# DELPHI PENSION FALLOUT: FEDERAL GOVERNMENT PICKED WINNERS AND LOSERS, SO WHO WON AND WHO LOST?

## HEARING

BEFORE THE

## COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

## HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

NOVEMBER 14, 2011

**Serial No. 112–106**

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

73–164 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

DARRELL E. ISSA, California, *Chairman*

| | |
|---|---|
| DAN BURTON, Indiana | ELIJAH E. CUMMINGS, Maryland, *Ranking Minority Member* |
| JOHN L. MICA, Florida | EDOLPHUS TOWNS, New York |
| TODD RUSSELL PLATTS, Pennsylvania | CAROLYN B. MALONEY, New York |
| MICHAEL R. TURNER, Ohio | ELEANOR HOLMES NORTON, District of Columbia |
| PATRICK T. MCHENRY, North Carolina | DENNIS J. KUCINICH, Ohio |
| JIM JORDAN, Ohio | JOHN F. TIERNEY, Massachusetts |
| JASON CHAFFETZ, Utah | WM. LACY CLAY, Missouri |
| CONNIE MACK, Florida | STEPHEN F. LYNCH, Massachusetts |
| TIM WALBERG, Michigan | JIM COOPER, Tennessee |
| JAMES LANKFORD, Oklahoma | GERALD E. CONNOLLY, Virginia |
| JUSTIN AMASH, Michigan | MIKE QUIGLEY, Illinois |
| ANN MARIE BUERKLE, New York | DANNY K. DAVIS, Illinois |
| PAUL A. GOSAR, Arizona | BRUCE L. BRALEY, Iowa |
| RAÚL R. LABRADOR, Idaho | PETER WELCH, Vermont |
| PATRICK MEEHAN, Pennsylvania | JOHN A. YARMUTH, Kentucky |
| SCOTT DESJARLAIS, Tennessee | CHRISTOPHER S. MURPHY, Connecticut |
| JOE WALSH, Illinois | JACKIE SPEIER, California |
| TREY GOWDY, South Carolina | |
| DENNIS A. ROSS, Florida | |
| FRANK C. GUINTA, New Hampshire | |
| BLAKE FARENTHOLD, Texas | |
| MIKE KELLY, Pennsylvania | |

LAWRENCE J. BRADY, *Staff Director*
JOHN D. CUADERES, *Deputy Staff Director*
ROBERT BORDEN, *General Counsel*
LINDA A. GOOD, *Chief Clerk*
DAVID RAPALLO, *Minority Staff Director*

# CONTENTS

# DELPHI PENSION FALLOUT: FEDERAL GOVERNMENT PICKED WINNERS AND LOSERS, SO WHO WON AND WHO LOST?

**MONDAY, NOVEMBER 14, 2011**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
*Dayton, OH.*

The committee met, pursuant to notice, at 9 a.m., at Sinclair Community College, Smith Auditorium, 444 W. 3rd Street, Dayton, OH, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Burton, Turner, and Jordan.

Also present: Representative Austria.

Staff present: Michael R. Bebeau, assistant clerk; Adam P. Fromm, director of Member services and committee operations; Linda Good, chief clerk; Tyler Grimm, professional staff member; Christopher Hixon, deputy chief counsel, oversight; Rebecca Watkins, press secretary; and Jason Powell, minority counsel.

Chairman ISSA. First of all, this hearing is being streamed for anyone who logs in with the assumption that anything you say will end up on the record. [Laughter.]

This congressional investigation and hearing was called by Congressman Turner—here and one of the most effective—last, do not try to do amateur video or too many pictures. It will be 100 percent available to you and to everyone. We post and maintain, going back more than 5 years, all of our video of all committee hearings.

So, with that, the full committee hearing on "Delphi's Pension Fallout: Federal Government Picked Winners and Losers, So Who Won and Who Lost?" will come to order.

The Committee on Oversight exists for two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent. And, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have the right to know what they get from their government.

It is our committee's responsibility to work tirelessly in partnership with citizen watch dogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Today, I ask unanimous consent that our colleague, Mr. Steve Austria, who is present and represents Ohio's 7th District, be allowed to participate as a non-member of the committee in this hearing.

Without objection, so ordered.

Additionally, at this time I would ask unanimous consent that the statement of Senator Portman be placed in the record.

Without objection, so ordered.

[The information referred to follows:]

ROB PORTMAN
OHIO

United States Senate
WASHINGTON, DC 20510

November 14, 2011

Chairman Darrell Issa
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

Thank you for holding today's field hearing titled: "Delphi Pension Fallout: Federal Government Picked Winners and Losers, So Who Won and Who Lost?" especially as it relates to the treatment of Delphi retirees during the General Motors (GM) bankruptcy. I appreciate your holding this hearing in Dayton in order to hear directly from the many people who have been impacted by the handling of this bankruptcy such as the four Ohioans who are testifying today, who each invested over 30 years of their lives working at Delphi and GM.

In September 2009, a decision was made by President Obama's Auto Policy Task Force to "top-up" the pension benefits of union retirees from Delphi but not those of salaried retirees from the same company. Previously, in June 2009 Delphi Corporation's defined benefit pension plans were terminated, resulting in an estimated 30 to 70 percent reduction in benefits for Delphi salaried and union retirees.

On March 30, 2011, the U.S. Government Accountability Office (GAO) released a report detailing the key events leading to the Delphi pension termination and the omission of a large number of salaried retirees. GAO is also expected to release a future report specifically examining how the Pension Benefit Guaranty Corporation's handling of the Delphi pension termination compares with that of other, similar terminations. In addition, the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) is investigating this issue and is expected to release a report later this year.

While the initial GAO report is useful in providing a chronology of events, it does not provide enough background on the disparate treatment of Delphi retirees. The 20,000 salaried retirees, including over 1,000 in the Dayton area, range from shop-floor supervisors and salespeople to engineers and office managers. These salaried retirees spent many years at Delphi, a major employer and economic engine in towns across Ohio, including Dayton. These men and women earned their pensions the American way, through hard work and dedication. However, these salaried retirees will lose a significant portion of their pension benefits, while many of their former co-workers will receive their full promised benefits. This is troubling, and merits further scrutiny by Congress.

Today's hearing along with forthcoming government reports will be helpful in determining the reasons and justification for the disparate treatment of Delphi retirees. Thank you again for holding this important hearing as we work to remedy this situation and understand its vast impacts on thousands of Ohioans.

Sincerely,

Rob Portman

Rob Portman

Chairman ISSA. Today I want to begin by thanking the Sinclair Community College for allowing us to use this facility. We would have expected this facility to be far larger than an ordinary hearing, but we do have standing room only, and we appreciate a facility this size being made available, far beyond what would ordinarily be used in a field hearing.

Additionally, I want to thank Mr. Turner again for tirelessly making sure that both in Washington and here these activities are happening. I might note that Jim Jordan and other Members of the Ohio delegation have held additional hearings and may hold more in Washington in days to come.

All Members, both present and those who want to submit for the record, will have 5 days in which to put in statements and extraneous materials for the record.

I will allow each Member who wants to make a short opening statement to make one if they choose to. And I think I will start with our hometown favorite, Mr. Turner, first.

Mr. TURNER. Mr. Chairman, thank you so much. Thank you for bringing this Washington committee hearing here to Dayton, OH. I appreciate you granting my request to hold it here. I think that——

Chairman ISSA. You did not give me a choice. [Laughter.]

Mr. TURNER. You are a very good friend, and I greatly appreciate your focus on this issue.

This is not the first hearing that has been held by your full committee or by the subcommittees on this issue. It is the first that is focused solely on this issue. You have had witnesses testify, and I greatly appreciate the manner in which you have allowed the retirees and their issues to be addressed as we have looked to the auto bailout, the use of retired funds, the discrimination that has occurred in the funding of the payout of pensions.

Representative Jordan as the chairman of the subcommittee has held hearings on this issue and has been very active I know not only just as a strong member of this committee, but also as an Ohioan. His father, like mine, retired from General Motors. My father retired from General Motors after 42 years as a result of the GM bankruptcy. His health insurance was impacted. We have stories like this throughout our community of people who have been impacted by General Motors and the Delphi bankruptcy.

I think, Mr. Chairman, you and I had the conversation that Delphi began as Dayton Engineering Laboratories Co., so it is important being here is that we have the historical nexus of the beginning of the company and also the thousands of numbers of retirees that are here that have been impacted.

In the wake of the General Motors' bailout, the administration clearly picked winners and losers without transparency, without justification, and, in my opinion, without respect for the men and women who dedicated years of service in earning their retirement benefits. Part of the hearing today is our ability to try to get some of that transparency. The administration has not been forthcoming. The negotiations, the decisions, have been largely in secret, and as the committee and the retirees have tried and attempted to get answers they have largely been thwarted, which is why it is so important to have the assistance of this hearing.

The treatment of salaried retirees is particularly troubling in comparison to the benefits received by some in organized labor organizations. In fact, the UAW and the Ohio AFL–CIO have written letters in support of restoring benefits for the Delphi salaried retirees.

I will work along with all the members of this panel to advocate on behalf of both the union and the non-union labor to ensure that all retirees receive whatever benefits that they were promised. All of these retirees, regardless of labor affiliation or not, worked alongside each other during their careers and were part of the success of Delphi. They earned these pensions, and they deserve them. They should not be differently in retirement.

I think as we have all said as we looked at this issue, we want to know where did the money go and how do we get the money put back? This is part of our quest today as we look to accountability in the administration and the decisionmaking process.

I also want to thank Congressman Dan Burton for being here from Indiana. He has been also a strong advocate on this as he has had a number of retirees in his area that were impacted. And certainly I want to recognize Representative Austria for being here today.

Mr. Chairman, thank you for this opportunity, and thank you for being here in Dayton, OH.

Chairman ISSA. Thank you. We now go to the former chairman of the full committee who represents, among other places, Kokomo, and as much as Mr. Turner, clearly has a huge population of people who have earned retirement who are not getting it today?

Mr. BURTON. Thank you, Mr. Chairman. I appreciate you having this hearing. I appreciate the comments of from Representative Turner, who shares my concern about the inequities that have taken place.

Mr. Chairman, Delphi Corp. was created in 1999 by General Motors through the spinoff of the company's automotive component group into a separate entity. In fact, many of the current Delphi retirees, hourly and salary, spent the majority of their working career, on average about 25 years, with GM until they were involuntarily moved to Delphi.

Regrettably, in 2005, Delphi Corp. filed chapter 11 bankruptcy protection. On October 6, 2009, 4 years after entering into chapter 11, Delphi Corp. exited bankruptcy as Delphi Holdings under a restructuring plan, facilitated by the Obama administration, and approved by the U.S. District Bankruptcy Court for the Southern District of New York. Under the terms of the agreement, the Federal Pension Benefits Guaranty Corp. assumed responsibility for all of the Delphi pension plans, roughly $6.2 billion in liability, for six Delphi pension plans covering approximately 70,000 employees and retirees.

However, in a very unusual agreement as part of the restructuring plan, GM consented to use money from its own pension funds to supplement the 46,000 Delphi hourly union employees' pension payments to make up for the 30 to 70 percent cuts in benefits resulting from a PBGC takeover of the Delphi pension plan. This unprecedented agreement was not extended to the 21,000 salaried workers and retirees, which is really terrible. By some estimates, this resulted in a 70 percent reduction in pensions and loss of health care for salaried Delphi retirees.

When questioned about the disparate treatment of Delphi employees and retirees, to this day executives for GM only say that the company agreed to supplement Delphi union employees and retirees because it had promised to do so in 1999, and that the company did not supplement Delphi non-union employees or retirees because it, "is not something that GM has any control over." And GM does not have a legal obligation, nor does it have the money to refund those pensions. The explanations offered by GM are woefully insufficient.

Once GM entered into bankruptcy, the contractual promises made in 1999 were null and void, and it makes no business sense for a company trying to shed excessive debt to assume more debt. In reality, though, the blame does not lie with GM. I believe that evidence uncovered by this committee and others clearly shows that the Obama administration's auto task force made this decision for purely political reasons. In fact, Mr. Ron Bloom, former senior advisor to the Secretary of the Treasury, on the auto bailout admitted as much when he said in a celebratory dinner for the auto bailout, "He did this for all of the unions."

On June 22, 2011 during the last committee hearing on this issue, when I questioned Mr. Bloom about his statement, he flatly and unequivocally denied that he ever said that. Unfortunately for Mr. Bloom, this statement was corroborated by a reporter for the Detroit Free Press, and in a book by Mr. Bloom's former boss, auto czar Steve Radner.

Two weeks later, after coming under fire from this committee and the media about his blatant lie under oath, and he should have been held in contempt—I still think we ought to do that, Mr. Chairman. [Laughter.]

Mr. Bloom retracted his denial and instead claimed he did not "recall" ever saying that. But he did.

Mr. Bloom's actions are sadly typical of this administration's blatant disregard for Congress' pursuit of the truth in this case. To the best of my knowledge, all congressional requests to the administration about this case have either been ignored or obfuscated. This is unacceptable and should not be tolerated, and I applaud the tenacity you have shown, Mr. Chairman—I do not tell you very often, but I mean that—to keep investigating this matter further so we can uncover the real truth behind the Delphi pension scam, and it is a scam.

I said back in October 2009 when I, along with others, first requested a congressional hearing on this issue, that I understood the restructuring of America's auto industry required a shared sacrifice and responsibility. But Delphi's salaried retirees are being forced to bear extra burdens that are not warranted and have not been explained. It seemed to me at the time, and it still does, to be fundamentally unfair to salaried and union employees in the same company who face the same unfortunate situation, were treated so unequally by the administration and the Federal Government.

The American people, especially from my perspective, the thousands of Hoosier families and people from Ohio who have been impacted by this policy, and whose tax dollars were used to facilitate this travesty, deserve a full and transparent explanation from all parties involved, especially the administration. Hopefully today we can move one more step closer to an explanation.

And once again, Mr. Chairman, I really want to thank you for having this hearing. I yield back.

Chairman ISSA. And with that, we will recognize the chairman of the subcommittee who has done more to further this, if he chooses?

Mr. JORDAN. Well, I would just say, Mr. Chairman, I want to thank you for having this hearing and for our colleagues for being here at Sinclair for this important event. And I will just yield back with that with all the testimony.

Chairman ISSA. Thank you.

Mr. AUSTRIA. Thank you, Mr. Chairman, for holding this field hearing, and my colleagues for attending. It is very important, and I appreciate all the work that the Committee on Oversight and Government Reform has done thus far on this issue, and particularly Chairman Issa for scheduling this hearing. It is very important to our community. I know many of the folks here today I represent, and it is important that we have this hearing here in our area. And I thank you for that.

And I especially want to thank the Delphi salaried retirees for testifying today, and all their efforts over the past several years to hold the administration accountable so that retirees can receive a fair pension.

You know, I am very concerned about the unfair treatment received by Delphi salaried retirees during the Delphi and GM bankruptcy proceedings. The administration, as Mr. Burton pointed out, picking winners and losers with Delphi retirees is something that should trouble I think all Americans.

While Delphi workers stood side by side every day doing similar jobs at the same plants, the administration proactively made a decision that retirees from three unions would be basically unaffected by the bankruptcy. But that is not the reason that we are here today. The reason we are here is because of the unfair treatment of the Delphi salaried retirees.

While in some cases, and I had an opportunity to recently meet with several Delphi salaried retirees last week in my office from our area, and I listened to the challenges that they have been facing with this unfair treatment. Some salaried Delphi employees had a 30 to 70 percent reduction in their pensions, and others have lost all their health care and life insurance, and that is unacceptable and troubling. And it is unacceptable, and it must be fixed. And that is why we are here today to hear your testimony. And I thank you all for being here today.

Thank you, Mr. Chairman. I yield back.

Chairman ISSA. Thank you. Does the gentleman wish unanimous consent?

Mr. TURNER. Mr. Chairman, before we proceed, I would like to ask unanimous consent that the written statements of Delphi salaried retirees that are unable to be here today to testify be included in the record.

Chairman ISSA. Without objection, so ordered.

We now recognize our first panel of witnesses, Mr. Steven Gebbia.

Mr. GEBBIA. Gebbia.

Chairman ISSA. Gebbia. He is a former executive director for employee benefits and salary policies at Delphi Corp. And Mr. Chuck Cunningham is the former senior executive at Delphi Corp.

Gentleman, pursuant to the rules of the committee, would you please rise and take the oath?

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that both witnesses answered in the affirmative. Please take a seat.

Now the rules of the committee are pretty straightforward. Your entire statement will be placed in the record, plus any additional remarks that you would like in the next 5 days. We would ask you to stick to the 5-minute rule, which means that when the green light comes on, you may begin, when the yellow light comes on, please summarize, and when it gets red, I am going to gavel you fairly quickly, and I will do that for each of the panels. This really allows us to quickly get to the portions not in the record, which is the questions and answer that I think you want to give you to us as much as we want to receive it.

Mr. Cunningham.

## STATEMENTS OF CHUCK CUNNINGHAM, FORMER EXECUTIVE AT DELPHI CORP.; AND STEVE GEBBIA, FORMER EXECUTIVE AT DELPHI CORP.

### STATEMENT OF CHUCK CUNNINGHAM

Ms. CUNNINGHAM. Mr. Chairman, members of the committee, thank you so much for the opportunity for the Delphi retirees to tell our story today.

My name is Chuck Cunningham, and I am a retiree who worked 27 years for GM and three for Delphi. I now serve as the DSRA legal liaison to our Washington law firm, coordinating the activities between the retirees 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 merits or the wisdom of that bailout. That is not for us to discuss. But we are to talk about the consequences of those actions that were devastating for one group, the Delphi salaried retirees.

In order to ensure a successful emergence from bankruptcy for GM, the issue of Delphi had to be dealt with. And that was a task the auto task force and the Treasury took up, because Delphi was previously spun off from GM. It was their major parts supplier, and in order for GM to be successful in the future, it had to be a viable Delphi. It just had not happened. We understand that. I think everybody understands that.

One of the issues of importance to the purchase of Delphi was the Delphi pension liabilities. The auto task force looked at various options, and we know they looked at them, including returning those pensions to GM, but they chose not to do this. They decided that this would not look good on GM's balance sheet. Therefore, the decision was made to turn over all Delphi pensions to the PBGC with one caveat. The new GM would top off only Delphi UAW pensions and make them up. The auto task force called this a commercial decision to ensure the UAW's cooperation and restructuring.

More than a month later, the announcement was made that the pensions of the Delphi CWEA/IUE and steelworkers would also be topped up, leaving only the salaried employees and a few small unions without the top ups.

Now, we hear many, many times from people that advocate on the part of the administration and the task force that it was contractual. It was done in 1999. The truth of the matter is, as Representative Burton so well put, these things would have been thrown out in bankruptcy court. They always were. A less than astute student in bankruptcy knows that. But they were not.

As Fritz Henderson, the CEO of GM, testified at the time of the bankruptcy, there was absolutely no reason for them to have this arrangement with the CWEA/IUE steelworkers. They had no employees. They had divested themselves of all those employees from those unions. There was no contract, and he said so. In an A-K filing that was done by GM, it called these gratuitous. The tops offs were gratuitous.

Now, why were they done? We believe they were done because the IUE/CWEA steelworkers put pressure on the administration, put pressure on the Treasury, to provide those top offs also. It is interesting to note that a large portion of membership in those unions was present from the State of Ohio, which is a very important swing State. And we believe that these were basically politically motivated. Unfortunately, we do not have the pensions.

We thought it was a pure of discrimination against the salaried employees who had chosen not to join the union. I would ask anyone to think about this in terms of our country's social security. Now, suppose an administration decided that everybody but Asians would receive social security. I think we would be outraged. How could that be? How could we decide one group would not receive the same pension treatment as another? I think this is about the same thing we are talking about today.

The worst part about this is that PBGC, who I understand is on a later panel, was complicit in all this. They did not object to the impermissible followup plans that were disguised as top offs. They have always objected to those plans in the past, and in fact took LTV to the Supreme Court to fight the top up plan. But for some reason, they choose not to now. I would mention that the Secretary of Treasury is head of the board of directors, but that is a fact.

Instead——

Chairman ISSA. If you could summarize.

Mr. CUNNINGHAM. Okay. We are in a legal conflict right now, and we are moving forward with it, but we are in the discovery stage and moving very slowly. The PBGC has failed to give us the information that the Federal judge has demanded of them. We have had a motion to compel on many other issues. Three times they have been told to comply, but they will not comply.

Chairman ISSA. Thank you.

Mr. CUNNINGHAM. Thank you.

[The prepared statement of Mr. Cunningham follows:]

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.

Chairman ISSA. Mr. Gebbia.

