

GAO Report on Delphi Pension Plans – December 2011

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Comments and Inputs Compiled from DSRA Board / Legal / Legislative Leadership

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1. Request for Response

DSRA requests that:

- 1) This summary of observations and concerns is forwarded to Ms. Barbara Bovbjerg at the GAO;
- 2) The GAO is requested to provide answers to each of the issues in this Response;
- 3) Copy of the material that is sent to the GAO is provided to DSRA;
- 4) The GAO reply not later than January 30, 2012.

2. Summary

The Delphi Salaried Retirees Association (DSRA Inc.) Leadership, and our Counsel have reviewed the 12/15/2011 GAO Report, **to identify Errors and Omissions** from DSRA perspective and information from other sources:

Given this review, we would suggest that the most significant errors and omissions include:

- 1) The **error** of the GAO in continuing to report that the UAW, IUE-CWA and USW Pension Benefits were "Kept Whole" via Taxpayer Funded "Top Up" payments because of existing "Contractual Obligations".
- 2) The **omission** of the fact that the termination of the Delphi Salaried Retiree Fund
 - a) Was funded at a level well above the 46% level that is claimed by the PBGC, and was not "Distressed";
 - b) Was terminated improperly in violation of ERISA requirements--without proper attention to Fiduciary terminations that are required by Law.
- 3) The **omission** of any mention of the failure of the PBGC to resist efforts to establish a "Follow On" Plan (identical to the LTV Supreme Court Case), to therefore establish a Plan that mirrored the "LTV Situation".
- 4) The **failure** of the PBGC to point out that the PBGC has repeatedly failed to execute the Discovery Orders of the Federal District Court, and thereby, the PBGC has overtly acted to obstruct "Justice" and to prevent "Full Discovery". **Yes, the GAO advocated added "Transparency"** going forward. But, what is required is for the Treasury, the Auto Task Force and the PBGC to cease the overt "Obstruction of Justice" in the case.

3. Issues and Known Discrepancies in the Report

3.1. Discrimination Between Retiree Groups

- 1) Why the 49 day lapse between the announcement of the UAW top-up (July 23, 2009) and the IUE/USWA top-up (September 10, 2009)? [Pg 21]
 - Same contract supposedly.
- 2) Why was the IUE/USWA top-up announced as being "gratuitous" by GM. Gratuitous is not the same as contractual. [Pp 18-21]
 - [Pp 22-23] "Treasury stated that GM had solid commercial reasons for providing the top-ups".
- 3) No mention made that normally all contracts are nullified through the bankruptcy process –
 - So how do "agreements" supersede and override nullified contracts? Without any contracts remaining in force, why were the Delphi Salaried Retirees arbitrarily disadvantaged?
- 4) The report states under "What GAO Found" [Pg 2] "some of those experiencing statutory reductions will still receive their full benefits because of union agreements with GM." But the report [Pg 21] states "new GM maintained that it was not obligated to provide top-ups to Delphi IUE and USWA retirees..."
 - How does GAO reconcile those statements? This implies that the Treasury/PBGC "forced" GM to top-up the IUE and USWA hourly retiree pensions.
- 5) The report states [Pg 21] "Moreover, IUE and USWA, which still represented part of Delphi's workforce, needed to give their consent to finalize the sale of assets in Delphi's bankruptcy."
 - How did the GAO determine that the IUE and USWA had any legal right to approve / disapprove the bankruptcy court decisions regarding the sale of Delphi's assets? Further "According to a GM official's court declaration, a prolonged cessation in the supply of parts from Delphi to GM would have had a "devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts suppliers".
 - Incongruous reasoning given that the New GM did not feel any obligation to the IUE and USWA implying that they had little or no impact on their supply chain, and that Delphi's salaried employees live in those same communities and would suffer the same devastating consequences cited in the rationale for extending consideration to the IUE and USWA.

