Oversight and Government Reform Committee field hearing, Dayton, Ohio, November 14, 2011

11-14-11 "Delphi Pension Fallout: Federal Government Picked Winner and Losers, So Who Won and Who Lost?"

Chairman Issa Preview Hearing Statement

Today's hearing will examine what happened with the Delphi Pension plan in the midst of the federal government's bailout of General Motors in 2009. While the pensions of unionized Delphi workers were largely protected as Delphi went through bankruptcy thanks to guarantees coming from the federal government/GM, non-union salaried Delphi employees saw their pensions greatly reduced.

Delphi – originally a part of General Motors – became an independent company in 1999. As part of this separation, an agreement was reached giving unionized Delphi employees a guarantee from GM that it would make pension plans whole in the event of a Delphi bankruptcy. No such agreement was made for the salaried retirees.

The committee has not received clear answers about what would have happened with Delphi pension plans had GM gone through bankruptcy rather than receiving a federal bailout. What is clear, however, is that when Delphi plans were terminated in 2009, the salaried retirees faced immense hardship and lost health coverage while unionized employees were protected.

Today's hearing builds on the Committee's previous oversight of the Delphi pension issue. Rep. Jim Jordan's subcommittee held a hearing on these matters and Rep. Turner and Rep. Burton have been strong advocates for the Delphi Salaried Retirees since the beginning of their ordeal. This hearing seeks to shed additional light on what happened and some of the outstanding questions from federal government's involvement in the rescue of GM.

Witnesses

Panel I

Mr. Steve Gebbia

Former Executive at Delphi Corporation

Mr. Chuck Cunningham

Former Executive at Delphi Forporation

Panel II

Mr. Den Black

Member of the Delphi Salaried Retirees Association

Mr. Tom Rose

Member of the Delphi Salaried Retirees Association

Mr. Bruce Gump

Member of the Delphi Salaried Retirees Association

Ms. Mary Miller

Member of the Delphi Salaried Retirees Association

Panel III

Ms. Barbara Bovbjerg

Director of Education, Workforce and Income Security

U.S. Government Accountability Office

Mr. Vincent Snowbarger

Deputy Director for Operations

Pension Benefit Guaranty Corporation

Testimony Given by Steven Gebbia at Committee on Oversight and Government Reform Hearing – November 14, 2011

I am Steven Gebbia, former Executive Director, Employee Benefits for Delphi Corporation.

I held that position from Delphi's inception in 1999 until I retired in June, 2011.

During this entire time, I held administrative responsibilities for Delphi's global employee benefit plans, including the U.S. salaried and hourly defined benefit pension plans that were involuntarily terminated by the PBGC in July, 2009.

My administrative responsibilities included designing and developing various benefit plans, negotiating their provisions with various unions from time to time, ongoing communications with employees, retirees, unions, etc., and oversight of day-to-day administration of these pension plans.

This oversight involved frequent interaction with Towers Watson, a consulting firm hired by Delphi to conduct actuarial work for these pension plans, including annual valuations of these plans as required by law.

During the almost four year period of Delphi's bankruptcy cases up until the PBGC involuntarily terminated Delphi's pension plans, Delphi's management team repeatedly communicated to employees its desire to retain these plans as part of the bankruptcy restructuring.

Like others, I was very surprised when I learned that the pension plans were to be terminated and taken over by the PBGC. I was extremely disappointed when I learned it was decided that only the hourly employee pension benefits – but not the salaried pension benefits - would be topped up by GM – and therefore would be made whole.

Several salaried employees came to me and asked me to quantify for them the impact of this seemingly unexplainable action on their drastically reduced pension benefits.

Because I did not personally have access to this information, I contacted Towers Watson and asked for their help in responding to the questions and concerns being raised by Delphi's salaried employees.

During our discussions, Towers Watson offered to me and to members of my staff that while the salaried pension plan was not fully funded at the time of the involuntary termination of the plan, it was, however, funded well above a level that would have required mandatory termination of the plan. In fact, Towers Watson stated that this plan had enough assets to pay benefits for decades to

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come, and they also opined that this plan was very salvageable should there be any sincere desire to save it.
They stated that the reasons for their opinions were based on:

1) data derived from their most recent actuarial calculations of the plan's valuation;
2) the fact that the plan was "frozen" as of October, 2008 – meaning no new benefits would accrue going forward;
3) equity markets were at historic lows at that time; and
4) discount rates were also extremely low by historical standards, thereby overstating the plan's liability valuations over the near term.

Towers Watson further offered that they believed that other bankruptcy cases existed where pension plans were funded at levels lower than the Delphi salaried pension plan, but had not been taken over by the PBGC.

To the best of my recollection, the Delphi salaried pension plan had total liabilities of about $4 billion, and was underfunded by roughly $1 billion at the time the plan was last valued by Towers Watson prior to its termination.

CHARLES CUNNINGHAM

TESTIMONY FOR HOUSE OVERSIGHT COMMITTEE

NOV.14, 2011

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR GIVING THE DELPHI SALARIED RETIREES AN OPPORTUNITY TO TELL OUR STORY HERE TODAY.

MY NAME IS CHUCK CUNNINGHAM AND I AM A DELPHI RETIREE WHO WORKED 27 YEARS FOR GENERAL MOTORS AND THREE YEARS AT DELPHI. I NOW SERVE AS DSRA LEGAL LIASON CO-ORDINATING ACTIVITIES BETWEEN THE DELPHI SALARIED RETIREE ASSOCIATION AND OUR ATTORNEYS.

IN 2009 THE OBAMA ADMINISTRATION DECIDED TO BAIL OUT GENERAL MOTORS THROUGH AN EXPEDITED BANKRUPTCY.

WE ARE NOT HERE TODAY TO DISCUSS THE WISDOM OR MERITS OF THAT DECISION, BUT WE ARE HERE TO TALK ABOUT THE CONSEQUENCES OF THOSE ACTIONS THAT WERE DEVASTATING TO ONE GROUP OF PEOPLE- THE DELPHI SALARIED RETIREES.

IN ORDER TO ASSURE A SUCCESSFUL EMERGENCE FROM BANKRUPTCY FOR GENERAL MOTORS, THE TREASURY AND AUTO TASK FORCE HAD TO ALSO DEAL WITH BANKRUPTCY ISSUES OF DELPHI, WHICH HAD PREVIOUSLY BEEN SPUN-OFF FROM GENERAL MOTORS. DELPHI WAS THEIR LARGEST PARTS SUPPLIER AND ITS VIABILITY WOULD HAVE A TREMENDOUS EFFECT ON GM.

ONE OF THE ISSUES OF IMPORTANCE TO POTENTIAL PURCHASERS OF DELPHI WAS DELPHI'S PENSION LIABILITIES. THE AUTO TASK FORCE LOOKED AT VARIOUS OPTIONS INCLUDING RETURNING THESE PENSIONS TO GM BUT CHOSE NOT TO DO THIS SO THAT THOSE PENSION LIABILITIES WOULD NOT THEN BE ON GM'S BALANCE SHEET. INSTEAD THE DECISION WAS MADE TO TURN ALL DELPHI PENSIONS OVER TO THE PBGC BUT WITH ONE CAVEAT. THE NEW GM WOULD TOP OFF ONLY DELPHI UAW PENSIONS AND MAKE THEM WHOLE. THE AUTO TASK FORCE CALLED THIS A COMMERCIAL DECISION TO ENSURE THE UAW'S COOPERATION IN THE RESTRUCTURING. MORE THAN A MONTH LATER THE ANNOUNCEMENT WAS MADE THAT THE PENSIONS OF THE DELPHI CWA/IUE AND THE STEELWORKERS WOULD ALSO BE TOPPED UP. LEAVING ONLY THE SALARY EMPLOYEES AND A FEW SMALL UNIONS WITHOUT TOP-UPS.

WHY WAS THIS DONE? NOT FOR CONTRACTUAL REASONS, AS WE HAVE HEARD MANY TIMES. NORMAL BANKRUPTCY RULES WOULD HAVE NEGATED THOSE CONTRACTS AND , ADDITIONALLY, THE NEW GM WOULD HAVE NO EMPLOYEES REPRESENTED BY THE CWA/IUE OR STEELWORKERS, AS FRITZ HENDERSON, CEO OF GM, AT THAT TIME, TESTIFIED IN BANKRUPTCY COURT.

WE BELIEVE THE REASON IS SIMPLE. POLITICALLY CONNECTED UNIONS WHO WERE PARTICULARLY WELL REPRESENTED IN THE SWING STATE OF OHIO LOBBIED THE TREASURY AND ADMINISTRATION TO INCLUDE TOP-UPS FOR THEIR RETIREES.

GM LITERALLY CALLED THESE TOP-UPS GRATUITOUS.
A PURE CASE OF DISCRIMINATION AGAINST SALARY EMPLOYEES WHO HAD CHOSEN NOT TO JOIN A UNION.
WHERE WAS THE PBGC DURING ALL OF THIS? THE PBGC, DIRECTED BY THE TREASURY, WAS COMPLICIT IN ALL OF THIS. THEY DID NOT OBJECT TO IMPERMISSABLE FOLLOW-UP PLANS WHICH WERE DISGUISED AS TOP-OFFS, SOMETHING THEY HAD ALWAYS FOUGHT PREVIOUSLY. THEY SURRENDERED THEIR VALUABLE LIENS ON DELPHI OVERSEAS ASSETS THAT WERE IN PLACE TO PROTECT THE SALARIED PLAN, FOR PENNIES ON THE DOLLAR AND THEY TERMINATED A SALARIED PENSION PLAN THAT WAS WELL FUNDED WITHOUT ADJUDICATION.
AS YOU ARE AWARE, WE HAVE BEEN ENGAGED IN A COSTLY LEGAL BATTLE WITH THE ADMINISTRATION AND THE PBGC FOR OVER 2 YEARS. WE HAVE FINALLY PROCEEDED TO THE DISCOVERY PHASE WITH THE PBGC BUT, DESPITE JUDICIAL FINDINGS AND AN ORDER TO COMPEL BY A FEDERAL JUDGE, THE PBGC REFUSES TO PROVIDE US THE INFORMATION AS IT HAS BEEN INSTRUCTED. DOING EVERYTHING POSSSIBLE TO KEEP US FROM SHOWING PROOF POSITIVE THAT WHAT WAS DONE TO THE DELPHI SALARIED RETIREES WAS UNJUST.
DURING A RECENT FEDERAL COURT HEARING IN MICHIGAN A JUSTICE DEPARTMENT ATTORNEY TOLD THE JUDGE THAT THIS WAS ONLY ABOUT MONEY!.THE IRONY IS THAT THIS ISSUE CAN BE RESOLVED WITHOUT THE CONGRESS APPROPRIATING

MORE MONEY OR THE PBGC COMMITTING MORE THAN IT HAS ALREADY AFFIRMED.