**STATEMENT OF STEVEN GEBBIA**

Mr. GEBBIA. I am Steven Gebbia, former executive director of employee benefits for Delphi Corp. I held that position since Delphi's inception in 1999 until I retired in June earlier this year in 2011. During this entire time, I held administrative responsibilities for Delphi's local 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 the various pension plans and negotiating their provisions with the unions, ongoing communications with employees, retirees, unions, and oversight of the 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 on these pension plans, including annual evaluations of these plans as required by law.

During the almost 4-year period during 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 going to be terminated and taken over by the PBGC, and I was extremely disappointed when I learned that it was decided that only the hourly employee pension benefits, but not the salaried employee pension benefits, would be topped up by General Motors, and, therefore, would be made whole.

Several employees came to me and asked me to quantify for them the impact on this seemingly unexplainable action on their drastically reduced pension benefits. Because I did not personally have the access to the information they were requesting, I contacted Towers Watson and asked for their help in responding to the questions and concerns being raised by Delphi salaried employees.

During our discussion, Towers Watson offered to me and the members of my staff that while the salaried pension plan was not fully funded at the time of the involuntarily termination, it was, however, funded well above a level that would have required mandatory termination of this plan. In fact, Towers Watson stated that this plan had enough assets to pay benefits for decades to come, and that they also opined that this plan was very salvageable should there be any sincere desire to save it.

They stated the reasons for their opinions were based on these four items: one, the data derived from their most recent actuarial evaluation of the plan; two, the fact that the plan was frozen in October 2008, meaning no new benefits would accrue going forward from that point in time; three, the equity market, the stock market, at that time were at a historic low, keeping asset values lower than they normally would have been; and, four, the 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 salary pension plans but had not been taken over by the PBGC.

Now, to the best of my personal recollection, the Delphi salary pension plan had total liabilities of about $4 billion at this time, and was under funded by roughly $1 billion at the time, the plan was last valued by Towers Watson prior to the plan's termination.

This concludes my statement.

[The prepared statement of Mr. Gebbia follows:]

**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 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.

Chairman ISSA. Thank you. I am going to ask just a couple of questions, and I will start by saying my family was a General Motors family, but my father passed away many years ago. So, I am not personally affected by it, but I do look at the broader problem of what I call the would have, could have, and should have—what would have happened had this been handled any of the two ways that you are mentioning. I will follow up with that.

What could have happened if the government had, if you will, what is the best course to take rather than making a decision that undoubtedly had a lot to do with their relationship with the unions. And they are, in fact, getting made 100 percent whole.

And then, for our committee, I think the most important thing that we are here is in addition to trying to bring justice for the retirees that you represent, quite frankly we have to figure out how to make sure this does not happen again either by government fiat or, in fact, in the defined benefit packages that continue to sustain the main companies.

So, if we could just go through a couple of numbers to make sure I get this right. If I look at the two figures that are most significant, if General Motors had said this is all the money we can do to try to make as whole as we can everybody, even with the termination, basically leaving the salaried employees with about a 70 percent discount, and making whole the roughly twice as many union employees, it comes out to about to 66 percent if you simply divide the money equally. Is that roughly what you are seeing, is that the haircut that you took would have been less than half as much had the same amount of money been broadly put into all the pensions?

Mr. GEBBIA. I am not sure I can speak to that.

Chairman ISSA. That is roughly the arithmetic——

Mr. CUNNINGHAM. I guess would go to——

Chairman ISSA. I am not suggesting that it is a should have, would have, could have. But the fact is if everyone had a shared sacrifice as has been said by so many, the shared sacrifice would have been less than half as much for people represented by the DSRA, if it had been shared across all employees.

Mr. CUNNINGHAM. To give you a reference to that, I would agree with you, and I think that work on both sides of the——

Chairman ISSA. Well, the other part of it, if you simply left it continuing to go and assuming kind of a lackadaisical performance of the market, you still would have gotten about 75 cents on the dollars if it simply had been terminated. So, whether it is terminated at low and spread plus up, or do not terminate, either way it would have been half the haircut you had taken.

Mr. CUNNINGHAM. In fact, the irony is, if they would have just done what they were discussing with the PBGC and GM originally and folded it into the GM salary plan, those two plans together, the Delphi and the GM plan, would have been about 94 percent financed. But it was decided that they did not want to do that.

Chairman ISSA. You know, one of the things that our committee has to look at is, can we unring the bell? I think for many people here today, that is one of the biggest challenges. When we get to the third panel, the third panel is going to basically say due process was executed pursuant to our rules. We had no choice. You back up and say maybe they are right. Assuming that a bankruptcy did not give a clean bill of health to a very unusual deal, assuming that they did not do a Claude Act the way they did with Bernie Madoff and say, no, no, this was a preferential payment, and that preferential payment has to be divided throughout the entire plan, all of those would haves, could haves, and should haves we are going to look at.

Are there other areas that you think this committee should delve into going forward that would be helpful, not to specific litigation—that is not within our jurisdiction—but for us to see if we cannot bring justice separately in congressional action and, more importantly, to the American people beyond all of you who are so affected, making sure that this does not happen again?

Mr. GEBBIA. Well, I think interesting enough, some people say, well, you know, you are asking Congress to appropriate money. We are not. In fact, the PBGC has stated in an affidavit in the legal text that they are putting $2.1 billion into our plan. If you add that together with the $2.4 that they admit was the amount that plan was funded, that comes out to $4.5. Watson Wyatt came in somewhere between $3.4 and $4. All we would like to do is sit down with PBGC and work through those numbers. We believe that under normal actuarial data, that we could have a fully funded pension administered by the PBGC, which is totally legal, but we cannot even get them to give us the option. And it is a shame.

Chairman ISSA. Thank you. I am going to be respectful of the 5-minute rule also, and I will recognize Mr. Burton?

Mr. BURTON. Why can you not get the records if the court has said that those records must be given to you?

[Applause.]

Mr. BURTON. Has the judge moved a contempt citation against them for not complying?

Mr. GEBBIA. We have not set forth a motion for contempt yet. We have another meeting with the PBGC coming up. But this is the third time that the judge has ordered discovery, and it is the third time we are now seeing resistance on the part of the PBGC.

Mr. BURTON. Are you concerned that the judge will not move a contempt citation if you ask him to do so?

Mr. GEBBIA. I would rather not speak to that, but I do not think that is the case at all.

Mr. BURTON. Well, if that is not the case, and, of course, you are the lawyer and I am——

Mr. GEBBIA. I am not a lawyer. I am the liaison.

Mr. BURTON. Well, whatever you are. [Laughter.]

Chairman ISSA. Folks, please do not applaud to find out that he is not a lawyer. Please. [Laughter.]

The gentleman may continue.

Mr. BURTON. Well, whatever is your law firm, I would urge them, if the judge has said not once, not twice, but three times there should be discovery and that information should be given to you, that your law firm say, okay, enough is enough to the court and urge them to go ahead and move a contempt citation, because if the administration or if those in charge will not give it to you or to your legal counsel, then, by golly, they should be held in contempt, and there should be a severe fine involved.

So, anyhow, can you elaborate a little bit further? What is your lawyer's explanation for why they have not done it?

Mr. GEBBIA. Well, I think our lawyers cannot give an explanation for what they say.

Mr. BURTON. No, no, but, I mean, why have they not moved a contempt citation?

Mr. GEBBIA. I believe there are civil procedures that have to be followed before we can ask for that. There are civil rules of Federal court, and we are following those. And, believe me, we will do everything we can under the law to get that information.

We have gotten some information. We have what they call the administrative record, but we have not gotten all the information that the judge has given us in a broad discovery sense.

But a lot of the information we have received, like from the PBGC and the Treasury, is really interesting. It says—an e-mail, and it says, Dear John. The rest is redacted, and it says, yours truly, Fred. I mean, that is the type of information we are getting from them, huge redactions or nothing at all.

Mr. BURTON. Well, redactions, they are usually only utilized when there is some kind of national security issue involved. I cannot understand why the court is allowing redactions, which means crossing out things so you cannot read them.

But anyhow, thank you very much, Mr. Chairman. I yield back.

Chairman ISSA. I thank the gentleman.

Mr. TURNER [continuing]. Mr. Jordan has held because we are getting the picture of really the crux of the problem in that we do not have the information from the administration as to how these decisions were made for a full and complete understanding of what was the process that was undertaken, what was the decision-making that was undertaken, and how can we review it through congressional oversight, how can the courts review it, to determine if you have been treated fairly and properly.

Now, both of you were just testifying concerning the pension plans, and we all know that pensions are contractual obligations. They are highly and heavily regulated. And it was my understanding that as Delphi went into bankruptcy, General Motors went into bankruptcy, of course they had a number of different pension plans.

But the pension plans, if I am understanding you, is that you were unaware of any reason why your pension plan on an entitlement basis, a legal basis, would have less standing than other pension plans with Delphi and General Motors, because you went into the bankruptcy process that your pension would have been as great of a contractual obligation and heavily federally regulated so that when you went into the process, you did not expect it would be handled differently than the other pension. Is that correct?

Mr. GEBBIA. That is absolutely correct.

Mr. TURNER. They know your and everybody else's understanding also, and I want to congratulate you and the other Delphi salaried retirees because you have—in the manner in which you approach the success of Delphi, you have approached this issue. You have professionally managed it to give us the issues and the information so that we can do this oversight.

Now, you frequently referred to decisions that were made along the way that your pension plan was equal to everyone else's, went into bankruptcy, came out the other end not the same as everyone else's. There were decisions made you identified it was decided. And my understanding is because you have not gotten discovery because they have not been forthcoming to you, you do not know who made these decisions. You do not know the basis of those decisions. You do not know why and you do not know how. Is that correct?

Mr. GEBBIA. It is correct, from my standpoint, yes.

Mr. TURNER. And the thing that is most disturbing to me about that, which is why I am, again, so appreciative of Chairman Issa and Chairman Jordan for holding these hearings, is that this was done with taxpayers' dollars ultimately. The bankruptcy did not receive it as a normal bankruptcy. Our taxpayers' dollars were utilized, were injected into this process so that what came out at the other end with General Motors and Delphi was a different animal that went in, more than what would normally occur in a bankruptcy.

So, there is a higher level of scrutiny. It is not just that we want to ensure we are treated the same, which of course we do, but also you were not treated the same, and your own taxpayers' dollars, the taxpayers' dollars of every Delphi salaried retiree were used in that process. It is discriminating.

[Applause.]

Chairman ISSA. If you could hold the applause, it will help us make the record more complete.

Mr. TURNER. And the troubling aspect of the fact that the taxpayers' dollars were there is not in dispute, but I am going to ask you to provide some asset valuation, because it seems to me that the PGBC is giving us answers as to what the financial status of the pension was before it went into bankruptcy. It has used its financial status and bankruptcy and even its status as it came out. My understanding is that the basis of your complaint is that you do not agree with their assessment as to the valuation of the assets before the handling of the assets during bankruptcy or even the manner in which they were valuating or allocating assets as they came out. Is that correct?

Mr. GEBBIA. Well, I think the message that I wanted to convey here, coming from Towers Watson, who are the experts here, is the population of that salaried pension plan was not the reason that it was terminated. It did not have to be terminated because of the lack of funding. So, there must have been other reasons; I do not what they were, but it was not this.

Mr. CUNNINGHAM. Representative Turner, if I may make a point. After getting knowledge of that Towers Watson report, we contracted with PDS&M, which is a wholly owned subsidiary of Wells Fargo, to do a followup analysis for the court. They found the same thing, that our pension plan was funded at the time of termination. In fact, higher than that, over 80 percent, and that it stood above the midpoint of the hundred largest pension plans in the country at that time, none of which were terminated.

So, no, it was expeditious to do that. It was not the right thing to do. Besides, in cases like this, ERISA is clear. These kinds of things have to be adjudicated. They should not have done it like passing the gravy between the people who wanted to be rid of the plan and PBGC.

Mr. TURNER. Thank you. Mr. Chairman, I have looked at this as a who, what, when, where investigation on the Federal side, and also the issue of, you know, where was the money, where did it go, and then ultimately how do we get it back?

Chairman ISSA. Will the gentleman yield?

Mr. TURNER. Yes.

Chairman ISSA. I just want to interject into this portion of the testimony that although the committee has been receiving documents from the PBGC—relatively unredacted, we have gotten almost no documents from Treasury. I know that will not be as much mentioned in their dialog, but it is one of the early frustrations, that even the committee is having trouble getting from Treasury, the behind the scenes decision separate from the actual decision about witnesses we have here today.

I would be happy to recognize the chairman of the subcommittee?

Mr. JORDAN. I thank the Chair. And Mr. Turner is exactly right. This is all about transparency. What we have had, as Mr. Burton talked about, Mr. Bloom in our subcommittee and committees in Washington talking about the lack of transparency. And it is not just yours. It is a whole host of issues which closed facilities. We have had GM in Mansfield, OH, which I have the privilege of representing, close. We have had dealerships close.

So, the idea that we need to bind up all these decisions, particularly, as Mr. Turner pointed out, when taxpayer dollars are stake, and when the auto task force made up of Federal employees is making the decision, that is the key issue here. And when you start down this road, which is why I have been troubled by this whole process where government gets this involved in the private sector, where you have the President of the United States firing the CEO of General Motors, where you have the auto task force taking over, that is the problem. And we just want to continue to look at this, delve into this, and get the answers needed for transparency that is needed for taxpayers to understand what is going on.

With that, I would yield back my time. I would be happy to yield time to——

Chairman ISSA. Mr. Austria.

Mr. AUSTRIA. Well, thank you, Mr. Chairman. Mr. Gebbia and Mr. Cunningham, thank you both for being here today and sharing your story with us, because as I heard your testimony, like many members up here, my uncle and brother-in-law both retired from GM. It is very troubling as to what is happening here.

And I would like to just continue on, if you could, as much as you are able to, with the ongoing lawsuit between Delphi Salaried Retiree Association and the Pension Benefit Guaranty Corp.

Let me first of all say that I applaud your determination to ensure that Delphi retirees receive a fair pension. However, it is concerning to me that while the trial court has ordered this discovery, and you mentioned that there a lot of documents or some of the documents have been redacted as far as much of the information, which is very troubling. PBGC continues to delay and refuse to comply with these orders.

Are you able to describe to the committee the effects that these actions have on the retirees, and your lawsuit, and the longer this goes, because I think one of you mentioned, or someone mentioned to me before this hearing, that this has now been going on and this issue has been going on for over 1,000 days now.

Mr. CUNNINGHAM. I think that the second panel will probably do a better job of describing that. That is their mission here today. But I will say that, I mean, the financial burden of the lawsuit is tremendous. I mean, you know, the irony of this, again, is this whole thing. We are spending money that we do not have to fight the government that has our money. [Laughter.]

It is a little odd, but that is what we are doing. I mean——

Mr. AUSTRIA. It sounds like an unfair fight to me.

Mr. CUNNINGHAM. Well, you know, they can spend all the money they want on attorneys, and, believe me, we have wonderful attorneys, the best we could have. But, you know, it gets a little long, and it gets very expensive. But we are not going to quit.

Mr. AUSTRIA. Let me just, if I could, just one last comment because you brought up the Treasury, Mr. Chairman, which is very important. I know our delegation and many other Members of Congress signed that letter that we sent to Secretary Geithner and never get a response back. And I wanted to discuss that with you as well as to what input Delphi retirees and non-union employees had during this time to protect their interests in a fully funded pension and receiving benefits? I am talking about when Delphi went through bankruptcy in terms of the pension plan, so there were several parties that were involved, including the Treasury Department, the auto task force, PBGC, and each of these parties were concerned with resolving the bankruptcy in a manner that would be most beneficial for their particular interests.

What was your position on that?

Mr. CUNNINGHAM. We were never invited to the table in any way, shape, or form. Delphi salaried retirees were not invited to the table. Meetings were held, in fact, a meeting which we would love to get information on was held in Poughkeepsie, New York, at the direction of the bankruptcy court. The PBGC and its attorney, one which is here today, I think, were there. UAW was there. The Treasury Department was there. GM was there. Delphi salaried retirees were not there. So, all the constituents were there, except us.

Mr. AUSTRIA. Was there a reason that they gave you that you were not included in those meetings?

Mr. CUNNINGHAM. Well, they would not answer those kind of questions. You know, we went to bankruptcy court, this is not just the 6th Circuit we were fighting in. We fought in the bankruptcy courts. We watched the pirate case get thrown out just like that from the judge. We also watched three small unions that had the same problem. They were often important. I watched their attorneys argue cases where their contracts in 1999 were identical to the UAW's, and then they could not go back because they were too small. We reached out to those people and talked with them.

So, you know, we were not going to be part of the process. The decisions were made. If you go back, we have a lot of information, not enough, not all of it. But if you go back to even the written testimonies of Matthew Sullivan from the automotive task force, you will see that, you know, they basically orchestrated this whole thing, and the PGBC was complicit.

One of the other things, and I would just bring this up, and I have someone with me here today who is from the minority side from Ohio, that is Senator Sherrod Brown, who held up the nomination of Mr. Gotbaum, the director of the PBGC, until the President decided to do a recess appointment. And guess what Mr. Gotbaum did before that? He represented the DIP financers for Delphi, who were part of a deal with PBGC, with the Treasury. And ironically, a month ago, Harry Wilson, who was on the automotive task force, especially responsible for GM, and one of the architects, became a member of the advisory board of the PGBC. Something is wrong.

Chairman ISSA. Gentleman, I am going to ask you, before I dismiss you, one quick round of questions that I saved until the end, figuring someone else might ask you.

But the union represents UAW, correct, that they might strike if they did not get topped up. Everybody knows that. Do you believe as people who did not get the benefit, that the real difference was that salaried workers could not reasonably, you know, current workers threatened to walk off the job in order to ensure that you got the same benefit. Is that really what separated, in your mind, the difference between large organized labor using current willingness to strike or it pulls out of the deal, if you will, by saying it would versus the inability of you as retirees not represented by a union that would take current workers and strike? Do you believe that that was, more than anything else——

Mr. GEBBIA. I believe that is half, that half being the UAW had leverage, okay? But I believe the other top ups had nothing to do with leverage as far as GM's exit in bankruptcy. I believe they were totally influenced by using membership and the ability of those unions to lobby and get a paper trail.

Chairman ISSA. So, you would say one group had power and used it, the other group had the power of helping the President be elected or his party. Is that more or less——

Mr. GEBBIA. It is the only way I can see it. I mean, that is the way a logical person would.

Chairman ISSA. Well, thank you. As I said, I am going to ask all the panels the same question. I think that would be appropriate in this case.

We are going to take a very short recess and set up the second panel. Thank you.

[Recess.]

Chairman ISSA. Would everyone please take their seats? The hearing will now resume. We will now recognize our second panel.

Mr. Den Black is the former chief engineer at Delphi Corp. Mr. Bruce Gump is a former senior engineer at Delphi Corp. Ms. Mary Miller formerly provided human resource leadership at Delphi Corp.'s brake assembly operations. And Mr. Tom Rose is a former plant manager at Delphi.

Again, you saw in the first panel, pursuant to our rules of our committee, all witnesses are to be sworn. Would you please rise and take the oath? Raise your right hands.

[Witnesses sworn.]

Chairman ISSA. Let the record indicate all witnesses answered in the affirmative. Please be seated.

As you saw in the first panel, I thank and reward those who stay within 5 minutes. [Laughter.]

I am a little less thankful if you go over, and if you go far over, I will have to ask you to come to a stop. And I would like you to end on a high note, which is best done when the yellow light is on.

And so, with that, I believe we are starting with Mr. Black. The gentleman is recognized?

**STATEMENTS OF DEN BLACK, MEMBER OF THE DELPHI SALARIED RETIREES ASSOCIATION; BRUCE GUMP, MEMBER OF THE DELPHI SALARIED RETIREES ASSOCIATION; MARY MILLER, MEMBER OF THE DELPHI SALARIED RETIREES ASSOCIATION; AND TOM ROSE, MEMBER OF THE DELPHI SALARIED RETIREES ASSOCIATION**

## STATEMENT OF DEN BLACK

Mr. BLACK. Thank you for the opportunity for this panel to share the story of the Delphi Salaried Retirees Association, and to ask that this committee leave here today with a renewed determination to ensure 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, and my career spanned 36 years with GM and Delphi Corp.s—34 years with GM and only 2 years with Delphi. During my career, I served GM in a large variety of capacities, including project engineer, engineering supervisor, chief engineer of two 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 was the infinitely variable displacement AC compressor that has literally created tens of thousands of living wage jobs around the globe, subsequently jobs that have allowed workers to support their families since the mid-1980's. This innovation has been emulated by every major competitor, and as a result, everyone in the globe has followed our lead.