- Incongruous reasoning given that the Delphi Salaried Retirees live in those same communities, and actually considerably outnumber, in some areas, current Delphi workers, and would suffer the same devastating consequences cited in the rationale for extending consideration to the IUE and USWA. [Ref: 2009 YSU Study (Youngstown State University OH)]

3.2. Valuation and Liens

- 1) Why the wide variance in the salaried pension funding calculations? There were at least three performed; two of which said we had funds enough not to require termination. What were factors driving these differences? [Pg 8]
 - What is the rationale for the PBGC claim that the Delphi Salaried Pension was only 48% funded vs. the other two studies which used established PBGC calculation protocols? [Pg 16 footnote]
- 2) The report states [Pg 9] “According to PBGC, as of the termination date, the Delphi plans were underfunded by approximately \$7.2 billion”.
 - This value seems to disagree with information provided by the actuaries monitoring the Delphi plans just prior to the termination. Did GAO compare the calculations used by the PBGC to those required to be used by the IRS for ongoing plans?
- 3) There is no mention of alternate funding calculations (e.g. Watson Wyatt) being provided, and why they were rejected. No mention of sworn testimony (11/15/2011 Steven Gebbia, former Executive Director, Employee Benefits for Delphi Corporation) that Watson Wyatt stated that the Delphi Salaried Pension Fund was capable of continuing to make full payments "For Decades".
- 4) The Highlights [Pg 2] state “Although acknowledging the significant role Treasury played in GM's restructuring, GM and Treasury officials stated that Treasury's role was advisory concerning GM's decisions not to take on additional Delphi pension liabilities but to honor the top-up agreements with some unions.”
 - How did GAO determine the accuracy of these statements by GM and Treasury?
- 5) The report states [Pg 14] “Treasury, as GM's primary lender in bankruptcy, played a significant role in helping GM resolve the Delphi bankruptcy to arrive at the “best resolution” from GM's perspective.”
 - What information did GAO use to determine the propriety of the Treasury involvement?
- 6) The report states [Pg 17] “On June 30, 2009, a meeting took place between PBGC and Treasury to discuss the Delphi plans; according to PBGC, Treasury informed PBGC officials that GM would not assume the remaining Delphi hourly pension liabilities.”

- Why would Treasury inform PBGC of anything if they were only acting in an advisory capacity?
- 7) Why did the Treasury get an "advance" copy of the GAO report? [Pg 52]
 - Is this normal practice for an agency implicated in the investigation?
 - 8) If, as the GAO report implies, there were no "illegal actions" or "wrong doing" by the PBGC, why has the **PBGC continued to defy a Federal Court Order** for discovery to the point of subjecting themselves to severe sanctions?
 - 9) Liens were not fully leveraged to provide top-ups for the salaried retirees, released to a recovery of \$600M-\$650M, no comment made to the essential presence of Delphi's supply line to keep GM in production [Pg 25]. The PBGC is the primary beneficiary of this extremely limited recovery.
 - Why didn't the PBGC use this leverage to provide the same top-ups for the salaried retirees.
 - 10) Was there an option to perfect liens on Delphi's foreign assets after the plans were terminated? The PBGC apparently recognized that was possible per the statements [Pg 27] "although liens could have arisen under this provision on Delphi's foreign controlled group members after the Delphi plans were terminated".
 - PBGC surrendered this leverage against Delphi's controlled group in return for an unsecured bankruptcy claim that ultimately paid a paltry \$53 million (2 pennies on the dollar).
 - Why wasn't this leverage used by the PBGC to fund top-ups for the salaried retirees?
 - 11) Did GAO determine why PBGC accepted an unsecured claim in the Delphi bankruptcy case in exchange for abandoning the liens and other claims it held in the case? [Pp 27-28]
 - 12) The liens PBGC held were valued [Pg 26] at \$195.9 million on behalf of the salaried plans and \$9.2 million on behalf of Delphi's smaller pension plans for a total of \$205 million. [Pg 28] The PBGC received in exchange for releasing those liens for a total of \$717 million or \$600 to \$650 million when discounted to the termination date.
 - Given that roughly 95% of the value of the liens held were on behalf of the Delphi Salaried Plan, did GAO determine that PBGC intends to distribute 95% of the \$600 million to \$650 million received in exchange for abandoning the liens held to protect that plan will in fact be used for the benefit of the participants in that plan?
 - 13) Is the value received from the sale of assets PBGC gained in exchange for abandoning the liens it held to protect the value of the Delphi Salaried Pension Plan a "recovery" or is it simply the value of the liens? In other words, if PBGC had not exchanged the liens for other assets would the full value of those liens have gone into the value of the plan? As PBGC simply "invested" the liens in other assets,