AND, YES, IT IS ABOUT THE MONEY! THE MONEY EARNED BY SALARIED WORKERS WHO WORKED ALONG SIDE UNION WORKERS WHOSE PENSIONS WERE TOPPED UP USING GOVERNMENT FUNDS- BUT IT IS MORE THAN THAT. THIS IS TRULY ABOUT JUSTICE, FAIRNESS AND THE LAW.

THANK YOU.

Testimony of Den Black, DSRA Chairperson
Monday, November 14, 2011
U.S. House Oversight and Government Reform Committee

Thank you for the opportunity for this panel to share the "Story" of the Delphi **Salaried** Retirees Association (DSRA) and to ask that the Committee leave here today with renewed determination to ensure that **an immediate end** to our 32 month long search for "Justice" is forthcoming.

My name is Dennis Black. I am trained as a Mechanical Engineer whose career spanned 36 years with General Motors and Delphi Corporations. 34 years with GM **and only 2 years** with Delphi. During my career, I served GM and Delphi in a large variety of capacities including Project Engineer, Engineering Supervisor, Production Superintendent, Chief Engineer of two(2) Business Units, Chief Engineer for Global Future Products, Global Quality Management and Divisional Strategic Planning.

Along the way, I was fortunate enough to be the inventor of what has turned out to be a "Game Changing" Innovation in the field of providing Automotive Air Conditioning comfort for millions of vehicle owners around the Globe. This Innovation—the first infinitely variable displacement automotive A/C Compressor—was spawned by the need to radically reduce the gasoline consumption required to provide you with vehicle A/C comfort. This Innovation has subsequently created, literally, tens of thousands of "Living Wage" jobs around the globe. Jobs that have allowed workers to support their families since the mid-1980's. This Innovation has been emulated by every major competitor, and so it has changed the entire, global, A/C industry. As a result, I was honored to receive GM's highest Engineering honor--the Boss Kettering Award--for Inventions considered to be of particular significance to General Motors. I have brought this award ,and the Patent which initiated it, along today should you wish to verify what I have said. Please understand that I only tell you this to emphasize that it is the **Salaried** workers of GM and Delphi whose historical role has been to first imagine, then design and develop the automotive products, and to design the production facilities. Without question, Salaried Workers have made tremendous contributions to the American auto industry, and our contributions were in no way less valuable than those of our Union counterparts.

I have served as the Chairperson for the Delphi **Salaried** Retirees Association (DSRA) since its inception in early February 2009--1012 very long and stressful days ago. The DSRA seeks to represent the interests of as many as 20,000 Delphi **Salaried** Supervisors, Accountants, Administrators, Administrative Assistants, Technicians and Engineers whose economic futures have been intentionally and needlessly "Torn Asunder" since our ordeal began. As I mentioned, we organized the DSRA in February, 2009, and subsequently we have left "No Stone Unturned" in our efforts to seek "Justice". We have taken our "Story" to the Federal Courts, to our Congressional Officials, to the GAO and SIGTARP, to our Union Counterparts, to the National and Local Media—everywhere. We have expended several million $$$'s in our unrelenting quest--$$$'s that many simply cannot afford to contribute due to their depleted financial resources. Nevertheless, they find a way to contribute anyhow. And we will **never, never, cease our unrelenting quest for "Justice"** until we obtain the Pension Benefits that we earned after a lifetime of "Playing By the Rules".

We have collected hundreds of **"Human Impact"** testimonials, and a large sampling of these have been submitted for the Hearing record. Please read them, but be sure to keep a box of tissues close by. The consequences of these huge economic losses have resulted in bankruptcies, foreclosures, massive family trauma and worse. These are stories of taxpaying American Citizens, who have never been a burden to American society, and who have never asked for anything but "Fair and Equitable" treatment from their government officials. These tell of the damage **already done** as a result of the loss of benefits—earned over a lifetime—by folks who simply “Played by the Rules”. However, they **__do not__ tell of the damage to come** ,over the next 10 to 30 years. They **__do not__ tell** of victims **who have __not yet drowned__.** Those who continue to **slowly sink**—like sinking in quicksand--due to **negative cash flows** which insidiously deplete their monetary reserves. Fortunately, my wife and I have not drowned **–as of YET.** But it is entirely possible that we could succumb, due to the huge, 30%, Pension losses imposed upon us, in years to come.

Here is just one letter from an Ohio resident to share with you. He wrote this, on November 3rd, following a November 1st Detroit News article by David Shepardson entitled**--Rattner Applauds Auto Bailouts 'Happy Ending'.**

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Mr. Shepardson:

I am a Delphi Salaried Retiree. The Delphi story may have been a happy ending for Mr. Rattner, who's all warm & fuzzy to the point of almost crying tears of joy, but for many of us, myself being one, we've been crying tears of pain and anguish over what Delphi did to us. The game changed radically to the disadvantage of us Salaried Retirees. Some were able to adjust and /or weather the change. Many others, and again myself included, given our age, health, and other restrictive factors, have little recourse but to take the beating imposed upon us by the reduction in our pensions and loss of health care, which we worked so hard for and still are so dependent upon because we have been unable to find ways to replace what was taken from us.

Please note my 330 cell phone # below. Truthfully, I had to give up the cell phone I was paying for as I couldn't afford it anymore. Note that I live in the 419 area code, but the area code for this cell phone is 330. That's because my children couldn't stand the thought of not being able to contact me, and one of my sons, who lives in Cuyahoga Falls, Ohio gave me this phone and pays for it on his plan. I work 4 jobs now and my wife and I struggle to keep the roof over our heads. For a college educated person who gave over 35 years of loyal service to the company, that really sucks.

In the Delphi story, one man's gain became another man's suffering.

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Since those first chaotic days of the DSRA, we have come a long way with regard to our factual understanding of how we have become hapless victims of the discriminatory actions of our Federal Government Executive Branch. These actions have resulted in egregious harm to thousands while using Taxpayer $$$'s.

We have learned:

* That the **__earned__** Pension Benefits of the Non-Union Delphi Retirees have been slashed by as much as 70% as a result of the needless and inappropriate termination of our Delphi Salaried Pension Fund to the Pension Benefit Guaranty Corporation (PBGC) in July 2009.

*We have learned that we were “Singled Out as Losers” by the Executive Branch while the **__earned__** Pension Benefits of our Union counterparts were “Kept Whole” via “Top Ups” using Taxpayer $$$'s.

Let me be clear that we do not “Begrudge” the fact that our Union counterparts have remained “Whole” and are receiving the Pension Benefits that they **earned** over decades. But, we cannot abide by the loss of **our earned** Benefits.

*In addition, our ordeal has caught the attention of a growing number of media sources which include FOX News, the New York Times, the Wall Street Journal, the Daily Caller, the Detroit News, and many more. Also, our “Story” has been reported in a recent, 2011, book by David Freddoso, of the Washington Examiner. **Chapter 2** (Stop Us If You Can: Saving the UAW) is recommended reading.

* We have learned that our, and Congressional, requests for Full Disclosure have consistently been ignored and obstructed by the Executive Branch.

In closing, our “situation” is not complicated. Very simply, our Major Union counterparts, received “Taxpayer Provided Top Ups” to keep their earned Pension Benefits “Whole”. In contrast Non-Union Delphi people did not receive equal treatment. This is wrong, This was needless. This is illegal. All that we require of our Federal Government is “Fair and Equitable” treatment They have **earned** their Pension Benefits, we have **earned** ours. **We simply ask** that this Committee continue to demand immediate, full disclosure, of all details that have been so zealously guarded by this Administration.

Thank you,

Now, Bruce Gump, Mary Miller, and Tom Rose will provide more facts about the negative effects of our Pension loss on individuals, families, Communities, entire States and the Nation.

Testimony of Tom Rose, DSRA Member
Monday, November 14, 2011
U.S. House Oversight and Government Reform Committee

Good Morning and Thank You for this opportunity to address the Committee.

My name is Tom Rose. I am a salaried retiree from Delphi, having worked 30 years for General Motors and another nine years for Delphi. My entire career has been spent working at five of the former eight Delphi plants in Dayton.

I grew up in Nashville, TN, graduated from college, served our country in the military including a year in Vietnam, met a wonderful girl in Dayton, married, three children, all of whom graduated from college and are themselves married, with two grandchildren.

My working career began as a young engineer at the local GM plant on Wisconsin Blvd and included many different management jobs, including Plant Manager at the Kettering Blvd Plant. I was fortunate to lead many talented salaried and union people as we delivered quality parts to our customers on time. Our plants and people contributed greatly to the local economy.

I am now using retirement savings at a much faster rate than originally planned to compensate for my missing pension dollars. The careful financial plan for retirement that my wife and I were taught to achieve was wiped out and became meaningless.

My wife and I are paying three times more for our health care than with Delphi, even with HCTC, and we are paying for it with 40% fewer pension dollars. We use what little is left to help fund the DSRA lawsuit to correct what never should have happened in the first place. A successful retirement for my wife and I is now in serious jeopardy.

We're glad the union retirees are receiving their full pensions. They earned it, they deserve it, but so do we. What we don't understand is how our federal government decided union pensions were fully protected when there were <u>zero</u> contractual obligations, while at the same time, our salaried pensions were severely reduced.

Salaried and union employees worked for the same company, were in the identical situation, in many instances worked side-by-side, but were treated in distinctly different manners. The current administration created solutions in which our pensions were <u>sacrificed</u> to help enable GM's emergence from a choreographed bankruptcy in a record 44 days.

In 2008, then Presidential Candidate Obama said:
"Pension protection is something we have to put at the top of our priority list. Right now, bankruptcy laws are more focused on protecting banks than protecting pensions and I don't think that's fair. It's not the America I believe in. If you work hard and play by the rules, then you've earned your pension. If a company goes bankrupt, then workers need to be our top priority, not an afterthought."

In September 2011, President Obama, in an address to Congress about his Jobs Bill said:
"These men and women grew up with faith in an America where hard work and responsibility paid off. They believed in a country where everyone gets a fair shake and does their fair share, where if you stepped up, did your job, and were loyal to your company, that loyalty would be rewarded. If you did the right thing, you could make it.

I would say to the President: We did the right thing, but we certainly are not making it.

You have heard some of how my wife and I have been impacted. I would like to share input from some of the retirees who did not have the opportunity to address you today.

<u>Saginaw, Michigan</u>
"…my unemployment ran out so I am really "under water" right now. I am using my savings account to pay my bills, but that is quickly dwindling and I may have to sell my house by spring time and find a cheap place to live."

