

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

Dennis Black, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 2:09-cv-13616
	)	Hon. Arthur J. Tarnow
v.	)	Magistrate Judge Mona K. Majzoub
	)	
Pension Benefit Guaranty Corporation,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFFS' BRIEF IN OPPOSITION  
TO DEFENDANT'S EMERGENCY MOTION FOR STAY**

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**STATEMENT OF ISSUES PRESENTED**

Whether Defendant is entitled to a stay pending resolution of its Rule 72 objections to Magistrate Judge Majzoub's discovery order where (1) those objections lack merit, as the Magistrate Judge correctly found in her detailed order denying reconsideration; (2) Defendant cannot be irreparably harmed by the denial of a stay since the Supreme Court has made clear that any valid privilege arguments can be effectively vindicated in an appeal from a final judgment; (3) Plaintiffs will be harmed by the granting of a stay as it will allow Defendant to continue to delay this litigation without proper cause for doing so; and (4) the public interest strongly favors moving the litigation forward.

## STATEMENT OF CONTROLLING AUTHORITY

1. In considering whether to grant a stay pending appeal, this court asks: (1) whether the moving party has a strong or substantial likelihood of success on the merits; (2) whether the moving party will suffer irreparable harm if the lower court order is not stayed; (3) whether staying the lower court order will substantially injure other interested parties; and (4) where the public interest lies. *Family Trust Found. of Ky., Inc. v. Ky. Judicial Conduct Comm'n*, 388 F.3d 224, 227 (6th Cir. 2004).

2. “In order to justify a stay of the district court’s ruling, the [Appellant] must demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted.” *Mich., Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)(citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985)).

3. No serious questions exist as to the merits. Discovery rulings, like the one here, are reviewed for abuse of discretion. *Serrano v. Cintas Corp.*, 699 F.3d 884, 899-900 (6th Cir. 2012), *pet. for cert. filed*, No. 12-1347 (U.S. Apr. 15, 2013). Likewise, because this matter comes to the Court pursuant to an objection to a ruling on a non-dispositive pre-trial motion, reversal is warranted only if the Magistrate Judge’s ruling is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a). As discussed more fully in Plaintiffs’ opposition to Defendant’s Rule 72 Objections, Magistrate Judge Majzoub’s order was demonstrably correct; it did not in any way abuse her discretion or amount to clear error.

4. No irreparable harm would occur through Defendant’s compliance with Judge Majzoub’s order. Post judgment appeals generally suffice to protect the rights of litigants and assure the vitality of the attorney-client privilege. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence. 558 U.S. 100, 109 (2009); *Holt-Orsted v. City of Dickson*, 641 F.3d 230, 240 (6th Cir. 2011) (party dissatisfied with order requiring disclosure of purportedly privileged information “ultimately can avail themselves of a post-judgment appeal which, under *Mohawk*, suffices ‘to protect

the rights of the litigants and preserve the vitality of the attorney-client privilege.””).

5. The Plaintiffs have been significantly injured by Defendant’s extended delays in providing discovery and ignoring court orders, and the public interest will be served by moving this litigation forward. *Freeman v. City of Detroit*, 09-CV-13184, 2011 U.S. Dist. LEXIS 68914, at \*7 (E.D. Mich. June 24, 2011).

Pursuant to Local Rule 7.1(c)(1), Plaintiffs respectfully submit this brief in opposition to Defendant's Emergency Motion for Stay Pending Resolution of its Objections To the Court's Order of August 21, 2013 (DE 235) (the "PBGC Stay Motion").

## **I. INTRODUCTION**

The PBGC Stay Motion lacks merit and this Court should deny it. Having correctly lost before Magistrate Judge Majzoub after engaging in discovery conduct that amply warranted the privilege waiver determination she made, the PBGC cannot satisfy any of the four well-established stay factors. It has no reasonable likelihood of success in its Rule 72 objections, as Judge Majzoub was correct to grant Plaintiffs' motion to compel the production of purportedly privileged material (for which the PBGC had not even produced a portion of its privilege log for almost two years after the discovery was served, and which is still far from complete). The PBGC also cannot demonstrate any irreparable harm from Judge Majzoub's order, because the law is clear that "[a]ppellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S.

100, 109 (2009). By contrast, the Plaintiffs have been significantly injured by Defendant's extended delays in providing discovery that is critical to the fair disposition of this lawsuit, and the public interest will be served by requiring immediate disclosure and moving this litigation forward.

In short, the PBGC cannot demonstrate serious questions going to the merits and it cannot show irreparable harm at all, much less irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted. The PBGC Stay Motion should be denied, and the administrative stay entered by Judge Majzoub (to allow for consideration of this stay motion by this Court) dissolved.

## **II. ARGUMENT**

The standard for resolving the PBGC's stay motion is a familiar one. In considering whether to grant a stay pending appeal, this court asks: (1) whether the moving party has a strong or substantial likelihood of success on the merits; (2) whether the moving party will suffer irreparable harm if the lower court order is not stayed; (3) whether staying the lower court order will substantially injure other interested parties; and (4) where the public interest lies. *Family Trust Found. of Ky., Inc. v. Ky. Judicial Conduct Comm'n*, 388 F.3d 224, 227 (6th Cir. 2004). While the manner in which the Court draws the balance among these factors can

vary from case to case, ultimately the real question for this Court is whether the PBGC can demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted. *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153-54 (6th Cir. 1991) (citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985)). The PBGC's motion fails when measured under this standard, as it can establish none of the four stay factors here, and the harm to Plaintiffs and the public interest from continued delay is substantial.

**A. THE PBGC CANNOT SHOW A LIKELIHOOD OF SUCCESS ON ITS MERITLESS RULE 72 OBJECTIONS**

The first factor for this Court to consider in deciding whether to grant a stay is whether the moving party has a strong or substantial likelihood of success on the merits of its appeal. *Family Trust Found.*, 388 F.3d at 227. The answer to this question is a resounding “no.”

The Magistrate Judge's Order Granting in Part Plaintiffs' Motion to Enforce Court Order (DE 231) (the “Rule 37 Order”), which is the subject of the PBGC's Rule 72 Objections, is reviewed on a clearly erroneous or contrary to law standard. 28 U.S.C. § 636(b)(1)(A). A factual finding is clearly erroneous or contrary to law when the reviewing court is left with the definite and firm conviction that a

mistake has been committed. *United States v. Smith*, 263 F.3d 571, 581 (6th Cir. 2001) (citations omitted). “If two permissible views of the evidence exist, a magistrate judge’s decision cannot be ‘clearly erroneous.’” *Hennigan v. GE Co.*, No. 09-11912, 2010 U.S. Dist. LEXIS 111757, at \*5 (E.D. Mich. Oct. 20, 2010) (citing *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985)). Legal conclusions are reviewed under the “contrary to law” standard, which means they legal conclusions should be overturned only where they “contradict or ignore applicable precepts of law.” *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), *aff’d without op.*, 19 F.3d 1432 (6th Cir. 1994).

In the Rule 37 Order, Judge Majzoub found, *inter alia*, that the “boilerplate” objections of privilege made by the PBGC in its 2011 discovery responses “were tantamount to filing no objections at all.” *See* DE 231 at 7. This holding is consistent with the rulings of this Court that have dealt with boilerplate objections. *See, e.g., PML N. Am., L.L.C. v. World Wide Personnel Servs. of Va. Inc.*, No. 06-14447, 2008 U.S. Dist. LEXIS, at \*5 (E.D. Mich. Apr. 21, 2008); *Cumberland Truck Equip. Co. v. Detroit Diesel Corp.*, No. 05-74594, 2007 U.S. Dist. LEXIS 84854, at \*9 (E.D. Mich. Nov. 16, 2007)).

Magistrate Judge Majzoub then considered Plaintiffs’ argument that the PBGC should be deemed to have waived its right to assert those privileges in light

of the specific facts of this case. As noted above, under the Federal Rules, the PBGC was required specifically to state its privilege objections in making its Rule 34 responses, which were made in October and November 2011, approximately twenty-two months prior to the Rule 37 Order. Noting that there was disagreement about whether the PBGC needed to assert those privileges prior to her March 9, 2009 Order granting Plaintiffs' Second Motion to Compel (the "March 9, 2012 Order"), Magistrate Judge Majzoub found that, "[e]ven assuming Defendant is correct in arguing that it was not required to begin logging its privileged documents until after the March 9, 2012 order was entered, the order was entered well over one year ago." DE 231 at 7. Further noting that the parties both agreed that no privilege log had yet been provided as of the briefing of Plaintiffs' Rule 37 Motion, the Magistrate Judge found the PBGC had waived its right to assert privilege. *Id.* This finding too is well in keeping with applicable law. *See, e.g., Carfagno v. Jackson Nat'l Life Ins. Co.*, No. 5:99 cv 118, 2001 U.S. Dist. LEXIS 1768, at \*4 (W.D. Mich. Feb. 13, 2001) ("[i]f the time limits set forth in the discovery rules are to have any meaning, waiver is a necessary consequence of dilatory action in most cases. 'Any other result would . . . completely frustrate the time limits contained in the Federal Rules and give a license to litigants to ignore

the time limits for discovery without any adverse consequences.”) (quoting

*Krewson v. City of Quincy*, 120 F.R.D. 6, 7 (D. Mass. 1988)).<sup>1</sup>

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<sup>1</sup> *Accord Allen v. Sears, Roebuck & Co.*, No. 07-CV-11706, 2008 U.S. Dist. LEXIS 45048, at \*4-5 (E.D. Mich. June 10, 2008) (Majzoub, Mag. J.) (citing *Carfagno* in enforcing waiver where Plaintiffs failed to file a timely privilege log as required by Fed. R. Civ. P. 26(b)(5)(A) and failed to demonstrate prejudice from the waiver’s enforcement); *Cozzens v. City of Lincoln Park*, No. 08-11778, 2009 U.S. Dist. LEXIS 4063, at \*9 (E.D. Mich. Jan. 21, 2009) (plaintiffs waived privilege where they did not file a privilege log in response to defendant’s motion to compel, did not provide information about the allegedly privileged documents at a hearing a month later, and did not file a motion for a protective order pursuant to Rule 26(c)); *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 356 (D. Md. 2008); *DL v. District of Columbia*, 251 F.R.D. 38, 43 (D.D.C. 2008) (“When faced with general objections, the applicability of which to specific document requests is not explained further, ‘[t]his Court will not raise objections for [the responding party],’ but instead will ‘overrule[] [the responding party’s] objection[s] on those grounds.’”) (quoting *Tequila Centinela, S.A. de C.V. v. Bacardi & Co., Ltd.*, 242 F.R.D. 1, 12 (D.D.C. 2007)); *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) (finding of waiver was not an abuse of discretion where privilege log was filed five months after the Rule 34(b) response); *GMC LLC v. Lewis Bros., L.L.C.*, 10-CV-00725S(F), 2012 U.S. Dist. LEXIS 107039, at \*21 (W.D.N.Y. July 31, 2012) (privilege waived after failure to produce privilege log for 13 months); *Horace Mann Ins. Co. v. Nationwide Mut. Ins. Co.*, 238 F.R.D. 536, 538 (D. Conn. 2006) (holding that discovery responses that were twenty-two days late and did not contain a privilege log, waived the privilege claim); *Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659, 662 (D. Colo. 2000) (“[B]oilerplate objection” filed seventy-one days late that did not comply with Rule 26(b)(5) waived attorney-client privilege); *Smith v. Conway Org.*, 154 F.R.D. 73, 76 (S.D.N.Y. 1994) (“[F]our-month delay in responding to the Document Requests . . . waived the protection of the attorney work-product rule.”); *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 181 F.R.D. 229, 237-38 (W.D.N.Y. 1998) (discovery responses file 3.5 months late that did not comply with Rule 26(b)(5) waived asserted privileges); *Witmer v. Acument Global Techs., Inc.*, No. 2:08-cv-12795, 2010 U.S. Dist. LEXIS 100663, at \*13-17 (E.D. Mich.

(footnote continued on next page)

As should be evident from the above, Magistrate Judge Majzoub's Rule 37 Order is neither clearly erroneous nor contrary to law. Nonetheless, prior to filing its Rule 72 Objections, the PBGC also moved Magistrate Judge Majzoub to reconsider her Order under L.R. 7.1(h)(3), presenting to her the exact same arguments now presented to this Court. *See* DE 232. On September 5, 2013, Magistrate Judge Majzoub denied the PBGC's motion for reconsideration, and in doing so, provided additional findings in support of her earlier Order. DE 237.

While summarized in more detail in Plaintiffs' Response to the PBGC's Objections to the Magistrate Judge's Order Granting in Part Plaintiffs' Rule 37 Motion to Enforce Court Order, the Magistrate Judge, in short, noted that the various assertions upon which the PBGC's objections here rest are all faulty. To take one example, she noted that, contrary to the PBGC's assertion that her Order

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(footnote continued from previous page)

Sept. 23, 2010) (granting motion to compel where defendants failed to file timely written objections and a privilege log and later filed privilege logs that were untimely, defective and conclusory); *Bowling v. Scott County*, No. 3:04-CV-554, 2006 U.S. Dist. LEXIS 56079, at \*7-9 (E.D. Tenn. Aug. 10, 2006) (finding waiver of privilege where defendants failed to provide the court with a privilege log or sufficient information in any form to evaluate the applicability of privilege); *Sonnino v. Univ. of Kan. Hosp. Auth.*, 221 F.R.D. 661, 669 (D. Kan. 2004) (“The applicability of the privilege turns on the adequacy and timeliness of the showing as well as on the nature of the document.”) (quoting *Peat, Marwick, Mitchell & Co. v. West*, 748 F.2d 540, 542 (10th Cir. 1984)).

failed to account for the “PBGC’s understanding with Plaintiffs that it would produce a privilege log at the conclusion of its production,” the Court “fully considered” those communications, including Plaintiffs’ assertions that “they did not agree to allow Defendant PBGC an unlimited amount of time to produce documents, assert privileges, and produce a privilege log. In fact, Plaintiffs argued that Defendant PBGC waived any right to assert privileges with respect to the withheld documents.” *Id.* at 2. She similarly disposed of the PBGC’s assertions regarding the equity of her Order, and whether she took into account the “practicalities” of the discovery demands in this case in issuing the Rule 37 Order. *Id.* at 3-4.

For all of the reasons demonstrated in Plaintiffs’ accompanying opposition to the Rule 72 objections, Judge Majzoub’s order granting Plaintiffs’ motion to compel was demonstrably correct, and the PBGC is unlikely to prevail on the merits.

**B. THE PBGC CANNOT DEMONSTRATE IRREPARABLE HARM IN THE ABSENCE OF A STAY**

The PBGC also cannot demonstrate the second stay factor – irreparable harm in the absence of a stay. *Family Trust Found. of Ky., Inc. v. Ky. Judicial Conduct Comm’n*, 388 F.3d 224, 227 (6th Cir. 2004). In its stay papers, PBGC simply asserts, without citing any authority, that “potential loss of its right to claim

privilege” – through compliance with Judge Majzoub’s order and disclosure of the withheld documents – “constitutes irreparable harm to PBGC.” DE 235 at 6. This argument is foreclosed by controlling Supreme Court authority, as well as recent Sixth Circuit case law.

In *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 109 (2009), the Supreme Court had before it a party who had been ordered to disclose purportedly privileged documents and sought an immediate interlocutory appeal, arguing that the right to maintain attorney-client confidences -- the *sine qua non* of a meaningful attorney-client relationship --is “‘irreparably destroyed absent immediate appeal” of adverse privilege rulings.’” *Id.* at 108 (citation omitted).

The Supreme Court rejected the argument, finding that:

[P]ostjudgment appeals generally suffice to protect the rights of litigants and ensure the vitality of the attorney-client privilege. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence.

*Mohawk Indus. Inc.* 558 U.S. at 109.

The Supreme Court has thus rejected the foundation on which the PBGC’s irreparable harm argument rests – that immediate disclosure would leave the PBGC with “potential loss of its right to claim privilege.” Not surprisingly, the

Sixth Circuit has done likewise, relying on *Mohawk*.<sup>2</sup> In *Holt-Orsted v. City of Dickson*, 641 F.3d 230, 240 (6th Cir. 2011), the trial court ordered a party's former counsel to testify in a deposition, rejecting the party's claim of attorney-client privilege. The Plaintiffs in *Holt-Orsted*, like the PBGC here, asserted irreparable injury from such a ruling because it forced them potentially to waive privilege if not immediately reviewed and overturned. But the Court of Appeals rejected this argument, concluding that Plaintiffs would have a remedy even if they disclosed the purportedly privileged information now, since they "ultimately can avail themselves of a post-judgment appeal which, under *Mohawk*, suffices 'to protect

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<sup>2</sup> In holding that any harm from an order to disclose purportedly privileged materials can be fully remedied through pursuit of a successful appeal after disclosure, the Supreme Court expressly rejected decisions like *United States v. Philip Morris Inc.*, 314 F.3d 612, 617-21 (D.C. Cir. 2003), and *Kelly v. Ford (In re Ford Motor Co.)*, 110 F.3d 954, 957-64 (3d Cir. 1997). *Mohawk*, 558 U.S. at 105 n.1. Those lower court decisions had erroneously held that such disclosure orders create unique and irreparable harms that can only be remedied through an immediate appeal. Relying on *Philip Morris* and *In Re Ford Motor Co.*, the Sixth Circuit ruled, in an unpublished decision pre-dating *Mohawk*, that an order requiring disclosure of privileged materials creates irreparable harm. See *In re Lott*, 139 F. App'x 658, 662 (6th Cir. 2005). But *Mohawk's* holding that such harms are in fact reparable (through an appeal from a final judgment) clearly supersedes and overrules decisions like *Lott*, as the Sixth Circuit's later decision in *Holt-Orsted* makes clear. See *Holt-Orsted*, 641 F.3d at 238 (noting that "the *Mohawk* decision has altered the legal landscape related to collateral appeals of discovery orders adverse to the attorney-client privilege and narrowed the category of cases that qualify for interlocutory review").

the rights of the litigants and preserve the vitality of the attorney-client privilege.”