aren't those assets owed to the plan even and maybe especially if they are sold for a higher value than the original liens? Isn't that the purpose of an investment – to increase the value of that investment? Did GAO determine the propriety of PBGC NOT putting the full value received from the sale of the assets taken in exchange for the liens into the plan?

- 14) [Pg 27] "During the negotiations, GM recognized that it might be necessary for it to make a cash payment to the PBGC or assume some portion of Delphi's unfunded pension liabilities. GM noted it would only make such a payment if necessary to help Delphi's reorganization and the payment was clearly outweighed by the benefits GM would receive from Delphi's reorganization. GM also noted that any contributions under an agreement with PBGC would be subject to Treasury's consent if funds in a restricted escrow account, over which Treasury held approval rights, would be used for such contributions."
 - This is another example of Treasury control which the Treasury denied. With this type of leverage, the PBGC could have extracted much more from GM (actually the US Treasury) to cover ALL pensions equally were it not for the extreme conflict of interest posed by Treasury being on all sides of the transaction.
- 15) [Pg 28] "PBGC received a membership interest in new Delphi, which gave it rights to some of the initial profit distributions from post-bankruptcy Delphi. PBGC actuaries valued the interest at \$500 to \$600 million. GM also paid PBGC \$70 million in cash. In exchange, PBGC released \$205 million in liens on Delphi's foreign assets (which PBGC considered worth substantial negotiating leverage in maximizing recoveries) and released Delphi controlled group members from any potential future PBGC claim that might arise against them under any circumstances."
 - This release of future liability makes absolutely no sense unless they received substantial hard assets in return for the release. Surrendering the leverage was not in the best interests of either the PBGC or retirees.
- 16) Charts [Pp 29, 31] clearly indicate that the flow of funds was primarily to the PBGC general treasury, not to the Delphi funds for which it was being recovered.

3.3. Treasury Involvement and Influence

- 1) The report states [Pg 14] "Treasury played an advisory role only ~ PBGC independently decided to terminate the Delphi plans."
 - This conflicts with Ron Bloom's testimony at the House Oversight Committee Hearing that he (Treasury) had final approval of GM plans.
- 2) [Pg 18] "With regard to the top-ups, Treasury officials said that while Treasury did not explicitly approve or disprove of GM's agreement to honor previously negotiated top-up agreements with some unions,~"

- This comment is disingenuous given the fact that any major expenditure by GM was required to get the approval of Treasury before it could be committed to.
- 3) [Pg 18] "PBGC officials have maintained that their agency's decision to terminate the Delphi plans was made independent of input from Treasury."
- How was this documented other than the PBGC's assertion that this is true?
- 4) [Pp 18-19] "Treasury has asserted that the department did not dictate what should be done with the Delphi pensions and that Treasury agreed with GM's decisions."
- This is largely semantics since all financial decisions were subject to Treasury's approval or veto thus making them the decision maker, not GM management.
- 5) Comments both in the GAO report and in their Hearing testimony note Treasury conflict of interest and lack of transparency in their actions. In light of these observations, in conducting this study, did GAO have access to the full and complete record of both Treasury and PBGC in conducting their investigation?
- [Pg 42] "Treasury's role as a shareholder led some to question the role Treasury might also be playing with respect to GM's decisions regarding Delphi and its pension plans. As we have reported previously, Treasury's multiple roles in situations involving the auto industry and workers' pensions may create potential tensions and challenges ~ and various parties told us that Treasury did not play an active role in decisions regarding Delphi's plans, potential tensions due to these multiple roles remain."
 - [Pg 43] "We continue to believe that Treasury's multiple roles in situations involving the auto industry and workers' pensions may create the appearance of potential tensions and challenges, and that the most effective means of addressing these concerns is for Treasury to continue to be as transparent as possible about its activities."
- 6) Treasury was highly conflicted in its multiple roles. [Pg 13]
- Transparency (assuming it was exercised) was insufficient given the fact that they had financial and political conflicts that were not reconcilable. Simply taking Treasury at their word shows no investigation was made as to how significant this conflict of interest was and how it impacted both the termination and subsequent lack of top-up of salaried pensions.
- 7) [Pg 14] "Treasury was looking for the best resolution of Delphi's bankruptcy from GM's perspective." They go on to say that "Treasury played only an advisory role according to Treasury officials."
- The evidence we have shows Treasury's role in the Delphi pension resolution much more than simply passive. GAO has no way of knowing whether the statements of Treasury are truly accurate since they didn't investigate this important aspect or the apparent lack of transparency already noted by them.