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.

Now, please understand that I only tell you this to emphasize that it is the salaried workers of General Motors and Delphi whose historical role has been to first imagine, then design and develop the automotive products and production facilities. Without question, the 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 had served as the chairperson for the Delphi Salaried Retirees Association since its inception in early February 2009. One thousand twelve very long and stressful days ago, the DSRA seeks to represent the interests of as many as 20,000 Delphi salaried retirees, 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 DSRA in February 2009, and subsequently we have left absolutely 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, to SIGTARP, to our union counterparts, to the national and local media everywhere. We have expended several million dollars in our unrelenting quest, dollars that many simply cannot afford to contribute due to their depleted financial resources. Nevertheless, they find a way to contribute anyhow. 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. However, they tell the story of 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, in 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 monitory reserves. Fortunately, my wife and I have not yet drowned. Not yet. But it is entirely possible that we could succumb, due to the huge pension losses imposed upon us in the 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 "Ratner Applauds Auto Bailout's Happy Ending." "I am a Delphi salaried retiree. The Delphi's story may have been a happy ending for Mr. Ratner, who is all warm and fuzzy to the point of almost crying tears of joy, but for many of us, myself being one, we have been crying tears of pain and anguish over what Delphi did to us." The remainder of his letter, which is anguishing indeed and only an indication of hundreds more, is in the record. And he is sitting right here in the audience, by the way, Mr. David Kane.

Since those first chaotic days of DSRA, we have come a long way with regard to our factual understanding of how we have become hapless victims of discriminatory actions of our Federal Government's executive branch. These actions have resulted in egregious harm to thousands while using taxpayer dollars. We have learned that the earned pension benefits of non-union Delphi retirees have been slashed by as much as 70 percent as a result of needless and inappropriate termination of our Delphi salaried pension funds by the Pension Benefits Guaranty Corp. We, of course, 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 by a top ups.

Let me be extremely clear, though. We do not for a moment begrudge the fact that our union counterparts have remained whole and they are receiving the pension benefits that they earned over decades. But we cannot abide by the loss of our earned pension benefits.

In addition, our ordeal has caught the attention of a growing number of media sources that include Fox News, New York Times, Wall Street Journal, The Daily Caller, or 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 for all.

Finally, we have learned that our congressional requests for full disclosure have been consistently ignored and obstructed by the executive branch. And in closing, our situation is not complicated. Very simply, our major union counterparts receive taxpayer provided top ups to keep their earned pension benefits, whole. In contrast, our nonunion 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. And we——

Chairman ISSA. Thank you. Your entire statement will be placed in the record.

[The prepared statement of Mr. Black follows:]

**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'.**

************************************************************************************

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.

**David Kane**
3311 Rods Drive
Sandusky, OH 44870
(330) 690-2931

************************************************************************************

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.

Chairman ISSA. Mr. Gump.

**STATEMENT OF BRUCE GUMP**

Mr. GUMP. Chairman Issa——

Chairman ISSA. By the way, only Senators get to filibuster. [Laughter.]

Mr. Gump.

Mr. GUMP. Chairman Issa, Congressman Turner, and members of the committee, thank you for another opportunity to explain our issues and the effect the treatment that 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 am here to represent the more than 20,000 Delphi salaried retirees. Please understand that these salaried retirees worked as secretaries, technicians, and engineers, as well as supervisors and managers. We worked hard. We did what we were told. We did everything right, and we expected to be paid for our efforts, both with our wages and the deferred compensation, known as a modest pension. But when our government stepped in, they chose to protect but only their favorite groups and throw us out like yesterday's trash.

The effects of this treatment have been devastating. My own story includes the fact that my wife and I have four children, all currently in college. Paying for health and life insurance, plus tuition, housing, and loans takes 90 percent of my monthly pension. Our other expenses, like utilities, mortgage, fuel, food, medicine, require us to spend my wife's small income, plus some of our savings each month. We calculate that so far over the last 30 months. We have spent more than $60,000 we had not planned to spend this early in my retirement.

The future outlook is getting worse for us. Just because I was a salaried worker instead of a member of a group our government chose to protect. I warned our children that they must be prepared to prove their commercial necessity to our government, as in the end that is all that matters. Citizenship, contribution to society, planning or effort, do not matter at all. That is the lesson in all of this. Government, the PBGC, and industry are not to be trusted.

The story of Mary Ann Hudzik is no better. She lost 40 percent of her earned pension. That, along with a 500 percent increase in the cost of healthcare insurance for herself and her self-employed husband, has resulted in them having to spend down their savings much faster than planned. Her husband has a degenerative disease, and so cannot always work, but no work means no pay when one is self-employed. Mary Ann is a fighter, though, and as the chairman of the group that she works on, I will guess that she has spent more than 7,000 hour over the last 30 months working to have this situation corrected. Mary Ann could not be here today because she has depleted her own physical resources and has contracted mononucleosis. I guarantee you she will continue to fight, though.

Jim Kane is here today. While working for Delphi in Mexico, he contracted a virus that destroyed the hearing in his right ear. Even though his superintendent told him to get whatever healthcare was needed, he ended up spending more than $12,000 out of his own retirement savings to pay for it. When he was involuntarily terminated he had lost his life and health care insurance, and then the PBGC reduced his pension by 30 percent. He has since had a heart attack and has developed diabetes. His retirement savings are now gone. He could no longer provide for his wife or himself. Living on a reduced pension alone is extremely difficult and may not be possible over time. He says, "I want what was promised, to survive with some dignity in my final years. I want justice."

That is what we all want, what was promised, to survive with dignity and justice.

The stories you hear today are just examples, and just the beginning. They will get worse as time goes forward as the economy takes its toll, and savings are depleted. Many of our members have already had to declare personal bankruptcy, some seeing their homes foreclosed. We have had to endure additional health issues from the stress and conditions and because we cannot always afford to get preventative care. I know a co-worker who delayed going to the doctor while he worked at a part-time job to earn enough to cover the expense. He knew something did not feel right, and by the time he did see his doctor and was diagnosed, it was too late. He died in just a few weeks.

On our larger scope, there are indications the effects on retirees are causing economic problems and our communities, too. In the area where I live in Northeast Ohio, a recent Brookings Institute study determined that Youngstown, OH has the highest concentration of poverty in the Nation. The poverty rate there got to be 49.7 percent. I saw an article in the local newspaper that 30 percent of the dwellings in Warren, OH, are unoccupied. There is a nine story bank building in good condition directly across the street from the courthouse was recently sold at auction for $75,000.

A study by Youngstown State University requested by Congress, and Tim Ryan, predicted that the pension issue alone, the cost to local economy, $58 million per year, or $145 million so far. When the cost of health care issues for all Delphi retirees is added, that that jumps to $400 million lost to the local economy so far. Adding in retirees from Dayton and Columbus and Sandusky, the losses in economic activity in Ohio are now over $1.2 billion. Nationally, it is about $4 billion, all because our government incorrectly chose to treat us as having no commercial necessity. The PBGC was willing to play along. These losses will continue to grow for decades if they are not corrected.

The PBGC has chosen to defy the Federal court. They are denying us access to documents and people we have requested. And one must ask why, and the only answer I can think of is that they feel that the consequences of defying the Federal court are not as bad as complying with it.

Here is one area where you can help. We need transparency on the actions of the PBGC and the administration regarding the treatment of the Delphi salaried retirees. I will summarize. We have lots of support, including the UAW, the Ohio AFL–CIO. The Senate in Ohio unanimously passed a resolution saying that all the retirees should be treated fairly. The State Democratic parties in both Ohio and Michigan, the Democratic Party, said that everybody should be treated fairly.

We need your help, and we ask your help to end this nightmare and reverse the precedents set by this administration and the PBGC, so that we and those behind us will have to deal with the same horrible issues. Help us stop the slide down the financial cliff. Thank you very much.

[The prepared statement of Mr. Gump follows:]

# 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.

Chairman ISSA. Thank you, Mr. Gump.
Ms. Miller.

**STATEMENT OF MARY MILLER**

Ms. MILLER. Thank you, Congressman Issa, for inviting me to testify today. I am Mary Miller. It is an honor and privilege to be here. I am here to tell you how the GM bailout has shattered my plans for retirement, and to ask you to fix this shameful injustice.

I worked for 22 years for General Motors and nine for Delphi. 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 hourly employee to manage the UAW and GM and Delphi training funds. 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 that my family and me?

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 tell you a little more about me, what my plan was for retirement, and what will happen to my plan unless you can fix this disaster.

I am a mother of four young adults ages 20 to 26. I am a home owner, a taxpayer, a person of deep faith, and a law abiding citizen. I am divorced. As a single mom, I have long 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. I started my own business, MTM Transformation Coaching, after I lost my job at Delphi. Being only 57, I knew I needed to start a new career to earn additional income. Due to the recessionary economy, it has been very challenging to build my coaching practice.

In 2009, Delphi stripped its retirees of all promised healthcare 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 in 2008 to $787 a month now, even with HCTC benefits. This means I cannot afford to provide health care coverage for my three sons who are in college. I feel that I have failed my children when I cannot help to provide the basics while they are full-time students.

And, sadly, that was just the beginning of the retirees' horror story. Just a few months later, the bottom fell out when the PBGC took over the Delphi pensions. The PBGC slashed my pension check by 30 percent. This is not a situation that can be remedied by just cutting out all discretionary spending. I am struggling to pay for the basics, to keep my 10-year-old car running, to pay my property taxes, and to make critical home repairs.

Even though I have bought health insurance for myself, I was not able to afford a CAT scan my doctor ordered last June. When I learned my portion of the bill would be $278, I had to take cancel the test.

I have 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 will not be able to maintain my own home or pay for my own medical needs. How can it be that a person who put herself through graduate school, worked hard in two Fortune 500 companies for over 31 years, 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 are in the right, you do not back down. We will never give up our fight to regain powerful pensions.

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

[The prepared statement of Ms. Miller follows:]

**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 hourly employee 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!

Chairman ISSA. Thank you.
Mr. Rose.

**STATEMENT OF TOM ROSE**

Mr. ROSE. Thank you, and good morning. My name is Tom Rose. I am a salaried retiree from Delphi, having worked 30 years for General Motors, and another 9 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, 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 Boulevard, and included many different management jobs, including, plant manager at the Kettering Boulevard plant. I was fortunate to lead many talented salaried and union people as we delivered quality parts to our customers on time. Our plans 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 healthcare than with Delphi, even with HCTC, and we are paying for it with 40 percent 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 jeopardy. 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 suspensions were sacrificed to help enable GM's emergence from a choreographed bankruptcy in a record 44 days.

You have heard some of how my wife and I have been impacted. I would like to share input from other salaried retirees: Saginaw, Michigan—"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." Dayton, OH—"This past year has been hard for me. I am making it through, but just by a thread. I had to borrow money from my family this month to make it to payday." Cicero, Indiana—"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 below poverty level guidelines." Boyne City, Michigan—"The 30 percent reduction in my pension has put my wife and me in a situation where in order to make ends meet, we have to live apart Monday through Friday, working in two separate towns. I have been blessed with a wonderful wife. We have been married for 35 years, and this is the first time in my career that we have been separated on a regular basis. It is very hard on both of us." Sandusky—"What makes what has been done to us so damndable is this. We are at an age and state of health where we cannot bounce back. There is too little time remaining and too little opportunity available. I do not want a hand out, but I do want a hand back of what was taken from me."

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. In closing, please let me give you to brief examples of exceptional sacrifice and the tenacity of our membership. Bonita Springs, Florida—"I have been pretty well consumed with caring for my wife, who has had a recurrence of breast cancer this spring. I have just sent $40 through PayPal, and next month I will send $35. Sorry I cannot do more, but we have some large medical bills this year." West Carrollton, OH—"In April, I took a part time job, along with my full time day job. I would get up at 5 AM and return home at 11 p.m. I soon had to quit my part time job for concerns about my health and lack of rest. After 39½ 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's side by dragging this out and not cooperating. This may someday deplete our funds in a way we cannot support our lawyers."

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 hold 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 and taken away by the executive branch of our own government.

Thank you for this opportunity.

[The prepared statement of Mr. Rose follows:]

**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.

Saginaw, Michigan
*"...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."*

Dayton, Ohio
*"...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."*

Cicero, Indiana
*"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."*

Boyne City, Michigan
*"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!"*

Sandusky, Ohio
*"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.

Chairman ISSA. Thank you, Mr. Rose.

As I said to the earlier panel, I am going to ask each panel substantially the same question, and I know some of you may have slightly different takes on it. And I will preface it by saying, you know, when I worked for General Motors, I was a machinist, Aerospace Workers Union in Cleveland. Enjoyed the job, enjoyed the benefits, did not stay for a career. But I knew at that time I was represented by a powerful union that had a lot of clout. None of you were represented by a powerful union who had a lot of clout. What part do you believe not being represented by a union played in the decision to have people, like Mr. Black and all of you who had special skills—some might say harder to duplicate skills—than a line worker, in many cases, choose to have retirees of that category receive only what was in the bank, so to speak, versus union workers who were topped up?

Anyone can answer. I want to make sure we go away with the record clear about why you might make a decision that one group was important versus another. Is there any reason you can find other than, in fact, the clout of the union and its influence on the administration?

Mr. GUMP. The reason is the involvement of the U.S. Government. The issue here is that the government stepped into this with our dollars, with our money, right, and allowed General Motors to make totally different decisions than they would have had that not happened. In the end, the Treasury knew that the folks represented by the unions tend to support them very strongly. And so, there is even some testimony that has already been offered in deposition that indicates that the political sensitivity of certain groups was a criteria that was considered during the bailout. So, we know that that was one of the things that was an issue.

I do not believe that the UAW would have struck General Motors, which was already in bankruptcy and in danger of liquidation, because that would have ruined all of the jobs for all of their members at General Motors. They would have found some other way to have worked and tried to make their point with General Motors. I do not think there would have been a general strike.

Chairman ISSA. So, your belief is that it was more the political importance to the current administration rather than the likelihood of a strike leading to the crippling of the company.

Mr. BLACK. Let me comment also and reiterate what was mentioned in the prior testimony, and that was immediately when the plan of reorganization for General Motors was announced, it immediately was said that our UAW counterparts would be topped up. But the other major unions were left out of that. Some weeks passed before it eventually came that the decision was changed to also top up our IUE counterparts and steelworkers, okay? That alone is indicative of why if they all had contractual agreements, why did it happen?

And, of course, clearly why it happened, especially in this State of Ohio, which I am a Buckeye and started my job with IUE representation here, is that IUE is very, very, very powerful in Ohio. And the decision to change and include the IUE clearly had to do with political considerations, not contractual considerations.

Chairman ISSA. Mr. Rose.

Mr. ROSE. I concur. As you heard Mr. Gebbia's testimony, there was no financial justification given the, you know, actuarial funding level of the pension plan. So, what else happened? It is my personal belief that when the Federal Government interjected itself into the GM bankruptcy process, and you can only wonder why they did, but to me, clearly the Delphi pension plan was an obstacle to quickly getting GM out of bankruptcy. So, they dealt with it in a way that I believe favored the current administration politically.

Chairman ISSA. Well, I also serve on the Judiciary Committee, and I was there for bankruptcy reform. Mr. Jordan also serves on the committee. The amazing thing to me is that we in government do not need a Constitution for the powerful. We do not need laws for the powerful. We need the Constitution and laws for the weak. Ultimately the success of our democracy is about the minority having rights, not the majority. If you want to see the majority have rights, just go to any Third World country and see who is in charge. They do not need any more government than in fact a one party.

So, I can only say to you and to all of the salaried employees that have suffered now and will continue to suffer until there is a resolution, that this committee will look into both the bankruptcy inequities and, in fact, the misconduct that we believe may in part have come out of Treasury and come out of the administration, to see if we cannot get a full disclosure and then rectification once that has seen the light of day.

I know that is not enough while you are continuing to suffer, but it is what we will do, and this committee will additionally make public such documents as we can from our discovery. Now, that will not necessary be the documents you want, but it is our intention to be as transparent as we can be, and particularly when we get into the details of Treasury's, what they did, why they did it, and what they did not tell all of you.

And with that, I would recognize former chairman of the committee, Mr. Burton?

Mr. BURTON. I think these stories that we have heard are heart rendering. It makes you kind of ashamed that our government even considers doing these sorts of things. We have another investigation going on right now with the National Labor Relations Board where they are trying to use political muscle to force unionism on a company down in South Carolina. It is a different issue, but, once again, you have the Federal Government, this administration, trying to control the people of this country instead of working for the people of this country. And I think it is very sad.

I do not have any questions, Mr. Chairman.

Chairman ISSA. I thank the gentleman. Mr. Turner.

Mr. TURNER. Thank you for your compelling testimony, and also thank you for your diligence in working on this issue. I know in addition to sharing your personal stories that each of you have taken responsibility in working on behalf of yourselves and all the Delphi retirees on this issue.

I want to commend you because one of the things that you have said that I think is very striking is the wide range of support that you have. The unions who have received their full pensions support that the outcome should have been you had received your full pensions. So, this is not an issue of division between you. It is winners and losers chosen by the government, not chosen by your fellow coworkers. And I think their solidarity with you is incredibly compelling.

And I also note your statement that in Ohio your strong support that you have, and the State Senate had passed a resolution calling on full funding of the pensions. I know Secretary Peggy Laner was here earlier, and she was one of the champions that you have worked with on this issue.

Over the last several years that I had the opportunity to work with you on this, and we have tried to advance this in a number of areas, one asking for GAO studies of the GAO today. Another study is ongoing. And working with the chairman, Chairman Jordan, on trying on the congressional side to get documents produced, to get people to answer appropriate questions, working also in putting additional pressure on the administration and then looking to, as your litigation proceeds, ways in which we might be able to assist in making certain that the story that you do not know yet, how did this happen, gets told.

So, I want to tell you that, I think you have heard from the chairman, and I know that you know from the things that are in front of us that we are not going to stop on this. You are not going to stop, and we are not going to stop. The administration is not going to be able to say, I am not going to tell the Federal courts, I am not going to tell Congress how or why I did this. The administration is going to have to 'fess up that there were decisions that they made. We want to know why and the basis of the decisions.

We know the outcome. The outcome is discriminatory. We need to determine and learn the manner in which this was done so that we can correct it. So, thank you for your diligence. Thank you for being here, and also thank you for the fact that you have continued to reach out so that this is not just an issue of you standing here alone. It is an issue of you also working with the other Delphi retirees in unison. So, thank you again.

Chairman ISSA. Thank the gentleman. Mr. Jordan.

Mr. JORDAN. If I could just real quickly, Mr. Black, come back to something you had just said. GM initially only wanted to top up the UAW plan. And yet, to your understanding, Treasury forced them to also add in the IUE and the UAW.

Mr. BLACK. Yeah. For about 40 days in continuing discussions by the IUE and the steelworkers, a miraculous thing happened, and it was decided that we will also top them up.

Mr. JORDAN. Yes. Mr. Chairman, I would just point out that this pattern, you remember in prior hearings we have had, the overall restructuring plan that GM first submitted to the auto task force was turned down, was rejected. And, you know, this idea that GM would make the decisions and not people in Treasury, not the auto task, not the government I think is just absolutely not true. Because the initial restructuring plan was turned down, the subsequent restructuring plan was accepted where facilities were closed, dealerships were closed, etc.

So, again, this I think points to a pattern where political influence was, in fact, at play. And I yield back.

Chairman ISSA. Go ahead.

Mr. GUMP. I am sorry. You asked at the last hearing to get a copy of the first restructuring plan.

Mr. JORDAN. We are looking over it now.

Mr. GUMP. You got it?

Mr. JORDAN. Yes.

Chairman ISSA. Yes. In consultation with the chairman, our anticipation is we would post an appropriately and limited redacted portion of that as soon as it has been reviewed by counsel. As you know, our committee has a unilateral right to determine what we will or will not release. We try to be considerate, but certainly this is something that has a huge public interest.

Mr. Austria.

Mr. AUSTRIA. Thank you, Mr. Chairman. Let me, first of all, take a moment to thank all of you for being here today. I think it is important that you share the stories that you have with this committee so we understand the direct impact it is having on you all and other families, which is very important. I know the last few years have been extremely difficult for you and your families, but we appreciate your determination to ensure that every Delphi retiree receives a fair pension.

And what I would like to ask you is about, and you have touched on this, is the reduced pensions. I know, Ms. Miller, you mentioned that your pension has been reduced another 30 percent. Mr. Gump, I think you talked about somebody who had a 49 percent loss.