*Id.* at 240 (quoting *Mohawk*, 558 U.S. at 103).

These authorities demonstrate that irreparable harm will not occur in the absence of a stay. The PBGC’s blanket assertion of such harm is refuted by controlling authority from the Supreme Court and the Sixth Circuit, likely explaining the absence of any authority in the PBGC Stay Motion. This essential factor is thus lacking from the PBGC’s Stay Motion, which alone is reason to deny a stay.

**C. THE GRANTING OF A STAY, WITH THE CONTINUED DISCOVERY DELAY IT WILL ENTAIL, WILL INJURE PLAINTIFFS**

The third factor – injury to other parties as a result of entry of a stay – also strongly cuts in Plaintiffs’ favor. With virtually no discussion, the PBGC simply asserts in its motion that “Plaintiffs will not be substantially injured by a stay pending resolution of PBGC’s Objection to the Order, because plaintiffs would not have otherwise been entitled to receive PBGC’s privileged documents absent the Magistrate Judge’s ruling.” DE 235 at 6. The PBGC also argues that no injury will come to Plaintiffs as a result of a stay because the Treasury Department is also delaying discovery in a related proceeding in the District of Columbia and “there is no indication that the Treasury Department discovery issues will be resolved any

time soon.” DE 235 at 6-7. But these arguments cannot withstand scrutiny; indeed, the PBGC’s same callous disregard for Plaintiffs’ right to a prompt and deliberate resolution of its claims is what earned the PBGC the waiver finding made by the Magistrate Judge below. This Court should be no more sympathetic to the PBGC’s stalling tactics.

Contrary to the PBGC’s conclusory assertions, Plaintiffs stand to suffer significant harm from any further delay in implementing Magistrate Judge Majzoub’s August 21, 2013 Order. As the Court is well aware, this is only the latest example of the PBGC’s attempts to stall litigation. Owing to the government’s many and varied delays, this four-year old action is still not through discovery. Plaintiffs have thus been denied their right to expeditious and orderly litigation, and any continued unwarranted delays will increase this harm.

Additionally, the Plaintiffs’ right to accurate discovery has been impeded by these delays. The PBGC’s own witnesses have repeatedly claimed a diminished level of recollection when asked about the events that occurred in connection with the termination of Plaintiffs’ pensions. Allowing the PBGC to impose additional delays while it pursues meritless objections will only compound the damage. To be sure, Plaintiffs have also been harmed by the delay caused by Treasury’s refusal to honor deposition and document subpoenas. But a government agency that has

engaged in substantial foot-dragging in discovery to the Plaintiffs' detriment – as Judge Majzoub correctly found the PBGC did – cannot fairly point to similar delays by a related government agency (Treasury sits on PBGC's Board of Directors) as evidence that its own delays are harmless. Both the PBGC's delays and Treasury's delays have harmed Plaintiffs. Of course, this Court can only put a stop to the PBGC's delays here; it cannot control the pace of the proceedings in the District of Columbia. But even there, the stay of the District of Columbia proceedings has now been lifted (on Plaintiffs' motion), and those proceedings should be fully briefed and ripe for a decision within a few weeks' time.

It must also be noted that Respondents are particularly vulnerable to these delaying tactics because of their age and financial situation. Respondents are a group of retirees living on reduced pensions. Their underlying lawsuit has already been pending for four years as a direct result of the government's dilatory response to legitimate discovery requests, and for them, every month the litigation continues is another month of having to make due with pensions far less than those to which they are entitled. Moreover, the passage of time has also seen more instances of death or serious illness. In sum, for such a group of plaintiffs, justice delayed is truly justice denied. In these circumstances, Plaintiffs respectfully submit that the imposition of a stay would result in substantial injury to them.

**D. THE PUBLIC INTEREST WILL BE FURTHERED BY  
REQUIRING IMMEDIATE DISCLOSURE AND MOVING  
THIS LITIGATION FORWARD**

The public interest will also be furthered by allowing this litigation to move forward during the pendency of the PBGC's Rule 72 objections. While the PBGC points to the supposed importance of the privilege issues raised by its appeal, those issues are entirely fact-bound, as they related to the unique and extraordinary foot-dragging engaged in by the PBGC. Such fact-found (and meritless) issues are dwarfed in relation to the public interest in moving this litigation forward.

Indeed, the issues related to the termination of Plaintiffs' pensions have generated substantial public interest, and have been the subject of multiple Congressional hearings. At the most recent hearing this month, the Special Inspector General of the Troubled Asset Relief Program chastised government officials for a lack of transparency with regard to the Delphi pension issues, testifying in relevant part:

Treasury's public statement that its role in that decision was advisory has caused unnecessary confusion. \* \* \* Both GM officials and auto team officials told us that Treasury was the purchaser who made decisions on which obligations to take on. \* \* \* Therefore, the auto team's role could not be advisory; who would they be advising? It would have been much better if Treasury had been transparent, saying that we made the decision with GM to agree to the top up because the UAW really wanted it, and we're under time pressure. \* \* \* They should have explained their decision and trusted the American people

to hear the reasoning. American taxpayers can either agree or disagree with what the auto team did, but they are entitled to full transparency, and that's why we put this report out.

Ex. A at 7-8. As the Inspector General made clear, the public has a right to know what its government officials did with regard to these pension issues, so that it can determine for itself whether it approves or disapproves of the actions of these public officials. Denial of a stay would further this public interest in transparency, allowing this litigation to move forward toward an inquiry into these important questions. *See Freeman v. City of Detroit*, No. 09-CV-13184, 2011 U.S. Dist. LEXIS 68914, at \*7 (E.D. Mich. June 24, 2011) (noting “the public’s interest in the prompt and efficient administration of justice”).

**E. THE COURT SHOULD DISSOLVE THE ADMINISTRATIVE STAY ISSUED BY MAGISTRATE JUDGE MAJZOUB**

Prior to filing this Motion for Stay and its related Rule 72 Objections, the PBGC sought a similar “emergency stay” from the Court pending the resolution of its motion for reconsideration of Magistrate Judge Majzoub’s August 21, 2013 Order. *See* DE 233. Because Magistrate Judge Majzoub denied the motion for reconsideration, that stay motion was denied as moot. DE 237 at 4. However, “in consideration of the fact that Defendant PBGC ha[d] recently filed an objection to the August 21, 2013 Order,” Judge Majzoub issued an administrative stay regarding the portion of her Order that requires the PBGC to produce by

September 30, 2012 documents withheld on the basis of privilege, “until Judge Tarnow rules on Defendant PBGC’s objection to the August 21, 2013 order or until the Court orders otherwise.” *Id.*

For all the reasons discussed above, any stay of the Magistrate Judge’s Rule 37 Order is inappropriate. As such, Plaintiffs respectfully request that the Court dissolve the administrative stay.

**CONCLUSION**

The Court should deny the motion for a stay and dissolve the administrative stay granted by Judge Majzoub that allowed for consideration of this motion.

Dated: September 23, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 23, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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# **Exhibit A**



4 of 5 DOCUMENTS

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September 11, 2013 Wednesday

**SECTION: PRESS CONFERENCE OR SPEECH**

**LENGTH:** 24737 words

**HEADLINE:** Hearing of the Government Operations Subcommittee of the House Oversight and Government Reform Committee Subject: "Oversight of the SIGTARP (Office of the Special Inspector General for the Troubled Asset Relief Program) Report on Treasury's Role in the Delphi Pension Bailout" Chaired by: Representative John Mica (R-FL) Witnesses: Christy Romero, Special Inspector General for the Troubled Asset Relief Program; Barbara Bovbjerg, Managing Director, Education, Workforce and Income Security, Government Accountability Office (GAO); A. Nicole Clowers, Director, Financial Markets and Community Investment, GAO; Matthew Feldman, Partner, Willkie Farr & Gallagher, LLP; Steven Ratter, Chairman, Willett Advisors, LLC; Harry Wilson, Chairman and CEO, MAEVA Group, LLC; Harvey Miller, Business Finance and Restructuring Partner, Weil, Gotshal & Manges LLP Location: 2154 Rayburn House Office Building, Washington, D.C. Time: 1:34 p.m. EDT Date: Wednesday, September 11, 2013

**BODY:**

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REPRESENTATIVE JOHN MICA (R-FL): (Sounds gavel.) Good afternoon. I'd like to call the Subcommittee on Government Operations to order.

Today we're conducting a hearing entitled "Oversight of the SIGTARP: Report on the Treasury's Role in the Delphi Pension Bailout." Giving a few minutes for the minority to appear, but I want to go ahead with the proceedings. It appears that there will be a vote, and they will probably be the last votes of the day, beginning a little after 2:00. So we want to try to get through at least part of the witnesses and the opening statements.

But welcome, everyone, today.

I guess I can't start without remembering that today is September 11th. We did a memorial, small service on the steps of the Capitol, and remembered those who lost their lives and others on the day that any of us who were alive and have a memory will never forget. So I too remember them.

I'll remember too Barbara Olson, who was killed on the plane that crashed into the Pentagon, who worked for this committee, a wonderful young professional. We lost her and lost a number of staffers, the 11 who I worked with with Senator D'Amato, who was head of the New York Port Authority. I left him in a room in the World Trade Center in a

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hearing I conducted there about a month before September 11th, and he and everyone who helped us during our hearing all -- none of them survived except for one.

And then I remember Terry Lynch, who was an aide to Senator Shelby, was in the Pentagon. I left the Pentagon from secretary of defense office September 11th, with a breakfast meeting there just a few minutes before he and others were killed, Terry Lynch. So we remember him today, others that we lost on that fateful day. So we remember him.

And then members of the Florida delegation also mourn today the loss of our recent member of the delegation, E. Clay Shaw, who passed away last night. So a day that we do remember both a former member and the tragic events of September 11th.

In just a minute I'll yield to the minority. But want to again welcome everyone today. We're conducting the business of the people, and part of the responsibility of this subcommittee and our committee is to look at various operations and make certain -- of government -- federal government -- make certain that Americans see that their taxpayer dollars are properly spent and that we conduct thorough oversight of the legislative and executive process, as we intended and as we passed, and those things are executed. So that's an important responsibility that we share today in this committee and part of our business here.

The order of business will be opening statements. I'll give mine. We'll recognize other members as they appear. and we may be joined with some Ohio members. I think we have -- and I would like to ask unanimous consent that our colleague from Indiana, Ms. Brooks, be allowed to participate in today's hearing. Without objection, so ordered. So we have one member from Indiana, and I think we may have some from Ohio joining us too who have interest in this hearing.

So with that, then we will recognize our panel of witnesses, hear from all of them, and then we will move to questions.

So I'll start with my opening statement. And again, welcome. Today's hearing concerns a very important issue that this committee has been working on for over three years. In June of this year, our subcommittee convened a hearing in Dayton, Ohio, an area hard-hit by the substantial losses of pensions to Delphi retirees. At that hearing, we heard from retirees who were unfortunately feeling the pain of some of the Obama administration's decision to take very distinct winners and losers in the context of the GM bailout.

I'm -- part of -- as part of that, unionized Delphi retirees were made whole because they just happened to be a politically favored group, and unfortunately, the salaried nonunionized pensioners were left out of the -- out -- left out in the cold. This is somewhat sad because we use federal money, to which all these folks had contributed in their tax dollars, to bail out this -- these activities, and some were treated, again, we believe, very unfairly.

In fact, some 23,000 -- I think Mr. Turner has a great number in his district, and others that are affected.

In addition to the financial hardship, nonunionized Delphi retirees feel betrayed by their government and also by their former employer. While the unions, we find out from a special investigator general report -- the unions, we find out, were pretty heavily involved in a negotiation surrounding the GI (sic) and Delphi bailout. The salaried employees did not have a seat at the table and unfortunately were left in the dark.

This whole mess could have been avoided were GM to pursue a traditional bankruptcy route and not be subject to the political whims of the administration. A traditional bankruptcy route would have been better for GM in the long run and would have mitigated the risk of politicized decision making such as what we've -- not just our committee found but also confirmed now by the special IG report that verifies the way this was conducted and how the Delphi salaried retirees' pensions were affected.

The bankruptcy proceedings that occurred were simply a legal vehicle for delivering ownership shares in the auto companies to the government. In the words of one legal scholar, instead of a traditional bankruptcy, quote -- let me quote that scholar -- said, "The Obama administration, working with the automakers, patched together a process without precedent, a bankruptcy combined without a bailout, incorporating the worst elements of both."

The recent release of an audit by the special inspector general for the Troubled Asset Relief Program shed light on the facts and circumstances surrounding this decision. We know that despite the Treasury's pledge not to be involved in the day-to-day operations of GM, that in fact Treasury and the auto task force played a major role in the decisions concerning GM operations.

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As you may know, or just for the record, we tried for several years to get data and information which was withheld from this committee. I'm pleased that we've had the cooperation both of the Pension Guarantee Fund and now supplying the committee information we requested that was denied. And also we've gotten information from Treasury and others that I demanded that this committee have. And I appreciate now the compliance that is two years overdue.

Finally, from the report -- and this is not my opinion; this is the inspector general -- special inspector general said, and let me quote, that, "Despite the assurances that Treasury's role, as well as the presidential task for for the auto industry, was purely advisory" -- and this is what SIGTARP found -- the four Treasury auto teams -- and I again quote, "played a direct role in GM's decisions and operations up to and through bankruptcy, including replacing the then- chief executive officer with Treasury's choice." So it shows a story a little bit different than we've been told and confirms, unfortunately, some of our worst suspicions.

Today we'll hear from key members of the president's automotive task force about the decisions they made, what took place, how those decisions led to, unfortunately, some very gross inequity between certain classes of employees, some with unions and some nonunionized Delphi employees. We'll also hear from SIGTARP and the inspector general, special inspector general, and GAO, both of whom conducted thorough audits relating to this issue.

Lastly, I can't help but thank Mr. Turner of this panel for his unyielding dedication and determination to get to the bottom of these issues. With his assistance we're getting more of a complete picture, and the information we requested and the taxpayers deserve, of what took place in this whole process. Mr. Turner has tirelessly pursued justice in the area. He represents many of the folks who are affected.

And our committee is in fact committed to finding out exactly what happened, when, who was involved, why, and particularly why there was unfair treatment with taxpayer dollars for some, and again the unfairness of the whole process, that these decisions were made on the basis of politics and not prudence. Those responsible need to be held accountable for their actions.

I'm now very pleased to recognize the distinguished ranking member, the gentleman from Virginia, Mr. Connolly, for an opening statement.

REPRESENTATIVE GERRY CONNOLLY (D-VA): Mr. Chairman, I do have an opening statement, and I thank you, but I was running a little bit late, and out of a courtesy, if the ranking member of the full committee wishes to go, I would defer to him, and then --

REP. MICA: Mr. Cummings then is recognized.

REP. CONNOLLY: Thank you.

REPRESENTATIVE ELIJAH CUMMINGS (D-MD): Thank you very much, Mr. Chairman. I want to thank the ranking member for his courtesy.

Mr. Chairman, I want to thank you for convening what common sense would suggest will be the capstone on this committee's five-hearing inquiry into GM's decision making on Delphi pensions during the extraordinarily successful rescue of the United States automotive industry.

In 2009 the administration's auto team members came from the private sector, took up the mantle of public service, and assumed responsibility of managing the investments that the Bush and Obama administrations made to save the United States auto industry from collapse.

Thanks to their work, America's automotive industry today directly employs 1.7 million people. And indirectly, this industry accounts for roughly 8 million jobs nationwide. That represents 4.5 percent of all private sector employment. It also accounts for roughly \$500 billion in wages being paid to workers and \$70 billion in personal income tax revenue.

I thank the former auto team officials for their work to protect this industry and the American economy. You did a critical job, and you did it exceedingly well. It is unfortunate that, regardless of these impressive results, the Republicans continue to criticize the successful rescue of the American auto industry. The majority, including members of this committee, has perpetuated the narrative that government officials made the decision that the salaried retirees of Delphi would not get top-ups. We know now that that narrative is inaccurate.

SIGTARP's report makes clear that a high-ranking GM official made that decision, not the administration. SIGTARP also found that at the time of Delphi's spin-off from GM in 1999, the pensions of Delphi salaried workers were

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fully funded. That is why the high-ranking GM official believed that giving the salaried workers a top-up in 2009 would have been tantamount to paying that group of workers twice.

SIGTARP also found that the unionized workforce did not receive fully funded pensions when Delphi was spun off. To the contrary, their pensions were underfunded, but their union negotiated contracts with GM to top-up their pensions in the future.

And when the union insisted that those contracts be honored in the bankruptcy process, they were honored without question. SIGTARP found that, quote, "No person SIGTARP interviewed could recall any discussion of the top-up agreement at the negotiations," end of quote.

The facts found by SIGTARP are consistent with GAO's review, completed more than a year-and-a-half ago. GAO detailed the business reasons for GM to honor previous agreements with certain unions. A failure to honor those agreements would have jeopardized the company's ability to move forward.

I feel bad for the Delphi employees who did not receive top-ups. There will be hard days ahead for them. They were betrayed by Delphi's management, which did not make pension payments for years after spin-off. But none of that is the fault of the government's effort to save GM.

The investigation into this matter has been thorough. An investigative body -- as an investigative body it is critically important that we follow the facts wherever they lead.

And it is equally important that when we get answers, we accept those answers. We now have the facts. We now have the answers. I ask that the majority accept them.

And with that, Mr. Chairman, I yield back.

