that wasn't --
15 **Q So your -- your recollection is that**
16 **PBGC's efforts were bigger than this; it wasn't**
17 **just the 414(l) transfer; it was PBGC was making a**
18 **full court press to convince GM and government**
19 **officials that GM should assume the plan?**
20 A That's not --
21 MR. MENKE: Objection: mischaracterizes
22 his testimony.

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1 THE WITNESS: That's Compass' way of
2 saying this, and that's not the way that I
3 would --
4 BY MR. O'TOOLE:
5 **Q How -- how would you say it?**
6 A The way I said it just a moment ago,
7 which is that the goal that -- that PBGC pursued
8 from the moment the first tranche of that transfer
9 occurred in September 2008 all the way up until
10 the point in time that the remaining portion of
11 the hourly plan was terminated was to enable,
12 facilitate, coordinate General Motors completing
13 the 414(l) transfer and taking the second tranche
14 of that, as was contemplated by the settlement
15 agreement that they entered into with Delphi.
16 **Q Now, what, if you know, at this point**
17 **in time was the relationship between GM and the**
18 **Treasury?**
19 MR. MENKE: Objection. It assumes this
20 witness has any knowledge of that relationship,
21 but I'll allow him to answer if he can.
22 THE WITNESS: That the Treasury, I

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1 think, was the facilitator of the loan that --
2 that General Motors received in that -- in the
3 2008 -- December 2008 or January 2009 time frame.
4 BY MR. O'TOOLE:
5 **Q And at this point had the auto task**
6 **force been created? And I think we're in**
7 **February 15th, 2008.**
8 A I don't recall.
9 **Q You --**
10 MR. MENKE: Excuse me. It was 2009.
11 MR. O'TOOLE: 2009. I'm sorry.
12 BY MR. O'TOOLE:
13 **Q When -- when, if -- if you recall, was**
14 **the auto task force created? And I'm not asking**
15 **for a specific date, just the general time frame.**
16 A I -- I think it was February,
17 March 2009.
18 **Q And -- and was -- and what was its**
19 **mandate, if you know?**
20 A I -- I -- I don't know.
21 **Q And -- and do you know what the auto**
22 **task force's role was with respect to General**

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1 **Motors?**
2 A No.
3 **Q And when Compass says that PBGC should**
4 **continue trying to convince, it sounded like you**
5 **disputed the use of the term "convince"; is that**
6 **correct?**
7 A No, I -- I -- I -- I -- I wouldn't say
8 dispute. This is just a characterization coming
9 from Compass about what I would say is Compass'
10 perception of PBC's [sic] approach at the time.
11 **Q And -- and what, if anything, is wrong**
12 **with the description? That's what I'm trying to**
13 **get at.**
14 A It's just not how I would say it, and
15 the way I would say it is the way I've said it.
16 **Q Right. But there's nothing that you**
17 **can point to here that you would say that's wrong?**
18 A That's right.
19 **Q Okay. Now, the bottom line on page 8**
20 **says, Compass says that PBGC can help GM with**
21 **waivers if equity markets don't turn around in the**
22 **next two years providing an adequate return on**

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1 their pension assets.
2 Are these the sorts of waivers that we
3 talked about earlier with the IRS, if you know?
4 A I have no idea.
5 Q Were you involved in discussions of
6 what PBGC could do with respect to GM if GM were
7 to assume the plans?
8 A No.
9 Q You were not?
10 A No.
11 Q Who at PBGC was?
12 A I would say nobody --
13 Q Okay.
14 A -- but I -- I -- I don't know whether
15 that's true or not.
16 Q Okay. But, to your knowledge, nobody
17 was involved in these sorts of discussions with
18 GM?
19 A Not that I recall.
20 Q Okay. Let's go to Exhibit 9.
21 (House Deposition Exhibit 9 was marked
22 for identification and attached to the

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1 transcript.)
2 THE WITNESS: (Reviews document.)
3 BY MR. O'TOOLE:
4 Q So Exhibit 9 appears to be an email
5 that you sent to -- at the top of the page to John
6 Sheehan, responding to an email from John Sheehan;
7 is that correct?
8 A Yes.
9 Q And the date on your email is
10 February 28, 2009 at 4:20 in the afternoon; is
11 that correct?
12 A Yes.
13 Q And in response to Mr. Sheehan's email,
14 you suggest that you would look for a way to use
15 the occasion of this meeting, and "this meeting,"
16 it appears from these -- this email chain that
17 Delphi is meeting with the -- the members of the
18 auto task force; is that correct?
19 A That's what it -- it -- it appears
20 to -- to be.
21 Q Do you have any recollection of that
22 particular meeting?

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1 A Nope.
2 Q But that would use the occasion to
3 again communicate PBGC's views on this situation
4 to our government counter- -- counterparts.
5 And -- and what did you mean by that?
6 A I -- I -- I don't recall.
7 Q Okay. Is this consistent with your
8 recollection of what you were doing at the time in
9 terms of your interactions with Treasury?
10 A What in particular?
11 Q Well, with respect to the auto task
12 force. First -- first -- I guess we'll break it
13 down.
14 First of all, your email also describes
15 what you viewed as key members of the auto task
16 force; is that correct?
17 A Yes.
18 Q And that would be Mr. Rattner,
19 Mr. Bloom and Mr. Deese?
20 A Right.
21 Q And with your -- with the caveat, I
22 think you were about to say, that Deese was not on

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1 the auto task force; he was on the National
2 Economic Council; is that correct?
3 A Yes.
4 Q Okay. And, so, you're -- you're
5 providing advice to Mr. Sheehan about who it is
6 that he's meeting; is that correct?
7 A I -- I -- I wouldn't say "advice."
8 Q Information?
9 A I would say information.
10 Q Okay. And these were people that --
11 had you met with these people before?
12 A Before February 28th --
13 Q Yes.
14 A -- 2009?
15 I have no recollection of it.
16 Q How -- how did you know who they were?
17 A Probably from the public announcement
18 of their appointment.
19 Q So at this point you don't have any
20 recollection of having interacted with any of
21 these --
22 A I don't.

24 (Pages 90 to 93)

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1 **Q Do you have any recollection general --**
2 **throughout this time period -- and, again,**
3 **August 2008 through August 2009 -- of interacting**
4 **with Messrs. Rattner, Bloom or Deese?**
5 A Say the time period again.
6 **Q August 2008 to August 2009.**
7 A Oh, yes.
8 **Q And which ones -- let's go through each**
9 **one. Mr. Rattner, did you interact with him?**
10 A I met him once.
11 **Q Okay. How about Mr. Bloom?**
12 A Yes.
13 **Q Okay. On how many occasions?**
14 A A number.
15 **Q Okay. More than ten?**
16 A Ten seems like a pretty decent
17 guesstimate.
18 **Q Okay. And how about Mr. Deese?**
19 A I never met with Mr. Deese.
20 **Q But at this point in time, you don't**
21 **think you've met them; is that correct?**
22 A I don't recall.

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1 **Q Okay. And then when you -- you**
2 **mentioned in the email that you were going to**
3 **again communicate PBGC's views on the situation to**
4 **our government counterparts.**
5 **You don't remember what you were**
6 **talking about here, but what was your general**
7 **recollection at the time of your interactions with**
8 **PBGC's government counterparts?**
9 A The memo you showed me in Exhibit 9 --
10 oh, sorry, 6.
11 **Q And that would be the email to -- to**
12 **Mr. Snyder --**
13 MR. MENKE: Excuse me. Objection.
14 The -- the witness had not finished answering your
15 question, previous question --
16 MR. O'TOOLE: I'm sorry. I --
17 MR. MENKE: -- I believe, unless I'm in
18 error.
19 MR. O'TOOLE: I thought he had.
20 THE WITNESS: No, that's -- I was done.
21 MR. MENKE: I'm sorry. I thought you
22 were going to say more, Joe. Forgive me.

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1 THE WITNESS: That's okay.
2 BY MR. O'TOOLE:
3 **Q And, so, that -- that -- that was the**
4 **interaction you had with the government**
5 **counter- -- counterparts when you communicated to**
6 **Treasury PBGC's views on transferring the plan to**
7 **GM; is that correct?**
8 MR. MENKE: Objection:
9 mischaracterizes. There is a lot more in that
10 memo than -- than just that.
11 BY MR. O'TOOLE:
12 **Q And -- and that would be your**
13 **testimony --**
14 A Yes, yes.
15 **Q -- that there was more?**
16 A My testimony would be that, right, we
17 were coordinating with Treasury on a -- a whole
18 variety of issues relating to potential pension
19 exposures in the auto industry and that Delphi and
20 GM were part of that coordination.
21 **Q And let me go to page 2 of Exhibit 9.**
22 **This is --**

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1 MR. MENKE: That --
2 BY MR. O'TOOLE:
3 **Q -- Mr. --**
4 MR. MENKE: -- that -- that -- for
5 clarity, that is the one with the Bates number
6 ending in 16?
7 MR. O'TOOLE: Yes.
8 MR. MENKE: Thank you.
9 BY MR. O'TOOLE:
10 **Q And it has a number of numbered**
11 **paragraphs. I'm -- I'm looking specifically at**
12 **paragraph 3.**
13 A (Witness reviews document.)
14 **Q Mr. Sheehan is telling the -- the**
15 **Treasury that he understands that Treasury had had**
16 **direct discussions with Joe House at the PBGC who**
17 **has stated the PBGC's position that the plans**
18 **should be sub- -- subsumed in the respective GM**
19 **Pension Plans.**
20 **Is that consistent with your**
21 **recollection of the discussions you were having**
22 **with Treasury at the time?**

25 (Pages 94 to 97)

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1 A I-- I want to get this right. Can I
2 look at Exhibit 6 again?
3 **Q Sure.**
4 A (Witness reviews document.) Can you --
5 I think the answer to your question is yes, but
6 let's make sure.
7 **Q So what Mr. Sheehan tells Treasury in**
8 **his email is that it was his understanding that**
9 **Treasury had had direct discussions with Joe House**
10 **at the PBGC who has stated that the PBGC's**
11 **position -- stated the PBGC's position that the**
12 **plans should be subsumed in the respective GM**
13 **Pension Plans.**
14 **Is that consistent with your**
15 **understanding of your communications with**
16 **Treasury?**
17 A (Witness reviews documents.) I'm
18 looking at Exhibit 6 again because I -- the answer
19 to your question is I don't recall, but this
20 communication -- this -- this draft memo, if it
21 ever became a final memo that was sent to
22 Treasury -- and I don't know whether or not that's

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1 the case, but I think that's the way the agency
2 outlined its views at the time. And, so, I think
3 that Sheehan's characterization is -- is basically
4 accurate.
5 The only -- the only thing I would add
6 is that these discussions were at this point in
7 time never with -- with just me. It was always,
8 you know, coordinated through the -- there were --
9 there are other people that were participating in
10 that at all times.
11 **Q The discussions with Treasury?**
12 A Yes.
13 **Q Okay. And you mentioned that perhaps**
14 **the memo in Exhibit 6 was never finalized.**
15 **Were you sharing a draft with**
16 **Mr. Snyder, to your knowledge?**
17 A I -- I don't recall.
18 **Q Okay. Would you -- would that have**
19 **been something that you would have done based on**
20 **your relationship with Mr. Snyder, is share a**
21 **draft?**
22 A I don't remember.

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1 **Q Okay.**
2 **MR. O'TOOLE: Why don't -- I think now**
3 **is a good time for a break if that's okay.**
4 THE WITNESS: Great.
5 THE VIDEOGRAPHER: This marks the end
6 of tape number 1 in the deposition of Joseph R.
7 House. Going off record at 12:01:12.
8 (Lunch recess -- 12:01 p.m.)
9 (After lunch recess -- 12:41 p.m.)
10 THE VIDEOGRAPHER: We're back on record
11 at 12:41:27. Here begins tape number 2 in the
12 deposition of Joseph R. House.
13 BY MR. O'TOOLE:
14 **Q So, Mr. House, when we last broke, we**
15 **were up to around March 2009 with respect to your**
16 **dealings with the auto task force and Delphi.**
17 **Does that conform to your recollection?**
18 A When we broke?
19 **Q Yes.**
20 A Yes.
21 **Q Okay. And what is your understanding**
22 **of what the auto task force was doing with respect**

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1 **to the Delphi pension issues in March of 2009?**
2 MR. MENKE: Objection: foundation; it
3 assumes the witness has any knowledge of what was
4 going on at the task force.
5 But you can answer if you can.
6 THE WITNESS: I'm not aware of the task
7 force doing anything as it relates to the Delphi
8 pensions. My understanding is that the task force
9 was looking at the Delphi bankruptcy as it
10 impacted the viability of General Motors.
11 BY MR. O'TOOLE:
12 **Q And what about gathering information on**
13 **the Delphi pensions; was that something that**
14 **the -- the task force was doing?**
15 MR. MENKE: Object- -- same objection.
16 THE WITNESS: I'm not so sure whether
17 to characterize it as inquisitive, that is to say
18 that they were gathering, or -- or rather to say
19 that we were providing.
20 BY MR. O'TOOLE:
21 **Q PBGC was providing the task force with**
22 **information?**

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1 A Yes.
2 **Q And the task force was also receiving**
3 **information, presumably from Delphi itself, with**
4 **respect to pension issues?**
5 A I don't have any knowledge of that,
6 but --
7 **Q Okay.**
8 A -- it seems reasonable.
9 **Q I'm -- I'm going to show you now an**
10 **exhibit we'll mark as Exhibit 10.**
11 **(House Deposition Exhibit 10 was marked**
12 **for identification and attached to the**
13 **transcript.)**
14 **BY MR. O'TOOLE:**
15 **Q Exhibit 10 appears to be an email that**
16 **you sent to Todd Snyder on -- on March 11, 2009;**
17 **is that correct?**
18 A Yes.
19 **Q And do you recall this email?**
20 A No.
21 **Q But as -- you do recall Mr. Snyder and**
22 **his consulting for the task force; is that**

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1 **correct?**
2 A At this point in time, yes.
3 **Q Okay. And on your memo it describes**
4 **a -- a meeting presumably with Mr. Snyder that**
5 **day.**
6 **Do you recall that meeting?**
7 A (Witness reviews document.) I don't
8 recall the meeting.
9 **Q Okay. And your -- your email describes**
10 **a number of action items going forward. And**
11 **apparently item number 1 was an in-person meeting**
12 **between PBGC senior leadership and the auto team**
13 **representatives.**
14 **Do you recall taking action on that**
15 **item?**
16 A What do you mean by "taking action"?
17 **Q Well, do you recall -- first of all, do**
18 **you recall discussing this with Mr. Snyder?**
19 A I don't recall it.
20 **Q Do you recall that meeting ever being**
21 **held?**
22 A PBGC senior leadership in- -- including

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1 me?
2 **Q (Indicated affirmative.)**
3 A Definitely met with auto team
4 representatives.
5 **Q And do you recall if it was during the**
6 **week of March 16th or sometime around --**
7 A I don't recall, but --
8 **Q Okay. How about number 2, Info Request**
9 **to General Motors seeking pension-modeling re:**
10 **assumption of the Delphi pension plans?**
11 **Do you recall discussing that with**
12 **Mr. Snyder?**
13 A No.
14 **Q Do you recall discussing that topic**
15 **generally with the auto task force in March of**
16 **2009?**
17 A No.
18 **Q And -- and not with Mr. Snyder either;**
19 **is that correct?**
20 A I don't recall it.
21 **Q Okay. And at this point the auto task**
22 **force is formed; is that your understanding?**

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1 A I -- March 11th. It seems like by
2 mid-March they had been assembled.
3 **Q Okay. And -- and Mr. Snyder is working**
4 **for them at that point?**
5 A I -- I -- I don't have firsthand
6 knowledge of who Mr. Snyder was working for in
7 terms of whatever the nature of the engagement
8 was, what the terms of the engagement were, but --
9 but certainly I understood at the time that he was
10 supporting the -- the auto team's effort to
11 Treasury.
12 **Q Okay. Anything else you re- --**
13 **remember about meeting with Mr. Snyder during the**
14 **March of -- month of March 2009?**
15 A No.
16 **Q You don't remember who was at the**
17 **meeting, for example?**
18 A No.
19 **Q Okay. Let's go to Exhibit 11.**
20 **(House Deposition Exhibit 11 was marked**
21 **for identification and attached to the**
22 **transcript.)**

27 (Pages 102 to 105)

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1 THE WITNESS: (Reviews document.)
2 BY MR. O'TOOLE:
3 **Q So Exhibit --**
4 **MR. O'TOOLE: Is it 12?**
5 MR. KHALIL: No, it's 11.
6 MR. O'TOOLE: Exhibit 11.
7 BY MR. O'TOOLE:
8 **Q Exhibit 11 appears to be a chain of**
9 **emails that begins with an email inquiry from**
10 **Delphi representatives to the PBGC about a**
11 **potential IRS regulation; is that correct?**
12 A I think so. What -- what -- what's
13 the --
14 **Q So -- so the -- the chain relates to**
15 **Delphi's having learned that the IRS was proposing**
16 **or may be proposing some new regulations; is that**
17 **correct?**
18 A Yes.
19 **Q And as Mr. Sheehan describes to -- in**
20 **an email to you on March 14th, this would be a big**
21 **problem for us, and "us" presumably means Delphi;**
22 **is that right?**

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1 A I -- I think that's a reasonable
2 conclusion.
3 **Q And he's asking for PBGC's position on**
4 **the matter?**
5 A He is.
6 **Q And do you remember this communication**
7 **at all?**
8 A Barely.
9 **Q And what do you remember about it, if**
10 **anything?**
11 A What I remember is the larger issue,
12 which is there was a technical aspect of the way
13 the funding standard was -- was potentially going
14 to be treated in the -- the implementing
15 regulations of the Pension Protection Act --
16 **Q Okay.**
17 A -- and that it posed some kind of issue
18 as it related to the transfer.
19 **Q And at some point you reached out to**
20 **others in the PBGC and asked them to call Will**
21 **Sollee; is that -- do you have any recollection of**
22 **that?**

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1 A I don't.
2 **Q Who's Will Sollee?**
3 A I think he's a lawyer at a firm --
4 well, I don't know where -- where he works now.
5 At -- at -- at the time --
6 **Q At the time.**
7 A -- I'm pretty sure he was a lawyer at
8 Ivins, Phillips & Barker.
9 **Q And did he work on IRS issues? Why --**
10 **why were you having someone call Will Sollee?**
11 A I -- I -- I don't have any particular
12 recollection of why that was my suggestion, but it
13 looked -- having -- you know, working backwards
14 from the -- the path here, it looks like I -- I
15 suggested that because he was the originator of
16 this -- this issue.
17 **Q Okay. Okay. So you're not -- you**
18 **don't have any relationship with Mr. Sollee other**
19 **than that?**
20 A No.
21 **Q Okay. Let's go to Exhibit 12.**
22 **(House Deposition Exhibit 12 was marked**

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1 **for identification and attached to the**
2 **transcript.)**
3 **BY MR. O'TOOLE:**
4 **Q So Exhibit 12 appears to be a tentative**
5 **calendar entry from you to a number of people at**
6 **PBGC; is that correct?**
7 A Yes.
8 **Q And it describes a potential meeting**
9 **with Snyder. And would that be Todd Snyder?**
10 A Yes.
11 **Q And -- and suggests that he was**
12 **available to deliver an update on the status of**
13 **the auto team's work at the Department of**
14 **Treasury; is that correct?**
15 A Yes.
16 **Q Do you know if this meeting ever**
17 **happened?**
18 A No.
19 **Q Do you have any recollection of an**
20 **update meeting with Mr. Snyder about the auto**
21 **team's work in March 2009?**
22 A No.

28 (Pages 106 to 109)

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1 **Q No recollection at all?**
2 A No.
3 **Q Okay. Was that consistent with his --**
4 **your interactions with Mr. Snyder on his work with**
5 **the auto team at the Treasury?**
6 A Yes.
7 **Q So he was updating PBGC on some sort of**
8 **regular basis on the work at the Treasury; is that**
9 **fair to say?**
10 A No.
11 **Q No. What -- what would be -- what**
12 **would be the nature of his updates?**
13 A Much more o- -- occasional or episodic
14 than regular.
15 **Q Okay. But you do recall that he was**
16 **updating PBGC?**
17 A He -- he provided more than one
18 update --
19 **Q Okay. And --**
20 A -- in this --
21 **Q -- and --**
22 A -- time period.

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1 **Q Around this time period, okay.**
2 **Around this time period are you**
3 **starting to meet with members of the auto task**
4 **force at all?**
5 THE COURT REPORTER: I'm sorry. What
6 was after "task force"? I just didn't --
7 MR. O'TOOLE: Members of the auto task
8 force at all.
9 THE WITNESS: Po- -- possibly.
10 BY MR. O'TOOLE:
11 **Q Okay. Do you -- and -- and who was**
12 **your main point or who were your main points of**
13 **contact at the auto task force?**
14 MR. MENKE: Ob- -- ob- -- objection.
15 You mean on March 25th or some broader time
16 period?
17 BY MR. O'TOOLE:
18 **Q In the -- in the spring of 2009**
19 **generally.**
20 A I'm -- I'm not going to get this
21 perfect. At -- at some point in time Michael Tae
22 coordinated a type of introduction to folks at the

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1 task force. The sequence I'm -- I don't recall,
2 but the way it developed is I started coordinating
3 with Matthew Feldman, principally, of the task
4 force. Harry Wilson was part of that at the very,
5 very beginning but then dropped out almost
6 immediately. And I was also having some contact
7 with staff folks that were supporting the task
8 force, but the names -- if I went back and looked
9 at the email, I would remember, oh, right, this
10 person and this woman, and this -- but I don't
11 have any of that on the tip of my tongue.
12 **Q And you mentioned that you met with Ron**
13 **Bloom on ten occasions. Did you meet with him**
14 **about the Delphi issues?**
15 A Just to clarify. I'm not sure I -- I
16 met with Bloom. I had some -- there were plenty
17 of phone conversations and the number that I --
18 you know, I think ten --
19 **Q Approximately ten --**
20 A -- I think, is a decent number of times
21 we interfaced. The majority of it was telephone,
22 but there were some in-person as well.

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1 But to answer your question, I don't
2 recall a single conversation with Ron Bloom about
3 Delphi.
4 **Q Okay.**
5 A I don't recall.
6 **Q Right. And, so, you're not -- you're**
7 **not saying you didn't have any, but you just don't**
8 **recall --**
9 A Right.
10 **Q -- any; is that correct?**
11 A That's right.
12 **Q And -- and what about GM?**
13 A I don't recall having -- I don't recall
14 it.
15 **Q What do you recall about your**
16 **conversations with Mr. Bloom, if anything?**
17 A Well, almost all of my conversations
18 with -- with Mr. Bloom were about Chrysler.
19 **Q Okay. And then you said you also dealt**
20 **with Mr. Snyder as a representative of the auto**
21 **task force, consultant?**
22 A Con- -- yeah, support.

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1 **Q Okay. Let's go to Exhibit 13.**
2 **(House Deposition Exhibit 13 was marked**
3 **for identification and attached to the**
4 **transcript.)**
5 **BY MR. O'TOOLE:**
6 **Q Now, Exhibit 14 describes --**
7 **MR. KHALIL: Thirteen.**
8 **MR. O'TOOLE: Or 13, I'm sorry.**
9 **BY MR. O'TOOLE:**
10 **Q Exhibit 13 describes -- it's an email**
11 **chain that suggests that there had been a Delphi**
12 **meeting planned for the following Monday, but that**
13 **PBGC had been disinvented from the meeting.**
14 **Do you recall that exchange at all?**
15 **A No.**
16 **Q Do you recall the proposed meeting at**
17 **all?**
18 **A I'm hesitating because there was a**
19 **meeting -- er -- early in the task force sort of**
20 **beginning to put its arms around Delphi. It --**
21 **there was definitely the idea that getting**
22 **everybody together for a walk-through of -- of,**

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1 like, the situation was a good idea. I don't know
2 whether this was -- the -- whether that meeting is
3 this meeting or the meeting that I'm thinking of
4 preceded this meeting.
5 **Q Okay. But you don't recall being**
6 **disinvented from a meeting by Treasury?**
7 **A No.**
8 **Q And -- and you wouldn't -- you**
9 **suggested in this email that being disinvented was**
10 **for the best.**
11 **Do you have any explanation for that?**
12 **A No.**
13 **Q Okay. Now, during April of 2009, it**
14 **sounds like there were a series of interfaces**
15 **between PBGC and Treasury; is that fair?**
16 **MR. MENKE: Objection: vague. What do**
17 **you mean by "interfaces"?**
18 **MR. O'TOOLE: If the witness**
19 **understands, he can answer. If not, I can**
20 **clarify.**
21 **THE WITNESS: It -- it sounds right.**
22 **BY MR. O'TOOLE:**

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1 **Q Okay.**
2 **A I mean, for sure, at some point in time**
3 **after the task force was appointed, they were in**
4 **the process of getting themselves up to speed on**
5 **all of the issues in the run-up to, you know, a --**
6 **a disposition of Chrysler and -- and General**
7 **Motors, and our coordination with that group**
8 **proceeded accordingly.**
9 **Q And who from PBGC was coordinating with**
10 **the task force?**
11 **MR. MENKE: Objection. Coordinating**
12 **generally or with respect to particular topics**
13 **or --**
14 **BY MR. O'TOOLE:**
15 **Q Coordinating with respect to Delphi.**
16 **A Definitely me, our actuary, our -- our**
17 **chief actuary -- her name is Neela Ranade -- had**
18 **as her sort of -- I'm going to get the -- I don't**
19 **remember the titles anymore, so her chief**
20 **lieutenant that was the person that handled the --**
21 **all the actuarial work for Delphi was Cindy**
22 **Travia, and Cindy and Neela played an important**

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1 role in providing, you know, data about the
2 pension situation to the task force group. And
3 then Terry Deneen, my boss, was an active
4 participant, a regular participant in the
5 interaction with Treasury.
6 **Q Okay. And is -- is Mr. Deneen still at**
7 **PBGC?**
8 **A No.**
9 **Q Okay. Where is he now?**
10 **A I -- I'm competent to testify where he**
11 **is now because he is in my employ. He is a senior**
12 **advisor to the -- a bus- -- a consulting business**
13 **that -- that I'm a principal in. He physically**
14 **lives in Chicago.**
15 **Q Okay. And is that Palisades?**
16 **A Yes.**
17 **Q Okay. Well, let's go back to April --**
18 **so from PBGC it sounds like on the Delphi issue it**
19 **was you, Terry Deneen, Cindy Travia and --**
20 **A Neela Ranade.**
21 **Q Neela Ranade?**
22 **A Yes.**

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1 **Q Okay. And that would be -- and when we**
2 **say interfacing, it's either by email or telephone**
3 **or in person; is that right?**
4 A Yes. There were -- there were other
5 participants, other -- other folks. I -- I think
6 Kristina Archeval; although, somewhere in there,
7 there was a maternity leave. So I'm going to --
8 not going to get those dates perfectly. Dana Cann
9 played a role. Karen Morris was a -- a
10 participant in some -- some of the interfaces.
11 And Vince Snowbarger, the direc- -- the acting
12 director for the corporation at the time, also --
13 I -- I recall him attending at least one meeting
14 with the task force folks.
15 **Q Okay. And you mentioned earlier -- I**
16 **think I heard this -- that at some point Matt**
17 **Feldman became your principal point of contact; is**
18 **that right?**
19 A Yes.
20 **Q And what were you dealing with**
21 **Mr. Feldman (inaudible)?**
22 A Everything.

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1 **Q And would everything mean non-Delphi**
2 **issues as well or --**
3 A Yes.
4 **Q Okay. So GM issues?**
5 A Yes.
6 **Q Chrysler issues?**
7 A Yes.
8 **Q Okay. But you were dealing with him,**
9 **and about how often were you communicating with**
10 **Mr. Feldman?**
11 MR. MENKE: Objection. Are we still
12 talking in March, or are we now talking --
13 MR. O'TOOLE: Well, let's go --
14 MR. MENKE: -- in April or --
15 BY MR. O'TOOLE:
16 **Q Let's do the progression from April to**
17 **about August. About how often were you**
18 **communicating? And you can divide it up into the**
19 **relevant months.**
20 A It felt like a couple times a week.
21 **Q Okay.**
22 A I mean, I -- there may have been weeks

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1 where the interaction was more frequent and there
2 may have been weeks where the -- the work they
3 were doing had the -- had him in particular off
4 doing other things. But I think a fair
5 characterization of how often we liaised starting
6 from, sort of, April to August was a couple times
7 a week.
8 **Q And on the Delphi issue, what were**
9 **the -- the main topics of your communication?**
10 A I would say -- topics. The
11 underfunding of the Delphi pension plans was a
12 topic that was a regular discussion point. The
13 minimum funding obligations of the Delphi pension
14 plans was a -- a regular aspect of our
15 discussions. We definitely at some point covered
16 the agency's position with respect to the liens
17 that arose as a result of missed funding
18 contributions.
19 **Q And -- and how would you describe this**
20 **conversation? Was this a negotiation; was this**
21 **a -- were you providing information? What --**
22 A I -- I -- I -- I would call it in the

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1 nature of -- of education.
2 **Q Okay.**
3 A I would -- I would say that these were
4 conversations that -- that, you know, considered
5 in a whole represented a primer in the agency's
6 experience in the Delphi bankruptcy, the nature
7 of -- of pension funding, the nature of pension
8 obligations and the potential resolution of those
9 obligations, I guess, is the way to say it.
10 **Q Now, as I understand it, Treas- --**
11 **Treasury was -- was GM's lender at this point in**
12 **time?**
13 A My understanding at the time was that
14 Treasury definitely had lent GM some money.
15 **Q Okay. But you -- you don't have an**
16 **understanding about how much money it was?**
17 A No.
18 **Q But because of its position as a**
19 **funder, Treasury was an important component in**
20 **this -- in the resolution of both GM and Delphi's**
21 **bankruptcies or asset sales; is that fair?**
22 A Yes.

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1 **Q** Now, would it -- is it normal for PBGC
2 to have those sorts of educational conversations
3 with lenders?
4 A "Normal" is a tough word when it comes
5 to PBGC.
6 **Q** All right. Have you ever had
7 conversations with lenders in which you're
8 educating them on PBGC's position on various
9 issues and -- and PBGC's liens and those sorts of
10 conversations with the lender?
11 A The -- the answer is definitely yes.
12 I'm -- I'm trying to come up with an example for
13 you.
14 **Q** Okay.
15 A And I -- and I -- nothing is jumping to
16 mind right away, but -- yes.
17 **Q** Okay. Have you ever had interactions
18 with Treasury in the same way in connection with
19 pensions and the resolution of pensions?
20 A Can you be more specific?
21 **Q** Well, has there ever been another
22 situation where Treasury was not only on the board

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1 of directors of PBGC -- which it obviously was at
2 the time; right?
3 A (Witness nods head.)
4 **Q** What was -- and -- and you're nodding,
5 just for the record --
6 A Yes.
7 **Q** -- but also -- but was also a -- a key
8 player in the transaction in which PBGC was
9 interested in?
10 A Not that I'm aware of.
11 **Q** So this was unique in that sense?
12 A Yes.
13 **Q** Okay. And you mentioned conversations
14 with lenders. When you deal with a potential
15 funder in a situation involving a pension, are you
16 coordinating with the lenders?
17 MR. MENKE: Objection: vague.
18 MR. O'TOOLE: He can answer it if he --
19 MR. MENKE: (Inaudible).
20 MR. O'TOOLE: -- understands.
21 THE WITNESS: It's -- it's tough to
22 answer in a hypothetical.

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1 BY MR. O'TOOLE:
2 **Q** Well, how would you -- how would you
3 describe your relationship with the lenders, for
4 example?
5 A If I could think of a specific example,
6 it would be a lot easier to give the -- you know,
7 a more direct answer to the question. But I --
8 but I can recall there being moments where I was
9 present for almost always telephone conversations
10 and almost always with lenders' advisors where --
11 and this -- to be more precise, it was probably in
12 the context of potential lenders as opposed to
13 already baked lenders, where they were attempting
14 to understand the nature of the liabilities and
15 the nature of the funding obligations and the
16 nature of the pension obligations as they related
17 to a -- a -- a potential capital structure,
18 conversations of that type.
19 **Q** And -- and would these potential
20 lenders, would you have interactions, you know, a
21 couple times a week during that process?
22 A I -- again, in the hypothetical,

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1 it's -- it's tough to answer, but I don't -- I
2 don't recall, you know, the -- the frequency
3 of . . .
4 **Q** Okay. Let's go to Exhibit 14.
5 Before we get there, you mentioned the
6 work that the PBGC's actuaries was -- were doing
7 with the auto task force. Is -- is it your
8 understanding that the actuaries provided an
9 analysis of what it would have cost Delphi to
10 maintain the -- or to keep the pension plans after
11 their exit from bankruptcy and provided that to
12 the task force?
13 A I -- I don't recall that.
14 **Q** What kinds of information do you recall
15 being provided with respect to the pensions?
16 A Pri- -- primarily the current state of
17 the unfunded benefit liability --
18 **Q** Okay.
19 A -- so to try and tie that time frame
20 and the sort of first quarter of 2009 to give a
21 good estimate of what those unfunded benefit
22 liabilities look like, and then also to show -- to

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1 demonstrate what the funding obligations from 2009
2 out into the future might look like.
3 **Q And do you know if a number of**
4 **scenarios were run for that sort of funding**
5 **obligation going forward?**
6 A I -- I -- I don't know --
7 **Q Okay.**
8 A -- but that's consistent with the
9 practice.
10 **Q Okay. And -- and, so, in terms of the**
11 **scenarios, you could have a scenario -- a -- a --**
12 **a number of different scenarios depending upon how**
13 **the economy does; is that right?**
14 A The performance of the equity
15 markets --
16 **Q Exactly.**
17 A -- is a very critical element of --
18 of -- of forecasting pension obligations.
19 **Q Right. And, so, you would have**
20 **different scenarios that are based on different**
21 **estimates of performance in the equity market, so**
22 **if the market does very well, there is one**

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1 **scenario for how much funding would be needed; if**
2 **the market does poorly, there's another scenario;**
3 **is that right?**
4 A That's -- that's correct.
5 **Q And then you could also run a set of**
6 **assumptions that are based on how the pension is**
7 **treated?**
8 **And what I mean by that is one thing**
9 **that we discussed earlier was that PBGC was**
10 **advocating for GM to assume the plans. And, so,**
11 **if GM assumes the plans, then the assumptions are**
12 **different than if a different purchaser or a**
13 **different sponsor assumes the plans; is that**
14 **right?**
15 A I think so.
16 **Q Well, and what I mean by that is if GM**
17 **assumes the plans, GM has its own plans that those**
18 **would be assumed into, and so the amount of money**
19 **that you might need to contribute for GM might be**
20 **different than another sponsor who has its own**
21 **plans or maybe doesn't have any plans and might**
22 **need to contribute a different amount of money; is**

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1 **that right?**
2 A I think that's right.
3 **Q And do you know if those sorts of**
4 **scenarios were run by the actuaries and provided**
5 **to the task force?**
6 A I -- I don't have a recollection of it.
7 **Q Okay. All right. Now let's go to 14.**
8 **(House Deposition Exhibit 14 was marked**
9 **for identification and attached to the**
10 **transcript.)**
11 **BY MR. O'TOOLE:**
12 **Q So Exhibit 14 appears to be an email**
13 **chain back and forth between you and Matt Feldman**
14 **of the auto task force; is that correct?**
15 A Yes.
16 **Q And it appears that the chain started**
17 **with some discussion about PBGC attempting to get**
18 **on the UCC, which I'm assuming is the unsecured**
19 **creditor's committee for Chrysler; is that**
20 **correct?**
21 A Yes.
22 **Q And at some point during the -- the**

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1 **chain, you asked Mr. Feldman if he has a minute to**
2 **chat Delphi at some point that day; is that**
3 **correct?**
4 A I see that, yes.
5 **Q Do you recall that -- that**
6 **communication with Mr. Feldman?**
7 A I do not.
8 **Q And do you recall the call?**
9 A I do not.
10 **Q Is this back-and-forth -- looks like**
11 **six emails over the course of two days --**
12 **consistent with your recollection of the**
13 **back-and-forth between you and Mr. Feldman during**
14 **that period?**
15 A Yes.
16 **Q Okay.**
17 **(House Deposition Exhibit 15 was marked**
18 **for identification and attached to the**
19 **transcript.)**
20 **BY MR. O'TOOLE:**
21 **Q Now, Exhibit 15 appears to be an email**
22 **chain between someone named William Shaw at**

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1 **Rothschild and a number of individuals at -- at**
2 **Delphi; is that correct?**
3 A Yes.
4 **Q First of all, do you know who William**
5 **Shaw is?**
6 A I don't.
7 **Q And it appears that he has a Rothschild**
8 **email address, but you -- you -- you're not**
9 **familiar with Mr. Shaw; is that correct?**
10 A That's right.
11 **Q Now, were -- was it your understanding**
12 **that Rothschild is advising Delphi on issues in**
13 **connection with the -- its pension plan?**
14 A No.
15 **Q You -- you -- that's not your**
16 **understanding?**
17 A Correct.
18 **Q Okay. So if -- if -- if you were to**
19 **learn that, that would be a surprise to you?**
20 A Yes.
21 **Q Okay. Now, the attachment to this**
22 **email chain contains a list of what are called**

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1 **interested party inquiries; is that correct?**
2 A That's what it says at the top of the
3 page, yes.
4 **Q Now, what the email suggests is that**
5 **these are potential interested parties in the**
6 **acquisition of the Delphi assets.**
7 **Have -- have you seen this list before?**
8 A No.
9 **Q Now, are you -- are you aware of any of**
10 **the parties that had expressed interest in**
11 **acquiring Delphi's assets?**
12 A No.
13 **Q And at some point there was a -- a sale**
14 **of Delphi's assets; is that correct?**
15 A Can you be more specific?
16 **Q Well, in connection with the**
17 **bankruptcy, Delphi's assets were sold; is that**
18 **correct?**
19 A If you're -- I'm hesitating because
20 Delphi engaged in sale transactions in portions of
21 its business throughout the --
22 **Q Okay.**

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1 A -- the Chapter 11 proceedings. The
2 ultimate disposition of the Delphi entity was also
3 an asset sale.
4 **Q Right. That -- and that's what I'm**
5 **referring to, the ultimate disposition.**
6 A Okay.
7 **Q Ultimately that -- at the end of the**
8 **day a number of Delphi's assets were sold to GM;**
9 **is that right?**
10 A I -- I -- I -- I think, among others.
11 **Q Okay.**
12 A That's my recollection.
13 **Q But is it -- was it your understanding**
14 **at the time that there were -- that there were**
15 **entities that were attempting to buy Delphi's**
16 **assets?**
17 A I -- I don't recall it.
18 **Q Okay. And -- and, so, you don't have**
19 **any understanding of who those entities might have**
20 **been?**
21 A No.
22 **Q And -- and you didn't have any**

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1 **negotiation or discussions with any of those**
2 **entities?**
3 A No.
4 **Q Do you know if anyone at PBGC did?**
5 A I don't know.
6 **Q Okay. Now, in other transactions that**
7 **you've been involved with where a pension plan is**
8 **in trouble and there's a potential acquirer, does**
9 **PBGC have communications with a potential**
10 **inquire -- acquirer?**
11 MR. MENKE: Objection: assumes
12 hypothetical facts.
13 The witness can answer if he can.
14 THE WITNESS: The answer is maybe.
15 BY MR. O'TOOLE:
16 **Q Have you ever had those sorts of**
17 **interactions with a potential buyer?**
18 A If I could think of an example, then I
19 could definitely say yes. I think the answer is
20 yes.
21 **Q Okay. But you know -- but to your**
22 **knowledge, no one from PBGC talked to these -- to**

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1 any of these potential buyers?
2 A Not that I'm aware of.
3 Q And -- and, so, for example, no one
4 talked to Federal-Mogul at any point in time --
5 A Not --
6 Q -- to your knowledge, that you --
7 A Not that I'm aware of.
8 Q And anyone else on this list that jumps
9 at you? I know that at some point Platinum Equity
10 was discussed as a potential purchaser of the
11 Delphi rest of world assets, but is -- are you
12 familiar with that?
13 A Familiar would be overstating it, but
14 Platinum is definitely a name that I've heard
15 and -- and I recall, you know, being a participant
16 in the process.
17 Q But -- but -- but you had no discussion
18 with Platinum --
19 A No.
20 Q -- Equity?
21 And -- and, to your knowledge, no one
22 from PBGC did; is that correct?

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1 A Not that I'm aware of.
2 Q Okay. We're moving on to Exhibit 16.
3 (House Deposition Exhibit 16 was marked
4 for identification and attached to the
5 transcript.)
6 THE WITNESS: (Reviews document.)
7 BY MR. O'TOOLE:
8 Q All right. Exhibit 16 appears to start
9 with an email from someone named Michael Riela to
10 a -- a group of people --
11 MR. MENKE: Objection. That --
12 that's not right; that's not correct. This
13 appears to start with a email from Ralph Landy.
14 THE COURT REPORTER: From who?
15 MR. O'TOOLE: I'm sorry.
16 BY MR. O'TOOLE:
17 Q The -- the -- the earliest entry is an
18 email from --
19 MR. MENKE: Oh.
20 BY MR. O'TOOLE:
21 Q -- Michael Riela to a group -- a group
22 of other people that include Kristina Archeval

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1 from the PBGC and Karen Morris from the PBGC and
2 Dana Cann from the PBGC; is that correct?
3 A I -- I see all those names on this
4 email, yes.
5 Q Okay. And if you'll turn to the second
6 page of the email, the one that had -- has 62 at
7 the bottom.
8 A Yes.
9 Q And at the top of that, the first
10 paragraph -- it's actually not a full paragraph --
11 if you'll look at the portion that says, The
12 company understands that the Treasury and the PBGC
13 have reached an agreement in principle about how
14 Delphi's pension underfunding would be handled,
15 but the company does not know what that agreement
16 is. And -- and the date of this is May 12th.
17 Is it your understanding that on -- on
18 May 12th that PBGC and Treasury had reached an
19 agreement in principle about how Delphi's pension
20 underfunding would be handled?
21 A I don't have any recollection.
22 Q Okay. Now, you were working closely

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1 with Treasury at that point in time; is that
2 correct?
3 A I don't -- closely I think would be
4 overstating it.
5 Q Well, who at the PBGC was working on
6 Delphi's pension issues and was communicating with
7 Treasury about those issues?
8 A The list of folks that we discussed a
9 little while ago, which would be myself and Terry
10 Deneen, Neela Ranade and Cindy Travia. And there
11 were -- there had to have been instances when
12 Kristina and Dana and Karen all participated as
13 well.
14 Q Now, if there was an agreement in
15 principle between PBGC and Treasury at this point
16 in time, would you have known about it?
17 A I believe so.
18 Q And do you have -- when you say you
19 don't have any recollection of such an agreement,
20 does that mean that you don't believe such an
21 agreement existed or that you just don't remember
22 whether such an agreement existed?

35 (Pages 134 to 137)

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1 A I want to get this right. I don't
2 think any such agreement existed at this point in
3 time.
4 **Q Okay.**
5 A But -- an agreement would be -- I'm
6 trying to think what was happening in May because
7 I haven't had any reason to look at this timeline.
8 It -- it feels extremely early in the process for
9 there to have been anything like a -- a common
10 understanding about Delphi's pensions.
11 **Q Okay. You say early for there to be a**
12 **common understanding. When do you remember there**
13 **being a common understanding?**
14 A At the moment that the agency pursued
15 the administrative process to terminate the
16 pension plans in July.
17 **Q So before then there was no common**
18 **understanding with Treasury about what was going**
19 **to happen with Delphi's pensions?**
20 A Not -- not that I can recall.
21 **Q Okay. And if you'll look at the top**
22 **entry, it appears to be an email from Mr. Landry.**

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1 **Who is Ralph Landry?**
2 A He is a lawyer in the chief counsel's
3 office at PBGC.
4 **Q Okay. And -- and he suggests that he'd**
5 **not heard about an agreement in principle on the**
6 **treatment of Delphi's pension plans at this point**
7 **in time; is that correct?**
8 A That's what the email says.
9 **Q And what's the time stamp on this**
10 **email?**
11 A 9:38 in the morning on Wednesday, May
12 the 13th.
13 **Q Okay. Can we go to Exhibit 17.**
14 **(House Deposition Exhibit 17 was marked**
15 **for identification and attached to the**
16 **transcript.)**
17 **BY MR. O'TOOLE:**
18 **Q I'm showing you Exhibit 17. What's the**
19 **date and time on that email?**
20 A Wednesday, May the 13th, at 11:37 --
21 well, there's one at 11:28 from me to Feldman and
22 then Feldman responding back to me at 11:37.

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1 **Q And you're asking Mr. Feldman to talk**
2 **today or to -- to come over to Treasury; is that**
3 **right?**
4 A It -- it says we can either get
5 together in person or talk on the phone.
6 **Q And -- and he said he would call you**
7 **this afternoon?**
8 A That afternoon, yes.
9 **Q And do you remember the topic of the**
10 **discussions?**
11 A No.
12 **Q And it doesn't have any subject or give**
13 **him any information about what the topic of the**
14 **discussion is.**
15 **Why -- why didn't you tell him what the**
16 **topic was?**
17 A I'm not sure.
18 **Q Okay. Do you remember what you guys**
19 **talked about?**
20 A No.
21 **Q All right.**
22 **(House Deposition Exhibit 18 was marked**

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1 **for identification and attached to the**
2 **transcript.)**
3 **BY MR. O'TOOLE:**
4 **Q Exhibit 18 appears to be an email from**
5 **Mr. Feldman to you dated May 22nd, 2009; is that**
6 **correct?**
7 A Yes.
8 **Q And the subject in -- in Mr. Feldman's**
9 **email is -- is Delphi; is that correct?**
10 A Yes.
11 **Q And he suggests talking today or over**
12 **the weekend because he spoke to the mediator and**
13 **to Delphi and he wanted -- and I'm -- I'm assuming**
14 **that's a typo, but he says he wants to update you;**
15 **is that correct?**
16 A Yes.
17 **Q Okay. Do you recall this conversation**
18 **with Mr. Feldman?**
19 A No.
20 **Q Now, this appears to be before the**
21 **mediation in this case took place; is that your**
22 **understanding?**

36 (Pages 138 to 141)

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1 A I -- I have no idea when the mediation
2 took place.
3 **Q Okay. But do you recall a conversation**
4 **with Mr. Feldman in which he discussed his**
5 **conversations with the mediator and Delphi and**
6 **reported about those conversations to you?**
7 A No.
8 **Q Did you ever have such a conversation**
9 **with Mr. Feldman?**
10 A I don't -- I don't recall.
11 **Q Okay. I'm going to show you a --**
12 **Exhibit 19.**
13 **(House Deposition Exhibit 19 was marked**
14 **for identification and attached to the**
15 **transcript.)**
16 **BY MR. O'TOOLE:**
17 **Q Before we get to that, do you -- what**
18 **was PBGC's position in connection with the**
19 **mediation, if you know?**
20 A I don't remember without context what
21 the -- what the -- I mean, I -- I would like to
22 ask you about ten questions before I answer the

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1 question --
2 **Q Well, let me --**
3 A -- because I don't -- I don't recall
4 it.
5 **Q Let me -- let me put some more**
6 **information in front of you in Exhibit 19, and**
7 **then I'll ask you questions about it.**
8 A (Witness reviews document.)
9 **Q So Exhibit 19 reflects a -- a mediation**
10 **being held in front of Cecelia Morris, a**
11 **bankruptcy judge in the Southern District of New**
12 **York, on May 26, 2009.**
13 **Is that consistent with your**
14 **recollection?**
15 A I don't recall it, but it happened, and
16 this document bears that date, so . . .
17 **Q And you know that there was a**
18 **mediation --**
19 A Yes.
20 **Q -- in connection with the Delphi**
21 **bankruptcy; is that correct?**
22 A Yes, I do recall that.

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1 **Q And -- and is it your understanding**
2 **that pension issues were discussed in that**
3 **mediation?**
4 A I think my recollection is the pension
5 issues were not discussed in that mediation.
6 **Q That -- your recollection is the**
7 **pension issues were not discussed?**
8 A I mean, my -- my recollection of the
9 report that came out of that session is that poor
10 John Menke and our advisor David Burns sat in a
11 room and read books all day.
12 **Q Do you -- and the -- the topic of**
13 **pensions, it's your understanding it did not come**
14 **up?**
15 A I -- what sticks out to me about this
16 mediation is, you know, that -- that anecdote
17 about it -- about John and David going up and
18 sitting in a -- in a room in Poughkeepsie and then
19 subsequently going and sitting in a room at
20 Skadden and nobody came knocking.
21 **Q So nobody talked to PBGC at that point?**
22 A You can ask John or David --

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1 **Q Okay.**
2 A -- but as far as I -- I recall, I -- I
3 don't recall there being any conversations with --
4 with PBGC that -- that -- that -- I just don't
5 recall there being any conversations.
6 **Q And you were -- were you briefed after**
7 **that mediation took place?**
8 A Yes.
9 **Q And -- and essentially given a report**
10 **on what took place at the mediation?**
11 A Yes.
12 **Q And is that everything that you**
13 **remember about it, or is that --**
14 A That -- that's what I'm remembering.
15 **Q Okay. And you mentioned someone else**
16 **at the mediation besides Mr. Menke. It was**
17 **David --**
18 A I saw his name here. That's how I
19 remembered.
20 **Q And who -- who is David -- who was the**
21 **Greenhill advisor, Mr. --**
22 A He -- he was -- yeah, he was at -- he

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1 worked --
2 **Q -- Burns?**
3 A -- for Greenhill. David Burns worked
4 for Greenhill.
5 **Q And -- and what was he doing in**
6 **connection with the Delphi issues?**
7 A He -- I don't recall his title. He was
8 like a managing director or director, but he was
9 supporting the Greenhill team. He was one of the
10 members of the Greenhill team that was supporting
11 PBGC's, you know, financial analysis and -- and
12 assessment of -- of potential outcomes in -- in
13 Delphi.
14 **Q All right. Let's go to Exhibit 20.**
15 **(House Deposition Exhibit 20 was marked**
16 **for identification and attached to the**
17 **transcript.)**
18 **BY MR. O'TOOLE:**
19 **Q Did you ever receive a report from**
20 **Mr. Burns about the mediation, if you recall?**
21 A I -- I don't recall it.
22 **Q But --**

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1 A It seems likely.
2 **Q But whatever report you received,**
3 **you've just told us the substantive -- substance**
4 **of it?**
5 A That's my recollection.
6 **Q Okay. You've now seen Exhibit 20.**
7 **That appears to be an email from Jack Butler at**
8 **Skadden to Matt Feldman at the auto task force and**
9 **some other individuals from Delphi and some**
10 **lawyers from Skadden; is that correct?**
11 A Yes.
12 **Q And Mr. Butler says in his email that**
13 **his understanding from the mediation discussions**
14 **is that in the event that GM takes the hourly plan**
15 **and leaves behind the salaried -- salaried plan,**
16 **the PBGC will terminate the salaried plan and will**
17 **waive rest of the world liens on the salaried plan**
18 **if they can receive some reasonable settlement on**
19 **the termination liabilities.**
20 **That -- that's not the report you**
21 **received from the mediation, is it?**
22 A I don't recall.

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1 **Q And is that -- were -- were there any**
2 **discussions between you and Mr. Feldman along**
3 **these same lines with respect to PBGC's actions**
4 **with respect to the salaried and hourly plans?**
5 A I'm -- I'm -- I'm hesitating because
6 I -- I -- I think the answer to your question is
7 eventually yes. But I don't have any recollection
8 of this type of a framework that fits this time
9 period.
10 **Q Okay. And, so, what Mr. Butler says in**
11 **his email in terms of the framework is**
12 **inconsistent with your recollection of how the**
13 **mediation was described?**
14 A I just don't remember the mediation
15 dialogue producing anything this specific or
16 particular as it related to a framework.
17 **Q And in this time period, you never had**
18 **any discussion along these lines with Mr. Feldman;**
19 **is that correct?**
20 A I don't know about never. I -- I
21 don't -- I don't know. I don't remember. I don't
22 recall.

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1 **Q You don't recall any discussions --**
2 A I don't recall.
3 **Q -- but -- you're not saying they didn't**
4 **happen; you just don't remember?**
5 A That's right.
6 **Q Okay. All right. I'm going to show**
7 **you now Exhibit -- what we'll mark as Exhibit 21.**
8 **(House Deposition Exhibit 21 was marked**
9 **for identification and attached to the**
10 **transcript.)**
11 THE WITNESS: (Reviews document.)
12 Okay.
13 BY MR. O'TOOLE:
14 **Q Okay. So by -- this isn't -- this --**
15 **Exhibit 21 is an email from you to Mr. Feldman; is**
16 **that correct?**
17 A Eventually, yes.
18 **Q Yes.**
19 A Right.
20 **Q The bottom -- the bottom item in the**
21 **chain --**
22 A Right.

