

COUNTS 1 THRU 4

IV. Claims for Relief

COUNT 1

Failure to Comply with ERISA's Requirements Regarding the Adjudication of Plan Terminations (Against Defendant PBGC)

38. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

39. In order for the PBGC to terminate a pension plan, it must obtain a court decree to that effect. 29 U.S.C. § 1342(a), (c). Any allowance in ERISA for termination via a summary agreement between the PBGC and a Plan Administrator applies, if at all, only to small plans and, even then, only when the PBGC has made special provision for adequate procedural safeguards for the interests of participants and beneficiaries. 29 U.S.C. § 1342(a) (“The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c)).”)

40. The Salaried Plan is not a small plan and therefore cannot be terminated through summary agreement between the PBGC and Plan Administrator, and the termination of the Salaried Plan through agreement between the PBGC and the Plan Administrator therefore violates ERISA. Moreover, in summarily terminating the Plan through agreement with the Plan's Plan Administrator, the PBGC made no provision for substantial safeguards of the interests of Plan participants and beneficiaries; therefore, for this reason as well, the termination of the Salaried Plan through agreement between the PBGC and the Plan Administrator violates ERISA.

41. For these reasons, the PBGC's termination of the Plan through summary agreement is null and void and illegal.

COUNT 2

Failure to Comply with ERISA's Requirement that Any Summary Termination Agreement Be with a Plan Administrator Properly Acting in that Capacity (Against Defendant PBGC)

42. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

43. Under ERISA, a Plan Administrator is an ERISA fiduciary with respect to any discretionary functions, and an ERISA fiduciary must discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries of the plan. 29 U.S.C. §§ 1002(21)(A), 1104(a). As a result, the Plan Administrator of the Salaried Plan, at least prior to and at the time of the signing of any agreement with the PBGC terminating the Plan, owed a fiduciary duty to the Plan's participants and beneficiaries in deciding whether to enter into and execute a termination agreement.

44. In entering an agreement summarily to terminate the Plan, the PBGC unlawfully entered into an agreement with a Plan Administrator who -- in violation of ERISA -- did not act as a fiduciary of the Plan. Instead, Delphi and its executives have stated that the decision, through the Plan Administrator, to enter into an agreement with the PBGC summarily to terminate the Plan involves a "settlor" function to be done in the corporate interest, rather than in the Plan participants' and beneficiaries' interests.

45. The PBGC's summary termination of the Plan based on an agreement with the Plan's Plan Administrator, when the Plan Administrator acted in the corporate interest as a settlor rather than as a fiduciary in the participants' and beneficiaries' best interests, violates

ERISA, which requires that any such agreement (if at all allowable) be entered with a Plan Administrator properly acting in its fiduciary capacity.

46. In addition, even in the absence of any showing that the Plan Administrator entered a summary termination agreement based on the corporate interest rather than Plan participants' and beneficiaries' interests, the PBGC's termination of the Plan based on such an agreement violates ERISA because the agency entered the agreement with a Plan Administrator laboring under a conflict of interest. ERISA fiduciaries have an obligation under ERISA to avoid placing themselves in a position where their acts as directors or officers of the corporation will prevent their functioning with the complete loyalty to participants demanded of them as fiduciaries. This duty requires that fiduciaries avoid conflicts of interest and that they resolve them promptly whenever they occur. This duty of loyalty requires the fiduciary to step aside in favor of a neutral fiduciary whenever it labors under a conflict of interest.

47. The Plan's Plan Administrator, whether that is Delphi or its Executive Committee, faced an irreconcilable conflict of interest that required it to step aside in favor of a neutral fiduciary with respect to any termination issues. Delphi and its executives' corporate interest necessarily favored a rapid termination of the Plan under the terms pressed by the federal government, including the PBGC. For one thing, those terms included the release of liens against Delphi assets; in addition, the terms included a release of any and all causes of action the PBGC might have against Delphi and its executives associated with the Plan, including mismanagement. Furthermore, Delphi and its executives were being pressured by the federal government to terminate the Plan as part of an orchestrated effort on the federal government's part to restructure the auto industry as expediently and cheaply as possible; compliance with the

government's will was in the furtherance of the corporate interest to emerge from bankruptcy immediately. To that end, Delphi has stated that its settlement with the PBGC is vital to its reorganization and that the summary termination agreement is a necessary element of that settlement.

48. In contrast, the interests of the Salaried Plan's participants and beneficiaries, who have vested and accrued benefits due to them under the Plan was, and is, in seeing the Plan maintained and fully funded or at least not terminated under the conditions the PBGC pursued. As fiduciaries of the Plan, the Plan's Plan Administrator should have favored careful consideration of any issues of Plan termination, a judicial adjudication of termination (as is the norm), and even rejection altogether of termination.

49. Delphi's and its executives' interests in selling Delphi's assets as quickly as possible and in terminating the Salaried Plan consistent with the government's will directly conflict with the interests of the Plan's participants and beneficiaries against termination. As such, the Plan's Plan Administrator labored under a conflict of interest with respect to termination and lacked capacity to sign a summary termination agreement with the PBGC (if any such agreement is otherwise allowable). By terminating the Plan based on a summary agreement with a Plan Administrator who labored under a conflict of interest, and therefore was incompetent to make fiduciary determinations, the PBGC has violated ERISA.

50. For these reasons, the PBGC's termination of the Plan through summary agreement is null and void and illegal.

COUNT 3
Violation of the Due Process Clause of the Fifth Amendment
(Against Defendant PBGC)

51. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

52. If an agreement summarily to terminate the Plan between the PBGC and the Plan Administrator is otherwise allowable and authorized under ERISA, ERISA's authorization for summary plan termination is unconstitutional in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution. In all instances, the Salaried Workers, because they have a cognizable property interest in their vested pension benefits, are entitled to meaningful notice of any Plan termination and the opportunity for a hearing prior to the Plan's termination. Because any ERISA provisions allowing for summary plan termination deprive the Salaried Workers of protected interests without adequate procedural safeguards, the provisions violate the Due Process Clause.

53. For these reasons, The PBGC's termination of the Plan through summary agreement is null and void and illegal.

COUNT 4
Plan Termination in Violation of ERISA
(Against Defendant PBGC)

54. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

55. If the Plan is to be terminated, it may only be terminated consistent with ERISA and Due Process after the full adjudication set forth in 29 U.S.C. § 1342(a) and (c) and compliance with the substantive standards for termination there set forth.

56. The PBGC cannot satisfy the standards for termination of the Salaried Plan under 29 U.S.C. § 1342(a) and (c) with the current termination terms it has negotiated and put in place. The termination of the Plan pursuant to the current termination terms is (i) unsupported by fact; (ii) not in accordance with 29 U.S.C. § 1342(a) and (c); (iii) unsupported by the law; (iv) the result of the PBGC's clear error in judgment and consideration of irrelevant factors; and (v) otherwise arbitrary and capricious. Contrary to the statutory requirements, the PBGC's termination of the Plan was politically motivated; the fact that the PBGC's decision was the result of political expediency rather than relevant statutory criteria is evidenced by the allegations described in this Second Amended Complaint, including among other things: the PBGC's release of its liens against Delphi's foreign assets, its failure to place additional liens against Delphi's foreign assets despite the under-funding of the Salaried Plan; its waiver of actions against Delphi and GM entities, and its failure to obtain additional funding from Old and New GM for the Salaried Plan in exchange for the release of the liens.