- 8) [Pg 42] "Treasury's multiple roles in situations involving the auto industry and workers' pensions may create potential tensions and challenges." GAO did not investigate this "tension", simply conducted interviews and regurgitated talking points.
- 9) No mention of the Treasury forcing GM CEO Rick Wagoner to resign March '09. Treasury also selected his replacement. Thus, Treasury controlled both the players and the rules of the game.

3.4. Misleading information

- 1) Misleading Title – "DELPHI PENSION PLANS - GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits" [Pg 1]
 - The GAO was misleading in titling their report and giving the impression that the reason for the differences was that "the unions had contracts", when established practice and procedure is that all contracts are nullified through the bankruptcy process.
- 2) Report cites selective validation of data, example [Pg 35] "We could not verify the accuracy of information collected by DSRA nor could we perform any statistical analyses to determine the significance of the results."
 - It doesn't appear that GAO did any "validation" or statistical analysis on other data they received, so why are they only questioning the validity of the data DSRA provided. GAO made a similar dismissal of the Watson Wyatt actuarial data that DSRA provided when they used the PBGC funding level estimate in the body of the report relegating the WW report to the footnotes.
- 3) No discussion regarding PBGC treatment of surviving spouse pension benefit: greater pension reduction than Delphi to fund, and reduced benefit to the surviving spouse, a double hit – was this a double hit for all plans?
- 4) The report states [Pg 14] "The documents we reviewed, including GM and Delphi SEC filings and PBGC internal records, are consistent with these statements." Was GAO given full access to all records relating to the decision by PBGC to terminate the plans, or was the Administrative Record the only written information reviewed?
- 5) Did the Delphi Salaried Pension Fund meet the ERISA criteria stated [Pg 15]? "Under ERISA, PBGC has authority to involuntarily terminate a plan that fails to meet minimum funding standards, will be unable to pay benefits due, failed to make quarterly contributions, or is reasonably expected to increase long term losses to PBGC if not terminated. 29 U.S.C. § 1342(a)."
 - It is a conflict to accept PBGC premise that the Salaried Fund warranted termination without further investigating independently verifying the actual funding level.
- 6) Misleading pension reduction information: [Pg 35] The 1,703 who responded (or about 8 percent of all salaried plan participants) reported losses in benefits ranging

from 5 percent to 60 percent, with more than 90 percent having losses of 10 percent to 40 percent."