38 (Pages 146 to 149)

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1 Q -- is an email --
2 A That's right.
3 Q -- from you to Mr. Feldman?
4 A Yes.
5 Q And in that email first you reference a
6 conversation that you had the night before; is
7 that correct?
8 A As discussed last night, yes.
9 Q And that conversation by the date of
10 the email would have taken place on May 28th?
11 A Had to have been.
12 Q Okay. And in that conversation it
13 appears that you and Mr. Feldman discussed the
14 outlines of PBGC's views on the acceptable
15 resolution of the hourly and salaried pension
16 plans; is that correct?
17 A Yes.
18 Q Do you have any recollection of that
19 conversation?
20 A I-- no, I don't have any recollection
21 of the conversation.
22 Q And you also had conversations with

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1 Mr. Feldman before the mediation as well; is that
2 correct?
3 A Definitely, yes.
4 Q And -- and you don't remember if
5 this -- this same topic was part of those
6 discussions either, do you?
7 A No.
8 Q So it could have been?
9 A It could have been.
10 Q And, so, when Mr. Feldman called you
11 the day be- -- or the Friday before the Monday
12 mediation and said, I talked to Delphi and I
13 talked to the mediator and I want to talk to you
14 about Delphi, he could have outlined exactly this
15 proposal to you during that call; right?
16 A Say that again.
17 Q When you talked to Mr. Feldman on the
18 Friday before a Monday mediation and he --
19 A So give me dates because the --
20 these -- this is bearing a Friday May 29 date.
21 Q Let's go back to -- it's the -- which
22 exhibit is this? It's the one that's dated

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1 May 22nd.
2 A Okay. Okay. Got it.
3 Q All right. And Mr. Feldman emails you
4 on May 22nd, and that's Exhibit 18; is that right?
5 A Yes, yes, yes, yes.
6 Q In Exhibit 18 Feldman says to you --
7 the subject is Delphi; right?
8 A Yes.
9 Q And he says, can we talk later today or
10 over the weekend. Spoke to mediator in Delphi and
11 want to update you.
12 Is that right?
13 A Yes.
14 Q And you don't remember that
15 conversation; right?
16 A I do not.
17 Q But it could have easily been along the
18 lines of your later email to Mr. Feldman a week
19 later; right?
20 MR. MENKE: Objection: calls for
21 speculation by the witness. He has already
22 testified he has no recollection of that

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1 conversation.
2 BY MR. O'TOOLE:
3 Q That could have been what you talked
4 about; right?
5 MR. MENKE: Objection: calls for
6 speculation by the witness. He has already
7 testified he doesn't recall.
8 BY MR. O'TOOLE:
9 Q You can answer.
10 A It's possible.
11 Q Right. You're not saying you didn't
12 talk about that in that conversation?
13 A I don't recall it.
14 Q Okay. But by February 29th you're
15 sending an email to Mr. Feldman that is -- is a
16 pretty detailed outline of what PBGC's -- what you
17 describe as its proposed solution with respect to
18 the plans; is that correct?
19 A That's your characterization of it.
20 Q I'm -- I -- I thought it was yours. If
21 you go down to the second --
22 A You said fairly detailed.

39 (Pages 150 to 153)

Page 154

1 Q Oh, I'm sorry. But you -- what you
2 call as PBGC's proposed solution.
3 A Yes.
4 Q And what does that solution consist of?
5 A I'd have to read it.
6 Q Okay.
7 A Do you want me to read it?
8 Q Well, do you have any recollection
9 of -- of writing this email?
10 A No.
11 Q Okay. But this email is consistent
12 with what PBGC's proposed solution was; right?
13 A Absolutely.
14 Q Okay. So the first item that you list
15 is that GM would assume Delphi's hourly plan and
16 merge the hourly plan with GM's hourly plan; is
17 that right?
18 A Yes.
19 Q And then PBGC staff would undertake its
20 best efforts to commence termination and
21 trusteeship of the Delphi salaried retiree plan
22 under Section 4042 of ERISA; is that right?

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1 A Yes.
2 Q All right. And that Delphi agreed that
3 it would -- Delphi would agree that it would sign
4 a trusteeship agreement and that would allow PBGC
5 to trustee the plan?
6 A Yes.
7 Q Okay. And then termination of Delphi's
8 salaried plan will mature PBGC's joint and several
9 claims against each member of the controlled group
10 for approximately 3 billion in unfunded benefit
11 liabilities.
12 That's right; right?
13 A I believe so.
14 Q Okay. And, so -- so that was what we
15 talked about earlier where, when once you commence
16 the termination, PBGC gets a claim for the
17 unfunded benefits that it can assert against
18 the -- against the company or whoever purchases
19 the assets of the company; right?
20 MR. MENKE: Objection: calls for a
21 legal conclusion by the witness.
22 BY MR. O'TOOLE:

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1 Q You're a lawyer; right?
2 A (Indicating)?
3 Q Yes.
4 A I was.
5 Q And you -- and you worked as a -- as a
6 lawyer at the PBGC; right?
7 A I did.
8 Q Okay. And, so, that's what -- that --
9 when -- when we talk about this \$3 billion
10 unfunded benefit liability claim in the SRP,
11 essentially that's a claim PBGC gets against
12 either the plan sponsor or whoever tries to take
13 the assets of the plan sponsor for this 3 billion
14 in unfunded benefit liabilities?
15 MR. MENKE: I -- objection, again:
16 calls for a legal conclusion and it misstates the
17 law.
18 MR. O'TOOLE: Okay. Well --
19 MR. MENKE: PBGC had that --
20 MR. O'TOOLE: -- it's --
21 MR. MENKE: -- claim --
22 MR. O'TOOLE: Okay.

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1 MR. MENKE: -- from the beginning of
2 the bankruptcy.
3 MR. O'TOOLE: It's his email.
4 BY MR. O'TOOLE:
5 Q What are you talking about in this
6 email?
7 A (Witness reviews document.) What do
8 I -- your question is -- relates to the first
9 sentence of paragraph 3; right?
10 Q It really relates to what is
11 paragraph 3 getting PBGC.
12 A (Witness reviews document.) I -- I
13 think it's -- it's simply an expression of our
14 calculation of unfunded benefit liabilities in the
15 salaried plan at the point -- at that point in
16 time.
17 Q And -- and PBGC's claims for that; is
18 that correct?
19 A Right.
20 Q Right. And so you go on at the end to
21 say PBGC would settle these claims in exchange
22 for -- and you have some consideration?

40 (Pages 154 to 157)

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1 A Yes.
2 Q Okay. And the claims would be you get
3 a \$3 billion unsecured claim in Delphi's
4 bankruptcy. That's one?
5 A Yes.
6 Q And then you would want a cash payment
7 equal to the value the PBGC would receive if its
8 liens were pari passu, which I'm assuming means
9 equal to the Tranche C DIP liens; is that right?
10 A Yes.
11 Q And a cash payment equal to one percent
12 of PBGC's claims against the nondebtor affiliates,
13 so one percent of 3 billion --
14 A Okay.
15 Q -- is that right?
16 A Yes.
17 Q Okay. And, so, this is the proposal
18 that you send to Feldman that did -- that --
19 how -- how far after the mediation is this? So
20 this is Friday and the mediation was on Monday; is
21 that correct?
22 A Was the mediation Monday?

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1 Q Let's go back. May 26th; is that
2 right?
3 A Whatever the dates are, the dates are.
4 Q Right.
5 A I'm not --
6 Q So this is a few days after --
7 A -- trying to argue with you.
8 Q -- the mediation --
9 A Yeah.
10 Q -- is that fair?
11 A Yes.
12 Q And you've had a conversation with
13 Feldman and -- and you came up with this proposal,
14 is that right, or did Feldman come up with this
15 proposal? How did it originate?
16 A I -- I don't have any recollection of
17 the -- the origins of this, but the one piece
18 of -- of origination that I would be -- that I
19 would definitely want to emphasize is that this
20 went through a round of internal collaboration and
21 coordination. So it maybe came from my email, but
22 this reflects a fully coordinated and agreed-upon

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1 internal PBGC approach.
2 Q Okay. And -- and one that you had
3 discussed with Matt Feldman the night before; is
4 that correct?
5 A I -- I don't recall.
6 Q Okay. Now, if you'll go back to
7 Exhibit -- is it 20? That proposal that you
8 provided that had been vetted with the PBGC, how
9 does that differ from the one that Mr. Butler said
10 was his understanding from the mediation
11 discussions?
12 A All I can do is -- is read the two
13 and -- and try and compare and contrast because I
14 don't have a recollection --
15 Q Okay.
16 A -- of how the two are different --
17 Q Is there any --
18 A -- if they're different at all. I
19 don't know.
20 Q Okay.
21 A You want me to --
22 Q Well, the -- I mean, if there's any --

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1 if there's -- so -- so let's -- we can go through
2 them if it's easiest.
3 So Mr. Butler suggested at the
4 mediation his understanding was that -- and he
5 says subject to the mediation privilege, which
6 it's been waived times ten, so there's no
7 mediation privilege -- but that -- that -- some --
8 that his understanding from the mediation
9 discuss- -- discussions was that in the event GM
10 takes the hourly plan and leaves behind the
11 salaried plan -- so that was consistent with your
12 proposal; right?
13 A It seems to be.
14 Q So you -- you -- your proposal included
15 GM taking the hourly plan; right?
16 A Yes.
17 Q And leaving behind the salaried plan?
18 A Yes.
19 Q Okay. And then the -- the PBGC would
20 terminate the salaried plan and would waive the
21 rest of the world liens, and that's consistent
22 with your proposal, too; right?

41 (Pages 158 to 161)

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1 A Let me see. I don't -- (witness
2 reviews documents.)
3 He uses the word "waive," and I don't
4 think that I would use the word "waive." I don't
5 think I used the word "waive."
6 **Q You did not. You -- so your -- so your**
7 **email says that for the -- and I'm looking at**
8 **section 3(b) of your email.**
9 A 3(b).
10 **Q For its claims and liens against**
11 **Delphi's nondebtor affiliates, and that's what it**
12 **would settle all those claims and liens in**
13 **exchange for and -- and what you get in section --**
14 **subsection B; is that right?**
15 A That -- that seems right.
16 **Q And that's -- but that's consistent**
17 **with what he goes on to say: Well, John was not**
18 **authorized to give me a specific number.**
19 **And -- and in this memo he's -- appears**
20 **to be referring to John Menke; is that right?**
21 A It -- it seems.
22 **Q Right. So John -- he's suggesting that**

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1 **John Menke didn't give him a specific number that**
2 **PBGC would agree on, but had a strawman of**
3 **something like 25 percent of the value of the**
4 **liens to date, so a settlement of something around**
5 **50 million. So he's not just saying waive the**
6 **liens; he's saying get a settlement for the liens;**
7 **right?**
8 A It's -- it's -- it's Jack Butler's
9 words, but I -- I think that that's a -- a -- a
10 reasonable conclusion.
11 **Q Okay. And -- and when you -- you then**
12 **take this proposal and you said you vetted it in**
13 **the PBGC -- within the PBGC. Was -- did you vet**
14 **it to Mr. Menke? Was he one of the people?**
15 A I don't have a specific recollection of
16 that.
17 **Q Okay. But you don't have any**
18 **recollection of him saying, what are you talking**
19 **about; all we did at the mediation was sit around**
20 **and read books; where does this plan come from?**
21 A I'm -- I'm only hesitating because I'm
22 trying to connect two -- two dots that occurred in

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1 time more proximate than I recall. So when you
2 asked me before -- and I'm -- and I'm not going to
3 recall the precise question. I knew at some point
4 this level of coordination with -- with the
5 Treasury folks had occurred. I didn't recall it
6 occurring this proximate to the mediation. What I
7 recall from the mediation is that the guys
8 reported that they sat in a room for a long time
9 and didn't have any contact with anybody.
10 **Q But it appears from the documents that**
11 **a proposal came out almost immediately after the**
12 **mediation; isn't that right?**
13 A Yes.
14 **Q And that it was represented to PBGC**
15 **that the proposal had come out of the mediation**
16 **and -- and a proposal in writing went to**
17 **Mr. Feldman on a Friday after the mediation took**
18 **place on a Monday; is that right?**
19 A I -- I think that's a reasonable
20 description of the timeline.
21 **Q And was there anybody else at PBGC --**
22 **it -- it looks like the proposal came from you to**

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1 **Mr. Feldman.**
2 **Was there anybody else at PBGC who was**
3 **involved in the discussion with Mr. Feldman or**
4 **anyone else at the auto task force about this**
5 **proposal?**
6 A I don't recall.
7 MR. O'TOOLE: Let's go to this
8 (indicating).
9 (House Deposition Exhibit 22 was marked
10 for identification and attached to the
11 transcript.)
12 BY MR. O'TOOLE:
13 **Q This email chain is dated June 2nd; is**
14 **that correct?**
15 A Yes.
16 **Q And that it ends at 10:15 on that same**
17 **day?**
18 A Yes.
19 **Q And it appears to be an email chain**
20 **between representatives of General Motors and**
21 **Harry Wilson and Matt Feldman of the auto task**
22 **force; is that correct?**

42 (Pages 162 to 165)

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1 A It does.
2 **Q And it starts with an email at about**
3 **seven o'clock the night of June 2nd in which Rick**
4 **Westenberg at GM -- do you know who Rick**
5 **Westenberg was at the time?**
6 A He was a senior executive. I don't
7 remember his title or his role.
8 **Q And were you working with him at all?**
9 A I don't think so.
10 **Q And he emails Matt Feldman and said**
11 **that GM was looking to understand the details of**
12 **the settlement with the PBGC regarding Delphi's**
13 **hourly and salaried plan, has it been finalized,**
14 **and he wanted an overview on that of -- of what**
15 **the settlement with the PBGC consisted of; is that**
16 **correct?**
17 A That's -- that appears to be a -- a
18 reasonable summary of his email.
19 **Q And -- and -- and the -- Mr. Feldman**
20 **from the task force said he told PBGC to speak**
21 **directly to you guys, and it -- it -- do you read**
22 **this email to mean that "you guys" meant GM?**

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1 A I do.
2 **Q And at some point it appears that GM**
3 **suggests that Walter Borst is the person to call**
4 **at -- at GM for the PBGC; is that correct?**
5 MR. MENKE: I'm going to object to this
6 line of questions. This email speaks for itself,
7 and while this witness has testified about his
8 views of the summary --
9 MR. O'TOOLE: Well, let me --
10 MR. MENKE: -- unless --
11 MR. O'TOOLE: -- just --
12 MR. MENKE: -- unless -- unless you'd
13 like to read into the record, it speaks for
14 itself.
15 BY MR. O'TOOLE:
16 **Q All right. Well, let's ask a question**
17 **about it. So at some point in early June did you**
18 **have direct discussions with GM about the PBGC**
19 **settlement?**
20 A I don't recall.
21 MR. O'TOOLE: Let's go to Exhibit 23.
22 (House Deposition Exhibit 23 was marked

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1 for identification and attached to the
2 transcript.)
3 THE WITNESS: (Reviews document.)
4 BY MR. O'TOOLE:
5 **Q All right. So Exhibit 23 appears to be**
6 **an email from Matt Feldman to you, Mr. House,**
7 **suggesting that you contact GM and specifically**
8 **Walter Borst; is that correct?**
9 A Yes.
10 **Q And Mr. Feldman provides you with**
11 **Mr. Borst's email, and -- and did you -- do you**
12 **have any recollection of having Mr. Borst's**
13 **con- -- contact information before this**
14 **interaction?**
15 A Yes.
16 **Q You do -- you think you did have his**
17 **contact information?**
18 A Yes.
19 **Q So you didn't need it?**
20 A I -- it was probably convenient to have
21 it --
22 **Q Okay.**

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1 A -- at this point.
2 **Q Okay. But you -- were you contacting**
3 **Mr. Borst on a regular basis?**
4 A No.
5 **Q No. And you respond to Mr. Feldman**
6 **that you would reach out to Walter that day; is**
7 **that correct?**
8 A Yes.
9 **Q And would keep Treasury, Mr. Feldman,**
10 **in the loop about your conversations; is that**
11 **correct?**
12 A Yes.
13 **Q And do you recall doing that?**
14 A No.
15 **Q Okay. Let's go to Exhibit 24 to see if**
16 **that refreshes your recollection.**
17 (House Deposition Exhibit 24 was marked
18 for identification and attached to the
19 transcript.)
20 THE WITNESS: (Reviews document.)
21 BY MR. O'TOOLE:
22 **Q So Exhibit 24 appears to be an email**

43 (Pages 166 to 169)

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1 from you suggesting that you did have that phone
2 call with Mr. Borst; is that correct?
3 A Yes.
4 Q And that you were going to then fill
5 Mr. Feldman in on the substance of that
6 conversation?
7 A Yes.
8 Q And do you have any recollection of,
9 first, the conversation with Mr. Borst?
10 A No.
11 Q What about the conversation with
12 Mr. Feldman?
13 A No.
14 Q And there's nothing in the email that
15 would refresh your rec- -- recollection because
16 the email doesn't have any discussion of
17 substance; right?
18 A That's right.
19 Q All right. Now, we're into June of
20 2009. At this point you've sent out a settlement
21 proposal to the -- to Mr. Feldman earlier in the
22 month?

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1 A Yes.
2 Q Do you recall a series of conversations
3 about that proposal during the month of June?
4 A I don't recall them, but seems like
5 they probably happened.
6 Q Okay. And -- and meetings with
7 Mr. Feldman during that month?
8 A Probably.
9 Q Okay. What about as you get closer to
10 the end of the month and some decisions are going
11 to be made with respect to the settlement
12 proposal; do you recall conversations with
13 Mr. Feldman or anyone at the auto task force along
14 those lines?
15 A No.
16 Q Okay.
17 A Other than them probably happening.
18 Q Okay. Let's go to --
19 MR. KHALIL: Twenty-five.
20 BY MR. O'TOOLE:
21 Q -- Exhibit 25.
22 (House Deposition Exhibit 25 was marked

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1 for identification and attached to the
2 transcript.)
3 THE WITNESS: (Reviews document.)
4 BY MR. O'TOOLE:
5 Q Sorry about the small print.
6 A (Witness continues reviewing document.)
7 Q All right. Exhibit 32 [sic] appears to
8 be an -- an email chain that starts with an email
9 from David Burns at Greenhill. And you've
10 described him previously as PBGC's -- one of
11 PBGC's consultants on Delphi pension issues; is
12 that correct?
13 A Yes.
14 Q And in the course of this email that's
15 addressed to you and Dana Cann and, it appears,
16 John Menke, he wanted to know if there was any
17 word from Treasury regarding the treatment of the
18 hourly plan.
19 Do you recall receiving this email?
20 A No.
21 Q No. And do you recall what he's -- the
22 subject -- the subject matter of this email in

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1 terms of waiting for word from Treasury/GM
2 regarding treatment of the hourly plan?
3 A No.
4 Q And you're also copied on Mr. Cann's
5 response that said no word from Treasury.
6 Do you recall any discussion amongst
7 the -- the recipients of this email as to whether
8 or not there had been any word from Treasury on
9 GM's treatment of the hourly plan?
10 A No.
11 Q Is this email consistent with your
12 recollection of what was taking place in June of
13 2009 with respect to waiting for word from the
14 PBGC -- from the Treasury, I'm sorry?
15 A This period is one where the -- the
16 only way I'm going to recall what was going on is
17 through the -- through documents --
18 Q Okay.
19 A -- that -- that would walk me through
20 it. I don't recall any particulars. I don't
21 recall either of the particulars that are laid out
22 here as it relates to end of June.

44 (Pages 170 to 173)

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JA396

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1 Q Okay.
2 MR. O'TOOLE: Let's go to 33.
3 MR. KHALIL: Twenty-six.
4 MR. O'TOOLE: Twenty-six.
5 (House Deposition Exhibit 26 was marked
6 for identification and attached to the
7 transcript.)
8 BY MR. O'TOOLE:
9 Q So have you had a chance to review
10 Exhibit 26?
11 A Yes.
12 Q And the heading on this is -- the email
13 is an urgent phone call, and at the top portion of
14 the e- -- email chain, Mr. Snowbarger -- who was
15 the acting director of the PBGC at the time;
16 correct?
17 A Yes.
18 Q He suggests that Terry and Joe were
19 called to Treasury this afternoon.
20 And -- and I'm assuming Terry and Joe
21 are -- are you and Terry Deneen; is that correct?
22 A Yes.

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1 Q And that decisions had been made with
2 respect to Delphi.
3 Do you recall being called over to
4 Treasury on the afternoon of June 30?
5 A No.
6 Q And do you recall being called at any
7 point in time to Treasury to learn that decisions
8 had been made about Delphi?
9 A No.
10 Q And were these decisions -- do you have
11 any recollection of who would have made these
12 decisions?
13 A No.
14 Q Okay. I'm now going to show you an
15 email chain, Exhibit 27.
16 (House Deposition Exhibit 27 was marked
17 for identification and attached to the
18 transcript.)
19 THE WITNESS: (Reviews document.)
20 Okay.
21 BY MR. O'TOOLE:
22 Q Okay. So Exhibit 27 appears to be an

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1 email that you sent -- it starts with an email
2 that you sent at 6:41 on June 30th; is that
3 correct?
4 A Yes.
5 Q And the email is -- the subject matter
6 is confidential; is that correct?
7 A Yes.
8 Q And the substance of your email
9 suggests that you had just been to a meeting with
10 Terry Deneen at the U.S. Treasury; is that
11 correct?
12 A Yes.
13 Q Do you have any recollection of this
14 meeting after reviewing this email chain?
15 A I recall it happening.
16 Q Do you recall who else was there?
17 A I know it was Terry and I and Matt
18 Feldman, and beyond that I -- I don't remember.
19 Q Okay. And at some point Michael Rae --
20 I assume he's someone at the PBGC?
21 A We talked about him earlier.
22 Q That's what I thought. He asked you

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1 what's the short answer to the question and why,
2 and -- and you respond, cost; they're totally
3 tapped.
4 A Yes.
5 Q Do you recall that interaction?
6 A I don't.
7 Q You don't. And, so, do you have any
8 idea what you meant by the -- the answer being
9 cost?
10 A I had the benefit now of being beyond
11 the moment, and I think what we came to understand
12 was that the -- GM had in its restructuring
13 plan -- its go-forward restructuring plan built in
14 a cost, a pension cost, and the pension cost that
15 was in GM's model reflected the -- the -- GM's
16 estimate of the price of this so-called top-up
17 payment and did not include as a -- as a price
18 component -- you know, as a -- as a cost component
19 going forward -- and I'm talking about the
20 restructuring plan -- a -- a -- the -- the costs
21 of minimal funding obligations going forward that
22 would have been part of what GM would have been

45 (Pages 174 to 177)

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1 responsible for if it had taken on the second
2 tranche of the hourly pension plan.
3 **Q So essentially -- so your -- is this**
4 **your recollection at the meeting you were**
5 **essentially told it's not part of GM's**
6 **restructuring plan so we're not going to be able**
7 **to do it?**
8 A I don't have a recollection of that
9 at -- at the meeting.
10 **Q Okay. And then up further in the chain**
11 **it says that Mr. Feldman said that up till now,**
12 **U.S. Treasury Auto had consulted/deliberated**
13 **exclusively amongst itself, and -- and I'm**
14 **assuming WH/NEC is White House National Economic**
15 **Council; is that your understanding?**
16 A I think so.
17 **Q Okay. That's -- that's what you**
18 **meant --**
19 A Yes, I -- yes --
20 **Q -- when you wrote that?**
21 A -- I believe so.
22 **Q Okay. And it appears that GM has not**

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1 **been told of this decision yet; is that correct?**
2 MR. MENKE: Objection. The document
3 speaks for itself.
4 BY MR. O'TOOLE:
5 **Q Well, Mr. -- Mr. House, you wrote this**
6 **document and when you wrote it was it your**
7 **understanding that GM had not been consulted about**
8 **this decision?**
9 A No.
10 **Q That was not your understanding?**
11 A I -- I don't particularly or
12 specifically recall it, so I think it's best that
13 I not try and hypothesize.
14 **Q Well, let's go back to the beginning of**
15 **the chain. The -- the last sentence in your --**
16 **your original email on June 30th was, Please hold**
17 **extremely close for now, as Vince and Terry will**
18 **be briefing board reps tomorrow morning and the**
19 **auto task force will be briefing Delphi, GM and**
20 **the UAW tomorrow afternoon and evening.**
21 **Do you believe this email accurately**
22 **reflected your rec- -- your recollection of the**

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1 **meeting at the time?**
2 A I think so.
3 **Q And you were sending this to various**
4 **members of the PBGC; is that correct?**
5 A Yes.
6 **Q And were you trying to carefully and**
7 **fairly reflect what it is that had been told to**
8 **you during the meeting by the -- the Treasury**
9 **officials?**
10 A I think so, yes.
11 **Q So -- so this would be the best**
12 **recollection you have of the meeting; is that**
13 **correct?**
14 A I wouldn't call it the best, but it was
15 the -- the -- it happened the same day.
16 **Q And you were trying to be as accurate**
17 **as you could?**
18 A Yes, yes.
19 **Q So originally the deal that you had**
20 **discussed in your email from early June had GM**
21 **assuming the hourly plan; is that correct?**
22 A That was the PBC [sic] proposal,

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1 correct.
2 **Q That was the PBGC proposal. And**
3 **apparently on June 30th Treasury rejects the PBGC**
4 **proposal; is that correct?**
5 MR. MENKE: Objection.
6 BY MR. O'TOOLE:
7 **Q Well, Treasury -- Treasury says that**
8 **the PBG -- says that GM is not going to assume the**
9 **hourly plan?**
10 A I think that's accurate.
11 **Q Okay. And is that a better deal or a**
12 **worse deal for PBGC?**
13 MR. MENKE: Is it a better deal or
14 worse deal than what? Objection: vagueness.
15 Better or worse than what?
16 BY MR. O'TOOLE:
17 **Q Well, than your proposal. Your**
18 **proposal was that -- your proposal, as I**
19 **understand it, was that GM assumes the hourly**
20 **plan; correct?**
21 A Yes.
22 **Q And now Treasury has said that's not**

46 (Pages 178 to 181)

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1 going to happen; PBGC is going to terminate the
2 hourly plan.
3 Is that a better deal or worse deal for
4 PBGC?
5 A I -- I -- I can't answer that in
6 absolute terms.
7 Q What -- you had emailed earlier -- I
8 believe it was in March -- about how if the plans
9 were terminated it would cost the government --
10 and I think you were assuming GM and Delphi, but
11 it would cost the government a lot of money to
12 terminate the plans; is that correct?
13 A Yes.
14 Q And by the government you were res- --
15 were referring if the plans were terminated to --
16 to PBGC; is that right?
17 A Yes.
18 Q And, so, now PBGC is going to have to
19 take the hourly plan; right?
20 A That portion of it that remained --
21 Q Right. Right.
22 A -- unassumed by GM.

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1 Q Right. And -- and then -- and -- and
2 it sounds like eventually GM was going to do some
3 top-ups in connection with that; that's what
4 their -- that's what their model assumed; right?
5 A That's my understanding.
6 Q Right. So at this point Treasury has
7 come to PBGC and said -- says, we've seen your
8 proposal and that is not what Treasury is going to
9 accept.
10 How does PBGC respond?
11 MR. MENKE: Objection. That -- that --
12 there's no reference in this to the proposal or
13 anything. What you just --
14 MR. O'TOOLE: Treasury --
15 MR. MENKE: -- said --
16 MR. O'TOOLE: -- has --
17 MR. MENKE: -- is not --
18 MR. O'TOOLE: -- not --
19 MR. MENKE: -- anywhere in the record.
20 I object --
21 MR. O'TOOLE: Treasury has said --
22 MR. MENKE: -- to that question.

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1 You're misstating the record.
2 MR. O'TOOLE: -- has stated that it
3 will not act consistently with PBGC's proposal.
4 MR. MENKE: Objection. There -- there
5 is no reference in there to this -- PBGC's
6 proposal or anything, no reference to the --
7 anything that that conversation ever occurred. I
8 object as lacking factual foundation.
9 MR. O'TOOLE: And that's a very
10 obstructive objection.
11 BY MR. O'TOOLE:
12 Q Because we've already established,
13 haven't we, that PBGC's proposal included
14 assumption of the hourly plan by GM; correct?
15 A Yes.
16 Q Okay. And Treasury has now said, no,
17 GM will not assume the hourly plan; is that
18 correct?
19 A Yes.
20 Q So, as of June 30th, that portion of
21 PBGC's proposal has been rejected by Treasury; is
22 that correct?

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1 MR. MENKE: A -- a -- again, I object.
2 We -- you keep talking about it as if they are
3 rejecting a proposal where the -- the only
4 information -- and we have both testimony from the
5 witness and written in the document -- makes no
6 reference to a PBGC proposal whatsoever. There's
7 no indication anywhere that they were responding,
8 referring or discussing a PBGC proposal on
9 June 30th, and so I object to your question as
10 completely without factual foundation.
11 BY MR. O'TOOLE:
12 Q You can answer the question.
13 A I can't answer the question.
14 Q Okay. Well, how does PBGC respond to
15 Treasury's statement that GM won't assume the
16 hourly plan?
17 A I think my email references our
18 response, so the activities in my email at
19 6:41 p.m., items like launching the notice of
20 determination and commencing court action.
21 Q So essentially that means PBGC is,
22 based on this meeting, going to start terminating?

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1 A I believe so.
2 **Q Does it affect PBGC's settlement**
3 **proposal? Because now one element of PBGC's**
4 **settlement proposal -- whether Treasury has said**
5 **we're rejecting it, they are not accepting one**
6 **portion of PBGC's settlement proposal; is that**
7 **correct?**
8 MR. MENKE: Again, objection. Absolute
9 lack of any factual foundation whatsoever for that
10 question.
11 The witness can answer if he can.
12 THE WITNESS: The -- I'm having a hard
13 time between May whatever the date was that I --
14 my outline --
15 BY MR. O'TOOLE:
16 **Q Right.**
17 A -- was delivered over to the Treasury
18 guys and this -- this June date --
19 **Q Right.**
20 A -- because for sure there were twists
21 and turns --
22 **Q Right.**

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1 A -- and coordination iterations. And,
2 so, when you say they rejected the proposal --
3 **Q I -- I'm not -- I'm not -- let's --**
4 **let's see if we can make it easier. There's**
5 **one -- there's a proposal on the table that**
6 **includes assumption of the hourly plan that PBGC**
7 **puts on the table at the beginning of June; is**
8 **that right?**
9 A That timing for what we went through
10 before?
11 **Q Yes.**
12 A Then yes.
13 **Q Yes. And, so -- and one component of**
14 **that proposal is assumption by GM of the hourly**
15 **plan?**
16 A Absolutely.
17 **Q At this point that proposal -- it's**
18 **clear that that proposal cannot happen because GM**
19 **is not going to assume the entirely -- the hourly**
20 **plan?**
21 A I think that's right.
22 **Q There's no way to accept that proposal**

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1 **cons- -- consistent with GM not assuming the**
2 **hourly plan; right?**
3 A I think that's fair as well.
4 **Q Okay. So PBGC doesn't get what it**
5 **wanted in the proposal; is that right?**
6 A Yes.
7 **Q Okay. So what does PBGC do -- because**
8 **this is a -- presumably a back-and-forth, what**
9 **does it say to Treasury, okay, if you won't do**
10 **this, we won't do that?**
11 A I don't know --
12 MR. MENKE: I object. You presume --
13 again, pre- -- presuming facts not in evidence.
14 Then there's -- I -- I don't know where you got
15 the back-and-forth notion between PBGC and
16 Treasury --
17 MR. O'TOOLE: Well -- well --
18 MR. MENKE: -- because that's not in
19 evidence anywhere. And, so, I object to the
20 question as assuming facts not in evidence.
21 BY MR. O'TOOLE:
22 **Q PBGC makes a settlement proposal;**

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1 **right? That's what the emails reflect?**
2 A I think we made more than one
3 settlement proposal.
4 **Q Okay. And Treasury rejects a component**
5 **of that proposal. It says it's not going to**
6 **happen. Whether it's in response to that proposal**
7 **or there's one -- there's one part of that**
8 **settlement proposal that's not going to happen.**
9 **What is --**
10 MR. MENKE: Again, I -- I -- I object
11 to the question. You're -- you're constantly --
12 your constant reference to rejecting a PBGC
13 proposal assumes facts not in evidence. And --
14 and so long as you keep making that statement,
15 I'll keep making my objection.
16 MR. O'TOOLE: That's fine.
17 BY MR. O'TOOLE:
18 **Q But what did -- does PBGC do anything**
19 **in response?**
20 A The commencement of the administrative
21 items that are laid out here?
22 **Q Right, that -- that -- that Treasury --**

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1 that Treasury suggested; right? I mean, Treasury
2 suggested --
3 A I don't recall Treasury suggesting
4 anything.
5 Q Okay. So immediately after that
6 meeting, PBGC commences termination of the hourly
7 plan, right, and the salaried plan?
8 MR. MENKE: Objection: assumes facts in
9 record. There's been no testimony to that effect
10 whatsoever.
11 BY MR. O'TOOLE:
12 Q Okay. So your email says, timing and
13 next step -- steps, launched NOD. That is the
14 notice of determination that -- and starting court
15 action. That's commencing termination of the
16 plans; is that right?
17 A No.
18 Q What is it?
19 A Reserve steps that are part of a
20 continuum as it relates to the termination of a
21 defined benefit pension plan.
22 Q So you start the process; is that fair?

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1 A No.
2 Q What do you mean when you say timing
3 and next steps?
4 A (Witness reviews document.) I don't
5 recall. What I think I'm trying to communicate to
6 this group of folks is what are likely to be
7 elements of their workload in -- in the -- in the
8 next -- in this -- this period of time.
9 Q All right. And then it says there will
10 be many details to iron out over the next couple
11 of weeks.
12 Do you remember what those would have
13 been?
14 A No.
15 Q Now, as you mentioned, one aspect of
16 the resolution by Treasury was that they had
17 budgeted money for the top-ups but not for
18 assuming the plans; is that correct?
19 MR. MENKE: Objection: misstates the
20 record. You -- you -- you're talking about
21 Treasury budgeting money and I believe the
22 testimony was that this was in the GM business

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1 plan.
2 BY MR. O'TOOLE:
3 Q In the GM business plan the money was
4 budgeted for top-ups, but it wasn't budgeted for
5 GM assuming the hourly plan; is that correct?
6 A I think that's correct.
7 Q Okay. Now, were you aware of any views
8 within PBGC that those top-ups might have been
9 subject to challenges in use of the follow-on
10 plans?
11 A I don't have a specific recollection.
12 Q Okay. And -- and -- and that mean --
13 you -- it could have been --
14 A It could have been.
15 Q -- but in -- but in -- it's not
16 inconsistent with your recollection, but you don't
17 have a specific recollection --
18 A That's --
19 Q -- of that?
20 A -- right.
21 Q Now, in this -- this meeting with
22 Treasury, was it ever suggested by PBGC to

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1 Treasury, well, if you're -- if GM is not going to
2 assume the plan and they're going to follow this
3 top-up route, we might have to challenge it as an
4 abusive follow-on plan, so that might be a bad
5 idea?
6 A I don't recall anything like that.
7 Q Okay. Was there any ever -- ever any
8 effort to go back with a -- a new settlement
9 proposal that now reflected that PBGC wasn't going
10 to have GM assume the plan; that PBGC was going to
11 have to take over the hourly plans and therefore
12 ought to get some -- some sort of consideration in
13 exchange for the new obligation it was taking on?
14 A I think so.
15 Q And how -- how did those discussions
16 go, to the best of your recollection?
17 A I -- again, there's no doubt that there
18 are documents that sort of give -- you know,
19 provide the meat to the bone of exactly what was
20 happening at this period of time in the sequence
21 of events, but I don't recall.
22 Q And these negotiations would have been

49 (Pages 190 to 193)

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1 with Treasury; is that right?
2 A Not just Treasury.
3 Q But, like the email chain that we
4 looked at before, sometimes Treasury -- sometimes
5 Treasury telling GM to communicate directly with
6 you, the same processes occurred in early June?
7 A I don't have a -- a -- a particular
8 recollection, but I'm pretty sure that both the
9 unsecured creditors committee and Delphi itself
10 were -- were parties that were, you know, in this
11 dialogue chain at whatever point in time the
12 agency commenced the -- to -- the -- you know, the
13 better way to say it is resuscitated the
14 administrative process to terminate all the Delphi
15 pension plans.
16 Q When Treasury announced this decision
17 to you in the June 30th meeting, did they -- did
18 they put -- were there any documents or were
19 there -- was it just a discussion -- kind of a
20 general level discussion?
21 A I don't remember it.
22 Q Okay. Now, how long were you at PBGC?

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1 A Almost eight years.
2 Q Okay. And were you always -- you -- it
3 sounds like you started out in the office of legal
4 counsel and then moved to DISC?
5 A Yes.
6 Q And how long were you in each of those?
7 A I was in the chief -- when I started
8 there, the legal function, the agency was all
9 under a single umbrella and -- what was it
10 called? -- I'm not asking him. He knows the
11 answer.
12 Whatever it was called, that's where I
13 started. And I was a lawyer in the agency from
14 September 2002 until -- I don't remember the
15 specific timing, but the 2000 -- the first part of
16 2005 is when I think I left the lawyer function
17 and joined the business function.
18 Q And you left PBGC when?
19 A July of 2010.
20 Q And you're now at -- at Palisades; is
21 that right?
22 A Palisades Capital Advisors, yes.

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1 Q And you're -- you're one of the -- the
2 partners; is that correct?
3 A I -- notionally, yes. It's not formed
4 that way, that's not the legal construct; but,
5 yes.
6 Q And what's the construct?
7 A I'm a principal now because the bus --
8 the business was recently acquired.
9 Q And -- and -- and what do you do there,
10 in a nutshell?
11 A It's a pension financial ad- -- advisor
12 focused consultancy. It's a consulting business.
13 Q Okay. And who -- who are your main
14 clients?
15 A Corporate sponsors of both single and
16 multiemployer defined benefit pension plans.
17 Q Okay. And in that context you work a
18 lot with PBGC?
19 A I don't. My partner does.
20 Q Okay. So you don't work with the PBGC
21 anymore?
22 A As -- as sort of warranted, but

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1 principally my focus in the business, my
2 consulting is really geared towards the
3 multiemployer aspects of our work.
4 Q Okay.
5 A And the single employer work that I do
6 is primarily geared towards pension defeasement
7 constructs that -- that would, by their -- their
8 nature, not have me interfacing with PBGC.
9 Q Okay.
10 A But that's not to say that I never have
11 any interaction with PBGC.
12 Q So have you -- have you been deposed
13 before?
14 A No.
15 Q Okay. Well, I think this is at least
16 all the questions I have in your first deposition.
17 THE WITNESS: Oh, okay.
18 MR. MENKE: Can we go off the record?
19 THE VIDEOGRAPHER: Going off record at
20 14:32:07.
21 (Recess -- 2:32 p.m.)
22 (After recess -- 2:50 p.m.)

50 (Pages 194 to 197)

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1 THE VIDEOGRAPHER: We're back on record
 2 at 14:50:24.
 3 MR. MENKE: Thank you. This is going
 4 to be really quick. We have no questions.
 5 MR. O'TOOLE: One thing to put on the
 6 record quickly. We introduced some -- some
 7 documents that Delphi had produced to us in
 8 discovery under a confidentiality order. And, so,
 9 we would just request that those exhibits be filed
 10 under seal in connection with the depositions.
 11 MR. KHALIL: Those are documents 2, 5,
 12 15, 20 and 21.
 13 MR. MENKE: I have no objection.
 14 MR. O'TOOLE: All right. We're done.
 15 THE VIDEOGRAPHER: This marks the end
 16 of tape number 2 and concludes today's deposition
 17 of Joseph R. House. Going off record at 14:51:02.
 18
 19
 20 (Signature having not been waived, the
 21 Videotaped Deposition of JOSEPH R. HOUSE ended at
 22 2:51 p.m.)

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1 ACKNOWLEDGMENT OF DEPONENT
 2 I, Joseph R. House, do hereby
 3 acknowledge that I have read and examined the
 4 foregoing testimony, and the same is a true,
 5 correct and complete transcription of the
 6 testimony given by me and any corrections appear
 7 on the attached Errata sheet signed by me.
 8
 9
 10
 11 _____
 12 (DATE) (SIGNATURE)
 13
 14
 15 CERTIFICATE OF NOTARY PUBLIC
 16 Sworn and subscribed to before me this
 17 _____ day of _____,
 18
 19
 20 _____
 21 NOTARY PUBLIC MY COMMISSION EXPIRES
 22

Page 200

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
 2 I, Dana C. Ryan, Registered Professional
 3 Reporter, Certified Realtime Reporter, the officer
 4 before whom the foregoing proceedings were taken
 5 do hereby certify that the foregoing transcript is
 6 a true and correct record to the best of my
 7 ability of the proceedings; that said proceedings
 8 were taken by me stenographically and thereafter
 9 reduced to typewriting under my supervision; and
 10 that I am neither counsel for, related to, nor
 11 employed by any of the parties to this case and
 12 have no interest, financial or otherwise, in its
 13 outcome.
 14 IN WITNESS WHEREOF, I have hereunto set
 15 my hand and affixed my notarial seal this 10th day
 16 of June 2013.
 17 My Commission expires:
 18 July 15, 2015
 19
 20 _____
 21 NOTARY PUBLIC IN AND FOR THE
 22 DISTRICT OF COLUMBIA

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1 ERRATA SHEET
 2 IN RE: DENNIS BLACK, et al. v. PENSION BENEFIT
 3 GUARANTY CORPORATION
 4 RETURN BY: _____
 5 PAGE LINE CORRECTION AND REASON
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 (DATE) (SIGNATURE)

51 (Pages 198 to 201)

Page 202	
1 ERRATA SHEET	
2 IN RE: DENNIS BLACK, et al. v. PENSION BENEFIT	
3 GUARANTY CORPORATION	
4 RETURN BY: _____	
5 PAGE LINE	CORRECTION AND REASON
6 _____	_____
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19 _____	_____
20 _____	_____
21 _____	_____
22 (DATE)	(SIGNATURE)

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In The Matter Of:

DENNIS BLACK, ET AL

vs.

PENSION BENEFIT GUARANTY CORPORATION

VINCENT K. SNOWBARGER

March 12, 2013

MERRILL LAD

1325 G Street NW, Suite 200, Washington, DC
Phone: 800.292.4789 Fax: 202.861.3425

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

5 - - - - -X

6 DENNIS BLACK, et al., :
7 Plaintiffs, : Case No.:
8 vs. : 2:09-cv-13616
9 PENSION BENEFIT GUARANTY :
10 CORPORATION, :
11 Defendant. :

12 - - - - -X

13 30(b)(6) Deposition of
14 PENSION BENEFIT GUARANTY CORPORATION,
15 By and Through its Corporate Designee,
16 VINCENT K. SNOWBARGER
17 Washington, D.C.
18 Tuesday, March 12, 2013
19 10:04 a.m.

20 Job No. 1-230700
21 Pages: 1 - 181
22 Reported by: Dana C. Ryan, RPR, CRR

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1 30(b)(6) Deposition of PENSION BENEFIT 2 GUARANTY CORPORATION, By and Through its Corporate 3 Designee, VINCENT K. SNOWBARGER, held at the law 4 offices of: 5 6 Miller & Chevalier, Chartered 7 655 Fifteenth Street, Northwest 8 Suite 900 9 Washington, D.C. 20005 10 (202) 626-5800 11 12 13 14 15 16 17 Pursuant to agreement, before Dana C. Ryan, 18 Registered Professional Reporter, Certified 19 Realtime Reporter and Notary Public in and for the 20 District of Columbia. 21 22	1 CONTENTS 2 EXAMINATION OF VINCENT K. SNOWBARGER PAGE: 3 By Mr. O'Toole 8 4 By Mr. Menke 173 5 By Mr. O'Toole 175 6 7 8 9 EXHIBITS 10 (Attached to the Transcript) 11 PBGC/SNOWBARGER DEPOSITION PAGE: 12 Exhibit 1 PBGC Board Agency Recipients 22 13 Of Periodic Reports 14 Exhibit 2 Report Of PBGC Significant 52 15 Activities For Week Ending 16 January 30, 2009 17 Exhibit 3 February 5, 2009 Memorandum 57 18 Exhibit 4 February 10, 2009 Email 63 19 Chain 20 Exhibit 5 February 9, 2009 Email 67 21 Exhibit 6 March 3, 2009 Email Chain 71 22
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1 APPEARANCES 2 3 ON BEHALF OF THE PLAINTIFFS: 4 TIMOTHY P. O'TOOLE, Esquire 5 MICHAEL N. KHALIL, Esquire 6 ANTHONY F. SHELLEY, Esquire 7 Miller & Chevalier, Chartered 8 655 Fifteenth Street, Northwest 9 Suite 900 10 Washington, D.C. 20005 11 Telephone: (202) 626-5800 12 13 ON BEHALF OF THE DEFENDANT: 14 JOHN A. MENKE, Esquire 15 KAREN L. MORRIS, Esquire 16 CRAIG T. FESSENDEN, Esquire 17 Pension Benefit Guaranty Corporation 18 United States Government Agency 19 1200 K Street, Northwest 20 Suite 340 21 Washington, D.C. 20005 22 Telephone: (202) 326-4020	1 EXHIBITS CONTINUED 2 (Attached to the Transcript) 3 PBGC/SNOWBARGER DEPOSITION PAGE: 4 Exhibit 7 February And March 2009 75 5 Email Chain 6 Exhibit 8 March 11, 2009 Email 78 7 Exhibit 9 Report Of PBGC Significant 80 8 Activities For Week Ending 9 March 20, 2009 10 Exhibit 10 March 25, 2009 Email Chain 89 11 Exhibit 11 Report Of PBGC Significant 93 12 Activities For Week Ending 13 April 3, 2009 14 Exhibit 12 April 3, 2009 Email Chain 96 15 Exhibit 13 April 8 And 9, 2009 Email 98 16 Chain 17 Exhibit 14 April 2009 Emails 102 18 Exhibit 15 Report Of PBGC Significant 110 19 Activities For Week Ending 20 May 15, 2009 21 22

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<p style="text-align: right;">Page 6</p> <p>1 EXHIBITS CONTINUED 2 (Attached to the Transcript) 3 PBGC/SNOWBARGER DEPOSITION PAGE: 4 Exhibit 16 Report Of PBGC Significant 111 5 Activities For Week Ending 6 May 22, 2009 7 Exhibit 17 May 28, 2009 Email 113 8 Exhibit 18 Report Of PBGC Significant 117 9 Activities For Week Ending 10 May 29, 2009 11 Exhibit 19 May 29, 2009 Email Chain 119 12 Exhibit 20 Report Of PBGC Significant 124 13 Activities For Week Ending 14 June 12, 2009 15 Exhibit 21 June 2 and 3, 2009 Email 126 16 Chain 17 Exhibit 22 April 20, 2009 Email Chain 134 18 Exhibit 23 June 30, 2009 Email Chain 136 19 Exhibit 24 June 30, 2009 Email Chain 140 20 Exhibit 25 July 8, 2009 Email 145 21 22</p>	<p style="text-align: right;">Page 8</p> <p>1 PROCEEDINGS 2 VINCENT K. SNOWBARGER, 3 having been duly sworn, testified as follows: 4 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS 5 BY MR. O'TOOLE: 6 Q Good morning. 7 A Good morning. 8 Q Just for the record, could you state 9 your name? 10 A Sure. My name is Vincent, middle 11 initial K, last name Snowbarger. 12 Q And do you understand why you're here 13 today? 14 A Yes. 15 Q And do you understand there is a 16 lawsuit entitled Black versus PBGC? 17 A Yes. 18 Q And that lawsuit has been filed in the 19 Eastern District of Michigan? 20 A I wasn't sure where it was filed, 21 but -- 22 Q Okay. Have you ever been deposed</p>
<p style="text-align: right;">Page 7</p> <p>1 EXHIBITS CONTINUED 2 (Attached to the Transcript) 3 PBGC/SNOWBARGER DEPOSITION PAGE: 4 Exhibit 26 Report Of PBGC Significant 148 5 Activities For Week Ending 6 July 10, 2009 7 Exhibit 27 July 9, 2009 Email Chain 149 8 Exhibit 28 A July 14 And 15, 2009 Email 151 9 Chain And July 14, 2009 10 Email Chain 11 Exhibit 29 September 4, 2009 Email 163 12 Exhibit 30 Administrative Record Of 168 13 The Pension Benefit Guaranty 14 Corporation Delphi Retirement 15 Program For Salaried 16 Employees Table Of Contents 17 And Letter With Notice Of 18 Determination Attached 19 20 21 CERTIFIED QUESTION: 22 Page 109, Line 4</p>	<p style="text-align: right;">Page 9</p> <p>1 before? 2 A You know, I don't recall. 3 Q Okay. But you do you understand the 4 rules of the deposition? 5 A I believe so. 6 Q I'll ask questions; is that correct? 7 A Yes. 8 Q And you have to respond audibly because 9 the court reporter is taking everything down -- 10 A Yes. 11 Q -- is that correct? 12 And if you don't understand my 13 questions, please ask for more information or tell 14 me you don't understand the question -- 15 A Okay. 16 Q -- okay? 17 So are you currently employed by the 18 Pension Benefit Guaranty Corporation? 19 A No, I am not. 20 Q You are not. When were you last 21 employed by the Pension Benefit Guaranty 22 Corporation?</p>

3 (Pages 6 to 9)

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1 A February 28, 2013.
2 **Q Okay. And when I refer to the Pension**
3 **Benefit Guaranty Corporation, is it okay to also**
4 **refer to the PBGC?**
5 A That's fine.
6 **Q Okay. What was your title when you**
7 **left the PBGC?**
8 A When I retired, I was a senior advisor
9 for external affairs.
10 **Q And was that the only title that you**
11 **held at the PBGC?**
12 A No.
13 **Q Can you describe your history with the**
14 **PBGC?**
15 A Do you want me to work backwards or --
16 **Q Please.**
17 A Okay. Up through about mid-October, I
18 was the deputy director for operations. I got
19 that title in, I believe, about March of 2008.
20 Prior to that, I was just referred to as the
21 deputy director, and also had the title of deputy
22 director for policy affairs -- or public

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1 affairs -- no, let me -- I think it's for
2 policy -- policy and public affairs.
3 Prior to that, I was first hired on as
4 the assistant executive director for legislative
5 affairs.
6 **Q When was that?**
7 A That would be June of 2002.
8 **Q Is that when you started with --**
9 A That's when I --
10 **Q -- the PBGC?**
11 A -- started.
12 **Q Okay. Now, what we're going to focus**
13 **on today a little bit is the time frame from**
14 **probably March 2008 --**
15 A Okay.
16 **Q -- through probably 2010. That's**
17 **really where most of the questioning is going to**
18 **be.**
19 **And what was your position then again,**
20 **just to clarify?**
21 A Well, it's probably a good idea to
22 clarify because I did leave out a title.

Page 12

1 **Q Okay.**
2 A Again, from March until roughly
3 January -- March of 2008 until January of 2009, I
4 would have been the deputy director for
5 operations. From January of 2009 until July of
6 2010, I was the acting director. I also held the
7 title of deputy director for operations, but was
8 actually the acting director.
9 **Q And as acting director, did you report**
10 **to anyone at the PBGC?**
11 A I didn't report to anyone at PBGC, no.
12 I reported to the board.
13 **Q You were in charge of everyone at the**
14 **PBGC; is that correct?**
15 A Yes.
16 **Q And this is between January 2009,**
17 **approximately, and did you say July 2010?**
18 A That's correct.
19 **Q Okay. Great. Now, I -- today you're**
20 **here pursuant to a notice of deposition, and I**
21 **don't know if you know what that is.**
22 **Have you -- are you familiar with that**

Page 13

1 **term?**
2 A I've seen that, yes.
3 **Q Have you seen the notice of deposition?**
4 A Yes.
5 **Q And it's pursuant to Rule 30(b)(6) of**
6 **the Federal Rules of Civil Procedure which, just**
7 **to paraphrase, suggests that you will be the**
8 **spokesperson for the Pension Benefit Corporation**
9 **[verbatim] -- the PBGC on various issues.**
10 **Do you understand that?**
11 A Yes.
12 **Q And the issue that you've been**
13 **designated to talk about today is the PBGC's**
14 **interactions with its board of directors' board**
15 **representatives relating to Delphi or the Delphi**
16 **pension plans in 2009.**
17 **Do you understand that?**
18 A Yes.
19 **Q And are you prepared to testify about**
20 **that today?**
21 A Yes.
22 **Q What did you do to prepare to testify?**

4 (Pages 10 to 13)

Page 14

1 A I looked at the documents that we had
2 provided to the board. We had weekly reports. We
3 had significant case memos that went to the board.
4 And if we're going into 2010, we would have had
5 reports from the acting director to the board at
6 the time of their board meetings.
7 **Q So did something change between 2009**
8 **and 2010 with respect to how you reported to the**
9 **board?**
10 A Well, there were changes during that
11 time because there were changes in the -- the
12 people that I was talking to. And I might -- I
13 think it might be helpful if I just explain.
14 In January 2009, we had a change in
15 administrations. The director of the PBGC is a
16 political appointee, and that's why I can say
17 pretty definitely January 20th of 2009 is when I
18 became the acting director.
19 The -- the board representatives that I
20 would report to or through to the board members
21 also are political appointees -- well, the board
22 is political appointees.