REP. MICA: I thank the gentleman. I yield now to the gentleman from Ohio, Mr. Turner.

REPRESENTATIVE MIKE TURNER (R-OH): Thank you, Mr. Chairman.

I'm just astonished. And I'm sorry, Mr. Cummings. I usually don't respond directly to what someone else is saying in their opening statement, but all of that has absolutely nothing to do with this hearing whatsoever, and I hope that you actually sit down and read this report.

There is nothing in this report that says that they were not involved in the PBGC's decision making with respect to Delphi salaried retirees. In fact, this report is about the hourly not the salaried. And you're going to see that when we have this discussion. In fact, it does say on the hourly the opposite of what you just said.

Again, if you would read the report, page 38 says -- I'm going to quote it -- "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 practices 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 actively negotiated and made the overall deal.

Now, there is partisan politics that shouldn't be happening here in this -- in this hearing. And the GAO report, it was not as extensive as this SIGTARP report has been. And I want to thank Ms. Romero. Thank you for your in-depth review. This is the first time we've ever really had an insight as to what the auto task force did.

And I must tell you, it's just shocking, because remember the last hearing that we had, Mr. Cummings -- Mr. Cummings, the last hearing we had, we had to have it because these gentlemen refused to even talk to the inspector general. They said: We've left the government; we no longer have to answer questions on the work that we did. We've had to subpoena Treasury just to get to the bottom of what happened in these things.

Now, I want to give us some context of what we're doing here today because this really, really is important. And this is the fact that in the TARP process, what occurred was not just the tragedy of the Delphi salaried retirees getting their pensions cut unjustly and I believe illegally, and the courts will determine that, but what we had was the entire process was thwarted because of TARP.

Normally when you have a bankruptcy, each of the parties who are -- who have an interest in either the new entity that's coming out of the old entity that is going through the bankruptcy process sit in a chair and represents their interests, or they have someone who sits there in a fiduciary capacity representing their interests.

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But what we had with TARP was this perversion of the process where each and every person sitting around the table suddenly became the Treasury Department. The banks became the Treasury Department, the lien-holders became -- and bond holders. The PBGC became the Treasury Department. Each and every one of these people became the Treasury Department.

And what we kept saying throughout all of this, which is why we're having this hearing today, is tell us how you made your decisions. Tell us, once you had all of these chairs, whether or not you go to the standard of protecting the fiduciary interests of the people who were behind you, because we don't believe that you did.

What we find now from the SIGTARP report, which is the first time we've ever had any insight into what occurred in the decision making -- we understand that they've set this unnecessary and artificial timeline of the quick wash, that they set the terms and the conditions. They determined who had leverage and who did not -- some political, some not.

And clearly, throughout all of this, is this concept of exceeding and abusing authority. This concept of commercial reasonableness that this group used to -- as a standard for determining their decision making that had no definition and no legal justification had people rewarded and people who were penalized. The administration picked winners and losers. And that's what this report says and that's what we're going to get to today.

Now, this does not decide the issue of PBGC and the Delphi salaried retirees. It was not intended to. This hearing is not -- is not to determine the end of the PBGC issue and GM issue with respect to the Delphi salaried retirees. That we will have to continue.

GAO, when they did their report, only looked at public sources. They didn't have access to what the inspector general did where they looked at the documents and looked at the emails between these individuals. And the SIGTARP inspector general did not check or review the GAO work to determine whether or not additional documents were necessary or whether or not the documents that they had needed to have the GAO report amended or redone.

But it tells us what we didn't -- what we didn't see before. The administration has said they were not involved. They said they didn't do it, that they only were on the sidecar and watched as General Motors made the decisions. And what we know now from this report is that decision-making was absolutely being made by the auto task force individuals themselves. But they were -- the four Treasury auto team officials played a direct role in GM's decisions and obligations up to and through GM's bankruptcy. Treasury's auto team had significant leverage and influence on GM's decision, including up to and through the bankruptcy first exerted by replacing the GM chief executive.

So if the document itself is allowed to go through this hearing instead of us just reading our own text that our staffs had written, I think we'll get to what really is the truth, what really happened, what needs to happen, was there injustice, and what this committee needs to do in further investigations, because this is not over.

Thank you, Mr. Chairman.

REP. MICA: I thank the gentleman.

Mr. Connolly.

REP. CONNOLLY: Thank you, Mr. Chairman, and thank you for holding this hearing.

Let me just say, as a member of this committee, I would caution my colleague as to characterizations about what homework is done or what reading is done or not done by the distinguished ranking member of this committee. I've known Mr. Cummings a long time. He does his homework. To suggest that his opinion is wrong because he didn't read the report I think crosses the line. If you want to disagree, disagree. But the impugn to reputation of the distinguished ranking member as somebody who comes here unprepared, I take exception to on his behalf and on behalf of this side of the aisle. And I urge my friend from Ohio to restrain from such characterizations.

Mr. Chairman, SIGTARP's report directly and definitely refutes the narrative we've just heard on this subject. And we just heard, for example, that this report didn't really address certain subjects. And I put up this slide on Page 29; it most certainly does. It most certainly does talk about the salary plan and explains what happened, at least from somebody's point of view, SIGTARP's, why they didn't top off the nonunion salary -- (inaudible) -- pensions after the 1999 separation.

This committee's explored in great depth the federal government's unprecedented intervention that not only rescued our nation's auto industry but enhanced the global competitiveness of the auto sector. Hopefully, with the issuance of

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SIGTARP's report and today's hearing, we can finally put to rest the unsubstantiated conspiracy theories about picking winners and losers to benefit political allies.

Unfortunately, some refuse to acknowledge the sheer complexity of the challenge then facing the administration in assisting General Motors navigate what SIGTARP characterized as, quote, one of the largest and fastest bankruptcies in the nation's history. It's easy to discount the monumental achievement in light of current auto industry conditions.

Consider just two years ago GM sold more than 9 million vehicles on its way to posting a record-breaking profit of \$7.6 billion, a company on the ropes that was looking at liquidation in 2009. Just last month GM posted its best month ever since the Great Recession. We must not forget the perilous days of late 2008, when leading economic think tanks were projecting the bankruptcy of all U.S. automotive manufacturing, and that would trigger a collapse of the domestic auto industry, costing us an additional three million jobs while we were shedding 750 a month -- 750,000. Indeed, it was estimated just the liquidation of GM alone would lose 900,000 industry jobs. And of course, SIGTARP found, and I quote, ultimately, GM did not fail, and the broader systemic consequences of a GM failure that Treasury had feared were avoided, unquote.

Yet the majority narrative continues to appear disinterested in convening to examine the lessons learned from all of that and from the effective federal initiative to save the U.S. auto industry. Instead, we find ourselves holding what is now the fifth hearing to rehash some hackneyed assertions from the past. Of course, a thorough review of SIGTARP's report enables one to test and, I think, ultimately rebunk those unsubstantiated claims.

For example, did the administration inappropriately intervene in the decision to deny Delphi's salaried workforce top-ups as part of a nefarious scheme to use GM's bankruptcy proceedings as a cover-up to protect political allies?

No.

As SIGTARP itself reports, there was no impropriety and it was a sound business decision from a substantial point of view for GM to deny pension top-ups to certain Delphi employees. According to SIGTARP, more than a decade ago, Delphi salaried workers received full funding of their pensions when the firm was bought off from GM, while the unionized workforce did not. Instead, in exchange for underfunding union pensions in the spin-off, labor-negotiated contractual agreements with GM legally binding contracts to protect the pensions to certain unionized Delphi hourly employees, not in the context of (TARP ?) but nine years earlier than that. This strategic decision paid off when the financial crisis hit and Delphi's unionized workforce emerged with its pensions protected.

Regrettably, Delphi's salaried workforce had not negotiated similar contracts, and when GM entered bankruptcy, the firm had no contractual obligations to top off their pensions. As SIGTARP noted, a hypothetical GM decision to top off those pensions, a cohort that no longer worked for, nor, had any association with GM by the time of TARP, would be equivalent to GM paying for the Delphi salaried pensions twice, from their point of view.

The bottom line is the GM's refusal to top off the pensions was a business decision, not a government policy decision, nor was GM in a position before bankruptcy judged to undertake a new financial obligation while it's trying to go through bankruptcy. In a perfect world, perhaps, GM would have prioritized fairness over commercial interests and treated the pensions of all of its former employees at Delphi equally. But bankruptcy is not a perfect world; it's an unfair and staggeringly difficult battle for survival itself. And I believe the record presented by SIGTARP and the witnesses before us today clearly demonstrates that GM, supported by Treasury and the auto task force, made those tough decisions under tremendous pressure, but not political pressure.

Thank you, Mr. Chairman.

REP. MICA: I thank the gentleman.

Mr. Amash, did you have an opening statement? (Inaudible.)

REPRESENTATIVE JOSH AMASH (R-MI): Mr. Chairman, could I ask unanimous consent to allow our colleague, Mr. Tim Ryan of Ohio, to --

REP. MICA: Yes, and what I'm going to do then is -- we've had Ms. Brooks, who's not a member of the panel, and we approved her. I have Mr. -- your request for Mr. Ryan, the gentleman from Ohio, and then we have a request for Mr. Tiberi, also the gentleman from Ohio. I ask unanimous consent that both of these colleagues be allowed to participate in today's hearings, without objection, so ordered.

REP. AMASH: Thank you, Mr. --

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REP. MICA: And our usual rule and procedure, for those who have joined us, would be we'll recognize the members of the panel first and then we'll go to you.

I think what we're going to do though, if we have no opening -- further opening statements is go right to our panel of witnesses. We are expecting both shortly, as I've said, so -- with that, let me introduce our panel of witnesses. We have the Honorable Christy Romero. Before I do that, let me say that without objection, the record will also be open for additional statements to appear in the record at this point and throughout the proceedings, to be fair to everyone who is now participating.

Again, the panel of witnesses, the Honorable Christy Romero is the special inspector general for the Troubled Asset Relief Program. Ms. A. Nicole Clowers is director of the financial markets and community investments at the United States Government Accountability Office. Ms. Barbara Bobvjerg is managing director of education workforce and income security issues at the Government Accountability Office.

Mr. Matthew Feldman is a partner at the law firm of Willkie Farr and Gallagher, and he served as legal adviser to the Treasury auto team. Mr. Steven Rattner is the chairman of Willet Advisers and served as the head of the Treasury auto team. Then we have Mr. Harry Wilson -- Harry J. Wilson is the chairman, CEO and founder of the -- is that Maeve (ph) -- MAEVA Group and served as a member of the Treasury auto team. And finally, Mr. Harvey Miller is a partner at the law firm of Weil, Gotshal, Manges --

MR. : Manges.

REP. MICA: Manges, OK -- and no special promotion -- Manges and served as lead counsel in the General Motors bankruptcy case and was the vice chairman and managing director of Greenhill and Company.

So I welcome all of our witnesses. Let me say that this is an investigative panel. And it is our procedure to swear in all of our witnesses. So if you will stand now, all the witnesses. (Administers oath.) All the witnesses, the record will reflect, have answered in the affirmative.

Thank you. And let me just give you the ground rules here too. We give you five minutes. If you have a lengthy statement, information you'd like included in the record just through the chair or member and ask consent and we'll include all of that in the record. So I'd like you to summarize, try to keep it to five. We'll also go through the entire panel and then go to questions.

We're going to try to get to as many as we can, albeit with the five minute. And we'll probably have to recess for -- the staff will tell us the amount of time the votes are -- actually, there's only one vote. So we'll only recess for about 15 minutes and give you a chance to scoot out but be back. And then we will proceed immediately until we have heard from all of you. Then we will begin the questioning. So that's the order of business.

So again, thank you. Let me turn to our first witness, which is Christy Romero. And she is the special inspector general for the Troubled Asset Relief Program. Thank you for your work and we recognize you now for your testimony.

CHRISTY ROMERO: Chairman Mica, Ranking Member Connolly and members of the committee, it's my honor to appear before you today. SIGTARP was created by Congress to conduct investigations and audits related to the TARP bailout. In our investigations we have -- we're a law enforcement agency and we have authority to search, seize and arrest.

So far, 151 people have been charged with crimes as a result of the SIGTARP investigation. One hundred and eleven of them have been convicted so far while others await trial, they're a guilty plea. And of those that are convicted, so far 58 have been sentenced to prison while others await sentencing. And the average prison sentence for a SIGTARP investigated crime is 68 months, which is nearly double the national average for white-collar crime.

We also conduct audits of decisions that were made related to TARP. And we issue these audits not to criticize for criticism's sake, but we issue them to ensure that our government functions at its best. We issue them to bring transparency. And we issue them so that we can learn from the past in case the government faces similar situations and decisions in the future.

Our latest audit reviewed Treasury's role in a decision to top up or make whole certain unionized former GM employees who worked at Delphi. In Treasury's public statement that its role in that decision was advisory has caused

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unnecessary confusion. It's also inconsistent with Treasury's rights under the 2008 TARP loan agreement and as the purchaser of GM and bankruptcy.

Under the TARP contract, there are certain big things -- like the collective bargaining agreement with the union -- where Treasury made the decision. And there's other things where Treasury could only advise GM. The top up agreement and the collective bargaining agreement are not too separate things. The top up is in the collective bargaining agreement.

The UAW came to the negotiation with Treasury and GM with a priority list that included the top up. There were no negotiations of the top up. GM did not come to Treasury later to discuss it. It became a foregone conclusion that it would be included with Mr. Rattner and Mr. Bloom of the auto team telling us that because it was on UAW's list, it was clear that the UAW expected it to be part of a deal.

As the purchaser, known as New GM, it was Treasury who made the decision on the collective bargaining agreement because only the purchaser could define the relationship with the union and only the purchaser could determine which obligations to take on.

Both GM officials and auto team officials told us that Treasury was the purchaser who made decisions on which obligations to take on. GM's lawyer, Mr. Miller, testified as to that today. Therefore, the auto team's role could not be advisory; who would they be advising?

It would have been much better if Treasury had been transparent, saying that we made the decision with GM to agree to the top up because the UAW really wanted it, and we're under time pressure. It would have been much better if Treasury had simply stated that we were concerned that in addition to the traditional strike leverage that UAW had the leverage to prolong the bankruptcy, that they did not think that GM could survive a lengthy bankruptcy and that could hurt the auto industry.

They should have explained their decision and trusted the American people to hear the reasoning. American taxpayers can either agree or disagree with what the auto team did, but they are entitled to full transparency, and that's why we put this report out.

So what was the alternative? Well, one alternative would have been to actually raise and actually negotiate the top up with the UAW, but Treasury conditioned the TARP funds on GM finishing the bankruptcy in 40 days, which had never been done, or else they would default. This severely limited the alternatives available to GM. GM's then-CEO told us they were under pressure to get the deal done, and that is why the top up was not negotiated.

But we found that the pressure came in part from the 40-day time constraint -- a timeframe that gave the UAW additional leverage. GM thought 40 days was unrealistic -- that they needed 60 to 90 days. No one will ever know if more time in the bankruptcy would have allowed for negotiation of the top up, but Treasury should take accountability that the 40-day condition had the effect of limiting GM's options.

Finally, there is an alternative still available today, which is for GM to consider topping up or contributing to the Delphi salary retirees today. Thank you again, and I'm happy to answer your questions.

REP. MICA: Thank you. And as I said, we'll withhold questions. Now, I have two GAO representatives, and we're going to recognize, I guess, Barbara Bovbjerg as the witness from GAO. So welcome, and you're recognized.

BARBARA BOVBJERG: Thank you so much, Mr. Chairman, Mr. Connolly, members of the committee. Thank you for inviting me and my colleague, Nicole Clowers, here today to speak about the termination of the Delphi pension plans. Our testimony today will address the timeline of key events leading to the plan's termination and the role of Treasury in these activities. This information is drawn from our 2011 report, prepared for Mr. Turner and others, and relies on publicly available documents.

First, the pension plan terminations. In 1999, the Delphi Corporation, once part of GM, was spun off as an independent company. And as part of that arrangement, GM was required to bargain with the unions affected by the spinoff. In those negotiations, GM agreed to provide top ups to the unionized employees, meaning that if something went wrong with the pension plans for these employees under Delphi, GM would make good on their promised benefits.

At the time of these agreements, Delphi's hourly plan was not fully funded. In contrast, the salaried employees' plan was fully-funded. So fast forward to October 2005, when Delphi filed for bankruptcy. All Delphi pension plans

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were underfunded, and Delphi was not planning to make any contributions to these plans during the bankruptcy process, hence the prospects for those plans and for the participants' future benefits got substantially worse.

By the fall of 2008, Delphi was still in bankruptcy, and economic conditions had deteriorated throughout the auto industry. GM's losses led the company to seek assistance from the federal government. By April 2009, the Department of Treasury was working with GM to develop a restructuring plan, and by June, GM, too, had filed for bankruptcy.

In June, as part of an arrangement for GM to emerge from bankruptcy, GM and the UAW agreed to modify wages, benefits and work rules to be more cost-competitive and agreed that new GM would assume all employment-related obligations and liabilities for any employee benefit plan covered by collective bargaining agreements. This, in effect, maintained the benefit guarantees GM agreed to in 1999.

Meanwhile, Delphi and PBGC began the process of what's called a distressed termination of Delphi pension plans. In accordance with governing statutes, PBGC estimated that Delphi plans were \$7 billion underfunded, with PBGC expected to bear 6 billion (dollars) of that shortfall, and Delphi plan participants the remaining billion.

However, per the settlement agreement, GM provided top up payments to all unionized workers.

No such agreement pertained to salaried workers, and this is where the situation stands today.

So let me turn to the role of Treasury in these decisions. As GM's primary lender, Treasury played a significant role in helping GM emerge from its bankruptcy, which included resolving the Delphi bankruptcy. However, with regard to GM decisions about the Delphi pension plans, the court filings and statements from GM and Treasury officials that we reviewed suggest that Treasury deferred to GM's business judgment.