- This figure is misleading since DSRA surveyed persons who were already retired (which numbered about half of the 8,000 current retirees) not the entire 20,000 plan participants at the time of the survey. That makes the real percentage of survey respondents with losses at about 50% not 8%. This also matches the PBGC's own data contained in this report that shows about 48% [Pg 32] of current retirees have suffered loss to varying extents
- 7) Chart [Pg 38] showing number of hourly and salaried retirees not covered by top-up agreements.
- Misleading information since 28,500 hourly were covered by the top ups and 18,700 hourly were not. Of the 18,700 hourly shown not being topped up, most were new hires with few accrued benefits to lose. By contrast, nearly all of the salaried participants were former GM employees with substantial accrued benefits since Delphi discontinued adding any new hires to the defined benefit plan at the end of 2000 substituting a defined contribution plan (similar to 401K) for all future hires.
- 8) [Pg 38] "18 percent of the salaried plan participants have had their benefits reduced".
- Actually 18% of the 20,000; not of the currently retired. The number of retirees who have had their pension benefits reduced is closer to 90% or more. The remaining beneficiaries will have their benefits cut upon retirement.
- 9) [Pg 38] "no other underfunded pension plan terminated and trustee by PBGC has had a top-up agreement with a parent company"
- Only because the PBGC went all the way to the US Supreme Court to defeat the top-up of the LTV Steel plan by undoing the plan termination and forcing LTV to take the plan back.
- 10) [Pg 39] Charts showing PBGC "almost equal treatment" of hourly and salaried plans.
- Again misleading - the 59% "pending review" are not retired at this time so it is impossible to evaluate the effects of the termination on those individuals. With the hourly, one has to look at not only those topped up but those transferred to GM to get a true picture of what happened, not contemplated in the chart. In reality, only 1% of the hourly retirees received a pension reduction without any top up or being transferred to GM. Adding the 28,500 with top ups and the 31,500 that were transferred to GM that means that 60,000 or approximately 80% of the hourly workers' pensions were made whole by GM. Of the remaining 20%, only 1% have suffered a loss and the rest are whole by virtue of the pension amount being less than the PBGC guarantee. Bottom Line ... 99% of

the hourly are completely whole while almost all of the salaried have been reduced to varying degrees.

- 11) [Pg 42] "That some participants will not get the full benefits promised to them by their employer is not unusual when companies go bankrupt and leave their plans with large unfunded liabilities."
 - What is unusual is that one group of unionized employees will not suffer losses due to plan termination while non-unionized employees bear the brunt of significant benefit reductions.
- 12) [Pg 43] "most effective means of addressing these concerns is for Treasury to continue to be as transparent as possible about its activities."
 - There has been no transparency ... The GAO report omits the fact that FOIA requests have been routinely denied or heavily redacted. Based on what little FOIA products DSRA has received, there were substantial meetings and conversations between the PBGC, GM, and Treasury while brokering the termination of the Delphi pension plans and setting up the safety net for the hourly union workers.

3.5. Citations of PBGC Deficiency

[Pg 7 footnote] PBGC Office of Inspector General Evaluation Report, *PBGC's Plan Asset Audit of National Steel Pension Plans Was Seriously Flawed* (OIG Eval-2011-10/PA-09-66-1, Washington, D.C.: Mar. 30, 2011); " Letter to Chairman Miller of The Committee on Education and Labor Regarding PBGC Termination of United Airlines Pension Plans" (LTR-2010-10, Washington, D.C.: Jul. 20, 2010); and *PBGC Processing of Terminated United Airlines Pension Plans Was Seriously Deficient*, (OIG, Eval-2012-05/PA-10-72, Washington, D.C: Nov. 30, 2011).

- Sufficient history and evidence to warrant recalculation of Delphi Salaried Pension Benefits.

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4. Appendix I – Historical Overview

Historical Overview of Events Leading to the Unlawful Loss of Delphi Salaried Retiree Pension Benefits, and Retiree Efforts Made to Restore This Unjustified Action