Page 15

1 **Q Right.**
2 A So until sometime in January or
3 February, I didn't have a board. I would have
4 reported to whoever their actings were. I don't
5 frankly recall who they were at each agency. So
6 there were changes in the people that I reported
7 to.
8 **Q And just to make the record clear, just**
9 **so we all understand what we're talking about, the**
10 **PBGC's board of directors consists of who?**
11 A PBGC's board of directors, the
12 Secretary of Labor is the chairman of the board
13 and the other two board members are the Secretary
14 of Treasury and the Secretary of Commerce.
15 **Q Okay. Those are the three people who**
16 **formally sit on the board, but it sounds like**
17 **there's also board representatives; is that what**
18 **you were talking about before?**
19 A The bylaws allow for the board to
20 designate a person that I believe has to be above
21 the assistant secretary level to act on their
22 behalf. And they're normally the people that we

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1 reported to most often. Both the secretaries of
2 the cabinets, as well as the assistant secretary
3 or above designees have day jobs.
4 **Q Okay.**
5 A And, so, we -- we reported more often
6 to the board of representatives than we would have
7 to -- directly to the board members.
8 And one step removed from that, we have
9 what we refer to as the board rep reps, board
10 representative representatives. And, frankly, at
11 that point, you got back to career people who have
12 been involved in that role of a liaison to PBGC
13 for a longer period of time.
14 **Q Now, how did these reports take place?**
15 **Did they take place in person, on the phone,**
16 **through written reports?**
17 A Yes. In -- in -- at various times in
18 all of those forms.
19 **Q And can you describe the frequency in**
20 **which you would use one form or another?**
21 A And, again, this -- this changed over
22 time, but we were providing written reports to

Page 17

1 board members on a weekly basis about all sorts of
2 aspects --
3 **Q Okay.**
4 A -- of PBGC operation cases that we were
5 dealing with. If we had public speeches, we gave
6 them indications of that, letting -- letting them
7 know what activities were going on.
8 I can't give you the exact time frame,
9 but early in 2009, as you were having the
10 changeover in administration, we were requested by
11 the Department of Labor to have a daily phone call
12 with them. And the board rep reps joined on that
13 phone call from -- from Commerce and Treasury
14 joined on that phone call at some point in time.
15 Those continued, I would say, until
16 midsummer. At a certain point everyone realized
17 that they weren't accomplishing a great deal.
18 There's not a whole lot to report on a day-to-day
19 basis, and -- so those -- those sort of waned over
20 time. I mean, the first thing to go was Friday
21 afternoons, you know, and over time it just --
22 they realized that they were getting enough

5 (Pages 14 to 17)

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1 information otherwise and could ask -- call and
2 ask questions if they -- if they had questions.
3 **Q But just to make sure I understand, so**
4 **from January 2009 through the summer of 2009,**
5 **approximately --**
6 A Okay.
7 **Q -- you were having daily phone calls**
8 **with the board -- with some representative from**
9 **each department --**
10 A From each department.
11 **Q -- from PBGC?**
12 A That's correct.
13 **Q So someone from Treasury would be on**
14 **the call; is that correct?**
15 A Usually.
16 **Q And someone from Labor would be on the**
17 **call?**
18 A Yes.
19 **Q And someone from Commerce would be on**
20 **the call; is that correct?**
21 A Usually.
22 **Q Okay. So do you remember the names of**

Page 19

1 **the board representatives or the representatives**
2 **of the representatives that you were talking to?**
3 **And if -- to be clear, I'm focusing on**
4 **the time period in 2009 now.**
5 A Okay. I'll do my best. At -- at
6 Labor, Alan Lebowitz, who was the acting assistant
7 secretary for EBSA, the employee benefits
8 something administration.
9 MR. SHELLEY: Security.
10 THE WITNESS: Thank you.
11 Security administration. And Hilary
12 Duke from Commerce, Jane Molloy. And at some
13 point in time they brought in Sabrina Montes, I
14 believe is her name, and -- because Jane was
15 getting ready to retire. And from Treasury, Phil
16 Quinn.
17 BY MR. O'TOOLE:
18 **Q Was he generally the person that you**
19 **dealt with at Treasury?**
20 A Yes.
21 **Q Okay. Any others that you remember?**
22 A Not that I recall. I think on a few of

Page 20

1 the early phone calls, there was an acting person
2 from Commerce that was also on the calls. Oh, and
3 again, at some point in time, I'm going to say
4 maybe as early as -- as March, Phyllis Borzi, who
5 became the assistant secretary for EBSA, joined on
6 the calls. She did not hold that position at that
7 point in time.
8 **Q So those are the calls. What about the**
9 **written reports? Do you remember who those would**
10 **be distributed to?**
11 A I don't remember the distribution list.
12 **Q Okay.**
13 A It was -- it went to a number of people
14 both inside PBGC as well as outside. There were
15 additional people who had traditionally received
16 that report that continued to receive the report.
17 I know there were several people over at Treasury
18 that we worked with on a continuing basis on
19 policy matters that we typically would send those
20 reports to. And I think there was a broader
21 distribution at the Department of Labor. I'm
22 thinking that the deputy secretary at the

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1 Department of Labor also received a copy of the
2 report.
3 At points in time -- and this was part
4 of the difficulty. That report is something that
5 pre- -- you know, preexisted prior to this point
6 in time and prior to the changeover in
7 administrations.
8 And, again, different administrations
9 handled things differently. I think the -- the
10 Secretary of Labor's chief of staff was on at some
11 point in time. I don't know whether during this
12 period of time they were or not.
13 **Q And then in terms of in-person**
14 **meetings, how often, just on a ballpark basis,**
15 **were you meeting in person with the**
16 **representatives?**
17 A Not more than quarterly --
18 **Q Okay.**
19 A -- during that period of time.
20 **Q Do you remember who would be at those**
21 **meetings?**
22 A Well, again, that -- they would not

6 (Pages 18 to 21)

Page 22

1 have started until we actually had confirmed board
2 representatives -- confirmed for their position --
3 **Q Right.**
4 A -- at the various departments. And my
5 recollection -- and obviously this would be public
6 record, but my recollection is that the -- those
7 representatives weren't confirmed until sometime
8 in June of 2009.
9 **Q Okay. So for the first part of the**
10 **year in 2009, you were not meeting in person; is**
11 **that fair to say?**
12 A Yes.
13 **Q Okay. I'm going to show you a document**
14 **now just at this point to refresh your**
15 **recollection, but we'll mark it as Exhibit 1.**
16 **(PBGC/Snowbarger Deposition Exhibit 1**
17 **was marked for identification and attached to the**
18 **transcript.)**
19 **BY MR. O'TOOLE:**
20 **Q First of all, do you recognize this**
21 **document?**
22 A I've seen it before, yes.

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1 **Q Can you describe what it is?**
2 A It appears to be a list of those -- of
3 people receiving the periodic reports from PBGC.
4 **Q From PBGC. And these are the reports**
5 **that we were just discussing?**
6 A Yes.
7 **Q Okay. And is that -- does that chart**
8 **fairly and accurately reflect who was receiving**
9 **those reports to the best of your knowledge?**
10 A Yeah, and it brings some other names to
11 mind that I did not mention earlier.
12 **Q Okay.**
13 A Connie Donovan was on a lot of the
14 phone calls.
15 **Q Connie Donovan?**
16 A Constance Donovan under the Department
17 of Labor. Again, Mario would have been in the
18 last administration, so, again, I think during the
19 spring of '09, at least, would not have been a
20 part of those.
21 **Q Okay. And that would be Mario Ugoletti**
22 **from Treasury?**

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1 A Yes.
2 **Q And what about some of these other**
3 **names with respect to the Treasury; for example,**
4 **Phillip Swagel, do you recognize that name?**
5 A Yes. He was the board rep at the end
6 of the last administration, the Bush
7 administration.
8 **Q So his time would have ended in**
9 **January 2009?**
10 A Yes.
11 **Q And then Michael Barr?**
12 A Yes, he was a board representative,
13 but, again, not until June of that year.
14 **Q Okay. Who -- is there anyone on this**
15 **list from Treasury who would have been there,**
16 **besides Mr. Quinn, who would have been involved in**
17 **receiving reports or the phone briefings?**
18 **And I'm specifically referring to**
19 **Mr. Booker, Mr. Bostick, Mr. Weller, Mr. Bortz,**
20 **Mr. Sokolov and Mr. -- I believe it's Iwry?**
21 A Iwry.
22 **Q Iwry.**

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1 A They would have received the reports.
2 They would not have been on the phone calls.
3 **Q Okay. Do you know how this chart was**
4 **prepared?**
5 A I do not.
6 **Q Did you have any role in preparing it?**
7 A I personally did not.
8 **Q Okay. So I'm going to direct your**
9 **attention now to approximately January of 2009,**
10 **and specifically towards the issue --**
11 A Let me -- let me go back and clarify.
12 All of these reports went out through my office.
13 The distribution list would have been the
14 responsibility of my personal assistant, Melody
15 Chestnut, and I suspect that's where the names
16 came from.
17 **Q Okay. And that's based on your**
18 **experience --**
19 A Yes.
20 **Q -- at the PBGC?**
21 A Yes. And that would have been both
22 when I was acting director as well as when I was

7 (Pages 22 to 25)

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1 deputy director for operations. We controlled
2 those lists and actually did the distribution.
3 **Q And before I forget, I do want to**
4 **circle back to something.**
5 A Okay.
6 **Q What are you doing now?**
7 A I'm retired.
8 **Q You're retired?**
9 A Uh-huh.
10 **Q Okay. So let's direct your attention**
11 **now to January of 2009 --**
12 A Okay.
13 **Q -- and specifically towards the issue**
14 **of the Delphi pensions.**
15 **Are you familiar with that issue and**
16 **were you in 2009?**
17 A Yes.
18 **Q Can you just describe basically the**
19 **issue as you understand it with respect to the**
20 **Delphi pensions?**
21 A PBGC had been watching the Delphi
22 pensions for most of the time I had been at PBGC.

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1 And when Delphi went into bankruptcy, I believe in
2 the fall of 2005, it obviously got increased
3 attention at that point.
4 But, again, we'd been watching it
5 earlier. We had been watching the whole
6 automotive industry, not only the big three
7 manufacturers, but also all of the suppliers.
8 And, so, Delphi had been a part of that
9 general review as well as when they went into
10 bankruptcy. We became very focused on that. And
11 the executive offices received briefings on both
12 the automotive industry and individual companies
13 within the automotive industry from 2005 all the
14 way up through 2000 -- well, all the way up
15 through summer of 2009 at least.
16 In -- as -- as things were progressing
17 through the bankruptcy, there were also reports
18 again to the director's office, but often I was
19 involved in receiving some of those reports as
20 well about various aspects of Delphi. It was a
21 very large plan. It would have been a significant
22 number of participants that we would have to take

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1 on. It was a significant liability that we would
2 have to take on.
3 And, so, we were watching it very
4 carefully, and every time there was an -- every
5 time there was a significant action in the
6 bankruptcy case that would involve pensions or
7 potentially involve the pensions, we were informed
8 about that activity.
9 Prior to January of 2009, the most
10 recent thing I think that had occurred in the case
11 was that there had been a transfer of a portion of
12 the pension -- the hourly pension plans to General
13 Motors along with a substantial amount of assets
14 that went with that liability. I believe it was
15 scheduled at the end of January of 2009 that an
16 additional portion of those hourly pension plans
17 would be transferred to GM. That did not occur
18 because some conditions precedent didn't happen.
19 So that's what I know of as of
20 January 2009 if that was the question.
21 **Q Okay. And that was the question.**
22 **Now, let's kind of go back to some of**

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1 **the things that you talked about. You talked**
2 **about the auto industry. What was Delphi's role?**
3 MR. MENKE: I'm just going to toss out
4 just for the record an objection. We seem to be
5 getting afield from our interaction with the board
6 of directors and getting more generally into case
7 history issues.
8 I'll let the witness answer, but I'm
9 just noting it for the record that we're off topic
10 here.
11 MR. O'TOOLE: And thank you for the
12 objection.
13 BY MR. O'TOOLE:
14 **Q And just so you understand, you can**
15 **continue to answer the questions. He's just**
16 **making an objection for the record. I'm just**
17 **going to respond briefly to that objection to note**
18 **that I assume -- and this was going to be one of**
19 **my next questions so we'll go to it now -- that**
20 **these are the sorts of issues that you would be**
21 **briefing the board on in January of 2009; is that**
22 **correct?**

8 (Pages 26 to 29)

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1 A Yes.
2 **Q And the board representatives as well?**
3 A Again, just let me explain the
4 operation that was actually occurring between PBGC
5 and its board during that period of time.
6 Most of our interactions would have
7 been with the board representative
8 representatives, so a third level down.
9 **Q Right.**
10 A On occasion, there were representatives
11 from those agencies at a higher level that had
12 been designated within their agencies, not
13 specifically as board representatives, but to sort
14 of act as a liaison. And that's about as far as I
15 was ever communicating with the board.
16 **Q Right.**
17 A Any communication between those
18 representatives and the board members themselves I
19 don't have any personal knowledge of.
20 **Q But you, as -- in your job as the**
21 **acting director and before that as the deputy**
22 **director, would have been communicating with the**

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1 **board representatives, and they were the**
2 **representatives of the board. So, as far as you**
3 **were concerned, you were communicating with the**
4 **board --**
5 A Correct.
6 **Q -- is that right?**
7 A That's correct.
8 **Q And you were communicating about topics**
9 **like we just discussed with respect to Delphi; is**
10 **that correct?**
11 A That's correct.
12 **Q And just to clarify the record, you**
13 **mentioned the auto parts industry. What was**
14 **Delphi's role in the auto parts industry?**
15 A It's one of the largest suppliers for
16 General Motors. General Motors was its biggest
17 customer, if I remember right, but was not its
18 only customer. And that's about all I recall.
19 **Q Okay. Now, focusing on that time frame**
20 **again, what was happening in the auto industry in**
21 **late 2008 and 2009 in terms of the economic**
22 **performance of that industry?**

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1 A Well, I presume that the objection is
2 continuing by my lawyer.
3 MR. MENKE: You're right. It is. It
4 is.
5 THE WITNESS: But, as I said, in terms
6 of Delphi and its activities, you had the transfer
7 of the pension plans or portions of the pension --
8 part of the pension plans at the end of September,
9 again with an agreement to take on more of them.
10 One of the reasons that -- that that
11 deal fell through is that the auto industry went
12 downhill. Sales went down. Financial markets
13 were going down at the same period of time. The
14 ability of Delphi to get financing to get out of
15 bankruptcy was lost because, again, the financial
16 industry was going under, and so it was a
17 pretty -- a pretty low time for the whole auto
18 industry, including Delphi.
19 BY MR. O'TOOLE:
20 **Q And was there a governmental response**
21 **to this crisis?**
22 A Yeah, I don't remember all the details

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1 and the timing of all this, but there was the --
2 there was TARP; there was money that was made
3 available to the auto industry. I believe that
4 was, though, in the -- well, I don't know. I
5 couldn't tell you the time frame, but during --
6 you're talking about late 2008, early 2009, in
7 that time frame, money was made available to the
8 auto industry in general. GM and -- and Chrysler
9 I know received money. I'm not sure who may have
10 received money outside of that.
11 **Q And did the President set up an auto**
12 **task force to deal with -- in terms of this TARP**
13 **money that you're -- are you familiar with that?**
14 A Yes. Well, I read the newspapers. He
15 didn't ask me about it.
16 **Q That's too bad.**
17 **Did you ever have any dealings with the**
18 **auto task force?**
19 A I met with members of the auto task
20 force two times that I recall.
21 **Q Okay. And do you know who was -- who**
22 **controlled the auto task force? What department**

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1 was it run out of?
2 A My understanding was it was within
3 Treasury.
4 Q Within the Treasury. And Treasury was
5 also on your board of directors; is that right?
6 A Yes.
7 Q Were there issues with respect to the
8 Treasury being on the board of directors and also
9 being on the auto task force that was dealing with
10 auto issues like the ones with Delphi that the
11 PBGC was dealing with?
12 MR. MENKE: Objection. That question
13 is awfully vague. What do you mean by "issues"?
14 BY MR. O'TOOLE:
15 Q Okay. Let's break it down.
16 So the Treasury was as -- was in charge
17 of the auto task force; is that correct?
18 A To my knowledge, yes.
19 Q And one of the auto task force's
20 responsibilities was to deal with automobile
21 manufacturers like General Motors; is that
22 correct?

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1 A Again, I guess so. I -- I don't
2 have --
3 Q As far as -- to the best of your
4 knowledge.
5 A To the best of my knowledge, yes.
6 Q Okay. And General Motors, I think as
7 you said, Delphi was their biggest part supplier;
8 is that your understanding?
9 A I think what I said was that General
10 Motors was Delphi's largest --
11 Q Customer?
12 A -- customer. I don't know what
13 proportion of GM Auto Delphi has responsibility
14 for. I don't know if it's a majority of -- I
15 don't -- I don't know.
16 Q But Delphi had a significant working
17 relationship with GM to the best of your
18 knowledge?
19 A Yes.
20 Q And the PBGC at the time -- at this
21 same time frame was following Delphi's pension
22 plans closely --

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1 A Yes.
2 Q -- is that correct?
3 Because the PBGC viewed that as having
4 significant potential exposure to PBGC?
5 A Yes.
6 Q And PBGC was reporting to its board of
7 directors about the Delphi pension plans; is that
8 correct?
9 A Yes.
10 Q And Treasury -- the Department of
11 Treasury representatives were on the board of
12 directors getting reports about the Delphi pension
13 plans?
14 A Yes.
15 Q At the same time, Treasury was in
16 charge of the auto task force trying to figure out
17 ways to deal with the auto industry financial
18 crisis; is that correct?
19 A To the best of my knowledge.
20 Q In terms of those -- so those were two
21 responsibilities. One was to deal with the auto
22 crisis at Treasury; the other was to sit on the

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1 PBGC board of directors; is that correct?
2 A Yes.
3 Q So when you were reporting to the
4 Treasury Department, did you take any steps or did
5 you consider the issue of whether or not your
6 reports to Treasury about pension issues would
7 also be considered by the auto task force?
8 A Ask the question again, please.
9 Q So at the time frame -- and now and I
10 suppose before then -- PBGC made reports to
11 Treasury because Treasury sat on its board of
12 directors. That's correct; right?
13 A Correct.
14 Q During 2009, Treasury, which was also
15 sitting on PBGC's board of directors, was also in
16 charge of the auto task force; is that correct?
17 A To the best of my knowledge.
18 Q Delphi's pension issues were relevant
19 to the -- to the financial situation of the auto
20 industry; is that correct?
21 A I don't know that I can opine on that.
22 Q Well, did you ever consider whether

10 (Pages 34 to 37)

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1 Treasury in its role -- wearing its hat as the
2 auto task force would be considering the
3 information that you were reporting to Treasury in
4 its role as PBGC director?
5 A No.
6 Q Okay. And there were no steps to
7 ensure that they were only wearing one hat when
8 you were briefing them?
9 A The purpose of the briefings were to
10 let them know what was going on within PBGC.
11 Q Okay. But you didn't consider when you
12 were briefing Treasury that they were going to
13 screen off this information and not use it with
14 respect to the auto task force?
15 A No.
16 Q Okay. Did you ever think that it might
17 make your job easier because they could coordinate
18 with the auto task force?
19 A That they could coordinate with?
20 Q I'm sorry. That the Treasury
21 Department representatives who were getting your
22 briefings could then coordinate the information

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1 that you were giving them with the auto task force
2 which was also considering similar issues?
3 A Okay. You -- you -- you clarified the
4 "they," but now I lost the question. Could you
5 repeat that?
6 Q So Treasury at the time was wearing two
7 hats; is that right?
8 A At least.
9 Q At least. One being the auto task
10 force and one being the board representative of
11 the PBGC?
12 A Yes.
13 Q And as board representative of the
14 PBGC, what sorts of powers would Treasury have
15 had?
16 A With regard to PBGC?
17 Q Yes.
18 A They were to advise and make decisions
19 on matters of policy. Day-to-day operation was
20 left to the director or acting director as the
21 case may be.
22 Q Okay. And would -- and did they have

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1 any sort of control? I mean, formally, can the
2 board of directors by a majority vote or by a --
3 I'm not sure what the voting rules are, so what
4 are the voting rules for the board of directors in
5 terms of control of PBGC day-to-day operations?
6 A I don't know that any control of
7 day-to-day operations is -- is addressed in the
8 bylaws of PBGC. They might have the opportunity
9 to get rid of the director if he's not doing
10 things that they want him to do.
11 By the way, there was a change in the
12 law last summer that -- that clarifies that, but
13 at that point in time, it was not real clear where
14 that appointment authority came from, but they --
15 in -- in my experience and anecdotally the
16 experience prior to my being there, the board did
17 not get involved in those day-to-day kinds of
18 operations.
19 Q Now -- but -- but if it wanted to, it
20 could; is that right?
21 A You're asking me to speculate on
22 something that's never occurred and isn't

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1 specifically mentioned in the bylaws.
2 Q So you never got any sort of direction
3 from any members of the board of directors that
4 this is the way that, say, for example, the Labor
5 Department would like to see something happen on a
6 particular issue?
7 A We would get those -- that kind of
8 direction on policy matters.
9 Q And how would you treat that?
10 A Very delicately. I mean, again, it --
11 the board clearly has the authority to set policy.
12 I'm trying to think of an example where that might
13 have come into play, and the most obvious example
14 is the area of investment policy.
15 Now, if the Department of Labor said
16 this is the way we want it to happen, the
17 Department of Labor is not the board.
18 Q Right.
19 A The fact of the matter was that was one
20 of the first showdowns I had with the new board,
21 was being told to not implement investment policy
22 from the last administration, and I refused to

11 (Pages 38 to 41)

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1 follow that until I was given written guidance
2 from the board, not just from one agency.
3 **Q And, so, the written guidance consisted**
4 **of all three members of the board?**
5 A Yes.
6 **Q And how did that -- what form did that**
7 **written guidance take?**
8 A I believe that particular guidance came
9 as a board resolution.
10 **Q Okay. And was that formally**
11 **recorded --**
12 MR. MENKE: I'm going to object to this
13 line of questions. We're off Delphi even now.
14 This is going quite far afield.
15 MR. O'TOOLE: And the objection is
16 noted.
17 BY MR. O'TOOLE:
18 **Q So we're talking about board guidance**
19 **to the PBGC with respect to issues generally, and**
20 **you said that there was a board resolution.**
21 **Is that -- is that resolution recorded**
22 **somewhere; is it printed? How could you find that**

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1 **if you were looking for board resolutions?**
2 A It's -- you know, it's recorded as --
3 yeah, it's -- I think it's -- well, I'll leave it
4 to the attorneys. I don't know if it's a public
5 document or not. I don't know the status of the
6 board decisions.
7 **Q Okay.**
8 MR. MENKE: I don't know if they are or
9 not. That would be a disclosure office issue.
10 THE WITNESS: Yeah.
11 BY MR. O'TOOLE:
12 **Q But if I were trying to find it, it**
13 **would depend on whether or not it was public**
14 **record in order to find a board resolution? You**
15 **don't know of anywhere that they're actually**
16 **published, for example?**
17 A I'm not aware of anyplace they're
18 published.
19 **Q So, to your knowledge, it's not**
20 **published in the Federal Register when the board**
21 **makes a resolution --**
22 A That's correct.

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1 **Q -- to the PBGC?**
2 **And no other publication that you know**
3 **of?**
4 A That's correct.
5 **Q Okay. So in terms of interactions**
6 **in -- in -- between January 2009 and June of 2009**
7 **or July -- let's say July of 2009, were you**
8 **interacting with the board about the Delphi issue**
9 **on a fairly regular basis?**
10 A I'm not sure exactly what you mean by
11 "regular." We would not be reporting, for
12 instance, on a daily basis about Delphi. We
13 were -- I'm trying to recall -- and the record
14 would speak for itself because I'm sure that we've
15 already produced these documents. But we may have
16 had a mention of Delphi in most of the weekly
17 reports. Often those would read almost the same
18 from week to week because there, again, hadn't
19 been that much change to make note of.
20 And if we're talking about that time
21 frame, the only other thing that I recall is a
22 memo toward the latter part of April of 2009 that

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1 I sent to the board advising them that we were
2 about to take action in the Delphi case, and,
3 again, just wanted them to be aware because it
4 would probably be a public event if we took
5 action.
6 **Q And, so, these sorts of interactions**
7 **with the board would -- could have been as**
8 **informal as emails at that point; is that correct?**
9 A They could have been. And they -- and,
10 you know, if I were to try to remember every time
11 Delphi came up, the other thing I would point out
12 is that we were dealing with a brand new set of
13 people who are not familiar with PBGC and PBGC
14 policy and procedure, and so oftentimes the issues
15 that we were talking about were not how we were
16 making our decision or what basis we were making a
17 decision on, but how -- how do you -- how do you
18 get from here to there and what does this mean
19 when you publish a notice of determination and,
20 you know, things that --
21 **Q Right.**
22 A -- more mechanical kinds of questions

12 (Pages 42 to 45)

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1 so that they're aware of, you know, the process.
2 **Q And, so, when you were dealing -- and**
3 **do you remember who you gave the heads up to that**
4 **you were thinking about issuing a notice of**
5 **determination?**
6 A I think, if I'm recalling correctly,
7 the memo was sent to the board, but it was
8 conveyed by email through the board representative
9 representatives.
10 **Q Okay. Was there ever an email to, say,**
11 **someone on the auto task force about this issue?**
12 A Not from me.
13 **Q Okay.**
14 A There were conversations that PBGC was
15 involved with that involved a number of parties,
16 and the auto task force -- or members of the auto
17 task force would have been a part of that. But
18 those were kind of discussions about the status of
19 the bankruptcy case and --
20 **Q So I guess --**
21 A -- that kind of thing.
22 **Q -- when you were communicating with the**

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1 **auto task force, did you view that as a**
2 **communication with the board in terms of the**
3 **Treasury part of the board?**
4 A No.
5 **Q You didn't?**
6 A No.
7 **Q So you totally separated those?**
8 A I had two conversations with members of
9 the auto task force.
10 **Q Okay. What about emails, though?**
11 A I did not have any other emails with
12 the auto task force that I recall.
13 **Q Okay. And at this point you were in**
14 **charge of the PBGC as a whole; is that --**
15 A Yes.
16 **Q Do you remember who from PBGC was**
17 **working on Delphi issues?**
18 A I believe Joe House was the primary
19 person that was communicating back and forth.
20 **Q And were you working on a regular basis**
21 **with Joe House?**
22 A I would receive reports from Joe and

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1 from his -- his superiors, I guess is the right
2 way to put it.
3 **Q And when he was dealing with ATF, he**
4 **was working under your supervision; is that fair**
5 **to say?**
6 A Well, since I was -- since I was the
7 acting director, yes.
8 **Q And pursuant to your authority as the**
9 **acting director?**
10 MR. MENKE: Objection. What do you
11 mean by --
12 BY MR. O'TOOLE:
13 **Q If Joe House did something you didn't**
14 **approve of and you told him not to do it, would he**
15 **be required under your authority not to do it or**
16 **to do it?**
17 A Yes.
18 **Q Okay. So he was under your control at**
19 **that point?**
20 A Yes.
21 **Q Okay. So he was acting as the PBGC**
22 **representative of which you were the head at that**

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1 **point?**
2 A Yes.
3 **Q Okay. And he was dealing directly with**
4 **members of the auto task force?**
5 A I don't know specifically who he --
6 **Q Okay.**
7 A I mean, whether -- and, again, I
8 don't -- I don't know how you're defining auto
9 task force. There were obviously some lead
10 players in the auto task force, but there are
11 plenty of staff members in the auto task force.
12 **Q Right.**
13 A The answer is Joe was in touch with
14 some of those people. I don't know exactly who or
15 when.
16 **Q Would he report to you periodically on**
17 **his interactions with the auto task force?**
18 A Periodically when -- when there was,
19 you know, something to report. It was not a
20 daily, weekly or even monthly report.
21 **Q Okay. And when you're talking about**
22 **PBGC meetings with the auto task force, are you**

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1 talking about meetings with PBGC staff with the
2 auto task force, because I think you said two
3 meetings, or are you talking about your own
4 personal meetings?
5 A Mine were own personal meetings.
6 Q So you have had two meetings with the
7 auto task force that you know of?
8 A With members of the auto task force.
9 Q Do you know which members of the auto
10 task force?
11 A The first meeting that I recall I think
12 was sometime in January we met with Steven
13 Rattner. We were supposed to meet with Ron Bloom.
14 Ron did not make it to the meeting. And the
15 purpose of the meeting was to make sure that the
16 auto task force was considering pension issues as
17 they were dealing with particularly General Motors
18 and Chrysler.
19 Q And do you remember who else was at
20 that meeting?
21 A I remember Terry Deneen was there. I
22 think Joe House was there. I don't recall who

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1 else might have been there.
2 Q Were you also -- did you ever meet with
3 Delphi about this issue in January of 2009?
4 A Delphi, I think, requested a meeting
5 with us. Again, I -- I know that you've got
6 information about that. I don't remember
7 specifically who was at that meeting. I know they
8 were very high-level folks at Delphi. I know that
9 former congressman Dick Gephardt was there with
10 them to represent them, and I recall meeting with
11 them.
12 Q And you were there. Do you remember
13 anybody else from PBGC who was there?
14 A Not specifically.
15 Q Okay.
16 A There were others that were there, but
17 I don't remember who specifically.
18 Q Okay. And do you remember
19 approximately the time frame of this meeting?
20 A It would have been very late January.
21 Q Okay.
22 A Yeah.

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1 Q Okay.
2 MR. O'TOOLE: I'm going to mark
3 Exhibit 2.
4 (PBGC/Snowbarger Deposition Exhibit 2
5 was marked for identification and attached to the
6 transcript.)
7 BY MR. O'TOOLE:
8 Q And you can take your time and review
9 that. I'm just going to ask -- my first question
10 is going to be do you recognize this document.
11 A Well, it would have been one of our
12 weekly reports for the week ending January 30.
13 Q And weekly reports to who?
14 A This, again, would have gone to that
15 broad distribution list that would have included
16 board reps if we had them. It would have been rep
17 reps as well and then additional people at the
18 various agencies.
19 Q So this report would have gone to
20 representatives at the Department of Labor?
21 A Yes.
22 Q Department of Treasury?

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1 A Yes.
2 Q And Department of Commerce?
3 A Yes.
4 Q Okay. And I'm going to direct your
5 attention to page 2 of the report.
6 A Okay.
7 Q And I think it describes a meeting on
8 January 30th --
9 A Yes.
10 Q -- between you and other members of
11 Delphi Corporation.
12 Is this the meeting that you were just
13 referring to?
14 A Yes.
15 Q And this is the update that you
16 provided to the board with respect to this
17 meeting; is that correct?
18 A Correct.
19 Q Okay. And this is an example of how
20 you would communicate with the board --
21 A Yes.
22 Q -- on these sorts of issues?

14 (Pages 50 to 53)

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1 A Yes. And paragraph 1 is the other
2 meeting that I referred to with Steven Rattner.
3 **Q Okay. That's the paragraph 1 being --**
4 A Under Executive Speaking Events.
5 **Q So that's the January 28th meeting --**
6 A Yes.
7 **Q -- with the Treasury Department.**
8 **Now, you discuss in that section**
9 **sharing information and coordinating on auto**
10 **industry pension issues.**
11 **What does that mean?**
12 A Again, our concern was, as they were
13 looking at any financial aid or decisions they
14 were going to make in regards to particularly GM
15 and Chrysler, that they consider that there were
16 pension issues involved as well. And in order for
17 them to consider that, they needed to know what
18 information we had on GM and Chrysler.
19 We also knew that there were
20 conversations at that point in time about, you
21 know, GM assuming some of Delphi's
22 responsibilities, and so we talked to them about

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1 that and the information that we had and could
2 make available to them if they wanted it.
3 We didn't want them going off and
4 making decisions on the other financial pieces of
5 GM and Chrysler without considering pensions.
6 **Q And just to clarify, when you mentioned**
7 **Treasury Department staff, these were members of**
8 **the auto task force; is that correct?**
9 A My recollection was that Steven Rattner
10 was there. There may have been someone else from
11 Treasury as well, but, yes.
12 **Q But Steven Rattner was the head of the**
13 **auto task force?**
14 A Yes, as I understand it.
15 **Q And you're not making any**
16 **differentiation between the auto task force and**
17 **the Treasury Department in this memorandum; is**
18 **that correct?**
19 A Correct.
20 **Q This is a report to the Treasury**
21 **Department?**
22 A Correct.

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1 **Q So presumably -- the Treasury**
2 **Department presumably understood this memo and is**
3 **referring to its staff and not some separate auto**
4 **task force; is that correct?**
5 A I don't know that I can answer --
6 **Q Okay.**
7 A -- what Treasury may have thought.
8 **Q And in terms of coordinating, is there**
9 **some -- what was involved in terms of**
10 **coordination?**
11 A Well, again, I think the purpose of the
12 meeting was to make sure that they understood that
13 PBGC does have information -- financial
14 information on GM and Chrysler, that we also had
15 pension information that was fairly up to date and
16 they needed to consider, and there's also -- as
17 the paragraph at the end indicates, the earlier
18 deal that we had struck with Chrysler, they needed
19 to understand that -- that guarantee --
20 **Q Okay.**
21 A -- going into whatever discussions they
22 were going to have with GM and Chrysler.

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1 **Q Anything else you remember about that**
2 **meeting in terms of who was there or things that**
3 **were discussed?**
4 A No.
5 **Q Okay. Now, we mentioned before about**
6 **whether or not the fact that Treasury sat on**
7 **PBGC's board made it easier to coordinate with**
8 **Treasury.**
9 **Do you believe it made it easier or**
10 **harder to coordinate with Treasury with respect to**
11 **pension issues at this point?**
12 A I didn't think about it one way or
13 another.
14 **Q Okay. I'm now going to show you a**
15 **letter from February 5th.**
16 **MR. O'TOOLE: We'll mark it as**
17 **Exhibit 3.**
18 **(PBGC/Snowbarger Deposition Exhibit 3**
19 **was marked for identification and attached to the**
20 **transcript.)**
21 **BY MR. O'TOOLE:**
22 **Q And you can take your time and look**

15 (Pages 54 to 57)

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1 **through this document, and my question to you is**
2 **going to be do you recognize this document.**
3 A (Witness reviews document.) I don't
4 specifically recall the document, no.
5 **Q Is this the sort of memo that -- it**
6 **appears to have been created after the meeting**
7 **that you described on January 28th; is that**
8 **correct?**
9 A That's correct.
10 **Q And in the normal course of**
11 **circulation, would you have been included on a**
12 **memorandum like this?**
13 A Not necessarily.
14 **Q Not necessarily.**
15 MR. MENKE: For the record, I'd just
16 like to note that this appears to be a draft
17 document, not a -- not a final document. I'm
18 unclear whether -- perhaps we'll find out what
19 became of it, but at the moment it's unclear what
20 became of it.
21 MR. O'TOOLE: And just for the record,
22 I would note that this was produced to the

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1 plaintiffs by PBGC. I presume that this came from
2 PBGC's files. I believe this is the only copy
3 that we have of this memorandum, so we assumed
4 that this was the PBGC's working copy. If you
5 have any other information on that, then we'd be
6 happy to hear it.
7 MR. MENKE: I'm confident it came from
8 our files, but I don't know anything more about it
9 than that.
10 MR. O'TOOLE: Okay.
11 BY MR. O'TOOLE:
12 **Q So just to -- if you can take a look at**
13 **this, this appears to be a memo from PBGC to**
14 **Treasury; is that correct?**
15 A Yeah. Again, it -- because it's a
16 draft, it didn't show exactly who it's going to or
17 who it's from, but that's what it appears.
18 **Q And this is the normal format for a**
19 **memorandum of the Pension Benefit Guaranty**
20 **Corporation in your experience, is it not?**
21 A It would be a typical format, yes.
22 **Q I'm going to direct your attention to**

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1 **the last -- well, first, and at least according to**
2 **this version of the memorandum, it appears to be a**
3 **follow-up on the in-person meeting that you**
4 **described; is that correct?**
5 A That's correct.
6 **Q And I'm going to direct your attention**
7 **to the last sentence of the first paragraph that**
8 **begins with the word "given."**
9 A Uh-huh.
10 **Q Could you just read that?**
11 A Given that the Secretary of Treasury
12 serves on PBGC's board, PBGC wishes to coordinate
13 with the Treasury on these matters.
14 **Q And when the sentence refers to "these**
15 **matters," this memorandum is discussing**
16 **interagency coordination with respect to GM,**
17 **Delphi and Chrysler; is that correct?**
18 A That's correct.
19 **Q Can you explain why PBGC would wish to**
20 **coordinate with the Treasury given that the**
21 **Treasury was on the board?**
22 A Again, I don't recall authoring this or

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1 saying this. I don't even know if it was ever
2 delivered. But, frankly, I think it's more an
3 indication that, look, guys, in addition to the
4 fact that we've got information about this stuff,
5 the Treasury is on our board.
6 **Q So these were the dual roles we were**
7 **discussing before?**
8 A Yes.
9 **Q Treasury is ATF?**
10 A Yes.
11 **Q Treasury is on your board?**
12 A Yes.
13 **Q Which makes it more convenient to**
14 **coordinate with Treasury?**
15 MR. MENKE: Objection: assuming facts
16 not in evidence.
17 THE WITNESS: Do you want to ask the
18 question again? I'm sorry.
19 BY MR. O'TOOLE:
20 **Q Treasury served both roles that we just**
21 **discussed; is that correct?**
22 A Yes.

16 (Pages 58 to 61)

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1 **Q And because you're reporting to**
2 **Treasury in its role as board representative and**
3 **you are meeting with Treasury in its role as the**
4 **auto task force leader, it is -- those two roles**
5 **at PBGC's reporting of responsibility becomes**
6 **easier to coordinate because Treasury is serving**
7 **in those two roles?**
8 A I don't know it's easier. I think it's
9 more important that it be coordinated.
10 **Q So the -- on February 5th, PBGC is**
11 **recognizing that it's important to coordinate with**
12 **Treasury in both of its roles; is that correct?**
13 A As we talked about before, Treasury is
14 playing more than two roles.
15 **Q Right.**
16 A Treasury also at this point in time
17 becomes a major creditor in all of these
18 negotiations. And because we are at that point in
19 time a creditor -- an unsecured creditor in
20 Delphi -- as we know now, we became an unsecured
21 creditor, at least for a short period of time, in
22 the General Motors bankruptcy that came later --

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1 it was important for us to coordinate with what,
2 in essence, was a future lender to those players.
3 **Q And in all of those roles, no**
4 **distinction was made between Treasury as ATF,**
5 **Treasury as a board member? You're just treating**
6 **Treasury as Treasury; is that right?**
7 A That's fair. Yes.
8 **Q I'm going to show you what we'll now**
9 **mark as Exhibit 4.**
10 **MR. O'TOOLE: Is that right?**
11 THE COURT REPORTER: Yes.
12 (PBGC/Snowbarger Deposition Exhibit 4
13 was marked for identification and attached to the
14 transcript.)
15 THE WITNESS: (Reviews document.)
16 BY MR. O'TOOLE:
17 **Q First of all, I'm going to ask, do you**
18 **recognize this document?**
19 A I don't know that I've seen it before,
20 no.
21 **Q Okay. But you do recognize who Joseph**
22 **House is?**

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1 A Yes.
2 **Q And he is the person at PBGC**
3 **responsible for interacting with auto task force**
4 **on Delphi issues, among other issues?**
5 A Yes.
6 **Q And this appears to be an example of a**
7 **communication between Mr. House and the Treasury**
8 **Department on Delphi issues; is that correct?**
9 A I presume so, only because the email
10 addresses indicate Treasury.
11 **Q And looking up the chain to the email**
12 **communication on February 10th at 7:19, it appears**
13 **that Mr. House forwarded this to a number of other**
14 **individuals within the Pension Benefit Guaranty**
15 **Corporation.**
16 A Yes.
17 **Q Can you read the entry on that short**
18 **email?**
19 A It just says, FYI, sent to Treasury a
20 couple of minutes ago.
21 **Q So this is indicating that he had sent**
22 **a report to Treasury?**

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1 A Yes.
2 **Q And is reporting his contacts with**
3 **Treasury to other members of the PBGC; is that**
4 **correct?**
5 A Yes.
6 **Q Can you tell me who the individuals are**
7 **on the to and the cc lines?**
8 A I'll try to.
9 **Q Okay.**
10 A Again, I'm not sure I'll get titles
11 exactly correct. Terry Deneen was the chief
12 insurance programs officer and would have been
13 Joe's supervisor. Michael Rae is the deputy to
14 Terry Deneen.
15 **Q So also Joe House's supervisor or not?**
16 A I don't think that there's a
17 supervisory role --
18 **Q Okay.**
19 A -- but I'm not sure exactly how that
20 department operated.
21 Israel Goldowitz is the chief counsel,
22 would have been the head of the office of chief

17 (Pages 62 to 65)

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1 counsel. Kristina Archeval would have been, I
2 believe, a direct report to Joe House in what was
3 then called DISC, Division of Insurance
4 Supervision and Compliance. Dana Cann was also in
5 that organization. Again, I'm not sure I can
6 describe his reporting relationship as to being to
7 Kristina -- through Kristina to Joe, but some --
8 something of that nature.
9 Karen Morris and John Menke would have
10 been in the office of chief counsel and would have
11 reported to Issy Goldowitz.
12 **Q And those two are actually in the room**
13 **today; is that correct?**
14 A Karen and John are actually in the
15 room, yes.
16 **Q Same people, okay.**
17 **And does this conform with your**
18 **recollection that there were continuing**
19 **interactions with Treasury between PBGC and**
20 **Treasury on the Delphi issue during that time**
21 **frame?**
22 A That's certainly not inconsistent with

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1 my memory.
2 **Q Okay. Thank you. I'm now going to**
3 **introduce as Exhibit 5 --**
4 **MR. O'TOOLE: Is that right?**
5 **(PBGC/Snowbarger Deposition Exhibit 5**
6 **was marked for identification and attached to the**
7 **transcript.)**
8 THE WITNESS: (Reviews document.)
9 BY MR. O'TOOLE:
10 **Q Now, can you tell me what Exhibit 5**
11 **appears to be?**
12 A It appears to be an email from Joe
13 House to Todd Snyder at Rothschild's.
14 **Q And what does it reference?**
15 A The subject indicates memo to
16 Treasury --
17 **Q Okay.**
18 A -- forwarding of a memo to Treasury.
19 **Q Okay. And do you know who Todd Snyder**
20 **is or was?**
21 A I believe he was a consultant to PBGC
22 from Rothschild's. I believe he may also have had

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1 a role in advising Treasury as well, but I don't
2 know exactly what that role was.
3 **Q So he was -- it's your understanding**
4 **that he was advising PBGC on what sort of issues?**
5 A Well, often we would hire financial
6 firms to help us analyze both market conditions,
7 financial well-being of companies that we were
8 concerned about. In this case, I -- I can't tell
9 you -- I don't recall whether that might have been
10 advising us on Chrysler, GM or Delphi.
11 **Q Okay.**
12 A I recall that he was involved in that
13 time frame, and those were the major firms that we
14 were focused on, but I can't tell you which one we
15 had hired him for.
16 **Q And it's also your understanding that**
17 **he was advising Treasury -- that Mr. Snyder was**
18 **advising Treasury at this point in time, but**
19 **you're not sure about exactly on what it was?**
20 A I don't know what the exact role was.
21 I know that Treasury -- and I presume the auto
22 task force -- got into the auto industry very

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1 rapidly, and Treasury did not on its own have
2 sufficient resources to analyze those situations.
3 Someone at Treasury was aware that PBGC regularly
4 used those kinds of analysts.
5 **Q Okay.**
6 A And I think we may have been the source
7 of a recommendation, but I -- but, again, I don't
8 know exactly what that relationship was with
9 Treasury.
10 **Q Let me make sure I understand that. So**
11 **you think that PBGC may have recommended**
12 **Mr. Snyder as a consultant to Treasury and that**
13 **Treasury may have hired him in part after that?**
14 A I have some vague recollection like
15 that. And, again, it had to do more with
16 financial analysts generally. Again, I know
17 Rothschild's is one that we had used on a regular
18 basis. So, frankly, I may be putting two and two
19 together and getting five --
20 **Q Okay.**
21 A -- but --
22 **Q And that would explain why Mr. House**

18 (Pages 66 to 69)

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1 from the PBGC is sending a memo that PBGC sent to
2 the Treasury to Mr. Snyder; is that correct?
3 A That's one possible explanation.
4 Q Well, I guess what are the others,
5 because I'm wondering why a PBGC memo to Treasury
6 is going to Mr. Snyder?
7 A Because he was advising us on things as
8 well.
9 Q Okay. Okay.
10 A And we may have wanted him to be aware
11 of communications that we'd had with Treasury.
12 Q With Treasury. And as far as you know,
13 he may have been advising Treasury at the same
14 time?
15 A I just don't know what capacity he was
16 in at this point.
17 Q Okay.
18 MR. MENKE: Could we go off the record
19 for a second?
20 (Discussion off the Record.)
21 (Recess -- 11:09 a.m.)
22 (After recess -- 11:18 a.m.)

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1 BY MR. O'TOOLE:
2 Q I'm now going to show you Exhibit --
3 MR. O'TOOLE: Is this 6?
4 THE COURT REPORTER: Yes.
5 (PBGC/Snowbarger Deposition Exhibit 6
6 was marked for identification and attached to the
7 transcript.)
8 BY MR. O'TOOLE:
9 Q And I'm first going to direct your
10 attention to the part of this email chain that's
11 dated March 3, 2009, 10:41 a.m.
12 A 10:41, is it?
13 Q That's correct.
14 A Okay.
15 Q Again, this is an email or appears to
16 be an email from Joe House to Todd Snyder; is that
17 correct?
18 A Yes.
19 Q And it appears that Joe House, who was
20 with PBGC at the time --
21 That's right, isn't it?
22 A Correct.

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1 Q -- was providing Mr. Snyder with an
2 email, what he says, to further assist
3 Messrs. Bloom, Rattner and Deese.
4 Do you know who Messrs. Bloom, Rattner
5 and Deese are?
6 A I know Bloom and Rattner; Deese I don't
7 recognize.
8 Q And what's your recollection of what
9 Messrs. Bloom and Rattner were doing in March of
10 2009?
11 A Well, they would have been auto task
12 force.
13 Q So this appears to be a memo from Joe
14 House to Todd Snyder to assist Messrs. Bloom and
15 Rattner in an upcoming meeting with Delphi; is
16 that correct?
17 A Yes.
18 Q And would this conform with your
19 recollection of Mr. Snyder probably also working
20 with the Treasury Department at this time?
21 A Yes.
22 Q And then that email is immediately

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1 forwarded on at 11:36 a.m. to Karen Morris at
2 PBGC; is that correct?
3 A Yes.
4 Q Do you recall seeing this communication
5 at any point in time?
6 A No.
7 Q Okay. Let's go on to Exhibit 7.
8 Actually, one more question on this.
9 Do you have any -- can you explain why Mr. House
10 would have been briefing Mr. Snyder on Delphi
11 issues at this point?
12 A I think the document speaks for itself.
13 Q Okay. But is there any reason that the
14 PBGC would have been involved in briefing Delphi
15 issues at this point in time?
16 A I think -- I indicated earlier that we
17 wanted to coordinate and provide information that
18 we had as Treasury is making its decisions.
19 Q And is one of the items that is up for
20 discussion at this point in time whether or not
21 the Delphi pension plans are going to be
22 terminated?

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1 A My recollection is throughout all of
2 this period of time Delphi was in hopes that
3 General Motors would take over the pension plans,
4 particularly the hourly plans, but I think they
5 also held out some hope that the salary plans
6 would be taken over by General Motors, so, yes.
7 **Q And do you know PBGC's position on the**
8 **termination of the plans at the time?**
9 A If someone will take over the plans and
10 legitimately can take over the plans, we'd rather
11 they do it.
12 **Q Is it fair to say PBGC wanted the**
13 **Delphi pension plans to be saved at this point in**
14 **time?**
15 A If possible, yes.
16 **Q Okay. And I guess the last question,**
17 **you mentioned earlier that the board would be**
18 **concerned with policy matters; is that correct?**
19 A Yes.
20 **Q Is the termination of a plan like**
21 **Delphi's a policy matter in which the board --**
22 **PBGC board would be interested in?**

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1 A It's a decision in which they would be
2 interested. It's not a policy matter in which
3 they would take a stand.
4 **Q What if they decided to?**
5 MR. MENKE: Excuse me. Could you
6 repeat that, please?
7 THE WITNESS: I'm not going to
8 speculate.
9 MR. MENKE: Can I have the last
10 question read back, please?
11 (The Record was read as requested.)
12 BY MR. O'TOOLE:
13 **Q Let's go to Exhibit 7, I believe it is**
14 **now, and this is the March 4th email.**
15 **(PBGC/Snowbarger Deposition Exhibit 7**
16 **was marked for identification and attached to the**
17 **transcript.)**
18 THE WITNESS: (Reviews document.)
19 BY MR. O'TOOLE:
20 **Q I guess my first question is do you**
21 **recognize this document?**
22 A Yes.

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1 **Q Can you describe what it -- what it is,**
2 **what it represents?**
3 A It's an email from me to the board
4 representative representatives, and it's in
5 response to a question from one of those board
6 representative representatives.
7 **Q Okay. So let's walk through the parts**
8 **of this email. There's an original email from**
9 **February 4th, 2009, and that's an email from you**
10 **to David Beede, Eric Berger and a group of other**
11 **people on the to and cc lines; is that correct?**
12 A Correct.
13 **Q Can you just describe who each of the**
14 **people are on the to and the cc lines?**
15 A Yes. David Beede would have been with
16 the Department of Commerce. He worked with Jane
17 Molloy, who was also on that line. Eric Berger
18 and Hilary Duke were from Department of Labor.
19 Phil Quinn was Department of Treasury.
20 All of those were career employees who
21 were the board representative representatives that
22 we had regular contact with.

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1 On the cc line, Melody Chestnut was my
2 assistant. Michael Rae, again, was the deputy for
3 the chief insurance programs officer.
4 **Q Right. And then, I guess about a month**
5 **later, on March 4th, there's an email from Phillip**
6 **Quinn to you and a group of other people thanking**
7 **you for providing apparently updates to two**
8 **reports and then asking you a -- for an update on**
9 **the auto parts suppliers; is that correct?**
10 A Correct.
11 **Q And then ultimately you responded**
12 **saying that you would pull something together.**
13 **Do you recall that?**
14 A Yes.
15 **Q Do you remember what you pulled**
16 **together?**
17 A I don't.
18 **Q And when you say that you know that the**
19 **suppliers were also trying to get money from**
20 **Treasury like the Detroit 3 are, what were you**
21 **referring to?**
22 A Well, again, in the press, most of the

20 (Pages 74 to 77)

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1 attention was focused on GM, Chrysler. At that
2 point in time I'm not sure if Ford had made its
3 decision whether or not it was going to ask for
4 money. They ultimately did not.
5 But I think I had had a report from the
6 Division of Insurance Supervision and Compliance
7 that the other suppliers like Delphi were seeing
8 if they might take advantage of the funds
9 available through Treasury.
10 **Q Now, you asked Treasury for more**
11 **information on those sorts of attempts by what you**
12 **describe as suppliers trying to get money.**
13 **Did you receive any information from**
14 **Treasury?**
15 A I don't recall.
16 **Q Okay.**
17 **(PBGC/Snowbarger Deposition Exhibit 8**
18 **was marked for identification and attached to the**
19 **transcript.)**
20 **BY MR. O'TOOLE:**
21 **Q What I'm showing you appears to be a**
22 **memo from Joe House at the PBGC to Todd Snyder,**

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1 **who we've discussed before, seeking PBGC follow-up**
2 **items.**
3 **Have you seen this memo before?**
4 A No.
5 **Q Okay. The memo first describes an**
6 **in-person meeting between PBGC senior leadership**
7 **and auto team representatives in March of 2009.**
8 **Were you at that meeting, or do you**
9 **have any knowledge about whether that meeting**
10 **occurred?**
11 A I don't believe I was at the meeting,
12 and I don't recall anything about the meeting.
13 **Q Okay. It also seeks information --**
14 **appears to seek information regarding General**
15 **Motors' pension-modeling, assumption of Delphi**
16 **plans.**
17 **Do you have any information about that**
18 **topic?**
19 A No.
20 **Q Okay. Let's go on to Exhibit 8.**
21 **MR. MENKE: That was Exhibit 8, by the**
22 **way.**

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1 **MR. O'TOOLE: Oh, I'm sorry.**
2 **Exhibit 9.**
3 **(PBGC/Snowbarger Deposition Exhibit 9**
4 **was marked for identification and attached to the**
5 **transcript.)**
6 **BY MR. O'TOOLE:**
7 **Q So I've shown you now Exhibit 9. Is**
8 **this another report from PBGC to its board of**
9 **directors?**
10 A It would have included the board of
11 directors in addition to other folks.
12 **Q Who else would it have gone to?**
13 A Well, again, that list of people that
14 we showed -- you showed me earlier. I don't
15 remember the exact exhibit, but --
16 **Q Right.**
17 A -- those people aren't board members
18 or --
19 **Q I believe it was Exhibit 1.**
20 A It could be.
21 **Q Okay.**
22 A But it may have gone to a number of

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1 people like that as well.
2 **Q Okay. And what are you trying -- are**
3 **you trying to talk about everything PBGC is doing**
4 **in one of these reports, or how are you -- how are**
5 **you deciding what to include in one of these**
6 **reports?**
7 A Well, first of all, we want it to be
8 significant. We're not reporting, you know, how
9 many letters we sent out that day and, you know,
10 things of that nature. But we're trying to let
11 them know -- again, in general -- what is going on
12 of major significance, particularly things that
13 either is going to have a significant impact on
14 operations; it may have a significant impact on
15 public affairs, that type of thing.
16 **Q And these are things that the board**
17 **would consider significant, to use your word, in**
18 **terms of its supervisory responsibilities over**
19 **PBGC; is that fair?**
20 A I think it's a matter of trying to keep
21 your board informed about the fact that you're
22 handling day-to-day operations and what the --

21 (Pages 78 to 81)

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1 what that consists of, what it's focused on.
2 **Q Well, is it fair to say you're trying**
3 **to give them information that they can use to**
4 **fulfill their responsibilities as board members?**
5 A Yes.
6 **Q Okay. Now, I'm going to direct your**
7 **attention to page 3 of this report. And, again,**
8 **this is a report that you would have been**
9 **responsible for -- maybe not preparing in the**
10 **first instance, but it's reviewing and signing off**
11 **on before it went to the board.**
12 A Yes.
13 **Q Okay. And the entry that begins**
14 **March 18th, can you just read that into the**
15 **record -- I'm sorry, March 18th, Acting Director**
16 **Vince Snowbarger. It's the fourth bullet point.**
17 A Yes, I've read it.
18 **Q And that entry indicates that you and**
19 **other representatives from PBGC's insurance**
20 **programs office met with members of the auto task**
21 **force at the Treasury Department?**
22 A Yes.