According to these records and to Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of sponsoring the entire Delphi hourly plan itself upon emerging from bankruptcy. Treasury also agreed with GM's rationale not to assume the Delphi salary plan, since that plan had been fully funded when GM transferred it to Delphi in 1999.

As for the top-ups, Treasury officials said that Treasury did not explicitly approve or disapprove of GM's proposal to honor previously negotiated top-up agreements with some unions. Treasury stated that its aim was to ensure that the new GM would only assume the liabilities of the old GM that were commercially necessary. Due to new GM's continued dependence on the UAW workforce and the workforce of the other unions, Treasury officials felt GM had solid commercial reasons to agree to the top-up pensions of those retirees.

I'd like to conclude with a few thoughts about these pension terminations. Under pension insurance laws, when companies go bankrupt and leave their plans with large unfunded liabilities, some participants may not get the full benefits promised to them by their employer. This, unfortunately, is not unusual. What makes the Delphi terminations different is the linkage to the GM bankruptcy and GM's role as a pension benefit guarantor.

Additionally, Treasury's multiple roles in this process, as SIGTARP just noted, have led to concerns about transparency to Congress and to the public. Although Treasury has established policies to separate its multiple interests, we believe the most effective means of addressing concerns about these different roles is for Treasury to be as transparent as possible about its activities.

And that concludes our statement, Mr. Chairman. Ms. Clowers and I are happy to answer questions.

REP. MICA: Thank you. And as I said, we'll get to questions in a little while, after we've heard from the others.

Let's see. We have next Mr. Feldman. And Matthew Feldman is a partner in Willkie Farr & Gallagher. Welcome. And you're recognized.

MATTHEW FELDMAN: Thank you. Mr. Chairman and members of the committee, I understand that I've been invited to appear before you today to discuss my role with the Treasury Department's auto team, which I joined in March 2009 as legal adviser, and on which I served until August 2009. The Treasury Department recruited me to join the auto team from my career as an attorney in private practice, where I specialize in reorganizing and restructuring large businesses, not unlike the American automobile manufacturers that were in significant financial distress in 2009.

I believe that the work of the auto team contributed to a successful effort to avert disastrous consequences to both the American automobile industry and the American economy as a whole. Now, just four years after emerging from bankruptcy, both General Motors and Chrysler are selling cars and adding jobs at a pace most thought unachievable. I

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remain proud of my service. And I'm prepared today to assist the committee in reaching a complete understanding of the auto team's work with respect to General Motors and in particular its relationship with its critical supplier, Delphi Corporation, during what was a difficult time and an unprecedented precedent challenge for all involved.

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

As stated by the special inspector general for the Troubled Asset Relief Program in her August 15th report to Treasury Secretary Lew, in 1999 when General Motors spun out Delphi as a separate company, Delphi's pension plan for its salaried employees was significantly overfunded, but the pension plans for hourly workers was significantly underfunded. To garner support and consent from the UAW and other unions for the Delphi spin-off and to avoid having to make a significant payment in 1999, General Motors and the UAW entered into a top-up agreement whereby GM agreed to make whole hourly employees being transferred to Delphi on their pension obligations in the unlikely, but ultimately real, event that Delphi defaulted on its pension obligations.

Following years of mismanagement and malfeasance, Delphi was forced to file for bankruptcy in 2005, after having allowed both its salaried and hourly pension plans to become underfunded, a situation that ultimately led the PBGC to conclude it needed to take action to terminate both plans.

As stated by the GAO in its March 30, 2011, report to Congress on the topic, the PBGC reached its own conclusion to terminate the Delphi pension plans, presumably after concluding that this was proper action to take under applicable law and that among the limited options available for these plans, the termination and takeover by the PBGC was the best choice available.

While I can understand why all parties involved would have preferred if General Motors had assumed these Delphi pension plans, taking on these liabilities in full would have threatened GM's future success as it exited from its own bankruptcy. While General Motors was not willing to assume all of the pension plans, as the SIGTARP report makes clear, because GM viewed a well-motivated workforce at its own facilities and at its largest supplier as critical to ensuring an uninterrupted supply chain, General Motors made the commercially reasonable and necessary decision to honor its legal obligation memorialized in the top-up agreement with the UAW. The decision to assume the UAW top-up agreement was bargained for by the UAW and agreed to by General Motors after having been extended by the parties once in 2007.

As this committee is aware, unfortunately, many of Delphi's employees did not have similar top-up agreements with General Motors, and some of the employees will face a shortfall in their pension payments.

The auto team agreed that honoring the top-up agreement was a prudent business decision. We believed that doing so would protect both General Motors' and the American taxpayers' collective investment in the company.

The desire to limit General Motors' stay in bankruptcy was purely economics. Every week of bankruptcy where General Motors continued to carry all of its costs but generated little or no revenue would cost the American taxpayers \$1 billion. The need for General Motors to complete a 363 sale in a short time period was intended, among other benefits, to limit the costs being borne by taxpayers.

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

I'm here today and prepared to answer any of the questions of the committee.

REP. MICA: Well, thank you. We have four minutes left before the vote, so what we're going to do is we will recess. Now I'm told there will be three votes, so this will be a little bit longer. It usually takes us 15 minutes, another five and five -- probably be back here about 10 minutes of to five -- 10 minutes of to the hour of 3:00, somewhere there.

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And we will come back. Mr. Rattner, you'll be the first recognized. Mr. Wilson and Mr. Miller will go through. And so you don't want to wander too far off.

So with that, we will -- the committee stands in recess until after these votes. (Sounds gavel.)

(Recess.)

REP. MICA: I'd like to call the subcommittee back to order. I appreciate everyone's patience in dealing with the votes.

First they said one, then they said three, and we ended up with two. So we should have some other members returning but we're going to go ahead and take off -- continue as to where we left off. And I think we left off with Mr. Feldman, and we're going to go to Mr. Rattner now.

Mr. Steven Rattner is chairman of Willett Advisors. Welcome, sir, and you're recognized.

STEVEN RATTNER: Thank you, Mr. Chairman.

It is sometimes difficult to recall that just five years ago the American auto industry was in a severe crisis that threatened its very existence on the broader American economy. It is incontrovertible that absent government intervention both General Motors and Chrysler would have been forced to cease production, close their doors and lay off virtually all their workers.

These shut-downs would have reverberated through the entire auto sector, causing innumerable suppliers to almost immediately also stop operating. More than a million jobs would have been lost, at least for a time. Michigan and the entire industrial Midwest would have been devastated. Everything we did in the government at that time was driven by our profound desire to prevent such an economic calamity while honoring our responsibilities to the taxpayers.

And by any objective measure, I believe our efforts were a success. Today General Motors is once again profitable and healthy. It has gone from a company that was hemorrhaging money before the financial crisis to one that turned a \$1.2 billion profit in its most recent quarter, driven by strong North American sales.

The restructuring of GM's contract with the United Autoworkers provided a company with new flexibility to use its workforce efficiently and expanded its ability to hire new workers at considerably lower costs. And GM has vastly improved its product lineup so that it is once again selling the kinds of cars consumers want to buy and demonstrating the power of American ingenuity, engineering and manufacturing.

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

This remarkable turnaround could not have occurred without significant restructuring at GM, a restructuring that regrettably but inevitably involved painful sacrifices from all of GM's stakeholders, but particularly its bond holders, dealers, suppliers, employees and retirees.

It is not easy to make these kinds of decisions under any circumstances. It was particularly challenging in the crisis atmosphere that GM was facing at the time. No one wants to get cents on the dollar of their investment or have their dealership close, or see their incomes or benefits reduced. These are personal pocketbook issues. For those affected they're unfair almost by definition.

To understand the decisions that were made, I believe it is important to appreciate that the auto task force had two over-riding goals: to restore a viable and thriving auto industry while acting as a prudent custodian of taxpayer funds. To achieve these goals we were guided by the principle that Treasury, as GM's investor and partner in bankruptcy, was entitled to set parameters and provide guidance to GM that was consistent with what would be commercially reasonable.

In accordance with that principle, the auto task force helped GM determine the broad strategic policies that will return the company to competitiveness at the least cost and risk to taxpayers. Day-to-day management remained the responsibility of GM.

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I know the subcommittee is interested in one of those decisions in particular, which was GM's decision to honor a pre-existing commitment to provide supplemental pension benefits, or top-ups, to certain hourly employees at Delphi, a critical GM parts supplier that was itself in bankruptcy. Other hourly employees and salaried employees at Delphi were not provided similar top-ups.

Although I fully understand that it was painful for the salaried employees who saw their pensions cut, and perhaps made more painful by the fact that some of their hourly colleagues did receive top-ups, I believe the special inspector general's report makes clear that GM's decision to honor its top-up agreement in bankruptcy was consistent with a commercially reasonable approach.

The Delphi hourly employees who received top-ups were differently situated from the salaried employees that did not, for reasons that predated GM's bankruptcy and the work of the auto task force. GM had fully funded the salaried employees' pensions but not the hourly employees' pensions before the Delphi spin-off in 1999.

At that time, the hourly employees negotiated for a top-up agreement from GM, but the salaried employees who were fully funded did not.

As the special inspector general's report explains, GM was therefore under no obligation to top up the salaried employees' pension, and indeed, doing so on its own initiative would have been like -- been like paying for the pensions twice. Such an action, while generous, would not have been consistent with the goals of restoring the GM -- of restoring GM to viability or protecting U.S. taxpayers' investment.

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

Five years later, I think it is clear that the government's extraordinary intervention in the American auto industry has been a success. I deeply wish that the actions we took did not have to be taken, but I am proud that we avoided a devastating dissolution of this vital sector of the economy and gave the American auto industry the opportunity to once again lead and succeed

Thank you.

REP. MICA: Thank you. We'll recognize now Mr. Harry Wilson, chairman and CEO of The MAEVA Group. Welcome, and you're recognized.

HARRY WILSON: Thank you.

Mr. Chairman, Ranking Member Connolly and members of the subcommittee, thank you for the opportunity to testify before you today at this somber anniversary of the attacks of 9/11. I'm here to report, as you request, on the 2009 auto rescues and the recent SIGTARP report on Delphi Pensions.

I'd like to make several comments on the report. First, I believe the body of the report makes clear that General Motors' management acted in a commercially reasonable manner in determining how they would treat various groups of Delphi retirees. As the report makes clear, General Motors had a choice. Option A, they could choose to not provide any funding at all for Delphi's underfunded pension plans. Option B, they could choose to fully fund, top up or even assume all of Delphi's underfunded pension plans, at great cost. Or option C, they could choose to fund or top up only the plans they needed to preserve the viability of GM's own reorganization process.

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

On option B, GM management believed there was no commercial justification for it, which would have involved assuming the pensions of nearly 70,000 salaried and hourly pensioners, a majority of whom GM had never committed

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to support after the 1999 Delphi spinoff, a group that included 20,000 salaried employees, 18,675 hourly employees and 2,000 other employees. At Delphi itself, none of the prospective investors in Delphi had indicated any willingness to maintain Delphi's pension funds. So unfortunately, there was just no contractual or market-based support for option B.

And that left only option C, the path GM ultimately pursued, where they agreed to assume existing top-up agreements only in cases where they felt they needed to in order to successfully emerge from bankruptcy and operate successfully thereafter. The record clearly supports these facts.

However, I do need to disagree with and correct for the record several characterizations in the summary and conclusion sections of the SIGTARP report. First, the report makes several points criticizing the commercial approach which the auto team was tasked to utilize. For example, SIGTARP implies the auto team worked too closely with GM management in developing a viable plan for GM's restructuring. However, the facts at the time and the results since repudiate this criticism.

When the auto team was first formed, GM had already failed multiple times to develop a viable plan on its own, and the Treasury, and thus the American taxpayer, was funding multibillion-dollar monthly losses with no end in sight. Time was of the essence. And in that spirit, the auto team worked closely with GM management to develop their revised viability plan, offering real-time feedback and helping to speed along a process that would normally take months and would have cost tens of billions of dollars more than it ultimately did. This was exactly the type of work which the auto team had been created to do, to determine if there was a path to viability for General Motors, and if so, work with management to achieve that path.

The commercial success of General Motors since this work was completed is beyond dispute. Just last week a Bloomberg article on the resurgence of the American auto industry stated, quote, "Detroit has come full circle from bankruptcy to boom. Those fatter profits come from trimmer companies that radically restructured operations, shed debts and overhauled their lineups."

SIGTARP also argued the Treasury inadvertently created negotiating leverage for the UAW due to its aggressive timeline for the restructuring process. Nothing could be further from the truth. The UAW had enormous leverage because they represented nearly 100 percent of the GM hourly workers with the skills to manufacture cars. And they were prepared to use that clout to press certain key issues. Nothing else in the restructuring process provided them any additional leverage, nor did they need more.

Furthermore, the SIGTARP report is silent on what viable alternatives, if any, there might have been for the path GM pursued. Like all choices in the real world, all the difficult decisions that were made during the auto rescues were about a series of trade-offs of bad and less bad options. For example, SIGTARP implies the auto team should not have established such an aggressive restructuring timeline.

However, all industry commentators, GM management and the auto team itself -- in fact not a single contrary voice that I'm aware of -- were convinced that GM could not survive a prolonged bankruptcy. As a result, there was no viable procedural alternative to a very rapid Section 363 sale. Moreover, Section 363 sales like this have been done in times in the past for exactly these reasons.

So in reality, neither GM management nor Treasury had a practical alternative, unfortunately, to the course that was followed. This is not to say that these choices were at all satisfactory. Sadly, the costs inherent in a restructuring as difficult as General Motors are massive and tragic. In a better world, none of these difficult and painful actions would have been necessary.

However, it is equally clear that for General Motors there was not a viable alternative path available to it and far greater costs and tragedies were avoided as a result of the work that was done by both companies, their many advisers and the Bush and Obama administrations. I look forward to discussing these issues with you today. Thank you.

REP. MICA: Thank you. And we'll now turn to our last witness, Mr. Miller. And Mr. Miller is the senior member of international law firm. And welcome and you're recognized.

HARVEY MILLER: Thank you, Mr. Chairman, Mr. Connolly and members of the committee, for the opportunity to participate in this hearing. I acted as the lead attorney for general motors in connection with its restructuring under Chapter 11 of the bankruptcy code, via a sale pursuant to Section 363 to an entity sponsored and financed by the U.S. Treasury and the governments of Canada and Ontario through its export development to Canada.

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During the period preceding the commencement of the Chapter 11 case, General Motors was subjected substantial adverse circumstances, beginning in 2007 as the subprime mortgage crisis begin to surface and affect auto and truck sales. That was compounded by a surge in oil prices in the summer of 2008 and further diminished -- that further diminished consumer demand and caused sales to erode.

As a result, GM's liquidity began dry up, conditions worsened with the financial crisis ignited by the conservatorships for Fannie Mae and Freddie Mac and, ultimately, the bankruptcy of Lehman Brothers. The future of the automotive industry looked bleak and the parts supplier industry had supplies which were beginning to fail. President Bush recognized the potential calamity and directed the U.S. Treasury to enter into a financing agreement with General Motors that resulted in the secured loan agreement to avoid the consequences to the American automotive industry and the loss of hundreds of thousands of jobs then at stake.

Unfortunately, in 2009 conditions continued to erode. The Obama administration inherited the administration of the secured loan agreement and GM needed additional financing. The auto team was appointed and got involved in the negotiations as to additional financing. Central to those negotiations was the protection of taxpayer monies and therefore the requirement that GM submit a feasible business plan that provided the prospect of restored viability and recovery of monies advanced.

The auto team conducted intensive due diligence in discharging its functions. The important point is that the auto team and the government at all times acted in the same manner as a private secured lending attempting to protect its loan, but also complicated by the desire to retain an American automotive industry. In that context, and in the face of the deepening global economic crisis, it became obvious that without radical surgery restructuring its finances and operations, GM would fail and that would cause a chain reaction throughout the automotive industry.

That led to the exploration of alternative issues and possible solutions that led to the direction of conducting a Section 363 sale under the Bankruptcy Code, a process which was not, at least at that point, totally novel and had been used in many other similar situations.

As it became evident that there was no access to credit for General Motors and the large amount of debt outstanding of the United States, the only source of financing and investment was the U.S. Treasury and the export development of Canada.

Integral to the process, as amply described in my written testimony, was that the end result would be an operating efficient company capable to compete in its own marketplaces with a prospect of returning to the purchase of all or a good portion of its loans and investments.

Incidentally, that is the same objective that ultimately was the objectives of the unsecured creditors committee that was appointed in the Chapter 11 cases to recover -- to recover some return on claims of unsecured creditors, which I might say included salaried employees of both GM and ultimately through Delphi's own Chapter 11 case. This is the normal process in Chapter 11 cases involving Section 363 sales, private lenders and investors in a process that was used basically in the Bethlehem Steel case.

In Section 363 situations, the purchaser is an active participant in the structuring of the sale and often selects the assets which are to be purchased in the executory contracts which should be assumed in leases and along those avenues.

In connection with the 363 sale that anticipates operating and ongoing operations, labor unions have a level of leverage that other participants don't have. A sale is not going to be successful if you cannot operate the plants. And to operate the plants, you have to have workers and labor piece. And that was what -- one of the main objectives in connection of this Section 363 sale and the restructuring of General Motors.

As I said set forth in the written testimony, the relationship with Delphi Corporation was very complex. Delphi was a major supplier to GM, and without those supplies, it would have been impossible for GM to continue to operate its plants. Sixty percent of steering parts came from Delphi. The two Chapter 11 cases in some respects were joined at the hip.

It turned out to be a very successful operation. GM is successful. Delphi is successful. And I think the government and the GM management did a great job in coming up with a feasible plan.