1998	Delphi Corporation Incorporated separately from General Motors.
February 1999	100 Million Shares of Delphi Common Stock sold by Delphi at an IPO.
April 1999	General Motors and Delphi Automotive Systems Corporation announce approval by GM's Board of the separation of Delphi from GM in a spinoff. As part of the spinoff, the Pension Plans, now known as the Delphi Hourly-Rate Employees Pension Plan and the Delphi Retirement Plan for Salaried Employees, and their respective sponsorship, are transferred from GM to Delphi.
May 1999	Delphi becomes an independent, publicly traded, Corporation.
May-Sep 1999	UAW, IUE-CWA and USW each enter into agreements with GM under which GM will “Top-Up” the difference between Plan and guaranteed Benefits if the Delphi Hourly Plan terminates. These three (3) agreements “Mirror” one another.
October 2005	Delphi and a number of its US Subsidiaries file for Chapter 11 Bankruptcy protection in New York. Delphi cited high cost structure, poor support / problematic contractual agreements with GM and onerous legacy costs as reasons for their financial troubles.
May 2007	IRS grants minimum funding waivers for the Delphi Hourly-Rate Employees Pension Plan and the Delphi Retirement Program for Salaried Employees (later modified by ruling letters dated July, 13, 2007, October 4, 2007, February 27, 2008 and March 28, 2008). A condition of the waivers was that Delphi emerge from Bankruptcy by May 9, 2008.
January 2008	Delphi's first Plan of Reorganization (POR) is confirmed. Under the POR, all six (6) Delphi Pension Plans would be frozen, but would continue with the reorganized Delphi.
April 2008	Delphi's post-emergence investors decline to fund their investment agreement with Delphi, despite Delphi's having obtained over \$6 billion in exit financing commitments. The investors' departure effectively defeats Delphi's attempt to emerge under the terms of the first POR.

May 2008 Delphi's IRS funding waivers expire, allowing the PBGC to exercise its right to draw down on letters of credit issued / received as collateral for the waivers. Of the \$172.5 million drawn, the PBGC deposited \$122.5 million into the Delphi Hourly-Rate Employees Pension Plan and \$50 million into the Delphi Retirement Plan for Salaried Employees.

September 2008 Delphi announces new agreements with GM which would enable Delphi to emerge from Bankruptcy. The agreements include GM's promise to transfer more than \$3 billion in liabilities from the Delphi Hourly Plan to the GM Hourly Plan, in exchange for an equal amount of securities in New Delphi. In addition, the PBGC released more than \$1.2 billion in liens that it had filed against Delphi's non-debtor foreign affiliates on behalf of the Pension Plan for Delphi Hourly-Rate Employees.

Although it did not appear at the time of the September 2008 deal that Delphi had attempted to secure a similar arrangement to protect the Salaried Workers, such an arrangement was, according to Delphi, unnecessary. In this regard, in a September 8, 2008, press release, Delphi reiterated a commitment it had made since the start of the Bankruptcy proceedings. That is, it would itself continue the Salaried Plan, stating that Delphi "remained committed to FULLY FUNDING the Salaried Plan".

Fall 2008 The Auto Market collapses.

November 2008 GM sought and received billions of dollars in emergency secured financing from the U.S. Government, through the Department of Treasury. The Treasury required GM to submit a proposed viability Plan to Congress. The Treasury continued to offer massive financial assistance to GM, but required it to submit a proposed Business Plan that required, among other things, the restructuring of employee benefits and work rules.

February 2009 Delphi informs all Salaried Retirees that it will Terminate all Healthcare and Life Insurance Benefits (earned and promised by GM over a lifetime), all to be terminated on April 1, 2009. The Delphi Salaried Retirees Association (DSRA) was formed in an unsuccessful effort to prevent this termination. However the New York Bankruptcy Court did authorize / order that Delphi work with the DSRA to establish a Voluntary Employee Beneficiary Association (VEBA).

February 2009 On February 15, 2009, the President appointed the Auto Task Force to oversee the Administration's efforts to support and stabilize the domestic Auto Industry. Treasury Secretary Geithner and National Economic Council Director Larry Summers were named as Co-Chairs. Steve Rattner and Ron Bloom were given key operational roles for the day-to-day execution of the Auto Task Force Mission.