<u>Dayton, Ohio</u>
"…This past year has been hard for me…I am making it thru, but just by a thread. I had to borrow money from my family this month to make it to pay day."

<u>Cicero, Indiana</u>
"I have great difficulty providing even the basics for my family. I am appalled and enraged at the treatment I am receiving in retirement…As a result of this discrimination my annual income is more than $6,500.00 BELOW POVERTY LEVEL GUIDELINES."

<u>Boyne City, Michigan</u>
"The 30% reduction in my pension payments has put (my wife and me) in a situation where, in order to make ends meet, we have to live apart Monday - Friday, working in two separate towns. I've been blessed with a wonderful wife, we've been married for thirty-five years and this is the first time in my career that we've been separated on a regular basis......it's very hard on both of us!"

<u>Sandusky, Ohio</u>
"Here's where we've gotten to in our lives. My wife just called me today saying she can get a 3-and-a-1/2 week 'gig' at a school 20 minutes away and wanted my thoughts. The tires on her GM built vehicle have been bald for the last 6 months and I know we can't afford new tires for at least another 2 months….. I didn't think she would be safe driving there; so, she has to pass that job opportunity up because we can't provide for ourselves.
What makes what has been done to us so damnable is this: we're at an age and state of health where we can't bounce back….. There's too little time remaining and too little opportunity available ….I don't want a hand-out, but I do want a hand-back of what was taken from me."

Springboro, Ohio
"Our weekly night out for dinner has been reduced to a monthly affair, our visits to Columbus to see our grandkids have been cut in half and we have cut costs anywhere possible just to survive. We cancelled our yearly trip to Florida to visit relatives and can't plan any future trips.
I gave 31 years of dedicated service to Delphi and GM, played by the rules, worked 10-12 hours a day on a regular basis, took work home and went for a period of 10 years without taking a sick day. I felt ownership in the company and gave my heart and soul to the job and company. Do I feel betrayed …YES …. taken advantage of…YES."

Dayton, Ohio
"I am making it. It's hard, but I am alone and don't have a family to take care of. So I'll make it – I always do. I often think how Delphi did such a good job hiring the best. Little did they know that down the road, they would see how strong and determined those people really were."

Earlier in my testimony, I mentioned we were forced into a legal effort to gain back that which we had earned and was denied us by the Administration. This effort has come at no small sacrifice to many DSRA members. In closing, please let me give you two brief examples of exceptional sacrifice and the tenacity of our membership.

Bonita Springs, Florida
"I've been pretty well consumed caring for my wife who has had a recurrence of breast cancer this spring……I have just sent $40.00 thru pay pal and next month I'll send $35.00…… Sorry I can't do more but we have some large medical bills this year."

Rochester, New York
"I, for one will never give up. I played by the rules for over 30 years…. And now they throw me under the bus. So, as long as I can afford it, I will continue to donate monthly."

West Carrollton, Ohio
"In April, I took a part-time job along with my full-time day job. I would get up at 5:00am and return home at 11:00pm. I soon had to quit my part-time job for concerns about my health and lack of rest. After 39.5 years at GM/Delphi ….. I never imagined that I would be working two jobs to try and support my family.
I am doubling what I would normally give to our cause. I hope someday that we will prevail. I feel that time is on the PBGC side by dragging this out and not cooperating. (This) may someday deplete our funds in a way that we can't support our lawyers in the fight."

Members of the Committee, these are real people, real lives, real impact.

More than 20,000 current and future Delphi salaried retirees and our families are appealing to the Oversight Committee today to accelerate the process of holding the Administration responsible to correct this injustice. We are not asking for a handout or an entitlement, only the deferred compensation that was earned by us, but taken away by the Executive branch of our own government.

Again, thank you for the opportunity to address you today.

Written Testimony from Bruce Gump, Vice-Chairman Delphi Salaried Retirees Association to the House Oversight and Government Reform Committee. November 14, 2011

Chairman Issa, Congressman Turner, members of the committee: Thank you for another opportunity to explain our issues and the effect the treatment we have received at the hands of the Obama Administration and the PBGC has had on our members and the nation, and to request your help in resolving those issues.

I would like to tell you about the harm that has happened to us for no reason other than the PBGC determined to cut a deal with Delphi and General Motors at the direction of the United States Treasury, especially the President’s Auto Task Force. First, please understand that the Salaried Retirees include people who worked as secretaries, customer service representatives, cost estimators, technicians, engineers, accountants, and numerous other functions that helped to make the company run. We were all told what to do, and did what we were told in exchange for the current and future compensation, including a modest pension. We were not all “highly compensated” nor were we “fat cats”, but we did work hard, we did everything right and we expected to be paid the wages we earned including the deferred compensation known as a pension. We were reassured several times by both Delphi and the PBGC that our pension plan was being well protected. But then the Treasury stepped in…

The short version is the PBGC chose to unnecessarily and illegally terminate our pension plan to make it easier for GM to retain Delphi as one of their main suppliers. No representation from the participants in the Salaried Plan was ever allowed, no effort was made to gain additional value from the company when the plan was terminated in spite of the PBGC’s right to do so, and it appears special effort was made to make the plan appear to be badly underfunded. The results of this have been devastating to our members and our communities.

I will tell you my own story first: At age 57 I had contributed almost 33 years to GM and Delphi. My wife and I have four children, and currently all four are in college with our oldest in grad school at Case Western Reserve. We provide health care insurance as well as other expenses for the whole family. The Delphi bankruptcy and the termination of the pension resulted in a 30% reduction plus the loss of all health care and life insurance. My wife works part time as a nurse for an area hospital that has just been taken over as a part of their own bankruptcy. If she works three days a week we can purchase health care insurance for about one-fourth the value of my pension. Scholarship money and loans help, but we still spend about 65% of my pension on tuition and room & board for our children. All of the taxes, fees, food, mortgage, utilities, fuel and incidentals are paid for through my wife’s relatively small income plus our savings. Over the last 30 months, we have spent about $60,000 we had not planned to spend this early in my retirement. The future is certainly not rosy for us, and looking down the road just 10 years from now our savings will be severely depleted. My fixed income pension will not be able to purchase even the necessities, let alone any optional expenses. Fifteen and twenty years from now will be even worse, but hopefully we won't live so long as to be a burden on our children. I wish I had joined a large and powerful union, but I never thought that my government would choose to treat me badly just because I didn't. I guess I was naïve. I have warned my children and as many others as I can that no promise from any company, or from our government can be relied upon. They are on their own and they had better be prepared to display their "commercial necessity" in the future for that is the only thing that matters to them. Citizenship, contributions to society, nothing matters except their "commercial necessity." That precedent, if it is allowed to stand, will just get worse over time and will likely be applied to education, Medicare and Medicaid, the military, Social Security, anything the government does. That is the lesson in the way the winners and losers were chosen in this unprecedented intrusion. The PBGC will play along with that too and allow everything to be taken away if they determine or are told to choose one group over another. The future my children face given this precedent is the biggest reason I fight for what is right and will not give up.

I will also tell you about the co-chairman of our Warren Legislative Group in the DSRA, Mary Ann Hudzik. She lost 40% of her earned pension, and the cost of health care insurance rose to more than 12 times what it cost while working. Fortunately the Health Coverage Tax Credit has been a life saver for her and for many others whose pensions are at the PBGC, and so her cost to provide insurance for herself and her self-employed husband is "only" about a 500% increase. She had earned an "award" of sorts for saving the company about $3 million in her position in the sales department, but that didn't matter to Delphi and even less to the PBGC who saw her as only a liability. Her husband suffers greatly from a degenerative disease and so cannot always work. Self employed means no work = no pay so their income fluctuates wildly as a result and their savings is the only buffer. With the reduced pension and increased cost for health and life insurance, their future is more uncertain than ever as they are having to use their savings much earlier than planned. Had she been a member of the right group, one that was favored by the administration, or even if the PBGC had actually protected the pension as they promised they would, then much of the uncertainty would be removed and they could plan for a healthy and secure retirement after the 30 or more years spent at Delphi. Mary Ann is a fighter, and so she says she has spent more than 5,000 hours working with the Warren Legislative Group fighting for the pension she earned by talking to, pleading with, and demanding her political representatives to do what is simply the right thing to do. As the chairman of that group, I will tell you she has estimated her time spent very conservatively. I would guess over the last 2 ½ years she has contributed more than 7,000 hours working to reverse the decisions and the precedent that have affected us all. Unfortunately, Mary Ann has depleted her own physical resources and has developed a case of mononucleosis. It is for that reason alone that she is not here today. She is simply too weak to risk travel.

Finally I will tell you about Jim Kane who is here today. Jim worked 36 ½ years for GM and Delphi. While working for Delphi in Mexico he contracted a virus that destroyed the hearing in his right ear. His Superintendent told him to get whatever health care was needed. Unfortunately for him that Superintendent retired before Jim had completed the health care process and so he ended up having to pay more than $12,000 out of his retirement savings because Delphi would not cover it. On being told he was being "involuntarily terminated" he lost his life and health care insurance, and then the PBGC terminated the pension plan causing him to further endure a 30% reduction in his pension. He has since had a heart attack and developed diabetes. His retirement savings are gone. He can no longer provide health care insurance for his wife or himself. He says "I want what was promised to survive with some dignity in my final years. I want justice."

I think that sums it up, that is what we all want – what we were promised, the ability to survive with some dignity and some justice. Please note that each of the stories you hear today are just the beginning of a situation that, if allowed to continue, will just get worse and worse. Many of our members have already fallen off the financial cliff and had to declare personal bankruptcy and have seen their homes foreclosed. We have had to endure additional health issues due to the stress and the desire to conserve resources. One friend of mine delayed going to the doctor for something he felt was wrong because he wanted to earn enough from a part-time job to pay for the expenses. He waited too long and by the time he was diagnosed it was too late and he was dead in just a few weeks.

On a larger scope, there are worse indications of the effects of these retirees not being able to participate in the economy as they had planned. In my community in NE Ohio, a recent Brookings Institute study determined that Youngstown Ohio has the highest concentration of poverty IN THE NATION! The poverty rate there was determined to be 49.7%. I saw an article in the local newspaper a couple months ago decrying the fact that 30% of the dwellings in Warren, Ohio are vacant. A nine-story bank building in good condition and right across the street from the Courthouse was sold at auction just a short time ago. It brought only $75,000 for the owner. A study by Youngstown State University predicted that the salaried pension issue alone would cost the economy of the Mahoning Valley more than $58 million per year and if the health care insurance losses for all the retirees was included that number would increase to $161 million per year. It has been 2 ½ years now, so what we are seeing is at least partially due to the loss of more than $400 million taken out of the local economy. All because we were determined by our government to have no "commercial necessity" so our pensions were unnecessarily and illegally terminated, we lost all our earned benefits and can no longer participate in the economy. On a state level and adding in the retirees from the Dayton, Columbus and Sandusky regions, those numbers increase to $480 million per year or nearly $1.2 billion SO FAR. On a national level it is about $4 billion in just the last 2 ½ years, but the effects could last for decades.