Thank you for this opportunity.

REP. MICA: Thank you, and I thank all of our witnesses for their testimony, and we'll turn to questions.

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Now, first I want to talk to the special inspector general, Ms. Romero. I just about fell out of my chair when you cited the number of convictions and also the people charged with stealing from TARP. Could you repeat that again for the record?

MS. ROMERO: Absolutely. I really appreciate you raising this.

So SIGTARP's a law enforcement agency, so we conduct criminal investigations. As a result of our investigation so far, 151 people have been charged with crimes, and 111 of them have been convicted so far; the others are waiting trial or --

REP. MICA: A hundred and eleven convicted, good.

MS. ROMERO: Yep. Sixty-eight of those --

REP. MICA: Let me just say good work. I don't think any -- at the American people, I mean, TARP is always touted as such a success and everything, but it looks like when you open the cover, the rats find their way to the cheese and steal a lot of it.

When we talk about this whole topping up of pensions, this doesn't -- this wasn't a normal bankruptcy; it would have been handled quite differently, wouldn't it, Ms. Bovberg, if it -- if this was a regular bankruptcy?

MS. BOVBJERG: Normally, in bankruptcy, when plants are being terminated -- and just to be clear, usually, PBGC is terminating plants because there is not viable sponsor and they're underfunded.

REP. MICA: Mmm hmm. But the whole bankruptcy was -- it wasn't handled like a normal bankruptcy, right?

MS. BOVBJERG: From the PBGC perspective.

REP. MICA: What's the difference -- well, what's the difference in this in how this was handled?

MS. BOVBJERG: What made these terminations unique was the presence of GM.

REP. MICA: Yeah. But again, the whole difference in what was done here is the topping up, and again, what took place was that they were using -- what? That's the question. Can you answer that? Anyone knows? Taxpayer money? Is that the truth?

MS. BOVBJERG: It's a little unclear because it's all fungible.

I mean we were not -- we were not looking to track that.

REP. MICA: I know, but where the hell did the money come from? Excuse the expression. It came from the taxpayers. Even Mr. Miller, the minority witness, just said that it was taxpayer money. And most of it's deficit money, 40 cents on a dollar.

But that's the difference. I've been in business, and you file bankruptcy and you go through a court proceedings. And there may be some protection of pensions through pension guaranty fund if you're a participant, et cetera, but the difference here is that taxpayer money was making up the difference.

Now, some of you all participated in a -- it was a presidential -- the president's automotive task force, auto task force? Raise your hand if you participated. OK, three here. OK. Did you all participate in the Poughkeepsie meeting? Did you participate in the Poughkeepsie meeting, Feldman?

MR. FELDMAN: No. Not familiar.

REP. MICA: You weren't there. Were you there, Rattner?

MR. RATTNER: I'm not -- (inaudible).

REP. MICA: Were you there, Wilson?

MR. WILSON: You mean the Poughkeepsie Delphi mediation, sir?

REP. MICA: Yeah.

MR. WILSON: Yes.

REP. MICA: But the other two were not. So you're the only one at the table that was there, right?

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MR. WILSON: I think that's correct.

REP. MICA: OK. And I understand there were union representatives at that meeting and that was the basis of a lot of the discussion that was taken prior to making a final decision as to how this was going to all play out. But there was no one -- no one from the nonsalaried side of the equation, was there?

MR. WILSON: Sir, I don't -- I don't recall that. The primary participants were representatives of GM and Delphi --

REP. MICA: But were there union representatives? I was told there was a union representative. Does anyone know?

MR. WILSON: There were dozens of people, so I can't really be sure.

REP. MICA: Do you know, Ms. Romero, if they were? There were dozens of union representatives?

MR. WILSON: No, there were dozens of people. I can't tell you for sure who was --

REP. MICA: OK. I'm told there was no one representing the nonsalaried, where a lot of the decisions were made, which seems a little bit unfair.

MR. : Can I ask you who you think was representing the unions? Because I don't recall anyone there who did.

REP. MICA: I was told that there was representation.

MR. : Was it by a source that was there?

REP. MICA: No, but it was my staff, and they're usually fairly reliable. Today's only Wednesday. (Chuckles.) OK.

Mr. Rattner, too you talked about this being a success and GM and Chrysler wouldn't make it without it, but others made it without it, Ford and a whole host of others. Isn't that correct too?

MR. RATTNER: That's correct.

REP. MICA: Yeah. And they made good decisions. I mean, I was in business. I would have loved to have somebody fund me when I had losses or wasn't making money or was on the verge of bankruptcy. But here again, I think the principal difference is that we used taxpayer money for the bailout.

Does anyone have any idea, Ms. Bovbjerg, of how much money was used for -- I heard there was some resolution of liability for health care? Is that --

MS. BOVBJERG: We did not look at the VEBA, is I think what you're asking about, the retiree health.

REP. MICA: Yeah.

MS. BOVBJERG: I know that there had been some provision, perhaps in --

REP. MICA: But I was told that that was also part of the bailout.

MS. BOVBJERG: We did not look at that.

REP. MICA: You don't know.

Do you know, Ms. Romero?

MS. ROMERO: I don't know the exact amount, but it was certainly part of the bailout.

REP. MICA: What I was trying to do is figure out how much the pension top-up cost and health care and any of the money that probably will not be paid back to the taxpayers. It won't be paid back, as opposed to some of the other money; is that correct?

MS. ROMERO: The estimated amount -- this is what GM and Treasury were working with at the time for the top-up of the union employees -- this would be all the unions -- was 1 (billion dollars) to \$1.5 billion.

REP. MICA: And that won't be paid back. There's no mechanism for that.

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MS. ROMERO: No. It's not a -- it's not separate than the TARP funds that have to be paid back, anyway, where Treasury expects a loss.

REP. MICA: All right. And again, we only have one person that was at the Poughkeepsie meeting, so we'll try to find out exactly who was there.

My last question is -- I've only chaired this, and Mr. Connolly as my ranking member, since the beginning of the year. However, the inquiry into this matter has gone on for at least two years previous. You've been involved for how long, Ms. Romero?

MS. ROMERO: Three years.

REP. MICA: And how would you describe the folks from TARP and Treasury, all the government folks that were involved, Pension Guaranty, as their cooperation as your investigation has gone forward?

MS. ROMERO: Well, this audit was very much delayed by the refusal of four auto team members to be interviewed by us.

REP. MICA: Yeah. Well, I made one pledge when I became chairman to Mr. Turner: that all hell would break loose if we didn't -- if we did not get a response. I did think at the beginning that they'd finally become responsive, but I will not tolerate, as chair of a subcommittee or participating in this committee, with nonresponsiveness from any of the agencies. And there will be -- and I think Mr. Connolly shares this too. We expect and demand the information. I know that's been turned over. It's been late, and I know that they did everything to delay, to keep information from you.

And I think that's a sad commentary, because the story does need to be told, and I think that it's our responsibility to look into how this unfolded and how taxpayer money was used and if people were treated fairly with taxpayer money.

So again, I thank you for your perseverance and the good job you did. And I wish you good luck on the conviction of the balance of those folks that stole out of the cookie jar. (Comment ??)

MS. ROMERO: Thank you. We'll get 'em.

REP. MICA: All right. Thank you.

Mr. Connolly -- (chuckles) -- you go get 'em.

REP. CONNOLLY: Thank you, Mr. Chairman.

By the way, just to clear up something, Mr. Wilson, you're under oath. Your testimony is, you do not recall any union reps at that Poughkeepsie meeting. Is that correct?

MR. WILSON: That's correct.

REP. CONNOLLY: Thank you.

MR. WILSON: I don't recall that.

REP. CONNOLLY: Just want to make it in the record, since you were the only one at the table who was there.

Ms. Bovbjerg, you -- I think I heard you characterize the bankruptcy as unusual. Is that correct?

MS. BOVBJERG: From the perspective of plan termination and the PBGC, it was unusual. PBGC's role in it was as it has been with other terminations. We were asked to look at the perspective of PBGC, and we looked at the 10 largest terminations, and you know, every one of course has its different twists and turns, but they were all pretty much the same. PBGC is mainly governed by ERISA. So most of what they do is in statute.

What was different here were the top-ups and the -- and the presence of GM. If Delphi had emerged from bankruptcy and tried to top up the plan, PBGC would have given the plans back --

REP. CONNOLLY: That's -- OK, let --

MS. BOVBJERG: -- because if they could do that --

REP. CONNOLLY: All right.

MS. BOVBJERG: -- any employer could do that.

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REP. CONNOLLY: If I may, because I want to explore the narrative here that some are trying to establish, let's go back. The top-off GM negotiated at the time of the spinoff of Delphi was with the unions. Is that correct?

MS. BOVBJERG: Yes.

REP. CONNOLLY: At the time, the union workers being represented -- their pensions weren't fully funded. Is that correct?

MS. BOVBJERG: Correct.

REP. CONNOLLY: The salaried workers who now are complaining about the fact that they didn't get topped off -- unlike the union workers, in fact they were fully funded at the time of the spinoff. Is that correct?

MS. BOVBJERG: Yes, their plan was overfunded.

REP. CONNOLLY: Huh. Subsequently, something happened so they -- OK, so they were fully funded. The union folks weren't. The union folks negotiated a contract to try to correct that and get a top-off. Salaried workers didn't. No taxpayer dollars yet.

And of course no one thinks Delphi goes under, but it does. And --

REP. TURNER: (Off mic) -- Mr. Connolly --

REP. CONNOLLY: I'm sorry?

REP. TURNER: Mr. Connolly, if I could -- if I could interrupt for just a moment -- and I'll give you additional time -- as you're having this discussion, that's not necessarily the -- a complete characterization of what the issue is. As Ms. Bovbjerg knows, the issue also is on the termination and on the funding itself --

REP. CONNOLLY: Right.

REP. TURNER: -- and on the dispute of the assets. So certainly on the top-off -- and I just want to make sure that what -- her answers aren't understood to be limited to just this issue of top-up.

REP. CONNOLLY: Yes. Thank you.

REP. TURNER: There are -- there are multiple other issues leading up to termination --

REP. CONNOLLY: Yeah.

REP. TURNER: -- that are at --

REP. CONNOLLY: I thank the chair. Yeah, I'm just trying to key off on the narrative here to make sure I understand what happened and when. But you're -- obviously there are other issues that we have to -- you are quite correct in addressing.

So subsequently, subsequent to the spinoff, things went south.

MS. BOVBJERG: Yes.

REP. CONNOLLY: And the salaried workers, who had not negotiated a top-off, so there was no contractual obligation to give them one, sued to try to get one. Is that correct?

MS. BOVBJERG: Yes.

REP. CONNOLLY: And what happened to that lawsuit?

MS. BOVBJERG: They're still in court.

REP. CONNOLLY: I'm sorry?

MS. BOVBJERG: They're still in court.

REP. CONNOLLY: Are you sure about that? They're still in court? So it's still pending?

MS. BOVBJERG: Yes.

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REP. CONNOLLY: OK. So they can -- they can pursue the route of litigation. But if -- if you're suing GM to get a top-off, from a new -- I mean, from a court point of view, if you're in bankruptcy, why would a court -- I'm just -- I'm talking about, you know, in theory -- why would a court approve a new obligation?

REP. TURNER: Would you mind if I hopped in for a minute?

REP. CONNOLLY: Yeah. Yeah.

(Cross talk.)

REP. TURNER: I just don't want to take time out of my time to clear that up.

That's not really the case. I mean, the issue is not a suit for top-up. The issue is one of valuing of assets, determination of the pension plan to begin with. The issue of going south, that actually is in dispute as to whether or not there were insufficient assets within the plan prior to determination, and whether or not these gentlemen exerted influence on the determination.

And so it's not really just an issue of we're going to court to get a top-up. The process of the top-ups was really the discussion of determining, post-Treasury's denial that they were not involved, were they -- were they involved? And here, from the report we have, they were.

REP. CONNOLLY: I want to be clear, Ms. Bovbjerg, there were multiple lawsuits and the one against GM was thrown out. It's not pending. Is that correct?

MS. BOVBJERG: That's correct.

REP. CONNOLLY: All right, just because it's a little misleading to say it's still pending. The GM suit is not. And that's what I'm getting at. Is there, was there any kind of applied commitment -- certainly there was no contractual commitment, but was there some implied commitment to keep these folks whole by GM nine years after the separation from Delphi?

MS. BOVBJERG: I'm sorry, I -- I didn't understand your question completely. Can you -- that there was an implied commitment?

REP. CONNOLLY: Well, in some of the conversation there seems to be some idea that either GM or the taxpayers have an obligation to folks who found themselves not whole in their pensions, but that population is a population that was not covered under the contractual agreement with the unions. It's nine years later. GM is in bankruptcy. They pursued, you know, their legal route against GM and that was thrown out.

And what I was going to get at is, what court in the land, bankruptcy court, would look at this situation and say, even though this is, you know, one of the largest bankruptcies ever, it's the largest automotive manufacturer in the world, 900,000 jobs are at stake, and we're looking at is there a plan we can salvage the company with or do we liquidate? Thank god we didn't go the route of liquidation but it was an option.

While we're doing all that, let's take on a new obligation; that is to say, one you are not contractually obligated to right now, topping off or making whole this category of pensioners.

REP. TURNER: Mr. Connolly --

MS. BOVBJERG: And you know I can't really speak to the intent of the bankruptcy court.

REP. TURNER: And if I could just hop in for one point again --

REP. CONNOLLY: Yeah.

REP. TURNER: -- because I know -- and you've been, you know, incredibly kind and diligent I know in the manner in looking at this. This is one where there are, unfortunately, members who have been working on it four years. So the distinctions I know that you're struggling with perhaps we can help with.

The issue of contractual obligations, there are no contractual obligations post-bankruptcy. There was a labor agreement, and of course salaried retirees -- salaried employees don't have a labor agreement, so they have no contractual obligation.

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So the distinction in how they sit as to whether or not there was a prior agreement -- but entering into bankruptcy they all sit equally because bankruptcy voids all of the agreements. They have to be redone. They have to be renegotiated.

So it's not -- it's not fair to say they didn't have one and they did. It's how are they treated as they go through the bankruptcy process. And that is in her report for the GAO.

REP. CONNOLLY: Yeah. Well, whether it's fair or not is a different issue -- that's a subjective judgment -- but your distinction is fair. There is a distinction. But I do note, for the record, one had a contractual contract. One did not. One was whole at the time of separation. One was not. And there is no evidence -- but correct me if I'm wrong -- that somebody from Treasury or the administration politically decided: Help this group, not that group. Or is there, Ms. Bovbjerg?

MS. BOVBJERG: We reviewed public documents. We in fact separated a bit. And I guess I would ask Nicki (sp) to talk about the methodology.

REP. CONNOLLY: Yeah, fair enough. I'll turn to Ms. Romero. I'm just asking whether you at GAO encountered anything. Ms. Romero?

MS. ROMERO: I'm a little bit lost. What was the question? (Laughter.)

REP. CONNOLLY: Well, I'm trying to lead us up to this narrative with the help of my good friend.

(Cross talk.)

REP. TURNER: -- question?

REP. CONNOLLY: Sure.

MS. ROMERO: Excuse me, Mr. Connolly --

REP. TURNER: His question was with respect to the top-up. Is there evidence that you uncovered that established that it was solely politically motivated?

MS. ROMERO: Well, just like --

REP. CONNOLLY: Or at all politically motivated.

MS. ROMERO: Well, just like in all of our audits, we look at everything. So what we were interested in is what were all the reasons, all the factors and considerations that went into the decision that GM and Treasury made on the top-up. So we didn't exclude one factor or focus on one factor, and we did not find evidence that the political clout of the UAW was a factor in GM and Treasury's decision.

REP. CONNOLLY: Thank you.

Mr. Chairman, I think fairly -- my time is probably up, and I thank you for your guidance.

REP. MICA: Thank the gentleman.

And recognize now Mr. Turner.

REP. TURNER: Thank you, Mr. Chairman.

First off, thank all of you for your participation in this because what we're doing is recreating what occurred so we can find out whether or not what occurred was proper and how to address it.

Ms. Romero, there were a number of people who threw political accusations when this first started, and I wanted to ask you a question that I think should help us in dissolving the political tension. And that is you are a President Obama appointee, are you not?

MS. ROMERO: I am.

REP. TURNER: Thank you. According to the SEC website, November 18th, 2012, the Securities and Exchange Commission charged you -- charged former Quadrangle Group principal Steven Rattner, yourself, with participating in a widespread kickback scheme to obtain investments from New York's largest pension fund. I'm going to ask consent

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that the portions of the SEC website concerning those charges be entered into the record, and the full text of the complaint on the kickback scheme and the pension fund.

REP. MICA: Without objection, so ordered.

REP. TURNER: Mr. Rattner, did you pay a settlement in that matter?

MR. RATTNER: Yes.

REP. TURNER: What was it -- what was the amount of that settlement?

MR. RATTNER: It was about -- a little over \$6 million.

REP. TURNER: I think it's, according to their website, 6.2 million (dollars) that you paid to settle that claim of a kickback scheme with respect to a pension fund.

Mr. Rattner, you indicated that the decisions that were applied with respect to the pensions were those of commercially reasonable. Could you define commercially reasonable for me?

MR. RATTNER: Commercially reasonable, in our minds, would be decisions that you would -- that a private actor would make in order to ensure, in this particular case, that money that was being invested was being invested wisely.

REP. TURNER: When you considered that private actor, would you consider a private actor that was involved in a kickback scheme for pension funds or those that had not been? You don't have to answer that, Mr. Rattner.

MR. RATTNER: Thank you.