- April 2009 Delphi's agreement with its DIP lenders is set to expire, which would allow the DIP lenders to foreclose on the stock of Delphi's foreign affiliates, thereby breaking up the Delphi controlled group. Accordingly, PBGC Staff recommends immediate termination of the Delphi Hourly-Rate Employees Pension Plan and the Delphi Retirement Plan for Salaried Employees. This proposal is approved. To avoid immediate termination of the Pension Plans, the DIP lenders agree to forebear from foreclosure and to give the PBGC five (5) days notice before exercising that right. In addition, as of April 25, 2009, Delphi's assets were subject to still more PBGC liens. There were no potential purchasers of Delphi's assets while those assets were subject to the threat of the PBGC liens.
- May 2009 On May 20, 2009, Judge Drain of the Delphi Bankruptcy Court ordered Judge Cecilia Morris to preside over a non-binding mediation proceeding on May 23, 24. This involved Delphi, GM, Lenders, the Auto Task Force and others in an effort to resolve lingering reorganization issues before June 1, 2009.
- June 2009 GM enters Chapter 11 Bankruptcy in New York. The U.S. Treasury becomes an integral partner in the GM reorganization. PBGC is informed by GM that it cannot afford to assume any additional Pension obligations from Delphi. At that time Delphi announced, in conjunction with a filing in its own Bankruptcy proceeding, that it had developed "a workable pension solution for its defined benefit plans". The Bankruptcy filing stated that Delphi expected to enter into an agreement with the PBGC, whereby the PBGC would initiate involuntary termination proceedings concerning the Salaried Plan. Upon the Salaried Plan's termination, responsibility for paying out benefits owed the Salaried Plan would transfer from Delphi to the PBGC, and the benefits would be subject to the statutory maximums provided for under ERISA.
- July 2009 PBGC and Delphi settle PBGC's Bankruptcy claims. Under the agreement, PBGC agrees to seek termination of all Delphi's Pension Plans in exchange for a \$3 billion unsecured claim in Delphi's Bankruptcy case. PBGC files District Court actions to terminate all six (6) defined benefit Pension Plans sponsored by Delphi.
- PBGC and GM settle PBGC's claims against Delphi's foreign subsidiaries. Under the settlement, the PBGC agrees to release its liens and claims against Delphi's foreign subsidiaries in return for a \$70 million cash payment from GM, as well as, a portion of future distributions to GM from the new company that will acquire Delphi assets upon resolution of its Bankruptcy.
- On July 30, 2009 the bankruptcy Court approves Delphi's modified Plan of Reorganization (POR) which includes provisions implementing PBGC's settlements with Delphi and GM.

On July 16, 2009, the DSRA filed a complaint for equitable relief against the named fiduciaries of the Delphi Salaried Plan seeking the appointment of an independent fiduciary. On July 21, 2009, the DSRA filed a motion for a temporary restraining order which sought to prohibit the Plan Administrator from negotiating, signing or effectuating an agreement with the PBGC summarily to terminate the Salaried Plan, pending determination of the underlying complaint.

Also, on July 21, and unbeknownst at the time to the Salaried Retirees, the PBGC signed a settlement agreement with Delphi. Under the agreement, the PBGC agreed to release all of its statutory liens against Delphi. On information and belief, the vast bulk of these liens were held on behalf of the Salaried Plan. In fact, the PBGC no longer held any statutory liens on behalf of Unionized hourly workers. Despite the fact that the Hourly workers' Plan's under-funding was significantly greater than that of the Salaried Plan, and despite the fact that the liens were the most significant tool available to ensure additional funding for the Salaried Plan, the New GM did not "Top-Up" any benefits for participants and beneficiaries of the Salaried Plan in exchange for the release of the liens.

On July 23, 2009, the announcement was made that the Delphi UAW Retirees Pensions would be kept "Whole" in spite of the fact that their Pension Plan was being terminated to the PBGC (as was the case for the Delphi Salaried Plan). This is accomplished by a "Top-Up" payment from GM which supplements their reduced benefit that they receive from the PBGC. Taken together, the PBGC Benefit along with the GM "Top-Up" maintains the same monthly payment as before the termination. The official announcement of the termination of the Salaried Plan was made on July 31, 2009, and the Salaried Plan was "Trusteed" to the PBGC on August 10, 2009. The Salaried Retirees, in contrast to the Delphi UAW Retirees, did not remain "Whole". The financial consequences of the Plan's termination to the Salaried Retirees are severe. The impact to them is the lifetime loss of 30% to 70% of their current Pension Benefit. This spells "Economic Disaster" for many. As a result of unlawful Government discrimination, only the Salaried Retirees will suffer these egregious Pension Benefit losses.