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1 **Q And the purpose of that meeting was to**
2 **share information and coordinate on several auto**
3 **industry pension issues; is that right?**
4 A That's correct.
5 **Q And one of those issues was the Delphi**
6 **pension issue; is that correct?**
7 A Yes.
8 **Q Do you remember who else was there from**
9 **PBGC at this meeting?**
10 A Again, Terry Deneen, chief insurance
11 programs officer, would have been there; Joe
12 House; I believe Karen Morris was there and
13 perhaps Michael Rae.
14 **Q Who is Michael Rae?**
15 A Michael Rae, again, is the deputy to
16 the chief insurance programs officer.
17 **Q And they would have all been actively**
18 **involved in the Delphi pension issue; is that**
19 **correct?**
20 A At some level, yes.
21 **Q Do you recall what was discussed in**
22 **that meeting?**

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1 A Primarily Chrysler.
2 **Q Was Delphi discussed as well?**
3 A I think we provided information about
4 Delphi and GM, but I think the -- the meeting was
5 commandeered by one of the auto task force members
6 who was primarily interested in Chrysler at that
7 point.
8 **Q Do you remember which auto task force**
9 **member it was at that point?**
10 A I think it was Ron Bloom. That's my
11 memory.
12 **Q Okay. What other auto task force**
13 **members were there?**
14 A Again, I'm not -- beyond -- beyond Ron
15 Bloom and Steve Rattner, I was not familiar with
16 the other -- other members of the task force, so
17 they may have been there, but I'm not sure that I
18 would have recognized them by name or otherwise.
19 I believe Mr. Rattner was there as well as Ron
20 Bloom.
21 **Q What about Harry Wilson?**
22 A He very well could have been. I just

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1 don't recall.
2 **Q And Matt Feldman?**
3 A I don't recall.
4 **Q Now, the report begins by saying --**
5 **describing the pension issues as including the**
6 **GM/Delphi situation and the dwindling prospects**
7 **for additional Delphi pension transfers to GM and**
8 **then discusses the Chrysler situation.**
9 **Since your recollection of the meeting**
10 **has been predominantly Chrysler, why doesn't the**
11 **report discuss Chrysler and describe it as having**
12 **been a predominantly Chrysler meeting?**
13 A We really hadn't focused very much with
14 the board on dealing with Chrysler issues. At
15 that point we had talked to them about GM and
16 Delphi.
17 **Q So what you're saying is your report to**
18 **the board in March of 2009 is inconsistent with**
19 **your recollection of the way that that meeting**
20 **went down?**
21 MR. MENKE: Objection.
22 THE WITNESS: Yeah, I don't think I

22 (Pages 82 to 85)

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1 said that. It's consistent with it. It just may
2 place a different emphasis on it.
3 BY MR. O'TOOLE:
4 **Q But you're saying that Delphi/GM**
5 **pension issues were discussed at this meeting; is**
6 **that right?**
7 A Information was provided on Delphi and
8 GM, yes.
9 **Q Okay. Okay. And while your**
10 **recollection is that this was predominantly a**
11 **Chrysler meeting -- because that's your**
12 **recollection now; is that right?**
13 A Yes.
14 **Q But that's not what the report says.**
15 A My recollection of the meeting is we
16 went in and made presentations on both Delphi and
17 GM and on Chrysler and the conversation took off
18 on Chrysler.
19 **Q Okay. Okay. Was there any reason that**
20 **you didn't mention that in your report?**
21 A I think I just gave you the reason.
22 **Q Which is that the board hadn't been**

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1 **that interested in Chrysler at that point?**
2 A It wasn't a matter of board interest.
3 It was a matter of what we had shared with the
4 board. We really hadn't focused on information
5 about Chrysler at that point with the board.
6 **Q Okay. So -- so -- okay. I'll leave it**
7 **there.**
8 **I'm going to show you now as**
9 **Exhibit 10 --**
10 MR. FESSENDEN: Just for the record,
11 Chrysler is mentioned in the report in that same
12 paragraph; is that not correct?
13 MR. O'TOOLE: Is that -- that's an
14 objection?
15 MR. FESSENDEN: Yeah, I would just
16 object to your characterization of the report not
17 mentioning Chrysler. It mentions it in that same
18 paragraph.
19 MR. O'TOOLE: Well, let's clarify with
20 the witness.
21 BY MR. O'TOOLE:
22 **Q So Chrysler is mentioned, is that**

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1 **correct, in this report?**
2 A Yes.
3 **Q Is there anywhere in the report that**
4 **you refer to Chrysler as having been the**
5 **predominant issue at that meeting or any words to**
6 **that effect?**
7 A I did not place weight on either one of
8 these --
9 **Q Okay.**
10 A -- relative weight of how much time we
11 spent on Delphi/GM versus Chrysler.
12 **Q But there's nothing describing Chrysler**
13 **as the main issue at this meeting?**
14 A And there's nothing describing GM or
15 Delphi as the main issue in the meeting either.
16 **Q Although, when you mention the two, you**
17 **do mention GM/Delphi first and Chrysler second; is**
18 **that correct?**
19 A The document speaks for itself.
20 **Q So that's a yes?**
21 A That's a yes.
22 **Q All right. Let's move to Exhibit 10.**

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1 **It's a March 25th email.**
2 **(PBGC/Snowbarger Deposition Exhibit 10**
3 **was marked for identification and attached to the**
4 **transcript.)**
5 THE WITNESS: (Reviews document.)
6 BY MR. O'TOOLE:
7 **Q Do you recognize this document?**
8 A It's -- it appears to be a meeting --
9 either a meeting request or announcement, yes.
10 **Q And from whom and to whom?**
11 A Well, the copy is sent from Dana Cann
12 to John Menke, but the original was sent from
13 Joseph House to a number of people within PBGC. I
14 don't know if you want me to go through each --
15 **Q No, that's fine. But you were one of**
16 **the people who was included?**
17 A Yes, that's correct.
18 **Q And also your assistant?**
19 A Yes, that's correct.
20 **Q And what does the meeting notice**
21 **describe?**
22 A It indicates that Mr. Snyder was going

23 (Pages 86 to 89)

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1 to be available that afternoon to update us on the
2 status of the auto team's work at the Department
3 of Treasury, and it says it's tentative because
4 he's not sure of his schedule.
5 **Q And this indicates that Mr. Snyder**
6 **presumably was working with the Department of**
7 **Treasury and was going to provide that update**
8 **based on his knowledge of what the auto task force**
9 **was doing; is that correct?**
10 A Yes.
11 **Q And what was the purpose of this**
12 **meeting, if you know? Was it to get PBGC more**
13 **information about the auto task force's work with**
14 **respect to what?**
15 A To the auto task force work on -- on
16 the auto issues.
17 **Q Relating to pensions or --**
18 A I think it -- I think it was also to
19 give us some idea what they -- they might have
20 been thinking about monies that were going to go
21 out. I mean, everything that was going on at that
22 point in time. Treasury is making a decision

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1 about how much money to lend, what conditions on
2 which to lend them.
3 I don't know if in March they had
4 already started discussing how that would occur,
5 you know, the planned bankruptcy. I don't know
6 exactly the time frame here, but all of those
7 kinds of discussions were going on at some point
8 in time in here.
9 **Q And just to be clear on time frame,**
10 **this indicates that this was March 25th, 2009 --**
11 A Yes.
12 **Q -- is that right?**
13 **Do you recall if this meeting occurred?**
14 A I believe it did, yes.
15 **Q Was it an in-person meeting?**
16 A Yes.
17 **Q Okay. About how --**
18 A I believe it was an in-person meeting.
19 **Q Do you recall about how long it lasted?**
20 A No. Probably an hour at most.
21 **Q Do you remember what was discussed?**
22 A I honestly don't.

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1 **Q Okay. Do you recall --**
2 A I mean other -- other than the general
3 topic of what the auto task force was doing.
4 **Q Do you recall if Delphi issues were**
5 **discussed?**
6 A I don't recall specifically, but I
7 suspect they were.
8 **Q Okay. Anything else you remember about**
9 **this meeting?**
10 A No.
11 **Q And at this point was -- were you**
12 **treating Mr. Snyder as a representative of the**
13 **Treasury when he was conducting this meeting?**
14 A No.
15 **Q Okay. How were you treating him? What**
16 **were you considering his role to be?**
17 A Well, again, I know he was consulting
18 us on other issues as well with the auto industry.
19 **Q But by this point you also knew that he**
20 **was working with the auto task force on pension**
21 **issues?**
22 A Yes.

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1 **Q Okay.**
2 **MR. O'TOOLE: Let's mark as Exhibit 11**
3 **(indicating).**
4 **(PBGC/Snowbarger Deposition Exhibit 11**
5 **was marked for identification and attached to the**
6 **transcript.)**
7 **BY MR. O'TOOLE:**
8 **Q I'm showing you now Exhibit 11. Is**
9 **Exhibit 11 another example of a report from PBGC**
10 **and -- and you to the board?**
11 A Yes.
12 **Q And the board representatives; is that**
13 **correct?**
14 A Well, and -- and the broader list --
15 **Q Right.**
16 A -- yes.
17 **Q And the broad -- the --**
18 A Yes.
19 **Q -- the distribution group --**
20 A Yes.
21 **Q -- that we discussed before?**
22 **I'm going to direct your attention now**

24 (Pages 90 to 93)

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1 to page 2 of the report. You'll see a number of
2 headings that are blacked out.
3 Do you have any reason why these
4 headings have been redacted?
5 A My guess is it contains confidential
6 information about different companies that aren't
7 relevant to this case.
8 Q But it -- so, to your knowledge, none
9 of this information is about Delphi that's been --
10 A Not to my knowledge.
11 Q Okay. And you prepared this report.
12 Do you have any recollection of what might have
13 been behind the redactions?
14 A I don't recall.
15 Q I'm going to direct your attention to
16 the second bullet point, the one that is not
17 redacted.
18 A Okay.
19 Q And is it fair to say that that
20 suggests that as of about April 2nd, 2009 -- it
21 looks -- it appears that the bankruptcy court,
22 which is the Delphi bankruptcy court, presumably,

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1 is about to address resolution of Delphi's pension
2 issues.
3 A (Witness reviews document.)
4 MR. MENKE: Objection: mischaracterizes
5 the document.
6 MR. O'TOOLE: I'll rephrase the
7 question.
8 BY MR. O'TOOLE:
9 Q What does this report to the board that
10 you prepared address in this bullet point?
11 A Well, again, I think it speaks for
12 itself, but we tried to keep the board aware when
13 significant activity was taking place in
14 bankruptcy cases, particularly with the companies
15 that we were most concerned about, and Delphi
16 would have been one of those.
17 And I think it's just indicating to
18 them that Delphi made an announcement to the
19 bankruptcy court that there's a tentative
20 agreement and that that would be developed over
21 the coming month --
22 Q Yeah.

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1 A -- coming month in April. And that as
2 a part of dealing with their issues with their DIP
3 lenders, that they would be addressing pension
4 issues, yes.
5 Q And you note in your report that PBGC
6 expected to participate in those discussions?
7 A Yes.
8 Q Was it important for PBGC to
9 participate in those discussions?
10 A We were the largest unsecured creditor
11 in the Delphi bankruptcy. Absolutely.
12 Q And PBGC wanted to participate in those
13 discussions; is that fair to say?
14 A Yes.
15 Q Okay. That's why you reported it to
16 the board?
17 A Yes. Well, that plus any plan that
18 came out of the discussions was going to impact
19 PBGC one way or the other.
20 Q Okay. Let's go to Exhibit 12.
21 (PBGC/Snowbarger Deposition Exhibit 12
22 was marked for identification and attached to the

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1 transcript.)
2 THE WITNESS: (Reviews document.)
3 BY MR. O'TOOLE:
4 Q Can you describe this document that's
5 now been marked as Exhibit 12?
6 A It's a series of emails from -- back
7 and forth with Joe House and members of PBGC
8 staff, it appears.
9 Q And the header is, No Delphi meeting
10 Monday; is that correct?
11 A Yes.
12 Q And is it fair to say that the email
13 suggests that PBGC has been disinvited from the --
14 a meeting relating to Delphi?
15 A Yes.
16 Q Who does the email chain suggest
17 disinvited PBGC?
18 A Well, again, I think the document
19 speaks for itself, but the last entry is Treasury.
20 Q Is it -- is this consistent with your
21 recollection of the time frame that PBGC was
22 disinvited from a meeting related to Delphi by the

25 (Pages 94 to 97)

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1 **Treasury?**
2 A I'm not sure I had any knowledge of the
3 meeting from the beginning.
4 **Q Why would Treasury disinvite the PBGC**
5 **from a meeting?**
6 A That's a question best asked Treasury.
7 **Q Okay. But, as you said, it was**
8 **important for PBGC to be at the meetings related**
9 **to Delphi pensions.**
10 A Yes.
11 **Q So this was -- to the extent that PBGC**
12 **was not invited, that was not something that you**
13 **approved of; is that correct?**
14 A I was not aware of the meeting.
15 **Q Okay. And you don't have any idea what**
16 **was discussed at this meeting?**
17 A No.
18 **Q You never received a report about the**
19 **meeting to your knowledge?**
20 A To my knowledge, no.
21 **Q Okay. Let's move on to Exhibit 13.**
22 **(PBGC/Snowbarger Deposition Exhibit 13**

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1 **was marked for identification and attached to the**
2 **transcript.)**
3 **BY MR. O'TOOLE:**
4 **Q Can you describe this document?**
5 A I think the -- the substance of the
6 document is an email from Michael Rae, again who
7 is the deputy to the chief insurance programs
8 officer, to Kelly Kinneen, who was one of PBGC's
9 liaison members with OMB; Ken Szigety, who is a
10 PBGC -- a -- a Department of Labor budget person.
11 PBGC's budget is submitted to OMB through DOL, so
12 on budget matters and things of that nature, Ken
13 would be involved in those. And then it was
14 copied to various people at PBGC.
15 There was an indication that they were
16 providing information to OMB --
17 **Q Okay. And OMB --**
18 A -- on -- on the -- on the auto task
19 force at Treasury, the coordination with them.
20 **Q Okay. And the -- the email notes --**
21 **and you're copied on the email -- As you know,**
22 **we've been coordinating with the auto task force**

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1 **at Treasury, particularly with respect to**
2 **Chrysler, General Motors and Delphi. And that's**
3 **the end of the quote.**
4 **Is that consistent with your**
5 **recollection at the time?**
6 A Yes.
7 **Q Now, I guess one other question is**
8 **would the Department of Labor have to approve the**
9 **PBGC budget?**
10 A Yes, it's -- it's submitted through the
11 Department of Labor to OMB --
12 **Q To OMB?**
13 A -- the final -- the final approval,
14 yes.
15 **Q And what's the board's responsibilities**
16 **with respect to budgeting issues?**
17 A Technically none.
18 **Q None. So if the budget -- if the board**
19 **disapproved of the budget, would the board have**
20 **any ability to do anything about it?**
21 A I'm trying to remember -- well, the
22 answer is, yes, I think they'd have some ability

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1 to do something about it.
2 **Q What would that be?**
3 A Well, they could put pressure on DOL
4 not to approve the budget. But the experience at
5 PBGC is that DOL is the only sort of review from
6 the board. None of the other board members have
7 been active in that review --
8 **Q Is that --**
9 A -- in my experience.
10 **Q Is that normal, where various board**
11 **members might take an area of responsibility as**
12 **their own and essentially have primary control**
13 **over that even though technically the full board**
14 **has control?**
15 A No, it's quite unusual. This is --
16 this is a -- first of all, a creation of ERISA,
17 which refers to PBGC as within the Department of
18 Labor. That then led to an interpretation through
19 the executive branch budgeting office that PBGC
20 budgets would be submitted through the Department
21 of Labor. And, again, when it's submitted to
22 Congress, it's submitted as a separate section,

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1 but it is a separate section of the Department of
2 Labor budget.
3 **Q So the Department of Labor on budgeting**
4 **issues has primary responsibility even though the**
5 **board could put pressure on the Department of**
6 **Labor, if it wanted to, to try and change that?**
7 A As I understand it, as a result of the
8 decisions of the Office of Management and Budget,
9 yes.
10 **Q Okay.**
11 A I don't think there's any statutory
12 basis for that.
13 **Q Let's mark as Exhibit 14 a series of**
14 **emails from April of 2009.**
15 **(PBGC/Snowbarger Deposition Exhibit 14**
16 **was marked for identification and attached to the**
17 **transcript.)**
18 THE WITNESS: (Reviews document.)
19 BY MR. O'TOOLE:
20 **Q Have you had a chance to review**
21 **these -- this exhibit?**
22 A Yes.

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1 **Q Is it fair to say this exhibit**
2 **describes a series of interactions between PBGC**
3 **and the auto task force in mid-April of 2009?**
4 A Not all of them.
5 **Q Well, which ones do not? Let's start**
6 **with those.**
7 A The last page, from Michael Rae to
8 Judith Starr, is not a report to the auto task
9 force.
10 **Q What is the last page?**
11 A It's follow-up to a meeting that we had
12 with the -- again, the board representatives that
13 were in place at that point in time. We made a
14 presentation to them and they had requested that
15 we give them -- I'm -- I'm presuming we'd done a
16 PowerPoint for them, and they requested that we
17 send that to them electronically, which we did.
18 **Q Do you remember giving that PowerPoint**
19 **or it being at that meeting?**
20 A I don't remember it specifically. That
21 would typically be the way that we would brief the
22 board in person, and I would not have made the

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1 presentation. It most likely would have been made
2 by either Kristina Archeval or Joe House.
3 **Q And do you recall the general nature of**
4 **this presentation?**
5 A No, but I -- given the -- given the
6 time frame, I think we were letting them know what
7 Delphi's situation was at that point. I think you
8 had an earlier email that was talking about -- or
9 a -- I guess it was a significant case report that
10 was talking about things that were occurring in
11 the Delphi bankruptcy, and this was probably a
12 follow-up meeting to that to let them know more
13 specific information about Delphi.
14 **Q Okay. And then I guess the first page**
15 **of Exhibit 14 is an email chain that reflects a**
16 **meeting with Matt Feldman at Treasury, re: Delphi;**
17 **is that fair to say?**
18 A Yes.
19 **Q Do you know who Matt Feldman is?**
20 A I'm just aware that he worked as a part
21 of the auto task force. I don't know what his
22 specific role was.

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1 **Q Do you recall ever meeting him?**
2 A I don't recall. I may very well have,
3 but I don't recall specifically.
4 **Q Do you recall if this meeting that's**
5 **discussed in these emails, the meeting between**
6 **Matt Feldman and Joe House and Brad Robins, took**
7 **place?**
8 A No, I don't know.
9 **Q Do you recall -- I guess you wouldn't**
10 **recall who was at the meeting either?**
11 A That's correct.
12 **Q Okay. What about the second page that**
13 **refers to a report about the Delphi pension -- GM**
14 **pension matters; are you familiar with that**
15 **report?**
16 A Without seeing the attachment, not
17 specifically.
18 **Q Okay. It suggests that PBGC is sending**
19 **reports about Delphi's pension funding to the --**
20 **to Matt Feldman, and it's your understanding that**
21 **Mr. Feldman was on the auto task force; is that**
22 **correct?**

27 (Pages 102 to 105)

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1 A Yes, that's very possible -- I mean,
2 yes.
3 **Q What about Brad Robins; do you know who**
4 **he is?**
5 A No.
6 **Q Okay. And it appears that -- from Joe**
7 **House's email that -- and I'm looking at the top**
8 **of page 2 -- that Matt Feldman at this point had**
9 **been the auto team point of contact for PBGC; is**
10 **that your recollection?**
11 A I don't know that.
12 **Q Do you have -- do you have any**
13 **inconsistent recollection of that?**
14 A No.
15 **Q You just don't know either way?**
16 A I just don't know.
17 **Q All right. Let's go to page 3. So at**
18 **this point -- this appears to be an email in which**
19 **Joe House is suggesting that he had left a**
20 **voicemail message for Matt Feldman; is that fair**
21 **to say --**
22 A Yes.

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1 **Q -- at the bottom of the page?**
2 A That's what it says.
3 **Q And that there was some sort of**
4 **discussion at PBGC related to some sort of**
5 **internal process that PBGC was considering; is**
6 **that fair to say?**
7 A Yes.
8 **Q And the email in response is from Matt**
9 **Feldman saying you should do what you need to do;**
10 **is that correct?**
11 A Correct.
12 **Q Why is the Treasury telling PBGC to do**
13 **what it needs to do?**
14 A You'd need to ask Matt Feldman.
15 **Q And then Mr. House takes that email and**
16 **forwards it to whom at the PBGC?**
17 A Again, Terry Deneen is the chief
18 insurance programs officer and Michael Rae is his
19 deputy.
20 **Q And it says that the task force is**
21 **officially on notice. Was there some requirement**
22 **to put the task force officially on notice?**

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1 A No.
2 **Q Do you know what he is referring to by**
3 **"officially on notice"?**
4 A We were contemplating taking action to
5 terminate the Delphi pension plans in the event
6 certain events occurred or were about to occur,
7 and we felt like it was important that they know
8 that that was going to happen.
9 **Q Did you take action at that time?**
10 A You know, I -- the specific dates I
11 don't recall, but sometime at -- within the next
12 week or so after this, yes, we went through our
13 internal process for determining whether or not
14 there was cause to terminate the Delphi pension
15 plans.
16 A recommendation was made to me. I
17 agreed with the recommendation that the pension
18 plans be terminated. And we were prepared to file
19 public notice, which is the first external step
20 that is taken to let people know that that's going
21 to occur. We did not take that final step because
22 accommodation was reached between Delphi, the DIP

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1 lenders and PBGC that we would be given plenty of
2 time to act later should action be taken that
3 might affect our interest.
4 **Q So what was the legal effect of any**
5 **action that you took in April of 2009?**
6 MR. MENKE: Objection: calls for legal
7 opinion. This lawyer is not here testifying as a
8 witness. I'll instruct him not to answer that
9 question.
10 MR. O'TOOLE: Can you please mark this
11 point in the record for the court's review?
12 BY MR. O'TOOLE:
13 **Q Based on the action that you took in**
14 **April of 2009, what effect did that have on**
15 **Delphi's pensions in terms of whether the pension**
16 **was an ongoing plan or whether it had been**
17 **terminated?**
18 A There was no impact as a result of the
19 action taken at that point in time.
20 **Q So everything was reversible at that**
21 **point?**
22 A Yes.

28 (Pages 106 to 109)

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1 **Q So the pension plan continued just as**
2 **it did on April 22nd; it was the same as it was on**
3 **April 20th?**
4 A Like I said, I don't recall the
5 specific dates, but in general, yes.
6 **Q The effect after you took this action**
7 **was exactly the same as it was before? There was**
8 **no effect on the pensions other than an internal**
9 **process had been conducted that was precautionary;**
10 **but, as it turned out, you worked out an**
11 **accommodation that didn't make it necessary; is**
12 **that fair?**
13 A That's fair.
14 **Q Let's go to Exhibit 15.**
15 **(PBG/Snowbarger Deposition Exhibit 15**
16 **was marked for identification and attached to the**
17 **transcript.)**
18 THE WITNESS: (Reviews document.)
19 BY MR. O'TOOLE:
20 **Q So are you familiar with this report?**
21 A Again, it would have been one of the
22 regular reports that we sent to that list of

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1 recipients.
2 **Q And can you look at page 3, the first**
3 **bullet point that's not redacted?**
4 A Okay.
5 **Q Is it fair to say that that reflects a**
6 **report by you to the board that Delphi's pension**
7 **issues are still unresolved?**
8 A Yes.
9 **Q Thank you. Let's go to Exhibit 16.**
10 **(PBG/Snowbarger Deposition Exhibit 16**
11 **was marked for identification and attached to the**
12 **transcript.)**
13 THE WITNESS: (Reviews document.)
14 BY MR. O'TOOLE:
15 **Q Exhibit 16 is another one of these**
16 **reports that you were making to the board on a**
17 **regular basis; is that correct?**
18 A That's correct.
19 **Q And I'm going to show you page 2, the**
20 **unredacted bullet point that begins with "Delphi."**
21 **Could you take a quick look at that?**
22 A Uh-huh.

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1 **Q That report is telling the board, it's**
2 **fair to say, that a mediation is scheduled to**
3 **resolve lingering issues with respect to Delphi;**
4 **is that fair?**
5 A That's correct.
6 **Q Do you recall anything about that**
7 **mediation?**
8 A I was not involved in that mediation.
9 **Q Do you -- did you have any**
10 **understanding or do you have any understanding of**
11 **what was involved at that mediation?**
12 A No.
13 **Q Did it involve pension issues to your**
14 **knowledge?**
15 A Well, I think -- yes. You can't
16 resolve Delphi's bankruptcy's issues without
17 resolving the issues of the largest unsecured
18 creditor.
19 **Q And, so, it's your understanding that**
20 **pension issues were discussed at that mediation;**
21 **is that correct?**
22 A No, what -- I don't know what was

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1 discussed at that mediation. I know that if PBGC
2 was there, and I presume they were, that that
3 would have been our issue; that would have been
4 what we were concerned about.
5 **Q Okay. And your -- and you indicate in**
6 **this email that that mediation started May 26th;**
7 **is that correct?**
8 A Yes.
9 **Q And that would have been 2009?**
10 A Correct.
11 **Q Do you have any other information about**
12 **that mediation session?**
13 A No.
14 **Q Okay.**
15 **MR. O'TOOLE: Why don't we take a**
16 **break.**
17 **(Recess -- 12:10 p.m.)**
18 **(After recess -- 12:20 p.m.)**
19 **(PBG/Snowbarger Deposition Exhibit 17**
20 **was marked for identification and attached to the**
21 **transcript.)**
22 THE WITNESS: (Reviews document.)

29 (Pages 110 to 113)

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1 BY MR. O'TOOLE:
2 Q I'm showing you now what's been marked
3 as Exhibit 17. And this appears to be an email
4 from John Butler to a group of people including
5 Matt Feldman and a number of people at Delphi.
6 Are you aware -- do you know who Jack
7 Butler is -- was?
8 A No.
9 Q Now, what Exhibit -- and correct me if
10 I get anything wrong, but what Exhibit 17 appears
11 to reflect is that Harry --
12 And would you know if that would be
13 Harry Wilson?
14 A I don't have any way to know that.
15 Q -- would suggest that -- so someone was
16 suggesting that Matt Feldman, the recipient of the
17 email, reach out to -- or be -- be the point of
18 contact on PBGC settlement issues.
19 Would you have any idea why Matt
20 Feldman would be dealing with PBGC settlement
21 issues?
22 A No.

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1 Q Okay. The email also seems to suggest
2 that the PBGC representative at the mediation was
3 John Menke.
4 Is that consistent with your
5 recollection?
6 A Well, that's what the memo says. I
7 don't have any particular recollection.
8 Q So you don't know who the PBGC
9 representative at the mediation was, do you?
10 A I -- no, I don't know.
11 Q Do you recall ever being briefed about
12 the mediation by anyone at PBGC?
13 A I don't recall.
14 Q Do you recall reporting to the board
15 about the mediation at any point?
16 A I don't recall.
17 Q The email suggests that Mr. Menke
18 needed to hear from Mr. Feldman about what GM and
19 Treasury planned to do with the hourly plan and
20 the salaried plan at Delphi.
21 Can you explain why the Treasury would
22 need to hear from Mr. Feldman on what -- or why

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1 Mr. Menke would need to hear from Mr. Feldman on
2 what Treasury planned to do with the hourly plan
3 and the salaried retiree plan?
4 MR. MENKE: Objection. That question
5 completely mischaracterizes the document.
6 MR. O'TOOLE: It's noted.
7 BY MR. O'TOOLE:
8 Q Can you explain why the lawyer for
9 Delphi would be suggesting that Mr. Menke needed
10 to hear from Mr. Feldman about what Treasury
11 planned to do with the hourly and salaried retiree
12 plan?
13 MR. MENKE: Same objection.
14 BY MR. O'TOOLE:
15 Q You can answer the question.
16 A (Witness reviews document.) PBGC was
17 having to make a decision about whether to proceed
18 with the termination of the hourly plan and the
19 salary plan. And if someone was going to
20 intervene, GM, then we needed to know that someone
21 was going to intervene.
22 Q What about Treasury?

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1 A Treasury was the source of money for GM
2 at that point.
3 Q Did Treasury have any decision-making
4 role as the source of the money?
5 A I don't know.
6 Q Okay. Let's go to Exhibit 18.
7 (PBGC/Snowbarger Deposition Exhibit 18
8 was marked for identification and attached to the
9 transcript.)
10 THE WITNESS: (Reviews document.)
11 BY MR. O'TOOLE:
12 Q And I'm specifically going to look on
13 Exhibit 18 at page 2, the bullet point that's
14 there.
15 A Uh-huh.
16 Q Can you describe what Exhibit 18
17 reflects?
18 A Yes. This would reflect the report --
19 again, through the weekly significant activities
20 report to the list of people who we talked about
21 earlier, but it would have been a report on
22 mediation, and it appears that mediation ended in

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1 an impasse.
2 **Q So you're reporting to the board on the**
3 **results of the mediation --**
4 A Yes.
5 **Q -- is that correct?**
6 A Yes.
7 **Q But you have no recollection of ever**
8 **having been briefed on the mediation; is that**
9 **correct?**
10 A I -- I don't have any independent
11 recollection of that, no.
12 **Q But given that you're providing a**
13 **report, this would suggest that you probably were**
14 **briefed on it; is that right?**
15 A Given the report, this suggests that
16 someone gave us a paragraph to put in the report
17 indicating that they'd reached an impasse.
18 **Q But you don't recall any briefing or**
19 **discussions?**
20 A I don't separately recall a separate
21 briefing, no.
22 **Q All right. I'm going to show you now**

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1 **Exhibit 19.**
2 **(PBGC/Snowbarger Deposition Exhibit 19**
3 **was marked for identification and attached to the**
4 **transcript.)**
5 THE WITNESS: (Reviews document.)
6 BY MR. O'TOOLE:
7 **Q Have you had time to review that?**
8 A A little bit more time.
9 **Q Okay.**
10 A (Witness continues reviewing document.)
11 **Q Okay. Can you describe what this**
12 **email -- and particularly I'm referring to the**
13 **portion that was sent from Joe House to Matthew**
14 **Feldman at 1:20 p.m. on May 29th.**
15 **Can you describe what that portion of**
16 **the email refers to?**
17 A Yeah, I think it is suggesting to Matt
18 Feldman the terms of -- the broad terms of an
19 agreement that PBGC was willing to be a part of in
20 terms of resolving the Delphi hourly and salaried
21 pension plans, and I think that's in conjunction
22 with auto task force dealing with GM.

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1 **Q And where did -- do you have any idea**
2 **where this proposal came from? Were you involved**
3 **in formulating this proposal?**
4 A No, I was not.
5 **Q Do you have any idea how it was**
6 **formulated?**
7 A I presume it was formulated within the
8 department of insurance supervision and compliance
9 with the help of the office of chief counsel.
10 **Q And who specifically would have played**
11 **a role in that to you?**
12 A Well, Terry Deneen would be the
13 supervisor for both of those departments as the
14 chief insurance programs officer. Typically
15 the -- and a proposal for settlement would come
16 both from our financial analyst side, which is the
17 Division of Insurance Supervision and Compliance,
18 in conjunction with our office of chief counsel.
19 **Q And why was this proposal submitted to**
20 **Treasury -- to the Treasury Department to your**
21 **knowledge?**
22 A It appears that it was discussed with

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1 Matt Feldman, and rather than relying on the
2 discussion, we preferred to have it in writing so
3 there wasn't any misunderstanding.
4 **Q Now, is this submitted for Treasury's**
5 **approval? I mean, what is the approval process at**
6 **this point?**
7 A I can't tell you.
8 **Q Okay.**
9 A I mean, I don't know what the purpose
10 of it is. Again, I think it appears to be
11 answering a question that Treasury had about what
12 PBGC was willing to do.
13 **Q Now, do you recall if you ever briefed**
14 **the board on this proposal?**
15 A I don't recall.
16 **Q Is this something that you -- normally,**
17 **in the course of your briefings to the board, is**
18 **this the sort of issue you would have briefed them**
19 **on?**
20 A No.
21 **Q Why not?**
22 A We don't talk about interim

31 (Pages 118 to 121)

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1 negotiations. We -- we would normally go back to
2 them with a here's what we've been able to work
3 out and here's the basis on which we're going to
4 either terminate or allow the plans to be ongoing,
5 here's the consideration that we got for it.
6 But, again, that's considered part of
7 the day-to-day operation of PBGC, and the board is
8 not involved in those kinds of decisions.
9 **Q Why did you brief the board about the**
10 **mediation?**
11 A Again, it was a status report about
12 where the case is with Delphi.
13 **Q And what's the difference between a**
14 **status report on where the case is and a**
15 **settlement proposal in the case? Why is one --**
16 **apparently the settlement proposal is less**
17 **important than the mediation; is that correct?**
18 MR. MENKE: Objection: assumes facts
19 not in evidence.
20 BY MR. O'TOOLE:
21 **Q I'm just trying to figure out why you**
22 **would brief the board on a mediation but not brief**

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1 **the board on a settlement proposal if that's what**
2 **you're saying. You're saying you wouldn't brief**
3 **them on a settlement proposal?**
4 A Not normally.
5 **Q Okay. Any explanation for why one and**
6 **not the other?**
7 A Well, we discussed the events that are
8 occurring in public --
9 **Q Okay.**
10 A -- so that they understand what's
11 happening. That is a -- a hearing or a mediation
12 that was announced, if -- if in no other way than
13 we had announced earlier that it was going to
14 happen.
15 **Q Okay.**
16 A The natural follow-up to that would
17 have been, okay, what happened. So we told them.
18 They met; nothing was resolved. We wouldn't have
19 discussed the terms of mediation with them or
20 terms of settlement.
21 **Q Now, this proposal suggests that PBGC**
22 **is intending at this point to terminate the Delphi**

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1 **salaried retiree plan.**
2 **Is that part of the proposal?**
3 A That we are willing to do that as part
4 of a settlement of the issues in the Delphi --
5 **Q Okay.**
6 A -- bankruptcy.
7 **Q All right. I'm now going to mark**
8 **Exhibit 20.**
9 **(PBGC/Snowbarger Deposition Exhibit 20**
10 **was marked for identification and attached to the**
11 **transcript.)**
12 THE WITNESS: (Reviews document.)
13 BY MR. O'TOOLE:
14 **Q Okay. I'm going to direct your**
15 **attention to page 2 of Exhibit 20.**
16 A Okay.
17 **Q And this suggests that PBGC is in**
18 **continuing discussions with Treasury and GM over**
19 **the fate of Delphi's hourly plan and recoveries**
20 **PBGC may receive in satisfaction of statutory**
21 **liens and any pension plan terminations.**
22 **So is this consistent with your**

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1 **recollection of the discussions that were going on**
2 **at the time with the Treasury Department?**
3 A Yes.
4 **Q So the discussions over the termination**
5 **and the fate of the pension plans at Delphi; is**
6 **that fair to say?**
7 A Yes.
8 **Q Was that along the same lines as the**
9 **proposal that PBGC had made to the Treasury in**
10 **terms of a settlement proposal?**
11 MR. MENKE: Objection: mischaracterizes
12 testimony; mischaracterizes the document.
13 BY MR. O'TOOLE:
14 **Q You can answer the question if you want**
15 **to, but I can also rephrase it if you don't**
16 **understand it.**
17 A Why don't you rephrase.
18 **Q Okay. We looked earlier at an**
19 **exhibit -- I believe it was Exhibit 19. That**
20 **exhibit contained what I think you described as a**
21 **settlement proposal with respect to the Delphi**
22 **pension plans that had been made to Matt Feldman**

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1 at the Treasury Department by, I believe, Joe
2 House at the PBGC; is that fair?
3 MR. MENKE: Well, I object. That
4 mischaracterizes previous testimony.
5 BY MR. O'TOOLE:
6 Q Well, describe that document, then,
7 please. What is Joe House proposing?
8 A It says this is an outline of PBGC's
9 proposed solution.
10 Q Solution of what? The pension issues?
11 A Yes, Delphi's pension issues.
12 Q And why is he passing it along to
13 Treasury?
14 A It appears that Matt Feldman may have
15 requested that we put it in writing.
16 Q Okay. Let's -- let's actually -- let's
17 hold off on Exhibit 20 for a second and we'll mark
18 Exhibit 21.
19 Can you go to Exhibit -- I'm going to
20 mark now Exhibit 21. It's an email chain that's
21 dated June of 2009.
22 (PBGC/Snowbarger Deposition Exhibit 21

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1 was marked for identification and attached to the
2 transcript.)
3 THE WITNESS: (Reviews document.)
4 BY MR. O'TOOLE:
5 Q Have you had a chance to read that
6 exhibit?
7 A I've glanced through it.
8 Q I'm going to direct your attention to
9 the -- the -- the email that's sent from Rick
10 Westenberg to Matt Feldman on June 2nd at -- it
11 appears to be 7:29. I think it's 19:00:29. I
12 think that's seven o'clock.
13 MR. MENKE: For the record, is it the
14 email that starts, We were looking to understand
15 the details of the settlement?
16 MR. O'TOOLE: That's correct.
17 MR. MENKE: Okay. Do you see --
18 THE WITNESS: I see it.
19 MR. MENKE: Thank you.
20 BY MR. O'TOOLE:
21 Q Now, this is a June 2nd email to Matt
22 Feldman. Now, my recollection is that Matt

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1 Feldman was the recipient of an earlier email from
2 Joe House in which the PBGC outlined the terms
3 under which -- I guess the terms that were
4 described in Exhibit 19; is that correct?
5 A I don't know if it refers specifically
6 to those terms, but, yes, Matt Feldman was a
7 recipient of an email from Joe House that
8 contained terms.
9 Q Contained terms. And one of the terms
10 was the termination of the salary plan; is that
11 correct?
12 A Yes.
13 Q And other terms related to the hourly
14 plan; is that correct?
15 A Other terms related to the settlement
16 of the liability associated with the salary plan,
17 yes.
18 Q Yes. And other terms related to the
19 hourly plan that -- not necessarily the
20 termination at this point, but they related to
21 what was going to be done with the hourly plan?
22 A Yes.

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1 Q And, so, this email that we just
2 discussed in Exhibit 21 appears to be a request
3 from someone at GM --
4 Do you know who Rick Westenberg is?
5 A No.
6 Q -- to Matt Feldman, in which
7 Mr. Westenberg suggested he wants to understand
8 the details of the settlement with the PBGC
9 regarding Delphi's hourly and salaried plans.
10 Are you aware of any settlement with
11 the PBGC regarding Delphi's hourly and salaried
12 plans as of June 2nd, 2009?
13 A No.
14 Q Do you have any idea what he could be
15 referring to at that point?
16 A I'd be speculating.
17 Q But you were the head of the PBGC at
18 this point; is that correct?
19 MR. MENKE: I'd ask the witness to
20 please not speculate.
21 BY MR. O'TOOLE:
22 Q At this point you were the head of the

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1 **PBGC?**
2 A I won't speculate on that. Yes, I was.
3 **Q Right. And that you're sure of?**
4 A It had its moments.
5 **Q And it -- so at that point, if there**
6 **was a settlement with the PBGC regarding the**
7 **hourly and salary plans, you'd have been aware of**
8 **it, wouldn't you have?**
9 A Not necessarily.
10 **Q You would not have been aware of a**
11 **settlement?**
12 A Not necessarily.
13 **Q Okay. But you're not aware of any**
14 **other settlement proposal or any other terms being**
15 **discussed with Treasury other than the ones in the**
16 **email that is in Exhibit 19, are you?**
17 A That would be correct.
18 **Q Okay. So when you report to the**
19 **board -- I believe it's Exhibit 20 now; let's get**
20 **back to that -- about the continuing discussions**
21 **with U.S. Treasury and GM of the fate of Delphi's**
22 **hourly plan and recoveries PBGC may receive, are**

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1 **you referring to the settlement proposal or to the**
2 **proposal, however you want to call it, that's**
3 **described in Exhibit 19, or are you referring to**
4 **some other ongoing discussions?**
5 A I'm referring to any discussions that
6 Treasury and GM and Delphi might have been willing
7 to engage in that would resolve the issues
8 surrounding the pension plans.
9 **Q And those are continuing to go on at**
10 **that point in time?**
11 A That's correct.
12 **Q Okay. Now, at this point is it your**
13 **understanding that a final decision has been made**
14 **with respect to what to do with the salaried**
15 **retirees plan?**
16 A PBGC had made a decision that all the
17 conditions had been met for a termination of that
18 plan absent some intervention to change those
19 events. That intervention could have come from
20 Delphi, but it had no money. It could have come
21 from someplace else, but it didn't.
22 **Q Where was that --**

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1 A We -- we had -- we had no reason to
2 believe that there was any sponsor out there for
3 the salaried plan.
4 **Q Was that decision reflected in a notice**
5 **of determination as of June 2009?**
6 A Not in a notice of determination, no.
7 **Q And isn't that the normal way that you**
8 **would determine that the plan should be**
9 **terminated?**
10 A No.
11 **Q Why not?**
12 A No. A recommendation is made to the
13 director through our trustee workingship --
14 trusteeship working group and a recommendation is
15 made to the director about whether or not a plan
16 should be terminated. The decision is made there.
17 The notice of determination is a public
18 statement that's published that says we're -- we
19 made the decision we're going to do this. And,
20 again, at that point it's not -- it's not that you
21 can't retract that at some point in time, but
22 again, it becomes public and that creates its own

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1 issues.
2 **Q But it's --**
3 A And, so, it had not been issued yet --
4 **Q But it's --**
5 A -- as of early June.
6 **Q You're talking about the decision that**
7 **was -- the internal decision that you described**
8 **earlier in April 2009; right?**
9 A Yes.
10 **Q But that's -- you described it earlier**
11 **as completely changeable; right?**
12 A I think I just said the same thing,
13 yes.
14 **Q So the April 2009 decision was a**
15 **decision that could -- was completely subject to**
16 **being reexamined and had not been put into a**
17 **notice of determination; is that correct?**
18 A That's correct.
19 **Q And, so, there was nothing that PBGC**
20 **needed to do to undo that decision; is that**
21 **correct? That is, that decision had no effect as**
22 **far as --**

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1 A That decision had not been implemented,
2 that's correct.
3 **Q And could never be implemented if PBGC**
4 **decided not to do a notice of determination?**
5 MR. MENKE: I object. It assumes facts
6 not in the record.
7 BY MR. O'TOOLE:
8 **Q All right. I'm going to mark now as**
9 **Exhibit 22 . . .**
10 **MR. O'TOOLE: Let's go back to that.**
11 MR. KHALIL: Okay.
12 (PBGC/Snowbarger Deposition Exhibit 22
13 was marked for identification and attached to the
14 transcript.)
15 BY MR. O'TOOLE:
16 **Q That's a report that you sent to -- it**
17 **appears to be board representatives or**
18 **representatives of representatives on the PBGC**
19 **board; is that correct?**
20 A It's the representatives of
21 representatives, yes. The cc's are all PBGC
22 personnel.

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1 **Q And you're describing the internal**
2 **action that PBGC took in April of 2009; is that**
3 **correct?**
4 A That's correct.
5 **Q And you say in the email, Nothing we do**
6 **now is irreversible; is that correct?**
7 A That's correct.
8 **Q And that's what you described before**
9 **the break; is that correct?**
10 A That's correct.
11 **Q And nothing changed during the break to**
12 **change your mind?**
13 A No.
14 **Q Okay. So you're saying exactly what**
15 **you said before the break now, which is that the**
16 **April 20th decision had no effect that could not**
17 **be changed or no effect at all if it was never**
18 **implemented?**
19 A That's correct.
20 **Q Okay.**
21 A I'm -- I'm -- I'm -- well . . .
22 **Q Go ahead. Please finish your answer.**

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1 A I'm done.
2 **Q Okay.**
3 A I thought that's what I'd said. I'm
4 trying to figure out what the inconsistency is.
5 **Q So, at this point in time, there's**
6 **nothing -- there's no notice of determination; the**
7 **salary plan can still go on as it was in terms of**
8 **there's no impediment to that happening?**
9 A At this point in time referring to
10 June?
11 **Q June of 2009.**
12 A That's correct.
13 **Q Okay. Those issues are still being**
14 **discussed?**
15 A Correct.
16 **Q All right. Let's go to Exhibit 23.**
17 **(PBGC/Snowbarger Deposition Exhibit 23**
18 **was marked for identification and attached to the**
19 **transcript.)**
20 THE WITNESS: (Reviews document.)
21 Okay.
22 BY MR. O'TOOLE:

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1 **Q Okay. So this appears to be an**
2 **email -- the chain appears to start with an email**
3 **from you to a group of people at the Treasury, at**
4 **the Department of Labor, basically the**
5 **representatives of the representatives or --**
6 A Actually, this is to the
7 representatives. I have two people on there from
8 Labor because I don't believe Phyllis Borzi was
9 confirmed at that point, so Alan Lebowitz was the
10 acting head of EBSA. Michael Barr was the board
11 representative; Rebecca Blank -- Michael Barr was
12 from Treasury. Rebecca Blank was from Department
13 of Commerce. And then in the cc's, the first
14 portion there looks like most of those are PBGC
15 folks. And then beginning with David Beede, they
16 are board representative representatives.
17 **Q And this is you're calling a meeting of**
18 **the board representatives and the representatives**
19 **of the representatives for the following day; is**
20 **that correct?**
21 A That's what we're trying to do, yes.
22 **Q And in response to this email, Judith**

35 (Pages 134 to 137)

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1 **Starr --**
2 **Who is Judith Starr?**
3 A Judith Starr is the general counsel of
4 PBGC, and she's also secretary to the board.
5 **Q And she asks you, what's up; is that**
6 **correct?**
7 A Yes.
8 **Q And what do you tell her?**
9 A That there was a decision made by
10 Treasury about Delphi.
11 **Q And Treasury announced that decision to**
12 **Terry and Joe at a meeting that afternoon; is that**
13 **correct?**
14 A That appears to be the case, yes.
15 **Q And who are Terry and Joe again?**
16 A Terry would be Terry Deneen, again, the
17 chief insurance programs officer; Joe would be Joe
18 House, the department director of the Division of
19 Insurance Supervision and Compliance.
20 **Q And you said decisions were made by**
21 **Treasury about Delphi. Do you recall what those**
22 **decisions were?**

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1 A Actually --
2 MR. MENKE: I object. That misquotes
3 the email.
4 MR. O'TOOLE: Well, I'm referring to
5 his testimony.
6 Could you read back his testimony when
7 he was discussing the decisions that were
8 reflected in this exhibit, please?
9 (The Record was read as requested.)
10 MR. MENKE: I apologize. I thought you
11 were reading from the document. Thank you.
12 MR. O'TOOLE: No, I was referring to
13 his testimony.
14 BY MR. O'TOOLE:
15 **Q So what decision was made by Treasury?**
16 A Well, I don't know. I misspoke. I
17 conflated the two sentences at the top of the
18 page. I can't tell you that Treasury made that
19 decision. I just -- that Treasury had announced
20 to us the decisions had been made. But I don't
21 know by whom.
22 **Q But not by PBGC?**

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1 A No.
2 **Q Okay. And do you know what the**
3 **decisions were that had been announced?**
4 A No.
5 **Q Okay.**
6 A I don't have a recollection at this
7 point in time specifically.
8 **Q Okay. I'm going to show you now**
9 **Exhibit 23 -- oh, wait, Exhibit 24. I'm sorry.**
10 **(PBGC/Snowbarger Deposition Exhibit 24**
11 **was marked for identification and attached to the**
12 **transcript.)**
13 THE WITNESS: (Reviews document.)
14 BY MR. O'TOOLE:
15 **Q All right. Let's start with the first**
16 **email in this chain which appears to be an email**
17 **from Joe House to Israel Goldowitz, Karen Morris**
18 **and John Menke dated June 30th at 6:41 p.m.; is**
19 **that correct?**
20 A Yes.
21 **Q That appears to be after you had sent**
22 **out an email to the board representatives; is**

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1 **that --**
2 A Yes.
3 **Q Okay. And he appears to be describing**
4 **the meeting that he and Terry --**
5 **When he says Terry, he means Terry**
6 **Deneen; is that correct?**
7 A That's correct.
8 **Q -- had just had over at Treasury.**
9 **And as a result of that meeting, he**
10 **says, quote, It is now clear that the Delphi**
11 **hourly plan will not be assumed by GM, and thus we**
12 **will be terminating/trusteeing that pension plan**
13 **along with the salaried and the four small plans.**
14 **Did I read that right?**
15 A Yes.
16 **Q Does that reflect your recollection of**
17 **what was -- what the decision that was made at**
18 **that meeting was?**
19 A I'm not sure the decision was made at
20 that meeting.
21 **Q The one that was announced at that**
22 **meeting?**

36 (Pages 138 to 141)

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1 A Yes.
2 **Q That refreshes your recollection?**
3 A Seeing -- seeing this now, yes. I --
4 I -- frankly, I speculated that was the case, but
5 I didn't independently recall it.
6 **Q And then it appears that if you follow**
7 **the chain there's an email from Joe House to**
8 **Michael Rae as -- it appears to be 8:30 that same**
9 **evening.**
10 **Do you see that email?**
11 A (Witness reviews document.)
12 MR. MENKE: For the record, are you
13 referring to the email at 1845?
14 MR. O'TOOLE: No, I'm referring to the
15 email on the page that's attached, the one that --
16 the one from Joseph House to Michael Rae.
17 MR. MENKE: Which one?
18 MR. O'TOOLE: The one at 22:30:52.
19 THE WITNESS: Okay. I see it. You
20 said eight o'clock. I think that's ten o'clock.
21 BY MR. O'TOOLE:
22 **Q Oh ten o'clock. I'm sorry.**

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1 MR. MENKE: 10:30.
2 THE WITNESS: 10:30, yes.
3 BY MR. O'TOOLE:
4 **Q It suggests that up until now, at least**
5 **according to Mr. Feldman -- who was at that**
6 **meeting; is that correct? Is that your**
7 **understanding?**
8 A (Indicating.)
9 **Q I'll be more clear. The earlier**
10 **exhibits described a meeting between Mr. House and**
11 **Treasury officials.**
12 **It's your understanding that**
13 **Mr. Feldman was one of the Treasury officials**
14 **working with the auto task force; is that correct?**
15 A I believe that's the case, yes.
16 **Q And Mr. House was obviously at that**
17 **meeting with the Treasury officials; is that**
18 **correct?**
19 A That's what the emails indicate, yes.
20 **Q And Mr. House is suggesting that**
21 **Mr. Feldman said, UST -- and I assume that UST**
22 **refers to U.S. Treasury?**

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1 A That's my presumption.
2 **Q And UST auto probably refers to the**
3 **U.S. Treasury auto task force?**
4 A I presume so.
5 **Q You don't have any reason to believe**
6 **otherwise?**
7 A No.
8 **Q That they've consulted -- deliberated**
9 **exclusively amongst themselves and WH --**
10 **A White House.**
11 **Q That's probably the White House; is**
12 **that correct?**
13 A It's the White House.
14 **Q And then he promised to wait to call**
15 **the company, which that would be GM; is that**
16 **correct?**
17 A Yes.
18 **Q And the UAW?**
19 A Yes.
20 **Q Until after you'd briefed your board**
21 **reps; is that right?**
22 A Yes.