And, as you know, the Federal law limits the maximum benefit a person can receive through the PBGC under a partially funded pension plan. The limit is based on the year the plan was terminated or went bankrupt and does not include an adjustment for inflation. As a result, not only have Delphi salaried employees had pensions cut, as I mentioned earlier, and you have mentioned also, as much as 70 percent with our discussions, Mr. Rose, last week, but each year, and this is the point I am trying to make, each year your pension has less and less purchasing power.

Can you describe for the committee how this has impacted your lives. And also, Mr. Black, you talked about the future, I mean, in planning for the future when you have less and less purchasing power.

Mr. ROSE. Yeah, inevitably, of course, now there are signs that even with inflation and everything it might be picking up steam, especially if you are trying to buy gasoline or food, so indeed. You know, those who have not suffered complete economic wreckage yet will most certainly suffer it in the next decade or two should they be unfortunate enough to live that long. [Laughter.]

Mr. AUSTRIA. That is the bottom line.

Mr. GUMP. I would like to point out, you talked about the 49.7 percent. That is actually the levels of concentrated poverty in Youngstown, OH is what I was trying to make. That same study, by the way, pointed up that for every million dollars lost, about 30 people downstream of us will also lose their jobs. So, you go do the math, at $161 million in the Mahoney Valley alone up in Northeast Ohio, that is nearly 5,000 people that were still waitresses, and service workers, and electricians, and plumbers that might do work. They lose their jobs, too, because we are not out participating in the economy any more, all right? That is the effect that commercial necessity, if you will, of including us. But the government chose to not do that because it was not just commercial necessity; it was also political necessity, all right? We are absolutely convinced of.

Mr. AUSTRIA. One follow-up real quick, Mr. Chairman, if I can in the short time allotted. Today, I think all four of you expressed your frustration with government, and the numerous hardships that have been put on you as a result of what has happened. And I know many of the retirees feel betrayed by the government because the administration's quest to quickly resolve the Delphi bankruptcy without adequate consideration for the effects on retirees.

And I know this panel, and I know this committee, and many of my colleagues have worked very hard to help your cause through the hearings and requesting this information from the administration. But I also know there have been obstacles and roadblocks have been put forward with government, and also Members of Congress. I know we want to continue to work hard. I have co-sponsored bills. There have been letters that we have sent that we have taken the lead on, and working coordinating with you. But what are some of those roadblocks that you have been faced with in trying to work with government and trying to work with Congress in particular?

Mr. GUMP. I think, first of all, the reluctance of both the Treasury and the PBGC to allow any transparency. They essentially tell us that we should be glad to be able to get anything at all, while our next door neighbors are out buying boats and taking vacations because they were members of the union. I think that is probably the most difficult.

There are some obvious political issues, one party versus another. Those kinds of issues have played a role.

What we found was that if we do get an opportunity to speak to the right people and explain the realities of the decisions that they are making, they tend to carve out niches in their ideologies to try to work against that. I would point out that we do have support on both sides of the aisle, very strong support. In fact, two of our very best supporters up to now have been Senator Brown and Congressman Ryan, both Democrats. That is not to leave out, you know, your committee and others on that side of the aisle.

The point I am trying to make is that this really is not an issue of one party versus another. The parties themselves have spoken and said this was wrong. This is an issue of right and wrong, and that is why they are protecting it. That is why they do not want to let anything out. They know they did wrong. They do not want to admit it. They do not want to allow anything out. So, they are going to go to the mat and prevent anybody from learning what happened. That is where we need your help.

Mr. ROSE. So, in a nutshell, of course, the roadblock has been the utter unwillingness to have transparency, utter unwillingness. And even Federal judges are slapped upside the head when they say you are going to be transparent. That is the problem.

Mr. AUSTRIA. Thank you.

Chairman ISSA. We are going to have a very limited second round. What I would add for all of you, I think you have done a good job of explaining for the record that this is not about bringing down the successes of a union or several unions looking out for the benefit of the people they represent. They did their job. We expect they would. And union members come in all party persuasions, from the far left to the far right. So, hopefully you are helping us make that record, additionally making the record that this is not a partisan issue of Republicans versus Democrats. You have support on both sides of the aisle in the House and the Senate. And, last, that in fact we cannot make you whole by taking away anything from the men and women who are receiving a greater benefit. To make you whole, we have to use other means available, either with Congress or with the Benefit Corp.

With that, I would recognize Mr. Burton for a second round of questions?

Mr. BURTON. Yes, real quickly, one of the things that Mr. Bloom, who lied to our committee and then said he could not remember once he was caught, staff just reminded me, he was the senior advisor to the President of the steelworkers union before he got his present position. So, when you think that there was not politics involved, it is clear as the day is long that it was definitely involved.

I just had one question I wanted to ask, Mr. Chairman, and that is, do you have any idea how much it has cost in legal fees, the people who are involved in this lawsuit?

Mr. ROSE. Yeah. We are over several million dollars so far, and we got plenty more if we need it.

Mr. GUMP. I would like to make the point, if I may, Mr. Burton, that the attorneys have worked very strongly and carefully with us on that. And our members send in $10, $20, $30 a month, $50 a month to support that, and every bill has been paid, and we are ahead. We are in this. We are going to finish this, and our attorneys are, too.

Mr. BURTON. Well, I appreciate your dedication. But it is unfortunate that the people who are suffering have to pony up the money for legal fees as well when their opponent, the Federal Government, has unlimited resources.

Chairman ISSA. I thank all of you for your testimony. Mr. Rose, you included a number of references to other letters that you had received. As I said in the beginning of the hearing, we will leave the record open for five additional days. That would include any and all letters or information from your various members that you want to make sure were added to make the record complete.

And with that, as we take a brief recess to set up the next panel, I want to ask the audience to be just as kind and considerate to people who were obligated to come here to tell what is to a great extent the other side of the story. They are career professionals. Their job is not to make political decisions, and they are here at our request to explain what they can and to take candid questions. So, I want you to be just as genteel and kind as you have been to the first two panels. [Laughter.]

With that, we will take a short recess.

[Recess.]

Chairman ISSA. Thank you. This hearing will come back to order. I am going to place in the record by unanimous consent the additional statements of Senator Sherrod Brown and Congressman Tim Ryan. They were unable to be here today, but wanted to make sure their thoughts were known on this hearing.

[The information referred to follows:]

SHERROD BROWN
OHIO

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
APPROPRIATIONS
BANKING, HOUSING, AND URBAN AFFAIRS
VETERANS' AFFAIRS
SELECT COMMITTEE ON ETHICS

# United States Senate

WASHINGTON, DC 20510

November 10, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Ranking Member:

I would like to welcome you to Ohio, and to thank you for your willingness to investigate this important matter: the treatment of the pensions held by salaried Delphi retirees.

The bankruptcies of General Motors (GM) and Delphi affected thousands of individuals. After helping build our nation and a stable middle class, the men and women of GM and Delphi were left without their promised retirement benefits. Delphi was created in 1999 as a spinoff of GM, and most Delphi employees spent two-thirds of their careers as GM employees. When Delphi entered bankruptcy protection in 2005, many long-term employees were forced into early retirement as part of the restructuring agreement. Early retirement or supplemental benefits are not guaranteed by the Pension Benefit Guaranty Corporation (PBGC), and as a result many of these Delphi retirees have lost a substantial percentage of their pension income.

These reductions in pension benefits can have drastic repercussions on individual retirees, their loved ones, and their communities. Now, the very people who built GM through their labor have lost the security of a middle-class retirement that they earned over a lifetime of hard work and service.

The federal government – whose efforts have helped save our nation's automotive industry – has the ability to treat the Delphi retirees fairly. Specifically, the PBGC – which terminated the Delphi pensions – should do all it can to ensure that these retirees receive the benefits that they have earned.

This hearing's goal is simple: how can we ensure that the Delphi retirees are treated fairly? I thank the Committee for its efforts, and am grateful for its efforts to achieve a fair and equitable resolution of this matter.

Sincerely,

Sherrod Brown

Sherrod Brown
United States Senator

1421 Longworth Building
Washington, DC 20515
202-225-5261
202-225-3719 FAX

Armed Services Committee

Committee on the Budget

Tim Ryan
Congress of the United States
17th District, Ohio

November 10, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Ranking Member:

Thank you for conducting this important hearing entitled "Delphi Pension Fallout: Federal Government Picked Winners and Losers, So Who Won and Who Lost?"

The bankruptcy of General Motors (GM) and Delphi left thousands of Delphi salaried retirees without the pension benefits they were promised. The auto industry helped build America's middle-class and now many of those who built the industry have lost the middle class retirement earned over a lifetime.

In 1999, Delphi was created through the spinoff of the automotive components group from GM. The majority of the Delphi employees spent two-thirds of their careers as GM employees. In 2005, Delphi entered bankruptcy protection. As part of the restructuring of the company, many long-term employees were forced into early retirement. In February 2009, Delphi salaried retirees lost their health care benefits and in July, 2009, the Pension Benefit Guaranty Corporation (PBGC) terminated Delphi's pension plans.

GM agreed to make up the difference between the PBGC benefit and earned benefits for the majority of Delphi hourly employees. However, Delphi salaried employees and some hourly employees represented by the International Union of Operating Engineers, the International Brotherhood of Electrical Workers, and the Machinists have had their pension benefits drastically reduced.

These reductions have had a profoundly negative effect on individual retirees, their families and their communities. They are looking for fairness. As a 60% shareholder in GM, I believe that the federal government is in a position to restore fairness for these retirees and to minimize the economic impact of the pension loss on their communities.

197 West Market Street
Warren, OH 44481
330-373-0074
330-373-0098 FAX

241 Federal Plaza West
Youngstown, OH 44503
330-740-0193
330-740-0182 FAX

1030 East Tallmadge Avenue
Akron, OH 44310
330-630-7311
330-630-7314 FAX

Toll-Free: 1-800-856-4152
www.house.gov/timryan

Furthermore, I believe that the PBGC should do everything in its power to ensure that these retirees receive the benefits they deserve. I understand that the value of the Delphi Salaried Plan at the time of its termination has been disputed. I have asked the PBGC for further information to help better understand the full commitment of PBGC.

I urge the Committee to help determine the facts of this matter and then to join me in supporting a fair and equitable solution to end the plight of these deserving workers.

Sincerely,

Tim Ryan

Tim Ryan
Member of Congress

Chairman ISSA. With that, we now recognize our third panel, as I said, career professionals. Ms. Barbara Bovbjerg is director for education, work force, and income security issues at the U.S. Government Accountability Office, which is a branch of Congress. Mr. Vincent Snowbarger is the deputy director for operations at the Pension Benefit Guaranty Corp., again, a career professional.

Pursuant to the committee rules, I would ask you to rise and take the oath.

[Witnesses sworn.]

Chairman ISSA. Let the record indicate that both witnesses answered in the affirmative. And you have sat patiently through two previous panels, so you know it better than I can describe how this is going to work.

And, Ms. Bovbjerg, you first?

**STATEMENTS OF BARBARA BOVBJERG, MANAGING DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE; AND VINCENT K. SNOWBARGER, DEPUTY DIRECTOR FOR OPERATIONS, PENSION BENEFIT GUARANTY CORP.**

**STATEMENT OF BARBARA BOVBJERG**

Ms. BOVBJERG. Thank YOU, Mr. Chairman, members of the committee. I appreciate your inviting me here today to speak about events leading to termination of the Delphi pension plans, and the differential benefit payments that resulted. My beat at GAO includes income security issues, and we have heard truly heart wrenching stories this morning.

My testimony today presents a timeline of key events leading to the plan's termination, focusing in particular on decisions allowing General Motors to provide retirement benefit supplements to some Delphi employees, but not to others. This information is drawn from our March 2011 report prepared for Mr. Turner and others, and relies on publicly available documents.

The story begins in 1999 when the Delphi Corp., once part of GM was spun off as an independent company. As part of that arrangement, GM was required to bargain with the unions affected by the spin off. In those negotiations, GM agreed to provide top ups to collectively bargained employees, meaning that if something went wrong with the pension plans for these employees under Delphi, GM would make good on their promised benefits.

At the time of these agreements, Delphi's hourly plan was not fully funded, meaning that absent a top up agreement, some benefits could have been at risk. In contract at that time, the Delphi salaried employees' plan was fully funded.

So, fast forward to October 2005 when Delphi filed for bankruptcy. The pension plans were under funded, and Delphi was not planning to make contributions to these plans during the bankruptcy process; hence, prospects for the plans and a prospect for participants' future benefits got substantially worse.

Two years later in 2007, Delphi was still in bankruptcy. In its initial reorganization plan, Delphi proposed to emerge from bankruptcy with its pension plans intact, which could have removed the need for top up agreements, but this proposal fell through. Shortly thereafter in 2008, GM agreed to take responsibility for about $3.4 billion of net liabilities in Delphi's hourly plan in two phases. Phase one took place in September 2008 when GM assumed about $2 billion in plan liabilities. Economic conditions deteriorated throughout the auto industry in fall 2008, as we all know. GM's losses led the company to seek assistance from the Federal Government.

By April 2009, the Department of the Treasury was working with GM to develop a restructuring plan, and by June, GM, too, had filed for bankruptcy.

In May 2009, Treasury believed that the hourly plan would be assumed by GM, at least for the UAW workers. However, phase two of the Delphi/GM transfer agreement required Delphi to pay GM about $2 billion, and because Delphi, in its bankrupt state, could not make such a payment, the phase two transfer never took place. Meanwhile, GM and Treasury both understood that the salary plan would be terminated.

In June 2009, as part of an arrangement for GM to emerge from bankruptcy, GM and the UAW agreed to modify wages, benefits, and work rules to be more cost competitive, and agreed that new GM would assume all employment-related obligations and liabilities for their hourly benefit plan. This agreement did not include other unions or salaried employees.

Meanwhile, Delphi and PBGC began the process of what we call a distress termination of Delphi pension plans. PBGC estimated that Delphi plans were $7 billion under funded, with PBGC expected to bear $6 billion of that shortfall, and Delphi plan participants the remaining $1 billion through the application of benefit limitations as required by law.

After objections from the other unions and the salaried employees, objections that threatened to thwart Delphi's and GM's future viability, GM entered into a settlement agreement that, among other things, resulted in top up payments to the unionized workers of the main unions. No such agreement pertained to salaried workers, and this is where the situation lies today.

GAO will be reporting more substantively to Mr. Turner and other requestors on these issues next month, and in that work, we will be talking about what precipitated plan termination, what actions were taken to preserve assets for PBGC in the plans, why some employees were topped up and others not, and what was communicated to employees about the termination, and we expect that in mid-December. And, unfortunately, I will not be able to talk about that work in progress today.

Thank you, Mr. Chairman. That completed my statement.

[The prepared statement of Ms. Bovbjerg follows:]

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

GAO-12-234T

November 14, 2011

# DELPHI CORPORATION

## Key Events Leading to Termination of the Delphi Defined Benefit Plans

GAO Accountability • Integrity • Reliability

Highlights

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

### 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.

Mr. Chairman and Members of the Committee:

**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).

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

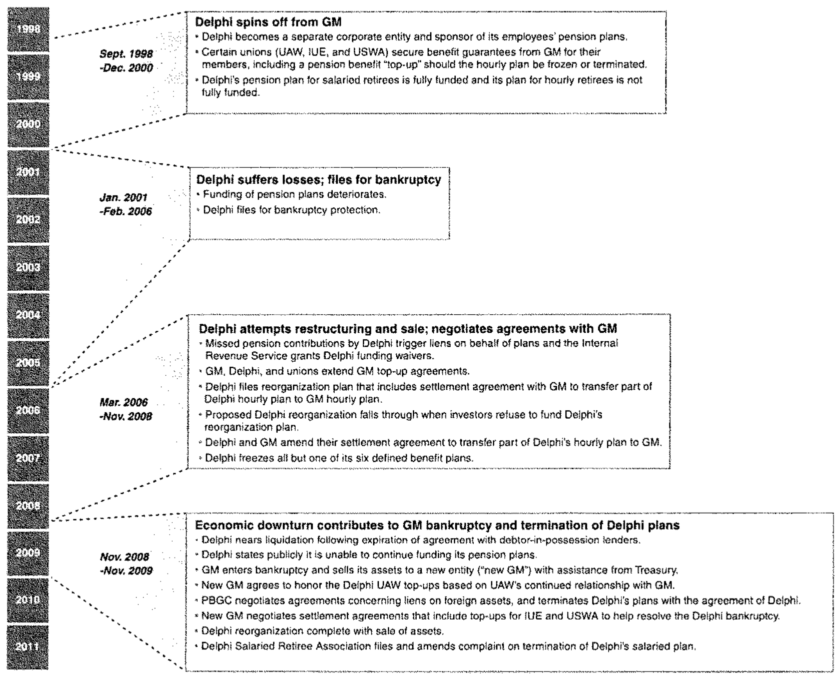
[4]For the purposes of this report, "Delphi" refers to the company prior to its emergence from Chapter 11 reorganization. Postbankruptcy Delphi is DPH Holdings Corporation, a liquidating entity, and Delphi Automotive LLP is a United Kingdom limited partnership, which was created in 2009 and purchased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

[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).

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

### Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, http://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

## Connect with GAO

Connect with GAO on Facebook, Flickr, Twitter, and YouTube. Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts. Visit GAO on the web at www.gao.gov.

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Website: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

## Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

## Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Chairman ISSA. Thank you.
Mr. Snowbarger.

**STATEMENT OF VINCENT SNOWBARGER**

Mr. SNOWBARGER. Good morning, Chairman Issa, and other members of the committee. I am Vince Snowbarger, deputy director of operations at the Pension Benefit Guaranty Corp., and I also ought to mention at the times relevant to our proceedings here, I was the acting director of PBGC.

I will testify today about the termination of the pension plans of Delphi Corp., the Nation's largest producer of auto parts, and specifically about PBGC's role.

As you know, in July 2009, PBGC stepped in to protect the pension of Delphi's 70,000 workers and retirees. PBGC will cover about $6 billion of the plan's shortfall, but there is also a shortfall of $1.2 billion in benefits that are not guaranteed by the insurance program.

Delphi, which was originally 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 the salaried and hourly pension plans to the newly established Delphi salaried and hourly defined benefit pension plans. GM negotiated with certain unions to provide benefit guarantees if the hourly plan terminated or was frozen at a later date. Delphi began suffering significant losses in January 2001, and the funding of pension plans deteriorated.

On October 8, 2005, Delphi entered chapter 11 bankruptcy, and ultimately liquidated in 2009. The old Delphi ceased to exist. The new Delphi, as United Kingdom Co. purchased most of the old Delphi's assets, including its name.

After Delphi entered into bankruptcy protection in October 2005, PBGC worked intensely with Delphi, GM, and other stakeholders to keep the pension plans ongoing. As mentioned earlier, during the bankruptcy Delphi consistently told PBGC and its employees that it intended to reorganize with the 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-bankruptcy foreign subsidiaries.

Beginning in March 2006, PBGC perfected those 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 Delphi bankruptcy court, and as a part of that reorganization, GM and Delphi entered into a settlement agreement to transfer part of Delphi's hourly plan to GM's hourly plan. Delphi was to continue to sponsor all of its other plans, including the salaried plan.

That fell through in April 2008, but in the latter half of 2008, as Ms. Bovbjerg has mentioned, Delphi still anticipated reorganization through bankruptcy, maintain its salaried plans and merge the hourly plan with the GM hourly plan. And they indeed transferred part of the hourly plan to GM for compensation.

Unfortunately, Delphi experienced severely declining revenues in the fall of 2008 and the spring of 2009 as GM and other manufacturers sharply reduced production. 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 prospects of imminent liquidation.

On April 21, 2009, I signed a notice of determination seeking to terminate the six Delphi salaried and hourly pension plans to avoid losses to participants in the insurance fund, if the DIP lenders were to foreclose on their collateral. 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. However, in July 2009 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 differently than the hourly plan. The only difference in treatment of the participants resulted from decisions made by GM. PBGC's involvement in the Delphi and GM 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 the old GM in 1999.

In conclusion, Mr. Chairman, companies that sponsor pension plans have the responsibility to live up to the promises they made to their workers and retirees. Plans come to PBGC because their sponsors have failed to properly fund them. In unfortunate cases like Delphi where sponsors fail and liquidate, PBGC is forced to, and will, step in to protect workers and retirees.

I would be happy to answer questions.

[The prepared statement of Mr. Snowbarger follows:]

**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.

Chairman ISSA. Thank you.

I recognize myself for a round of questioning.

In June 2009, General Motors, as you know, received $50 billion in taxpayer money, and it used $2.5 billion of that $50 billion to buy a stake in Delphi, essentially an indirect bailout. In early 2011, Delphi bought back its assets from General Motors. However, GM still owes about $26 billion to the taxpayers, and unless the stock more than doubles, the taxpayers will not be made whole at General Motors.