September 2009 This unlawful discrimination was repeated on September 10, 2009, when, at the direction of the United States Government, acting thru the Treasury Department and the Auto Task Force, the New GM agreed to "Top-Up" the PBGC Pension Benefits of the IUE-CWA and the USW Union Retirees. This "Top-Up" came 49 days after the announcement of the "Top-Up" for the Delphi UAW Retirees. Recall that the IUE-CWA and USW Union Contracts "Mirrored" the UAW agreement. This lag of 49 days in agreeing to provide the IUE-CWA and USW "Top-Ups" is proof that this decision was not made due to the need for GM to honor any "Contractual Obligation". Instead, the evidence shows that this "Top-Up" was a "Gratuitous" act. Once again, the

Delphi Salaried Retirees were not provided the same “Top-Up” Benefit. On information and belief, the New GM's discriminatory decision was the result of significant pressure by the United States Government, carried out in connection with governmental policies that were politically motivated, and the result of the Treasury Department's management and control of the New GM. As a result of these actions, the Delphi Salaried Retirees – **alone** – have been denied the benefit of a “Top-Up”. This denial is based driven, solely, on the basis of their choice not to associate with a Union. This is in violation of the First and Fifth Amendments to the United States Constitution.

October 2009 On October 29, 2009, the DSRA was invited to testify at a Hearing of the Senate Health, Education, Labor and Pension (HELP) Committee, chaired by Senator Harkin. A letter to Secretary Geithner resulted from this Hearing. The letter demanded that the Treasury provide full disclosure of the complete Delphi / GM /Treasury, Auto Task Force / PBGC record. No response has ever been received from the Treasury.

November 2009 DSRA filed a First Amended Complaint in the Michigan Federal District Court on November 5, 2009. This expanded the scope of the case, as well as, the named defendants beyond the PBGC alone.

December 2009 First hearing conducted by Judge Tarnow in the Michigan Federal District Court. This hearing, on December 22, 2009, addressed the DSRA's request for an injunction to prevent the PBGC from beginning to reduce Pension Benefits until the completion of all litigation.

Also, the DSRA was invited to testify before the House Subcommittee on Health, Employment, Labor and Pensions (HELP) on December 2, 2009. Once again, a letter was sent to Secretary Geithner demanding full disclosure. Once again, no response has ever been received from the Treasury.

January 2010 Judge Tarnow issues an Order on January 26, 2010. This Order required the PBGC choose one of the following actions:

- 1) Immediately begin to escrow any PBGC monies not paid to all beneficiaries as of February 2010; or
- 2) Stipulate that all “Lost Monies” would be paid to beneficiaries at the conclusion of litigation in the event that the defendants lost the case.

The PGBC requested that Judge Tarnow amend his Order, and were denied.

February 2010 On February 18, 2010, Judge Tarnow ordered a “Status and Settlement Meeting” for all named parties to attend. Each party was to come with “Settlement” Authorization. Nothing was settled. However, it was at this

meeting that the DSRA made Judge Tarnow aware that we had just discovered NEW FACTS which led us to believe that the PBGC had acted to terminate our Salaried Pension Fund without justification.

May 2010

On May 26, 2010, the DSRA filed a Supplemental Brief and a supporting Declaration which presented the evidence to prove that the PBGC has acted to terminate our Salaried Pension Fund when it was 85% Funded. This was completely unjustified. On information and belief, the facts indicate that the Delphi Salaried Pension Fund was terminated simply because this was necessary to expedite the emergence of the New GM from Chapter 11. The huge benefit losses that are being experienced as a result of this unjustified termination are entirely unnecessary and need to be remedied immediately.

Sources Include:

- DSRA's First Amended Complaint in Michigan Federal District Court, Case 2:09-cv-13616. Filed November 5, 2009.
- Supplement to Plaintiff's Opposition to the PBGC's Summary Judgment Motion. Filed May 26, 2010.
- Declaration of Jim DeGrandis, Consulting Actuary, BPS&M/Wells Fargo. Filed May 26, 2010.
- PBGC Response to Miller & Chevalier FOIA Appeal Re: The Delphi Retirement Program for Salaried Employees. Case No. 2063700. Filed June 21, 2010.

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