TARP required the Secretary of the Treasury to use the funds to "*minimize any potential long-term negative impact on the taxpayer, taking into account the… overall economic benefits of the* *program, including economic benefits due to improvements in economic activity and the availability of credit, the impact on the savings and pensions of individuals…"* Based on what I just told you, I think he failed miserably and the citizens of the country, especially in the areas where he became involved in Delphi are paying the price. But this can be corrected and reversed even now. The PBGC has the ability to solve this problem and do what is right in regards to the well funded pension plan they took. I'm sure our attorneys would be glad to explain the methods available.

We also fight for information about the termination of our pension plan and facts about the status of the plan, however the PBGC continues to defy us and the court by refusing to allow any transparency further than they deem desirable. One must ask why the PBGC would fight the Federal Court on our discovery effort, even when it has specifically spoken on it. I can only come to one conclusion: the consequences of defying the Federal Court are less severe to them than complying with it. That means that protecting the information is worth going to jail or enduring heavy fines, the potential loss of a law license or a career. Let this be known: we <u>will</u> continue to fight in both the legal and the political arenas. We need the aid of good people in government who are willing to help bring transparency, to show the light of truth on a dark area of government. This fight is not really necessary though as all we are asking is to be treated in a fair and equitable manner, not thrown out like yesterday's trash!

We have a great deal of support and agreement from numerous people and agencies that what was done to us is wrong. That support comes from more than 70 Congressmen and Senators who have written, spoken and acted on our behalf. It also comes from the President of the International United Auto Workers who called the current treatment we have received "a gross injustice." The Ohio AFL-CIO wrote in support of an Ohio Senate Resolution that called on the Obama Administration and the Congress to treat all the Delphi Retirees in a fair and equitable manner. The Speaker of the Ohio House of Representatives, who didn't believe in resolutions, wrote a personal letter to the Administration and the Congress in support also. Even the state Democratic Parties in Ohio and Michigan have passed resolutions demanding that all the Delphi Retirees be treated fairly. It seems that everybody except the Obama Administration and the PBGC see the wrong that has been committed and is demanding it be corrected.

Help us, please, to put an end to this nightmare and reverse the precedent set by this administration and the PBGC so we and those who come behind us will not have to deal with the same horrible issues. Help us stop the slide down the financial cliff our members have been forced to endure and which can only lead to ruin. Do it for your and our children's and grandchildren's sake. Do it for the sake of the entire country. Do it for us, and please do it quickly! There is an old saying that all evil requires to succeed is for good people to do nothing. We're doing all we can and we ask you to do the same.

Testimony of Mary T. Miller, DSRA Member

Monday, November 14, 2011

U.S. House Oversight and Government Reform Committee

Thank you Congressmen for inviting me to testify today.

It is an honor and a privilege to be here. I have seven minutes to tell you how the GM bailout has shattered my plans for retirement and to ask you to fix this shameful injustice.

As I sit here I feel a great sense of responsibility and obligation to the more than 20,000 current and future Delphi Salaried Retirees who will not have the opportunity to tell you how the bailout of GM has ruptured their lives.

I am Mary T. Miller.

I worked for 22 years for General Motors and 9 years for Delphi, the company GM spun off in 1999. While I held many different positions over my 31 year career, one of the jobs I held for quite some time was to partner with an appointed <u>hourly employee</u> to manage the Joint Training Fund and oversee all training at the plant. I am still good friends with this coworker. While he continues to receive the full pension and health care benefits he earned, I do not.

How can it be legal for the government to pick winners and losers amongst its own citizens? Why did the Administration deem my friend and his family as more valuable to America than my family and I?

The DSRA has fought a great fight over the past two and a half years but we haven't yet been able to win back our full pensions. Please take action now to fix this blatant discrimination against salaried employees.

Steve Rattner was the auto czar during the automotive industry bailout. Earlier this month he was featured in a Detroit News article discussing the outcome of the auto bailout. Rattner said, "It's a story with a happy ending." This statement couldn't be further from the truth for each and every one of the more than 20,000 current and future Delphi Salaried Retirees.

For me and many of my fellow retirees the burden of trying to figure out how to make ends meet gets heavier every day.

Let me quickly tell you who I am; what my plan was for retirement and what will happen to my plan unless you can fix this disaster.

Mother of four young adults – ages 20 to 26.

Home owner, taxpayer, church goer, and law abiding citizen of the Unites States of America.

A Purdue graduate with a Masters in Industrial Relations.

I am divorced. As a single mom I have been the main provider for my four children.

Prior to losing my job at Delphi, I was a Human Resources Manager.

I am a Professional Certified Coach who started my own business - MTM Transformation Coaching after I lost my job at Delphi. Being only 57 I knew I needed to earn additional income. Due to the recessionary economy it has been very challenging to build a viable, full-time coaching practice.

I recall the day I was hired by GM. My mother cried joyful tears and my dad told me how proud he was of me. Like many others they knew what a GM career offered. I planned to work hard, move up the career ladder, contribute for at least 30 years and in return I'd receive life-time health care benefits, a comfortable pension and be able to enjoy my golden years with my family and friends.

So I did my part. I fulfilled my obligations. I did my job well, working hard to earn this promised reward. I was loyal, dedicated and responsible.

In the first quarter of every year, I received, along with all GM and Delphi employees, a formal Personal Compensation Summary for the previous year. On the first page of the 2001 annual summary there was a letter from Kevin Butler, the VP of Human Resources for Delphi. He wrote, "Many things have changed since Delphi began standing on its own in 1999. One of the constants, though, is Delphi's continued dedication to providing you with an attractive and competitive salary and benefits package." One page of the annual summary always detailed the value of the pension that I would receive in retirement. I continued to give Delphi my commitment and dedication and counted on them to honor their promises to me.

Then my plan began to crack and crumble.

My ex-husband was awarded half of the pension I'd earned at the time of our divorce. I'm sure within this group of more than 20,000 many other people have a similar circumstance.

In 2009 Delphi stripped its retirees of all promised health care coverage. That means retirees under the age of 65 have to purchase it. In my case that means the cost for health care for my family has increased from $179.00 a month in 2008 to currently costing $787 a month, even with HCTC benefits. In my case this means that I can't afford to provide health care coverage for my three sons who are in college. Nor can I afford to pay their bills when they have to see a doctor for an illness or an emergency. I feel that I have failed my children when I can't help to provide the basics while they are full-time students.

And sadly, that was just the beginning of our horror story. Just a few months later the bottom fell out when the PBGC took over the Delphi pension and slashed my already reduced pension check by another 30%. This isn't a situation that can be remedied by just cutting out all discretionary spending. I'm struggling to pay for the basics – to keep my 10 year old car operational, to pay my property taxes, and to make critical home repairs.

Even though I bought health insurance for myself I was not able to afford the CAT scan my doctor ordered last June. When I learned that my portion of the bill would be $278.00 I had to cancel the test.

I've been put in this crushing position because the government intentionally chose to treat me and all Delphi Salaried Retirees with absolute disdain and disregard.

What does the future hold? Without your help to resolve this travesty, I won't be able to maintain my own home, pay for my own medical needs, or live independently. I won't be able to have the simple pleasure of giving even small gifts to grandchildren in the future.

How can it be that a person who put herself through graduate school, worked hard at two Fortune 500 Companies for over 31 years, provided for her children, always paid her bills on time, and earned a comfortable pension and health care benefits to have in retirement, will live her "golden" years in such poverty? How can it be legal for the government to pick winners and losers amongst its own citizens?

I have learned that when you're in the right you don't back down. We will never, never, never give up our fight to regain our full pensions.

Please take up our cause and help us to regain the pensions we earned and so desperately need.

Thank you!

United States Government Accountability Office

GAO

Testimony

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

For Release on Delivery
Expected at 9:00 a.m. EST
Monday, November 14, 2011

DELPHI CORPORATION

Key Events Leading to Termination of the Delphi Defined Benefit Plans

Statement of Barbara D. Bovbjerg, Managing Director
Education, Workforce, and Income Security Issues

U.S. Government Accountability Office
GAO 90 YEARS 1921-2011
ACCOUNTABILITY ★ INTEGRITY ★ RELIABILITY

GAO-12-234T

G A O
Accountability * Integrity * Reliability

Highlights

Highlights of GAO-12-234T, a testimony before the Committee on Oversight and Government Reform, House of Representatives

DELPHI CORPORATION

Key Events Leading to Termination of the Delphi Defined Benefit Plans

Why GAO Prepared This Testimony

The Delphi Corporation (Delphi) was a global supplier of mobile electronics and transportation systems that began as part of the General Motors Corporation (GM) and was spun off as an independent company in 1999. Delphi filed for bankruptcy in 2005, and in July 2009, Delphi's six defined benefit pension plans were terminated and trusteed by the Pension Benefit Guaranty Corporation (PBGC).

In March 2011, GAO issued a report providing a timeline of key events leading to the plans' termination (GAO-11-373R). This report focused, in particular, on events related to the reasons for GM providing retirement benefit supplements to certain Delphi employees, but not to others, and the role of the U.S. Department of the Treasury (Treasury) in those events.

GAO was asked to testify on the information gathered on the termination of Delphi's pension plans for this previous report. In preparing that report, GAO relied on publicly available documents—such as bankruptcy filings by GM and Delphi, company reports to the Securities and Exchange Commission, and press releases—and on documents received from groups with whom we have talked, including Delphi, GM, the Delphi Salaried Retiree Association, PBGC, and Treasury.

View GAO-12-234T. For more information, contact Barbara D. Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov.

What GAO Found

The termination of the six defined benefit plans sponsored by Delphi, and the provision of benefit protections to some Delphi employees but not others, culminated from a complex series of events involving Delphi, GM, various unions, Treasury, and PBGC.

When Delphi spun off from GM in 1999, three unions secured an agreement that GM would provide a retirement benefit supplement (referred to as "top-ups") for their members should their pension plans be frozen or terminated and they were to suffer a resulting loss in pension benefits. These three unions were:

- the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW);
- the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE); and
- the United Steelworkers of America (USWA).