So, ultimately that $2.5 billion was, in fact, simply a pass through of taxpayers' dollars. It was not within General Motors' means or anticipated means in the foreseeable time. Literally, they need 10 years' worth of profits they have never had in modern times in order to come close to paying back the government.

So, in that scenario, the question I would ask you, first of all, is, at the time the PBGC terminated Delphi's pension, did you know General Motors was going to own a large stake in Delphi? Did you know about the purchase?

Mr. SNOWBARGER. Obviously we knew about the interconnection between GM and Delphi, but at the time we made the decision in April 2009 that the plans were going to need to be terminated, I do not think any decision had been made at that point. Well, I guess there had been a couple of——

Chairman ISSA. April to June was pretty close. That is why I asked.

Mr. SNOWBARGER. No, I understand that. But I think it is a significant difference in timing. Again, our decision was based on factors that were beyond what was happening with GM. We were looking solely at——

Chairman ISSA. Sure, and I am not questioning your termination. It is simply, at that time—I mean, April to June was very, very close. At the time of the termination, were you aware of obviously the top ups and this investment that was literally a conduit of taxpayer money?

Mr. SNOWBARGER. My understanding is those decisions had not been made by GM at that point in time.

Chairman ISSA. Did you know——

Mr. SNOWBARGER. To my knowledge.

Chairman ISSA. Did you have any knowledge that it might happen?

Mr. SNOWBARGER. We understood that that agreement was in place in 1999, yes.

Chairman ISSA. Well, that agreement expired with the bankruptcy, did it not?

Mr. SNOWBARGER. I do not think it automatically expires. I think they have to reject the agreement. I am not a bankruptcy lawyer, but I believe GM would have had to reject those parts of the agreement.

Chairman ISSA. But GM had the power to reject all agreements, void all leases, all purchase agreements. That is a standard part of bankruptcy is you can literally pick and choose what you want to get rid, and all you have to show is a business reason to do it.

Mr. SNOWBARGER. Again, PBGC was not a part of that decision, but I do not disagree with the chairman.

Chairman ISSA. Okay. Well, but it is safe to say that GM's purchase of Delphi is the equivalent of an indirect bailout from the Treasury to Delphi. You would agree with that, that that $2.5 billion of the $50 billion is essentially a conduit of a loan to GM that passed through to Delphi. And you knew that that was anticipated.

Mr. SNOWBARGER. I do not know that we did anticipate that in terms of our decision about terminating the plans, no.

Mr. BURTON. What was the timeframe?

Chairman ISSA. The timeframe was April to June. But am I right to assume that terminating these pension plans made Delphi a more viable company? That these were somewhat anchors to them, the fact that they were, at that point, underfunded. And unless the market rose, would remain underfunded, and would cause dollars to have to be put into them?

Mr. SNOWBARGER. PBGC made its decision to terminate the Delphi pension plans because Delphi was going away. It would no longer exist.

Chairman ISSA. But if General Motors getting $50 billion had given $10 billion to Delphi instead of $2.5, would there not have been enough money to view it differently?

Mr. SNOWBARGER. I suppose. I do not have any basis on which to make a decision like that.

Chairman ISSA. So, if the administration had handed $10 billion in TARP money to Delphi, and I use this point because, remember, with Chrysler, we sold Chrysler to Fiat, but we also put the money in out of TARP never to get it back. Is that correct, to your understanding?

Mr. SNOWBARGER. That is my understanding. And, again, whether $10 billion was the right number or something more than that, sure, TARP funds could have been used for a different purpose.

Chairman ISSA. Do you have any knowledge as of today if you had not terminated the fund as the earlier panel said, would that amount of funds be still able to pay out substantially more than you are currently paying out? That is their allegation is that the funds were there. They were at a low point. The funds were essentially transferred to you as part of the termination. If those funds were put back into ordinary investments today, would they yield as much as the recipients are getting today, or would it be likely more?

Mr. SNOWBARGER. The problem, Mr. Chairman, is that there is no sponsor to turn this plan back over to. Delphi no longer exists.

Chairman ISSA. And retirees are no longer working.

Mr. SNOWBARGER. I understand.

Chairman ISSA. Okay. I just want to understand that General Motors, for example, and I said earlier would have, could have, and should have. General Motors could have taken back the retirees at least and said, you retirees, we are going to fold you back into our plan, and then you would not have terminated had they agreed to be the sponsor.

Mr. SNOWBARGER. If there had been another sponsor willing to take over the plan, that is correct.

Chairman ISSA. So, it was General Motor's decision to cut and run from its former employees, longstanding former employees, that in no small part played a part in this. They could have made that decision. They considered that decision. It was even in earlier proposals. And they chose not to.

Mr. SNOWBARGER. I am not aware that it was in earlier proposals to take over the salaried plan. My understanding was they had a number of times talked with Delphi about taking over the hourly pension plans, but I do not believe the salaried plans were ever treated that way, or considered that way.

So, the more powerful of the group was considered, and ultimately taken care of, while the less powerful, less represented group, in your opinion, was always going to get screwed.

Mr. SNOWBARGER. Well, again, I think—[laughter.]

Chairman ISSA. It is a technical term. You remember we use that in Washington. [Laughter.]

Mr. SNOWBARGER. I have heard the term before, yes. And, again, I do not think it is my position to respond to that because we were not a part of those decisions by them or Treasury.

Chairman ISSA. But you know there could have been a better outcome than there was by several means that you have described here today.

Mr. SNOWBARGER. Well, obviously the people that lost an awful lot of those salaries—excuse me, those pensions that were not topped up obviously could have been treated better.

Chairman ISSA. Thank you.

Mr. Burton.

Mr. BURTON. This is a little confusing to me. Did the administration have any hand in any of the decisions that were made?

Mr. SNOWBARGER. I want to try to understand the definition here of the word "administration."

Mr. BURTON. The President, the people that work in his administration.

Mr. SNOWBARGER. If you are talking the task force or the political side of the administration, the answer is no, not in terms of our decision to terminate the pension plans.

Mr. BURTON. I am trying to figure out how the topping up decision was made. The Federal Government, the taxpayer, put all that money into it. General Motors gets the money, and then they decide that the unions are going to be made whole or almost completely whole, but the salaried employees, the hourly employees, are not. And I am just wondering how that decision was made.

Mr. SNOWBARGER. We were not a part of that decision. And that was not a part of our decision to terminate.

Mr. BURTON. So, it was left up to General Motors.

Mr. SNOWBARGER. Again, we were not a part of that process, part of the auto task force's decisions.

Mr. BURTON. Do you know anything about the auto task force's decisionmaking process?

Mr. SNOWBARGER. What I read in the papers, you know, and we had some conversations about both GM's plans and Chrysler's plans early that spring.

Mr. BURTON. But you did not have anything to do with any of that.

Mr. SNOWBARGER. No, we had no part in the decision about how they were spending their funds.

Mr. BURTON. You just turned it over to GM and that was it.

Mr. SNOWBARGER. We did not turn anything over to GM, I am sorry.

Mr. BURTON. Explain to me real quickly the process that you went through, because I am not sure I got it right.

Mr. SNOWBARGER. Sure. Our focus in this particular case was solely on the pension plans sponsored by Delphi. Let us say old Delphi is what came out. In looking at those plans, we were looking at are they funded? The answer was no. For all the hourly plans and for the salaried plans, none of them were funded as well as they should have been funded, as well as they needed to be funded. The second thing we looked at is there——

Mr. BURTON. When you were asking the question, you said between April and June they got another $2.5 billion?

Chairman ISSA. Terminated in April. The money came in from GM in June. Obviously it was anticipated at that point.

Mr. BURTON. Did you know that that money was—you did not know that that money was coming?

Mr. SNOWBARGER. Well, let me——

Mr. BURTON. When you made the decision to terminate these plans.

Mr. SNOWBARGER. When I made the decision to terminate, when I signed off on the notice of determination in April, no. It was not a part of our consideration.

Mr. BURTON. And had you known, would that have changed your decision?

Mr. SNOWBARGER. Well, again, it depends on whether—the third factor that we look at is, is there going to be an ongoing sponsor. If, as the chairman posited, Delphi somehow is going to continue and come out bankruptcy because they were able to get lending from other source, that would be one scenario. That was not a scenario that existed as of April 21st. The fact of the matter was, as of April 21st, the lenders in the Delphi bankruptcy were ready to foreclose on their liens.

Now, they agreed to postpone that a little while longer, and we agreed to postpone taking action on our decision until——

Mr. BURTON. And 2 months later, $2.5 billion came in.

Mr. SNOWBARGER. Yes. And it did not go——

Mr. BURTON. But that would not have changed your decision at all.

Mr. SNOWBARGER. If it would have made Delphi a viable ongoing sponsor for the pension plan, yes, it would. But it did not.

Mr. BURTON. Ms. Bovbjerg, you said that Mr. Turner asked for information from you, and you said that you could not talk about it today, but that you would get it to him in December. Can you tell me why you cannot talk about it today?

Ms. BOVBJERG. Because it is ongoing work.

Mr. BURTON. But what do you mean ongoing work? Do you have any kind of answers at all today?

Ms. BOVBJERG. We have answers, but they could be wrong since it is ongoing work. We want to make sure that we are right when we are reporting to the Congress. We did this interim report in March that was really just a sort of a sequence of events, a timeline, not particularly analytic, from publicly available documents. And you will note in here that——

Mr. BURTON. How long have you been working on this? I am just curious.

Ms. BOVBJERG. I want to say about a year. About a year.

Mr. BURTON. About a year, and you could not have the information for us today. It has to be after the hearing in December.

Ms. BOVBJERG. Well, that was the schedule. I was notified of the hearing last week.

Chairman ISSA. I would ask unanimous consent that the gentleman have an additional minute.

Mr. BURTON. Sure. I yield back, Mr. Chairman.

Chairman ISSA. And I would ask you to yield.

I might note for the record that GAO is very conscious that in the for-profit education preliminary report that was issued that was essentially reversed in the final report, the early report, we have chastised GAO for issuing anything that they could not stand behind 100 percent. So, although it is the original schedule and we would love to have it faster, I think on behalf of the former chairman and myself, we do want you to get it absolutely right the first time when it comes out.

Ms. BOVBJERG. Thank you, Mr. Chairman. I wonder if I might make——

Chairman ISSA. Of course.

Ms. BOVBJERG [continuing]. A remark about the question of who did what, and where the money went. We have done a fair amount of work in another part of GAO on the auto task force and the auto bailout, and we have done some work jointly on GM and Chrysler and how that all worked, and how it worked with pensions particularly. We did that about a year and a half ago. And we have made recommendations in that report and prior to Treasury that they really need to be more transparent about how they do this business, that the auto task force and with Treasury as a whole.

The Secretary of Treasury is not only over the auto task force and everything else in Treasury, he also sits on a three-person PBGC board of directors. It is critically important, even if there is indeed this steel curtain that we have heard a lot about, and everyone is doing everything completely without conflict. It is very important that the appearance of conflict not exist as well. And we felt that if they had been more transparent about how all these things were working and when, that would have been very helpful, and it would help you all in this hearing today.

Chairman ISSA. Thank you.

Mr. Turner.

Mr. TURNER. Thank you. And I also want to note for the record that there is a GAO response of November 14th that is in our materials that includes an overview of some of the things that you have looked at. So, we do have that information from you.

Mr. Snowbarger, I want to thank you for the responses that I just received November 9th to the questions that I had given you at our hearing of June 22nd. I want to ask you, are you familiar with these——

Mr. SNOWBARGER. Yes.

Mr. TURNER [continuing]. With these answers——

Mr. SNOWBARGER [continuing]. Yes.

Mr. TURNER [continuing]. And these questions. You are under oath. I would like you to affirm the content of these as being truthful and correct.

Mr. SNOWBARGER. They were true when I signed it. They are true now.

Mr. TURNER. Excellent. Thank you.

There is a lot of talk about the issue of the termination. I want to get to the issue of the settlement. The PBGC approved the settlement. They were a party to the settlement. We have heard today about these Delphi retirees, and really the perception that we all have is that this was wrong, that the pension plans were dealt with differently, that some were topped up and some were not. Does this happen a lot with the PBGC, or is this unusual that pension plans would come out of a bankruptcy, a legal proceeding that you are a part of, that there would be a settlement that results in just one group that had a pension from the company versus others, being so significantly impacted and others being made whole. Is that unusual?

Mr. SNOWBARGER. I am not aware of any other situation where there was an agreement like this between a former plan sponsor and a union that carried through. I do believe we have had situations where you have multiple plans sponsored by a company, and some of the plans are terminated and others remain ongoing.

Mr. TURNER. I have three topics I want to deal with, ask you about. And one is the issue of conflicts, and another is asset and liens, and the other is openness and transparency. And I appreciate that the statement on the issue of the conflict. I am going to walk you through that a little bit, because in the question that I have to you, part of what you gave me on September 9th, I asked, please describe the actual conflicts and potential conflicts between the Secretary's duties as a PBGC board member and the Treasury Department's duties as the majority owner of the new GM. And you wrote, we are not aware of any conflict. And I think our GAO representative gave us a great outline of those conflicts.

In your testimony, you say, "I want to emphasize that PBGC treated the salaried plan no differently from the hourly plan. The only difference in treatment are the participants resulted from GM's decisions." Well, you know, part of the reason I voted against TARP and why I think people are so upset about all these bailouts is because that is not really an accurate statement, participants resulted from GM's decisions, because there was no independent GM when the President publicly called for the firing of the CEO. The Treasury Department is bailing them out. The auto task force reports to the Secretary of Treasury, and the Treasury Secretary is on your board.

And when I get to the question that I ask you about the settlement negotiations, you indicate that PBGC notes that attorneys for the auto task force participated, along with the PBGC, GM, Delphi, and Delphi debtor in possession lenders in telephone conversations during which the terms of the PBGC settlements were negotiated.

I mean, you really have the government there three times, General Motors and Delphi being bailed out through the TARP program as in the stock being owned ultimately by the Treasury Department, you have the auto task force that reports to the Treasury

Secretary, and you have PBGC which has the representation of the Treasury Secretary.

Do you not think that since—well, actually I cannot find one of them that was on the telephone that did not have some direct connection with the Treasury Secretary. Do you not believe that that can result in conflicts?

Mr. SNOWBARGER. I can only speak to PBGC's side of things. When decisions are made to terminate plans, we keep our board informed about the actions that we are taking. But——

Mr. TURNER. In this instance, the board member that you are keeping informed also is in control of the other entities.

Mr. SNOWBARGER. Mr. Chairman, I cannot speak to all the other rules that the Treasury Secretary has. I can speak to his role as a board member for PBGC, and I can tell you how PBGC interacts with that board. But I do not know anything more about that. I do not know he——

Mr. TURNER. I perceive it as a conflict. I think GAO will perceive it as a conflict, as was stated. I think certainly the people here today in this committee will.

Mr. Chairman, are you going to do a second round of questions?

Chairman ISSA. We will.

Mr. JORDAN. Would the gentleman yield?

Chairman ISSA. Following up on Mr. Turner, though, it is impossible to have the Secretary, Secretary Geithner, not know what you intended to do prior to your doing it. Well, it is impossible for Secretary Geithner not to have the ability to order moneys made available to General Motors. Well, it is impossible for him not to have influence on the auto task force as to what they might recommend or recommend to General Motors that they should do.

That is an impossibility. There is no Chinese firewall between Secretary Geithner, Secretary Geithner, and Secretary Geithner, is that correct? [Laughter.]

Mr. SNOWBARGER. To my knowledge, no.

Chairman ISSA. Thank you. Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman. And I do have to leave here after my questioning. I apologize. I got to run to another meeting here in the Dayton area.

Mr. Snowbarger, you mentioned that you were totally impartial when you initiated the termination of the Delphi plan in the spring of 2009, this April to June timeframe. But the first restructuring plan, to my knowledge, came out in February 2009. Is that not correct?

Mr. SNOWBARGER. The restructuring plan of which?

Mr. JORDAN. General Motors. The overall restructuring plan.

Mr. SNOWBARGER. Again, we were not concerned with General Motors.

Mr. JORDAN. But that is not my question. My question is——

Mr. SNOWBARGER. I do not know. I do not know.

Mr. JORDAN. The restructuring plan came out in February 2009.

Mr. SNOWBARGER. Okay.

Mr. JORDAN. Right? Did you have a chance to look at that plan?

Mr. SNOWBARGER. I did not, but I do not know if our attorneys did or not. Again, we were not focused on General Motors.

Chairman ISSA. Your attorney is shaking his head yes.

Mr. SNOWBARGER. Maybe they did.

Mr. JORDAN. So, PBGC looked at the plan, and in the plan was the top up agreement was contained in the restructuring plan in February 2009. So, before you made the initial termination decision in the spring of 2009, you knew about the top up plan being part of the overall new restructuring plan. Is that correct?

Mr. SNOWBARGER. PBGC, I guess, was. When I made my decision and when I signed off, it was not part of——

Mr. JORDAN. Well, but you are PBGC, right?

Mr. SNOWBARGER. Well, I was the ultimate signer and the ultimate decider about whether or not these pension plans should be terminated.

Mr. JORDAN. All I am trying to get at is you——

Mr. SNOWBARGER. And I am suggesting to you that that was not a part of my rationale for signing off on that, on those terminations.

Mr. JORDAN. But it was common knowledge that that was part of the deal, part of the restructuring plan, correct?

Mr. SNOWBARGER. I do not how to respond. I mean, common knowledge? You know, it was a restructuring plan that fell through as well.

Mr. JORDAN. Okay.

Mr. SNOWBARGER. My decision was not made on the basis that there were going to be top ups.

Mr. JORDAN. Okay then, let me move on to this. When you were dealing with the Delphi plan, who did you primarily deal with? Was it General Motors, or was it the Treasury Department auto task force?

Mr. SNOWBARGER. Delphi.

Mr. JORDAN. You never dealt with General Motors at all?

Mr. SNOWBARGER. I am not going to say we did not talk to General Motors because, again, they were a potential rescuer for Delphi. If we could have found a sponsor that would have carried on the pension plans after Delphi, then that is fine. We do not care to take over pension plans when there is a sponsor out there.

Mr. JORDAN. I am just asking about this. When you dealt with General Motors, was it General Motors or was it the auto task force, or could you make a distinction?

Mr. SNOWBARGER. I think they were all in the room at the same time when discussions were had.

Mr. JORDAN. So, it is fair to say you were dealing with the Treasury and auto task force.

Mr. SNOWBARGER. And Delphi.

Mr. JORDAN. And Delphi, okay. And did it ever come up in those discussions that General Motors or Treasury auto task force when you were dealing with it, did it ever come up, did they explain why they wanted the top up agreement to take place, why they wanted that to be in place?

Mr. SNOWBARGER. I am not aware of that.

Mr. JORDAN. And in those discussions when you were dealing with GM, did it ever come up with why they were not going to treat the salaried the same as they were going to treat the hourly employees? Did that ever come up?

Mr. SNOWBARGER. To my knowledge, the only discussion about top ups were related to the agreements that they entered into in 1999.

Mr. JORDAN. Okay. Mr. Chairman, I yield back. Thank you.

Chairman ISSA. Thank you.

Mr. Austria.

Mr. AUSTRIA. Thank you, Mr. Chairman. Deputy Director Snowbarger, I want to ask you about the *Pension Benefits Guaranty Corporation* v. *LTV Corporation* case that PBGC won in 1990 in the U.S. Supreme Court. That case had very similar, I think, facts to the Delphi pension termination. And when LTV went through bankruptcy, it created an agreement with the steel workers, which provided additional payments based on reduced benefits that retirees receive through PBGC, and what the retirees would have received if the plans had not been terminated.

In that case, PBGC objected to the agreements as improper follow-up on plans, and, in fact, one of the main reasons PBGC has a policy against followup plans is because such plans remove employee resistance as a significant check against termination. Therefore, PBGC has sought to restore those pension plans back to LTV, and the Supreme Court agreed.

So, I ask you why hasn't PBGC filed a similar lawsuit against GM to restore the union pension plans based on top up agreements? And, I mean, it seems that if this were to occur, then all the windfall payments could be used to fund the salary plan as a fully funded pension with full benefits.

Mr. SNOWBARGER. I think there are two significant differences between LTV and Delphi. The agreements that we opposed in LTV were in the context of the LTV bankruptcy case. The agreements between GM and the unions were a matter of contract between private parties.

The second major difference——

Chairman ISSA. Private parties both in bankruptcy, right?

Mr. SNOWBARGER. No.

Chairman ISSA. In 2005, both were in bankruptcy.