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1 **Q And so -- which would probably explain**
2 **why immediately after this meeting you sent out an**
3 **email to your board reps about a briefing; is that**
4 **correct?**
5 A Correct.
6 **Q Okay.**
7 A It's the first indication there
8 wouldn't be any white knight.
9 **Q Let's go to Exhibit 25.**
10 **(PBG/Snowbarger Deposition Exhibit 25**
11 **was marked for identification and attached to the**
12 **transcript.)**
13 THE WITNESS: (Reviews document.)
14 BY MR. O'TOOLE:
15 **Q Can you describe what Exhibit 25**
16 **appears to be?**
17 A It appears to be an email from Joe
18 House to Terry Deneen and others, both within PBGC
19 and at Greenhill. Greenhill was one of our
20 financial analyst contractors. And it talks about
21 conversations with Matt Feldman about getting, I
22 guess, a response to an offer that we made in

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1 settlement on the Delphi case.
2 **Q Now, is it fair to say that this**
3 **reflects that PBGC is negotiating directly over**
4 **this proposal with the Treasury and the White**
5 **House, or is there somebody else who is in the**
6 **negotiations that's not reflected on this email?**
7 A I don't know.
8 **Q Do you -- do you have any understanding**
9 **of PBGC negotiations that would have been with**
10 **someone else because this -- this -- is it fair to**
11 **say this reflects that PBGC was negotiating with**
12 **Treasury on this issue?**
13 A Yes.
14 **Q And do you have any recollection of**
15 **PBGC negotiating with other entities besides**
16 **Treasury or the White House on this issue?**
17 A It would have been my understanding
18 that we would be talking with Delphi, with
19 creditors on the creditors committee, and this is
20 all in terms of -- of settling our claims against
21 Delphi and their bankruptcy.
22 **Q Now, what about GM?**

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1 A GM was involved in the settlement of
2 Delphi. I can't recall exactly how, but I know
3 they were purchasing some of the assets. I think
4 there was -- they were a lender to Delphi, so they
5 were a creditor to Delphi as well. So I would
6 suspect, but I don't know, that GM would have been
7 involved in those conversations as well.
8 **Q Now, the earlier email -- I believe it**
9 **was Exhibit 24; is that right? -- suggests that**
10 **Treasury had not told GM about the decision that**
11 **it had made with respect to the pensions as of --**
12 **as of the time of the meeting between Joe House**
13 **and, I believe, Terry Deneen and the Treasury**
14 **officials.**
15 **Is that a fair read of Exhibit 24?**
16 A (Witness reviews document.) All I can
17 do is read.
18 **Q And what -- could you just read it and**
19 **then if you have -- if you question --**
20 A Feldman says that, Up to now, UST auto
21 has consulted/deliberated exclusively amongst
22 itself and White House/NEC. He promised to wait

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1 to call company, GM and UAW, until after we've
2 briefed our board reps.
3 **Q So that suggests that he hadn't even --**
4 **that he hadn't contacted or even called the**
5 **company about this until after you had briefed**
6 **your board reps.**
7 **Is that a fair representation of**
8 **that -- that email from Joe House at the PBGC?**
9 A I think what I just read speaks for
10 itself.
11 **Q Okay. And, so, your answer is, yes,**
12 **that -- that --**
13 A Yes, that's what it reads.
14 **Q Yes. Thank you.**
15 **All right. Let's go to Exhibit 26.**
16 **(PBGC/Snowbarger Deposition Exhibit 26**
17 **was marked for identification and attached to the**
18 **transcript.)**
19 THE WITNESS: (Reviews document.)
20 BY MR. O'TOOLE:
21 **Q Now, this report to the board -- and**
22 **I'm looking specifically at page 2 -- suggests**

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1 **that General Motors has concluded that GM cannot**
2 **afford to assume Delphi's hourly rate plan and it**
3 **did so in consultation with the U.S. Treasury; is**
4 **that right?**
5 A Yes.
6 **Q Can you tell me where the suggestion**
7 **came from that General Motors had made this**
8 **decision?**
9 A It would have been from the folks from
10 PBGC that were familiar with the conversations
11 that had been going on.
12 **Q And do you have any specific**
13 **recollection of any conversations in which people**
14 **said General Motors, as opposed to the Treasury,**
15 **had made the decision?**
16 A No.
17 **Q Okay.**
18 **(PBGC/Snowbarger Deposition Exhibit 27**
19 **was marked for identification and attached to the**
20 **transcript.)**
21 THE WITNESS: (Reviews document.)
22 BY MR. O'TOOLE:

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1 **Q In Exhibit 27, I'm going to direct your**
2 **attention to an email that -- it looks like it was**
3 **sent by you to someone named John Hanley at**
4 **7:41 on July 9th.**
5 **Have you read that email?**
6 A Yes.
7 **Q First, who is John Hanley?**
8 A John Hanley is the director of our
9 legislative and regulatory affairs department. He
10 would have been our primary contact with members
11 of Congress.
12 **Q Okay. So you're reporting to him about**
13 **what's going on on the Delphi matter, and I assume**
14 **by that you are referring to the pensions?**
15 A Yes.
16 **Q And your email suggests that all**
17 **parties have been notified. Does that mean that**
18 **you notified the board of what had happened?**
19 A No.
20 **Q What does that mean?**
21 A It's the parties that are involved with
22 the Delphi bankruptcy --

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1 **Q And your email says and --**
2 A -- because it says I need to send
3 information to the board agency. So it does not
4 include the board.
5 **Q Okay. And this suggests that, quote,**
6 **all happening at Treasury. Is that what you said?**
7 A Yes.
8 **Q And did -- did you say anything about**
9 **GM in this email?**
10 A Well, it says all parties.
11 **Q Okay.**
12 A So I think GM would have been one of
13 those parties, yes.
14 **Q That was notified?**
15 A Yes.
16 **Q What do you mean by "all happening at**
17 **Treasury"?**
18 A I don't specifically recall what I
19 meant by that.
20 **Q Okay.**
21 **(PBGC/Snowbarger Deposition Exhibit 28**
22 **was marked for identification and attached to the**

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1 **transcript.)**
2 THE WITNESS: Are there two --
3 MR. O'TOOLE: I think there are two
4 sheets on 28.
5 MR. MENKE: Twenty-eight?
6 MR. O'TOOLE: . Let me just make sure
7 we have got the same one. So one is Bates
8 number 184930 and the other one is 60342.
9 BY MR. O'TOOLE:
10 **Q Is that correct?**
11 A Yes.
12 MR. MENKE: You did not hand me the
13 first of those two. This is meant to be a single
14 exhibit.
15 MR. O'TOOLE: Single exhibit.
16 MR. MENKE: Can we refer to page 1 and
17 page 2 possibly?
18 MR. O'TOOLE: That's fine. Why don't
19 we call page 1 the 184930.
20 MR. MENKE: Okay. Thank you.
21 MR. O'TOOLE: And page 2 is 60342.
22 THE WITNESS: If I could suggest --

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1 you've got the sticker on the other page.
2 MR. O'TOOLE: All right. Well, why
3 don't we go with the sticker. So that will be one
4 and the other one will be two.
5 MR. MENKE: Okay.
6 BY MR. O'TOOLE:
7 **Q All right. On page 1 -- what we're**
8 **referring to as page 1 now, can you describe**
9 **what's going on in this email chain?**
10 A (Witness reviews document.) The bottom
11 email appears to be from, again, Greenhill, who is
12 our contract financial analyst, to first Joe and
13 then Terry Deneen forwards it on. And it appears
14 to be an analysis of a counterproposal the
15 Treasury sent over to PBGC.
16 **Q Okay. And it appears, if I'm correct,**
17 **there's an email sent at July 14th at 5:17 p.m.**
18 **from John Menke to Karen Morris in which it is**
19 **suggested that in response to the counterproposal,**
20 **Terry is taking it up to the board reps this**
21 **afternoon and expecting to get a head nod which he**
22 **will then have Greenhill convey to Treasury.**

39 (Pages 150 to 153)

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1 **Is that a fair reading of that**
2 **sentence?**
3 A Yes.
4 **Q Can you describe what -- what that**
5 **means?**
6 A No.
7 **Q Well, let's -- let's go piece by piece.**
8 **So Terry is Terry Deneen; is that correct?**
9 A That's correct.
10 **Q And taking it up to the board reps**
11 **meeting this afternoon, what does that mean?**
12 A It sounds like he's going to propose
13 a -- or explain to the board reps the basis on
14 which we are going to settle the Delphi claims.
15 **Q And -- and what -- and, so, in meeting**
16 **with the board reps, that would have been part of**
17 **your responsibilities; is that correct?**
18 A Yes.
19 **Q Do you recall a meeting --**
20 A I don't.
21 **Q -- at that time frame?**
22 A I don't.

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1 **Q Do you have any recollection that such**
2 **a meeting did not take place?**
3 A No.
4 **Q And then -- then, "expecting to get a**
5 **head nod," is that getting the board's approval?**
6 **Is that what that suggests to you?**
7 A That's what that suggests.
8 **Q And would that be something that would**
9 **be done at a board meeting in terms of a**
10 **settlement of this sort?**
11 A With all due respect to Mr. Menke, no.
12 **Q Why not?**
13 A Because they were not involved in the
14 day-to-day decisions about either the termination
15 of cases or the settlement of cases. They were
16 notified of those events, but they were not
17 involved in the decision.
18 **Q And let me just be clear on this,**
19 **Mr. Menke is a lawyer for the PBGC; is that**
20 **correct?**
21 A That's correct.
22 **Q Okay. So you're suggesting that his**

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1 **legal analysis of the board's powers is wrong; is**
2 **that correct?**
3 MR. MENKE: Objection.
4 MR. O'TOOLE: Based on what?
5 MR. MENKE: Mischaracterizes the
6 document.
7 BY MR. O'TOOLE:
8 **Q Mr. Menke suggests in this email, does**
9 **he not, that Terry would be taking the proposal to**
10 **the board reps this afternoon and expecting to,**
11 **quote, get a head nod; is that correct?**
12 A That's what it says.
13 **Q And by "get a head nod," you read this**
14 **to mean to get the board's approval; is that**
15 **correct?**
16 A All I can see is what's there in black
17 and white. I don't know exactly what he's
18 referring to.
19 **Q And to the extent that he's suggesting**
20 **that this decision meets the board's approval, you**
21 **disagree with him?**
22 A That's correct.

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1 MR. MENKE: I guess I object,
2 mischaracterizing the email.
3 But go ahead.
4 BY MR. O'TOOLE:
5 **Q Later on --**
6 A Frankly, I have to give the head nod.
7 **Q Okay.**
8 A Or at that point I would have had to
9 give the head nod as the acting director. I don't
10 have to do anything now.
11 **Q Now, this email was then forwarded on**
12 **to a number of -- to -- it was forwarded on, it**
13 **appears, to lawyers at Kelley Drye; is that**
14 **correct?**
15 A That's -- yes.
16 **Q Among others?**
17 A Yes.
18 **Q And along with a header that says,**
19 **Current settlement numbers; is that correct?**
20 A Along with a header that says -- I'm
21 sorry?
22 **Q Quote -- along with a message that**

40 (Pages 154 to 157)

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1 says, **Current settlement numbers.**
2 A Oh, okay.
3 **Q Who is Kelley Drye, the law firm?**
4 A It's -- it's a law firm, and I don't
5 recall specifically, but -- I don't recall
6 specifically what role they were playing.
7 **Q Is it a law firm retained by the PBGC?**
8 A It's very pos- -- yes.
9 **Q Right. And you have no suggestion that**
10 **they responded to this by saying that the board**
11 **did not need to approve this deal; is that**
12 **correct?**
13 A Yeah.
14 **Q Okay. Now, there's another sentence in**
15 **here that says, Feldman will then take it to GM**
16 **and get their approval, which will either be a**
17 **rubber stamp or one last chance to nick us on the**
18 **deal.**
19 **Did I read that correctly?**
20 A Yes.
21 **Q Do you know what that means?**
22 A Again, my recollection is that GM was

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1 one of the lenders that was helping to resolve the
2 Delphi bankruptcy providing them with the ability
3 to -- well, I guess they were selling off assets
4 at that point, but allowing new Delphi to emerge.
5 And, as a part of their financing
6 arrangement, they were going to get certain
7 considerations; and if I recall correctly, PBGC
8 was going to get a portion of the consideration
9 given to GM from Delphi --
10 **Q Okay.**
11 A -- in settling those issues.
12 **Q And did GM have any other arrangement**
13 **that they were going to make with regard to the**
14 **Delphi pensions?**
15 A With PBGC?
16 **Q Well, with respect to the Delphi**
17 **pensions itself. I mean, there was -- at least as**
18 **it turned out, GM --**
19 MR. MENKE: I object. Are we just
20 talking about board context, or are we talking
21 about something entirely different here.
22 MR. O'TOOLE: We are talking about

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1 board context.
2 BY MR. O'TOOLE:
3 **Q I'm assuming that the reports were**
4 **continuing to go to the board on these matters**
5 **with respect to the --**
6 A PBGC's involvement.
7 **Q PBGC's involvement.**
8 MR. MENKE: You launched into sort of
9 questions of this witness about what GM's
10 interests were with respect to new Delphi which I
11 don't know had anything -- there's no indication
12 at the moment that that has anything to do with
13 PBGC's board.
14 MR. O'TOOLE: Well, I believe -- and I
15 can't remember which exhibit this was -- but there
16 was a report to the board from Mr. Snowbarger in
17 July of 2009 that suggests that GM was involved in
18 the decision-making process. And I was just
19 trying to ask questions about what was meant by
20 that report to the board.
21 And, so, GM's involvement was suggested
22 in this report. I'm just trying to find out

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1 exactly what was meant.
2 BY MR. O'TOOLE:
3 **Q And, so, I guess the question I would**
4 **have at this point is was there any discussion in**
5 **terms of GM's involvement of what's been referred**
6 **to -- and you may or may not understand this term,**
7 **and if you don't, we can talk -- of top-ups with**
8 **respect to the hourly plan.**
9 A There was no agreement or any
10 conversation about -- there was no agreement with
11 PBGC about top-ups. There was an agreement
12 between General Motors and other parties,
13 including United Auto Workers -- there may have
14 been others involved -- about top-up of the hourly
15 plans.
16 **Q Did PBGC ever take a position on**
17 **top-ups and then discuss it with its board with**
18 **respect to whether or not top -- the top-ups would**
19 **be a follow-on plan?**
20 A No.
21 **Q That never -- that --**
22 A We had discussions with the board about

41 (Pages 158 to 161)

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1 the existence of the top-up agreement, but there
2 was no discussion beyond that.
3 **Q What about internally at PBGC; was**
4 **there any discussion of whether or not these --**
5 **these top-ups would constitute follow-on plans?**
6 MR. MENKE: I object and caution the
7 witness that to the extent he is -- would testify
8 about conversations with PBGC attorneys on this
9 topic, he may be revealing confidential
10 attorney-client privileged matters, and I would
11 ask that he consider that before answering the
12 question.
13 BY MR. O'TOOLE:
14 **Q Let's just start as to whether the**
15 **conversations occurred. And then if -- and then**
16 **if we -- we -- there are -- there were such**
17 **conversations, we can talk about who they were**
18 **with and whether or not the content of them is**
19 **privileged.**
20 **And do you recall any contents**
21 **[verbatim] occurring?**
22 A I raised questions about that and

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1 talked to our attorneys about it.
2 **Q Do you recall when you would have**
3 **raised questions about that?**
4 A I don't recall specifically, but it
5 would have been -- it would have been fairly early
6 in the process when I first heard about the top-up
7 arrangements.
8 **Q Okay. And that --**
9 A I can't tell you whether that was 2005,
10 2008, early 2009, but it was long before this
11 point in time.
12 **Q Okay. Let's --**
13 **MR. O'TOOLE: I want to go to this**
14 **(indicating).**
15 MR. KHALIL: Sure.
16 MR. O'TOOLE: This is going to be
17 Exhibit 29.
18 (PBGC/Snowbarger Deposition Exhibit 29
19 was marked for identification and attached to the
20 transcript.)
21 THE WITNESS: (Reviews document.)
22 BY MR. O'TOOLE:

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1 **Q Now, Exhibit 9 [sic] appears to be an**
2 **email that's dated September 4, 2009 at 4:13 p.m.;**
3 **is that correct?**
4 A Yes, sir.
5 **Q And it's from Andrea Wong. Who is**
6 **Andrea Wong?**
7 A Andrea is -- she's a PBGC employee. I
8 think she is with the office of chief counsel.
9 **Q Is she an attorney?**
10 A I believe that's correct.
11 **Q And she's sending an email to Terrence**
12 **Deneen. Who is Terrence Deneen?**
13 A Terry Deneen is the chief insurance
14 programs officer.
15 **Q Is he an attorney?**
16 A Yes.
17 **Q He was the one negotiating with the**
18 **Treasury Department; is that correct?**
19 A I don't know if that's an accurate
20 characterization. He may have been involved in
21 conversations with the Treasury Department. Joe
22 House would have been our primary point of contact

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1 with the Treasury.
2 **Q Okay. The only reason I mentioned that**
3 **question is I believe he was in the meeting**
4 **discussed in the June 2009 emails where**
5 **Treasury -- the decisions were made email in which**
6 **there was Joe and Terry --**
7 A Yes.
8 **Q -- I think, who were called to**
9 **Treasury.**
10 **That would be Terry who was called to**
11 **Treasury; is that correct?**
12 A Yes.
13 **Q Terrence Deneen would have been the**
14 **Terry of the Terry and Joe; is that right?**
15 A Yes.
16 **Q Okay. And I think we've gone over most**
17 **of these names, but who is Charles Finke?**
18 A He is also an attorney in the office of
19 chief counsel.
20 **Q What about Michael Rae?**
21 A Michael Rae is the deputy to Terry
22 Deneen.

42 (Pages 162 to 165)

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1 **Q And Michael Maricco?**
2 A I don't -- that one is unfamiliar to
3 me.
4 **Q Now, does this email refresh your**
5 **recollection with respect to questions that you**
6 **had about the follow-on policy, or is this**
7 **reflecting something different?**
8 A I think it was a continuing question
9 that I had, but it doesn't -- it doesn't refresh
10 my memory, no.
11 **Q You had continuing questions about**
12 **whether or not the top-ups were of follow-on**
13 **policy?**
14 A Yes.
15 **Q And this is a memo that's sent in**
16 **September 2009 that was requested with respect to**
17 **those questions?**
18 A I don't recall specific -- I mean, I
19 didn't talk with Andrea Wong about it specifically
20 that I recall, and without looking at the memo, I
21 don't know.
22 **Q Do you recall -- so you don't recall**

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1 **this memo off the top of your head?**
2 A Not off of top of my head, no.
3 **Q Okay. Do you recall any other memos**
4 **that were written on this issue?**
5 A No.
6 **Q Do you think there were -- there were**
7 **more than one?**
8 A I think I just answered the question I
9 don't recall.
10 **Q Okay. Just one more question on the**
11 **top-ups. I think we may have already discussed**
12 **it.**
13 **Did you ever report to the board in any**
14 **way, either in writing or orally, about your**
15 **concerns about the top-up policy and the potential**
16 **that they would have been a follow-on plan?**
17 A I don't recall.
18 **Q So no recollection --**
19 A I have no recollection.
20 **Q You're not saying you didn't, but**
21 **you're not saying that you did?**
22 A Correct.

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1 **Q Okay.**
2 **MR. O'TOOLE: This is Exhibit 30.**
3 **(PBGC/Snowbarger Deposition Exhibit 30**
4 **was marked for identification and attached to the**
5 **transcript.)**
6 **BY MR. O'TOOLE:**
7 **Q I'm going to direct your attention to**
8 **the last page of this. I believe it's -- no, it's**
9 **not the last page of the exhibit, but it's the**
10 **page AR000003, which is the Notice Of**
11 **Determination.**
12 A Okay.
13 **Q This was the notice of determination**
14 **that you signed in July of 2009; is that**
15 **correct --**
16 A Correct.
17 **Q -- or a copy of it?**
18 **And this was the irrevocable decision**
19 **that you made with respect to the Delphi salaried**
20 **retiree plan; is that correct?**
21 A It's not irrevocable.
22 **Q How can you revoke it?**

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1 A We cannot proceed --
2 **Q Even after you --**
3 A -- on terminating the plan. Yes. The
4 significance of the notice of determination is
5 that that becomes public. And, when it becomes
6 public, that creates other kinds of issues both
7 with the company in its ability to try to meet --
8 reorganize or sell assets or those kinds of
9 things. So we -- that's sort of the last step.
10 **Q This is a public decision; is that**
11 **correct?**
12 A Yes, it makes public that decision.
13 **Q And it's subject to challenge at some**
14 **point; is that correct?**
15 A Yes.
16 **Q That's --**
17 A Yes.
18 **Q That's what this lawsuit is about; is**
19 **that correct?**
20 A That's correct.
21 **Q Right. There's -- there's requirements**
22 **in ERISA, it's your understanding, that you can**

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1 **challenge a determination like that; correct?**
2 MR. MENKE: Objection: calling for a
3 legal conclusion on legal issues from the witness.
4 He can answer if he can, but I caution him not to
5 state legal positions.
6 THE WITNESS: I'll take advice of
7 counsel.
8 BY MR. O'TOOLE:
9 **Q I think he advised you you can answer**
10 **the question.**
11 A I know he did.
12 **Q Okay. And --**
13 A He also said that I didn't need to.
14 **Q Well, I don't think he instructed you**
15 **not to.**
16 A I understand that.
17 **Q Okay. So --**
18 MR. MENKE: I asked him not to take
19 legal positions since he's neither -- he is not in
20 a legal position with the agency or here as a
21 lawyer.
22 BY MR. O'TOOLE:

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1 **Q Well, you understand -- you were the**
2 **head of the agency; is that correct?**
3 A Yes, at that point in time.
4 **Q Right. You have some understanding of**
5 **ERISA; is that correct?**
6 A I hope so.
7 **Q You're not a lawyer, but --**
8 A I am a lawyer.
9 **Q Oh, you are a lawyer?**
10 A (Witness nods head.)
11 **Q That's good to know.**
12 **So as a lawyer and the head of the**
13 **agency and someone who is familiar with ERISA,**
14 **your understanding, is it not, is that this notice**
15 **of determination is subject to judicial review; is**
16 **that correct?**
17 A Yes.
18 MR. MENKE: Objection: again, asking
19 for a legal position from the witness that is not
20 at PBGC as a lawyer.
21 MR. O'TOOLE: He was a lawyer and was
22 the head of the agency and knows about ERISA. But

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1 we've got an answer.
2 MR. MENKE: He's not a legal officer of
3 the agency.
4 MR. O'TOOLE: We'll move on.
5 We're done subject to one objection.
6 We haven't gotten all of the documents that we
7 have requested. I believe some are being withheld
8 on grounds of privilege which is currently subject
9 to challenge. And, so, we will reserve the right
10 to continue this deposition if documents are
11 produced that is relevant to the topics that we
12 have discussed and we get them after the
13 deposition closes.
14 But with that reservation, we're done.
15 MR. MENKE: Thank you. Could we
16 have -- go off the record and have a brief break?
17 MR. O'TOOLE: Sure.
18 MR. MENKE: Thank you.
19 (Recess -- 1:30 p.m.)
20 (After recess -- 1:35 p.m.)
21 MR. MENKE: I have just a handful of
22 questions to clarify a point. That's all. So

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1 whenever we're ready we can go back on the record.
2 EXAMINATION BY COUNSEL FOR THE DEFENDANT
3 BY MR. MENKE:
4 **Q Mr. Snowbarger, I would like to**
5 **redirect your attention back to your Exhibit 30**
6 **that was discussed right at the end of the**
7 **plaintiff's questioning in this deposition. And**
8 **to page -- I believe it was page AR multiple 03.**
9 A Okay.
10 **Q AR, five zeros, 3, I believe, AR000003.**
11 **And I believe it was your testimony**
12 **that this was, in fact, the notice of**
13 **determination with respect to the Delphi salaried**
14 **plan that you had signed on or about July 20th,**
15 **2009; is that -- is that a correct**
16 **characterization of your testimony?**
17 A That's correct.
18 **Q Thank you. And I believe you also**
19 **testified that issuing this notice of**
20 **determination was not an irrevocable action by**
21 **PBGC; is that correct?**
22 A That's correct.

44 (Pages 170 to 173)

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1 **Q Can you explain what you mean by**
2 **"irrevocable action" in this context?**
3 A Well, I presume it -- that the action
4 becomes irrevocable once the plan has been
5 terminated and a notice of determination is just a
6 notice that PBGC considers that this plan should
7 be terminated. And we're required to either go
8 through a court process or get agreement from the
9 plan sponsor that actually effectuates the
10 termination of the plan.
11 **Q Okay. So, correct me if I'm wrong, but**
12 **paraphrasing your testimony, you would not**
13 **consider an action to be irrevocable until PBGC**
14 **either received a court decree terminating the**
15 **plan or the plan had been terminated by agreement**
16 **with the -- by an administrator; is that correct?**
17 A That's correct.
18 **Q And until that -- up to that point, the**
19 **termination process could be stopped; is that**
20 **correct?**
21 A That's correct.
22 **Q Is it your understanding that after**

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1 **issuing this notice of determination PBGC could**
2 **withdraw it and the plan would not be terminated?**
3 A Could you restate the question?
4 **Q Okay. Is it your understanding that,**
5 **say -- well, let's take a hypothetical.**
6 **If on July 21st PBGC changed its mind**
7 **or events occurred that made, in PBGC's view, the**
8 **termination of the pension plan not necessary,**
9 **PBGC could withdraw the notice of determination**
10 **and the plan would simply continue?**
11 A Yes.
12 MR. MENKE: I have no further
13 questions. Thank you.
14 MR. O'TOOLE: I just have a couple.
15 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
16 BY MR. O'TOOLE:
17 **Q Can you look at the bottom of the last**
18 **paragraph, the second one, on page -- on the**
19 **notice of determination, the part that begins**
20 **with, PBGC has completed?**
21 A Yes.
22 **Q Can you just read that?**

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1 A It says, PBGC has completed its
2 decision-making process in this matter;
3 accordingly, this determination is effective on
4 the date it is issued.
5 **Q That's in the notice of determination**
6 **itself?**
7 A Yes.
8 **Q The word is "completed"; is that**
9 **correct?**
10 A Our decision-making process is
11 completed, yes. We have made the decision that
12 this plan needs to be terminated.
13 **Q As of July 20th, 2009?**
14 A Yes.
15 MR. MENKE: Actually, objection. That
16 mischaracterizes the testimony or at least is
17 vague. The -- I would note that in reflection it
18 reflects a date of July 22nd, 2009 as the date on
19 which the plan would be terminated.
20 BY MR. O'TOOLE:
21 **Q And with that clarification, so**
22 **July 22nd, this document says that PBGC had**

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1 **completed its decision-making; is that correct?**
2 A Yes.
3 **Q You mentioned earlier that there were**
4 **two ways to terminate a pension plan, one being by**
5 **agreement and the other being by court process; is**
6 **that correct?**
7 A Yes.
8 **Q That's your view of this, but you**
9 **understand that that's one of the questions**
10 **presented in this lawsuit; is that correct?**
11 A Yes.
12 MR. O'TOOLE: Okay. No further
13 questions.
14
15
16
17 (Signature having not been waived, the
18 30(b)(6) Deposition of PENSION BENEFIT GUARANTY
19 CORPORATION, By and Through its Corporate
20 Designee, VINCENT K. SNOWBARGER, ended at
21 1:39 p.m.)
22

45 (Pages 174 to 177)

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1 ACKNOWLEDGMENT OF DEPONENT
 2 I, Vincent K. Snowbarger, do hereby
 3 acknowledge that I have read and examined the
 4 foregoing testimony, and the same is a true,
 5 correct and complete transcription of the
 6 testimony given by me and any corrections appear
 7 on the attached Errata sheet signed by me.
 8
 9
 10
 11 _____
 12 (DATE) (SIGNATURE)
 13
 14
 15 CERTIFICATE OF NOTARY PUBLIC
 16 Sworn and subscribed to before me this
 17 _____ day of _____,
 18 _____
 19 _____
 20 _____
 21 NOTARY PUBLIC MY COMMISSION EXPIRES
 22

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
 2 I, Dana C. Ryan, Registered Professional
 3 Reporter, Certified Realtime Reporter, the officer
 4 before whom the foregoing proceedings were taken
 5 do hereby certify that the foregoing transcript is
 6 a true and correct record to the best of my
 7 ability of the proceedings; that said proceedings
 8 were taken by me stenographically and thereafter
 9 reduced to typewriting under my supervision; and
 10 that I am neither counsel for, related to, nor
 11 employed by any of the parties to this case and
 12 have no interest, financial or otherwise, in its
 13 outcome.
 14 IN WITNESS WHEREOF, I have hereunto set
 15 my hand and affixed my notarial seal this 17th day
 16 of March 2013.
 17 My Commission expires:
 18 July 15, 2015
 19 _____
 20 _____
 21 NOTARY PUBLIC IN AND FOR THE
 22 DISTRICT OF COLUMBIA

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1 ERRATA SHEET
 2 IN RE: DENNIS BLACK, et al. v. PENSION BENEFIT
 3 GUARANTY CORPORATION
 4 RETURN BY: _____
 5 PAGE LINE CORRECTION AND REASON
 6 _____
 7 _____
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 16 _____
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 20 _____
 21 _____
 22 (DATE) (SIGNATURE)

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1 ERRATA SHEET
 2 IN RE: DENNIS BLACK, et al. v. PENSION BENEFIT
 3 GUARANTY CORPORATION
 4 RETURN BY: _____
 5 PAGE LINE CORRECTION AND REASON
 6 _____
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 19 _____
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 21 _____
 22 (DATE) (SIGNATURE)

46 (Pages 178 to 181)

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In The Matter Of:

DENNIS BLACK, et al.

v.

PENSION BENEFIT GUARANTY CORPORATION

C. DANA CANN - Vol. 1

March 25, 2013

MERRILL LAD

1325 G Street NW, Suite 200, Washington, DC
Phone: 800.292.4789 Fax: 202.861.3425

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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|
DENNIS BLACK, et al., |
|
Plaintiffs, |
|
| Case No.
vs. | 2:09-CV-13616
|
PENSION BENEFIT GUARANTY |
CORPORATION, |
|
Defendant. |
|
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30(b)(6) Deposition of
PENSION BENEFIT GUARANTY CORPORATION
BY AND THROUGH ITS REPRESENTATIVE
C. DANA CANN
Washington, D.C.
March 25, 2013
10:00 a.m.

Job No. 1-230704

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Reported by: Michele E. Eddy, RPR, CRR, CLR

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6	forwarding an e-mail dated 1-31-09	6	forwarding an e-mail dated 5-12-09
7	from Rodney O'Neal to Vince	7	from Michael Riela to Andrew Yearley
8	Snowbarger; PBGC-BL-0187271-72	8	and others; PBGC-BL-0059061-063
9	Exhibit 11 E-mail dated 2-9-09 from Joe House 107	9	Exhibit 23 Two e-mails dated 5-13-09 between 164
10	to Todd Snyder with Treasury memo	10	Matthew Feldman and Joseph House;
11	attachment; PBGC-BL-0058205-209	11	PBGC-BL-0058204
12	Exhibit 12 Memo dated 2-13-09 Memo from 110	12	Exhibit 24 E-mail dated 5-22-09 from Matthew 165
13	Phillip Siegel to Kristina Archeval	13	Feldman to Joseph House;
14	and Dana Cann; PBGC-BL-0184871-878	14	PBGC-BL-0058140
15	Exhibit 13 E-mail dated 3-11-09 from Joe House 112	15	Exhibit 25 E-mail dated 5-27-09 from Dana Cann 167
16	to Todd Snyder; PBGC-BL2-00611463	16	to Joseph House, forwarding an e-mail
17	Exhibit 14 E-mail chain; top e-mail dated 117	17	dated 5-27-09 from Matthew Fuller to
18	3-14-09 from Joe House to Karen	18	Andrew Yearley and others;
19	Morris, Dana Cann, and Michael Rae;	19	PBGC-BL2-00015018-19
20	PBGC-BL-0187238-239	20	Exhibit 26 E-mail dated 5-28-09 from John 170
21	Exhibit 15 "Key Emergence Issues," dated 120	21	Butler to Matthew Feldman;
22	3-20-09; PBGC-BL-0013263-264	22	110224-054417 through 054118

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<p>1 EXHIBIT INDEX CONTINUED</p> <p>2</p> <p>3 DEPOSITION EXHIBIT PAGE</p> <p>4 Exhibit 27 E-mail chain; top e-mail dated 173</p> <p>5 6-2-09 from Walter Borst to Harry</p> <p>6 Wilson; TREAS_FOIA_00000115-117</p> <p>7 Exhibit 28 Two e-mails dated 6-3-09 between 178</p> <p>8 Joseph House and Matthew Feldman;</p> <p>9 PBGC-BL-0058249</p> <p>10 Exhibit 29 E-mail dated 6-4-09 from Joe House 179</p> <p>11 to Matthew Feldman; PBGC-BL-0058203</p> <p>12 Exhibit 30 Two e-mails dated 6-9-09 between 179</p> <p>13 Joseph House and Matthew Feldman;</p> <p>14 PBGC-BL-0058170</p> <p>15 Exhibit 31 E-mail dated 5-29-09 from Robert 184</p> <p>16 Rosenberg to Andrew Yearley and</p> <p>17 others; PBGC-BL-0172538</p> <p>18 Exhibit 32 E-mail chain; top e-mail dated 187</p> <p>19 6-25-09 from Dana Cann to David</p> <p>20 Burns, Joe House, and John Menke;</p> <p>21 PBGC-BL-0061195</p> <p>22</p>	<p>1 PROCEEDINGS</p> <p>2 C. DANA CANN,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>5 BY MR. O'TOOLE:</p> <p>6 Q Good morning.</p> <p>7 A Good morning.</p> <p>8 Q Can you just state your full name for the</p> <p>9 record so that the court reporter can take it down?</p> <p>10 A Sure. Charles Dana Cann.</p> <p>11 Q Mr. Cann, have you ever been deposed before?</p> <p>12 A No.</p> <p>13 Q Do you understand the rules of the</p> <p>14 deposition?</p> <p>15 A I've been explained by my lawyers. That's</p> <p>16 as much as I know.</p> <p>17 Q So basically what's going to happen today is</p> <p>18 I'm going to ask you questions. Do you understand</p> <p>19 that?</p> <p>20 A Yes.</p> <p>21 Q And you're going to answer truthfully to the</p> <p>22 best of your ability.</p>
Page 11	Page 13
<p>1 EXHIBIT INDEX CONTINUED</p> <p>2</p> <p>3 DEPOSITION EXHIBIT PAGE</p> <p>4 Exhibit 33 E-mail chain; top e-mail dated 197</p> <p>5 6-30-09 from Michael Rae to Joseph</p> <p>6 House; PBGC-BL-0170325</p> <p>7 Exhibit 34 E-mail dated 7-7-09 from Joseph 200</p> <p>8 House to Matthew Feldman, Oren Haker,</p> <p>9 and Paul Nathanson, plus attachment;</p> <p>10 UST/HWM 002764-67</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 A Right.</p> <p>2 Q And this sort of deposition, I'm not sure if</p> <p>3 you understand, is a deposition where we've asked the</p> <p>4 PBGC, the Pension Benefit Guaranty Corporation, to</p> <p>5 designate a spokesperson, and you've been designated</p> <p>6 as the spokesperson on certain issues to talk about</p> <p>7 with respect to the Black versus PBGC lawsuit.</p> <p>8 Do you understand that?</p> <p>9 A That's my understanding, yes.</p> <p>10 Q When I ask questions, you'll need to answer</p> <p>11 audibly so that the court reporter can take it down.</p> <p>12 Any other questions about how the deposition</p> <p>13 works?</p> <p>14 A No.</p> <p>15 Q So are you currently employed by the PBGC?</p> <p>16 A Yes.</p> <p>17 Q What's your job title?</p> <p>18 A Financial analyst.</p> <p>19 Q How long have you had that job title?</p> <p>20 A I've had that job title since 1999.</p> <p>21 Q Was that your first job title, or have you</p> <p>22 had others?</p>

4 (Pages 10 to 13)

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1 A That was my -- it's really my only job
2 title, although I've assumed manager roles at PBGC
3 from time to time, just as an acting manager.
4 **Q Do you have a formal managerial title?**
5 A Acting manager.
6 **Q Is that your current title or -- if not,**
7 **what years have you had that title for?**
8 A I had that title probably -- definitely in
9 2010, 2011, and there were a couple times prior to
10 that when my manager was on maternity leave.
11 **Q What was your job responsibility during the**
12 **period from, say, June of 2008 through August of 2009?**
13 A I was a financial analyst at PBGC.
14 **Q And what are the responsibilities of a**
15 **financial analyst?**
16 A Well, what we do in our group -- it was at
17 that time the Department of Insurance Supervision and
18 Compliance. It's now called Corporate Finance and
19 Restructuring Group.
20 **Q So the name has changed?**
21 A The name has changed.
22 **Q Have the responsibilities changed at all?**

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1 A No.
2 **Q So what's the current title again?**
3 A Corporate Finance and Restructuring
4 Department.
5 **Q But does that -- why did the name change?**
6 A Because no one could figure out what the
7 Department of Insurance Supervision and Compliance
8 did.
9 **Q So the Corporate Finance title probably more**
10 **accurately describes what your division does?**
11 A I think it does.
12 **Q What exactly is that? On a day-to-day**
13 **basis, what does your division do, and then what do**
14 **you do as a financial analyst?**
15 A We, along with my colleagues in the Office
16 of Chief Counsel, we're kind of front end of the
17 pension insurance system. We work with ongoing
18 pension plan sponsors, and we are charged with keeping
19 pension plans ongoing, and at some point that may or
20 may not be possible, at which time our charge shifts
21 to risk mitigation and recovery maximization.
22 **Q So in terms of working with corporate**

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1 **sponsors, is one of your responsibilities to identify**
2 **corporate -- corporations who may present problems in**
3 **terms of their pension plans?**
4 A Yes.
5 **Q How do you go about doing that?**
6 A A number of ways. We monitor news stories.
7 We get news alerts through our e-mail on a portfolio
8 of companies. We get alerts through Moody's and
9 Standard & Poor's. We also track prices of debt
10 issues to see where movement is happening.
11 **Q Prices of debt issues, is that basically**
12 **looking for companies that have a large amount of debt**
13 **or an unusual amount of debt?**
14 A No, it's really looking at companies where
15 the debt is not trading at par, and maybe it's moved a
16 lot from par to a different amount.
17 **Q What did you do to prepare for today's**
18 **deposition?**
19 A I met with these guys, my OCC counsel. I
20 met with them a couple of times, maybe a total of
21 three and a half hours. And I read some of the
22 documents from the 2008, 2009 period.

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1 **Q Did you talk to anybody else besides counsel**
2 **in preparing for this?**
3 A Well, I talked with Cindy Travia, who I
4 think you deposed maybe a week or two ago. I just
5 asked her about her deposition.
6 **Q Great.**
7 **Anyone else?**
8 A I also attended the prep session for Vince
9 Snowbarger.
10 **Q When was that?**
11 A I would say probably two or three weeks ago.
12 I'm not sure.
13 **Q Now, you talked in terms of your job**
14 **responsibility in terms of identifying companies that**
15 **may be at risk in terms of pensions; is that right?**
16 A That's right.
17 **Q And at some point, the Delphi company became**
18 **one of those corporations that you'd identified at**
19 **risk; is that correct?**
20 A Correct.
21 **Q How did you do that?**
22 A Delphi -- first of all, it was a large

5 (Pages 14 to 17)

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1 exposure for PBGC, so we were keenly interested in
2 what was going on at the company. I wasn't with the
3 PBGC at the time of the spin-off, but I was monitoring
4 it a few years later. And in 2005, they were doing a
5 financing transaction in the April 2005 time frame
6 that we became interested in and looked at at that
7 time.
8 **Q Which transaction was that?**
9 A They were refinancing some outstanding debt.
10 **Q Can you talk a little bit more about why**
11 **that gave you concern?**
12 A That gave us concern because, at the time,
13 Delphi had either just been downgraded from investment
14 grade to below investment grade or was being
15 downgraded during that process, and the new debt was
16 going to be secured debt as opposed to unsecured debt,
17 which the old debt was.
18 **Q Now, you said this was in 2005 but that you**
19 **had had concerns about Delphi before that. Do you**
20 **know when you first became concerned about Delphi?**
21 A Well, again, it was one of our largest
22 exposures, but that was the first, kind of, triggering

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1 event. I think probably the downgrade in the credit
2 rating coupled with the refinancing.
3 **Q But was it on your radar screen before that?**
4 A Yes, it was by virtue of the fact that it
5 was a large exposure for PBGC.
6 **Q But for no other reason at that point?**
7 A Correct.
8 **Q So after you became -- after Delphi became**
9 **something that you were watching actively, when did**
10 **you formally get assigned to work on a Delphi matter**
11 **at the PBGC?**
12 A It was in my monitoring portfolio, I don't
13 recall what year, probably beginning in 2004, so I
14 would have been following the news at that time. The
15 first time we contacted Delphi was in conjunction with
16 this refinancing in April of 2005.
17 **Q Who did you contact at Delphi?**
18 A John Sheehan.
19 **Q Anyone else that you had contact with in the**
20 **2005 time frame?**
21 A There were others.
22 **Q Do you remember who?**

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1 A I don't recall.
2 **Q On the PBGC side, was it only you working on**
3 **this matter, or were there others?**
4 A There were others. I had counsel working on
5 it. There were various lawyers at that time.
6 **Q PBGC lawyers?**
7 A PBGC lawyers, in-house lawyers. My boss,
8 Kristina Archeval, was involved. And her boss, John
9 Spencer, was involved.
10 **Q Who is John Spencer?**
11 A John Spencer was -- at the time he was the
12 director of DISC.
13 **Q When did he leave DISC?**
14 A I think it was the summer of 2007.
15 **Q Who replaced him?**
16 A Joe House.
17 **Q How long did Joe House stay at DISC?**
18 A I believe Joe -- I'm getting my years
19 confused. Joe either left in 2010 or 2011. I don't
20 recall.
21 **Q And for that entire time, he was the head of**
22 **DISC?**

Page 21

1 A Correct.
2 **Q When we say "DISC," what are we referring**
3 **to?**
4 A The Department of Insurance Supervision and
5 Compliance.
6 **Q All right.**
7 **So once you started working on the Delphi**
8 **matter, can you just describe basically what you would**
9 **have done in the 2005 to, say, 2007 time frame.**
10 A In 2005, like I said, there was a
11 refinancing transaction. We contacted the company.
12 We would have gotten actuarial information to measure
13 the -- better measure our exposure. And when we get
14 the actuarial information, that all goes to our
15 actuaries to do a calculation on how underfunded the
16 plan is at that time.
17 **Q Let me stop you there. So you would get**
18 **actuarial information from Delphi; is that right?**
19 A Correct.
20 **Q And also Delphi's actuaries; is that**
21 **correct?**
22 A Yes.

6 (Pages 18 to 21)

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1 **Q Do you remember who they would have been?**
2 A I want to say Watson Wyatt, but I don't
3 know.
4 **Q And then after you get this information, you**
5 **would have it run through the PBGC actuaries; is that**
6 **also correct?**
7 A Correct.
8 **Q And who were the PBGC actuaries?**
9 A I believe it was Cindy Travia at that time,
10 but I don't recall.
11 **Q So I stopped you. You were talking about**
12 **you were getting the actuarial information. What else**
13 **did you do in this 2005 to 2007 time frame?**
14 A Well, in conjunction with the refinancing,
15 again, we would have received information or the
16 details of the financing, and I know we met with
17 Delphi in May of 2005. They came to our offices for a
18 meeting.
19 **Q What was the purpose of that meeting?**
20 A To discuss the refinancing and how that
21 refinancing might affect the pensions.
22 **Q Was there any discussion at that point in**

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1 **time of funding waivers for the pensions, that is,**
2 **Delphi getting a waiver, I guess, from the IRS, but,**
3 **as I understand it, the PBGC sometimes at least**
4 **facilitates that process in terms of missing payments**
5 **but then making them up later. Was there any**
6 **discussion of that at that point in time?**
7 MR. MENKE: Objection to the extent he
8 characterizes the waiver process incorrectly.
9 **Q Why don't you describe the waiver process**
10 **for us.**
11 A The waiver process generally includes the
12 company making an application to the IRS. The IRS,
13 with certain size waivers, will seek our input on the
14 waiver itself and on the collateral that might satisfy
15 us for issuing a waiver.
16 **Q And what kinds of collateral are we usually**
17 **talking about?**
18 A Usually assets of the company.
19 **Q Would PBGC get those assets, or would they**
20 **put liens on those assets? What would they do with**
21 **those assets to secure the waiver?**
22 A We would file liens against those assets.