After Delphi filed for bankruptcy in 2005, GM agreed to extend the top-up agreements with these three unions in 2007, as well as to assume some of the liabilities in Delphi's hourly-employee pension plan. In 2008, GM agreed to take responsibility for approximately $3.4 billion of Delphi's hourly plan net liabilities, to be transferred to GM in two phases. The first transfer—involving $2.1 billion—took place in September 2008. However, in fall 2008, losses throughout the auto industry pushed Delphi near liquidation and caused GM to seek assistance from Treasury. In April and May 2009, Treasury worked with GM to develop a restructuring plan, and helped GM to determine the "best resolution" of the Delphi bankruptcy from GM's perspective.

In June 2009, Delphi stated publicly that it was unable to fund its plans. In July 2009, the "new GM," which began operations following GM's bankruptcy, maintained the top-up agreements with UAW, which represented GM's largest employee group. However, GM concluded that the Delphi hourly plan was a "$3 billion liability that [GM] could not afford," and Treasury agreed. The second transfer of Delphi's hourly plan net liabilities never took place. On July 22, 2009, PBGC announced the termination of all six of Delphi's defined benefit plans. Because the plans were terminated with insufficient assets, and because PBGC must adhere to statutory limits, many Delphi employees will receive a reduced benefit from PBGC.

GM was not required to provide the top-ups to IUE and USWA under its own bankruptcy settlement, but Delphi remained a significant—if not the largest—supplier for GM, and GM was motivated to help resolve Delphi's bankruptcy. In September 2009, new GM agreed to provide top-ups for IUE and USWA members as well, pursuant to the 1999 agreements.

None of these agreements provided for top-ups to members of other unions or to any other noncovered employees, including all members of Delphi's salaried plan. As a result, Delphi employees covered by the GM top-up agreements are protected from losses in pension benefits due to PBGC's benefit limits, while other employees are not.

Delphi's Six Defined Benefit Plans, Terminated as of July 31, 2009

- Delphi Hourly-Rate Employees Pension Plan (hourly plan): *47,176 participants*
- Delphi Retirement Program For Salaried Employees (salaried plan): *20,203 participants*
- Packard-Hughes Interconnect Non-Bargaining Retirement Plan: *1,383 participants*
- ASEC Manufacturing Retirement Program: *533 participants*
- Packard-Hughes Interconnect Bargaining Retirement Plan: *165 participants*
- Delphi Mechatronic Systems Retirement Program: *148 participants*

Source: Pension Benefit Guaranty Corporation (PBGC).

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present information about the key events leading to the termination of the defined benefit plans sponsored by the Delphi Corporation (Delphi), a global supplier of mobile electronics and transportation systems. Delphi began as part of the General Motors Corporation (GM),[1] but was spun off as an independent company in 1999. In 2005, Delphi filed for bankruptcy,[2] and in 2009, Delphi's six qualified defined benefit plans were terminated and trusteed by the Pension Benefit Guaranty Corporation (PBGC). The termination of Delphi's plans culminated from a complex series of events involving Delphi, GM, various unions, the U.S. Department of the Treasury (Treasury), and PBGC.

This testimony presents information from a report we issued in March 2011.[3] In that report, we provided a timeline of key events leading to the termination of Delphi's plans, focusing, in particular, on events related to the reasons for GM providing retirement benefit supplements to certain Delphi employees, but not to others, and Treasury's role in those events. To construct this timeline, we relied on publicly available documents, such as bankruptcy filings by GM and Delphi, company reports to the Securities and Exchange Commission, press releases; and on documents received from groups with whom we have talked, including Delphi, GM, the Delphi Salaried Retiree Association (DSRA), PBGC, and Treasury. We conducted our work from October 2010 to March 2011 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe

[1]Prior to bankruptcy reorganization, GM's legal name was General Motors Corporation. The legal name of the new entity that was created through the bankruptcy process is General Motors Company (the entity that purchased the operating assets of the pre-reorganization corporation, which we discuss later in this report). As of October 19, 2009, General Motors Company became General Motors LLC. Throughout this report, in cases where a distinction is important, we refer to the pre-reorganization corporation as "old GM" and the post-reorganization company as "new GM."

[2]Voluntary Petition of Delphi Corporation, No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 8, 2005).

[3]GAO, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans,* GAO-11-373R (Washington, D.C.: Mar. 30, 2011).

that the information and data obtained, and the analysis conducted, provided a reasonable basis for any findings and conclusions in that product. We are continuing to conduct work on this topic, and plan to issue another report that will compare PBGC's process for terminating Delphi's pension plans with its process for terminating other large, complex plans. We expect to issue this report in December 2011.

Summary

During the 1999 spin-off negotiations between GM and Delphi,[4] three unions secured benefit guarantees for their members: International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE);[5] and the United Steelworkers of America (USWA). The benefit guarantees included an agreement that GM would provide a retirement benefit supplement (referred to as "top-ups") to certain Delphi employees who were members of these unions should their pension plans be frozen or terminated and they were to suffer a resulting loss in pension benefits. No other Delphi employees had a similar agreement to receive a top-up, including salaried workers and hourly workers belonging to other unions. Over the course of events that followed, summarized in figure 1 and described in more detail below, the agreements with these three unions were ultimately preserved through the resolution of the bankruptcies of both GM and Delphi. Because Delphi's pension plans were terminated with insufficient assets to pay all accrued benefits, and because PBGC must adhere to statutory

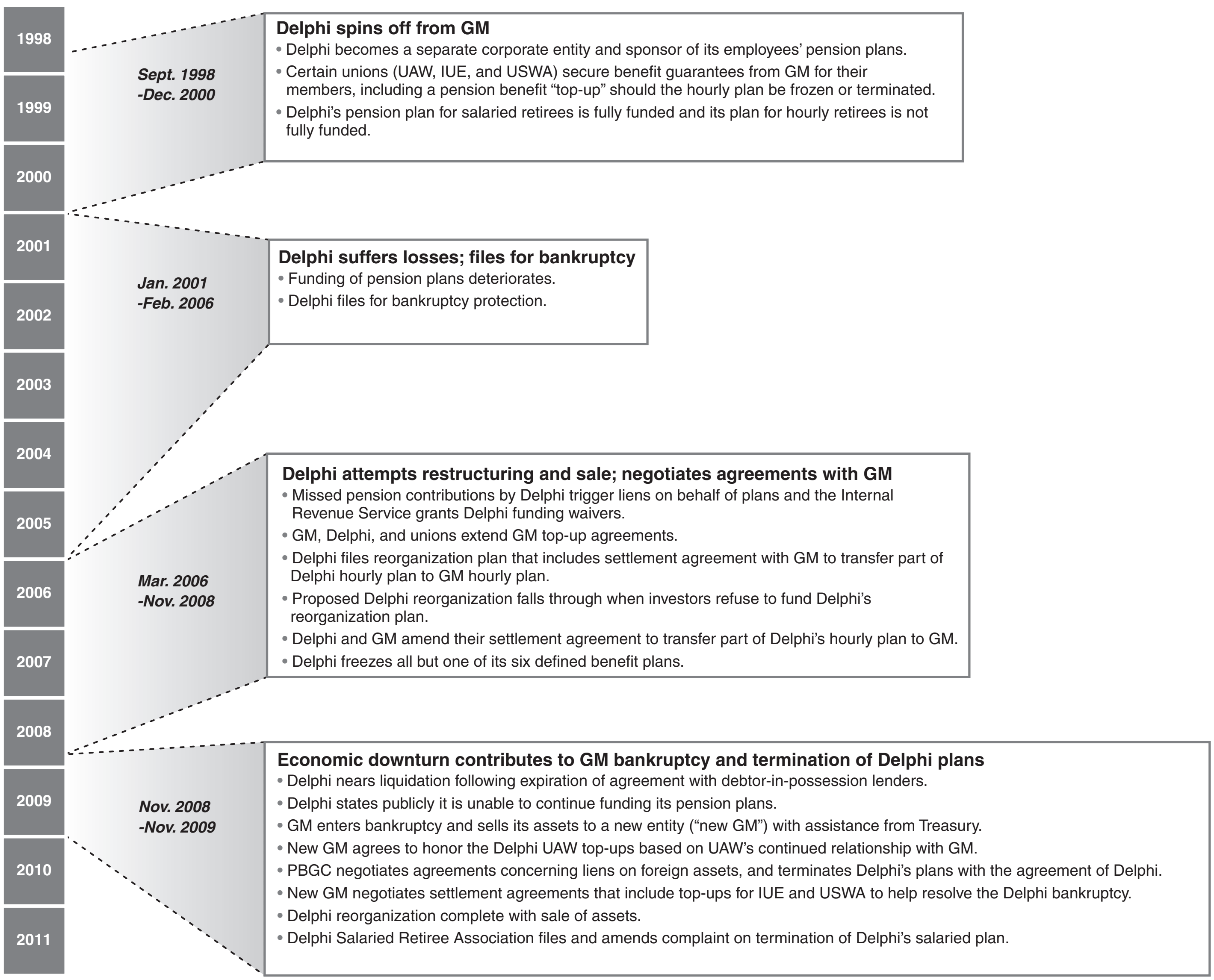
[4]For the purposes of this report, "Delphi" refers to the company prior to its emergence from Chapter 11 reorganization. Postbankruptcy Delphi is DPH Holdings Corporation, a liquidating entity, and Delphi Automotive LLP is a United Kingdom limited partnership, which was created in 2009 and purchased most of Delphi's assets.

[5]Effective October 1, 2000, IUE merged with the Communications Workers of America to become the Industrial Division of CWA (IUE-CWA); for the purposes of this report, we continue to refer to this entity as the IUE.

limits on the benefits it guarantees,[6] many Delphi employees will receive a reduced pension benefit from PBGC compared with the benefits promised by their defined benefit plans. Those Delphi employees receiving the top-ups will have their reduced PBGC benefit supplemented by GM while others will not.

[6]When a plan is terminated without sufficient assets to pay all promised benefits, PBGC determines the amount of benefit guaranteed based on certain limits specified under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1322-1322b, and related regulations, 29 C.F.R. §§ 4022.21, 4022.24 and 4022.25 (2010). While PBGC does not expect to finalize benefit amounts for each participant in Delphi's plans for several years, it anticipates that the application of these limits will result in many participants receiving a lower benefit from PBGC than that promised by their plans. For more on PBGC guarantees and the benefit determination process, see GAO, *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments,* GAO-09-716, (Washington, D.C.: Aug. 17, 2009).

Figure 1: Overview of Key Events Leading to Termination of Delphi's Pension Plans



Sources: GM, Delphi, and Treasury documents.