Mr. SNOWBARGER. What I am referring to are the agreements that were made back in 1999.

Chairman ISSA. Subsequently, both entities were in bankruptcy.

Mr. SNOWBARGER. Yes, but they were not in a court setting that PBGC had standing to be a part of complaining about those particular agreements. In 1999, it was the spin off in a private business setting where those agreements arose. In this situation where the top ups, or, excuse me, where the supplements were promised in LTV, that was still in a bankruptcy setting where PBGC was still an active party to the bankruptcy.

The second major difference between the two cases that you gave me is that LTV came out of bankruptcy as LTV, and then prospered and was able to take on those pension plans. That was what we were arguing.

In this case, you have Delphi who is the sponsor of the pension plans. They go into bankruptcy, and they did not come out.

You are asking us to turn these pension plans over to General Motors. General Motors does not have a legal obligation to take over those pension plans. That was Delphi's responsibility as of the spinoff of the pension plans to Delphi.

Mr. AUSTRIA. Mr. Chairman, I would be glad to yield to you, because I think a good point to make here is that were both parties not in bankruptcy? Would you respond to that question because I think that is a very important question.

Mr. SNOWBARGER. They were not in 1999 when the agreements were made.

Mr. AUSTRIA. All right. Well, I know I have one other question, we are short on time.

Chairman ISSA. Please, go ahead.

Mr. AUSTRIA. We will get this on the second round because it is important. But let me ask you this, Deputy Director Snowbarger. You know, Delphi employees believe that prior to termination, PBGC overestimated the pension liabilities and under estimated the level of funding. Can you explain to the committee, and I am interested in knowing what determinations were made for the Delphi pension plans?

Mr. SNOWBARGER. Well, first of all, I want to caveat all this by saying that that is part of the litigation that is ongoing, so I would rather talk about it in general terms. From what I have seen, and I have seen the Watson Wyatt report that has been referred to. It is referred to as an adjusted funding target attainment percentage. That is a formula specified in the Pension Protection Act, or at least the parameters are set out in the Pension Protection Act.

When PBGC tries to decide whether or not a pension plan is funded sufficiently, we look at it as a termination liability because we presume that if PBGC is interested and PBGC is going to take it over, that plan is terminating and it is not going on any further.

There are three major differences in the way we would calculate things. One is the discount rate that is used. And, again, one of the earlier people testified if you use a higher discount rate, the liability is lower. We normally use a lower discount rate than our use for ongoing pension funds.

A second is what do you consider the normal retirement age. And our experience is when a company goes out of business, people tend to retire earlier than if a company is staying in business. And so, the assumed retirement age that we use is probably lower than the one that was used by Watts Wyatt.

And the third thing is the value of the assets and the date when you value those assets. My understanding is the Watts and Wyatt report valued assets in the salaried pension plan as of October 1, 2008, we valued them at January 1st or January 31, 2009. I do not think I need to tell the members of the committee what happened between October 8th and January 2009. There was a significant decline in the market and a significant decline in the assets, and also a significant decline in the interest rate. So, you have liabilities are going up at the time assets are coming down, and a lower retirement age. And it leads to the conclusion that we have that at termination, the Delphi salaried pension plan was about 46 percent funded.

Mr. AUSTRIA. My time has expired. Thank you, Mr. Chairman.

Chairman ISSA. We are going to do a second round.

You were there in 2008 and 2009. Is it not true that everybody's pension plans enjoyed that same precipitous fall? So, if I was at General Electric, or I was at General Motors, or I was at dozens of Warren Buffet's various holdings, working for the railroad, wherever I was, I probably had my pension dropped by 25 or 30 percent, meaning it was at least 30 percent underfunded. If it had been fully funded or the usual 90-some percent in 2008 at that exact low point that you fund it. I mean, virtually a lot of them, you could have gone to every pension plan there was and said, boy, you guys are grossly underfunded, could you not?

Mr. SNOWBARGER. Correct.

Chairman ISSA. Okay. And nobody was forced to top up based on a moment in time. I mean, and I am not trying to push you beyond making sure we get the current law. Current law, you mark to market on a date.

Mr. SNOWBARGER. Correct.

Chairman ISSA. The reality, though, is had you been allowed to anticipate those revenues over the life of an ongoing use of those revenues, you would never have marked them to the current value, would you? In other words, functionally those assets, assuming that America did not go down rat hole and never come back, those assets were worth a lot more in a relatively short period of time because everybody knew this was a short term disaster for which the American people were bailing out all kinds of entities, knowing that good times comparatively were coming back.

So, part of the problem for Delphi retirees, salaried retirees, is you marked—statutorily I understand why you did it. But you marked at literally the worst possible time for valuation.

Mr. SNOWBARGER. We revalued by the time we had come to June, and we continued to revalue as we find out what the assets were actually worth at the day of termination.

The biggest problem for Delphi employees is that Delphi no longer exists. There is no plan sponsor. So, you cannot really assume an ongoing plan when there is no sponsor.

Chairman ISSA. Now, I want to get back to that. First of all, Mr. Austria makes the point better than I was making. Very clearly, you had two entities in bankruptcy, and bankruptcy is the wild west. Companies ask for relief any which they want to, so there is no question, I think, in anyone on this panel's mind or anyone here today. They could have absolutely reneged on that 1999 agreement, and I assume your counsels have told you that General Motors could have reneged on it, that they could have sought complete relief. Is that correct?

Mr. SNOWBARGER. I think it is accurate legally, yes.

Chairman ISSA. Okay. So, the idea that it was an obligation just is not so. It was an obligation for which they could have gotten relief.

Now, let me go through one line of thinking or two lines of thinking.

First of all, could General Motors have been a sponsor at amount less than 100 percent? Could they have taken both of these plans, but had them taken at an adjusted amount and having them transferred from Delphi back?

Mr. SNOWBARGER. I do not about the adjustment part. I think we have concluded that they have could have taken both over both of these plans.

Chairman ISSA. And they could have taken—right. They could have taken over at 100 percent, but to your knowledge, under existing law, could they have taken them over at 90 percent?

Mr. SNOWBARGER. I do not believe they could. I believe ERISA does not allow cutbacks by the sponsor of benefits that have already been promised.

Chairman ISSA. The sponsor was gone.

Mr. SNOWBARGER. Well——

Chairman ISSA. Let me put it another way, because I want to get to the forward looking. We will assume for a moment——

Mr. SNOWBARGER. I thought you were positive that GM was now the sponsor, so I misunderstood this.

Chairman ISSA. Okay. Right. What I want to do is I want to go to two things. First of all, let us assume for a moment that the company has gone. These two pensions have not been terminated. General Motors walks in under current law and says, we will take these, but we cannot have the anchor as great as it is. We will take all the assets and we will agree to 80 percent or 90 percent, and Delphi says to the bankruptcy judge, will you grant us that relief? Is that not available under the law today, either bankruptcy law or ERISA, do you believe it should be available to salvage a greater amount than these salaried Delphi workers had salvaged when you took it over in termination?

Mr. SNOWBARGER. I appreciate the comment of the chairman earlier on that I am a career Federal employee. I do not have a position on that issue. [Laughter.]

Chairman ISSA. You are not getting away with that. [Laughter.]

But nice try. I ask unanimous consent I have an additional minute. So ordered.

You are a person who has the tools that you have. Would that tool be, and this is where you may not be able to lobby for it, but you do have an opinion on it. Would that tool be a good tool for people in your position now or in the future to have if it were made available by Congress?

Mr. SNOWBARGER. I think PBGC has taken the position before that we wish we had more tools to keep plans out there for participants. Currently, the major tool that we have is threatening to terminate a plan. If you think that through, that does not make a lot of sense for an agency that is supposed to be promoting defined benefit pension plans.

Chairman ISSA. Okay. So, we will take that as it is.

The goal here today obviously is to try to find out what happened, and you have been helpful on that, and I want to thank you for it. And I know some of the other Members have a second round. But prior to adjournment, I will not be speaking to either of you again.

I want to thank you for being here. As you said, you are career professionals. You are limited to answering our questions and not lobbying for, and I appreciate that. And I want to thank you for being here and giving us your testimony.

And with that, I recognize Mr. Turner for a second round? I am sorry——

Mr. BURTON. It is okay. I am just sitting here. [Laughter.]

Chairman ISSA. You know, Dan, I am going to call you Mica if you are not careful. [Laughter.]

Mr. BURTON. That is an inside joke, folks.

Chairman ISSA. Former chairman?

Mr. BURTON. Let me follow up. You said that nobody in the administration had any influence on the decision that was made. There was a meeting——

Mr. SNOWBARGER. Well, again, I have never quite understood in the parlance here whether you are including us as a part of the administration, or the executive branch.

Mr. BURTON. Okay. Well, the executive branch includes Treasury, does it not?

Mr. SNOWBARGER. Yes.

Mr. BURTON. Okay. And Geithner and Mr. Bloom were part of Treasury.

Mr. SNOWBARGER. Correct.

Mr. BURTON. And they are also part of PBGC.

Mr. SNOWBARGER. Mr. Bloom is not.

Mr. BURTON. Well, Mr. Bloom is not, but Geithner is. They work together, do they not? They know each other.

Mr. SNOWBARGER. Not anymore, but, yes, they did.

Mr. BURTON. What I am trying to find out is during your telephone conversations and during the meetings that you had, what went on? What was said by Treasury who also had a tremendous amount of influence on PBGC. What did they say to you? Did they say, hey, this is what we ought to do? I mean, they went ahead and upped the pension for the union people, but they did not for the salaried or hourly people. What went on? What was said that made that decision?

And you told me earlier, you said, well, the administration had no influence on the decisionmaking process. Well, Treasury is part of the administration. Geithner is part of the administration. Bloom is part of the administration.

I want to know what went on in the meetings that you had, and what did they say? I mean, somebody said something about helping the unions. Somebody said something about not doing it for the hourly employees. And you were on the phone with them. You were talking to them. So, what happened?

Mr. SNOWBARGER. Number one, let me explain that when I said that they were not a part of the decision, the decision I was referring was the decision about whether or not to terminate the pension plans, which pension plans, the timing of that, etc. That decision was solely done in PBGC by career employees, as it turns out.

Mr. BURTON. But Treasury is on the board, and Bloom is——

Mr. SNOWBARGER. They were not part of the decision. The board is not a part of the decision.

Mr. BURTON. Well, wait, wait, wait. What do you mean they were not part of the decision? There are three people on the board, right?

Mr. SNOWBARGER. The day-to-day operations of PBGC are vested with the director of the corporation.

Mr. BURTON. And so, they do not have any input on these kinds of things.

Mr. SNOWBARGER. As a practical matter for the history of PBGC, no, they have not. We have done that to avoid political influence on those kinds of decisions.

Mr. BURTON. That just mystifies me. I do not know how you can have Bloom, who lied to our committee, and who also was an executive for the steel workers union. He was one of the people that was involved in this decisionmaking process.

Mr. SNOWBARGER. I met Mr. Bloom when we terminated a number of steel plans, yes.

Mr. BURTON. And Geithner, and I just do not understand how they were not involved in the decisionmaking process. But you said they were not, so I guess I will take your word for that.

Mr. SNOWBARGER. They were not.

Mr. BURTON. Okay. You know, I am a stickler for people being under oath. When Mr. Bloom testified, he said he did not say things, and we proved that he did and he recanted. So, it is very important that you remember because we are going to pursue this.

Mr. SNOWBARGER. Like I said, I was the ultimate decisionmaker on whether or not to terminate these plans, and Mr. Bloom did not talk to me about them, and Secretary Geithner did not either.

Mr. BURTON. None of these meetings on the phone or anything else. There was no influence exerted by Treasury or by the administration.

Mr. SNOWBARGER. No. I think we communicated with them that we thought we were going to have to terminate those plans, if, in particular because there was no sponsor.

Mr. BURTON. What did they say when you communicated that to them?

Mr. SNOWBARGER. They normally did not respond back to me.

Mr. BURTON. They did not say anything. They just listened.

Mr. SNOWBARGER. For most of the conversations, I think that is correct.

Mr. BURTON. Thank you, Mr. Chairman.

Chairman ISSA. If the gentleman would yield.

Mr. BURTON. I will yield to you, sure.

Chairman ISSA. I just want to review for the record, Secretary Geithner knew you were going to terminate the plans. Secretary Geithner, through the TARP, his control of General Motors and the task force, made sure that the union workers were made whole in the termination, while Secretary Geithner, informed of the termination, allowed the salaried workers to be terminated with 30 to 70 percent loss by not topping it up or taking steps to have them made whole.

Clearly, Secretary Geithner was aware of this at all times, and had the power and influence to change that.

Mr. SNOWBARGER. I can talk to you about what influence he may have had in the decision on PBGC side of things. I cannot tell you what decisions were made on the auto task force side.

Chairman ISSA. Following up, Secretary Geithner left you no choice but to terminate as a result of Delphi not being viable, General Motors not taking it. And the losses experienced by the salaried employees and retirees of Delphi is the result of his not taking steps to make them whole, while clearly steps were taken to make the union employees whole. That is your observation, even though your decision, you had no choice.

Mr. SNOWBARGER. Mr. Chairman, that is not my observation. That is your observation. All I can talk to you about is the decision that PBGC made, what went into those decisions. And the only part of that that goes into that decision was there was no plan sponsor going forward.

Chairman ISSA. Thank you.

Mr. SNOWBARGER. The plans were basically abandoned.

Chairman ISSA. Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman. I just want to know one thing for the record with respect to your answer on the LTV case. I understand that you are saying that the agreements for General Motors from 1999 predated the bankruptcy. They were not top up agreements that were made in bankruptcy. But to buy your argument that there were parties that made an agreement in 1999 is to assume that the parties that were in the bankruptcy were the same. I mean, we do not buy, and no one in this room buys, that there was independent General Motors in that bankruptcy. That bankruptcy had new parties. The new party was the Treasury Secretary, and that is how it becomes like the case that Mr. Austria is citing of the LTV because it is not this independent decision-making of affirming this. There is not only this new party, but it is the government, and that is why everyone is so particularly disappointed and upset.

And I want to turn to the issue on the liens because part of the concern that everyone has is, you know, the valuation of assets, but also the termination of the plan, but also what happened with respect to liens.

Now, in your written testimony, you indicate that Delphi entered bankruptcy in October 2005, and that they failed to make the required minimum funding contributions to the plans, so as a result liens were triggered, and that PBGC perfected those liens in March 2006.

In your November 9th answers to me from the June 22nd questions, you indicate when the plan was terminated, PBGC had perfected $195.9 million in liens for the benefit of the salaried plan due to Delphi's failure to make statutory required minimum funding contributions. You did say, which is what confuses me, this was the largest lien amount that PBGC could assert under the law because a secured interest exists only to the extent there is a debt. It is underfunded; they clearly were not during that period making payments.

Is it really your testimony that from the period of October 2005, where PBGC went into bankruptcy, up to the point of plan termination, that there was no additional opportunities for the PBGC to assert liens? And we know, by the way, that those liens were largely against foreign assets that had their value. I mean, did you have——

Mr. SNOWBARGER. That is correct.

Mr. TURNER. You had no additional time period from October 2005 until plan termination to assert any additional liens.

Mr. SNOWBARGER. Yeah. There are only certain events that give rise to liens, and we file the lien every time one of those events occurred. And it normally is missed contributions.

I think I am not sure they were actually liens. We also received, I guess that was letters of credit on the waivers that were given by Treasury for funding contributions. But we did receive those back. PBGC does not receive any of these, by the way. It goes into the plan.

But, no, there are only a limited amount of circumstances that allow us to file a lien. And the lien is not for all of the underfunding. It is for the amount of the contribution that was missed.

Mr. TURNER. And you are saying that during that time period, all the way up until termination, you were dealing only with the liens that you had placed, and that was on the foreign assets going into the settlement.

Mr. SNOWBARGER. Yeah. Let me expand that just a little bit. And I think this is correct, and we will correct if it I am wrong. But I believe there were other liens that were filed on behalf of the hourly plan, and when GM took over half of the hourly plan, as Ms. Bovbjerg indicated, I believe those liens expired at that point. So, the only liens we are talking about here is, what, it is about $195, $196 million for the salaried plan, and I think there was another smaller amount of liens for some of the other smaller plans. But in terms of the large salary plan, there had been liens, but those were satisfied when GM took over the first half of the hourly plan, as they had agreed to.

Mr. TURNER. As you went into the settlement negotiations, you had the liens that had been in place. You relinquished the liens in part for unsecured debt and payments.

As part of the FOIA request, as part of the whole process that the Delphi salaried retirees have requested is that these settlement negotiations, what had been said, the documents that had passed between parties, be made public. The settlement is over. This certainly is an issue that has taxpayers' dollars. How the settlement proceeded should be both a discoverable item in Federal court, but also should be released with respect to FOIA.

As we heard from those that had testified, when they have made their requests under Freedom of Information, they get pages that look like this. Governmental pre-decisional, attachment deleted, 34 pages. I mean, the government is not telling the taxpayers, part of which were the Delphi salaried retirees who had their retirements reduced, what were those settlement negotiations, and what was on the table, and who was saying what, and who told who to do what.

I do not understand, and I would like you give us, as you said, you know, you are the decider. Why isn't this information being released? This is public information about public taxpayers.

Mr. SNOWBARGER. I think all the documentation that was requested pursuant to FOIA has been produced, with the exceptions that are allowed by FOIA, with the exceptions that are allowed by FOIA.

Mr. TURNER. Okay. Now, let us emphasize that word, "allowed by," which means that you are exercising discretion to hold the documents back. It is not required by FOIA. You have the ability under FOIA to fully comply and release the documents. Will you?

Mr. SNOWBARGER. That is a matter under litigation, and when——

Mr. TURNER. No, no, no, it is not under litigation. The FOIA request is not, the subject matter is. You have the FOIA request. You know you have the discretion to release the documents. I personally believe, like this panel believes, that this is taxpayers' dollars that were handled here. These retirees deserve an answer. Will you release the documents?

Mr. SNOWBARGER. Well, let me make clear, PBGC does not operate on taxpayer dollars. I understand you are not drawing a distinction between the amount of money that came from TARP and what PBGC does, but PBGC does not receive taxpayer funding.

Second part is, as long as this is a matter of litigation, I will stay with the decisions that we have made thus far.

Mr. TURNER. Well, I think that is wrong. I mean, I think is it wrong that you not be held accountable in the decisionmaking that you had. This was a heavily taxpayer subsidized transaction in the General Motors and Delphi bankruptcy. These individuals have been significantly impacted. I thank the chairman for his push to make you give him the documents so he can make the decision as to whether or not they be released. But you should be releasing those documents.

Chairman ISSA. Mr. Austria.

Mr. AUSTRIA. Thank you, Mr. Chairman. And I would just follow up to what Mr. Turner was saying as far as the transparency here. I mean, if we want a level playing field, so to speak, and we want to make sure that things are done right, then there should not be any reason there should not be full transparency.

But let me go back to this valuation of the level of funding. And I agree with the chairman, the timing—and I think you might acknowledge, is the timing in which that valuation was done was when the markets were down. And what was the funding level that you valuated the pension at that time?

Mr. SNOWBARGER. A specific dollar amount?

Mr. AUSTRIA. Or percentage, whatever.

Mr. SNOWBARGER. Again, when we did our initial review of this, it was about 46 percent funded.

Mr. AUSTRIA. About 46 percent funded. Okay. Let me ask you this. When you did the revaluation, what was the difference?

Mr. SNOWBARGER. There wasn't a lot of difference.

Mr. AUSTRIA. There was not a lot of difference? There was not a lot of difference?

Mr. SNOWBARGER. It was still below 50 percent.

Mr. AUSTRIA. Now, let me ask you, because I am looking at some information here. It shows that the average funding level for the top 100 pension plans in 2009 was 81 percent, and that, again, and you made reference to it, there were two independent actual firms that analyzed DSRs pensions and determined that it was actually 86 percent funded.

Those are big differences. I mean, can you further elaborate and give us your thoughts as to why we have such big differences other than the timing of when you valuated it?

Mr. SNOWBARGER. If one is calculating the funded percentage for an ongoing plan, that means there is going to be a sponsor at the end of the day. There was not going to be a sponsor here. Therefore, PBGC evaluates the funding of the plans on a termination basis, and, again, on a termination basis, we use an interest factor that is derived from the annuity markets. We use a retirement age that reflects our experience that people retire when their employers go out of business. They retire earlier. And we use mark to market on the value of the assets.

Mr. AUSTRIA. Well, it seems to me that, again, we are going back to transparency here as far as—and I appreciate you disclosing this now because it is important that we understand how you evaluate these pension plans. But when we look at the average level of the other, you know, top 100 pension plans in 2009 and how they were valuated, it does not seem like we are comparing apples to apples.