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1 **Q Before companies go to the IRS, does PBGC**
2 **ever have discussions with them about the waiver**
3 **process?**
4 A Sometimes.
5 **Q What about with Delphi?**
6 A No.
7 **Q No discussions with Delphi?**
8 A Are we still in 2005?
9 **Q Let's start with 2005.**
10 A No.
11 **Q When were the first discussions with Delphi**
12 **about the waiver process?**
13 A If I remember correctly, I think the first
14 discussions about a waiver were in 2007.
15 **Q About when in 2007, if you remember?**
16 A I don't remember. I'm thinking April. I
17 don't know.
18 **Q Do you remember who those discussions were**
19 **with at Delphi?**
20 A They would have been with John Sheehan and
21 Karen Cobb.
22 **Q Were you part of those discussions?**

Page 25

1 A Yes.
2 **Q Anybody else from PBGC?**
3 A Yes, the same team that would have worked on
4 the case.
5 **Q Let's fast-forward now to 2009. At this**
6 **point -- January of 2009. At this point there's a lot**
7 **of talk about Delphi within PBGC; is that correct?**
8 A That's correct.
9 **Q And, also, now the President has established**
10 **an Auto Task Force to work on automobile issues**
11 **arising in conjunction with the TARP; is that right?**
12 A I don't know. The President took over in --
13 toward the end of January. I don't know exactly when
14 they established the Auto Task Force.
15 **Q But sometime around that time frame?**
16 A Correct.
17 **Q And there was some discussion -- the Auto**
18 **Task Force is at least primarily or primarily charged**
19 **with the auto companies like General Motors, is that**
20 **correct, and Chrysler?**
21 A Right. Prior to the formation of the Auto
22 Task Force, the Treasury had issued loans to Chrysler

7 (Pages 22 to 25)

Page 26

1 and General Motors.
2 **Q And what is the -- what's the role of the**
3 **Auto Task Force at this point, as you understand it?**
4 A As I understand the Auto Task -- the role of
5 the Auto Task Force at that point is to restructure
6 the automotive industry.
7 **Q And restructure it how?**
8 A Let me back up. Not restructure the
9 automotive industry, but restructure those companies
10 that were seeking or needing government financing.
11 **Q And GM, General Motors, was one of those**
12 **companies, right?**
13 A Right.
14 **Q And what's the relationship, as you**
15 **understand it, between Delphi and General Motors?**
16 A In 2009?
17 **Q In 2009.**
18 A Delphi was General Motors' largest supplier.
19 **Q Do you have any idea what percentage of**
20 **parts Delphi was making for General Motors?**
21 A I don't remember.
22 **Q Any ballpark idea?**

Page 27

1 A I don't remember.
2 **Q More than 50 percent or less than 50**
3 **percent?**
4 A I would say it was less than 50 percent of
5 the parts, but I would also say in 2009 most of
6 General Motors' plants were idle because of excess
7 inventory and low sales. So Delphi really wasn't
8 supplying many parts to General Motors in 2009.
9 **Q But in terms of General Motors' operating**
10 **plant, assuming that General Motors is actually**
11 **selling what it wants to be selling, is Delphi playing**
12 **a big role in supplying parts to General Motors at**
13 **that time frame?**
14 A I think they're playing a big role, yes.
15 **Q So at some point the Auto Task Force becomes**
16 **interested in Delphi; is that correct?**
17 A There were discussions about Delphi with the
18 Auto Task Force.
19 **Q Between PBGC and the Auto Task Force or**
20 **between Delphi and the Auto Task Force or both of**
21 **those? Can you just describe the discussions?**
22 A We had discussions with the Auto Task Force

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1 about Delphi. I believe Delphi had discussions with
2 the Auto Task Force about Delphi.
3 MR. O'TOOLE: I think I'm going to show you
4 now what we're going to mark as Exhibit 1.
5 (Exhibit 1 was marked for identification and
6 attached to the deposition transcript.)
7 BY MR. O'TOOLE:
8 **Q Just take your time and take a look at that.**
9 **What I'm going to focus on is not necessarily this**
10 **letter, although you're certainly free to read it, but**
11 **the attachment to the letter that has at the top an**
12 **entry that's 2509 and then that page and the following**
13 **page.**
14 A Okay. That's a lot of things, yes.
15 **Q So what this document has been represented**
16 **to us to be is a description of the meetings or**
17 **contacts between PBGC, Delphi, and the Auto Task**
18 **Force. What I would like to do, since you were**
19 **involved in at least some of these, I think, is just**
20 **to walk with you through these and get your**
21 **recollection of these particular meetings, if that's**
22 **okay.**

Page 29

1 A Okay.
2 **Q The first entry is a February 5th, 2009,**
3 **telephone conference between -- regarding Delphi's**
4 **unsuccessful efforts to persuade GM to assume Delphi**
5 **pensions. It notes on here that apparently PBGC and**
6 **Delphi participated in that conference.**
7 **Were you part of that conference, if you**
8 **recall?**
9 A I don't recall.
10 **Q Do you recall hearing about that conference**
11 **or getting a report on that conference?**
12 A I'm sure I would -- if I wasn't on the
13 conference, I would have heard about it, although
14 there were lots of conferences, some of which I was a
15 part of and some of which I wasn't.
16 **Q Let's walk through these and see if you**
17 **remember any of them.**
18 **So the second one is the 2-12-09 entry that**
19 **deals with an in-person meeting of the Delphi**
20 **unsecured creditors committee.**
21 **Do you remember that meeting at all?**
22 A We had monthly meetings at Skadden's offices

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1 in New York that I attended regularly. I probably
2 attended this meeting, but to be honest, they all kind
3 of run together.
4 **Q Understandable. Why don't we ask a few**
5 **general questions about that.**
6 A Okay.
7 **Q First of all, why were you attending**
8 **meetings of the Delphi unsecured creditors committee?**
9 A PBGC was an ex officio member of the Delphi
10 unsecured creditors committee.
11 **Q Why was that?**
12 A Because we were keenly interested in the
13 case. Our exposure was large, and we wanted to be as
14 involved in the bankruptcy as possible.
15 **Q And why did the unsecured creditors want you**
16 **at those meetings or allow you to be at those**
17 **meetings?**
18 A Because we were one of the biggest unsecured
19 creditors of Delphi.
20 **Q So you all had, basically, a common interest**
21 **in protecting the rights of the unsecured creditors;**
22 **is that fair to say?**

Page 31

1 A I would say that's true.
2 **Q And you mentioned that these meetings took**
3 **place every month. Is that right?**
4 A That's right.
5 **Q Do you recall who else would have been**
6 **there?**
7 A For?
8 **Q Well, I guess, how many unsecured creditors**
9 **were there at these meetings?**
10 A I think there were probably, if I remember
11 correctly, maybe seven to nine unsecured creditors on
12 this committee, and then there were a couple of ex
13 officio members of which we were a part of on the
14 committee as well. I think the UAW may have been an
15 ex officio member as well. So there were probably a
16 total of, I would say, 11 or so unsecured creditors at
17 these meetings and various advisors and counsel, and,
18 of course, the committee itself had its own advisors
19 and counsel.
20 **Q Who were the advisors to the committee?**
21 A The law firm was Latham & Watkins, and the
22 financial advisory firm included Mesirrow Financial and

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1 Jefferies and, at that time, Moelis.
2 **Q And who -- are these all consultants?**
3 A They are consultants, investment bankers.
4 **Q Working for the unsecured creditors**
5 **committee at this point?**
6 A Correct.
7 **Q Let's go to the next entry. The next entry**
8 **is February 24th, dealing with the bankruptcy court**
9 **and the retiree medical benefits. I'm assuming you**
10 **probably weren't at that one?**
11 A I was not.
12 **Q What about the telephone conference**
13 **regarding the negotiations with GM, the 2-25-09**
14 **conference?**
15 A I don't know if I was at that.
16 **Q Maybe to speed this up, are there any of the**
17 **meetings that are listed on here that you recall, or**
18 **should we walk through them all just to see if we can**
19 **jog your recollection?**
20 A All the committee meetings, I was likely at.
21 Again, the meetings -- telephone conferences and
22 in-person meetings with the Auto Task Force, I was

Page 33

1 probably at some of those, but I don't recall
2 specifically which ones.
3 **Q Who else would have been at the Auto Task**
4 **Force meetings for PBGC?**
5 A Probably Vince Snowbarger. Probably Joseph
6 House and Terry Deneen.
7 **Q And what about from the Auto Task Force?**
8 A The attendees were typically Steve Rattner
9 and Matt Feldman.
10 **Q What about Harry Wilson, was he ever there?**
11 A Not when I was there. Harry -- I met Harry
12 at that time, but he never attended any of the
13 meetings that I was in.
14 **Q Now, were you on this 3-26-09 call with the**
15 **IRS regarding funding waivers?**
16 A I probably was.
17 **Q Any recollection about that?**
18 A No.
19 **Q How about the 4-21-09 in-person meeting with**
20 **the Department of Labor?**
21 A Yes, I was at that.
22 **Q Do you remember anything about that meeting?**

Page 34

1 A I do.
2 **Q What do you remember?**
3 A I remember it was largely focused on jobs,
4 and the Department of Labor had -- I don't remember if
5 it was their guy or it was the White House's guy who
6 was tasked with jobs in the auto industry and perhaps
7 softening the blow for employees in the auto industry.
8 **Q What do you mean by "softening the blow"?**
9 A I don't know. I think that's just my take
10 on what his task was. I don't know what he did.
11 **Q You mentioned "their guy" and the "White**
12 **House's guy." So their guy would be someone who was**
13 **formally at the Department of Labor; is that right?**
14 A Yes, he -- I'm speaking of the same guy, and
15 I don't remember his name. What I don't remember is
16 whether he was a DOL employee or a White House
17 employee.
18 **Q Is this fairly common that on -- I don't**
19 **want to characterize it for you, but I'll say this,**
20 **and if you disagree, you can disagree -- but on big**
21 **issues like the Delphi matter, that the Department of**
22 **Labor would be involved in briefings on the current**

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1 **status of that matter?**
2 A The Department of Labor is or the Secretary
3 of Labor is on our board. So as a board member they
4 get regularly briefed on big matters at PBGC.
5 **Q Was my characterization fair? Was Delphi a**
6 **big matter for the PBGC?**
7 A Yes.
8 **Q Let's go back very quickly to this 4-8-09**
9 **telephone conference regarding salaried plan, minimum**
10 **funding waiver request, and it has "PBGC and Delphi."**
11 **Were you on that call?**
12 A I don't remember.
13 **Q Any recollection of what that call involved,**
14 **whether you were on it or not?**
15 A There were a lot of discussions at that
16 time. We were kind of grasping at any straws in order
17 to make the Delphi plan affordable. I imagine that's
18 what was going on there.
19 **Q In terms of making the Delphi plan**
20 **affordable, do you have any recollection of what it**
21 **would have cost for Delphi to maintain the salaried**
22 **plan? Did PBGC do projections on that?**

Page 36

1 A We did.
2 **Q When did you do those projections?**
3 A I didn't do them.
4 **Q When did PBGC do those projections?**
5 A I think we were doing those projections
6 fairly regularly during this time period, in winter
7 2009 to spring 2009.
8 **Q Of what it would have cost Delphi to**
9 **maintain the plan?**
10 A Well, really, what it would have cost --
11 what the ongoing funding requirements of the pension
12 plan were.
13 **Q Do you remember seeing those?**
14 A Yes.
15 **Q Do you remember who prepared them?**
16 A Probably Cindy Travia or her outside
17 consultants. I don't know who she was using, but we
18 have outside consultants, actuarial consultants.
19 **Q But if the outside consultants had prepared**
20 **those estimates, would Cindy Travia have seen them?**
21 A She would have. She would have not only
22 seen them, she would have reviewed them for accuracy,

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1 tested them.
2 **Q And what do you recall about those funding**
3 **projections?**
4 A What I recall about those funding
5 projections was that Delphi was significantly behind
6 on contributions to certain plans and that there was
7 going to be required a big true-up of pension
8 contributions should Delphi emerge from Chapter 11
9 with the pension plans ongoing.
10 **Q Any recollection of what the true-up number**
11 **might have been?**
12 A I would think it would be consistent with
13 our lien amounts, which at that time were, for the
14 salaried plan, were in the 160 to 190 million dollar
15 range, but the projections would have gone forward
16 from there, and there would have -- and I don't recall
17 what they were going forward.
18 **Q Any recollection of how long these reports**
19 **were?**
20 A Typically, our funding projections were for
21 five years.
22 **Q Like how many pages would the reports have**

10 (Pages 34 to 37)

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1 **been?**
2 A They're typically summarized to one page.
3 **Q So it would have been a one-page report on**
4 **what Delphi needed to do if they were to keep the**
5 **plan, what sorts of funding contributions they would**
6 **have made and then what sorts of expenses they would**
7 **have needed to undertake over a five-year period; is**
8 **that fair?**
9 A They would have shown or summarized what the
10 ongoing minimum funding -- projected minimum funding
11 requirements for the pension plans were.
12 **Q In these analyses, was there any discussion**
13 **about whether Delphi could amortize these payments so**
14 **that if they got through bankruptcy, they wouldn't**
15 **have to make it all at once but could spread them out**
16 **over time?**
17 A I think we ran various scenarios that --
18 first of all, there aren't a lot of options available
19 for companies to do that sort of thing, but we did run
20 certain scenarios that spread those costs out.
21 **Q And, again, if there's anything on this**
22 **document, Exhibit 1, any of the meetings on here, if**

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1 **you would just look through, that you remember, I**
2 **would love to hear about them. If not, I'll ask you a**
3 **few more questions about specific meetings.**
4 A Okay.
5 Why don't you ask me specific questions.
6 **Q Okay. Let's look at that May 21st, 2009.**
7 A Okay.
8 **Q "Telephone conference with Auto Task Force,**
9 **Auto Task Force PBGC."**
10 **Any recollection of this call?**
11 A Not specifically, no.
12 **Q What about May 28th, 2009, "Telephone**
13 **conference re settlement terms for resolving Delphi**
14 **pension plan issues and PBGC claims"? It looks like**
15 **PBGC, the task force, and U.S. Treasury were on that**
16 **call.**
17 A Yeah, I don't recall.
18 **Q Can I ask you a question about this -- and I**
19 **know you didn't make this document, but it appears on**
20 **this document that Auto Task Force and U.S. Treasury**
21 **are on the call. What's the difference between Auto**
22 **Task Force and U.S. Treasury?**

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1 A I don't know. For this purpose, my
2 understanding -- obviously, when we first started
3 talking to that branch of the government, before there
4 was an Auto Task Force, it was U.S. Treasury. At some
5 point there became an Auto Task Force that was housed
6 at Treasury. So I don't know if it's just shorthand.
7 **Q And the Auto Task Force, as you understood**
8 **it, was -- they answered to the Secretary of the**
9 **Treasury and ultimately to the President; is that**
10 **right?**
11 A That's right.
12 **Q Anyone else that would have been in charge**
13 **of the Auto Task Force besides the Secretary of**
14 **Treasury?**
15 A No.
16 **Q Let's go to the 7-16-09 entry, "Telephone**
17 **conference regarding GM benefit guarantee."**
18 **Do you recall that telephone conference?**
19 A I don't.
20 **Q Do you have any understanding of what the GM**
21 **benefit guarantee -- I guess at this point it would**
22 **have been proposed GM benefit guarantee -- would have**

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1 **involved?**
2 A I think it was the existing GM benefit
3 guarantee.
4 **Q What did that involve?**
5 A It involved an agreement between General
6 Motors and the UAW to pay certain benefits should
7 Delphi fail.
8 **Q And how was that benefit guarantee, how did**
9 **that play out in terms of the hourly plan pension?**
10 A What do you mean, how did it play out?
11 **Q So it sounds like it was PBGC's position or**
12 **the UAW's position that there was a benefit guaranteed**
13 **to certainly hourly workers who used to be in Delphi's**
14 **plan. Ultimately, the hourly plan was terminated; is**
15 **that correct?**
16 A That's correct.
17 **Q So PBGC became responsible for at least some**
18 **of those benefits; is that right?**
19 A That's right.
20 **Q What about the benefits that PBGC wasn't**
21 **responsible for, did the hourly workers get their**
22 **benefits?**

11 (Pages 38 to 41)

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1 A My understanding is they did through the GM
2 benefit guarantee.
3 Q So GM is now paying benefits to these
4 workers after the termination of the hourly plan.
5 A Correct.
6 Q To make up for benefits that were originally
7 guaranteed.
8 A No, to make up -- oh, I'm sorry, guaranteed
9 by whom?
10 Q Guaranteed by GM or guaranteed -- it's the
11 position, I guess, of the UAW is that they were
12 guaranteed by GM.
13 A Right, and I think GM acknowledged that.
14 Q Right.
15 And were there any issues within PBGC with
16 respect to how that payment post termination worked?
17 A It was novel. So we -- it was something we
18 had never seen before so, yes, there were lots of
19 discussions.
20 Q Are you familiar with the term "follow-on
21 plan"?
22 A I am.

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1 Q Can you describe what that means?
2 A My understanding of a follow-on plan is once
3 a plan is terminated and trustee by the PBGC, a
4 follow-on plan would provide additional benefits to
5 participants that may be getting part of our
6 guarantee.
7 Q Vince Snowbarger was the head of the PBGC at
8 this point; is that correct?
9 A I think so.
10 Q He thought this was a follow-on plan, didn't
11 he?
12 MR. MENKE: Objection.
13 Q You can answer.
14 MR. MENKE: You can answer. But it's asking
15 a lot of this witness to know what was in someone
16 else's mind at the time.
17 A I don't know. I mean, you could
18 characterize anything as a follow-on plan. The
19 question is whether it's an abusive follow-on plan.
20 Q Did Vince Snowbarger ever -- did you ever
21 hear him say that he thought this was a follow-on
22 plan?

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1 A I don't remember.
2 Q Did you ever read anything in writing where
3 he had stated that this was a follow-on plan?
4 A I don't think so.
5 Q But did you have any understanding of what
6 Vince Snowbarger's views were on whether this was a
7 follow-on plan?
8 A There were lots of discussions within the
9 building at that time about what this was, and I think
10 there were discussions about whether this was a
11 follow-on plan.
12 Q And who were those discussions among?
13 A They were probably among the case team and
14 the lawyers, and I imagine it went higher than that,
15 but I don't know.
16 Q Were there -- was there a significant view
17 in the PBGC, more than one person who thought this
18 might be a follow-on plan?
19 A I don't know.
20 Q Did you ever hear that there was a concern
21 within PBGC that this might be a follow-on plan?
22 A Yes.

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1 Q Were you at meetings when this concern was
2 expressed?
3 A Yes.
4 Q Do you remember who expressed these
5 concerns?
6 A There were lots of people at these meetings.
7 I don't know.
8 Q More than one?
9 A More than one?
10 Q Person expressing concern.
11 A I think that there was a lot of discussion
12 about the nature of the GM benefit guarantee and what
13 it was.
14 Q And no one had ever seen anything like it;
15 is that right?
16 A My understanding is that's correct.
17 MR. O'TOOLE: Why don't we take a break at
18 this time.
19 (A brief recess was taken.)
20 BY MR. O'TOOLE:
21 Q So before the break, I think we talked about
22 an April 21st, in-person meeting at the Department of

12 (Pages 42 to 45)

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1 **Labor.**
2 A Right.
3 **Q Do you recall that?**
4 A Yes.
5 **Q And you mentioned that you were there. Is**
6 **that correct?**
7 A I was, yes.
8 **Q Can you tell me what you remember about that**
9 **meeting?**
10 MR. MENKE: Objection, asked and answered.
11 The witness can answer.
12 MR. O'TOOLE: Well, I guess maybe if you
13 would like me to focus my question more, I can.
14 BY MR. O'TOOLE:
15 **Q So I think you mentioned that someone was**
16 **there from the Department of Labor, you know, they**
17 **might have been also the White House's person there at**
18 **the Department of Labor. Is that correct?**
19 A That's correct.
20 **Q And you said -- you mentioned that their**
21 **focus was jobs. Is that correct?**
22 A Yes.

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1 **Q Can you describe more what you meant by**
2 **that?**
3 A I think that's, you know, generally
4 Department of Labor's focus. The Secretary of Labor
5 was also there, and --
6 **Q The Secretary of Labor being -- is that**
7 **Secretary Solis?**
8 A Correct.
9 We also -- but the focus of the meeting was
10 kind of generally about what was going on with Delphi
11 at the time. We might have talked about other
12 companies as well. There was a lot going on in the
13 auto industry.
14 **Q Do you remember what was said about Delphi?**
15 A No.
16 **Q Do you remember what Secretary Solis said**
17 **during the meeting?**
18 A My recollection is that the purpose of the
19 meeting was just to bring them up to speed on what was
20 going on in the automotive industry and Delphi
21 specifically. So it would have been just very
22 high-level discussions about what was going on.

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1 **Q Who else was there from PBGC?**
2 A I am confident that my counsel was there. I
3 think Vince was there, but I don't know who else.
4 **Q And are these sorts of meetings with the**
5 **Secretary of Labor or Secretary of Treasury or cabinet**
6 **heads, are they usual in your experience at PBGC?**
7 A They're unusual.
8 **Q How often have you met with the Secretary of**
9 **Labor since you've been at PBGC?**
10 A That was the only time.
11 **Q And how long have you been at PBGC?**
12 A Since 1999.
13 **Q I'm going to show you now what we're going**
14 **to mark as Exhibit 2.**
15 **(Exhibit 2 was marked for identification and**
16 **attached to the deposition transcript.)**
17 BY MR. O'TOOLE:
18 **Q Do you recognize this document?**
19 A I would have written this.
20 **Q It says on the title that it's a summary of**
21 **a conference call with the Delphi Corporation. Is**
22 **this a summary of the sorts of calls that you**

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1 **described earlier in your deposition between PBGC and**
2 **Delphi?**
3 A Correct.
4 **Q Directing your attention to the content of**
5 **the document, this seems to discuss -- it seems that**
6 **the phone call discusses some sort of arrangement**
7 **between GM and Delphi for GM to assume some portion of**
8 **the Delphi pensions. Is that correct?**
9 A I would have to -- do you want me to read
10 it?
11 **Q Please.**
12 **(Pause in proceedings.)**
13 A Okay.
14 **Q Does this refresh your recollection about**
15 **the call at all?**
16 A Yes.
17 **Q So what was discussed on the call?**
18 A I think what's in my summary.
19 **Q So just to kind of paraphrase, at the time**
20 **there's a discussion of a transfer between GM and**
21 **Delphi.**
22 **Can you describe the nature of that**

13 (Pages 46 to 49)

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1 **transfer?**
2 A So at the time Delphi was requesting GM to
3 assume the hourly plan, and in order to get that
4 done -- and here I'm a little out of my league
5 actuarially, but there was a large portion of that
6 that had to get done prior to the fiscal year-end of
7 the hourly plan, which was September 30th, 2008. And
8 so the summary talks about doing the transfer in two
9 tranches, one of which would get done in -- prior to
10 September 30th, 2008, and one would get done later.
11 **Q And why was GM prepared to assume the hourly**
12 **plan in this way, if you know?**
13 A I think that it goes back to the benefit
14 guarantee that GM had with the UAW that they were
15 going to have to make good on that promise anyway.
16 **Q Was there a dispute about that?**
17 A Not that I'm aware of.
18 **Q You also had a discussion in the memo about**
19 **the salaried plan. From the discussion, it looks like**
20 **Mr. Sheehan thought that the salaried plan**
21 **contributions due at emergence would be less than a**
22 **hundred million.**

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1 **Is that your recollection?**
2 A If it's in the memo, that's what he said.
3 **Q Do you remember anything else about your**
4 **discussions during that time frame with Delphi about**
5 **what sorts of contributions or monetary payments would**
6 **be required at emergence from bankruptcy for Delphi if**
7 **they were to keep the salaried plan?**
8 A I don't recall.
9 **Q Let's go to Exhibit 3.**
10 **(Exhibit 3 was marked for identification and**
11 **attached to the deposition transcript.)**
12 **BY MR. O'TOOLE:**
13 **Q My first question on this is who is Compass**
14 **Advisers?**
15 A Compass Advisers is a financial advisor that
16 PBGC had hired at the outset of the case.
17 **Q At the outset of the Delphi case?**
18 A The bankruptcy, yes.
19 **Q What services did Compass Advisers provide**
20 **for PBGC with respect to the Delphi bankruptcy?**
21 A Financial advisory services.
22 **Q On what sorts of issues?**

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1 A On all issues related to the company's
2 financial wherewithal, business plan, that sort of
3 thing.
4 **Q Would Compass have provided, for example,**
5 **estimates or projections about what Delphi would have**
6 **needed to pay in order to keep the plan post**
7 **emergence?**
8 A No, they would not have done that.
9 **Q Why not?**
10 A Because that's an actuarial calculation.
11 **Q Were there other advisors that PBGC had who**
12 **would have done those sorts of projections?**
13 A If we had -- you know, the actuary, Cindy,
14 was in charge of that, and she -- like I said, she may
15 have had actuarial consultants working with her.
16 **Q So Phillip Siegel, who was he and what was**
17 **his role with Compass Advisers?**
18 A He at that time was the lead advisor from
19 Compass Advisers for us.
20 **Q Was there anyone else with Compass Advisers**
21 **that you worked with?**
22 A The memo references Judah Malunsky.

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1 **Q And those are the two?**
2 A Those were the primary two, yes.
3 **Q This document, Exhibit 3, appears to be a**
4 **memo that Mr. Siegel is sending to you and Kristina**
5 **Archeval, who I believe you testified earlier was your**
6 **direct supervisor. Is that correct?**
7 A Correct.
8 **Q It summarizes an unsecured creditors**
9 **teleconference from September 8th; is that correct?**
10 A That's what it says.
11 **Q Have you seen this memo before?**
12 A I imagine I did. It was addressed to me.
13 **Q Do you recall seeing it?**
14 A I don't.
15 **Q I'm going to direct your attention to the**
16 **bullet point at the end of the second page, not the**
17 **last one, but just before the end, the one that begins**
18 **with "Daigle."**
19 **Now, the first question is, who is Daigle?**
20 A David Daigle is an employee of Capital
21 Research and Management. I think that's the name of
22 the company. It's Cap Re. They're a money manager.

14 (Pages 50 to 53)

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1 And they were -- David was the chair of the unsecured
2 committee and was very involved in those
3 deliberations.
4 **Q From the memo, it appears that the IRS held**
5 **a meeting with Delphi and GM the Thursday before this**
6 **memo was written, a couple days before, it appears**
7 **from the memo.**
8 **Do you recall that early September meeting**
9 **between the IRS, Delphi, and GM?**
10 A I don't.
11 **Q Do you have any recollection of being**
12 **present at it?**
13 A I don't.
14 **Q Now, it appears from the memo that during**
15 **the meeting the IRS questioned whether some of GM's**
16 **previous actions were aimed at achieving a follow-on**
17 **plan for Delphi.**
18 **Do you remember if there was any further**
19 **discussion on this point?**
20 A At the committee?
21 **Q No, after you received this memo within**
22 **PBGC.**

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1 A Like I said before, there were discussions
2 on this question of a follow-on.
3 **Q But you don't remember any specific**
4 **questions at this time arising out of the IRS meeting?**
5 A I don't.
6 **Q Let's go to Exhibit 4.**
7 **One last question on this. Why is**
8 **Mr. Daigle, if you know, commenting on the IRS meeting**
9 **with Delphi and GM? Would a member of the unsecured**
10 **creditors committee have been at that meeting as well?**
11 A I'm guessing he was there.
12 **Q Why is that? Is that normal?**
13 MR. MENKE: Objection. Calls for
14 speculation from the witness.
15 **Q In your experience, have you ever met with**
16 **the IRS about follow-on plans?**
17 A Have I ever met with the IRS about follow-on
18 plans?
19 **Q With respect to --**
20 A I don't think that that was the topic of
21 this meeting. I would guess that the topic of this
22 meeting were funding waivers.

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1 **Q And at a funding waiver meeting, would it be**
2 **normal for the representative for the creditors to be**
3 **there?**
4 A David Daigle was very, very involved. He
5 was a very activist -- took a very activist role in
6 the committee.
7 **Q In your experience at PBGC, how many**
8 **meetings with respect to funding waivers with the IRS**
9 **have you either been at or heard directly about**
10 **through your job?**
11 A I've probably been at ten or so.
12 **Q And then have you been -- have you heard**
13 **direct reports from meetings in more than that, or is**
14 **there -- are those the only ones you've been involved**
15 **with?**
16 A I'm sure that there are others that I've
17 heard about.
18 **Q Is the creditors committee generally present**
19 **at those meetings?**
20 A It's probably unusual for a bankrupt company
21 to be getting funding waivers, in general, because
22 that's generally not how it happens.

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1 **Q How does it generally happen?**
2 A Well, first of all, you don't have to be in
3 bankruptcy to get a funding waiver. That's what I
4 should be saying. And so it's a little unusual in
5 this case that there was a bankrupt company getting a
6 funding waiver.
7 **Q So most funding waivers come with companies**
8 **that are not in bankruptcy; is that correct?**
9 A I think.
10 **Q In your experience.**
11 A I think so.
12 MR. O'TOOLE: Okay. Let's go to Exhibit --
13 this is going to be 4. Let's mark it.
14 (Exhibit 4 was marked for identification and
15 attached to the deposition transcript.)
16 BY MR. O'TOOLE:
17 **Q I'm going to ask you some questions about**
18 **Exhibit 4 now.**
19 A Okay.
20 **Q The first is, have you seen this document**
21 **before?**
22 A I have.

15 (Pages 54 to 57)

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1 **Q Where did you first see it?**
2 A I probably first saw it on my e-mail when it
3 came out.
4 **Q And who would have written the document, if**
5 **you know?**
6 A Our public affairs department.
7 **Q Is that generally who writes press releases**
8 **at PBGC?**
9 A Yes.
10 **Q Did you have any role in providing**
11 **information to the press department as part of this**
12 **press release?**
13 A Yes, I did.
14 **Q What was your role?**
15 A Probably to, you know, confirm the numbers
16 that we're talking about in the press release. And,
17 also, with respect to the paragraph where we talk
18 about 13 auto parts companies that have emerged
19 successfully, I would have provided that information
20 to our public affairs group.
21 **Q With respect to that information, do you**
22 **know who those 13 auto parts companies were that**

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1 **emerged successfully?**
2 A Yes, I do.
3 **Q Can you tell us who they were?**
4 A Yes. Can I have a piece of paper?
5 **Q Sure.**
6 A Allied Systems Holdings. Let me just say
7 also that these are all companies with exposure to
8 automotive companies. They're not necessarily auto
9 parts companies, such as Allied Systems Holding.
10 Citation Corporation; Dana Corporation; Dura
11 Automotive Services, Inc.; EaglePicher, Inc.; FloMAX
12 International, Inc.; Federal-Mogul Corporation; Holley
13 Performance Products, Inc.; Intermet Corporation;
14 Meridian Automotive Systems, Inc.; Remy International,
15 Inc.; Tower Automotive, Inc.; and JL French Automotive
16 Castings.
17 **Q And did you work on any of those or all of**
18 **them?**
19 A I worked on six of them.
20 **Q Six of them.**
21 **In the ones that you worked on, was PBGC's**
22 **goal throughout to save the pension plan?**

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1 A Yes.
2 **Q And how did PBGC go about doing that? And**
3 **you don't have to talk about any individual cases but**
4 **just the general sorts of things that PBGC was doing**
5 **in order to ensure that the pension plan survived.**
6 A Well, that's always our goal in these cases.
7 You know, we're pretty adamant and consistent that
8 Chapter 11 does not mean pensions are going to
9 terminate, necessarily. So we come in with the
10 attitude that the pensions -- the company can be
11 restructured and the pensions can remain ongoing.
12 **Q Now, is that always the company's position?**
13 A Not always.
14 **Q Can you characterize how companies viewed**
15 **the pensions coming through? I realize it's a general**
16 **characterization, but let's talk about companies --**
17 **some companies, I assume, from your answer, don't want**
18 **to save their pensions. What do they say?**
19 A Well, you know, it depends. You know, there
20 are a few ways that pension plans can get terminated.
21 PBGC can initiate a termination of a pension plan, or
22 the company can initiate a termination of a pension

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1 plan. Sometimes the companies move to do that. But
2 in other instances, I think probably most of our
3 terminations are terminations that we initiate, and
4 most of those probably have to do with asset sales
5 where the buyer has not assumed the pension so the
6 pension plan has essentially been abandoned.
7 **Q What about the ones that you saved? Did any**
8 **of the sponsors come in and say, "We can't afford the**
9 **plan," of those 13?**
10 A Again, I only worked on six. And of those
11 six, the answer is no. On Tower Automotive, that was
12 actually an asset sale, and the buyer originally was
13 not going to assume the plan but wound up assuming it.
14 **Q Why did they do that?**
15 A They assumed it because there were other --
16 there was competition for the assets, and that was a
17 way for them to improve their bid without necessarily
18 coming out of pocket.
19 **Q Have you ever had a sponsor come in and say,**
20 **"We can't afford the plan," but PBGC determines**
21 **otherwise?**
22 A Yes.

16 (Pages 58 to 61)

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1 **Q How would that dynamic evolve? So the**
2 **sponsor comes in and says, "We can't afford the plan."**
3 **What would PBGC do in response?**
4 A We would look at the funding projections
5 relative to the business plan, and we would look at
6 the dynamics associated with a bankrupt pension plan
7 sponsor, their ability to emerge from bankruptcy with
8 a pension plan ongoing. So there's an affordability
9 component, but there's also an exit financing
10 component.
11 **Q And you go -- you do your own projections on**
12 **that; is that correct?**
13 A On which?
14 **Q On both components, so the component of**
15 **the -- both the current affordability and then the**
16 **projections.**
17 A So we do our own projections -- well, the
18 company's actuary typically provides funding
19 projections for us, and we either run our own or try
20 to match up ours, reconcile with theirs. Sometimes we
21 run our own funding projections.
22 The company typically provides a business

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1 plan to us. And, again, we'll look at that and make
2 our own adjustments to that.
3 **Q So if the company says, "We can't afford**
4 **it," you're not just going to take them at their word?**
5 **You're going to do a lot of work to determine whether**
6 **they're telling you the truth?**
7 A Correct.
8 MR. O'TOOLE: Let's go to Exhibit 5.
9 (Exhibit 5 was marked for identification and
10 attached to the deposition transcript.)
11 BY MR. O'TOOLE:
12 **Q So Exhibit 5 appears to be an e-mail. It's**
13 **a chain that starts with an e-mail from Steve Miller**
14 **to Charles Millard. I'll first have you explain both**
15 **who Steve Miller is and who Charles Millard is.**
16 A Steve Miller was the CEO of Delphi at the
17 time, and Charles Millard was the PBGC director.
18 **Q From the e-mail it appears that after**
19 **Mr. Millard issued the press release that we discussed**
20 **in Exhibit 4, Mr. Miller responded with a proposal to**
21 **PBGC.**
22 **Do you recall that proposal?**

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1 A I do.
2 **Q Can you describe it?**
3 A I think I can describe it generally. I
4 think Delphi's request to us was that, in light of
5 the -- in light of the success of the 414(l)
6 transfer -- let me just see what it -- "Finish the
7 job, relinquish liens assuming we effect the 414(l)
8 transfer."
9 So I guess what he is requesting is that in
10 light of a successful 414(l) transfer, where GM would
11 assume some 2 billion dollars of hourly plan pension
12 liabilities, that PBGC would, I think he says,
13 "relinquish our liens."
14 **Q Do you have a recollection of what liens**
15 **PBGC had over Delphi at the time?**
16 A Yes, the liens -- it's complicated. And
17 it's heavily actuarial. The numbers moved a lot from
18 month to month. And this 414(l) transfer had a
19 significant bearing on the amount of -- the value of
20 the liens that we had against the hourly plan before
21 September 30th and after.
22 **Q Now, is this request also to relinquish**

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1 **liens with respect to the salaried plan?**
2 A I don't know.
3 **Q Do you know if PBGC had any liens at the**
4 **time of the salaried plan?**
5 A We did.
6 **Q Had you ever discussed those liens with**
7 **Delphi in this time frame, September 2008?**
8 A Probably.
9 **Q Do you recall what Delphi's position was on**
10 **those liens?**
11 A I don't recall.
12 **Q It appears that this proposal got forwarded**
13 **through the e-mail chain. At the top of the chain you**
14 **respond, "Whoa," W-H-O-A, with an exclamation point.**
15 **Do you recall why you would have responded**
16 **like that?**
17 A I -- I don't.
18 **Q Do you recall your general impression of**
19 **this proposal?**
20 A Apparently I was stunned by the proposal.
21 **Q What would have stunned you about this**
22 **proposal?**

17 (Pages 62 to 65)

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1 A I guess the only thing that would have
2 stunned me, if they were actually requesting us to
3 give up liens on the salaried plan. And I don't know
4 that that's the case.
5 **Q It appears that there's going to be a**
6 **meeting from this e-mail soon afterwards to discuss**
7 **this issue, probably the next day or soon thereafter.**
8 **Do you recall that meeting?**
9 A What I recall is there was some general
10 discussion about the treatment of liens as a result of
11 the transfer.
12 **Q What was that general discussion, if you**
13 **recall?**
14 A I think that there was some discussion over
15 a period of some months about how we might treat the
16 liens or enforce the liens.
17 **Q What was generally the position as to how**
18 **you would treat the liens and/or enforce the liens?**
19 A I think that, if I recall correctly, we were
20 not going to relinquish our liens against the salaried
21 plan. I think that there was some discussion
22 regarding forbearance on foreclosing against those

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1 liens.
2 **Q From this e-mail, it appears that Mr. Miller**
3 **suggested that the liens -- "relinquishing the liens**
4 **would go a long way toward calming our nervous**
5 **overseas suppliers and creditors."**
6 **Do you recall any discussion about how**
7 **suppliers and creditors were responding to the PBGC**
8 **liens?**
9 A Yes.
10 **Q What do you recall?**
11 A In the kind of run-up to the 414(l)
12 transfer, PBGC was advocating for the transfer,
13 cheerleading for the transfer, but also utilizing our
14 liens overseas as potential leverage to get it done.
15 **Q So, in your experience, did the liens serve**
16 **as a pretty good leverage for that?**
17 A I don't know if that was the reason that it
18 got done.
19 **Q Did Delphi seem concerned about the liens?**
20 A Delphi was concerned about the noise we were
21 making regarding the liens.
22 **Q And is that often how PBGC uses liens in**

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1 **terms of leverage?**
2 A That's one way.
3 **Q You mentioned PBGC saving plans from**
4 **sponsors who may be reluctant. Do liens help in that**
5 **process?**
6 A They can. You know, there are liens against
7 domestic assets and there are liens against foreign
8 assets, and those liens against domestic assets tend
9 to have a lot more -- we tend to be able to utilize a
10 lot more leverage on those liens.
11 **Q Where were all of Delphi's assets?**
12 A The assets --
13 **Q That were reachable by lien.**
14 A Well, the company was -- the domestic
15 company was in Chapter 11, so there was an automatic
16 stay against the debtor entities, which were all the
17 U.S. entities. The nondebtor entities were all
18 overseas.
19 **Q So all of your liens were overseas with**
20 **respect to Delphi; is that correct?**
21 A That's correct.
22 **Q And yet it appears that Mr. Miller is**

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1 **suggesting that overseas suppliers and creditors were**
2 **nervous about your liens; is that right?**
3 A That's right.
4 **Q And that's the case -- that's why you put**
5 **liens down, right?**
6 A That's one reason, yes.
7 **Q They seem to have worked here.**
8 A Yes.
9 **Q Let's go to Exhibit 6.**
10 **(Exhibit 6 was marked for identification and**
11 **attached to the deposition transcript.)**
12 **MR. O'TOOLE: I want to note for the record**
13 **now that this was a document that was produced in**
14 **discovery by Delphi to the plaintiffs in this case,**
15 **and pursuant to a confidentiality agreement with**
16 **Delphi, we would like this exhibit to be maintained**
17 **under seal unless there's any objection from PBGC.**
18 **MR. MENKE: No objection.**
19 **BY MR. O'TOOLE:**
20 **Q Have you seen this document before?**
21 A I don't know.
22 **Q When you say you don't know, it appears that**

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1 this document is a Delphi proposal to PBGC with
2 respect to liens that we were discussing earlier.
3 Were you ever present at a meeting in which
4 a presentation similar to this or this presentation
5 was made to the PBGC?
6 A I don't remember.
7 Q Anything I can do to help refresh your
8 recollection?
9 A I mean, the general discussion seems
10 consistent with my understanding of what was going on.
11 Q I'm going to direct your attention to the
12 second point on page 2, the one that begins "Second."
13 So this proposal appears to say that "The
14 PBGC wants Delphi to emerge from Chapter 11 and to
15 continue to maintain its salaried pension plans."
16 Was that consistent with your understanding
17 of the PBGC's view at the time?
18 A Yes.
19 Q And this also suggests that the liens --
20 presumably this refers to the salaried plan liens; is
21 that your understanding?
22 A Yes.

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1 Q -- that those liens were unnerving the
2 debtors' DIP lenders. Who were the debtors' DIP
3 lenders, if you know?
4 A The debtors' DIP lenders -- you mean
5 specifically?
6 Q Not specifically, just generally.
7 A Those lenders who lent money to Delphi on a
8 post petition basis.
9 Q And it appears that they're being unnerved
10 by the liens and making what the presentation calls
11 "an unprecedented number of calls due to arguments
12 discussing the liens."
13 Do you have any recollection of this sort
14 of, I'm going to call it pressure, for lack of a
15 better word?
16 A Like I said, in the run-up to the
17 transfer -- the first tranche of the 414(l) transfer,
18 we were making some noise about enforcement of
19 overseas liens, and that noise was causing
20 consternation among Delphi and apparently, based on
21 this, their lenders.
22 Q I'm going to direct your attention now to

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1 page 4. About halfway down the page, there's a
2 paragraph that begins, "The amount of the purported
3 liens asserted on behalf of the SRP," and I'm assuming
4 that that means salaried plan, "filed in Washington,
5 D.C., approximates 450 million dollars."
6 Is that number consistent with your
7 recollection?
8 A Here, again, the amount of the liens moved
9 around quite a bit. And there were liens -- it's not
10 so straightforward as to say a company misses a
11 contribution and we file liens for that miss. There's
12 interest payments that, you know, add to the lien, but
13 there's also ways, as I understand it -- again, I'm
14 not an actuary, and I don't calculate the lien
15 amounts, but there are ways for companies to
16 characterize certain contributions as being for
17 different plan years, and they can change their mind
18 on that, and that can have a bearing on how much the
19 lien amount is.
20 Q So there's some wiggle room with respect to
21 the amounts of the liens. Is that your understanding?
22 A Unfortunately, yes.

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1 Q In the second half of this, it talks
2 about -- I guess Delphi is arguing that there's
3 adequate protection already with respect to
4 repatriated cash.
5 Do you understand what that means?
6 A Yes.
7 Q Can you explain it?
8 A So we had -- PBGC had liens against the
9 foreign assets of Delphi, the nondebtor assets.
10 Delphi was in need of cash and tapped their nondebtors
11 for that cash to fund their bankruptcy. Because we
12 had a lien against those assets, we initially objected
13 to those repatriations, but recognizing the need for
14 Delphi to have that liquidity, we wound up getting an
15 agreement where we would have a subordinated lien
16 against one of the debtor entities.
17 Q So is that basically a way of domesticating
18 your foreign liens? Is that what was basically
19 happening?
20 A I wouldn't put it that way.
21 Q How would you disagree? I want to
22 understand exactly what's going on.

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1 A Yes. So it was a way that we compromised on
2 Delphi being able to bring in the foreign cash. We
3 thought that they needed the cash. We did get a lien
4 against a debtor entity, and it was the debtor entity
5 that held all the value overseas, and that's what we
6 got.
7 **Q Was the debtor entity in the U.S.?**
8 A Yes.
9 **Q So you got a lien in the -- a domestic**
10 **lien --**
11 A Yes.
12 **Q -- on a debtor entity based on the influx of**
13 **cash; is that right?**
14 A Correct.
15 **Q It was for the amount of the cash that was**
16 **brought in?**
17 A Correct.
18 **Q Now, did you release the foreign liens in**
19 **exchange for that, or did you keep the foreign liens**
20 **as well?**
21 A We kept the foreign liens.
22 **Q So you kept the foreign liens, and you were**

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1 **getting domestic liens at this point on the debtor**
2 **entity?**
3 A On one debtor entity.
4 **Q It looks like -- is 510 million about how**
5 **much you had?**
6 A That's what it looks like.
7 **Q Is this all in connection with the salaried**
8 **plan?**
9 A I think this is -- I don't know. I don't
10 know the answer to that question.
11 **Q But that was a mechanism that you were using**
12 **with Delphi in order to get the domestic liens on**
13 **debtor entities that were essentially --**
14 A It was a method we were using to protect
15 ourselves for the use of foreign cash in the Delphi
16 bankruptcy.
17 **Q Because otherwise you could have just tried**
18 **to execute those liens on the foreign entities and get**
19 **the foreign cash?**
20 A We could have, yes.
21 **Q Let's go to Exhibit 7.**
22 **(Exhibit 7 was marked for identification and**

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1 **attached to the deposition transcript.)**
2 **BY MR. O'TOOLE:**
3 **Q Exhibit 7 appears to be an e-mail dated**
4 **November 11th from Joe House.**
5 **Can you describe, just for the record, who**
6 **Joe House was?**
7 A Joe House was at the time the director of
8 the Department of Insurance Supervision and
9 Compliance.
10 **Q And it's to a number of individuals at PBGC,**
11 **including the director, and that would be Charles**
12 **Millard.**
13 A Uh-hmm.
14 **Q And you and several other people.**
15 A Uh-hmm.
16 MR. MENKE: Excuse me, I would caution the
17 witness to answer questions yes or no.
18 THE WITNESS: Thank you.
19 MR. MENKE: For the purposes of the
20 transcript.
21 MR. O'TOOLE: Thank you.
22

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1 BY MR. O'TOOLE:
2 **Q Do you recall receiving this e-mail?**
3 A I don't recall receiving it, but I see I did
4 receive it.
5 **Q Do you recall this general time frame and**
6 **what Mr. Sheehan describes as, essentially, a rising**
7 **level of receptiveness to GM's taking the salaried**
8 **plan?**
9 MR. MENKE: Objection. Mischaracterizes the
10 document. Speaks for itself.
11 **Q Okay. Do you recall GM's willing -- GM's**
12 **willingness in November of 2008 to take on Delphi's**
13 **salaried plan?**
14 A I don't specifically recall that. I see
15 this e-mail and see that Sheehan thought that it
16 seemed like a possibility. Whatever came out of this
17 was very short-lived because this didn't take at all.
18 **Q Now, he described it, not only as a**
19 **possibility, but -- and I'm quoting now -- a change in**
20 **attitude, right?**
21 A That's what he says.
22 **Q And you don't -- you were on this e-mail,**

20 (Pages 74 to 77)

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1 **but you don't recall any other discussion about this**
2 **change in attitude?**
3 A Like I said, I don't think that -- I don't
4 remember a time when GM said, "Let's discuss assuming
5 the salaried plan."
6 **Q Did you follow up with GM after receiving**
7 **this e-mail? Because it sounds like PBGC's position**
8 **was "We want to save the salaried plan." So getting**
9 **an e-mail like this probably would have been something**
10 **that the PBGC and you would have viewed as a good**
11 **development, right?**
12 MR. MENKE: Objection, speculation.
13 **Q Would you have viewed this as a good**
14 **development at the time?**
15 A I would have.
16 **Q Do you remember following up on it?**
17 A I don't remember.
18 **Q Now, this e-mail -- in this e-mail Mr. House**
19 **also suggests that Delphi is interested to know about**
20 **PBGC's coordination with Treasury. I guess he -- I'll**
21 **back up. He's asking about GM's coordination with the**
22 **federal government, and he wants to hear whether and**

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1 **what level of relevant federal agencies may be**
2 **coordinating amongst one another.**
3 **Did I read that right?**
4 A I think so.
5 **Q Mr. House suggests that he told Mr. --**
6 **Mr. Sheehan that "We" -- and by "we," I'm assuming**
7 **that he means the PBGC. Is that right?**
8 A Correct.
9 **Q -- "were coordinating," but that he wasn't**
10 **at liberty to say much beyond that.**
11 **First of all, was it your observation that**
12 **PBGC was "coordinating with the relevant government**
13 **agencies" at the time?**
14 A We were -- first of all, beginning in
15 September or October 2008, car sales fell off a cliff,
16 and we had significant exposure, not just to Delphi,
17 but even larger exposure to the OEMs, the Detroit
18 three, Ford, Chrysler, and GM, all of which were
19 requesting financing from the federal government at
20 that time. So we were keenly interested in that
21 process.
22 **Q What would the relevant agencies be in terms**

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1 **of that sort of financing?**
2 A I mean, if I remember correctly, at that
3 time they were going to Congress for -- for some sort
4 of funding, but, obviously, the U.S. Treasury would
5 have been the funder.
6 **Q And, if you know, by November of 2008 was**
7 **there such a thing called the Troubled Asset Relief**
8 **Program, commonly known as TARP?**
9 A I don't recall.
10 **Q This was after the election in November of**
11 **2008. Does that help refresh your recollection?**
12 A I know that the TARP came into place prior
13 to the Obama administration, but I don't recall when
14 it went into place.
15 **Q Mr. House suggests that "We," the PBGC, "are**
16 **coordinating."**
17 **Who would the PBGC have been coordinating**
18 **with at that point in time?**
19 A Our board of directors includes the
20 Secretary of the Treasury and Secretary of Commerce
21 and Secretary of Labor. So I would think we would be
22 coordinating with those branches.

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1 **Q Is that your experience, that generally PBGC**
2 **coordinates its actions with the Board of Directors?**
3 A I mean, if -- first of all, the IRS is part
4 of Treasury, and we have kind of more direct
5 relationships with the IRS counterparts. But when
6 you're talking about the TARP or the Treasury
7 specifically, then, you know, I would think that we
8 would -- we would utilize our board representation to
9 make those contacts.
10 **Q And by "on their board," I mean, so**
11 **technically Department of Treasury, along with two**
12 **other agencies, controls PBGC; is that right?**
13 A I don't know. I don't know if they control
14 us.
15 **Q Do you have any understanding of what their**
16 **power is, in terms of PBGC?**
17 A I don't.
18 **Q Now, Mr. House said that he wasn't at**
19 **liberty to say much beyond the fact that there was**
20 **coordination.**
21 **Why wouldn't he have been at liberty to say**
22 **anything beyond that?**

21 (Pages 78 to 81)

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1 MR. MENKE: Objection, calls for
2 speculation.
3 A I don't know.
4 **Q Were you ever told not to talk about**
5 **coordination between Treasury and PBGC?**
6 A No.
7 **Q Were there any discussions of what could be**
8 **said and what couldn't be said with respect to**
9 **coordination between various federal agencies with**
10 **respect to the auto industry?**
11 A Restate your question.
12 MR. MENKE: Could we have the court reporter
13 read it back.
14 (Record read.)
15 A I don't recall.
16 **Q What about with respect to PBGC and various**
17 **federal agencies? Were you told or sent memoranda or**
18 **given any communication that suggested that you should**
19 **not talk about coordination between PBGC and other**
20 **government agencies?**
21 A Not that I remember.
22 **Q You looked like you were searching your**

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1 **mind, you had some sort of recollection that may not**
2 **have been exactly what my question called for.**
3 **What were you searching for a few moments**
4 **ago?**
5 MR. MENKE: Objection, speculation.
6 **Q You can answer. You don't have to speculate**
7 **about what's in your own mind. What were you thinking**
8 **about?**
9 A There was no -- I never received any
10 direction not to coordinate, not to discuss any
11 coordination between federal agencies.
12 **Q Any communication on that subject?**
13 A No.
14 **Q Why were you searching for the right answer?**
15 MR. MENKE: Objection.
16 A I lost track of your question.
17 **Q Okay.**
18 **Was there any discussion -- what was the --**
19 **what was the policy in terms of discussing**
20 **coordination, if you know?**
21 MR. MENKE: Objection. Assumes facts not in
22 evidence.

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1 **Q Well, was there a policy for discussing**
2 **coordination with Treasury, if you know?**
3 A I don't know that there was a written,
4 specific policy.
5 **Q What was the general understanding, then, at**
6 **PBGC with respect to discussing your coordination with**
7 **Treasury?**
8 A I would say that all those -- all of that
9 coordination went through Joe House.
10 **Q Why was that?**
11 A He was the director of the department.
12 **Q Was there ever any discussion about not**
13 **putting things in e-mails to Treasury?**
14 A Not that I'm aware of.
15 **Q Because when you look through the documents**
16 **here, there seem to be a lot of e-mails that say, "I**
17 **want to discuss this," but then it's all done by**
18 **phone. Was there ever any discussion about doing**
19 **things by phone rather than e-mail?**
20 A Not that I'm aware of.
21 **Q Do you have any other reason why Joe House**
22 **would have felt not at liberty to say anything about**

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1 **the level of coordination between PBGC and relevant**
2 **federal agencies?**
3 A You know, in my recollection, the
4 coordination didn't really begin in earnest until
5 December.
6 **Q Let's go to December. So what happened in**
7 **December when the coordination started, and what**
8 **started it?**
9 A I think that there was a loan made to GM and
10 Chrysler in December from the TARP.
11 **Q And at that point PBGC and Treasury started**
12 **to coordinate more with respect to the Delphi issue?**
13 A I wouldn't say relative to the Delphi issue.
14 I would say relative to GM and Chrysler.
15 **Q And was Delphi -- the Delphi issue part of**
16 **the GM issue, in your understanding of the two?**
17 A It was a tangent of the GM issue.
18 **Q Big tangent, small tangent?**
19 A I would say, from our perspective, PBGC's
20 perspective, it was a big tangent.
21 **Q What about GM? GM is -- if Delphi goes**
22 **under, is that important to GM?**

22 (Pages 82 to 85)

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1 A I don't know. Again, I would say at this
2 point everybody's got their plants idled, and they had
3 bigger things to worry about than Delphi's supply.
4 **Q This is December?**
5 A December.
6 **Q Right. So January starts and the Auto Task
7 Force is formed, I think you said earlier, in late
8 January; is that correct?**
9 A My recollection. I don't know when it was
10 started, but it was definitely started after Obama
11 took office.
12 **Q And the mandate, as you understand it, and
13 I'm just talking generally, of the Auto Task Force was
14 to make GM and other auto -- I believe, Chrysler, into
15 viable economic entities again. Is that correct?**
16 A Yes.
17 **Q To build cars, you need parts, right?**
18 A Yes.
19 **Q And Delphi, at least at that point, was one
20 of GM's biggest parts suppliers or would be if GM
21 becomes a viable economic carmaker again; is that
22 right?**

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1 A That's right.
2 **Q So figuring out how to make GM a viable
3 economic carmaker involves figuring out how to get
4 Delphi to make parts for GM, at least in part, right?**
5 A Certainly you want to ensure the supply of
6 parts for making cars.
7 **Q So that was something, in your
8 observation -- and you were observing the Auto Task
9 Force in its work. Delphi was on their minds, right?**
10 A It was.
11 **Q Big deal to them?**
12 A They had a lot of big deals.
13 **Q But it shows up in a lot of their paper,
14 right? You went through the paper to review this.**
15 A Which paper?
16 **Q Well, e-mails, memos, looks like there were
17 a lot of phone calls.**
18 A From PBGC to the task force, yes.
19 **Q And so the task force is dealing at least a
20 lot with PBGC on this issue?**
21 A They are, yes. It was a big deal for us,
22 like I said.

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1 MR. O'TOOLE: Why don't we take a break.
2 (A brief recess was taken.)
3 BY MR. O'TOOLE:
4 **Q I think when we broke we were up to about
5 December of 2009, and I think you mentioned that
6 was --**
7 A December --
8 **Q December of 2008, sorry -- and that that was
9 the period where the Treasury had become more involved
10 with the auto companies and that PBGC had become more
11 involved with Treasury at that point. Is that fair?**
12 A Yes.
13 **Q Let's go to January of 2009 now. And
14 Treasury and the Auto Task Force's involvement was
15 largely with GM. Is that fair to say?**
16 A What's the question?
17 **Q The Auto Task Force. Their involvement was
18 largely with GM.**
19 A And Chrysler.
20 **Q And Chrysler.**
21 A Right.
22 **Q But in terms of Delphi, it was largely**

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1 **through GM; is that correct?**
2 A Yes.
3 **Q And at this point you're continuing to have
4 calls with Delphi to discuss the pensions; is that
5 correct?**
6 A Correct.
7 **Q Delphi is also continuing to have calls with
8 GM and starting to try to get involved to try to
9 figure out what's going on with the Auto Task Force;
10 is that correct?**
11 A I don't know.
12 **Q I'm going to now mark for you Exhibit 8.
13 (Exhibit 8 was marked for identification and
14 attached to the deposition transcript.)**
15 BY MR. O'TOOLE:
16 **Q So Exhibit 8 appears to be a summary of two
17 calls with Delphi that took place between you and Joe
18 House and Keith Stipp and John Sheehan at Delphi. Is
19 that correct?**
20 A That's correct.
21 **Q Do you know who prepared these summaries?**
22 A It looks like I did.

23 (Pages 86 to 89)

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1 **Q Do you have any recollection of these calls?**
2 A Not specifically, but there are lots of
3 calls.
4 **Q The January 16th call, it appears that, from**
5 **your summary, that GM was taking the position that**
6 **there was a covenant in the TARP that prevented it**
7 **from assuming either the hourly plan or the salaried**
8 **plan. Do you recall that?**
9 A Yes.
10 **Q Do you recall what GM's position on that was**
11 **and why they felt the TARP would prevent the**
12 **assumption of those plans?**
13 A I just -- I think within the documents,
14 their credit agreement, it prevented them from
15 assuming these liabilities.
16 **Q Now, that ultimately didn't turn out to be**
17 **right, correct?**
18 A Those loans were redone during the GM
19 bankruptcy. So I don't know what -- you know, they
20 got new loans then.
21 **Q But, ultimately, GM was at least able to pay**
22 **for parts of the hourly plan obligations as part of**

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1 **its emergence from bankruptcy, correct?**
2 A As part of GM's emergence from bankruptcy?
3 **Q As part of GM's emergence from bankruptcy.**
4 A They were able to pay? I'm sorry.
5 **Q They were able to pay --**
6 A Their own pension?
7 **Q Well, also the Delphi hourly retirees were**
8 **able to get money from GM as these top-ups that we**
9 **talked about before, and TARP didn't stop that,**
10 **correct?**
11 A Well, we're talking about January.
12 **Q Right.**
13 A This was before the GM bankruptcy.
14 **Q Right.**
15 A After the GM bankruptcy, they had different
16 agreements.
17 **Q So once GM went into bankruptcy, nothing in**
18 **TARP would have stopped GM from doing what it**
19 **ultimately did?**
20 MR. MENKE: Objection. Calls for
21 speculation. Calls for a legal conclusion from the
22 witness.