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

As part of Delphi's spin-off from GM in 1999, GM was required to collectively bargain with the unions affected by the spin-off—including UAW, IUE, and USWA, as well as other "splinter" unions.[7] As a result of these negotiations, GM agreed to provide top-ups to "covered employees" with UAW, IUE, or USWA if the Delphi pension plans were terminated or frozen at a later date, covering any shortfall of benefits below the level promised by the Delphi plans. "Covered employees" were generally defined as those who had been represented by these unions as GM workers and now as Delphi workers with no break in employment or seniority as of May 28, 1999. The top-up benefits were part of separate benefit guarantee agreements, signed between September and December 1999, between GM and certain unions representing Delphi workers—specifically, the UAW, IUE, and USWA. Also, on December 22, 1999, Delphi agreed to indemnify GM for all benefits provided by GM under the UAW benefit guarantee.[8] At the time GM entered into these agreements, Delphi's salaried plan was fully funded while Delphi's hourly plan was not fully funded (see table 1).

Table 1: Funding History for Delphi's Salaried and Hourly Pension Plans, 1999-2009

Dollars in millions

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	July 2009[c]
Salaried plan												
Assets[a]	$2,449	$2,449	$2,455	$2,256	$1,959	$2,532	$2,703	$3,027	$3,439	$3,600	$2,371	$2,456
Liabilities[b]	2,251	1,996	2,260	2,704	3,131	3,562	4,087	4,463	4,346	3,924	4,419	4,574
Net assets	198	453	196	(448)	(1,172)	(1,030)	(1,384)	(1,437)	(907)	(324)	(2,048)	(2,119)
Funded percentage	108.8%	122.7%	108.7%	83.4%	62.6%	71.1%	66.1%	67.8%	79.1%	91.7%	53.7%	53.7%
Company Contributions	$0	$0	$0	$0	$0	$276	$0	$140	$126	$125	$105	$0

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

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

Hourly plan											
Assets[a]	$2,806	$4,247	$3,780	$3,627	$4,854	$5,763	$6,621	$7,214	$7,015	$3,732	$3,659
Liabilities[b]	4,063	4,620	5,535	6,323	7,531	8,408	8,894	10,212	9,734	6,792	7,035
Net assets	(1,257)	(373)	(1,756)	(2,695)	(2,677)	(2,646)	(2,273)	(2,998)	(2,720)	(3,060)	(3,376)
Funded percentage	69.1%	91.9%	68.3%	57.4%	64.5%	68.5%	74.4%	70.6%	72.1%	54.9%	52.0%
Company contributions	$1,225	$1,125	$0	$400	$714	$600	$485	$108	$69	$157	$0

Source: GAO analysis of Delphi Corporation data.

[a]Assets are year-end fair market values of plan assets.

[b]Liabilities are the projected benefit obligations, or present value of benefits projected to be paid. Throughout this report, we have characterized the value of plan assets and liabilities based on available documents. It is often the case that the value of assets and liabilities from these sources is substantially different than their values at the point of termination. PBGC has reported that, at the time they were terminated, the Delphi plans were underfunded by approximately $7 billion on a termination basis.

[c]July 2009 figures are approximate as of July 31, 2009.

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

Over the period 2001 to 2005, Delphi suffered large losses, and the company filed for bankruptcy in October 2005. During the bankruptcy, Delphi failed to make required minimum contributions to the plans and, as a result, liens were triggered by federal statute on behalf of the plans. Beginning in March 2006, PBGC took steps to perfect these liens in accordance with law.[9] While Delphi was in bankruptcy and attempting to restructure, in May 2007, the Internal Revenue Service (IRS) granted Delphi waivers that temporarily allowed Delphi to forego making minimum contributions to its plans and to provide letters of credit as collateral for the waivers.

Shortly thereafter, Delphi and GM agreed to extend the top-up agreements with UAW, IUE, and USWA. In June 2007, GM, Delphi, and UAW entered into a memorandum of understanding (MOU) extending the GM benefit guarantee for Delphi UAW workers, which would be enforceable if benefit accruals for future credited service in the Delphi hourly plan were frozen and if the plan were terminated. On August 5, 2007, GM and Delphi entered into a MOU with Delphi IUE, and on August 16, 2007, with Delphi USWA, providing the same top-up guarantee as the Delphi UAW MOU. The splinter unions negotiated for other benefits at

[9]Perfecting a lien involves registering it with the proper legal authority, resulting in it becoming a secured interest and thereby receiving a higher priority in bankruptcy.

this time, but were not guaranteed top-ups; nor were any agreements reached regarding top-ups for salaried workers.

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

Under Delphi's initial reorganization plan, the company planned to emerge from bankruptcy without terminating its pension plans. However, in April 2008, the deal with investors that would have made this possible fell through. Five months later, in September 2008, Delphi and GM amended their September 2007 global settlement agreement to specify that GM would take responsibility for approximately $3.4 billion of net liabilities in Delphi's hourly plan in two phases. In phase 1, GM would assume a portion of Delphi's hourly plan with net liabilities of $2.1 billion. This transfer took place on September 29, 2008. In phase 2, upon "substantial consummation" of Delphi's reorganization, the remaining assets and liabilities in Delphi's hourly plan were to be transferred to GM. No comparable arrangements were made concerning a transfer of assets and liabilities for Delphi's salaried plan or other smaller plans.

In September 2008, Delphi froze its salaried plan and three of its smaller plans, and in November 2008, Delphi froze its hourly plan as well. [10]

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

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

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

GM's losses in the fall of 2008 led the company to seek assistance from Treasury through the Automotive Industry Financing Program (AIFP).[11] As a condition of receiving this assistance, GM was required to develop a restructuring plan to identify how the company planned to achieve and sustain long-term financial viability. In April and May 2009, Treasury worked with GM to develop a restructuring plan through the Presidential Task Force on the Auto Industry (Auto Task Force) and its staff (auto team).[12] On June 1, 2009, GM filed for bankruptcy and sought the approval of the bankruptcy court for the sale of substantially all of the

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[11]In December 2008, Treasury established AIFP under the Troubled Asset Relief Program (TARP) to help stabilize the U.S. automotive industry and avoid disruptions that would pose systemic risk to the nation's economy. TARP was originally authorized under the Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110-343, div. A, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261). EESA originally authorized Treasury to purchase or guarantee up to $700 billion in troubled assets. § 115(a), 122 Stat. 3780. The Public-Private Investment Program Improvement and Oversight Act of 2009 amended EESA to reduce the maximum allowable amount of outstanding troubled assets under EESA by almost $1.3 billion, from $700 billion to $698.741 billion. Pub. L. No. 111-22, div A, § 402, 402(f),123 Stat. 1656, 1658. EESA requires that the appropriate committees of Congress be notified in writing when the Secretary of the Treasury, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines that it is necessary to purchase other financial instruments to promote financial market stability. § 3(9)(B), 122 Stat. 3767 (codified at 12 U.S.C. § 5202(9)(B)).

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

company's assets to a new entity ("new GM").[13] In court documents, a Treasury official stated that Treasury was mandated by the President to act in a "commercially reasonable manner" as it related to GM's restructuring and ensure that the new GM assumed only those liabilities of the old company that were thought to be "commercially necessary" for the new company to operate.[14] As GM's primary lender, Treasury was concerned about GM's overall exposure to risks related to distressed suppliers, including Delphi. Specifically, Treasury was concerned about how GM's Delphi liabilities would fit within the new company's business plan. According to a Treasury official deposition, Treasury's mandate to restructure GM included helping GM determine the "best resolution" of the Delphi bankruptcy from GM's perspective, which was guided by three principles (see table 2).[15] However, as Treasury asserted in a February 2010 court motion, the Auto Task Force did not dictate what should be done with the Delphi pensions.[16]

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

[14]Deposition of Treasury Official at 185, No. 05-44481 (RDD) (S.D.N.Y. July 21, 2009) and Motion of Defendants U.S. Department of the Treasury et al. at 10, No. 2:09-cv-13616 (E.D. Mich. Feb. 16, 2010).

[15]According to the December 19, 2008, pre-bankruptcy loan agreement between Treasury and GM, Treasury had the right to review and prohibit any "asset sale, investment, contract, commitment, or other transaction not in the ordinary course of business proposed to be entered into with a value in excess of $100 million," referred to as a "material transaction." Treasury also needed to sign off on the purchase agreement under which old GM sold substantially all of its assets to new GM. This agreement established which contracts would be assumed by new GM. After July 10, 2009, the only approval right, pursuant to the new loan agreement, was if new GM needed funds from an escrow account.

[16]The Special Inspector General for the Troubled Asset Relief Program (SIGTARP) is conducting an audit of Treasury's role in GM's decision to provide top-ups for hourly workers, including whether the Administration or Auto Task Force pressured GM to provide additional funding for the hourly plan. SIGTARP has not announced when it expects to complete this audit.

Table 2: Treasury's Three Guiding Principles for Resolving GM's Liabilities Related to Delphi

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

Source: Deposition of Treasury Official at 36 and 37, No. 05-44481 (RDD) (Bankr. S.D.N.Y. July 21, 2009).

In assisting with GM's reorganization, Treasury conducted analysis confirming GM's assessment of the Delphi pension liabilities. Specifically, in May 2009, Treasury had anticipated that Delphi's salaried pensions would be terminated, but that GM would assume additional liabilities for the Delphi hourly plan, as called for in phase 2 of the September 2008 agreement. Additionally, on June 1, 2009, Delphi announced that its hourly plan would be "addressed by GM." According to a Treasury official deposition, there was a reasonable argument for GM to assume the Delphi hourly plan for UAW-represented workers, given that UAW's role was continuing with the new GM and that the hourly plan was not fully funded at the time the plan was transferred from GM to Delphi in 1999. However, the phase 2 transfer called for Delphi to pay a $2.055 billion administrative claim to GM, which it could not do. In the Treasury official's deposition, it was noted that shortly after GM's bankruptcy filing, GM notified Treasury that it had not built sufficient funding into its restructuring plan to take on the hourly plan, but that it had built in the assumption that it would provide the top-up for Delphi UAW retirees. Treasury's auto team assessed GM's analysis on the potential cost of GM taking on the Delphi hourly pension plan and agreed with GM's conclusion that the hourly plan was a "$3 billion liability that General Motors could not afford." [17] Phase 2 of the transfer of hourly plan liabilities from Delphi to GM was not in GM's reorganization plan and never took place.

[17]Deposition of Treasury Official, No. 05-44481 (RDD) (S.D.N.Y. July 21, 2009).