REP. TURNER: Ms. Bovbjerg, you were in Dayton, and you did an excellent job describing the GAO report. And I greatly appreciate your distinction of that your report is not, as Ms. Romero's is, a detailed analysis of documents and records requested from the government and the Treasury Department in review.

You did, in your report, specifically dedicate a section to -- I believe it is on Page 9 -- the issue of Treasury's multiple roles. When I did my opening, I indicated that part of the concern on all of this is that Treasury, through TARP, became multiple people, I mean, that Treasury is on the board of the PBGC; Treasury became new GM; Treasury became the bondholders and the -- you know, some of the equityholders. And you indicated this -- you said in previous reports, we also have examined the challenges posed to Treasury due to its multiple roles as a private pension regulator and a GM shareholder as well as having its secretary serve on the PBGC board. Now, you testified earlier, which is why I want to clarify this -- you said, well, PBGC viewed this normally.

Now, you have not reviewed all the emails that we have and that Ms. Romero has, so the word "normally," I'm a little concerned about. So let's just go back to what I recall you having said in Dayton and end it with this. In Dayton, you said those Treasury's multiple roles did have the appearance of a conflict of interest from which you were concerned and noted in your report. Is that still accurate today?

MS. BOVBJERG: Yes, and I'd like to ask Ms. Clowers to jump in because she leads our auto work at GAO and was probably -- and her report was the first place to -- (inaudible) --

REP. TURNER: OK, we'll get to that in a minute because I only have five minutes, and I have to get back to Ms. Romero. But we'll take your answer for the record.

Ms. Romero, in the GAO report, they state the sentence in their testimony today -- they say, as we reported in 2011, Treasury officials said -- which is why the distinction of GAO looked at public documents -- that while Treasury did not explicitly approve or disapprove of GM's agreeing to honor previously negotiated top-up agreements with some unions, it agreed that GM had solid commercial reasons, which is the distinction that Mr. Rattner tried to explain to us of what the definition of the commercially reasonable was.

In your written testimony today, I believe on page 44, you state that the auto team made it clear -- no, that was another provision -- that they specifically did approve them and played a role. And could you talk about those two roles? In your report, you talk about the two things: One, that as the purchaser they had a construct in the agreement that required that issues that were over 100 million (dollars) and that related to pensions must be approved by them.

And secondly, from the dialogue that you reviewed, that you under that they were involved. So could you explain those two issues to me, as to how that statement that -- (inaudible) -- looked in the public records is not accurate?

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MS. ROMERO: So, yeah, let me talk about what we found. This is what I opened with in my opening statement. There was no way for Treasury's role to be advisory. The TARP loan agreement from 2008 sets up basically two roles for Treasury. For the big things, like things over \$100 million or big decisions like the collective bargaining agreement, Treasury has the approval rights. They are the decider.

There's other things where Treasury would just give advice to GM. The top-up is -- only appears in the collective bargaining agreement. It's not some separate agreement. And the discussion of the top-up has been confusing so far because it's been as if the top-up was somehow a separate agreement that was separately negotiated and Jim made a decision on it and came to the auto team and said, we'd like to do this.

None of those facts are what we found to have actually happened. It appears in the collective bargaining agreement. The other part of this, not just the collective -- not just Treasury's rights to approve the collective bargaining agreement. Treasury became the purchaser in bankruptcy. And that changed everything as well. Mr. Miller, in his written testimony -- and he was GM's bankruptcy lawyer -- says that the U.S. Treasury acted in the same manner as other secured creditors would act in selecting the assets it would -- it would purchase and liabilities it would assume.

And that's what Mr. Wilson told us and that's what GM officials told us. That -- GM officials told us: We weren't in control. We could make recommendations, but it's ultimately up to the purchaser. An obligation that would be assumed would be the collective bargaining agreement and all of the obligations that were in it. Therefore it was Treasury's role -- direct role to make that decision as the purchaser, just like they did with any other obligation that the purchaser took on.

REP. TURNER: Thank you for the additional time. I see my time has expired. I look forward to the second round.

REP. MICA: I recognize now Mr. Ryan. Mr. Ryan.

REPRESENTATIVE TIM RYAN (D-OH): Thank you, Mr. Chairman. Thank you for holding this hearing. And I appreciate everyone's participation here. This is obviously for me, representing Ohio, northeast Ohio, it is a bittersweet moment, which is why I'm thankful to be able to sit here and be able to be on this committee on which I don't normally sit, because Ohio has benefited greatly from what has happened in the auto industry in the past couple years.

One in every eight jobs in Ohio is related to the auto industry. And that makes its way down through the supply chain, as you all know. On the other end of this is a group of people who live in my congressional district, primarily in Mr. Turner's as well and some in Columbus, that are Delphi salaried who have been devastated -- families devastated. And I think Mr. Feldman mentioned you go through this a lot. We go through it a lot too for those of us who represent older industrial areas.

And I hope as we talk about bankruptcy -- this is one or two bankruptcies that we're talking about. And I hope I get as much enthusiasm from my friends on the other side about reforming bankruptcy laws for all Americans because for me and my congressional district, this has been going on for a long, long time. That's not what this hearing is about, but these are people who have been not made whole and who have been harmed. And we're here to try to figure out how to help those people.

But there's a broader issue that I'll set on the side about bankruptcy laws and I'll be looking forward to support from other side of the aisle to reform those laws, like the Delphi salary folks who sat in my office the other day said they would be willing to help us make those changes.

To sit in a meeting with these folks who didn't do anything wrong, paid money in, had a pension, were ready to go, worked hard their whole lives, and sit here and hear the stories, as I heard the other day -- I walk into a room. You know, two or three of the eight people sitting there I call coach because they were a former coach or a coach in our community. These aren't people who make, you know, a kijillion dollars just because they happen to be white collar.

These are hard-working people who, in my estimation, got a raw deal, and we're trying to figure out how to make this whole.

I want to make one other point as well. There's a lot of splinter unions that were involved here. We talk a lot about Delphi Salaried, but there is a list of splinter unions -- the machinists, the electrical workers, Michigan Regional Council of Carpenters, Local 687 and Interior Systems, International Brotherhood of Painters and Allied Trade, Sign & Display Union, teamsters, boilermakers, operating engineers, catering, restaurant, bar and hotel workers -- lots of other splinter unions are in the same position. So I don't want us to forget anybody as we go through this process.

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I also would like to say that the people responsible for the bankruptcy of a company like Delphi, that's having a ripple effect throughout our community, are the ones losing their pension over this whole thing. And clearly, something is terribly wrong with the bankruptcy system. But let me just say: these guys can't go back -- these men and women can't go back 25 years and say, OK, this is what our portfolio's going to look like because of this bankruptcy. They can't go back and do that.

And I want to say very clearly that I do not believe that Congress or the retirees still have a complete picture of what happened in this situation. And if it's determined by -- through the evidence produced here or in the court or in the lawsuit that Delphi salaried retirees and the splinter unions were unjustly harmed due to politics or favoritism, that they must be made whole. And I will continue to pursue that. So let me get to some questions here.

First question is going to go to Ms. Bovbjerg, who testified a little bit about the GAO report in 2011. Do you feel that the PBGC was forthcoming with the documents for the GAO report in 2011?

MS. BOVBJERG: I did. We had no reason to believe they were not.

REP. RYAN: So recently, the court has ordered PBGC to turn over additional documents as well and communications. And is it of your opinion that those new documents or that new communication would somehow influence the 2011 report?

MS. BOVBJERG: No, because when we approached that report, we were very clear that there were a number of questions that the requesters asked. And we took the ones that we could deal with in public documents. And you know, we might talk to PBGC people or Treasury people for clarification of a public document. We did not interview the auto team. We did not look at emails. That was a question that was about whether Treasury had exerted political pressure in this process, and GAO did not feel that we could do that work, that that was more appropriate for an IG office, hence the split between our methodologies.

REP. RYAN: If I could take an extra minute here, Mr. Chairman.

One of the things I want to ask you is about the range of recovery ratios with regard to the terminated plans. And did you feel that the PBGC, in any way, left monies on the table with those plans that maybe could have bumped the value of the plan assets? There's some discrepancy between the Delphi Salaried folks -- and maybe Nicole, you'd like to touch upon this as well -- whoever can answer it best. There is some discrepancy where our folks -- salaried folks are saying, well, we think we could have gotten a lot more revenue for the plan. Do you believe, in your participation in this case, that there were monies left on -- possibly left on the table?

MS. BOVBJERG: We did not see that. We saw that out of \$7 billion owed on these plans, PBGC got 700 million (dollars) in recoveries. That's not really outside the range of what they've gotten in the 10 largest terminations. They did better with airlines; they got up to 38 percent, but on some they got nothing. They try to do what they can.

So we did not -- we didn't evaluate a particular, you know, foreign lean or something like that, but we did look at the process and whether they followed it. And what we saw was that they followed the process as they have with other terminations, and most of it is required by ERISA -- by the pension law.

REP. RYAN: I know I'm way, way, over my time, so I yield back, Mr. Chairman.

REP. TURNER: Mr. Chairman, could I have just --

REP. MICA: Yes -- (inaudible) -- some time for --

REP. TURNER: MS. Bovbjerg -- and I'm just going to take this and pass it back, because I think what Mr. Ryan is asking is incredibly important.

I think the reason why several people are struggling with your answers today as opposed to the answers that you gave in Dayton is that they're not giving answers that are in the context of what you did. I mean, you're -- you looked at public documents, and you were not given the issue the influence and how it occurred.

But yet your statements today appear to be a little stronger, and I just want to assist you in the confines of what I know your report says: You did not find that PBGC did everything according to their rules and regulations. You don't -- you had no information of that. You had no emails. You had public documents. You did not interview those who were involved in the GM bankruptcy.

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So to state that conclusion, which actually is the subject matter of ongoing litigation, is far more expansive than I think you intend, and I think that's how the panel is hearing it. So I want to give you a chance to confine your answer back to, I did not find anything that would indicate those in the things that we -- in the documents that we reviewed. It's not that you can conclusively say that everything was hunky dory. Correct?

MS. BOVBJERG: We did not do a compliance review. You are correct.

REP. TURNER: Thank you.

MS. BOVBJERG: What we did look out was how might this termination have been different from others. And --

REP. TURNER: And you found nothing that told you a difference in the public domain, but you had no access to the others, and that's why you were helpful to us, but you can't give a conclusion beyond then. I think that's what we've kind of struggle with -- (inaudible).

MS. BOVBJERG: And we can't talk about motivations of people. That's what -- yeah.

REP. TURNER: Right. So I appreciated your work. I appreciate your dedication and your statements. I just want to make clear its limitations for today for these purposes.

Thank you, Mr. Chairman.

REP. MICA: Mr. Turner, if you want to take an additional three minutes, you can -- you can just continue, and then I'll take --

REP. TURNER: Thank you.

REP. MICA: -- I'll yield to Mr. -- back to this side and then myself, so --

REP. TURNER: Mr. Feldman, I believe -- let's hold for -- I believe that -- you know, you're under oath, and we've met before in this format. And I struggle on the issue of the auto task force involvement. As you know, GAO does a report that says Treasury says that they weren't involved in the top up. Ms. Romero's report says conclusively that obviously, Treasury was involved, and extensively, because of one, by the terms of TARP, you were required to be at Treasury, and two, you actually were because she looked at the documents and the like.

I have previously asked you -- and I'm not saying that you have misrepresented anything to us, but I have previously asked you and struggled with an understanding of your role in the discussion on termination of pension plans because I believe that it's been unclear to people trying to determine what occurred that you were involved in discussions with respect to the termination or nontermination of pension plans of old GM as they went through the bankruptcy process. Now, you don't deny that, right? You don't deny that you were involved in discussion with respect to the termination or nontermination of pension plans from old GM as they went through the bankruptcy process. Is that correct?

MR. FELDMAN: Congressman, just to be clear: of old GM?

REP. TURNER: Or GM that's going through the bankruptcy, of the existing plans, as it went -- as it went to with respect to going forward in the bankruptcy, new GM. In contrast -- let me shorten it.

MR. FELDMAN: Sure.

REP. TURNER: Were you involved in discussions with respect to the termination or nontermination of pension plans in the GM bankruptcy?

MR. FELDMAN: Of General Motors as opposed to Delphi. That was the discussion I was asking you.

REP. TURNER: I see. Give me the distinction if you -- if there is one, then.

MR. FELDMAN: I don't recall being involve in discussions of termination of pension plans of General Motors. I don't -- I don't recall being part of those discussions to the extent that there were discussions about that. With respect to Delphi, certainly, I spoke with Joe House from the PBGC who communicated to me what the PBGC's thinking was with respect to the Delphi pension plans, both on the hourly side and the salary side.

REP. TURNER: OK. Let's stop there. And yeah, I said -- mine was broad pension plans, because I wanted you to give me the -- to walk me here. So in that speaking with Joe House of PBGC with respect to termination or nontermination, did you ever advocate or have a position?

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MR. FELDMAN: Not that I recall, no.

REP. TURNER: OK. Well, I'm going to hand you your June 18th email to Joe House. Maybe it'll help you recall.

Give you a moment to read it.

Because the question I ask you is specifically structured with respect to your own email.

Let me re-ask you the question. Mr. Feldman, did you advocate with respect to the issue of termination or nontermination with respect to issues relating to Delphi pension plans?

MR. FELDMAN: I recognize what the email says, I still wouldn't -- (inaudible) --

REP. TURNER: OK, pause. If you're -- if you're -- if you're not going to answer yes, I will just read it for the record. This is Matt Feldman on June 18th in response to Joe House. He says, thanks, I'll call you later today or tomorrow -- I want to enter this into the record -- we are having a sit-down on the D. hourly plan in the am. There is a split as to what should happen. There are some wanting to see it terminate. I've -- that's you -- been advocating -- the next word is -- hard. I've been advocating hard for our deal -- emphasis on our deal, because that would include you -- and I believe that will be the conclusion -- meaning I've been advocating hard for our deal and I believe that I'm going to win; I believe that will be the conclusion -- but wanted to give you a heads up.

Mr. Feldman, you didn't say you didn't do this, you said you didn't recall it. The email speaks for itself. I'm going to ask you the question again. Did you advocate with respect to the termination or nontermination of a Delphi pension plan? (Inaudible) --

MR. FELDMAN: As part of a broader understanding with the PBGC, obviously, I did. That's what the email says. But it's very narrow and frankly, misleading to just say, did you advocate for a position on the pension plan, which is --

REP. TURNER: I had terminate; I said terminate. I'd like --

MR. FELDMAN: -- (inaudible) -- into a broader context.

REP. TURNER: Mr. Feldman, I'm only using your word, which is terminate. I'm putting nothing else behind it.

So for the record, your answer is yes, this is your email and yes, you did advocate, as this says, hard, with respect to the issue of termination or nontermination.

I'm going to turn to -- I'll yield my time and come back to Ms. Romero in a second.

REP. MICA: Thank you, and to be fair, I yielded you the balance of the time, so you had the full five minutes. And then I had given Mr. Connolly some extra time. So the other side has about 30, 45 seconds extra coming.

Mr. -- let me yield to the ranking member, who has arrived. So you have six minutes, Mr. Ranking?

REPRESENTATIVE ELIJAH CUMMINGS (D-MD): Can you hold on for a second? I've been -- just real quick, this -- I've been watching this clock. Can you explain that timing again to me? Because I've seen --

REP. MICA: Well --

REP. CUMMINGS: -- (inaudible) -- about -- almost 10 minutes since I've been sitting here. And I came in when you gave him three minutes.

REP. MICA: I gave him my --

REP. CUMMINGS: An additional three minutes -- oh, I see.

REP. MICA: I gave him my time.

REP. CUMMINGS: OK, OK.

REP. MICA: We're in the second round and I gave him my time.

REP. CUMMINGS: I see, OK, all right.

REP. MICA: And then he took some of it, and I said, well, go ahead and take the balance of your time --

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REP. CUMMINGS: OK, I got you.

REP. MICA: -- and then he went over -- I keep this pretty good a lot, Mr. --

REP. CUMMINGS: I just want to make sure that -- I just --

REP. MICA: So right now you have six minutes.

REP. CUMMINGS: Thank you.

REP. MICA: And I -- and you know, if you want 10 --

REP. CUMMINGS: Very well.

REP. MICA: Then I'll give him more -- (inaudible) --

REP. CUMMINGS: Very well. Thank you very, Mr. Chairman. I know you to be a fair man. That's why I've always admired you, and I really mean that.

And Ms. Romero, I want to thank you for your thorough audit. I, for one -- I do sympathize with the Delphi salaried workers whose pensions will not be what they thought and planned on. That's a very sad situation, a very unfortunate situation. I was surprised to learn from your report that the Delphi salaried workers pensions had been fully funded at the time Delphi spun off from GM in 1999.

Is that right? Is that correct?

MS. ROMERO: Yes.

REP. CUMMINGS: Those pensions were fully funded when Delphi started as an independent company, is that right?

MS. ROMERO: Yes.

REP. CUMMINGS: All right, now, Ms. Bovbjerg and Ms. Clowers, it's my understanding that the salaried pensions actually overfunded at the time of the spin off -- they were overfunded at the time of the spin off. Do you know the exact figure?

MS. BOVBJERG: It was close to 120 percent.

REP. CUMMINGS: So they were overfunded. Hello, are you talking to -- are you saying something?

MS. BOVBJERG: Yes -- yes, underfunded.

REP. CUMMINGS: OK, all right. So something happened between 1999 and 2009 that caused the fully funded pensions of Delphi salaried workers to become underfunded by 2009.

Ms. Romero, what happened, and who was responsible?

MS. ROMERO: Who's responsible for the plan being --

REP. CUMMINGS: Yeah, I just --

MS. ROMERO: -- (inaudible) -- fully funded? That would be Delphi.

REP. CUMMINGS: Yeah. And so it was Delphi management who did not continue to make pension payments, and their failure to make payments resulted in Delphi salaried workers with underfunded pensions; is that a fair statement?

