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

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

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

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

PENSION BENEFIT GUARANTY CORPORATION

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

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

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

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

What PBGC Does

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

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

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

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

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

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

DELPHI CORPORATION

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

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

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

Delphi's Bankruptcy

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

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

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

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

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

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

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

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

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

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

Recoveries and Benefit Payments

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

I would be happy to answer any questions.

Vincent K. Snowbarger

Vince Snowbarger is Deputy Director for Operations of the Pension Benefit Guaranty Corporation (PBGC). In that role, he oversees the PBGC's participant-oriented operations conducted by the Benefits Administration and Payment Department. Mr. Snowbarger joined the agency in 2002 after a career as an attorney, educator, and elected official in his native Kansas. From 1997 until 1999 he represented the Kansas Third Congressional District in the U.S. House of Representatives. Mr. Snowbarger is a graduate of Southern Nazarene University, and received his M.A. from the University of Illinois and his J.D. from the University of Kansas.