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

As part of the sale of the assets of old GM to new GM, GM negotiated with UAW—which represented its largest employee group—to modify wages, benefits, and work rules to be more cost competitive. As a result of these negotiations, GM and UAW agreed that new GM would assume all employment-related obligations and liabilities under any assumed employee benefit plan relating to employees that are or were covered by UAW collective bargaining agreements in its master sale and purchase agreement, to which Treasury gave its approval.[18] Thus, the master sale and purchase agreement included only GM's obligation to provide top-ups to Delphi UAW retirees.[19] No other negotiations took place that resulted in comparable obligations concerning top-ups for members of the two other unions, IUE and USWA, even though they had previously secured top-up agreements with GM; nor for the splinter unions or the salaried employees who had no previous top-up agreements with GM. As noted in a Treasury official deposition, because of the bargaining between GM and UAW concerning the GM bankruptcy and new UAW agreement, GM was prepared to honor the obligation of providing top-ups to UAW Delphi retirees, while the situation regarding comparable obligations with the other unions was less clear.

On June 19, 2009, IUE and USWA objected to the proposed sale of GM's assets because retirees of Delphi represented by IUE and USWA would not receive the same benefits as retirees of Delphi represented by UAW.[20] The court overruled these unions' objection to the sale, stating that new GM needed a "properly motivated workforce to enable [new GM] to succeed," requiring it to enter into "satisfactory agreements with the UAW" and was not "similarly motivated in triaging its expenditures to assume obligations for retirees of unions whose members, with little in the

[18]In re General Motors Corp, 407 B.R. 463, 481 (Bankr. S.D.N.Y. 2009) (Decision on debtor's motion for approval of (1) sale of assets to Vehicle Acquisitions Holdings LLC; (2) assumption and assignment of related executory contracts; and (3) entry into UAW retiree settlement agreement).

[19]The master sale and purchase agreement outlined, among other things, the assets being sold by old GM to new GM and the liabilities being assumed by new GM from old GM.

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

way of exception, no longer work for GM."[21] Accordingly, the bankruptcy court approved the sale of GM's assets on July 5, 2009, and those assets were conveyed to new GM on July 10, 2009.

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

On June 1, 2009, Delphi, citing its inability to fund its plans and a lack of feasible alternatives, publicly stated that PBGC "may initiate an involuntary termination" of the Delphi salaried plan. Delphi and GM entered into agreements with PBGC that provided PBGC an unsecured claim in Delphi's bankruptcy and released PBGC's current claims and foreign liens on Delphi's assets on July 21, 2009. PBGC agreed to release its $196 million of foreign liens (foreign subsidiaries had not filed for bankruptcy) and other termination claims in exchange for a $3 billion unsecured claim in Delphi's bankruptcy, a $70 million cash contribution from GM, and 10 percent of the first $7.2 billion of distributions from Delphi Automotive LLP, the newly-created British partnership that purchased most of Delphi's assets. On July 22, 2009—12 days after the sale of GM's assets to new GM—PBGC announced the termination of all six of Delphi's qualified defined benefit plans, and on August 10, 2009, PBGC assumed trusteeship of the plans. PBGC stated that the Delphi pension plans were underfunded by $7 billion when they were terminated. PBGC estimates that it will need to make up about $6 billion of that shortfall using PBGC funds, leaving plan participants to bear the loss of the $1 billion difference through reduced benefit amounts provided by PBGC.

[21]407 B.R. 512.

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

The approval of the sale of old GM did not resolve IUE's and USWA's claims that new GM was required to continue to provide the pension benefit guarantees in accordance with collectively bargained agreements. Both old GM and new GM denied these claims. According to a company filing, new GM maintained that it was not obligated to assume or to continue to abide by old GM's collective bargaining agreements with IUE and USWA, while old GM maintained that it was entitled to cancel or terminate all obligations arising from collective bargaining agreements between old GM and IUE or USWA.[22] In the summer of 2009, IUE and USWA shifted the focus of their objections from the GM bankruptcy settlement to the Delphi bankruptcy settlement. On July 9 and July 15, 2009, IUE and USWA, along with some of the splinter unions, filed objections against Delphi's proposed reorganization plan and sale.[23] On July 15, 2009, Delphi Salaried Retiree Association (DSRA) filed an objection against Delphi's bankruptcy based on Delphi's modified plan including the termination of the salaried plan, among other things. On July 30, 2009, the Delphi bankruptcy court overruled the IUE, USWA, and DSRA objections and authorized the consummation of Delphi's modified reorganization plan.

Delphi remained a significant—if not the largest—supplier for GM. Thus, although GM was not required to provide the top-ups to IUE and USWA under its own bankruptcy settlement, GM was motivated to resolve Delphi's bankruptcy, and Treasury, as previously noted, was interested in a quick resolution of the Delphi bankruptcy that required the least possible amount of investment by GM, but that guaranteed the "sanctity" of GM's supply chain. According to the Delphi–GM master disposition agreement, IUE's and USWA's consent was required to finalize the sale

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

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

of assets in Delphi's bankruptcy.[24] As a result, new GM continued negotiating with IUE and USWA to resolve their objections against Delphi's bankruptcy case.

On September 10, 2009, new GM, old GM, IUE, and USWA signed a settlement agreement that, among other things, required new GM to provide top-ups to retirees of Delphi represented by IUE or USWA who were covered by the benefit guarantee agreements that GM had entered with IUE and USWA in 1999.[25] The parties entered into this agreement after consideration of the "factual and legal arguments regarding these issues, as well as the costs, risks, and delays associated with litigating these issues." In its February 2010 court motion, Treasury noted that in light of these costs, new GM had solid commercial reasons for agreeing to provide top-ups to Delphi retirees represented by IUE or USWA. As part of the settlement agreement, IUE and USWA agreed to withdraw their objections against Delphi's bankruptcy, resulting in the completion of Delphi's reorganization on October 6, 2009, with the sale of its assets.

The settlement agreement did not provide top-ups to the splinter unions or to any other noncovered employees, including all members of Delphi's salaried plan. On September 14, 2009, DSRA filed a complaint against PBGC in U.S. district court related to the termination of Delphi's salaried plan.[26] DSRA amended its complaint on November 5, 2009, to include new GM, Treasury, and the Auto Task Force as defendants. However, in

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

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

[26]Complaint for Equitable Relief, No. 2.09-cv-13616 (E.D. Mich. Sept. 14, 2009).

March 2010, the court dismissed the claim against new GM,[27] and in September 2011, dismissed the claim against Treasury.[28]

Mr. Chairman and Members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee might have.

GAO Contact and Staff Acknowledgments

For further information regarding this testimony, please contact me at (202) 512-7215 or bovbjergb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include Margie K. Shields (Assistant Director), Mark M. Glickman (Analyst-in-Charge), James Bennett, Julie DeVault, Heather Krause, Edward Leslie, Kathy Leslie, and Craig Winslow.

[27]First Amended Complaint, No 2:09-cv-13616 (E.D. Mich. Nov. 5, 2009). On March 12, 2010, the court dismissed GM as a party to the DSRA lawsuit. The court stated that if the plaintiffs showed new facts and circumstances that demonstrated new GM's conduct is not subject to the release and injunction provisions of the approved Delphi modified plan and plan modification order, then the plaintiffs could bring a future claim against new GM. Black v. Pension Benefit Guaranty Corp., No. 2:09-cv-13616 (E.D. Mich. March 12, 2010) (Order dismissing General Motors LLC).

[28]In September 2011, the court dismissed the retirees' claims against Treasury and Treasury officials. Order Granting Defendant United States Department of the Treasury, Presidential Task Force on the Auto Industry, Timothy F. Geithner, Steven L. Rattner, and Ron. A. Bloom's Reviewed Motion to Dismiss, No. 09-13616 (E.D. Mich. Sept. 1, 2011).

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Testimony
of
Vincent K. Snowbarger, Deputy Director for Operations
Pension Benefit Guaranty Corporation
before the
Committee on Oversight and Government Reform
U.S. House of Representatives
Field Hearing
Dayton, Ohio
November 14, 2011

Good morning Chairman Issa, Ranking Member Cummings and other Committee Members. I am Vince Snowbarger, Deputy Director for Operations of the Pension Benefit Guaranty Corporation ("PBGC" or "the Corporation").

The need for a federal pension safety net became starkly evident when, at the end of 1963, the Studebaker Corporation, then the nation's oldest major automobile manufacturer, closed its U.S. operations and liquidated. As a result, about 4,000 workers lost the bulk of their pensions, receiving only fifteen cents on the dollar of vested benefits. At an average age of 52, these Studebaker employees had worked for the company an average of 23 years.

In 1974, Congress passed the Employee Retirement Income Security Act ("ERISA") which, among other protections, created PBGC to insure pensions earned by America's workers under private-sector defined benefit ("DB") plans. We now insure the pensions of more than 44 million workers, retirees, and beneficiaries in about 27,000 DB plans. When a plan terminates in an underfunded condition – usually because the employer responsible for the plan goes out of business or can no longer fund the promised benefits – PBGC takes over the plan as trustee and pays benefits to the full extent permitted by law.

As part of this hearing on the pensions of former Delphi Corporation employees, I will testify today about the impact of the restructuring on the underfunded pension plans of Delphi Corporation, the nation's largest producer of auto parts. I will also describe the developments that forced us to step in to protect the pensions of Delphi's 70,000 workers and retirees. We are now responsible for about $6 billion of the plans' shortfall, but there is also a shortfall of about $1.2 billion for benefits that are not guaranteed by the insurance program. The Delphi Salaried Plan alone was underfunded by $2.7 billion; PBGC will make up over $2 billion of that shortfall with the agency's own funds.

PENSION BENEFIT GUARANTY CORPORATION

Before I talk about the details of the Delphi plan terminations, I would like to give you a brief overview of the Pension Benefit Guaranty Corporation.

PBGC is a wholly-owned federal government corporation overseen by a three-member Board of Directors consisting of the Secretary of Labor, who is the Chair, and the Secretaries of Commerce and Treasury. PBGC's presidentially-appointed, Senate-confirmed Director is responsible for PBGC's day-to-day operations—including the decision to terminate pension plans. The Corporation also has a seven-member Advisory Committee appointed by the President to represent the interests of labor, employers, and the general public.

PBGC operates two pension-insurance programs, which are financially separate. The single-employer program covers about 34 million workers, retirees, and beneficiaries in about 25,000 single-employer plans. The smaller multiemployer program – which covers collectively bargained plans that are maintained by two or more unrelated employers – protects more than 10 million workers, retirees, and beneficiaries in about 1,500 multiemployer plans.

Although PBGC is a federal government corporation, it receives no funds from general tax revenues and by law its obligations are not backed by the full faith and credit of the U.S. government. Operations are financed by insurance premiums, assets received from pension plans trusteed by PBGC, investment income, and recoveries from the companies formerly responsible for underfunded trusteed plans.

What PBGC Does

PBGC provides a safety net when the corporate sponsors of DB plans can no longer afford to continue sponsoring and administering them. In the aftermath of the 2008 economic crisis, PBGC responded to the wave of corporate bankruptcies by stepping up its work to protect plans. Our staff negotiated with dozens of companies, in bankruptcy, through our Early Warning Program and when corporate downsizing events occurred, to preserve their DB plans.