Mr. SNOWBARGER. Well, Congressman, we are not. We are not. Those are ongoing pension plans. Those sponsors are still out there. They are still viable entities. To the extent they are not a viable entity and they underfunded in the same way that these plans were, then we look to terminate those. You are talking about the funding of all pension plans, and, again, not all plan sponsors are in financial difficulty. Delphi was not only in financial difficulty, it went away. It is no longer there. It does not exist.

Mr. AUSTRIA. What was the revaluation as far as with this plan?

Mr. SNOWBARGER. I would have to check. I do not know what the latest valuation is on that. But it would go toward the benefits that are paid to participants.

Let me put it this way. We have certain limitations, and I believe one of the earlier witnesses testified to the limitations by law that are placed on us. There are times when we can pay above those limitations for a certain limited group of people. That is for people that have retired or could have retired 3 years prior to the termination date. So, that goes back to could have retired in 2006. They fall under the category called priority category 3, and I very frankly could not go through the exact calculations of how you get there. But it is possible that if assets are sufficient, we can pay benefits above guarantees for those folks. But we will just have to wait and see what the ultimate valuation is of the assets. And that is ongoing.

Mr. AUSTRIA. Thank you, Mr. Chairman.

Chairman ISSA. I am going to take two chairmen prerogatives. First, Mr. Turner is going to close the hearing. And, second, I am going to renege on I have asked my last question. [Laughter.]

Because I think there are two things I want to make clear. I serve on the company that I founded when it became public, and our stock traded below certain minimums, and PriceWaterhouseCooper came to us and said, oh, by the way, because your stock is trading low, because people do not appreciate its going concern value, its actual earnings, we are going to make you take $100 million write down on your good will. And I never understood it. I never agreed with it. But the SEC and GAP and so on, they could do that.

I will never agree that you have to diminish somehow an 80 percent to a 60 percent or a 50 percent for the difference between the two without at least stating that as a going concern, there was 80 percent.

And the reason simply is that if we continue to allow you to do that, then pensions need to be funded at 120 percent. They need to be funded as though the entity is not going to be a going concern. And, by the way, it is not just General Motors; it is the State of California. It is an awful lot of other groups, because sovereigns can default, and if they default, then you are stuck with the assets you have.

So, I think that is an area that this committee and Congress needs to look at is to beg the real question of, if you are correct, not as to the early retirement because I think there is a little bit of wiggle room there, but as to these other diminishments of the amount, then to be honest, 85, 90 percent just is not enough. And it is not enough because ultimately we need to be protected, or we need to protect those people who rely on these pensions at a level that if the company defaults, or if anyone defaults, the pension is going to be able to pay substantially close to what was promised and not end up where these people did, or, for that matter, the United Airlines pilots and flight attendants who today, and I will use the word "enjoy" in a terrible way, enjoy the same kind of same kind of diminishment that the salaried workers for Delphi do.

Let me ask you one last question, and you can respond for the record if it requires more counsel than you have here today. Most of these workers contributed most of their money as General Motors employees. And none of these workers got a real say in being spun off. If they cannot claw back to the parent entity, if they cannot demand that 70, 80 percent of their retirement, which was really GM retirement, be able to go back to GM, which is still around, then do we not open everyone to a situation, not one in which there was a legitimate spin off that was intended to work, but to a spin off that would be just absolutely designed to do in their existing retirees? Because ultimately anybody could say, well, I am going to spin off a subsidiary, and I am going to spin off this, and I am going to make it all sound good, but I am basically after 2 years going to quit buying from that subsidiary that I set up, and it is going to go bust, and they are just going to be screwed, to use that technical word again. [Laughter.]

Doesn't Congress have an obligation to ask, should they not be able to claw back to the parent, which they were taken away from involuntarily, or some other remedy that would prevent this from happening in the future, which I believe you are going to say does not exist in the law today.

Mr. SNOWBARGER. Well, it does not exist in the law today, but PBGC watches those transactions all the time. And if we are concerned that the pension plans are either being transferred to a spin off that will not be able to sufficiently fund that, or if they see that the assets of a company are being spun off leaving the pension behind, we try to intervene in those transactions and stop them or make sure there is some kind of protection for the pension plans.

Chairman ISSA. But is it not true, both in the case of Delphi and Visteon, the Ford spinoff, that their entire viability was dependent upon continuing the tier 1 suppliers at substantially the same revenue as they had been when they had been part of General Motors or Ford. I mean, basically that was always the case is their viability. The Delphi, and I bought from Packard Electric and some of the other divisions for my company.

But the fact is, 90-some percent of their revenues was father to child kind of thing. So, when you did that evaluation, weren't they completely dependent upon the success of General Motors continuing to buy, and isn't that really why the unions had the 1999 agreement that required General Motors to protect them for an indeterminate period of time while the salaried workers did not get the same?

Mr. SNOWBARGER. Well, it was also the fact that their plan was underfunded when the spin off occurred.

Chairman ISSA. But under your calculations, they were both underfunded.

Mr. SNOWBARGER. No, I have not made any comment about what the funding status was of the salaried plan in 1999.

Chairman ISSA. Well, but——

Mr. SNOWBARGER. And that is the time period I am referring to when the spinoff actually occurred.

Chairman ISSA. Yeah, but today you gave testimony that shows if you are fully funded and if the fit hits the shan, you are going to, in fact, be underfunded by 30 percent or more. I mean, the fact is they were underfunded if Delphi did not remain a going concern, and Delphi's going concern was completely linked both to General Motors' continuing to be viable and General Motors choosing to continue buying. So, they were in a precarious position in 1999, and that is why the unions, on behalf of their portion of the work force, demanded something. Shouldn't that have been a red flag to your role or your entity's role that if the union needed it, why did the salaried workers, the people who had less power to negotiate, why did they not need the same guarantee?

Mr. SNOWBARGER. I have no response.

Chairman ISSA. I now turn the gavel over to Mr. Turner.

Mr. TURNER [presiding]. I did not want our chairman to leave because obviously one of the things that I want to do is to thank him.

Chairman ISSA. You are the chairman.

Mr. TURNER. Well, I appreciate that.

Mr. Chairman, if you had not held the prior hearings that we have had, or, Chairman Jordan, the subcommittee under your committee having had inquiries in this and hearings, we would not know as much as we even know today.

But thank you for coming here, for having this hearing. Thank you for granting my request for these retirees to have an ability to speak with you, and for this issue to gain additional light. I think we have learned a couple of things, one of which is the fact that the administration was in on all sides of this deal. But the second thing, which I want to thank you for, is that we have learned that, you know, PBGC has the ability to release these documents, is exercising discretion under FOIA. Some of those documents have been or will be released to this committee, and I know you are going to be reviewing the issue as to what of those the committee might under its own guise make public that PBGC chooses on their own accord not to.

So, thank you for your consideration of that, and thank you for being here today. And thank you for being in Dayton, OH.

Chairman ISSA. Well, thanks for inviting me.

[Applause.]

Mr. TURNER. With that, the committee stands adjourned.

[Whereupon, at 12:27 p.m., the committee was adjourned.]

[The prepared statement of Hon. Dan Burton and additional information submitted for the hearing record follow:]

Opening Statement
The Honorable Dan Burton
Oversight and Government Reform Committee
Hearing: "Delphi Pension Fallout: Federal Government Picked Winners and Losers, So Who Won and Who Lost?"
Dayton, Ohio - November 14, 2011

First, I want to thank Chairman Issa for convening this hearing today. I also want to thank Sinclair Community College for hosting us.

Mr. Chairman, Delphi Corporation was created in 1999 by General Motors (GM) through the spin-off of the company's automotive components group into a separate entity. In fact, many of the current Delphi retirees – hourly and salaried – spent the majority of their working career (on average over 25 years) with GM until they were involuntarily moved to Delphi. Regrettably, in 2005, Delphi Corporation filed for Chapter 11 bankruptcy protection.

On October 6, 2009, four years after entering Chapter 11, Delphi Corporation exited bankruptcy, as Delphi Holdings, under a restructuring plan facilitated by the Obama Administration and approved by the U.S. District Bankruptcy Court for the Southern District of New York. Under the terms of the agreement, the Federal Pension Benefit Guaranty Corporation (PBGC) assumed responsibility for all of the Delphi pension plans – roughly $6.2 Billion in liabilities for six Delphi pension plans (covering approximately 70,000 employees and retirees).

However, in a very unusual agreement as part of the restructuring plan, GM consented to use money from its own pension funds to supplement the 46,000 Delphi hourly (union) employees' pension payments to make up for the 30 to 70 percent cut in benefits resulting from the PBGC's takeover of the Delphi pension plans. This unprecedented agreement was not extended to the 21,000 salaried workers and retirees. By some estimates, this resulted in a 70 percent reduction in pensions and loss of health care for salaried Delphi retirees.

When questioned about the disparate treatment of Delphi employees and retirees, to this day, executives for GM will only say that the company agreed to supplement Delphi union employees and retirees because it had promised to do so in 1999; and that the company did not supplement Delphi non-union employees and retirees because it "isn't something that GM has any control over" and "GM doesn't have the legal obligation nor does it have the money to re-fund those pensions." The explanations offered by GM are woefully insufficient. Once GM entered bankruptcy the contractual promise it made in 1999 was null and void, and it makes no business sense for a company trying to shed excessive debt to assume more debt.

In reality though, the blame does not lie with General Motors. I believe that evidence uncovered by this Committee and others clearly shows that the Obama Administration's Auto Task Force (ATF) made this decision for purely political reasons. In fact Mr. Ron Bloom, former Senior Advisor to the Secretary of Treasury on the auto bailout admitted as much when he said at a celebratory dinner for the auto bailout team that he "did this all for the unions." On June 22, 2011 during the last Committee hearing on this issue when I questioned Mr. Bloom about this statement, he flatly and unequivocally denied ever having said that. Unfortunately for Mr. Bloom, this statement was corroborated by a reporter for the the Detroit Free Press and in a book by Mr. Bloom's former boss, auto czar Steve Rattner. Two weeks later after coming under fire from this Committee and the media about his blatant lie under oath, Mr. Bloom retracted his denial and instead claimed that he did not "recall" making the alleged statement.

Mr. Bloom's actions are sadly typical of this Administration's blatant disregard for Congress' pursuit of the truth in this case. To the best of my knowledge, all Congressional requests to the Administration about this case have either been ignored or obfuscated. This is unacceptable and should not be tolerated; and I applaud the tenacity you have shown, Mr Chairman, to keep investigating this matter further so we can uncover the real truth behind the Delphi pension scandal.

I said back in October 2009 when I, along with others, first requested a Congressional hearing on this issue that I understood that restructuring America's auto industry required shared sacrifice and responsibility. But Delphi's salaried retirees are being forced to bear extra burdens that are not warranted and have not been explained. It seemed to me at the time - and it still does - to be fundamentally unfair that salaried and union employees from the same company, who faced the same unfortunate situation, were treated so unequally by the Federal government.

The American people, especially, from my perspective, the thousands of Hoosier families who have been impacted by this policy, and whose tax dollars were used to facilitate this travesty, deserve a full and transparent explanation from all parties involved. Hopefully today we can move one more step closer to that explanation.

Once again, Mr. Chairman, thank you for holding this hearing and I look forward to hearing from our witnesses.

COMMITTEE ON APPROPRIATIONS
Subcommittee on Defense
Subcommittee on Transportation, HUD, and Related Agencies
Subcommittee on Agriculture, Rural Development, FDA and Related Agencies
COMMITTEE ON THE BUDGET
DEMOCRATIC STEERING AND POLICY

U.S. HOUSE OF REPRESENTATIVES

MARCY KAPTUR
9TH DISTRICT, OHIO

WASHINGTON, D.C. OFFICE
2186 Rayburn Building
Washington, DC 20515-3509
(202) 225-4146
Fax: (202) 225-7711

OHIO OFFICE
One Maritime Plaza
6th Floor
Toledo, OH 43604-1853
(419) 259-7500
(800) 964-4699
Fax: (419) 255-9623

http://kaptur.house.gov

The Honorable Darrell Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman and Ranking Member:

Northern Ohio has been a center of automobile production for a century, and I have had the privilege to represent many of the thousands of hard working people that helped build and continue to sustain that industry.

In the aftermath of the financial crash, the U.S. automotive industry was severely impacted, and in the summer of 2009 General Motors declared bankruptcy. Shortly thereafter, General Motors announced that it would no longer assume the pension liabilities of one of its tier 1 suppliers, Delphi, despite an earlier agreement to do so after Delphi itself declared bankruptcy in 2005. In September of 2009, a number of Delphi employees filed a suit against the Pension Benefit Guarantee Corporation over its handling of their benefits.

Pensions, healthcare benefits, and insurance benefits are a critical part of the compensation earned by employees, oftentimes over a lifetime of work. I have been contacted by constituents in my Northern Ohio district that were severely impacted by the handling of Delphi's pension, and this hearing is an opportunity to ensure that their voices are included. Having heard from individuals that lost as much as 70 percent of their pensions along with health benefits and insurance, I believe that Congressional oversight of this case is important.

I ask that the materials that I have received from my constituents be included in the record.

Sincerely,

Marcy Kaptur

MARCY KAPTUR
Member of Congress

*"Delphi Pension Fallout: Federal Government Picked Winners and Losers, So Who Won and Who Lost?"*

This is the truthful story of unfair treatment and actual discrimination against Delphi salaried retirees.

To help protect the Delphi pension fund during the company's bankruptcy the PBGC placed liens on Delphi's foreign assets and could have funded the salaried retirees' pensions. Delphi made no contributions to the funds while it was in bankruptcy.

Yet the PBGC's liens were interfering with the resolution of Delphi's bankruptcy, which had dragged on for four years. The government was in a hurry to complete GM's bankruptcy restructuring, and the Delphi liens needed to be lifted so its assets could be sold to its lenders and to GM. We suggest that Treasury dictated the move. It was the Treasury that owned the majority share in GM that ran the whole train. None of this was driven by contractual obligations. This was driven by political considerations and Treasury telling GM and the PBGC what to do.

My wife and I both looked forward to receiving the health care and pension that had been promised as part of our deferred compensation. It was greedily, speedily, and systematically taken away as part of the Delphi and General Motors bankruptcy proceedings orchestrated by people in business, judicial, and administrative positions that, quite frankly, broke the law in the process.

I am dismayed with the actions of GM/Delphi and feel betrayed by the actions of my federal government which included the federal bankruptcy court, the PGBC, and the Administration through the actions of the Automobile Task Force. Ethically and morally our Delphi salaried retiree group has been wronged. Laws have been broken and inside deals have been made. This has resulted in the worst crime; the crime of discrimination.

So obviously the winners in this travesty are General Motors, Delphi Corporation, the PGBC and all employees that had the clout of collective bargaining representation. The losers were the Delphi Salaried Retirees, many of which put countless hours and years who had not representation while working for GM and Delphi and no representation in the bankruptcy proceedings. Their reward was loss of healthcare, up to 70% loss in pension, and loss of life insurance.

Most of all, the entire American people have lost. They have lost the trust in their government officials to administer their responsibilities jointly, fairy and open-handedly. This is evident everyday by turning on the television, reading an internet article, reading the newspaper, or listening to radio. Nothing good gets done in Washington D.C. anymore. Lobbyists and PACs buy votes, politicians spew rhetoric and partly lines and the American people are treated as chattel.

I say it is time to change. Our issue is neither a Republican issue nor a Democrat issue. It is a matter of right and wrong. It can be rectified jointly which is a great move in the right direction for the United State of America.

Respectfully Submitted by:

Chris Twarek
1014 Prairie St.
Marblehead, OH 43440

JOHN A. BOEHNER
SPEAKER
OHIO

H-232 U.S. CAPITOL BUILDING
WASHINGTON, D.C. 20515
(202) 225-0600

Congress of the United States
House of Representatives

WASHINGTON OFFICE:
1011 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3508
(202) 225-6205

DISTRICT OFFICES:
7969 CINCINNATI-DAYTON ROAD, SUITE B
WEST CHESTER, OH 45069
(513) 779-5400

12 SOUTH PLUM STREET, 2ND FLOOR
TROY, OH 45373
(937) 339-1524
DISTRICT TOLL FREE NUMBER
1-800-582-1001

December 2, 2011

Chairman Darrell Issa (R-CA)
Committee on Oversight & Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

On behalf of my constituents in Ohio, I commend you and members of the House Committee on Oversight & Government Reform for your efforts to investigate why non-unionized Delphi retirees were treated differently than their union counterparts at General Motors (GM), and whether the government picked winners and losers in the GM bankruptcy proceedings.

The bankruptcy of Delphi has a far-reaching impact in the 8th congressional district of Ohio. Delphi had multiple facilities in the Dayton area and many retirees live in my district. Many of these individuals spent most of their careers as GM employees before Delphi was spun off as an independent company. While the pensions of union Delphi retirees were fully protected by GM, affected salaried, non-unionized Delphi retirees may lose up to 70 percent of their expected pension benefits. Hourly and salaried employees and retirees worked side-by-side during their careers yet now are receiving inequitable treatment.

The Committee's recent field hearing, held on November 14, 2011 in Dayton, Ohio, offered a significant opportunity to hear firsthand from non-unionized Delphi retirees about the disparate treatment they received in the wake of U.S. taxpayers' bailout of GM, their resulting hardships, and their quest for answers regarding how these pension decisions were made and the federal government's involvement in the rescue of GM.

The American people, especially those affected by the bankruptcy proceedings, deserve to be a part of an open and transparent process. In August 2010, I joined Senator Roger Wicker (R-MS) in requesting that the independent, nonpartisan Government Accountability Office (GAO) conduct an investigation of this issue. Neither GM nor the Treasury Department's Automotive Task Force has provided a full explanation regarding the special treatment of union retirees, and whether this was yet another decision by the Obama Administration to reward union bosses and liberal special interests. Delphi salaried retirees deserve an explanation for this, and they deserve accountability. I look forward to the final GAO report to learn more about the Treasury Department's role, and the factors that explain why Delphi salaried retirees will receive reduced pensions while union retirees will not.

At the field hearing, more questions were posed regarding the federal government's actions and the advisory role the Treasury Department played by picking winners and losers. The Obama Administration must explain the extent of its role in the decision-making process and why the unions were given preferential treatment at the expense of non-unionized retirees. I support the Committee's commitment and attention to this matter, and look forward to a resolution for Delphi salaried retirees.

Sincerely,

John Boehner

PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

February 15, 2012

The Honorable Michael R. Turner
U.S. House of Representatives
2454 Rayburn House Office Building
Washington, DC 20515

**Re: Responses to Questions Regarding Delphi Pensions**

Following the House Oversight & Government Reform Committee hearing on Delphi pensions held on November 14, 2011, in Dayton, Ohio, you asked me to provide responses to 32 questions related to communications between PBGC staff and the PBGC Board regarding Delphi pensions. Please find below responses to these questions.

1. **In your November 9, 2011 response to Question 1, you stated, "PBGC periodically informed the PBGC Board of matters involving the Delphi Pension Plans, including their potential impact on PBGC, plan participants, and estimates of benefit reductions resulting from large unfunded benefits that exceed PBGC's statutory guarantee limits." Who at PBGC periodically informed the PBGC Board, and by what means of communication? Provide documentation and records of any such communications that occurred in written form.**

   **Answer:** Vince Snowbarger [1] periodically informed the PBGC Board of a variety of matters, including the Delphi Pension Plans. Periodic reports provided to the PBGC Board were: Weekly Reports on Significant PBGC Activities to the PBGC Board Representatives (see Attachment A for weekly reports that contained information about Delphi); Memoranda to the Board that included Significant Case Reports prepared by PBGC's Insurance Program Office to brief the PBGC Director (see Attachment B for memoranda to the Board that contained information about Delphi.); and, during transition, daily conference calls with the Board Representatives and/or their designated representatives[2]. Mr. Snowbarger and/or one or more of the following PBGC staff participated in daily conference calls that dealt with various matters including the Delphi Pension Plans: Terrence Deneen (Chief Insurance

[1] Mr. Snowbarger is Deputy Director for Operations. He served as Acting Director from 1-20-2009 through 7-21-2010.

[2] As noted in the November 9, 2011response to Question 1, each Secretary on PBGC's Board is supported and advised by a designated PBGC Board Representative. Each Board Representative has a designated representative (Board Representative's representative) to support and advise him or her.

Program Officer), Michael Rae (Deputy Chief Insurance Program Officer), John Hanley (Director, Legislative and Regulatory Department), John Menke (Assistant Chief Counsel, Office of Chief Counsel), Karen Morris (Deputy Chief Counsel, Office of Chief Counsel), Neela Ranade (Chief Negotiating Actuary, Department of Insurance Supervision and Compliance). PBGC has no written records of daily calls.