MS. ROMERO: That is correct.

REP. CUMMINGS: All right. Now Ms. Romero, your audit (probed ?) the decision about what to do about those underfunded pensions. The question came up in the context of GM's bankruptcy in 2009, during which the United States government provided a loan and then a debtor- in-possession financing to enable GM to survive as a domestic automaker; is that correct?

MS. ROMERO: That's correct.

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REP. CUMMINGS: Now, the SIGTARP report identifies the reasons GM officials did not want to top up the pensions of the Delphi salaried employees in 2009. Let me read from your report, Ms. Romero. It says: GM's CEO told SIGTARP that Mr. Borst -- that's GM's treasurer -- 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 explained, GM had already fully funded Delphi's salaried pensions at the time of Delphi's spin-off and there was no basis to do so again. End of quote.

That's part of your report; is that right?

MS. ROMERO: That's correct. That's what GM's CEO told us.

REP. CUMMINGS: Well, do you stand by that finding?

MS. ROMERO: Well, it's not a finding. It's just what a witness told us in our audit.

REP. CUMMINGS: OK. So GM -- so according to this, GM had commercial business reasons not to top up the Delphi salaried pensions -- well, let me go back. Did you have -- did you find anything that contradicted the statement that I just read?

MS. ROMERO: No, I did not find anything that contradicted it. There is a bigger context, which is included in the report.

REP. CUMMINGS: All right.

So GM had commercial business reasons not to top up the Delphi salaried pensions in 2009. Those were not the Treasury Department's reasons. Those were not the Obama administration's reasons. Those were GM's reasons. Is that right?

MS. ROMERO: Well, this is where I need to add a little context.

REP. CUMMINGS: All right.

MS. ROMERO: So the earlier page of my report right before this statement talks about how GM had taken the position that it was prohibited under the TARP loan agreement from increasing the -- giving the top-up to the salaried workers without Treasury's consent. So GM alone took the position that they alone could not do the top-up. And GM's CEO, Mr. Henderson at the time, told us that Treasury's consent would have been necessary; that Treasury ultimately had to agree under the TARP loan agreement.

So what happened was that Mr. Henderson went to Mr. Rattner, and according to both of them -- according to Mr. Rattner, he says that GM came to them because -- this is a quote -- GM wanted to do something for the salaried retirees.

Mr. Rattner discussed it with the CEO, and although he didn't remember the specifics of the conversation, he told SIGTARP there was nothing defensible from a commercial standpoint. He says -- this is from Mr. Rattner -- quote: "We didn't think there was anything defensible. We felt bad, but we didn't think it was justifiable."

What happened then is Mr. Rattner sends an email to the rest of the auto team saying that he had spoken to Mr. Henderson, and he wrote in his email: With respect to the Delphi retirees, Walter Borst -- who is the treasurer -- is apparently preparing some kind of proposal for how to do something for them that is defensible. And then he --

Well, let me ask you this.

MS. ROMERO: Right.

REP. CUMMINGS: Now, the quote I gave you a little bit earlier, Borst had said that it would be like funding it twice; is that right?

MS. ROMERO: Right. So I'm putting in context. So Mr. Henderson talks to Mr. Rattner, goes to him and says, we'd like to do something for the salaried retirees. Mr. Rattner says something to Mr. Henderson, while we don't know the exact specifics, but says, basically, we don't think there's anything commercially defensible.

Then Mr. Borst, who's the treasurer for GM, goes to look to see if there is something defensible. He's trying to see if there's something defensible. And he and Mr. Henderson -- because that is the standard that Treasury, through their auto team, had given them. It's not necessarily GM's standard. The commercially reasonable standard is the standards that the auto team had given.

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And remember that GM took the position that Treasury had to make the decision on the salaries, that they did not have authority. So then Mr. Borst goes to try to prepare something that would fit into Treasury's standard, the commercially defensible standard, and comes back. And he and Mr. Henderson can't come up with anything.

REP. CUMMINGS: Now, explain that -- explain that commercially -- the standard that you just talked about. Explain that to me.

MS. ROMERO: Sure. The commercially reasonable standard doesn't exist other than through the auto team and through TARP. It's the marching orders that the auto task force, through Mr. Summers and Mr. Geithner, give to the auto team as to how they should be making decisions. And so they -- there's no definition of it or standard. It's just interpreted. And it's interpreted by the auto team that that means to act like a private investor is essentially how they -- how they take it.

They tried to do that every time. They -- what we found in our audit is they made some decisions that were not what a private investor would make. So for example, deciding not to move the headquarters of GM to Detroit, which would save money. These are other governmental concerns that come into play that a private investor wouldn't have. And so that commercially reasonable standard -- commercially defensible -- is the auto team's standard. It's not necessarily GM's standard; it's the auto team's standard. And so that's what they were looking for.

REP. CUMMINGS: Right. Let me just -- I see I'm running out of time. Let me just get to Mr. Miller.

GM's treasurer and CEO made an assessment. GM had already fully funded the salary -- the retiree pensions 10 years earlier when Delphi was spun off from GM. They got the money but they had no contractual agreement that obligated GM to further top up those pensions, as I understand it. Mr. Miller, isn't that how you read the report? Is that how you read it? I can't hear you, I'm sorry.

MR. MILLER: Yes, sir.

REP. CUMMINGS: Mr. Rattner, Mr. Feldman and Mr. Wilson, is that finding by the SIGTARP about GM's actions and reasons for not giving Delphi salary retirees a top up consistent with your memory? Mr. Rattner first.

MR. RATTNER: The reason being that it was not commercially reasonable?

REP. CUMMINGS: Right.

MR. RATTNER: Yes, that's my memory.

REP. CUMMINGS: Mr. Feldman?

MR. FELDMAN: My memory as well, sir.

REP. CUMMINGS: Mr. Wilson?

MR. WILSON: Yes.

REP. CUMMINGS: All right, Mr. Chairman.

REP. MICA: OK. I calculate I have approximately two minutes left in this round. I've not asked any questions. I gave my five to him. And then Mr. Ryan would be next. Do you want to go first, Mr. Ryan, and I'll save my two minutes?

REP. RYAN: Thank you, Mr. Chairman.

Mr. Rattner, there were some discussions about terminating the plan. Can you talk to us about how those discussions went? I mean a lot of other stuff -- there's still a lawsuit and things going on with documents being released. But from your vantage point, can you enlighten us about what those discussions were when it came to we want to terminate the plan?

MR. RATTNER: When you say terminate you're referring to the salary plan?

REP. RYAN: Yes.

MR. RATTNER: The discussions were very much, I think, along the lines of what you've heard in the last few minutes, which is we understood that the failure to provide any financial support to the salaried plan would leave those retirees with reduced benefits. We were not happy about that. We didn't think it was obviously a very good outcome

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for them. We spent a considerable amount of time thinking about whether there was anything that we could recommend be done for them. And we concluded that it was not commercially reasonable or defensible as a matter of normal bankruptcy procedures.

REP. RYAN: There the -- you said to SIGTARP in the -- in my reading of it, that GM officials had been too generous in the past and the auto team had to dial that back a little bit -- that was in the SIGTARP report -- and that you guys needed to press General Motors to be less generous in relation to the Delphi and the pensions. Now, to what extent did the auto team press that issue? And did that adversely affect the -- even the possibility of the top-offs?

MR. RATTNER: Among the problems at General Motors was that they did not act in a way that one would call commercially reasonable at all times.

In fact, they often didn't act in a way that was commercially reasonable, which was a good part of why they were in bankruptcy or insolvent and Ford, for example, wasn't.

So there were any number of places and times when General Motors would recommend or suggest doing something that we did not feel was commercially reasonable, and this was one of them.

REP. RYAN: Ms. Romero, you mentioned that at times the commercially reasonable standard was used and then at times it hadn't -- it was not used. You mentioned one example. Were there other examples where the auto team did not follow that standard?

MS. ROMERO: So let me -- let me be very clear here. I think what our report talks about -- and this is what we found -- they tried to use the commercially reasonable standard and act as a private investor, but in the end they were still the government. So there were broader concerns that a private investor would not have. I'll give you a few of them.

One, to invest in GM in the first place when no private investor was investing in GM, according to what GM's CFO told us, that is -- that was done out of concern about saving GM because of the impact that GM's failure could have on the broader auto industry. A private investor wouldn't necessarily have those same concerns.

Two, deciding not to move GM's headquarters out of Detroit for reasons about how it would impact the city of Detroit. Mr. Rattner talks about this in his book. Those are not considerations that a private investor would normally have.

Another one was deciding, when they made the additional TARP injection as a loan to fund the bankruptcy, rather than take it as debt, which is what it would be, they were worried about too much debt being on GM's books. So they decided to convert that to an equity interest, an ownership interest in the new company. That has lower priority in bankruptcy, so that is not something -- that had bigger concerns, broader concerns than a private investor.

And finally, on what they decided to pay for GM as the purchaser, there was information in the bankruptcy court -- CEO Henderson -- GM CEO Henderson talked to us about that, that Treasury ended up paying more than the enterprise value -- I believe this is in Mr. Rattner's book -- more than GM's enterprise value.

These are all -- all of these decisions are just some examples where the auto team had to consider other things other than just dollars and cents and not act as just a private investor would. And frankly they shouldn't have. They're the government. And that's one of the lessons learned out of this.

REP. RYAN: Well, I guess as my time is winding down, I'm going to argue on behalf of my constituents and these Delphi salaried folks that they should have been included in some of these -- if we're not following that standard all the way through, if that's not a hard-line standard -- and I understand this is a very, very unique situation -- that that should be considered.

We have \$57 million a year getting pulled out of our local economy because of the pensions. And these Delphi salaried are concentrated in areas like mine, like Mr. Turner's and others, that that should have been considered as the whole bankruptcy proceeding was going on at the headquarters was -- which I think is a good move, but there were other moves that could have been made, in my opinion, that could have topped these folks off. And in my estimation, if you're not going to follow that hard-line rule when it comes to commercially reasonable, then there's other who lose out because of that. And that's ultimately why we're here.

And my time is out, and I just would like to make one final pitch to my colleagues on the other side that this happens all the time. The distinction here is that the government was involved. But there are bankruptcies every single day

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in this country and we need bankruptcy reform, because these workers that we're talking about are unique to this particular circumstance, and we're going to advocate as hard as we can for them.

But there are thousands and thousands and thousands of other workers across this country who end up on the short end of the stick, who are last in line when it comes to getting made whole, and they get screwed. In Youngstown, Ohio; in Akron, Ohio; in Cleveland, Ohio; in Pittsburgh and all through the industrial Midwest we've seen this for 30 years. And so I hope that we get the enthusiasm from the other side when it comes to bankruptcy reform as well.

Mr. Chairman, I'm very thankful for this hearing. Mr. Turner, thank you for your work and cooperation on this as well. And I hope this leads to some situation where these men and women could be made whole. Thank you very much.

REP. MICA: Thank you. I've got about -- I've got about a minute-and-a-half, and my two minutes. It's about three-and-a-half minutes, I guess, left from this side, which I'll take since I've asked no questions in the second round and yielded my five.

First of all, Ms. Romero, in the '99 spinoff, we keep talking about topping up employees. Was that just salaried employees or nonsalaried employees? One or both?

MS. ROMERO: The discussions in 1999 were an agreement to top up the hourly employees, not the salaried employees. The salaried employees weren't represented at that time, and their pension plan was fully funded.

REP. MICA: OK. I just wasn't clear as to what took place, which was some years previous and then -- but the final decision -- I mean, when you just cut to the chase, this is -- there may be problems in bankruptcy, and we may need to do bankruptcy reform -- this is not -- this was not a typical bankruptcy and a civil proceeding, was it?

MS. ROMERO: No, and this wasn't even typical for a TARP program.

REP. MICA: Yeah.

MS. ROMERO: This is the only situation in TARP where you have a member of -- members of Treasury, Treasury officials, being so deeply and significantly involved in this company.

REP. MICA: Exactly. And again, you said it was ultimately Treasury's decision, as the buyer, to assume or reject the top-up liability. Treasury, last time I checked, was the United States of America, public -- using public money to -- and -- I thought Mr. Ryan said -- used the term I try not to use, "screwed," but -- because it gets my wife upset and -- but basically that's happened. Some people got screwed here who -- in this proceeding. And the unfairness is that those people had also paid their taxes, et cetera, into the Treasury of the United States and should have been treated fairly.

Now probably some of this would never have occurred if everyone would have cooperated, but before I became the chair, for two years we couldn't even get the documentation or the cooperation. Mr. Turner turned to me when I became chair, we did the hearing in June, and I demanded that documentation. And you finished your report, and I think you did an admirable job. You're just reporting the facts. And again, this isn't a typical situation. Mr. Rattner had talked about commercially acceptable or reasonable process. I guess they were trying to cover their bases in all of this.

But Mr. Wilson, you testified last summer that unions did not receive special treatment. Is that correct?

MR. WILSON: I believe so, yes.

REP. MICA: You did.

And Ms. Romero, did you say and your report find that unions received special treatment in the GM bailout and the bankruptcy proceeding?

MS. ROMERO: Well, Treasury gave additional leverage to certain stakeholders --

REP. MICA: So --

MS. ROMERO: -- and those were two: the UAW and the bondholders.

REP. MICA: But they gave, again, some -- something special to the union folks, right?

MS. ROMERO: They established the hierarchy of who would get a deal cut prior to the bankruptcy, add those were the two groups that the auto team picked.

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REP. MICA: Mr. Wilson, any change in light of their findings?

MR. WILSON: No. That's just not correct. The UAW and the bondholders had enormous leverage because they were critical components of a potential restructuring transaction. That's why they had leverage, and that's why they're important to the deal. It wasn't because of anything that Treasury did, as I described both in my written and verbal testimony.

REP. MICA: And what were the nonunion employees? Chopped liver?

MR. WILSON: Unfortunately, anyone who didn't have a stake --

REP. MICA: They were just dumped overboard.

MR. WILSON: No, that's not -- that's not the --

REP. MICA: But again, the union side -- maybe they were entitled to this, in the top-up, and I have no problem with that. But what I have a problem with is thousands of people left behind, and we're using taxpayer money for the top-up, and we also had a testimony today of a billion dollars that won't be returned to the Treasury. So I don't view that as fair for all -- and Mr. Ryan, Mr. Turner here have to go back and face these people -- I faced some of them at the hearing we held in June.

One -- Ms. Brooks (ph) isn't here. She told me one person that she ran into this week is basically homeless, who was one of these employees that she talked to this past week, and we will leave the record open, some of the members weren't able to return after the votes, and she's one of them to cite in the record what this is -- how this has affected folks. So again, we're dealing with federal taxpayer funds and how they were distributed, and some people were unfairly treated according to the report. And Treasury did have the discretion to make a different decision. Wouldn't that be correct, Ms. Romero?

MS. ROMERO: Absolutely, it was their decision.

REP. MICA: Good. OK. Let me --

REP. RYAN: Mr. Chairman, if I could just --

REP. MICA: Just -- got to --

REP. RYAN: I just want to make --

REP. MICA: Yes, go right ahead.

REP. RYAN: -- make a point that there were nine -- eight or nine other union; I just don't want to leave anybody out, so it was the salary, but that list of union members that I gave are also on -- we can't forget them as we're advocating for this that there were other seven, eight, nine unions that were also included that had been left out. So I just -- we talked about the Delphi salary, but it's also these splinter unions as well.

REP. MICA: And Mr. Ryan, I think everyone of them should have been treated fairly.

REP. RYAN: Yeah. Agree.

REP. MICA: Again, it's taxpayer money in this. This isn't -- I got involved in business, I've seen bankruptcies, and I've seen how they're settled, and there's a lot of unfairness. There are things that we could do to correct that. This was not a civil or commercial bankruptcy in any sense of the normal way these things are conducted. Again --

REP. RYAN: That's why I'm sitting here with you, Mr. Chairman.

REP. MICA: That's my beef. And if there were some way in a bipartisan manner to make people whole, I mean, TARP is still not done. I don't know if legislatively that can be done. Or -- however -- but I think it's a great injustice to thousands of people. We -- our job is to, again, try to be fair to those folks. I'd be glad to work with you and others of both sides of the aisle to see what we could do.

REP. RYAN: Well, Mr. Turner and I have been working on this for a long time, and we welcome that opportunity as well as the HCTC extension for the next year because a lot of the -- these folks are having huge, huge health care costs as well. So I appreciate that, Mr. Chairman, and let's make something happen.

REP. MICA: OK. Any additional question?

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REP. RYAN: No. Just thank you.

REP. MICA: Mr. Turner, there's no question?

REP. TURNER: Right, thank you. I have three. And I did want to acknowledge Mr. Ryan's dedication and just hard work on this. This has been a really -- a team ball project here and a bipartisan project. Rob Andrews is being another, of course, on the other side of the aisle, and certainly in the Senate there are a couple others.

And in follow up to my congratulations to Mr. Ryan, thanks to Mr. Ryan, I unfortunately had to step out and have -- and while I was gone, Mr. Ryan asked a question to Mr. Rattner. And so I'm going to paraphrase, not having been in the room, your answer, and I'm going to ask you to say it again and elaborate it -- on it so that I can understand it.

He was discussing with you the termination of the salary pension plan, and you indicated that you had had considerable discussion on the termination of the salary plan. Is that a correct characterization of what occurred when I was not in the room?

MR. RATTNER: I'm not sure what discussion -- I'm not sure with whom you are thinking we had discussions.

REP. TURNER: Perhaps you could tell -- well, first of all, did you have any discussions with respect to the termination of the salary pension plan?

MR. RATTNER: Yes.

REP. TURNER: And those discussions occurred prior to its termination.

MR. RATTNER: Correct.