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1 **Q So what you -- I guess what you just said**
2 **was that once -- whatever concerns GM had about TARP,**
3 **once GM had went into bankruptcy, those concerns went**
4 **away; is that correct?**
5 MR. MENKE: Objection. Calls for
6 speculation. Calls for a legal conclusion from the
7 witness. Answer if you can.
8 A Again, the loans that GM is referencing here
9 are gone when they come out of bankruptcy. Those
10 loans have been -- well, they're gone when they go
11 into bankruptcy because they're converted to DIP
12 loans.
13 **Q And then when they come out of bankruptcy --**
14 A When they come out of bankruptcy, they're
15 equity.
16 **Q So when they came out of bankruptcy, TARP**
17 **didn't have any -- as far as you know, TARP had no**
18 **restrictions on what could be done with equity that**
19 **the government bought from the new GM; is that**
20 **correct?**
21 MR. MENKE: Objection. Calls for
22 speculation. Calls for a legal conclusion from the

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1 witness. Lack of foundation.
2 A I don't know.
3 **Q It sounds like you do know, though, right?**
4 **I mean, you just --**
5 MR. MENKE: Objection.
6 A I don't know.
7 MR. MENKE: You're mischaracterizing his
8 testimony. He said he didn't know.
9 **Q Let me see if I understand what your**
10 **testimony was. When GM became the new GM, there**
11 **was -- the federal government's funding of GM was**
12 **through equity. Is that correct?**
13 A That's correct.
14 **Q And, as far as you know, TARP only**
15 **restricted what could be done with the loans. Is that**
16 **correct?**
17 A I know that TARP restricted -- they had
18 covenants in their loans about what GM could and could
19 not spend their money on. I don't know whether
20 Treasury, as an equity holder, had those types of
21 restrictions.
22 **Q Restrictions.**

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1 **But you do know that GM was able to pay the**
2 **top-ups after it emerged from bankruptcy?**
3 A Right, GM assumed it into their hourly plan.
4 **Q So the second bullet point says GM has also**
5 **taken the position that those same loans would -- loan**
6 **covenants would prevent them from assuming the**
7 **salared plan, and then it suggests that Delphi is now**
8 **contending -- "Delphi contends it can no longer**
9 **afford."**
10 **Was this a new contention of Delphi?**
11 A Well, when Delphi filed Chapter 11 in 2005,
12 its position all along was that it would not terminate
13 the pension plans. Now, that evolved as things
14 developed, and it certainly evolved a lot in late 2008
15 when the auto sales fell over the cliff and the cash
16 flow evaporated. And I don't recall exactly when
17 Delphi came to this conclusion for the first time, but
18 yes, at some point Delphi concluded that they could no
19 longer afford the salared plan.
20 **Q Now, did they ever do a presentation**
21 **explaining to PBGC what the basis was for their belief**
22 **that they could no longer afford the salared plan?**

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1 A I don't think so.
2 **Q Did they ever back up their contention with**
3 **any sort of report or documentation of why it was no**
4 **longer possible for them to have an emergence plan**
5 **that would have allowed new Delphi to keep the**
6 **pensions?**
7 A I don't recall. Again, this is -- this is
8 kind of -- I mentioned before about, you know, there's
9 affordability and there's financing issues. I would
10 characterize this as more of a financing issue.
11 **Q Okay.**
12 A Because at this point they had post petition
13 DIP lenders who were going to be not paid off as part
14 of the reorganization.
15 **Q And do you remember who those DIP lenders**
16 **were?**
17 A I remember Elliott Capital was one.
18 **Q Anyone else?**
19 A I don't recall.
20 **Q Platinum Equity, was that one?**
21 A I don't recall.
22 **Q Now, let's go to the summary -- your summary**

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1 **of the January 21st call.**
2 **First of all, do you recall what happened**
3 **between January 16th, 2009 and January 21st, 2009?**
4 A I believe that Obama was inaugurated.
5 **Q And on the 21st call, it sounded like GM had**
6 **moderated its position somewhat with Delphi. Is that**
7 **your recollection of what took place on the call?**
8 A I mean, that's what it says here.
9 **Q Do you have any independent recollection of**
10 **that?**
11 A No.
12 **Q It also suggests that GM may be looking for**
13 **the cover of the, I guess, the Car Czar in terms of**
14 **mandating that GM take the plans. Do you have any**
15 **recollection of that discussion?**
16 A That's what it says here.
17 **Q But no independent recollection?**
18 A No independent recollection. But keep in
19 mind that this is a summary of what we were told by
20 Delphi.
21 **Q Right. It's a summary of what Delphi was**
22 **reporting GM was saying in their direct negotiations**

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1 **with GM; is that correct?**
2 A Right.
3 **Q Now, you spoke with Delphi quite a bit; is**
4 **that right?**
5 A Yes.
6 **Q Were you of the impression that their**
7 **reports were accurate with respect to what they were**
8 **hearing from other people?**
9 A Generally, yeah.
10 MR. MENKE: Again, just for the record, I
11 caution the witness to try to say yes or no.
12 THE WITNESS: Okay. Thank you.
13 BY MR. O'TOOLE:
14 **Q Let's go to Exhibit -- it's going to be**
15 **Exhibit 9.**
16 **(Exhibit 9 was marked for identification and**
17 **attached to the deposition transcript.)**
18 **MR. O'TOOLE: Again, this exhibit should be**
19 **placed under seal because it was produced by Delphi**
20 **pursuant to a confidentiality agreement.**
21 MR. MENKE: That's fine.
22

25 (Pages 94 to 97)

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1 BY MR. O'TOOLE:
2 **Q Just for your information, Exhibit 9 is an**
3 **e-mail chain. It contains a dialogue between Rodney**
4 **O'Neal, who was then the -- I believe, the CEO of**
5 **Delphi, and Frederick Henderson, who was then the CEO**
6 **of General Motors. Is that your understanding of who**
7 **those individuals were?**
8 A Yes, at some point Rodney became CEO. I
9 don't remember at what point he did.
10 **Q First of all, have you ever seen this e-mail**
11 **exchange before?**
12 A No.
13 **Q I'm going to direct your attention to, I**
14 **believe it's page 110224-041076, the Bates stamp.**
15 A Okay.
16 **Q Now, this appears to be an e-mail or a**
17 **letter that Mr. O'Neal sent to Mr. Henderson. Is that**
18 **correct?**
19 A That's what it appears to be.
20 **Q In this e-mail on the page 041076, in the**
21 **middle of the paragraph, or the middle of the page,**
22 **the middle paragraph, that begins, "We must" --**

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1 A Do you want me to read that paragraph?
2 **Q Well, if you could read it, and then I'll**
3 **ask you a question about it.**
4 **What I'm going to ask specifically about is**
5 **the part of that paragraph in which Mr. O'Neal is**
6 **explaining PBGC has said that it would "assert liens**
7 **against Delphi ROW."**
8 **First of all, is it your understanding that**
9 **PBGC had said that it would assert liens against**
10 **Delphi, and then ROW, do you have any understanding of**
11 **what that means?**
12 A Rest of world.
13 **Q And it was your understanding, then, that**
14 **PBGC had said that it would assert liens against**
15 **Delphi rest of world; is that correct?**
16 A Yes, we had liens against Delphi rest of
17 world.
18 **Q And you had been saying, and I think you had**
19 **described it as making a lot of noise --**
20 A Right.
21 **Q -- that you were going to assert.**
22 A Well, we asserted the liens when we filed

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1 them.
2 **Q Right.**
3 **Then the second part of this suggests that**
4 **PBGC said it would sue GM for what PBGC had said was**
5 **its view as "GM's prior unlawful follow-on plan at the**
6 **time -- at the time the pension plans were split."**
7 **Do you have any understanding of what this**
8 **is relating to?**
9 A It appears to be related to the benefit
10 guarantee.
11 **Q Do you have any understanding of PBGC having**
12 **said that it would sue GM?**
13 A No.
14 **Q Do you know who at PBGC would know more**
15 **about that if that had ever been said?**
16 A I would know about it.
17 **Q You would know about it if it were said?**
18 A Yes. Well, it's possible it could be said
19 outside of my presence, but I was unaware of any -- of
20 any assertion that we would sue GM.
21 MR. O'TOOLE: Let's go to the next exhibit,
22 Exhibit 10.

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1 While we're marking Exhibit 10, at some
2 point the Delphi salaried plan was frozen. Is that
3 your understanding?
4 A Yes.
5 **Q Do you recall when that was?**
6 A I think it was November of 2008.
7 **Q When the plan was frozen, at that point,**
8 **what is your understanding of what a frozen plan**
9 **means?**
10 A It means that at that point none of the
11 participants are receiving accruals. And when I
12 said -- wait, I said November?
13 **Q Yes.**
14 A That was for the hourly plan.
15 **Q Okay.**
16 A The salaried was September.
17 **Q So none of the participants are receiving**
18 **accruals. Is that in terms of service time?**
19 A I don't know. There are different types of
20 freezes, and I don't remember what constituted this
21 freeze.
22 **Q Now, what are the different types of freeze?**

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1 A Well, you could have a plan that's frozen to
2 new entrants, doesn't affect the people who are in the
3 plan at the time.
4 **Q But that wasn't what type of freeze you**
5 **understood this to mean.**
6 A No, I think what this was, was it was a hard
7 freeze where those participants in the plans would
8 stop accruing benefits, but I --
9 **Q But beyond that --**
10 A That's my understanding.
11 MR. O'TOOLE: We'll mark this as Exhibit 10,
12 then.
13 (Exhibit 10 was marked for identification and
14 attached to the deposition transcript.)
15 A Okay.
16 **Q So Exhibit 10 appears to be an e-mail.**
17 **First it was, I guess, a chain between Rodney O'Neal**
18 **and Vince Snowbarger dated January 31st. That e-mail**
19 **describes the pension freeze that we were just talking**
20 **about; is that correct?**
21 A Right.
22 **Q It appears that later on that evening, this**

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1 **exchange was forwarded from Joe House at PBGC to a**
2 **number of other people, including you. Is that**
3 **correct?**
4 A Right.
5 **Q And is this description consistent with your**
6 **understanding of the salaried plan freeze?**
7 A Well, I mean, this is a clarifying piece
8 about how it was frozen.
9 **Q Right. But, basically, it's still**
10 **consistent with the description you just gave; is that**
11 **correct?**
12 A Yeah. I don't know about this exception.
13 **Q But, generally, your understanding was that**
14 **there was a hard freeze on the pension benefits, and**
15 **you're not exactly sure how that played out, but it**
16 **was basically that existing participants were not**
17 **getting any more benefit accruals.**
18 A Correct.
19 **Q So are you familiar with a document**
20 **repository called the Delphi data room?**
21 A Whose document repository was this?
22 **Q My understanding, and you can correct me if**

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1 **I'm wrong, is that Delphi compiled a number of**
2 **documents so that potential purchasers or other groups**
3 **that wanted to do due diligence with respect to**
4 **Delphi's financials could come to the Delphi data room**
5 **and review those relevant documents.**
6 **Have you heard of that repository?**
7 A I probably did. It's pretty typical in an
8 M&A scenario.
9 **Q Have you ever been to that room, or has PBGC**
10 **sent anyone to the Delphi data room?**
11 A I never went. It could be that our
12 investment banker, Greenhill, visited.
13 **Q But you don't know either way whether**
14 **Greenhill visited?**
15 A I don't.
16 MR. O'TOOLE: We'll go to Exhibit 11.
17 **Q Before we mark this, are you familiar with**
18 **Todd Snyder?**
19 A Yes.
20 **Q Who is Todd Snyder?**
21 A Todd Snyder is an investment banker from
22 Rothschild.

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1 **Q Did he work on the Delphi matter that we've**
2 **discussed today?**
3 A He did not.
4 **Q He did not at all?**
5 A Well, he worked -- he was the Auto Task
6 Force's investment banker. So he would have been
7 involved with Delphi through that.
8 **Q Through that, through his work with the Auto**
9 **Task Force?**
10 A Correct.
11 **Q Did he also work for PBGC?**
12 A My understanding -- on Delphi?
13 **Q Well, on anything, I guess is the first**
14 **question.**
15 A Oh, yes, he's worked with us.
16 **Q What did he work on with PBGC?**
17 A I remember he worked on -- I mentioned Tower
18 Automotive earlier. He worked with us on Tower
19 Automotive.
20 **Q Do you recall what he did on Tower**
21 **Automotive?**
22 A He was our financial advisor.

27 (Pages 102 to 105)

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1 MR. MENKE: Objection. This is outside the
2 scope of the topics of this deposition.
3 **Q Just generally, he was a financial advisor**
4 **with -- for PBGC. What sorts of advice would he**
5 **provide in terms of financial advice?**
6 MR. MENKE: Same objection.
7 **Q You can answer the question.**
8 A He would provide expertise on company's
9 business plan, financing options, you know, ability to
10 raise capital, that sort of thing.
11 **Q So ability to afford pension plans, is**
12 **that --**
13 A Yes, that would cover it.
14 **Q But he didn't -- your understanding is that**
15 **he did not work on the Delphi issue for PBGC?**
16 A Correct.
17 **Q But he was working for the Auto Task Force**
18 **at that time?**
19 A Correct.
20 **Q On the Delphi issue?**
21 A He was working for the Auto Task Force on
22 all Auto Task Force matters.

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1 **Q Including Delphi.**
2 A Indirectly because GM was really the issue.
3 (Exhibit 11 was marked for identification and
4 attached to the deposition transcript.)
5 BY MR. O'TOOLE:
6 **Q Now I will show you Exhibit 11.**
7 **Now, Exhibit 11 appears to be an e-mail from**
8 **Joe House to Todd Snyder with an attachment that's**
9 **entitled "Treasury Memo." If I could get you to take**
10 **a look at what was produced to us as the attachment**
11 **that was sent with that e-mail.**
12 **First of all, have you seen this memo**
13 **before?**
14 A Yes, I have.
15 **Q How did you see it?**
16 A I was the author.
17 **Q You were the author of this memo.**
18 **Now, is there a later form of this memo?**
19 **Because it appears to be in draft form, or at least**
20 **there are -- appear to be track changes on this memo**
21 **or metadata attached to it.**
22 **Do you know if there's a later version of**

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1 **this memo?**
2 A I think there must be.
3 **Q Do you know if this earlier draft was the**
4 **one attached to the Joe House e-mail, or do you know**
5 **whether the final version was attached?**
6 A I don't know.
7 **Q But you were the author of this memo?**
8 A In the first instance, yes.
9 **Q So it was your understanding that in part**
10 **because the Secretary of Treasury was serving on**
11 **PBGC's board, PBGC wanted to "coordinate with Treasury**
12 **on these matters"? And I believe "these matters"**
13 **refer to both the GM and Delphi pension issues as well**
14 **as Chrysler.**
15 MR. MENKE: Can I have that question read
16 back, please.
17 (Record read.)
18 MR. MENKE: Thank you.
19 BY MR. O'TOOLE:
20 **Q I'll rephrase that question.**
21 **I'm going to refer you to the last sentence**
22 **on page 1 of the memo. It says, "Given that the**

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1 **Secretary of Treasury serves on PBGC's board, PBGC**
2 **wishes to coordinate with the Treasury on these**
3 **matters."**
4 **Did I read that correctly?**
5 A You read that correctly.
6 **Q What are you referring to when you say**
7 **"these matters"?**
8 A I think automotive in general. I think
9 that's what the purpose of this -- of this memo was.
10 **Q And what's the -- what's the title of this**
11 **memo?**
12 A "Inter-Agency" -- are you talking about the
13 subject?
14 **Q Yes, the subject.**
15 A "Inter-Agency Coordination on Certain TARP
16 Borrowers."
17 **Q So at least one focus of this memo is on**
18 **inter-Agency coordination; is that right?**
19 A I suppose so.
20 **Q And who would the TARP borrowers be that the**
21 **agencies were coordinating on?**
22 A General Motors and Chrysler.

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1 **Q** Now, I guess the third sentence of your memo
2 says that "These issues directly implicate pension
3 plans sponsored by GM and its former subsidiary,
4 Delphi Corporation, as well as Chrysler." So one
5 focus of this memo was the direct implications on the
6 pension plans sponsored by GM and its former
7 subsidiary, Delphi Corporation; is that correct?
8 A That's correct.
9 **Q** All right. Let's go to Exhibit 11.
10 MR. MENKE: That was Exhibit 11.
11 MR. O'TOOLE: Let's go to 12.
12 (Exhibit 12 was marked for identification and
13 attached to the deposition transcript.)
14 BY MR. O'TOOLE:
15 **Q** Now, before discussing Exhibit 12, can you
16 remind us who Compass Advisers were?
17 A They were our -- one of our financial
18 advisors on the Delphi matter.
19 **Q** And by "our," you mean PBGC?
20 A PBGC's.
21 **Q** Now, I'm going to direct your attention to
22 the last page of this, the last bullet that begins,

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1 "PBGC should continue." In this bullet, Compass
2 appears to be describing a "full court press" that
3 PBGC was making to convince GM and government
4 officials that a 414(l) transfer was in everyone's
5 best interest.
6 Is that consistent with your recollection?
7 A I would say we were advocating for that.
8 **Q** Would you contest the use of the term "full
9 court press"?
10 A It's a metaphor.
11 **Q** Does it accurately describe what you were
12 doing?
13 A I think we were advocating for the transfer.
14 **Q** And why -- what about "full court press" is
15 rubbing you the wrong way?
16 MR. MENKE: Objection, mischaracterizes the
17 testimony. He didn't say that.
18 **Q** Is the term "full court press" an accurate
19 metaphor to describe what the PBGC was doing to
20 convince GM and government officials that the 414(l)
21 transfer was in everyone's best interest?
22 A It was something we were very interested in

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1 and we were living every day.
2 **Q** Now, at some point earlier today we talked
3 about waivers, in terms of Delphi's ability to get
4 waivers from the IRS for pension contributions.
5 Did the PBGC ever suggest that it could help
6 GM with waivers if the equity markets didn't turn
7 around?
8 A I don't recall.
9 **Q** Do you recall any discussions with GM about
10 potential equity waivers for GM?
11 A No, I don't recall, although that would
12 definitely be something we would be -- I could see us
13 doing that.
14 **Q** No specific recollection of doing it, but
15 it's something that you would be doing?
16 A Makes sense.
17 **Q** Okay.
18 MR. O'TOOLE: Let's go to Exhibit 13.
19 (Exhibit 13 was marked for identification and
20 attached to the deposition transcript.)
21 BY MR. O'TOOLE:
22 **Q** So Exhibit 13 appears to describe a briefing

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1 that Todd Snyder provided for PBGC in March, appears
2 to be March 11th, 2009.
3 Do you recall that briefing?
4 A I do.
5 **Q** What was discussed at that briefing?
6 A Todd was providing us with, kind of, an
7 update on what the task force was doing at the time.
8 One of the things they were doing, I remember, in
9 number 3 was this supplier receivable program is
10 something they were exploring at the time. They
11 weren't providing any financing to suppliers, but one
12 thing they were looking at was some sort of supplier
13 receivable program that would make it -- that would
14 ease cash flow concerns at auto suppliers. I don't
15 know that that ever was put into place.
16 **Q** How would that have worked?
17 A You know, I don't remember.
18 **Q** Okay. But the goal of that program would
19 have been to essentially --
20 A Provide some relief to suppliers.
21 **Q** And by "relief," we're probably talking
22 about cash or payments?

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1 A We're talking about cash flow, yes.
2 **Q Cash flow relief.**
3 **Would it have been through purchasing**
4 **through cash but essentially using the TARP cash to**
5 **make the purchases so that the money goes directly to**
6 **the suppliers, or do you not recall?**
7 A I don't recall, but I think it had something
8 to do with, as it describes, a guarantee of certain
9 supplier receivables.
10 **Q It sounds like during this briefing that**
11 **there was a discussion of an in-person meeting between**
12 **PBGC senior leadership and auto team representatives**
13 **during the week of March 16th to March 20th, 2009.**
14 **Do you recall the discussion of that**
15 **in-person meeting?**
16 A At the meeting with Todd?
17 **Q Yes.**
18 A Not specifically.
19 **Q Do you recall the meeting itself?**
20 A I don't think I was at that meeting.
21 **Q Do you know who was?**
22 A I'm sure that Joe House and Terry Deneen

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1 were.
2 **Q This also describes an "info request to**
3 **General Motors seeking pension modeling regarding**
4 **assumption of the Delphi pension plans."**
5 **Do you recall this discussion?**
6 A Not specifically, but I know that we were
7 talking -- or we were trying to understand what a GM
8 assumption of Delphi pensions would look like for GM
9 on a cash flow basis.
10 **Q Do you know if you ever received any pension**
11 **modeling materials from GM?**
12 A I think we did.
13 **Q Do you know when, approximately?**
14 A Sometime in this time period. I don't know
15 when.
16 **Q This would -- in terms of assumption of the**
17 **plans, this would have been both the hourly and the**
18 **salaried plans; is that correct?**
19 A That's my recollection.
20 **Q Now, during this same time frame, are you**
21 **still participating in UCC calls and meetings?**
22 A Yes.

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1 **Q Did you participate pretty extensively all**
2 **the way through the time frame from September 2008**
3 **through, say, August 2009?**
4 A Yes.
5 **Q Do you have any recollection of what in**
6 **particular was being discussed at those meetings in**
7 **this exact same time frame as the Snyder briefing of**
8 **March, early March of 2009?**
9 A My recollection is that Delphi was looking
10 for a path to exit bankruptcy, and a lot of that --
11 one of the potential hurdles to that was some sort of
12 pension solution.
13 **Q So that was being discussed among the UC --**
14 **the unsecured creditors as well?**
15 A It was being reported on as a discussion
16 that was happening.
17 **Q Were the unsecured creditors taking any**
18 **position with respect to the pensions, that you know**
19 **of?**
20 A I don't recall specifically, but it would
21 make sense that they would -- that the unsecured
22 creditors would probably advocate -- they didn't want

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1 the pension plans in the claims pool because it would
2 dilute them significantly. So I would think that they
3 would have been in line with a pension transfer, but,
4 you know, I could be wrong.
5 **Q No specific recollection?**
6 A Yeah.
7 **Q Okay.**
8 **Around this same time, Delphi was expressing**
9 **concern about a new IRS regulation that they were**
10 **concerned might have some effect on the pensions.**
11 **Do you recall that?**
12 A I don't.
13 MR. O'TOOLE: Let's mark Exhibit 14.
14 (Exhibit 14 was marked for identification and
15 attached to the deposition transcript.)
16 BY MR. O'TOOLE:
17 **Q Does this refresh your recollection at all**
18 **of the IRS issue?**
19 A A little, yes.
20 **Q Can you describe what you remember about it**
21 **now?**
22 A Yes. So PPA, which is the Pension

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1 Protection Act, I think it was 2006, changed a lot of
2 the nomenclature by which pension plans are funded,
3 and I know very generally about that because I'm not
4 an actuary. But one of the -- apparently, Delphi's
5 tax counsel is reporting to his client that one of the
6 issues related to PPA would have not allowed General
7 Motors to use its credit balance in the hourly plan to
8 satisfy past due funding for the hourly plan -- Delphi
9 hourly plan.

10 **Q What difference would that have made?**
11 A I think it would make it more difficult for
12 General Motors to afford the Delphi hourly plan.

13 **Q And it appears from this e-mail that Delphi**
14 **is requesting the PBGC's assistance on this issue.**
15 **Do you recall what, if anything, the PBGC**
16 **did?**
17 A I don't, specifically.

18 **Q Are you familiar with the name of Will**
19 **Sollee?**
20 A Yes.

21 **Q Did you ever have any discussion with Will**
22 **Sollee about this issue?**

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1 A I believe we did, yes.

2 **Q Do you recall the content of that**
3 **discussion?**
4 A I don't.

5 **Q Who is Will Sollee?**
6 A He is -- he was Delphi's tax counsel.

7 **Q He was Delphi's tax counsel, okay.**
8 A Yes.

9 **Q That's not their internal tax counsel; that**
10 **would be an outside consultant?**
11 A Yes, he's outside.

12 **Q Now, you mentioned a meeting around**
13 **March 10th in which Todd Snyder provided a briefing.**
14 **Do you recall another meeting later that**
15 **month, March 25th or so, in which Mr. Snyder provided**
16 **another update on the status of the auto team's task**
17 **force?**
18 A Not specifically.

19 **Q But when he -- there were briefings during**
20 **the month of March in which he was providing briefings**
21 **to the PBGC but not wearing his PBGC hat, wearing his**
22 **Auto Task Force hat; is that correct?**

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1 A Correct.

2 **Q Now, when PBGC has consultants, do the**
3 **consultants have offices at PBGC?**
4 A No. Well, sometimes.

5 **Q So, for example, when Mr. Snyder would do**
6 **PBGC work, did he have an office there, or did he work**
7 **out of his Rothschild office?**
8 A He did not have an office at PBGC.

9 MR. O'TOOLE: Let's go to 15.
10 (Exhibit 15 was marked for identification and
11 attached to the deposition transcript.)
12 BY MR. O'TOOLE:

13 **Q So Exhibit 15 appears to be a presentation**
14 **that Delphi made to the DIP steering committee; is**
15 **that correct?**
16 A Yes, that's what this looks like. It could
17 have been reported to the unsecured committee as well.

18 **Q Do you recall seeing this presentation?**
19 A I do.

20 **Q Does March 20th sound about when you would**
21 **have seen it?**
22 A Probably somewhere in that area.

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1 **Q Somewhere in that time frame?**
2 **Anything about this presentation that sticks**
3 **out for you?**
4 A No.

5 **Q I'm going to direct you to page 9.**
6 A 9?

7 **Q So one of the key emergence issues for**
8 **Delphi was what was going to happen to the pension**
9 **plans; is that correct?**
10 A That's what it says here, yes.

11 **Q And this -- page 9 describes two likely**
12 **outcomes for the pension plan; is that right?**
13 A That's right.

14 **Q The preferred one is the agreement by GM to**
15 **assume both the hourly and salaried plans; is that**
16 **correct?**
17 A That's right.

18 **Q Is that consistent with your recollection of**
19 **what took place at the meeting?**
20 MR. MENKE: Objection. Refers to evidence
21 not in issue. I don't recall testimony about a
22 meeting.

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1 **Q** Wherever you were presented with this
2 PowerPoint, is it consistent with what was presented
3 to you? Is what is on this current PowerPoint
4 consistent with what was said at the meeting or at the
5 presentation?
6 A Absolutely.
7 **Q** So there was nothing that contradicted this
8 presentation?
9 A My recollection is that this is -- that this
10 was Delphi's preferred path forward on a pension
11 resolution.
12 **Q** As of this time frame?
13 A Yes.
14 **Q** We're going to mark Exhibit 16.
15 Now, you mentioned earlier that it was your
16 understanding that GM had made some funding
17 projections for what it would cost to -- for GM to
18 assume the hourly and salaried plans. Is that
19 correct?
20 A That's what I remember.
21 (Exhibit 16 was marked for identification and
22 attached to the deposition transcript.)

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1 BY MR. O'TOOLE:
2 **Q** I'm going to show you now Exhibit 16.
3 Did you ever see those funding projections?
4 A Yes.
5 **Q** If you could take a look at Exhibit 16 and
6 tell me whether or not those are the funding
7 projections.
8 A Yes, these look like GM's funding
9 projections.
10 **Q** Now, it appears that -- from this
11 document -- so it appears from -- these are consistent
12 with your recollection of what GM provided; is that
13 right?
14 A Well, okay, I'm not the one who was actually
15 looking at the funding projections.
16 **Q** Right.
17 A That's not what I do. So this would have
18 been something that Cindy would have done with GM's
19 actuaries and with her own consultants.
20 **Q** I wasn't trying to trick you. I actually
21 was mistaken about -- when I asked my question before,
22 but this appears to be funding projections that are

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1 prepared by the PBGC that are similar to GM's funding
2 projections; is that right?
3 A I think we probably took GM's projections
4 and summarized it in this chart.
5 **Q** Do you remember ever seeing this chart
6 before?
7 A Yes, I do.
8 **Q** When, do you recall?
9 A Probably March 2009.
10 **Q** After you saw this in March of 2009, do you
11 remember ever doing anything with it in terms of
12 presenting it anywhere else?
13 A I don't recall specifically.
14 **Q** Just generally then, do you have any general
15 recollections about discussing these projections
16 outside of PBGC?
17 A I would imagine we had discussed it -- I
18 would think we discussed it with the Auto Task Force
19 and with GM.
20 **Q** But you have no specific recollection?
21 A No.
22 **Q** Do you have any idea when you would have

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1 been likely to discuss it with the Auto Task Force?
2 A Probably shortly after we got it.
3 MR. O'TOOLE: Let me just mark Exhibit 17,
4 which will be the GM funding projections.
5 (Exhibit 17 was marked for identification and
6 attached to the deposition transcript.)
7 MR. O'TOOLE: Once again, we would ask that
8 these be placed under seal because they were produced
9 to us by GM pursuant to a confidentiality agreement.
10 MR. MENKE: No objection.
11 MR. OWEN: Just for the record, these
12 actually were produced to you from us, just so you
13 know, but no objection.
14 BY MR. O'TOOLE:
15 **Q** Now that you've had a chance to look at
16 Exhibit 17, is that consistent with your recollection
17 of what was produced by GM in terms of funding
18 projections in March 2009?
19 A I don't recall seeing this, this document.
20 **Q** So the only document you recall seeing is
21 Exhibit 16, which would have been the document that
22 appears to have been produced by the PBGC?

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1 A Yes.
2 **Q And likely based on those projections,**
3 **although you don't know that for sure?**
4 A Possibly.
5 **Q Exhibit 16, you mentioned that you feel like**
6 **it's likely you would have shared that with the Auto**
7 **Task Force.**
8 **Would you have also shared it with the**
9 **Department of Labor, to your knowledge?**
10 A I doubt it.
11 **Q So you don't have any recollection of any**
12 **meetings within the Department of Labor in which those**
13 **projections were discussed?**
14 A No, I don't.
15 **Q You testified earlier that there were**
16 **meetings that were ongoing during this time frame --**
17 **and now we're into about April of 2009 -- between**
18 **PBGC, Auto Task Force, Delphi, GM, unsecured creditors**
19 **committees. All of these meetings are happening**
20 **around the same time; is that right?**
21 A Right.
22 (Exhibit 18 was marked for identification and

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1 attached to the deposition transcript.)
2 BY MR. O'TOOLE:
3 **Q I'm going to show you Exhibit 18, and**
4 **there's a meeting that's being discussed in early**
5 **April of 2009. Apparently, PBGC was disinvented from**
6 **the meeting by Treasury. Do you recall that?**
7 A Not specifically, no.
8 **Q Was that something that was common?**
9 A To be disinvented to a meeting?
10 **Q Well, I guess, to be invited or disinvented**
11 **at the last minute by Treasury.**
12 A I don't think it's common, no.
13 **Q But you have no recollection of a meeting**
14 **that PBGC was supposed to be at in early April 2009?**
15 A There were lots of meetings all the time.
16 **Q And if somebody were to say that it was a**
17 **good thing, somebody within PBGC were to say it was a**
18 **good thing that you were disinvented for the meeting or**
19 **that it's for the best, would you have any explanation**
20 **for that?**
21 MR. MENKE: Objection, lack of foundation.
22 **Q So let's say someone from PBGC wrote an**

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1 **e-mail in response to this, saying, "It's for the best**
2 **that we were disinvented," and you're involved with**
3 **these meetings at this time. Any explanation for why**
4 **someone from PBGC would send that sort of e-mail?**
5 MR. MENKE: Objection, lack of foundation.
6 There's no evidence that Mr. Cann was involved in this
7 meeting at all. He appears nowhere, as far as I can
8 tell, in this e-mail exchange.
9 **Q You were meeting with the Treasury during**
10 **this time frame; is that right?**
11 MR. MENKE: Objection, clarity. Who do you
12 mean by "you"?
13 **Q You, Mr. Cann, were involved with -- in many**
14 **meetings with the Treasury, with the task force.**
15 A With the task force, yes.
16 **Q During April 2009?**
17 A Yes. I mean, winter and spring of 2009. I
18 wasn't at all of the meetings.
19 **Q But you were working pretty closely with Joe**
20 **House, right?**
21 A I was.
22 **Q So if Joe House had a meeting with the**

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1 **Treasury on Delphi, you would have probably known**
2 **about it, right?**
3 A I would have known about it.
4 **Q You would have definitely known about it?**
5 A I would have.
6 **Q Yes.**
7 **So if Joe House were disinvented from a**
8 **meeting from the Treasury and someone within PBGC's**
9 **office of legal counsel wrote an e-mail or Joe House**
10 **wrote an e-mail, saying, "We've been disinvented, it's**
11 **for the best," would that be something that's**
12 **surprising to you, or could you explain why it would**
13 **be good to be disinvented?**
14 A I don't know why in this context it would be
15 good to be disinvented.
16 MR. O'TOOLE: Why don't we take a break.
17 (A brief recess was taken.)
18 MR. O'TOOLE: Back on the record.
19 BY MR. O'TOOLE:
20 **Q All right, we've been talking about April**
21 **2009, and at some point in April 2009 there's some**
22 **discussion of foreclosure by the DIP lenders.**

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1 **Do you recall that?**
2 A Yes.
3 **Q Can describe what was going on with respect**
4 **to the foreclosure?**
5 A Well, Delphi -- I think the original DIP
6 loan expired December 2008, and they had been on, kind
7 of, temporary agreements to extend it out for a period
8 of time. And the DIP lenders had the collateral and,
9 obviously, if Delphi was not in compliance with the
10 agreement at some point, they could foreclose on that
11 collateral.
12 **Q Was PBGC concerned by that possibility?**
13 A Yes.
14 **Q Why?**
15 A Because, first of all, foreclosure on the
16 collateral would be the end of Delphi, first of all.
17 But, specifically for PBGC, any recoveries we would be
18 able to get through Delphi was going to come from
19 overseas.
20 **Q The liens; is that correct?**
21 A The liens plus our joint and several claims
22 against -- our unsecured claims against overseas

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1 entities.
2 **Q Okay.**
3 A That's where all the value was. So we were,
4 you know, keenly focused on that. A foreclosure by
5 the DIP lenders would have removed all that value from
6 what we call our control group, the control group
7 meaning the Delphi consolidated entity against which
8 our claims reach, including overseas. Foreclosure
9 would have done that because the debtor entity that
10 owned all that stock had pledged that stock to the DIP
11 lenders. So the DIP lenders would have foreclosed on
12 that stock, removing the ownership of those entities
13 from our control group.
14 **Q So what, if anything, did PBGC do to**
15 **preserve its position with respect to the**
16 **foreclosures?**
17 A We moved forward with a termination
18 recommendation in April of 2009 on the hourly and
19 salaried plan, and we were a part of a negotiation
20 around, I don't know what you would call it, but some
21 sort of standstill agreement on the DIP lenders giving
22 various parties written notice of foreclosure.

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1 **Q So that was the gist of the standstill**
2 **agreement is that PBGC had to get a certain amount of**
3 **notice before foreclosure could go forward, and during**
4 **that notice period, PBGC would then essentially move**
5 **on its liens or whatever interest it had in the**
6 **overseas property so that it couldn't get foreclosed**
7 **out from under the PBGC; is that basically it?**
8 MR. MENKE: Objection, foundation,
9 characterization. The witness can answer.
10 A Ask your question again.
11 **Q What was the gist of the foreclosure**
12 **agreement -- or of the standstill agreement between**
13 **PBGC and the DIP lenders?**
14 A It was to basically stop us from moving
15 forward with the termination and just forbear,
16 essentially, from terminating so that we could play
17 this out and see if there was some sort of resolution
18 that would allow us to keep the pensions ongoing or,
19 you know, some better resolution.
20 **Q So PBGC stopped the termination proceedings**
21 **midstream with the hopes that the plans could be saved**
22 **going forward?**

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1 A Yes, we got the termination approved within
2 PBGC, but we did not issue the notice of determination
3 to the world.
4 **Q So nothing became public with respect to the**
5 **PBGC proceedings?**
6 A Correct.
7 **Q And why did PBGC not move forward with the**
8 **actual termination itself?**
9 A Because we still had hope that there would
10 be some resolution that would allow a reorganized
11 Delphi to emerge from Chapter 11.
12 **Q Was another part of it that the standstill**
13 **agreement protected the PBGC's interest short of**
14 **moving forward with termination?**
15 A That was our position, yes. That was the
16 purpose of the standstill from our standpoint.
17 **Q Was to protect whatever interests you had in**
18 **Delphi in terms of liens or in terms of unsecured**
19 **claims overseas?**
20 A Correct.
21 **Q By protecting those, by protecting those**
22 **liens and protecting those overseas claims, did that**

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1 preserve what I think you just called before the
2 PBGC's -- PBGC's leverage in terms of negotiating to
3 keep the plan alive?
4 MR. MENKE: Objection, foundation.
5 A It protected our ability to recover assets
6 from rest-of-world entities.
7 Q What about in negotiations? Say, for
8 example, that someone wanted to purchase the Delphi
9 assets post emergence.
10 A Right.
11 Q They've got to deal with your liens and
12 they've got to deal with your claims, right?
13 MR. MENKE: Objection, lack of foundation.
14 You can answer if you can.
15 A Yes.
16 Q So if, for example, they come to PBGC and
17 say, "We want you to waive these liens or we want you
18 to waive these claims," PBGC could say, "Well, keep
19 the plan post emergence," right?
20 MR. MENKE: Objection, lack of foundation,
21 requests -- calls for speculation on the part of the
22 witness. You can answer if you can.

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1 A They could also ignore our liens and just
2 move forward with them.
3 Q Right. But they do so at their peril. It
4 might cost them hundreds of millions of dollars to
5 ignore your liens, right?
6 MR. MENKE: Objection, lack of foundation,
7 lack of testimony on the topic.
8 Q You can answer.
9 A Was there a question?
10 Q Yes. You said that the potential purchaser
11 could ignore your liens. What would happen if they
12 ignored your liens and they turned out to be valid,
13 they purchased the company?
14 MR. MENKE: Objection. Calls for
15 speculation of the witness. Calls for a legal
16 conclusion of the witness. I caution him to answer
17 with care.
18 A I don't know.
19 Q Mr. Cann, you've dealt with companies, I
20 think you testified earlier many companies, that have
21 gone through bankruptcy and kept their pension plans,
22 and sometimes the way they kept their pension plans is

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1 that the -- the purchaser post emergence agreed to
2 keep the pension plans; is that correct?
3 A That's correct.
4 Q And in doing so, they're negotiating with
5 PBGC at that point, right?
6 MR. MENKE: Objection, lack of foundation.
7 You can answer.
8 A Sometimes.
9 Q And in the negotiations, one of the points
10 of -- and I think it's your word -- leverage that PBGC
11 has is liens or -- and PBGC here had both foreign
12 liens and domestic liens on the repatriated cash; is
13 that right?
14 A That's right.
15 MR. O'TOOLE: Let's go to what we're going
16 to mark as Exhibit 19.
17 (Exhibit 19 was marked for identification and
18 attached to the deposition transcript.)
19 BY MR. O'TOOLE:
20 Q Do you recognize this document?
21 A Yes.
22 Q It appears that on page 1 of this document

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1 your name is mentioned as the financial analyst. Is
2 that correct?
3 A That's right.
4 Q What did you have to do in terms of
5 preparing this document?
6 A This document would have been prepared by
7 Cindy Travia.
8 Q Would you have had any role in preparing it?
9 A Well, it's part of the termination
10 recommendation package. I had primary responsibility
11 for that. This piece was -- is typically done by the
12 actuary.
13 Q Do you know what documents would have been
14 relied on in preparing this, in terms of funding
15 projections?
16 A Funding projections?
17 Q Or funding assumptions with respect -- with
18 respect to the plan itself?
19 A What do you mean, "funding assumptions"?
20 Q Well, I'm looking at number 3 on page 2,
21 "Funding Assumptions."
22 A Okay.

35 (Pages 134 to 137)

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1 **Q I'm wondering what documents would have been**
2 **relied on in creating those funding assumptions.**
3 A Okay, so when we're talking about funding
4 assumptions here, we're talking about how well funded
5 the pension plan is.
6 **Q Okay.**
7 A It looks to me like it relied on the
8 October 1, 2007 actuarial valuation report and
9 projected benefit obligation from Delphi's 10-K as of
10 December 31, 2008, plus some demographic information
11 prepared by Watson Wyatt Worldwide, which was Delphi's
12 actuary as of October 1, 2008.
13 **Q Now, we talked before -- and maybe I'm**
14 **looking in the wrong place, but we talked before about**
15 **some documents that had been prepared with respect to**
16 **Delphi's ability to keep the plan post emergence, that**
17 **is, what it would have cost for Delphi to keep the**
18 **plan when they came through bankruptcy.**
19 **Were any of these documents considered in**
20 **connection with this, in connection with Exhibit 19?**
21 A Other than the fact that, if you look at
22 section 4042(a)(1) that's been checked, "The plan has

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1 not met the minimum funding standard" means that they
2 missed a full -- you know, a year of contributions.
3 **Q Go ahead.**
4 A No, the answer is no.
5 **Q Now, in terms of -- let's go to the 4042**
6 **factors. What this has checked is "The plan has not**
7 **met the minimum funding standard."**
8 **That means the plan missed a year of**
9 **contributions; is that correct?**
10 A That's correct. In shorthand.
11 **Q Right.**
12 **But lots of plans miss a year of funding**
13 **contributions and don't get terminated; is that right?**
14 MR. MENKE: Objection, foundation.
15 A I would say that's not true.
16 **Q Well, how often does that happen?**
17 A In my experience, once plans have missed a
18 full year of funding obligations, they get terminated.
19 **Q What about the one -- what about the plans**
20 **that you talked about in connection with the press**
21 **release earlier that's the auto supplier plans, did**
22 **any of those miss funding contributions?**

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1 A Those were all current on funding
2 contributions during bankruptcy.
3 **Q You've not seen a plan before that's missed**
4 **funding contributions and was not terminated?**
5 A I have seen that before.
6 **Q About how often?**
7 A Maybe two or three times in my years at
8 PBGC.
9 **Q What about the waiver process? Now, all of**
10 **these missed contributions were waived by the IRS; is**
11 **that correct?**
12 A I think if they had -- if there was a valid
13 waiver in place at the time this document was done, we
14 would not have checked 4042(a)(1).
15 **Q Were any waivers denied?**
16 A I don't recall.
17 **Q So you don't know if there were any funding**
18 **contributions that were missed that weren't waived?**
19 A The fact that this was checked would
20 indicate that there were.
21 **Q But other than the check in the box, there's**
22 **nothing on here that suggests to you, or you haven't**

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1 **seen anything that you can recall that shows that a**
2 **contribution was missed that was not waived by the**
3 **IRS?**
4 A I guess not.
5 **Q Let's go to number 2. "The plan will be**
6 **unable to pay benefits when due."**
7 **Now, was it your understanding that the plan**
8 **was making benefit payments at this point?**
9 A Yes.
10 **Q Had they missed any payments to the**
11 **participants?**
12 A Not that I was aware of.
13 **Q Why is this box checked?**
14 A Because the plan itself was very
15 underfunded. If you look at the present value of
16 benefit liabilities of 5 billion dollars and the plan
17 assets of 2.3 billion, it's a little better than
18 50 percent funded, and that's a very poorly funded
19 plan.
20 **Q And what's the time horizon on this**
21 **5 million dollar liability -- 5 billion?**
22 A 5 billion?

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1 **Q 5 billion dollar liability.**
2 A It's forever.
3 **Q Right. So --**
4 A But that's the present value --
5 **Q Right.**
6 A -- of --
7 **Q Right.**
8 A The actual liability is --
9 **Q But that's how much you would need to pay**
10 **out over 40 or 50 years in terms of present value.**
11 A Right.
12 **Q And it's got 2.3 billion to do that?**
13 A It does.
14 **Q So the 2.3 billion is going to last**
15 **certainly longer than what benefits went due? I mean,**
16 **the benefits are due in, let's say --**
17 A Over the next 40 to 50 years.
18 **Q Right. But there's no -- it's not like the**
19 **2.3 billion isn't going to make the May 2009 payment,**
20 **right?**
21 A Correct.
22 **Q So there's going to be a while before --**

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1 **there's going to be a while before the plan runs out**
2 **of money?**
3 A Assuming somebody is administering the plan.
4 **Q Right.**
5 A Yes.
6 **Q What's the time horizon on this? Because**
7 **some plans get poorly funded when the market is low**
8 **and then the market comes back; is that right?**
9 A Yes.
10 **Q What about the last factor that's checked,**
11 **the "Long-run loss"? Is that more what you're trying**
12 **to get at when you're talking about the 5 billion**
13 **dollars in liabilities and the 2.3 billion dollars**
14 **in --**
15 A No, the long-run loss is -- has to do with
16 our ability to -- in this instance, has to do with our
17 ability to collect recoveries from the overseas
18 assets. So, in other words, if we waited to
19 terminate, we would miss that opportunity.
20 **Q Got it.**
21 **So that one was taken care of when you got**
22 **the standstill agreement, right?**

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1 A It was taken care of -- well, it was taken
2 care of until that standstill agreement was no longer
3 in place.
4 **Q Right. So as of April 2009, when you got**
5 **the standstill agreement, and at that point the DIP**
6 **lenders weren't saying, "We're going to foreclose on**
7 **this very soon" -- now, they could change that when**
8 **they give you five-day notice, but at that point**
9 **they're not saying, "We're going to foreclose."**
10 **This long-run loss problem went away at**
11 **least for that point, right?**
12 MR. MENKE: Objection, mischaracterizes
13 testimony. Mischaracterizes the nature of the
14 standstill agreement. Mischaracterizes his past
15 testimony.
16 **Q You can answer.**
17 A The standstill agreement was not in place
18 when we -- when we got this approved.
19 **Q Right. And once it goes into place, then**
20 **this -- then this factor is no longer relevant, right?**
21 **It's been taken care of by the standstill agreement.**
22 A It's not taken care of. It's been stayed,

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1 is the way I would characterize it.
2 **Q Let's say you had to make this determination**
3 **on May 1st. So the standstill agreement is in place.**
4 **Same conclusion?**
5 MR. MENKE: Objection. Calls for
6 speculation. Calls for facts not in evidence.
7 **Q The standstill agreement was in place by May**
8 **1st, right?**
9 A It was.
10 **Q Would this factor apply on May 1st?**
11 MR. MENKE: Objection, calls for
12 speculation.
13 MR. O'TOOLE: It's not speculation.
14 BY MR. O'TOOLE:
15 **Q You can answer.**
16 A I don't know how to answer that question
17 because you're talking about a five-day notice, that
18 they had five days -- they could give us notice. We
19 would have five days to terminate this pension plan.
20 I would think that we would need that time and have
21 this approved in order to do so.
22 **Q But the five-day provision prevented the**

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1 sort of long-run loss that you're talking about
2 because it gave the PBGC an opportunity to perfect its
3 interests without being blindsided, basically, by the
4 lenders going in and taking the assets before you
5 perfect your interest.
6 A No, it didn't prevent -- it just stayed it.
7 We didn't have to move at that time, and we didn't
8 move at that time. We just got it approved. We had
9 the notice of determination ready for such point when
10 the lenders gave us the five-day notice so we could
11 act at that time.
12 Q But what you were worried about in this
13 provision was you didn't have the five-day notice at
14 that point, right? So the DIP lenders could have
15 proceeded immediately and caused PBGC long-run loss.
16 A No. We didn't even know about a five-day
17 notice at this point.
18 Q Well, you didn't have any protections at
19 this point.
20 A Right.
21 MR. MENKE: Objection. Calls for
22 speculation.

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1 Q And the notice -- and the standstill got you
2 some protection against the problem that you were
3 worried about.
4 A It got us some protection, five days' worth.
5 Q Which turned out to be enough, right?
6 A Because we had the -- because we had this
7 termination approved, yes.
8 Q How long did it take you to get the
9 termination approved?
10 A How long did it take us to get the
11 termination approved? We wrote a memo. We put a
12 package together probably over a couple of days. We
13 convened a meeting of the trusteeship working group.
14 They concurred with our recommendation. And we got
15 the deciders to decide to approve the termination.
16 That all probably would have taken a few
17 days to do. Once you have that, though, you've
18 actually got to release the notice of determination
19 and you've got to put the world on notice that we've
20 taken this action, which, in itself, could take
21 another couple days to do that.
22 Q So what's the date on Exhibit -- is it

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1 Exhibit 19?
2 A What's the date on it?
3 Q Is there a date?
4 A It looks like most of the people signed on
5 the 20th.
6 Q Okay. And then it looks like Mr. Snowbarger
7 signed on the 23rd?
8 A Yes. So what would have happened was he
9 would have signed after the trusteeship working group
10 concurred.
11 Q Now, do these ever get done without a
12 meeting of the trusteeship working group?
13 A Sometimes.
14 Q So that could have sped things up, too,
15 right?
16 A It could have.
17 Q If you go down to the -- back to page 3 of
18 Exhibit 19, it talks about protecting the interests of
19 the participants. Could you explain that finding?
20 A Well, to the extent that the plan is unable
21 to pay benefits when due, the participants would be
22 hurt. PBGC's insurance program is designed to benefit

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1 those participants.
2 Q Well, the participants are going to get some
3 benefit cuts because of the termination, right?
4 A In some cases they do, yes.
5 Q Do you know about this plan?
6 A I have heard that some participants are cut
7 back, yes.
8 Q So if the plan was making its benefit
9 payments now and then it gets terminated and the
10 participants' benefits go down, they're not better off
11 than they were when the benefits were being paid,
12 right?
13 MR. MENKE: Objection. Calls for
14 speculation on behalf -- on the part of the witness,
15 but he can answer.
16 A I guess in the short run, no.
17 Q Now, in the long run they might be better
18 off and they might be worse off, right?
19 A They might be better off.
20 Q The last factor is "Avoid any unreasonable
21 increase in the liability of the PBGC's insurance
22 fund."

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1 **What's the basis for that, for checking that**
2 **box?**
3 A I think this is the same thing as the
4 long-run loss piece.
5 **Q Now, does it matter with this one that the**
6 **benefits are frozen?**
7 A With "Avoid any unreasonable increase in the
8 liability?"
9 **Q Right.**
10 A I think it could matter, but what we're
11 talking about here is the recovery that we would have
12 lost by waiting.
13 **Q Right.**
14 **What you're worried about here is that the**
15 **finding, basically, is "We need to terminate as a**
16 **protection against losing these liens that are out**
17 **there and losing the unsecured claims"?**
18 MR. MENKE: Objection, mischaracterizes
19 testimony.
20 **Q Did that mischaracterize your testimony?**
21 A Say it again. Ask it again, please.
22 MR. MENKE: Court reporter, read it back.

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1 MR. O'TOOLE: Let's have her read it back.
2 (Record read.)
3 A I think that's right.
4 **Q Let me ask you one more question about this.**
5 **Number 4 recommends PBGC trusteeship. What**
6 **was the basis of that recommendation?**
7 A Well, it's an underfunded pension plan.
8 Typically, if we terminate an underfunded pension
9 plan, we also trustee it.
10 **Q Was any -- why is that, if you know? I**
11 **guess the question -- the question really is, why the**
12 **PBGC as opposed to some other trustee?**
13 A I don't know the answer to that question.
14 MR. O'TOOLE: Let's mark Exhibit 20.
15 (Exhibit 20 was marked for identification and
16 attached to the deposition transcript.)
17 BY MR. O'TOOLE:
18 **Q Have you seen this executive summary before?**
19 A Yes, I have.
20 **Q Did you help prepare it?**
21 A I probably reviewed it, but it was authored
22 by the chief counsel's office.

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1 **Q I'm going to direct your attention to**
2 **page 2, the last paragraph, "Delphi's current position**
3 **is that it cannot keep the plans."**
4 **Do you know what evidence that was based on**
5 **other than what Delphi was saying?**
6 A I think it was based on -- well, it was what
7 Delphi was telling us. It was based on what our
8 intimate knowledge of what was going on with Delphi at
9 the time in their bankruptcy. They could not afford
10 hundreds of millions of dollars of pension
11 contributions and get out of bankruptcy.
12 **Q As the same entity?**
13 A I'm not sure what you mean.
14 **Q Well, Delphi itself, in its current**
15 **financial state, you're saying, your knowledge of**
16 **Delphi is suggested that they couldn't afford it. I**
17 **guess the first question is, so how much are we**
18 **talking about that Delphi would have had to expend**
19 **post emergence. Do you know? Is that in the memo?**
20 A I don't know if it's in this memo. I
21 haven't read it.
22 **Q Well --**

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1 A My understanding is, for the salaried plan,
2 they would have had to true up 200 million dollars.
3 **Q 200 million dollars.**
4 A Right.
5 **Q And so one option is that Delphi is able to**
6 **get approval to do that in their reorganization plan,**
7 **right?**
8 A Well, somebody would have to fund it, yes.
9 **Q Right. Another option is that Delphi is**
10 **bought, a new company emerges, but the purchaser is**
11 **required to pay 200 million dollars to fund the plan,**
12 **that that's part of the sale price.**
13 MR. MENKE: Objection, calls for
14 speculation.
15 **Q You talked about financing. That's one way**
16 **to get financing, right?**
17 A Sometimes buyers assume pension plans and
18 asset sales.
19 **Q And you were involved with that once in the**
20 **auto supply industry, right?**
21 A Yes.
22 **Q So that happens?**

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1 A Well, it happens, yes, but like I said, that
2 company was current on their minimum funding. There
3 was no big arrears.
4 **Q But whoever bought Delphi, or Delphi's**
5 **assets, was going to face some hurdle with respect to**
6 **the pensions, right?**
7 MR. MENKE: Objection, calls for
8 speculation.
9 **Q There were -- I think we talked about it**
10 **before. The amount could fluctuate, but the document**
11 **we saw was about 900 million dollars in different**
12 **types of liens.**
13 A I don't know about 900 million. We have 200
14 million of liens at the time Delphi emerged from
15 bankruptcy.
16 **Q What about the repatriated cash?**
17 A The repatriated cash would have been -- it
18 could not exceed the amount of the liens. I mean, the
19 value of that lien could not exceed the amount of our
20 statutory filings.
21 **Q So you had about 200 million in liens; is**
22 **that right?**

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1 A At the time that Delphi -- at the time of
2 termination, yes.
3 **Q If somebody wants to buy Delphi at that**
4 **point, you're going to want money for your liens,**
5 **right?**
6 A Absolutely.
7 **Q So they're going to have to pay the 200**
8 **million either way, right?**
9 MR. MENKE: Objection. Calls for
10 speculation.
11 A No. I mean, they're going to have to
12 satisfy our liens in some way in order to get them
13 released.
14 **Q Right.**
15 **And with respect to the 200 million dollar**
16 **funding contribution, they're going to have to satisfy**
17 **that in some way because, as we talked about before,**
18 **that could be -- that could be the subject of another**
19 **waiver or some sort of amortization, right?**
20 MR. MENKE: Objection, calls for
21 speculation, mischaracterizes testimony, based on
22 facts not in the record.