When companies do enter bankruptcy, we aggressively work with them to keep their plans ongoing. In large bankruptcy cases, such as Delphi, the stakes for workers and retirees can be tremendous. A severely underfunded pension plan can mean benefit losses to those workers, retirees, and beneficiaries whose benefits exceed the amounts guaranteed by law.

If a company can retain its plan, the promises made to beneficiaries are still intact. If the company sheds its plan, not only do participants lose, but PBGC can be saddled with the addition of billions of dollars to its deficit.

During FY 2011, the agency worked with debtors and creditors to help 19 companies that were reorganizing in bankruptcy keep their plans. As a result, approximately 74,000 workers and retirees continue to enjoy their full pension benefits, while continuing to be protected by PBGC insurance coverage.

Despite PBGC's efforts to preserve pensions, PBGC became responsible for current and future benefit payments for over 55,000 new people whose plans terminated, most often in bankruptcy, and started paying benefits to about 15,000 retirees.

For the past 37 years, PBGC has stepped in to pay benefits – on time, every month, without missing a single payment. These benefit payments are important, often crucial, to the retirement income security of retirees and workers in trusteed plans, many of whom worked decades for their promised benefits. In FY 2011, PBGC paid nearly $5.5 billion in benefits to about 873,000 retirees and beneficiaries in more than 4,300 failed plans; another 628,000 participants will receive benefits in the future.

DELPHI CORPORATION

Delphi, which was originally created as an in-house parts manufacturer for GM, was spun off as an independent company in 1999. At that time, GM transferred assets and liabilities from its salaried and hourly pension plans to the newly established Delphi Salaried and Hourly DB pension plans. GM negotiated with certain unions to provide benefit guarantees if the Delphi Hourly plan terminated or was frozen at a later date.

Delphi began suffering significant losses by January 2001, and funding of the pension plans deteriorated. On October 8, 2005, Delphi entered Chapter 11 and ultimately liquidated in 2009.

The old Delphi ceased to exist. The new Delphi is a United Kingdom corporation that purchased most of the old Delphi's assets, including its name.

Delphi's Bankruptcy

Delphi was one of about 50 auto suppliers that we were monitoring under our Early Warning Program. After the spinoff in 1999, PBGC actively monitored Delphi, focusing on its credit profile and corporate transactions that could have put the pension plans at risk. While Delphi suffered large losses between 2001 and 2005, the company maintained its investment grade credit ratings until early 2005 when it was downgraded to speculative grade. At that time (approximately five months before bankruptcy), Delphi refinanced a large portion of its debt. PBGC engaged with Delphi management on a refinancing transaction. Delphi contributed some of the proceeds from that transaction to its pension plans.

After Delphi entered bankruptcy protection in October 2005, PBGC worked intensively with Delphi, GM, and other stakeholders to keep the pension plans ongoing. During the bankruptcy, Delphi consistently told PBGC and its employees that it intended to reorganize with its pension plans intact. However, Delphi failed to make required minimum funding contributions to the plans, and, as a result, liens were triggered on behalf of the plans against the assets of Delphi's non-bankrupt foreign subsidiaries. Beginning in March 2006, PBGC perfected these liens as the law provided, so that the plans had a secured interest against the foreign Delphi entities.

In September 2007, Delphi filed a reorganization plan with the bankruptcy court. As part of the reorganization, GM and Delphi entered into a settlement agreement to transfer part of Delphi's Hourly plan to GM's Hourly plan. Under the reorganization plan, Delphi was to continue to sponsor all its other pension plans, including the Salaried plan. Delphi did not plan to transfer any pension liability to PBGC.

In April 2008, Delphi's reorganization fell through, and the next month, previously granted IRS pension funding waivers expired. As collateral for the waivers, Delphi had obtained bankruptcy court approval to provide PBGC with $172.5 million in the form of letters of credit. In order to protect the plans, PBGC drew down on the Delphi letters of credit, which resulted in $122.5 million in contributions to the Hourly plan and $50 million to the Salaried plan.

In the latter half of 2008, Delphi still anticipated that it could reorganize in bankruptcy, maintain its Salaried plan, and merge the Hourly plan into the GM Hourly plan. In September 2008, Delphi and GM, with the approval of the bankruptcy court, amended their settlement agreement to provide for a transfer of up to $3.4 billion of net liabilities from Delphi's Hourly plan to GM's Hourly plan in two phases. The first $2.1 billion was transferred the same month. This provided added security for retirees and employees of Delphi, and also reduced PBGC's exposure to loss. Between September and November 2008, Delphi froze benefit accruals in the Hourly and Salaried pension plans.

The second transfer of liabilities to GM was to be made upon Delphi's emergence from bankruptcy. In exchange for the transfer of liabilities, Delphi agreed to provide GM with an administrative claim of over $2 billion to be paid to GM when Delphi emerged. Unfortunately, Delphi experienced severely declining revenues in the fall of 2008 and the spring of 2009 as GM and other manufacturers sharply reduced production. As a result, Delphi would not be able to make the cash payment to GM. When Delphi's financing agreement with its debtor-in-possession ("DIP") lenders was scheduled to expire on April 24, 2009, Delphi was faced with the prospect of imminent liquidation. PBGC stepped in to seek termination of the six Delphi salaried and hourly pension plans to avoid the losses to participants and the insurance fund that would result if the DIP lenders were to foreclose on their collateral and break up Delphi's controlled group. PBGC agreed with the Delphi DIP lenders to postpone the effective date of the termination decision to allow the parties to negotiate a resolution of Delphi's bankruptcy. In July 2009, however, as Delphi was being liquidated, the DIP lenders initiated foreclosure, leaving PBGC with no choice but to step in and take over Delphi's underfunded pension plans.

I want to emphasize that PBGC treated the Salaried Plan no different from the Hourly Plan. The only difference in treatment of the participants resulted from GM's decisions.

PBGC's involvement in Delphi's and GM's bankruptcies was limited to the disposition of the pension plans. PBGC did not have any influence in GM's restructuring decisions, including the decision to assume the collectively-bargained top-up agreements entered into by Old GM in 1999.

Delphi promised its Salaried Plan participants about $5.2 billion in benefits and, unfortunately, Delphi put only about half that – $2.5 billion – into the plan. In the case of an underfunded pension plan, PBGC pays monthly retirement benefits subject to guarantee limitations prescribed by statute and regulations. By law, PBGC can only pay benefits that are not guaranteed if there are plan assets to cover them. PBGC estimates that it will use $2.1 billion of its funds above and beyond the assets that Delphi put into the Salaried Plan to pay guaranteed benefits.

It is distressing when benefits are lost because of plan underfunding. When it became apparent that the liquidating Delphi could no longer be responsible for the Salaried Plan, we fought to reach the best settlement possible for participants and PBGC.

Recoveries and Benefit Payments

Delphi's proposed modifications to its plan of reorganization, approved by the bankruptcy court in late July 2009, called for the liquidation of Delphi, the sale of its remaining valuable assets, and termination of the Delphi plans. The modifications included provisions for settlement of PBGC's claims. The settlement included in Delphi's modified plan of liquidation provided PBGC with a $3 billion general unsecured claim against Delphi's bankruptcy estate. In addition, the investors in the new company that agreed to purchase Delphi's foreign subsidiaries, which included New GM, required PBGC to release its liens and claims on those foreign assets before the purchase could proceed.

At the time of the settlement, PBGC had a $196 million lien on behalf of the Salaried plan. The September 2008 transfer of Hourly plan liabilities to GM eliminated PBGC's lien on behalf of the Hourly plan.

In exchange for the release of the Salaried plan lien and PBGC's other claims, PBGC reached an agreement with the buyers that provided PBGC with a $70 million cash payment from GM and a membership interest in the new company, which had been created as a U.K. partnership. PBGC's membership interest provided that PBGC would receive approximately ten percent of the first $7.2 billion of distributions that the new Delphi partnership made to its members.

The cash payment and membership interest effectively paid PBGC's Salaried plan lien and, in the context of Delphi's bankruptcy gave PBGC a reasonable recovery on its other claims; therefore, PBGC released its claims against, and statutory liens on, Delphi's foreign subsidiaries. In March of 2011, new Delphi redeemed PBGC's stake in the company for $594 million.

The law provides a formula for PBGC to allocate a portion of its total recoveries to provide benefits that are not guaranteed or funded by plan assets. Generally, the Delphi recoveries may allow PBGC to pay additional benefits to older Delphi workers who retired or could have retired by July 31, 2006, three years before the Delphi plans terminated, and who are now receiving benefits less than those promised to them by Delphi due to the statutory limits on the amount that PBGC can pay. However, because the amount of PBGC's recovery is less than 10 percent of the benefits that Delphi promised but failed to fund, any benefit increases are likely to be small.

Since PBGC became trustee of the Delphi plans in August 2009, we have been making uninterrupted payments to retirees and putting new retirees into pay status as they apply. Participants receive estimated payments until calculations are final. Calculating benefits for the 70,000 workers and retirees in the six Delphi plans poses challenges because of complex benefit structures and mergers and acquisitions that took place throughout the life of the plans.

It will take several years to fully review Delphi's plans, verify participant information, and determine benefit amounts. We plan to issue most final benefit determinations in 2013.

A group of Delphi Salaried plan participants sued PBGC, the Treasury Department, the Presidential Task Force on the Auto Industry, and others seeking to undo the plan termination. On September 2, 2011, the court dismissed the allegations against all but PBGC. The litigation is ongoing.

CONCLUSION

This is a time of great challenge for all of us in the public sector who are trying to assure American working families of financial security in retirement. In one sense we've been fortunate. Despite the greatest financial turmoil in many decades, fewer plans were terminated than many observers had expected.

In part, this also may be due to PBGC's own efforts. We continue to respond to the recent wave of corporate bankruptcies by stepping up and stepping in. We work tirelessly to convince companies, both in and out of bankruptcy, to preserve their plans. In many instances, this approach works.

However, underfunding in plans sponsored by financially weak companies remains high, and PBGC's efforts to preserve pensions can only succeed where the plan sponsor's business survives and is large enough to support the pensions. In the unfortunate cases like Delphi, where the sponsor failed and liquidated, PBGC is forced to, and will, step in to protect the pensioners from the fate suffered by the Studebaker retirees some fifty years ago.

In sum, companies that sponsor pension plans have a responsibility to live up to the promises they made to their workers and retirees. But when a company cannot keep its promises, PBGC provides a dependable safety net for workers and retirees.

I would be happy to answer any questions.

Vincent K. Snowbarger

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