REP. TURNER: Who did you have those discussions with?

MR. RATTNER: I had one or more discussions with Fritz Henderson, who's been the CEO of General Motors, and we had a number of discussions among the auto team members.

REP. TURNER: So you spoke to Mr. Feldman.

MR. RATTNER: I believe so.

REP. TURNER: So when I asked Mr. Feldman whether or not he had any discussions, and he didn't recall it, you do recall having had a conversation with Mr. Feldman with respect to terminating salary pension plan -- (inaudible)?

MR. RATTNER: I thought (in ?) your question, Mr. Feldman was in the context of the PBGC.

REP. TURNER: Have you had any -- did you recall having discussions with the PBGC with respect to the termination of the plan?

MR. RATTNER: I don't recall.

REP. TURNER: Would you say that -- I mean, would you deny that you did?

MR. RATTNER: I said I didn't recall.

REP. TURNER: So you don't recall whether or not you did -- or didn't, right? I mean, you could have?

MR. RATTNER: I could have, but I don't recall.

REP. TURNER: Well, luckily, with the subpoenas that have been issued, we're going to get even more of the information because Mr. Feldman had no recollection of his discussion with respect to termination of the pension plans until I handed him his email, and Mr. Rattner, I look forward to addressing that issue with you again, perhaps your own emails.

Mr. Wilson, one of the issues in the GAO report is this concept of the conflicts of interest -- the multiple roles of Treasury is, I think, the heading in the report.

And we talk about Treasury having a -- you know, the treasurer on the board of PBGC. We have Treasury as TARP, purchaser of GM. We have auto task force Treasury. We have many of those. You've left the auto task force; you've left any role at Treasury, but it's my understanding you were subsequently appointed to the PBGC Advisory Committee. Is that correct?

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MR. WILSON: I was recommended by Senator Mitch McConnell's staff to the White House, that ultimately decided to employ me as a representative of the people at large.

REP. TURNER: So was that a yes? I didn't understand it.

MR. WILSON: Yes.

REP. TURNER: OK. Are you still on the PBGC Advisory Committee?

MR. WILSON: Yes.

REP. TURNER: OK. Ms. Romero, thank you for the clarity of your answers, among what at times becomes a heated and an obtuse -- I don't know, where the answers here are not always the clearest.

On your report, on page 29 you state that the audit -- in the audit, you state that after the decision was made to not make the (salaried ?) retirees (whole ?), Dr. Summers prepared a briefing memo for President Obama in August of 2009. Can you tell us who Dr. Summers is?

MS. ROMERO: Larry Summers was the -- one of the heads, with Secretary Geithner, of the auto task force.

REP. TURNER: I just -- I know it's in the report; I just want it for the clarity of the record -- for it to be stated. Was this memo provided to you or your staff?

MS. ROMERO: We were provided access, but not -- we were not given the memo.

REP. TURNER: So you've seen the memo?

MS. ROMERO: No, I have not seen the memo.

REP. TURNER: Someone on your team did the see the memo?

MS. ROMERO: Someone on my -- I should say this: Someone on my team saw a draft of an email that contained the memo.

REP. TURNER: Do you know what was in the memo?

MS. ROMERO: Yes.

REP. TURNER: Could you tell us, please?

MS. ROMERO: Sure. A Delphi Salaried retiree had written a letter to the president to describe his personal situation. The president had asked his advisers for information about the situation. The memo discussed how this person would receive less benefits on their pension, how there was -- it describes the 1999 agreement -- the spin-off of Delphi. It describes the discussions between the UAW and GM in 1999. It then discusses how, as part of GM's bankruptcy, the top up for the UAW retirees would be given, but not for the salaried employees. It discusses that the salaried retirees did not have leverage because they did not have current workers at GM, and it also discussed how the salaried plan was fully funded by GM in 1999.

REP. TURNER: Do you know who briefed the president from that memo?

MS. ROMERO: The memo came from Mr. Summers. I don't know if there was any verbal briefing to the president.

REP. TURNER: And no action to reverse the decision came from the president or the White House that you're aware of after the memo informing the president that the salaried retirees lacked the leverage of UAW?

MS. ROMERO: That's correct. We did not see any change or any action taken after the memo to the president.

REP. TURNER: Ms. Romero, I'm going to read something from your written statement that I just -- I'd like you to elaborate on, because I think it really goes to the issue of the power and authority that Treasury exerted here. You say an auto team official told SIGTARP that the auto team's approach with GM was to push them and to question them, and another one said we pushed GM toward making the changes necessary to becoming a viable company.

And when asked, how is it that this was done at the bottom of the paragraph on page 12, which is the third paragraph down, 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.

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Now, that's a constant theme throughout your report. Could you elaborate on that just a moment? Because that's -- I mean that's fairly (but for ?) -- GM goes away if they don't do what Treasury says.

MS. ROMERO: Well, I think -- I think this goes to the bigger issue, and I think the best way to discuss this is to tell you what the auto team told us and tell you what GM told us. So Mr. Bloom told us, from the auto team, that Treasury did not want to start running the company, but when dealing with taxpayer resources, we, the government, were ultimately holding the purse strings, and we reserve the right to tell GM we would not back them. So when we asked Mr. Bloom how the auto team conveyed its preferences or nudged GM to see things the way the auto team did, given that ultimately GM could do its own thing, that's when he 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.

GM officials told us just a couple statements: One, ultimately, it is that GM was -- it was that GM is not in control and GM is totally dependent. The auto team replacing the CEO was an early indicator that Treasury as a main investor would have significant influence over GM's decisions and operations. GM officials told us the auto team was pushing GM to be tougher and take more significant actions other than what we would have done on our own volition, that GM put forward recommendations, but ultimately the purchaser made decisions, which was Treasury.

So there were a lot of situations that we found where the auto team can take the position that they did not intend to have significant influence on GM's decisions and operations, but we have GM officials telling us that they felt that they were not in control and that the auto team did have significant influence on GM's decisions and operations. So the other team may not have intended the significant -- to have a significant influence, and they may not believe that they had it, but they did.

Now, if I can just -- if I can just take two seconds, I want to read one part in Mr. Rattner's book which is very much on point. This is -- this is quoting from Mr. Rattner's book. Larry -- meaning Mr. Summers -- Larry had pushed us from the start to play down team auto's role and keep the emphasis on GM and Chrysler managing their own affairs. That ended up being partly true of GM in the sense that Harry -- meaning Mr. Wilson -- and his team tried to set parameters and assumptions for its executives in the hope that they then could produce the specifics of a restructuring plan.

And he goes on to say: In reality, the talent and determination of Harry -- and then he names David and Sadiq (ph) who were on the auto team -- were what really drove the process. As we drafted press statements and fact sheets, I would constantly force myself to write that GM had done such and such. Just once I would have liked to write "we" instead.

And that's what Mr. Rattner wrote. That's consistent with what we found, that the public statements Treasury made downplayed their influence, downplayed their role.

REP. TURNER: Thank you.

Thank you, Mr. Chairman.

REP. MICA: Thank you.

And, Mr. Connolly, I yield you 10 minutes.

REPRESENTATIVE GERRY CONNOLLY (D-VA): Thank you, Mr. Chairman.

I want to come back to that in a minute, but, Mr. Wilson, you objected that Ms. Romero was inaccurate when she said Treasury gave leverage to the union and bondholders. You weren't really allowed to explain your objection. Please do so now.

MR. WILSON: Sure. There was no doubt that UAW and the bondholders had a lot of leverage, but it was not in any part as a result of Treasury actions or anyone else's actions. They were -- had a lot of leverage because they were critical actors in the restructuring. You need the UAW to manufacture cars, and therefore, they're critical for that, and they would always be critical.

And the bondholders were -- because they were a large stakeholder, even though they had no ongoing involvement, they were critical because they could object and hold up the proceedings and cost the taxpayers lots of -- you know, billions of dollars and a prolonged bankruptcy that also imperiled the potential viability of General Motors.

REP. CONNOLLY: So, good point you're making here, that the leverage they had was self-created by virtue of their power over many years. It wasn't something conferred upon them by Larry Summers or Mr. Rattner.

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MR. WILSON: That's correct.

REP. CONNOLLY: Mr. Miller, Mr. Rattner, Mr. Wilson, Mr. Feldman, I -- any and all of you, but here's GM facing bankruptcy. Why would they choose to honor these union contracts? Could there be a good business reason to do that, or is it just because somebody somewhere said take care of the unions? Is it at all conceivable there could be a business reason if you want to save the industry and save GM through the bankruptcy process and have them come out whole, that you might want to honor that contract?

MR. MILLER: The issue is that without honoring the contracts, there wouldn't be any workforce. And the last time that GM -- I forget the year -- allowed a strike to go on, it was exceedingly expensive and almost destroyed the company.

To operate and become feasible, you must have the workers who produce the product, and that was a prevailing theme, even though the negotiations were very difficult with the union in trying to get concessions. But it was -- it's a long history going back to Walter Reuther of a lot of adversity. But without a labor force, there is no feasibility.

And as far as the GM management was concerned, if the United States of America wanted to pay everybody and GM not file a bankruptcy petition, that would have been perfectly fine. But from my observation, what the auto team was concerned about is how do you protect taxpayer money? If you're just going to open up the door and everybody's going to be paid, well, then, you don't need the bankruptcy. But the -- bankruptcy is a zero-sum gain. There's only so much value and the fight is who's going to share in that value. And there are priorities that are commanded by the bankruptcy code and there are business reasons why, unfortunately, from my perspective, unions have a lot of leverage.

And the question is, how much money are you going to put in? From my perspective again, United States and Canada operated as if they were secured lenders. They were trying to protect their investment. And after all, you're talking about a company which, as people have described here, prior to bankruptcy, was too lax. They took on too much credit. They gave out too much money. Well, what this task force was trying to do is to make sure that GM stayed within the line of what would be feasible to get to a viable company.

REP. CONNOLLY: And in retrospect -- and again, I invite others -- would it be fair to say, looking back, that actually, that kind of worked out?

MR. MILLER: Yes.

REP. CONNOLLY: That it was a wise business decision not to vitiate the contract or ignore it?

MR. MILLER: From my perspective, yes.

REP. CONNOLLY: Mr. Rattner, Ms. Romero quoted from your book a conversation you had with Larry Summers. Would you comment on her comment?

MR. RATTNER: Yeah, Ms. Romero, I don't think fully understands the difference between being involved in day-to-day operations and being involved in a restructuring. And she sort of tossed those back and forth without making the right distinction.

We had no involvement in the day-to-day running of General Motors. We did not decide what kind of cars they were going to make, we did not decide which plants were going to function, we did not decide how much they were going to discount their new model, we didn't pick new models, we didn't do any -- we didn't pick executives, we didn't do any of the things that one would associate with the, quote, "day-to-day running" of the company.

The section she read from my book pertains entirely to the efforts that we made to affect the restructuring of General Motors, in which we were heavily involved. We were investing ultimately, a total of \$50 billion; I think 12 billion (dollars) of it under the Bush administration, into the company. And we had a responsibility to the taxpayer to be sure that money was invested wisely.

And if we had not been involved in those restructuring plans, if we not pushed back on General Motors, if we had not insisted on a viable restructuring plan, then I would be relatively confident in saying we would be sitting here in front of you having a different discussion, which is why were you not watching over the taxpayer money? Why were you not involved in this restructuring? Why did you not insist that it was being done on commercially reasonable terms?

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REP. CONNOLLY: Ms. Romero, we have heard Mr. Rattner's explanation and from his point of view, you perhaps misread what the nature of that conversation was, namely, it was focused on restructuring, not on day-today management and operational decisions.

MS. ROMERO: So earlier, when I talked about the actions of what Treasury's influence was. What I did was I read quotes from Mr. Bloom (sp), who is not here, on the auto team. And I also read quotes from GM officials. And I think this is what's important, and this is what I -- what I as saying earlier. It may be that the auto team went into their job not intending to get so involved or have such significant influence on the decisions and operations of the company, and it may be that as I sit there today and look back at what they did that they don't think they had that influence.

But ultimately, the only one who can say whether they felt that influence was the company itself. And what the company officials told us in interview after interview after interview after interview was that they were not in control, that the leverage was held by Treasury. And when they talk about, we weren't involved in the selection of executives, this -- one of the first things they did was Mr. Rattner went to GM and asked the CEO to resign and then put in his own replacement, his own pick of the CEO.

And that CEO told us that the GM's board was very upset by that, and said that the auto team had usurped their authority. And he said to us, that was an early indicator that Treasury -- of the -- that Treasury, as the investor, would have a significant influence on our decisions and operations. Those are his words.

So when Mr. Rattner talks about our interpretation is wrong, we aren't interpreting. We're laying out for the public all of the things that the auto team told us and all of the teams (sic) that GM officials told us.

REP. CONNOLLY: Well, all right. Ms. Romero, let me just posit a little devil's advocate.

MS. ROMERO: Sure.

REP. CONNOLLY: The U.S. taxpayer is pumping tens of billions of dollars to save this company and, you know, try to make sure we don't lose all those jobs and the whole industrial core of our economy, and, you know, it's not entirely unexpected that the existing GM management team, watching this, thinks, what a pain in the butt, who needs their interference; I'll take your money, and keep your opinion to yourself, thank you very much, because we really have done nothing wrong. We actually know what we're doing and you people don't.

And they're going to resent any intrusion, any second-guessing, any kind of new leadership change. That's kind of human nature. And as a taxpayer and as somebody who oversees taxpayer investments, I'm not entirely unsympathetic to Mr. Rattner and his team trying to protect my interest.

Now, maybe -- maybe from someone's point of view, it went too far. But the fact that you're relying on GM interviews, well, I'm not entirely surprised, having mucked it up to a fare thee well and forced the taxpayer to bail them or let them go under, that they resent our exercising some oversight responsibilities. I mean, we wouldn't that --

REP. TURNER (?): Mr. Connolly?

REP. CONNOLLY: Wait a minute -- could that be the case, Ms. Romero?

MS. ROMERO: Oh, I think it absolutely could be the case. I do want to point out it's not just we're relying on interviews of GM. We interviewed 84 people. We're also relying on the interviews of the auto team officials, who sat here today, and another auto team official, Mr. Bloom (sp), who did not, and the statements that they said.

But I think you raise a really good point, Ranking Member Connolly, which is maybe that's in the taxpayers' best interest, and we're OK with that. Our point is, just be transparent. Just say it and let the American people judge, like yourself and all of us who funded the bailout, do we agree or disagree. But the point is, don't hide behind roles or don't try to downplay your involvement. Just tell the truth.

Because you know what? The American people are pretty smart. We know there was a crisis. We know something had to be done with GM. And we understand that their role was monumental and that they had to do something to restructure GM. If you just be transparent and tell the truth, then the American people will decide.

And that's what we've done. What we did in our report, if you'll see -- there's not a lot of judgments in our report on this. What there is is we just told it like a story, a chronological story, put the facts out there so that the American people and all of you can decide whether you agree or disagree.

REP. CONNOLLY: Thank you. That's a fascinating story. I know we'll return to it.

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Mr. Chairman, thank you so much for allowing me to -- (inaudible).

(Cross talk.)

REP. TURNER: Mr. Chairman, if I could have one moment?

REP. MICA: Well, you have 30 seconds.

REP. TURNER: OK, great. Well, Mr. Connolly, I would just --

REP. CONNOLLY (?): (Off mic.)

REP. MICA: You went over your --

REP. CONNOLLY (?): Thirty seconds -- (off mic).

REP. MICA: -- 30 seconds. So I'm going to give him the 30 seconds --

REP. TURNER: As usual --

REP. MICA: -- and then we'll be exactly even.

So reset the clock. Give Mr. Turner 30 seconds. He's determined to get the (last word ?).

REP. TURNER: Maybe it's the Federal Express delivery man here on the 30 seconds speaking. Can I start while you're setting it?

What I was going to say, Mr. Connolly, Ms. Romero once again has been incredibly articulate about what her position is and what she's done. And you are absolutely right, I mean you're both right, that she does not conflict with your conclusions or opinions. What she conflicts with is the public statements that have been made and the statements by Treasury, and that's the part that is disturbing, I think, to all taxpayers, is that there's one story being told and there's one that's being reality. And it's not as if they relied on interviews. They had papers and emails.

Mr. Rattner, I want to give you one opportunity, because we all know that your statement about picking executives is not accurate. Do you want to amend that? Because you're under oath. And we know when people are speaking, sometimes they get a little carried away. If you'd like to re-characterize that, I think everybody would be very pleased.

MR. RATTNER: I was referring to picking executives below the CEO level. We did, obviously -- it's public record -- we did obviously make a decision that there needed to be a new CEO. It was in the context of a commercially reasonable investment decision.

REP. TURNER: Great, because I just didn't want you to be subject to perjury for saying something that wasn't accurate and truthful.

Thank you.

REP. MICA: OK. I think we've -- well, unless anyone wants to go another round.

REP. : (Off mic.)

REP. MICA: OK. Well, I think everyone's had ample opportunity. I know we could go on.

And there are additional questions. There are questions from members that are not here that will be submitted. And with concurrence of the minority, we're going to leave the record open for a period of two weeks. And I will advise the witnesses too that they may submit questions to you to respond, which will be part of the record -- made part of the record.

So we have completed this hearing. I thank the witnesses for their participation. I thank the members for their involvement. And I think it is an important issue. I'm sorry that it was not resolved before Mr. Connolly and I took over the subcommittee.

But again, we now have the report of the special inspector general. We have additional information. If we need additional hearings to resolve pending issues, we'll conduct that.

But I promised a field hearing, which we conducted, and a Washington hearing, as we completed and got the SIGTARP report.

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So I thank all of you for your participation. There being no further business before the Government Operations Subcommittee, this hearing is adjourned. (Sounds gavel.)

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