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1 A I don't know if it could have been waived at
2 that point.
3 **Q But you don't know it couldn't have been.**
4 A I don't remember.
5 MR. O'TOOLE: Let's go to 21.
6 (Exhibit 21 was marked for identification and
7 attached to the deposition transcript.)
8 MR. O'TOOLE: I will apologize in advance
9 for the small print.
10 Exhibit 21 is Bates stamped 110224-047970.
11 I believe this is a document provided to us by Delphi.
12 So, therefore, I would ask that it be kept under seal
13 pursuant to the confidentiality agreement.
14 MR. MENKE: That's fine, no objection.
15 BY MR. O'TOOLE:
16 **Q Mr. Cann, I'm going to go to page 2 of this**
17 **document. It appears to be --**
18 MR. MENKE: For clarity, for the record, is
19 that page 2 of the document 791 -- 971 or 972? Make
20 sure the document is page 1.
21 MR. O'TOOLE: It's going to be 971. So it's
22 page 1 of the attachment.

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1 MR. MENKE: Okay, thank you.
2 BY MR. O'TOOLE:
3 **Q Now, do you recognize any of these companies**
4 **as potential purchasers of Delphi?**
5 MR. MENKE: Objection, foundation. The
6 witness can answer.
7 A I do.
8 **Q Which ones do you recognize as potential**
9 **Delphi purchasers?**
10 A Platinum.
11 This document is -- you know, it's a
12 document that shows that they've gone out to the
13 various parties for a potential purchase.
14 **Q And it suggests that these parties -- I**
15 **think that the e-mail on 970 refers to these as**
16 **potentially interested parties.**
17 **Do you have any reason to dispute that**
18 **these -- that the list of these parties were**
19 **potentially interested in purchasing Delphi?**
20 MR. MENKE: Objection, calls for
21 speculation.
22 A I don't have any reason to dispute that.

40 (Pages 154 to 157)

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JA539

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1 **Q So there's no one on this list that you can**
2 **look at and say, no, I know that they did not have any**
3 **interest in purchasing Delphi?**
4 A No.
5 **Q With respect to Platinum, you know that they**
6 **did; is that correct?**
7 A Correct.
8 (Exhibit 22 was marked for identification and
9 attached to the deposition transcript.)
10 BY MR. O'TOOLE:
11 **Q Take your time, look through that document.**
12 **(Pause in proceedings.)**
13 **Q Have you had a chance to review that**
14 **document?**
15 A Yes.
16 **Q That document purports to describe a**
17 **May 12th meeting that apparently took place in**
18 **Washington, D.C., at Skadden's office.**
19 **Do you recall that meeting?**
20 A Not specifically. I wasn't at that meeting,
21 I know that.
22 **Q Now, the e-mail comes from someone at Latham**

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1 **& Watkins. Do you know who Latham & Watkins was**
2 **representing?**
3 A They were representing the unsecured
4 committee.
5 **Q And so based on that, is it your**
6 **understanding that the unsecured creditors committee**
7 **was part of this meeting?**
8 A Yes.
9 **Q Did you -- do you recall receiving this**
10 **e-mail describing the meeting?**
11 A Not specifically.
12 **Q Do you recall any other communications that**
13 **you may have had about this particular meeting?**
14 A Like I said, lots of meetings going on at
15 the time. Obviously, I received this so I -- you
16 know, I would have known about it, yes.
17 **Q Was anyone from PBGC at this meeting as far**
18 **as you know?**
19 A No.
20 **Q So this summary suggests that "the**
21 **company" -- and by "the company," I'm presuming that**
22 **means Delphi. Is that your understanding? I'm**

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1 **looking at the top of 59062.**
2 A Where it says, "To that end, the company
3 understands"?
4 **Q Yes.**
5 A Yes, that would be Delphi.
6 **Q "The Treasury and PBGC have reached an**
7 **agreement in principle about how Delphi's pension**
8 **underfunding would be handled."**
9 **Is that what the summary says?**
10 A That's what the summary says.
11 **Q But no one from PBGC was at this meeting,**
12 **correct?**
13 A Not that I'm aware of.
14 **Q Is it your understanding that Treasury was**
15 **at this meeting?**
16 A That's not my understanding.
17 **Q Let me ask you this. So it says that -- at**
18 **the top, the first line of the memo, says, "Delphi and**
19 **its advisors met separately from representatives of**
20 **the DIP lenders and with the U.S. Treasury at**
21 **Skadden's offices in Washington."**
22 A So it looks like Treasury was at the

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1 meeting.
2 **Q So Treasury was at the meeting and --**
3 MR. MENKE: Objection, mischaracterizes
4 the -- both the testimony and the contents of the
5 document. As I read the document, it appears there
6 was a meeting in the morning with the DIP lenders,
7 which is described in the first half of this memo.
8 And then in the afternoon, subsequently, there's a
9 meeting at which Treasury representatives were
10 present.
11 So please be careful what -- which meeting
12 you're attributing what comments to.
13 **Q All right. So whatever the meeting, this**
14 **memo suggests that the company understands -- this**
15 **memo is written after both meetings; is that correct?**
16 A That's what it looks like. I don't know
17 that the committee was at the Treasury meeting,
18 though.
19 **Q So the -- well, the memo itself is written**
20 **at 9:52 at night on May 12th.**
21 A Okay.
22 **Q So presumably both meetings were over at**

41 (Pages 158 to 161)

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1 **that point. Is that your assumption?**
2 A Probably.
3 MR. MENKE: Objection. Calls for
4 speculation by the witness. I see he's already
5 answered.
6 **Q Now, maybe it's not over; is that correct?**
7 **Because at the end it says, "We left the conference**
8 **room and the company and Treasury continued their**
9 **discussions." Presumably, in that last sentence in**
10 **this, "we" means the UCC. Is that correct?**
11 A "We" meaning the UCC seems like a good
12 conclusion, yes.
13 **Q So UCC leaves the conference room, and**
14 **Mr. Riela -- is it your understanding that Michael**
15 **Riela was one of the lawyers representing the UCC?**
16 A Yes, he was.
17 **Q So he writes a memo at 9:52 at night after**
18 **both meetings stating that "the company understands**
19 **that the Treasury and the PBGC have reached an**
20 **agreement in principle about how Delphi's pension**
21 **underfunding would be handled."**
22 **Is that correct?**

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1 A That's what the memo says.
2 MR. MENKE: I would note for the record that
3 that sentence, however, is in the section of the memo
4 that is discussing the meeting with the DIP lenders,
5 not the meeting with Treasury.
6 MR. O'TOOLE: That's noted.
7 BY MR. O'TOOLE:
8 **Q Now, any idea where the UCC would have**
9 **gotten such an understanding?**
10 MR. MENKE: Objection. Calls for
11 speculation from the witness. Lack of foundation.
12 A I don't know.
13 **Q Was there an agreement in principle between**
14 **Treasury and PBGC at this point?**
15 A Not that I'm aware of.
16 **Q Were you dealing directly with Treasury at**
17 **this point?**
18 A Me?
19 **Q You personally.**
20 A Me personally, no.
21 **Q So could there have been an agreement in**
22 **principle that you were not aware of?**

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1 A I don't know.
2 **Q Let's go to Exhibit 22.**
3 MR. MENKE: That was Exhibit 22.
4 MR. O'TOOLE: Exhibit 23.
5 (Exhibit 23 was marked for identification and
6 attached to the deposition transcript.)
7 BY MR. O'TOOLE:
8 **Q So Exhibit 23 appears to be an e-mail from**
9 **Matt Feldman to Joe House and vice versa, trying to**
10 **set up a meeting to talk over the phone or in person.**
11 **Is that correct?**
12 A That's correct.
13 **Q Were you aware of this meeting?**
14 A I don't know. I don't recall.
15 **Q And you're not copied on these e-mails,**
16 **correct?**
17 A Correct.
18 **Q So it appears that Mr. House and Mr. Feldman**
19 **are having communications that do not involve you; is**
20 **that correct?**
21 A These communications do not involve me.
22 **Q And did you know about these communications?**

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1 A I don't recall.
2 **Q You don't recall being sent a copy of this**
3 **e-mail or --**
4 A Correct.
5 **Q Just one last question on this. Do you**
6 **recall what they were talking about on May 13th?**
7 A I don't.
8 **Q Did Mr. House ever report to you the**
9 **contents of that communication?**
10 A Not that I recall.
11 **Q In preparing for this deposition, did you**
12 **speak to Mr. House?**
13 A No.
14 (Exhibit 24 was marked for identification and
15 attached to the deposition transcript.)
16 BY MR. O'TOOLE:
17 **Q Can you describe Exhibit 24?**
18 A It looks like an e-mail from Matt Feldman to
19 Joe House.
20 **Q And, again, they're asking to talk today or**
21 **over the weekend; is that correct?**
22 A Correct.

42 (Pages 162 to 165)

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1 **Q Any idea what the conversation was about?**
2 A Looks like there's a mediator. I don't
3 remember when there was -- at some point there was a
4 mediation, and I don't recall if this is the point at
5 which there was a mediation.
6 **Q Did you ever discuss the -- what Mr. House**
7 **and Mr. Feldman said with either Mr. House or**
8 **Mr. Feldman?**
9 A Related to this?
10 **Q Related to this May 22nd or 23rd or 24th**
11 **conversation.**
12 A I don't recall.
13 **Q Do you recall ever being forwarded a copy of**
14 **this e-mail or told about it?**
15 A No, I don't recall.
16 **Q Did you ever talk to Mr. House about the**
17 **mediation?**
18 A I don't think Joe went to the mediation. I
19 don't know.
20 **Q Did you talk about the -- did you talk about**
21 **this conversation with him in preparing for this**
22 **deposition?**

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1 A No.
2 (Exhibit 25 was marked for identification and
3 attached to the deposition transcript.)
4 BY MR. O'TOOLE:
5 **Q So first let me ask, does Exhibit 25 refer**
6 **to the mediation that you also referred to in answer**
7 **to a question about five minutes ago?**
8 A Yes.
9 **Q That's the mediation you were thinking of?**
10 A Yes, that's the only mediation I'm aware of.
11 **Q Who is Matthew Fuller?**
12 A He looks to be an employee of Moelis.
13 **Q Who is Moelis, or what is Moelis?**
14 A Moelis was one of the financial advisors for
15 the unsecured committee.
16 **Q So he appears to be writing this on behalf**
17 **of the unsecured creditors committee?**
18 A That's what it looks like to me.
19 **Q Is he describing the -- what took place at**
20 **the mediation?**
21 A That's what it looks like to me.
22 **Q Now, PBGC attended the mediation as well,**

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1 **didn't they?**
2 A Yes.
3 **Q Do you know who from PBGC attended the**
4 **mediation?**
5 A I think John Menke did, along with our
6 financial advisor from Greenhill.
7 **Q Who was that?**
8 A Either Brad Robins or David Burns. I don't
9 know which one.
10 **Q One of the two did?**
11 A Maybe both. I don't know.
12 **Q Now, it appears you were copied on this**
13 **e-mail from Fuller. Is that correct?**
14 A That's correct.
15 **Q And then it appears from this that you**
16 **forwarded this e-mail to Dana Cann and Joe House --**
17 A I'm Dana Cann.
18 **Q I'm sorry, to John Menke and Joe House?**
19 A Joe and John.
20 **Q Sorry. Is that correct?**
21 A Correct.
22 **Q Were you keeping them in the loop in terms**

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1 **of what the UCC was doing?**
2 A Well, John was in the loop because he was a
3 part of that process. Joe was not on the distribution
4 list for this -- for the UCC, so I was keeping him in
5 the loop.
6 **Q Now, during the mediation itself, did you**
7 **also speak with either Mr. Menke or someone from**
8 **Greenhill about what was going on at the mediation?**
9 A I probably got updates.
10 **Q Do you have any understanding of what took**
11 **place at the mediation?**
12 A My understanding of what went on at the
13 mediation were, kind of, some broad plan of
14 reorganization parameters, broad plan discussions.
15 **Q Presented by whom?**
16 A Presented by various stakeholders.
17 **Q What, if anything, is your understanding of**
18 **what was discussed with respect to the salaried plan**
19 **at the mediation?**
20 A I don't know.
21 **Q No recollection at all?**
22 A No.

43 (Pages 166 to 169)

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1 **Q Do you know who would have a recollection at**
2 **PBGC, besides Mr. Menke?**
3 A No.
4 **Q Greenhill might, though, right?**
5 A Greenhill might.
6 MR. O'TOOLE: We'll go to 26 now.
7 (Exhibit 26 was marked for identification and
8 attached to the deposition transcript.)
9 BY MR. O'TOOLE:
10 **Q So this exhibit appears to describe -- first**
11 **of all, who is John Butler?**
12 A John Butler was -- he was the partner in
13 charge -- well, representing Delphi in the bankruptcy.
14 **Q So he's Delphi's lawyer, right?**
15 A Correct.
16 **Q And he's e-mailing Matt Feldman. Who was**
17 **Matt Feldman?**
18 A He was on the Auto Task Force.
19 **Q Saying that Matt needs to reach out to the**
20 **PBGC representative at the mediation, John Menke; is**
21 **that right?**
22 A That's what it says.

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1 **Q And John needed to hear from GM/U.S.**
2 **Treasury on what they plan to do with the hourly plan**
3 **and the salaried retirees plan; is that correct?**
4 A That's what it says.
5 **Q Do you know if these sorts of discussions**
6 **took place between Mr. Feldman and PBGC?**
7 A I don't know.
8 **Q Do you have any recollection of discussions**
9 **around the time of the mediation involving what GM and**
10 **U.S. Treasury plan to do with the hourly plan and the**
11 **salaried retiree plan?**
12 A There were all sorts of discussions going on
13 at that time. But I wasn't at the mediation.
14 **Q But what about the discussions afterwards?**
15 **Because this appears to be afterwards, right?**
16 A Right.
17 **Q Were you involved with the discussions**
18 **afterward?**
19 A I'm sure I was.
20 **Q Now, it goes on to say that PBGC would**
21 **terminate the salaried retirees plan and waive the ROW**
22 **liens. You talked about those before, right?**

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1 A Rest of world, which would be all -- you
2 know, our statutory liens against foreign nondebtors.
3 **Q "If they can receive some reasonable**
4 **settlement on the termination liabilities." Is that**
5 **right?**
6 A That's what it says.
7 **Q Now, it sounds like -- and this was not the**
8 **specific number, but there was a straw man of**
9 **25 percent of the value. Why would PBGC settle for**
10 **25 percent of the value of those liens?**
11 A I have no idea.
12 **Q Did you think those liens were enforceable?**
13 MR. MENKE: Objection. Calls for a legal
14 conclusion on the part of the witness.
15 A What does enforceable mean?
16 **Q Well, you've been involved in placing liens**
17 **on assets before, right?**
18 A Yes.
19 **Q And you've been involved in negotiations**
20 **about lifting those liens, right?**
21 A Yes.
22 **Q More than once?**

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1 A Yes.
2 **Q Many times?**
3 A Yes.
4 **Q 25 percent a reasonable settlement to lift**
5 **liens?**
6 MR. MENKE: Objection, calls for speculation
7 by the witness.
8 **Q When you've settled those liens, is**
9 **25 percent what you usually get?**
10 A I think we always should get a hundred
11 percent of the lien amount.
12 **Q Let's go to Exhibit 27.**
13 **(Exhibit 27 was marked for identification and**
14 **attached to the deposition transcript.)**
15 BY MR. O'TOOLE:
16 **Q Have you had a chance to read that e-mail**
17 **chain?**
18 A Yes.
19 **Q Do you know who Rick Westenberg is?**
20 A I think he was a GM pension person. I know
21 I met him at some point.
22 **Q What about Walter Borst?**

44 (Pages 170 to 173)

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1 A Walter was GM's treasurer.
2 **Q Were they working on Delphi pension issues?**
3 A They were working on -- well, at this point
4 Walter was working on his own bankruptcy, but a part
5 of that bankruptcy was the GM or the Delphi pension
6 issues.
7 **Q And it appears that on June 2nd they're**
8 **"looking to understand the details of the settlement**
9 **with the PBGC regarding Delphi's hourly and salaried**
10 **plans."**
11 **Do you know what settlement they're**
12 **discussing in June of 2009?**
13 A I don't.
14 **Q Apparently, GM wants to know from -- and**
15 **they're e-mailing to two people from the Treasury Auto**
16 **Task Force; is that correct?**
17 A Matt Feldman and Harry are both with the
18 Auto Task Force.
19 **Q Correct.**
20 **It's my understanding that they're asking**
21 **Treasury what's going to be done with Delphi's hourly**
22 **and salaried plans. Is that correct?**

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1 A That's what it looks like, yes.
2 **Q Now, Mr. Feldman from the Auto Task Force**
3 **responds that he's "told the PBGC to speak directly to**
4 **you guys," and "you guys" presumably means GM. Is**
5 **that right?**
6 MR. MENKE: Objection, calls for speculation
7 of the witness. The document speaks for itself.
8 A Where are you looking?
9 **Q I'm sorry, I'm looking at the June 2nd,**
10 **7:13 p.m. e-mail.**
11 MR. MENKE: Same objection.
12 A What's your question?
13 **Q So Mr. Feldman suggests that he's "told the**
14 **PBGC to speak directly to you guys." "You guys" means**
15 **GM here, right?**
16 MR. MENKE: Objection. The document speaks
17 for itself. Calls for speculation from the witness.
18 MR. O'TOOLE: All right.
19 BY MR. O'TOOLE:
20 **Q Well, let's ask it this way. Around June**
21 **2nd or afterwards, were you aware of the PBGC**
22 **receiving any communications from GM about this deal**

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1 **that's being discussed in this e-mail?**
2 A We were talking to GM all the time during
3 the month of June about their own bankruptcy, about
4 Delphi's bankruptcy, about a pension resolution for
5 Delphi.
6 **Q And it appears that GM wants to know this**
7 **information because they want to make sure that**
8 **whatever deal has been, according to them, consummated**
9 **or deal has been made between PBGC and Treasury is**
10 **what they call modeled correctly in the forecast**
11 **budget, right?**
12 A That's what it says, yes.
13 **Q Right. They're trying to figure out how to**
14 **do their own bankruptcy projections based on what the**
15 **deal is between -- with respect to the Delphi**
16 **pensions. Is that --**
17 MR. MENKE: Objection. Calls for
18 speculation. The document speaks for itself.
19 **Q Do you have a -- you were involved -- you**
20 **were -- did you have any observation of the GM**
21 **bankruptcy?**
22 A I did.

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1 **Q Did you have any observation with respect to**
2 **the pensions questions involved in the GM bankruptcy?**
3 A For GM?
4 **Q Yes.**
5 A Yes.
6 **Q And also for GM's potential assumption of**
7 **the Delphi plans; is that right?**
8 A Through the Delphi bankruptcy, yes.
9 **Q And it would have been important, wouldn't**
10 **it, for GM to be able to project, to know what the**
11 **terms of any pension settlement were in order to**
12 **provide numbers that were relevant to their own**
13 **bankruptcy, correct?**
14 MR. MENKE: Objection. Calls for
15 speculation.
16 **Q Based on your knowledge as observing the GM**
17 **and Delphi bankruptcies and your general knowledge as**
18 **14 years as a financial analyst for PBGC, if you can**
19 **answer that question, that would be very helpful.**
20 A Yes.
21 **Q Thank you.**
22 **Do you recall any discussions between PBGC**

45 (Pages 174 to 177)

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1 and GM relating to the terms of this deal between
2 Treasury and PBGC?
3 A There were discussions going on all the time
4 about how GM was going to -- about the Delphi pension
5 resolution. I don't know specifically about this deal
6 because I don't know this deal.
7 Q Okay. Let me show you an e-mail dated the
8 next day. We'll mark it as Exhibit 28.
9 (Exhibit 28 was marked for identification and
10 attached to the deposition transcript.)
11 BY MR. O'TOOLE:
12 Q So based on Exhibit 28, it looks like
13 Treasury reached out to Joe House to have them contact
14 GM with respect to the matters discussed in the
15 previous exhibit. Is that correct?
16 MR. MENKE: Objection. Calls for
17 speculation.
18 A It looks like Treasury reached out to Joe
19 about reaching out to GM.
20 Q Do you have any knowledge of this
21 discussion?
22 A I don't recall.

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1 Q Do you recall if you were in the loop at the
2 time with respect to the Joe House/Matt Feldman
3 communications about GM?
4 A We had lots of discussions with Treasury,
5 with Feldman, with Walter Borst. They were happening
6 daily, so yes.
7 Q But this -- this communication, you don't
8 remember.
9 A I don't recall.
10 Q What about this next one, Exhibit 29.
11 (Exhibit 29 was marked for identification and
12 attached to the deposition transcript.)
13 BY MR. O'TOOLE:
14 Q Do you recall these communications with Joe
15 House between Joe House and Matt Feldman on June 4?
16 A No, not specifically.
17 (Exhibit 30 was marked for identification and
18 attached to the deposition transcript.)
19 BY MR. O'TOOLE:
20 Q So this is -- this Exhibit 30 seems to talk
21 about trying to bring the UCC Delphi on board. It's
22 around June 9th of 2009. Do you recall why the PBGC

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1 would have been trying to bring UCC Delphi on board
2 and what they would have been trying to bring UCC
3 Delphi on board for?
4 A At some point during GM's bankruptcy, it
5 became apparent that GM could not assume the rest of
6 the Delphi hourly plan. And, as I described before,
7 at some point when that becomes apparent, we shift
8 into recovery maximization mode, and that's what this
9 appears to be.
10 Q So why do you say that?
11 A Well, I remember having a call with the UCC
12 when we talked about PBGC's participation in the
13 waterfall.
14 Q And what was -- what was the UCC position?
15 A Well, obviously they -- whatever money we
16 might take would affect those creditors junior,
17 meaning the general unsecured creditors.
18 Q So this is a discussion where -- this is a
19 discussion between Treasury and PBGC, the first one,
20 the one between Feldman and House, about trying to
21 bring the UCC on board, but on board for what?
22 A I don't know specifically, but I do know

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1 around this time that we were -- you know, we were
2 discussing broad plan of reorganization terms with the
3 UCC -- within the UCC.
4 Q And it sounds like, from Mr. House's
5 response, that at least he thought that PBGC was
6 trying to bring the UCC on board; is that correct? Is
7 that your understanding of what PBGC was trying to do?
8 A That's what it looks like, yes.
9 Q But you're not sure exactly what settlement
10 they were trying to be brought on board on?
11 A I don't recall specifically.
12 Q Now, the last part of this e-mail, the
13 11:50 a.m. e-mail, appears to have been cut and pasted
14 from another e-mail. Is that -- am I looking at this
15 wrong?
16 A I think you're right.
17 Q And the e-mail -- there were regular reports
18 coming from the UCC to some people at the PBGC; is
19 that correct?
20 A There were.
21 Q Was Mr. House one of the people who would
22 get those reports?

46 (Pages 178 to 181)

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1 A Not directly from the UCC.
2 **Q Why not?**
3 A He just -- he wasn't. He relied on me to
4 keep him in the loop on UCC matters.
5 **Q Did the UCC know that their reports were**
6 **being sent to Treasury?**
7 A I don't know.
8 **Q Do you think --**
9 A First of all, I don't think this is UCC's
10 report.
11 **Q Whose do you think it is?**
12 A I think it's mine.
13 **Q You think that's your report about what**
14 **happened at the UCC?**
15 A Correct.
16 **Q Was the UCC aware that PBGC was sending**
17 **reports to Treasury about their meetings?**
18 A I don't know.
19 **Q UCC was negotiating with Treasury at this**
20 **point, right?**
21 A Yeah, I would say.
22 **Q So knowing what's going on in UCC internal**

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1 **meetings is going to be very helpful to Treasury but**
2 **kind of harmful to UCC; is that correct?**
3 MR. MENKE: Objection. Calls for
4 speculation.
5 **Q You can answer.**
6 A I don't know that the UCC is negotiating
7 with Treasury at this point.
8 **Q Why does Treasury want to bring them on**
9 **board?**
10 A Well, I think that they want to bring them
11 on board with -- with any PBGC settlement.
12 **Q And this last sentence is essentially -- I'm**
13 **not sure I understand it, but maybe you do. It's from**
14 **Feldman to House, the 10-16 e-mail. "As we discussed,**
15 **we have room to move up in terms of percentage."**
16 **Is he suggesting that if you can bring the**
17 **UCC on board, that PBGC is going to get a bigger**
18 **recovery?**
19 MR. MENKE: Objection, calls for
20 speculation.
21 A I have no idea.
22 **Q Have you ever heard of any suggestion like**

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1 **that previously? Was that part of the negotiations?**
2 A I can't say what that means. I don't know.
3 **Q But you haven't heard -- you haven't heard**
4 **previously that Treasury said to PBGC, "If you bring**
5 **UCC on board, your percentage in any deal involving**
6 **terminating the pensions will go up"?**
7 A I'm not aware of anything like that.
8 (Exhibit 31 was marked for identification and
9 attached to the deposition transcript.)
10 BY MR. O'TOOLE:
11 **Q So, I'm sorry, this was a little out of**
12 **order. I missed it going by.**
13 **This appears to be an e-mail setting up an**
14 **emergency call for the UCC.**
15 A Yes.
16 **Q Do you recall that telephone call?**
17 A Not specifically.
18 **Q Do you recall if you were on that telephone**
19 **call?**
20 A I don't. I prob- -- don't know.
21 **Q Did the UCC have very many emergency calls?**
22 A No, that would have been unusual.

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1 **Q It's coming around the time of the**
2 **mediation, if that refreshes your recollection at all.**
3 A It doesn't.
4 MR. O'TOOLE: Let's take one more short
5 break.
6 (A brief recess was taken.)
7 BY MR. O'TOOLE:
8 **Q All right. I just want to come back to a**
9 **couple of quick points. You mentioned earlier, and**
10 **correct me if I paraphrase this wrong, but that there**
11 **were constant negotiations going on in June of 2009**
12 **between PBGC and GM; is that correct?**
13 A Discussions.
14 **Q Discussions.**
15 **Do you know who these discussions were with?**
16 A Who at GM?
17 **Q Both at GM and PBGC.**
18 A Mostly between Joe and Walter Borst.
19 **Q Would those discussions have been reflected**
20 **in e-mails, or were they done by phone, if you know?**
21 A I don't know.
22 **Q Anybody else at PBGC that would have been**

47 (Pages 182 to 185)

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1 **having direct negotiations with GM?**
2 A Maybe Terry Deneen. I don't know.
3 **Q But, to your knowledge, it was Joe for sure,**
4 **Joe House for sure and maybe Terry Deneen.**
5 A Those were where most of the discussions
6 were going on, between Joe and GM.
7 **Q And who at -- what was the negotiating**
8 **authority at PBGC? Who had negotiating authority on**
9 **the Delphi issue for PBGC, first, I guess, in talks**
10 **with the Treasury?**
11 A It would be Vince Snowbarger had negotiating
12 authority for everything.
13 **Q What about Joe, for example? What was his**
14 **authority? Did he have any discretion, or was he just**
15 **reporting back to Vince and doing whatever Vince said?**
16 A Joe would have -- according to the
17 delegation of authority, the decider is Vince. So any
18 kind of decision would be made by -- made by Vince.
19 **Q But in terms of the actual day-to-day**
20 **negotiations, your understanding is that Joe was the**
21 **lead negotiator from PBGC with the Auto Task Force?**
22 MR. MENKE: Objection. That was not what

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1 the past testimony was about. We were talking about
2 GM.
3 **Q Let me just ask you, was Joe House the PBGC**
4 **lead negotiator with the Auto Task Force?**
5 A I would say Joe was, yes.
6 **Q What about with GM?**
7 A I would say Joe was.
8 **Q And you're not sure what scope of authority**
9 **he had because ultimately all authority was with**
10 **Vince?**
11 A All authority was with Vince, I know that.
12 **Q And you don't know what authority Vince**
13 **delegated to Joe?**
14 A No, I don't know.
15 (Exhibit 32 was marked for identification and
16 attached to the deposition transcript.)
17 BY MR. O'TOOLE:
18 **Q Now, the bottom -- the bottom e-mail on this**
19 **chain is from someone named David Burns to you, Joe**
20 **House, and John Menke; is that correct?**
21 A Yes.
22 **Q And then it also copies three people from**

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1 **Greenhill, Brad Robins, Nidhi Chadda, and Justin**
2 **Sapolsky; is that right?**
3 A That's right.
4 **Q Who were the people from Greenhill that are**
5 **on this e-mail chain?**
6 A Brad Robins was the lead, David Burns was
7 his right-hand person, and the other folks were
8 support.
9 **Q And it's your belief that either Mr. Burns**
10 **or Mr. Robins were at the mediation; is that correct?**
11 A Yes, I know one of them was. Perhaps both.
12 **Q And Greenhill was a PBGC consultant. Was it**
13 **consulting -- what issues was it consulting on**
14 **specifically with respect to Delphi?**
15 A It was consulting on all financial matters.
16 **Q Would that have included the liens?**
17 A Yes.
18 **Q So Greenhill had done some work with respect**
19 **to the liens and what they were worth; is that**
20 **correct?**
21 A They did, yes. I don't know at this point
22 if they had done it, but they did.

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1 **Q Do you know when they did it?**
2 A Yes, I think it was earlier. I think it was
3 earlier in spring or winter.
4 **Q And did they produce some reports or**
5 **documents on what the liens were worth?**
6 A They produced documents on what the company
7 was worth and how that broke out between the debtors
8 and the nondebtors.
9 **Q Would this have been around the same time --**
10 **you mentioned earlier that there were reports on --**
11 **that reports were done with respect to what sorts of**
12 **funding projections would have been necessary for**
13 **Delphi to keep the plans.**
14 **Would they have done that work as well?**
15 A They would not have done that work.
16 **Q That work, you believe, was done internally?**
17 A I believe that -- I don't know for sure.
18 **Q But if there were reports -- if there was**
19 **work done with respect to projections about Delphi**
20 **keeping the plans, that would have been in 2009, you**
21 **believe?**
22 A I don't think we did anything in 2009

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1 related to Delphi being able to keep the plans because
2 the plans were -- Delphi was unfinanceable at that
3 point.
4 **Q So you don't remember any work being done**
5 **with respect to Delphi -- PBGC projecting what it**
6 **would cost Delphi to keep either of the plans?**
7 A I think that work was done prior to 2009.
8 **Q Were these reports done internally by PBGC**
9 **or done by others?**
10 A Typically, we get minimum funding
11 projections from the plan or its actuary and -- or
12 from the plan sponsor or its actuary, and we, meaning
13 Cindy Travia and her folks, either confirm those
14 projections, tweak them, sometimes they do their own.
15 **Q But if those projections existed, Cindy**
16 **Travia would know about them, correct?**
17 A Correct.
18 **Q Now, this e-mail also seems to be asking you**
19 **and Mr. House and Mr. Menke whether there was any word**
20 **from Treasury regarding the treatment of the hourly**
21 **plan, and you respond, "No word from Treasury."**
22 **Why would -- why would you be asking**

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1 **Treasury about the treatment of the hourly plan? I**
2 **mean, I thought the negotiations were with GM at this**
3 **point.**
4 MR. MENKE: I object. You mischaracterize
5 the document, which speaks for itself.
6 **Q Why would Treasury have any word on GM's**
7 **treatment of the hourly plan?**
8 MR. MENKE: Again, to the extent that you're
9 talking about this document, you're mischaracterizing
10 it.
11 **Q Let's just ask the question without regard**
12 **to the document.**
13 A GM was in bankruptcy, and Treasury was the
14 funder of GM.
15 **Q So that's where you were looking for word,**
16 **where somebody would go who wanted to know what was**
17 **going to be done with the Delphi hourly plan?**
18 A If anybody was going to fund it, it was
19 going to be Treasury.
20 **Q So this document also mentions that there**
21 **were five or six potential contenders doing diligence,**
22 **and they list Blackstone, Cerberus, and FedMo, which I**

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1 **assume is Federal-Mogul.**
2 **Were you aware of these five or six**
3 **potential contenders doing diligence?**
4 A I'm on the e-mail so I was, yes.
5 **Q Do you have any recollection -- independent**
6 **recollection of who the other ones might have been?**
7 A I don't.
8 **Q But this -- this does not sound -- this**
9 **sounds right to you, is that correct, that there were**
10 **five or six potential contenders that were looking to**
11 **buy -- and by "due diligence," my understanding, and**
12 **correct me if it's not yours, is that they were doing**
13 **due diligence on Delphi and about purchasing Delphi?**
14 A That's what it looks like to me.
15 **Q And that was your understanding of what was**
16 **going on?**
17 A The company was for sale, and they were
18 looking for a buyer.
19 **Q And there were potential buyers out there.**
20 A There were potential buyers.
21 **Q Okay.**
22 **Now, did PBGC ever speak to potential buyers**

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1 **about whether they intended to keep the pensions if**
2 **they bought the assets?**
3 A I don't recall.
4 **Q Now, you've been involved with -- in this**
5 **situation before where there's a company that's**
6 **bankrupt, there's questions about the pension plan,**
7 **and there are potential acquirers; is that correct?**
8 A Right.
9 **Q Have you ever spoken in those circumstances**
10 **to potential acquirers about what PBGC's view is with**
11 **respect to the pensions and what would need to be done**
12 **with respect to the pensions?**
13 A Yes.
14 **Q But you don't recall doing it here?**
15 A I don't recall doing it here, although we
16 may have done it here, but I would also say that
17 Delphi was in such bad shape at this point that the --
18 the value of the company was well below any liability
19 that they would be assuming.
20 **Q "The value of the company" -- so -- "any**
21 **liability that they would be assuming."**
22 **So you're talking about --**

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1 A I'm talking about a company that's worth a
2 billion dollars and a pension plan, to take the
3 salaried plan, for instance, that's underfunded by
4 2 and a half billion dollars.
5 **Q Now, there have been some projections done**
6 **about what it would take to get the plan back to**
7 **viability, and it wasn't 2 and a half billion dollars.**
8 **It wasn't that that would have to be put into the plan**
9 **immediately, right? I mean, the plan had assets which**
10 **presumably also would have grown and produced revenue**
11 **of their own, right?**
12 A Right.
13 **Q So the projections are designed to figure**
14 **out what needs to be put in, and you said earlier that**
15 **it was probably about the same amount as the liens,**
16 **right?**
17 A Oh, no. I said the amount that was due at
18 emergence was probably the same amount as the liens,
19 but that's not what's due --
20 **Q Going forward.**
21 A -- going forward.
22 **Q Now, had projections been done going forward**

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1 **as to what would have needed to be put in?**
2 A My recollection is we had asked Delphi for
3 those projections on a number of occasions throughout
4 the pendency of the bankruptcy case, and we got those.
5 **Q But not -- not after the fall of 2008.**
6 A Probably not.
7 **Q Okay.**
8 **Now, when you were trying to figure out the**
9 **value of the Delphi -- of Delphi, because you**
10 **mentioned that the value seemed to be so low that no**
11 **one -- that the pension would have been too big to**
12 **take on, did Greenhill do any evaluations of Delphi?**
13 A They did.
14 **Q Do you remember when they did those**
15 **valuations?**
16 A I believe it was in conjunction with, I
17 think it was an attachment to our termination package
18 from April, so it would have been done before then.
19 **Q Did that take into account what it would**
20 **have cost to keep the pensions or not?**
21 A That took into account -- it was a -- it was
22 a total enterprise value of the business done on a

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1 number of bases. So that enterprise value is the
2 value of the business, including the equity and the
3 debt.
4 **Q Now, what if some of these other companies**
5 **that were potential purchasers had their own pension**
6 **plans? Would it have been possible, in the same way**
7 **that GM was thinking about doing this, to roll the**
8 **salaried plan or the hourly plan or both into the**
9 **pension plans that already existed with these**
10 **companies and maybe reduce the amount of the immediate**
11 **contributions that would have been needed?**
12 MR. MENKE: Objection. Calls for
13 speculation.
14 **Q That's one of the things that you would look**
15 **at in deciding whether or not a company could take on**
16 **the plans if they purchased Delphi.**
17 A If there was a bidder that had a pension
18 plan, it's possible that they could do that.
19 **Q Do you know if any of the bidders had**
20 **pension plans?**
21 A I know that Federal-Mogul has a pension
22 plan.

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1 MR. O'TOOLE: Let's go to the next exhibit.
2 It's going to be 33.
3 (Exhibit 33 was marked for identification and
4 attached to the deposition transcript.)
5 BY MR. O'TOOLE:
6 **Q So this e-mail chain appears to relate to a**
7 **meeting that took place between Joe House of the PBGC**
8 **and some officials at Treasury on the Auto Task Force.**
9 **Is that correct?**
10 A That's my recollection.
11 **Q Do you recall this June 30th meeting?**
12 A I recall when it happened. I wasn't at the
13 meeting.
14 **Q Do you recall any reports that you received**
15 **about the meeting?**
16 A I recall getting this e-mail.
17 **Q Getting this e-mail.**
18 **Did you have any discussions with Joe House**
19 **about the meeting itself after receiving this e-mail?**
20 A Yes, we discussed it.
21 **Q What did you discuss specifically?**
22 A Basically, what's in this summary.

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1 **Q** So I guess one thing in the summary is
2 that -- Michael Rae, who is Michael Rae?
3 A Michael Rae was Terry Deneen's deputy.
4 **Q** And he wants to know why -- and presumably
5 there was a decision made by Treasury at this meeting,
6 is that correct, or announced by Treasury at this
7 meeting?
8 A There was -- yeah, I -- there was --
9 information was conveyed to PBGC that GM would not be
10 assuming the hourly plan.
11 **Q** And "It is now clear that the Delphi hourly
12 plan will not be assumed by GM, and thus, we will be
13 terminating that pension plan along with the salaried
14 and the four small plans."
15 Does that accurately reflect what Joe House
16 told you took place at that meeting?
17 A Yes.
18 **Q** Michael Rae asks, "Why?" And Joe House
19 responds, "Cost. They're totally tapped."
20 Do you have any idea who "they" is that he's
21 referring to here?
22 A I don't know.

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1 **Q** You never talked to him about that?
2 A About "they're totally tapped"?
3 **Q** Well, or something along the lines of
4 someone being totally tapped and that being the reason
5 why this decision came out the way it did.
6 A No. I mean, the assumption is that GM
7 didn't have the money and Treasury wasn't going to
8 fund it.
9 **Q** Okay.
10 Later up in the chain, House says to Rae
11 that -- at least according to Feldman -- that the U.S.
12 Treasury auto "has consulted exclusively amongst
13 itself and WH/NEC." I'm assuming that's the White
14 House?
15 A White House National Economics Council.
16 **Q** Okay.
17 So it suggests, at least from this e-mail,
18 Mr. House's e-mail, that GM didn't know about this
19 decision at the point the e-mail is written.
20 Is that your understanding from Mr. House as
21 well?
22 A I don't know.

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1 **Q** So you don't know if GM was even aware that
2 this decision had been made?
3 A They may not have been. I don't know.
4 (Exhibit 34 was marked for identification and
5 attached to the deposition transcript.)
6 BY MR. O'TOOLE:
7 **Q** Now, Exhibit 34 refers to -- appears to
8 refer to -- it's entitled "Treasury Talking Points re:
9 Delphi."
10 Is that correct?
11 A That's correct.
12 **Q** Have you seen this document before?
13 A I think so.
14 **Q** Can you just describe your understanding of
15 it?
16 A After the decision came down that GM would
17 not be assuming the hourly plan and we would be
18 terminating and trusteeing the -- all the plans, we
19 moved into recovery maximization mode, and we were
20 negotiating with the Auto Task Force our participation
21 in the recovery waterfall.
22 **Q** And what's the waterfall?

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1 A The waterfall is the -- if you look at
2 page 3 of the illustration, shows how various cash
3 flows from the organized Delphi would flow to various
4 membership interests.
5 **Q** And which one is PBGC on there?
6 A It's the -- if you look at the bottom right
7 corner, "50 percent of GM" is what the proposal was at
8 that time.
9 **Q** That was a proposal that PBGC made to
10 Treasury?
11 A Yes.
12 **Q** So PBGC is negotiating with Treasury on this
13 issue, right?
14 A Yes.
15 **Q** Did anybody at PBGC ever have any concerns
16 about negotiating with Treasury since the Secretary of
17 Treasury is on the PBGC board?
18 A I don't know.
19 **Q** Have you ever negotiated these sorts of
20 settlements before with companies?
21 A What do you mean, "these sorts"?
22 **Q** Well, the company is going -- the PBGC is

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1 going to terminate a plan, right?
2 A Right.
3 Q And the company is going to be providing
4 some form of value to PBGC as part of the plan
5 termination.
6 A Right.
7 Q Who do you generally negotiate with in terms
8 of what sort of value you're going to get back? The
9 company?
10 A You typically negotiate with the company.
11 Q And you talked earlier about leverage.
12 When you're doing those negotiations, you
13 have leverage in the form of liens, right?
14 A You do, yes.
15 Q In the form of the ability to withhold plan
16 termination altogether, right?
17 A Well, not really.
18 Q Well, you could -- they could go through the
19 bankruptcy court, but they've got to go through a
20 bankruptcy court proceeding --
21 A They can sell the assets and take the value
22 away from us. That's what we were -- that's what we

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1 were concerned about.
2 Q Well, if you have liens, you have some
3 leverage on that.
4 A Well, yes, that's true, but we didn't just
5 have liens. We had joint and several claims for our
6 full underfunding against rest of world assets.
7 Q Right. So when you have those sorts of
8 interests and you're negotiating with the company, you
9 can say to the company, "You do X, and," you know, "if
10 you don't pay us X, then we're going to -- we're going
11 to assert the liens" or "we're going to assert the
12 rest of world assets that we've got" --
13 MR. MENKE: Objection. Calls for
14 speculation --
15 Q -- right?
16 MR. MENKE: -- hypothetical answer by the
17 witness.
18 A I don't understand the question either.
19 Q Have you ever engaged in negotiations with a
20 company?
21 A Yes.
22 Q And in those negotiations, what are the

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1 relevant considerations from PBGC's perspective?
2 A The relevant considerations are should the
3 pension plan remain ongoing. If yes, keep it ongoing.
4 If not, maximize recoveries.
5 Q And in terms of -- first, let's go with
6 should the pension plan remain ongoing. Who are you
7 generally negotiating with on that?
8 A Well, depending on the facts and
9 circumstances, you're going to be negotiating with the
10 company or a potential buyer of the company.
11 Q Neither of whom has ever been, to your
12 knowledge, on the PBGC Board of Directors, right?
13 A Not to my knowledge.
14 Q So the leverage is a little bit different in
15 those circumstances because they have absolutely no
16 formal or informal control over PBGC, right?
17 MR. MENKE: Objection. Calls for
18 speculation by the witness.
19 Q You can answer.
20 A I have no idea.
21 Q You were involved in this, right?
22 A Right.

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1 Q How do you say no to the White House?
2 A To the White House?
3 Q Well, you just read the e-mail where the
4 White House was involved in these negotiations.
5 A The White House was involved -- well, the
6 White House was briefed on the decision not to keep
7 the pension plan ongoing, right?
8 Q Which Treasury made.
9 A Which the Auto Task Force made, yes.
10 Q How would you say no to them? They're on
11 your board.
12 A I don't think we -- first of all, it's
13 clear, very clear, at this point that Delphi cannot
14 reorganize with the pension plans ongoing. They're
15 going to sell their assets to somebody. The pension
16 plan is underfunded by a multiple of the value of the
17 company. It doesn't make sense that any buyer would
18 assume the pension plan.
19 Q What's the company worth now, do you know?
20 A I don't know. It's a different company.
21 Q Like GM is a different company, too, right?
22 A Right.

<p style="text-align: right;">Page 206</p> <p>1 Q I mean, it's the same company, it's just the 2 same assets, the same -- they just reorganized, 3 basically? 4 A They sold the assets to a different company, 5 yes. 6 Q But it's the same company like GM is the 7 same company, and they still make GM cars, right? 8 A Yes. 9 Q And they have at least some of the old 10 obligations like GM pays for the Delphi hourly plan, 11 the new GM, right? 12 A Right. 13 Q You can call it a different company, but 14 there's a lot of similarities, right? 15 A Yes, but in the bankruptcy code. 16 Q Right. 17 A Yeah. 18 Q But it's a formality. 19 A Okay. 20 MR. MENKE: Objection. That calls for a 21 legal conclusion without any basis in fact that I've 22 heard today.</p>	<p style="text-align: right;">Page 208</p> <p>1 the workers from the old GM that they followed through 2 with. 3 MR. MENKE: There's no point in engaging. 4 We're in a deposition, not a legal argument. 5 MR. O'TOOLE: Right. 6 BY MR. O'TOOLE: 7 Q Now, let's talk about recoveries. After the 8 plan is terminated, one of the things PBGC does is try 9 to make recoveries for any outstanding money that's 10 owed by the sponsor; is that right? 11 A Right. 12 Q Did that happen here? 13 A Yes. 14 Q What form did it take? 15 A What form did our recoveries take? 16 Q Yes, what forms did your recoveries take? 17 A So we got -- PBGC received 70 million 18 dollars in cash. We received participation in the 19 waterfall, and we received a claim in the Delphi 20 bankruptcy. 21 Q What did the waterfall wind up being worth? 22 A It wound up being worth, I think, 600</p>
<p style="text-align: right;">Page 207</p> <p>1 MR. O'TOOLE: Other than the facts we just 2 went through. 3 MR. MENKE: In fact, in fact, in bankruptcy 4 code, Delphi was sold to a brand-new company that 5 hadn't existed until they bought those assets. So in 6 that regard, it was a completely different company. 7 MR. O'TOOLE: Just like GM. 8 MR. MENKE: There's no -- in fact, Delphi 9 now is a company that is based not in Troy, Michigan, 10 but, in fact, is incorporated under the laws of the 11 United Kingdom. It is not a U.S. company at all. 12 It's an entirely different company. They bought 13 assets. 14 MR. O'TOOLE: Just like GM. 15 MR. MENKE: Exactly, just like GM. GM -- 16 the GM that existed before the GM bankruptcy is 17 currently known as Motors Liquidation, and it's 18 selling closed plants. It is not the GM that is 19 making cars now. It is an entirely different company. 20 MR. O'TOOLE: Right. 21 But they had that, according to GM, and I 22 guess to PBGC, they had the contractual obligation to</p>	<p style="text-align: right;">Page 209</p> <p>1 million or thereabouts. 2 Q What about the Delphi bankruptcy claim? 3 A It hasn't been worth anything yet. 4 Q Do you think it will be? 5 A I have no idea. I'm not following Delphi. 6 Q Now, the DIP lenders wound up purchasing 7 what we've been calling the new Delphi. 8 A Right. 9 Q Were any of the assets that they purchased, 10 were those assets that PBGC had asserted liens on? 11 A They purchased the stock of the overseas 12 companies, so, yes. 13 MR. O'TOOLE: Give us five minutes. 14 (A brief recess was taken.) 15 BY MR. O'TOOLE: 16 Q A couple of quick questions. So we were 17 just talking earlier about recoveries, and I mentioned 18 the bankruptcy claim and I asked if you knew if it had 19 been resolved, and you said you didn't know. 20 Did PBGC ever sell the bankruptcy claim, to 21 your knowledge? 22 A I was just told that we did.</p>

53 (Pages 206 to 209)

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1 **Q Okay.**
2 **If I threw out a number of 53 million, does**
3 **that sound about right?**
4 A That sounds about right.
5 **Q What about any other sources of recovery?**
6 **And we have the waterfall, which I think you valued at**
7 **what, was it 700 million?**
8 A I threw out 600, but it could be 700.
9 **Q And who was the waterfall from? Who paid**
10 **the waterfall?**
11 A Who paid the waterfall?
12 **Q Where was it -- what was the source of the**
13 **funds for the waterfall? Where were you getting it**
14 **from?**
15 A We got it from a membership interest in the
16 new Delphi.
17 **Q In the new Delphi.**
18 A Yes.
19 **Q So other than that claim and the bankruptcy**
20 **claim, any other sources of recovery?**
21 A Well, and the 70 million dollars in cash.
22 **Q 70 million in cash, great.**

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1 **We talked a little bit earlier about Delphi**
2 **and its role as GM's supplier.**
3 **Do you know if any analysis was done or did**
4 **you do any analysis to determine specifically what**
5 **role Delphi played and how big a portion of GM's**
6 **supply Delphi consisted of?**
7 A Not specifically.
8 **Q Any analysis in terms of what Delphi was**
9 **worth to GM?**
10 A Not specifically. Although, again, in 2009,
11 Delphi was -- everyone was idle anyway.
12 **Q So no analysis done in 2009, but the**
13 **analysis was -- went back to earlier time frames?**
14 A Yes. I mean, I don't know if there's
15 anything specific, but the impression I have is that
16 Delphi was a significant supplier of General Motors.
17 MR. O'TOOLE: That's all the questions that
18 I have.
19 MR. MENKE: Can we have a break to talk a
20 few minutes ourselves?
21 MR. O'TOOLE: Sure.
22 (A brief recess was taken.)

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1 EXAMINATION BY COUNSEL FOR DEFENDANT
2 BY MR. MENKE:
3 **Q I have just a handful of questions.**
4 **Dana, earlier there's been some testimony,**
5 **you recall, about PBGC liens in this case?**
6 A Yes.
7 **Q And PBGC, as I understand it, had filed and**
8 **had liens for the salaried plan, for contributions**
9 **missed to the salaried plan?**
10 A Yes, we did.
11 **Q And at -- when the plan terminated in July**
12 **of 2009, what was the value of those liens?**
13 A About 196 million dollars.
14 **Q Did PBGC receive any value in recovery for**
15 **those liens?**
16 A Yes.
17 **Q How much value did it receive for those**
18 **liens?**
19 A Full value for those liens.
20 **Q In other words, those liens were effectively**
21 **paid off?**
22 A They were.

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1 **Q Thank you.**
2 **You also testified that in the April time**
3 **frame, April 2009 time frame, PBGC was in the process**
4 **of deciding whether or not to proceed with termination**
5 **of the hourly and salaried plan.**
6 A Correct.
7 **Q And one of the reasons that PBGC said that**
8 **they were doing that was to -- because the benefits --**
9 **because benefits would be unable to be paid; is that**
10 **correct?**
11 A That's right.
12 **Q I'm misphrasing that, I know.**
13 **Why would they be unable to be paid?**
14 A Well, like I said, the plan was
15 significantly underfunded by a wide order of
16 magnitude. In addition, the DIP lenders were talking
17 about foreclosure and liquidating the company.
18 **Q So if Delphi liquidated, would it be in**
19 **position then to make up any of the difference between**
20 **the asset value and the liability value?**
21 A Absolutely not.
22 MR. MENKE: Thank you. I have no further

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1 questions.
 2 MR. O'TOOLE: We're done here.
 3
 4 (Signature having not been waived, the
 5 deposition of C. Dana Cann was concluded at 4:00
 6 p.m.)
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1 CERTIFICATE OF SHORTHAND REPORTER
 2 I, Michele E. Eddy, Registered Professional
 3 Reporter and Certified Realtime Reporter, the court
 4 reporter before whom the foregoing deposition was
 5 taken, do hereby certify that the foregoing transcript
 6 is a true and correct record of the testimony given;
 7 that said testimony was taken by me stenographically
 8 and thereafter reduced to typewriting under my
 9 supervision; and that I am neither counsel for,
 10 related to, nor employed by any of the parties to this
 11 case and have no interest, financial or otherwise, in
 12 its outcome.
 13
 14 IN WITNESS WHEREOF, I have hereunto set my
 15 hand and affixed my notarial seal this 2nd day of
 16 April, 2013.
 17
 18 My commission expires June 30, 2017
 19
 20 _____
 21 MICHELE E. EDDY
 22 NOTARY PUBLIC IN AND FOR
 THE DISTRICT OF COLUMBIA

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1 ***
 2 ACKNOWLEDGEMENT OF WITNESS
 3 I, C. DANA CANN, do hereby acknowledge that
 4 I have read and examined the foregoing testimony, and
 5 the same is a true, correct and complete transcription
 6 of the testimony given by me, and any corrections
 7 appear on the attached Errata sheet signed by me.
 8
 9
 10 _____
 11 (DATE) (SIGNATURE)
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1 ERRATA SHEET
 2 IN RE: DENNIS BLACK, et al. V. PENSION BENEFIT
 3 GUARANTY CORPORATION
 4
 5 RETURN BY: _____
 6 PAGE LINE CORRECTION AND REASON
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55 (Pages 214 to 217)

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6 PAGE LINE CORRECTION AND REASON

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22 (DATE) (SIGNATURE)

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

/s/ Abby C. Wright

ABBY C. WRIGHT