2. **Who at the PBGC Board was periodically informed by PBGC?**

   **Answer:** Memoranda to the Board identified in the response to Question 1were sent to the Board members, the Board Representatives, and the Board Representatives' representatives. Weekly Reports on Significant PBGC Activities identified in the response to Question 1were sent to PBGC Board Representatives and/or their designated representatives as well as other ERISA agency staff. Attachment C lists the Board Representatives, Board Representatives' representatives, and other individuals at the ERISA agencies to whom weekly reports were typically sent. The Board Representatives and/or their designated representatives participated in the daily conference calls identified in the response to Question 1. PBGC has no written records of these conference calls or who participated in them.

3. **In your November 9, 2011 response to Question 1, you stated, "PBGC provided estimates of the unfunded status of the Delphi Pension Plans to the Auto Task Force." Who at the PBGC provided estimates to the Auto Task Force, and by what means of communication? Provide documentation and records of any such communications that occurred in written form.**

   **Answer:** As PBGC stated in its November 9, 2011 response to Question 1 of Rep. Turner's questions, PBGC provided estimates of the underfunding in the Delphi pension plans to Auto Task Force representatives in February 2009 and again in June 2009. In February 2009, the information was provided to the Task Force representatives by e-mails from Terrence M. Deneen and from Joseph House, PBGC's Director of the Department of Insurance Supervision and Compliance. In June 2009, the information was provided to Task Force representatives at an in-person meeting and by e-mail from Joseph House. Copies of those e-mail communications have been previously provided to the OGR Committee in PBGC's document productions.

4. **Who at the Auto Task Force was provided estimates by PBGC?**

   **Answer:** The February 2009 e-mails providing estimates of the underfunding in the Delphi pension plans were sent to James Lambright and Michael Tae at the U.S. Department of

Treasury and to Todd Snyder of The Rothschild Group, who was serving as a financial adviser to the Treasury Department. The June 2009 in-person meeting was with, and the e-mail was sent to, Matthew Feldman of the Treasury Department.

5. **In your November 9, 2011 response to Question 1, you stated, "PBGC provided its Board with additional information on estimated benefit reductions for retired Delphi Pension Plan participants." Who at the PBGC provided additional information on estimated benefit reductions to the PBGC Board, and by what means of communication? Provide documentation and records of any such communications that occurred in written form.**

   **Answer:** Vince Snowbarger provided additional information on estimated benefit reductions to the PBGC Board in a memorandum dated February 16, 2010, emailed to the Board in advance of a February 23, 2010 meeting of the PBGC Board (see Attachment B2).

6. **Who at the PBGC Board was provided additional information on estimated benefit reductions?**

   **Answer:** Additional information on estimated benefit reductions was provided to members of the PBGC Board of Directors, Board Representatives, and Board Representatives' representatives (see Attachment B).

7. **To which retired Delphi Pension Plan participants did the additional information on estimated benefit reductions pertain?**

   **Answer:** The additional information on estimated benefit reductions pertained to retired participants under all the terminated Delphi plans.

8. **In your November 9, 2011 response to Question 1, you stated, "PBGC sent a memorandum to the PBGC Board that included estimates of the number of Delphi Pension Plan participants that would have their benefits reduced to the guarantee limit." Who at the PBGC wrote, or otherwise contributed to, the memorandum to the PBGC Board?**

   **Answer:** PBGC staff who wrote or otherwise contributed to the memorandum to the PBGC Board are: Vince Snowbarger, Michael Rae (Deputy Chief Insurance Program Officer), Candice Campbell (Deputy Director, Benefits Administration and Payment Department), and

Robert Stokes (Manager, Trusteeship Processing Division 6, Benefits Administration and Payment Department) and his staff.

**9. To whom at the PBGC Board was the memorandum addressed?**

**Answer:** The memorandum to the PBGC Board containing additional information on estimated benefit reductions was addressed to the Board of Directors.

**10. Who at the PBGC Board had access, whether direct or indirect, to the memorandum?'**

**Answer:** PBGC does not know.

**11. In your November 9, 2011 response to Question 3, you state, "PBGC kept the PBGC Board periodically informed of matters involving Delphi Pension Plans, including their potential impact on PBGC, plan participants and estimates of benefit reductions resulting from large unfunded benefits that exceed the guarantee limits under ERISA." Who at the PBGC kept the PBGC Board periodically informed of matters involving Delphi Pension Plans, and by what means of communication? Provide documentation and records of any such communications that occurred in written form.**

**Answer:** See response to Question 1 above.

**12. Who at the PBGC Board was periodically informed by the PBGC?**

**Answer:** See response to Question 2 above.

**13. In periodically informing the PBGC Board, which plan participants were included in the PBGC's analysis of potential impact?**

**Answer:** Plan participants under all the terminated Delphi plans in PBGC trusteeship were included in PBGC's analysis of potential impact.

**14. In your November 9, 2011 response to Questions 6 and 26, you state, "PBGC notes that attorneys for the Auto Task Force participated along with PBGC, GM, Delphi, and**

**Delphi's debtor-in-possession lenders in telephone conferences during which the terms of the PBGC settlements were negotiated." Which attorneys for the Auto Task Force participated in the telephone conferences, and what were their responsibilities in the negotiations?**

**Answer:** The following persons representing the Auto Task Force either participated in the telephone conferences or were identified as recipients of e-mails regarding the conferences: Bronislaw Grala, Oren Haker, Mark Holdsworth, John Rapisardi, and Joseph Zujkowski from the Cadwalader, Wickersham & Taft law firm; Matthew Feldman from the Auto Task Force; Brian Osias and Paul Nathanson from the Department of the Treasury; and Matthew Schwartz and Joseph Cordaro from the Department of Justice. PBGC understands that these persons were generally responsible for representing the interests of the Auto Task Force during those conferences, but PBGC does not know what particular responsibilities were assigned to these individuals during the conferences.

15. **Who at PBGC participated in the telephone conferences, and what were their responsibilities in the negotiations?**

**Answer:** The following persons representing PBGC either participated in the telephone conferences or were identified as recipients of e-mails regarding the conferences: Karen Morris, John Menke, and Wayne Owen from PBGC's Office of the Chief Counsel; Joe House and Dana Cann from PBGC's Department of Insurance Supervision and Compliance; Merrill Stone, Craig Wolfe, Gabrielle Rohwer, and Jacob Frohman from PBGC's outside law firm Kelley Drye & Warren; Duncan Scott from PBGC's outside UK law firm Speechly Bircham; and Bradley Robins and David Burns from PBGC's outside financial advisors Greenhill & Co.. Their responsibility during the telephone conferences was to represent and advocate for the legal and financial interests of PBGC.

16. **Who at GM participated in the telephone conferences, and what were their responsibilities in the negotiations?**

**Answer:** The following persons representing General Motors either participated in the telephone conferences or were identified as recipients of e-mails regarding the conferences: Michael Kam, Robert Lemons, Gregory Burns, Ted Waksman, Victoria Vron, Ronald Landen, Steven Peck, Sean Ewen, and Christine Jarmer from the Weil, Gotshal & Manges law firm; Francis S. Jaworski, Walter Borst, Rick Westenberg, Fred Fromm, Gil Kaminski, and Ajai Shankar from General Motors; John Kanan from the Honigman Miller Schwartz & Kohn law firm; and Douglas Armstrong and David Thompson from the UK law firm of Dickson Minto. PBGC understands that these persons were generally responsible for representing the interests of General Motors during those conferences, but PBGC does not know what particular responsibilities were assigned to these individuals during the conferences.

**17. Who at Delphi participated in the telephone conferences, and what were their responsibilities in the negotiations?**

**Answer:** The following persons representing Delphi Corp. either participated in the telephone conferences or were identified as recipients of e-mails regarding the conferences: Allison Herriott, Jack Butler, Ron Meisler, and Eric Cochran from the Skadden, Arps, Slate, Meagher & Flom law firm; Lonie Hassel from the Groom Law Group; and Beth Sax and Karen Cobb from Delphi Corp. PBGC understands that these persons were generally responsible for representing the interests of Delphi Corp. during those conferences, but PBGC does not know what particular responsibilities were assigned to these individuals during the conferences.

**18. Who at Delphi 's debtor-in-possession lenders participated in the telephone conferences, and what were their responsibilities in the negotiations?**

**Answer:** The following persons representing the Delphi DIP lenders either participated in the telephone conferences or were identified as recipients of e-mails regarding the conferences: Jeffrey Hochman, Kenneth Sicklick, Ameesha Hosmane, Maurice Lefkort, and Matthew Rizzo of the Willkie Farr & Gallagher law firm; Scott Zimmerman, Jonathon Silverblatt, and Ricco Bhasin of the Dechert law firm; and Dan Celentano of Evercore Partners Inc. PBGC understands that these persons were generally responsible for representing the interests of the Delphi DIP lenders during those conferences, but PBGC does not know what particular responsibilities were assigned to these individuals during the conferences.

**19. Which terms of the PBGC settlements were negotiated in the telephone conferences?**

**Answer:** All the terms of the PBGC settlements were subject to negotiation during the telephone conferences.

**20. In your November 9, 2011 response to Question 11, you state, "The PBGC Board had no involvement in the process of reducing benefits." Which PBGC Board members were not involved in the process of reducing benefits?**

**Answer:** As previously noted, the PBGC Board consists of the Secretaries of Labor, Treasury and Commerce -- none of whom were involved in the process of reducing benefits.

**21. In your November 9, 2011 response to Question 19, you state, "We are not aware of any conflicts." Please clarify the entity or group of individuals to which you assign to the term "We," as used in your response to Question 19.**

**Answer:** Deputy Director of Operations Vince Snowbarger, General Counsel and Secretary to the Board Judith Starr, Deputy General Counsel and Designated Agency Ethics Official Philip Hertz.

**22. Please provide and describe the processes used by this entity or group of individuals in concluding that no conflicts existed.**

**Answer:** No facts have been brought to PBGC's attention that would lead to a conclusion that a conflict exists between the role that the Secretary of the Treasury plays as a member of PBGC's Board (a role described in PBGC's previous response to QFR 18) and the Secretary's role as head of the cabinet department overseeing the United States Government's ownership interest in New GM. The conflict of interest laws (18 U.S.C. 208) and regulations (5 CFR 2635.401 et seq) apply to personal financial interests and not to governmental interests that government officials overseeing multiple programs must balance. The issue as described in the QFR appears to be one of appearances. As noted in PBGC's prior response to QFR 19, GAO has reported on the measures Treasury has undertaken to prevent any appearance of tension between these roles.

**23. In your November 9, 2011 response to Question 23, you state, "PBGC approved the [settlement] agreements and signed them as a party." Who at PBGC approved the settlement agreements?**

**Answer:** PBGC's Acting Director Vince Snowbarger approved the settlement agreements.

**24. By what processes were the settlement agreement approved by PBGC?**

**Answer:** After PBGC's Delphi team negotiated the terms of the settlements (see answer to Question 15 above), PBGC's Chief Insurance Program Office Terrence Deneen described the terms of the settlements to Mr. Snowbarger and recommended that the agreements be approved. Based on Mr. Deneen's recommendation and on his own knowledge of the case, Mr. Snowbarger approved the settlements and authorized Mr. Deneen to sign them.

**25. Which individuals not employed by PBGC were consulted, whether formally or informally, in the process of PBGC approving the settlement agreements, and by what means of communication were these individuals consulted? Provide documentation and records of any such communications that occurred in written form.**

**Answer:** No individuals not employed by PBGC were consulted in the process of approving the settlements.

**26. In your November 9, 2011 response to Question 23, you state, "In negotiating the settlement, PBGC sought to protect its economic interests and obtain the test outcome for the pension insurance program and its stakeholders, including the participants in the termination Delphi Pension Plans." Who at PBGC participated in negotiating the settlement, and by what means of communication? Provide documentation and records of any such communications that occurred in written form.**

**Answer:** See Answer to Question 15 above. Information about the communications that led to the settlements have already been provided to the Committee by PBGC.

**27. With whom did PBGC participate in negotiating the settlement?**

**Answer:** See Answers to Questions 14, 16, 17, and 18 above.

**28. Please clarify what meaning you assign to the term "economic interests", as used in your response to Question 23.**

**Answer:** In every negotiation involving the settlement of its claims arising out of the termination of a pension plan, PBGC seeks to obtain the largest recovery possible in the circumstances. PBGC did that in the Delphi case. That is the meaning of the phrase "PBGC sought to protect its economic interests" as used in PBGC's November 9, 2011 response to Question 23.

**29. In your November 9, 2011 response to Question 24, which asked when the PBGC made the Department of Treasury aware of its belief that there were $2.4 billion in foreign Delphi assets upon which the PBGC could assert liens, you state that "as of June 15, 2009, PBGC had perfected $195.9 million in liens on behalf of the Delphi**

**Salaried Plan[,]" and that "[t]he $195.9 million represented the full amount of the liens that PBGC could assert under law on behalf of the Delphi Salaried Plan at the time of its termination." However, in a report presented to the PBGC dated April 16, 2009, Greenhill & Company, Inc. (a third party consultant that the PBGC hired to "evaluate the relative value of Delphi and its foreign businesses") stated that "[t]he combined collateral value potentially subject to foreign liens is currently estimated at $2.4 billion dollars." Is it your position that, despite the fact that you served as the Acting Director of the PBGC and signed the notice of determination that the Delphi plans should be terminated, you did not know that after the PBGC initiated termination proceedings against the Delphi plans it had the right, under ERISA § § 4062 and 4068, to assert additional liens upon Delphi assets? Are you also stating that you were unaware of the $2.4 billion estimate provided to the PBGC by Greenhill? Various PBGC memorandum directed to you at the time you were serving as Acting Director suggest that it was the need to perfect the PBGC's rights to these foreign liens that justified the PBGC's decision to initiate termination proceedings when it did. If you did not believe that the PBGC had the right to secure additional liens beyond the $195.9 million it had already perfected, why did you authorize the PBGC to institute termination proceedings as to the Delphi plans?**

**Answer:** At the time of the termination of the Delphi pension plans, PBGC had the legal right to file liens in the amount of $195.9 million against the non-bankrupt foreign assets of Delphi. That was the maximum lien amount that PBGC had under law, notwithstanding the fact that PBGC's financial advisors valued the Delphi foreign assets at about $2.4 billion. PBGC was also aware that there may have been positive net worth in some of the foreign subsidiaries in the Delphi controlled group. After the Delphi plans were terminated, PBGC may have had the right to file additional liens under ERISA § 4068. Under ERISA, however, the lien amount would have been limited to 30% of such net worth; a lien amount likely less than the value of PBGC's actual recovery from its settlements with Delphi and GM.

Moreover, the value of a § 4068 lien has been eclipsed by other claims Congress has provided to PBGC since ERISA was enacted in 1974. ERISA originally limited PBGC's claim against a plan sponsor and its controlled group for pension plan underfunding to 30% of the collective net worth of the plan sponsor's controlled group, via a statutory lien imposed by § 4068. The lien imposed by § 4068 "arises on the date of termination of a plan . . . ." Perfection of § 4068 liens against pension plan sponsors in bankruptcy is prohibited by the Bankruptcy Code's automatic stay. 11 U.S.C. § 362(a)(4). Furthermore, the 30% net worth limitation often resulted in PBGC receiving little to no recovery in cases where a plan sponsor and its controlled group were liquidating in bankruptcy, because their net worth was zero or nearly zero. In 1986, recognizing the limitations on PBGC's recovery inherent in this construct, Congress gave PBGC the ability to pursue a claim for the full amount of a plan's underfunding as described in ERISA § 4062(b).[3]

The Delphi pension plans were terminated on July 31, 2009. PBGC considered all possible avenues to maximize recovery and found that waiting until after the pension plan was terminated in order to pursue enforcement of a § 4068 lien was not the best option, in light of the inherent limitations discussed above, and the imminent breakup of Delphi's controlled group. Rather, PBGC ensured an optimal recovery by achieving its claims settlement prior to plan termination, and before Delphi's DIP lenders exercised their foreclosure rights. Had PBGC not acted to settle its claims at that point, when the Debtors were negotiating settlements with other creditors, the agency would not have obtained the valuable settlement package which included a $70 million cash payment from GM, and a membership interest in New Delphi, which ultimately yielded a payment to PBGC of $594 million.

**30. In your November 9, 2011 response to Question 24, you also state that "PBGC did not discuss its assessment of the value of Delphi's foreign assets with the Treasury Department." You elsewhere acknowledged that the PBGC took part in discussions with the Auto Task Force (which is of course a part of Treasury) over the terms of the PBGC Settlement Agreements, see, e.g., your answer to Question 26, and a key provision of these Settlement Agreements was the release of all liens asserted and/or assertable by PBGC against Delphi (and any entities in Delphi's controlled group). See Delphi-PBGC Settlement Agreement at 4-6; GM-PBGC Settlement Agreement at 4, 6. Is it your testimony that the PBGC never discussed the release of its liens, both asserted and assertable, with Treasury and/or Auto Task Force officials?**

**Answer:** To the best of our knowledge, PBGC did not discuss its assessment of the value of Delphi's foreign operations with the Treasury Department or the Auto Task Force. Representatives of the Auto Task Force did participate in the telephone conferences during which the terms of the PBGC settlements with Delphi and GM were negotiated. The release of PBGC's actual and potential liens was a term of both of those settlements, and that topic was discussed during those phone conferences. See Answers to Questions 14 and 19 above.

**31. In your November 9, 2011 response to Question 22, you state that "[t]hough Delphi continued to state its hope of GM assumption publicly through the spring of 2009, no one from Old GM, the Treasury Department, or the Auto Task Force ever communicated to PBGC that GM had any intention of assuming the Delphi Salaried**

[3] P.L. 100-203, Omnibus Budget Reconciliation Act of 1987. *See also* House Report No. 100-391 (II).

**Plan." Did the PBGC consider what the effect on GM would be if the PBGC refused to release its liens, both asserted and assertable, on Delphi assets? Did the PBGC ever propose to the Auto Task Force, Treasury or Old or New GM that Old or New GM assume the Salaried Plan? Did the PBGC ever prepare any financial estimates reflecting the cost to GM of assuming the Delphi Salaried Plan? If so, did the PBGC ever share such estimates with employees of the Treasury or Auto Task Force?**

**Answer:** PBGC considered the effect on GM and on all parties of refusing to settle PBGC's claims. PBGC concluded that settling its liens and claims in the manner that it did was the best option available and offered the optimal recovery available in the circumstances. See Answer to Question 29 above. During 2009, PBGC repeatedly asked GM whether it would consider assuming the Delphi Salaried Plan. GM consistently informed PBGC that it did not intend to do so. PBGC and GM both prepared estimates reflecting the cost to GM of assuming the Delphi Salaried Plan. PBGC did share those estimates with the Auto Task Force.

32. **In your November 9, 2011 response to Question 5, which asked whether the Treasury Department initiated discussions with the PBGC regarding the Delphi Salaried Plan, you stated that "[n]either the Treasury Department nor the Auto Task Force had a role in authorizing, approving or consenting to the termination of the Delphi Salaried Plan." This suggests that there was no interaction between the PBGC and the Treasury/Auto Task Force regarding the Delphi Salaried Plan. Are you denying that representative from the PBGC and Treasury/Auto Task Force discussed Delphi's Pension Plans between March and August 2009? If not, please list the communications that took place, stating the date and time of the communication, the exact topics discussed, and the individuals from each agency that took part in the communications.**

**Answer:** While neither the Treasury Department nor the Auto Task Force had any role in authorizing, approving or consenting to the termination of the Delphi pension plans, PBGC did discuss matters relating to the Delphi pension plans with the Treasury Department and the Auto Task Force between March and August 2009. PBGC has previously provided information regarding those discussions to the Committee.

Sincerely,

Vince Snowbarger
Deputy Director for Operations

**Attachments**

A. Weekly Reports to PBGC Board Representatives
   - A1. November – December 2008
   - A2. January 2009 - June 2009
   - A3. July 2009 - December 2009
   - A4. January 2010 - June 2010
   - A5. July 2010 - December 2010
   - A6. January 2011 - June 2011

B. Memoranda to the Board with attached Significant Case Reports
   - B1. October 21, 2009 Board Meeting
   - B2. February 18, 2010 Board Meeting
   - B3. July 22, 2010 Board Meeting
   - B4. October 18, 2010 Board Meeting
   - B5. March 2, 2011 Board Meeting
   - B6. May 3, 2011 Board Meeting

C. Board Agency Recipients of Periodic Reports