

**STATEMENT OF MATTHEW FELDMAN**  
**TO**  
**SUBCOMMITTEE ON GOVERNMENT OPERATIONS**  
**UNITED STATES HOUSE OF REPRESENTATIVES**  
**September 11, 2013**

Mr. Chairman and Members of the Subcommittee, I understand that I have been invited to appear before you today to discuss my role with the Treasury Department's Auto Team, which I joined in March 2009 as Chief Legal Advisor and on which I served until August 2009. The Treasury Department recruited me to join the Auto Team from my career as an attorney in private practice, where I specialize in reorganizing and restructuring large businesses not unlike the American automobile manufacturers that were in significant financial distress at that time. I believe that the work of the Auto Team contributed to a successful effort to avert disastrous consequences to both the American automobile industry and the American economy as a whole. Now, just four years after emerging from bankruptcy both General Motors and Chrysler are selling cars and adding jobs at a pace most thought unachievable. I remain proud of my service and I am prepared today to assist the Subcommittee in reaching a complete understanding of the Auto Team's work with respect to General Motors and in particular its relationship with its critical supplier Delphi Corporation during what was a difficult time and an unprecedented challenge for all involved.

Although it is wonderful to see the dramatic recovery of the automobile manufactures, and the thousands of American jobs that were saved and have been created as a result of our work, I am mindful that the restructurings that the Auto Team worked on required many Americans to make great personal sacrifices. As a result of the Delphi Corporation

bankruptcy, for example, Delphi's lenders, some of which had purchased Delphi's debt at a steep discount exerted significant influence over Delphi and ultimately the Pension Benefit Guarantee Corporation (PBGC) which forced the PBGC to terminate Delphi's pension plans. As a result of what occurred during the Delphi bankruptcy, there are Delphi retirees who unfortunately will collect less than their full pension benefits.

As stated by the Special Inspector General for the Troubled Asset Relief Program (TARP) in her August 15, 2013 Report to Treasury Secretary Lew, in 1999 when General Motors spun out Delphi as a separate company, Delphi's pension plan for its salaried employees was significantly overfunded (at 123% of expected payments needed to cover Delphi's salaried employees), but pension plan for hourly workers was significantly underfunded (at 69% of the expected payments needed to cover hourly retirees). To garner support and consent from the United Auto Workers (UAW) and other unions for the Delphi spin off and to avoid having to make a significant payment in 1999, General Motors and the UAW entered into a "top-up" agreement whereby General Motors agreed to make whole hourly employees being transferred to Delphi on their pension obligations in the unlikely, but ultimately real, event that Delphi defaulted on its pension obligations.

Following years of mismanagement and malfeasance, Delphi was forced to file for bankruptcy in 2005, after having allowed both its salaried and hourly pension plans to become underfunded, a situation that ultimately led the PBGC to conclude it needed to take action to terminate both plans. As stated by the GAO in its March 30, 2011 report to Congress on this topic, the PBGC reached its own conclusion to terminate the Delphi pension plans presumably after concluding that this was proper action to take under applicable law and that among the limited options available for these plans, the termination and takeover by the PBGC

was the best choice available. While I can understand why all parties involved would have preferred if General Motors had assumed these Delphi pension plans, taking on these liabilities in full would have threatened General Motors' future success as it exited from its own bankruptcy.

While General Motors was not willing to assume all of the pension plans, as the August 2013 SIGTARP Report makes clear, because General Motors viewed a well-motivated workforce at its own facilities and at its largest supplier as critical to ensuring an uninterrupted supply chain, General Motors made the commercially reasonable and necessary decision to honor its legal obligation memorialized in the "top-up" agreement with the UAW which it had entered into in 1999. The decision to assume the UAW top-up agreement was bargained for by the UAW and agreed to by General Motors after having been extended once by the parties in 2007. As this Subcommittee is aware, unfortunately many of Delphi's employees did not have similar top-up agreements with General Motors, and some of those employees will face a shortfall in their pension payments.

While the Auto Team agreed that honoring the top-up agreement was a prudent business decision, and we believed that doing so would protect both General Motors and the American taxpayers' collective investment in the company, the decision to honor the top-up agreement was wholly General Motors'. Our agenda was simple; the Auto Team was focused primarily on limiting the number of days General Motors spent in bankruptcy and ensuring a continuing supply of parts from Delphi.

The desire to limit General Motors' stay in bankruptcy was purely economic. Every week of bankruptcy where General Motors continued to carry all of its costs, but

generated little or no revenue would cost the American taxpayers hundreds of millions if not billions of dollars. The need for General Motors to complete its 363 sale within the 40-day<sup>1</sup> time period was intended, among other benefits, to limit the costs being borne by the taxpayers. We worked tirelessly with General Motors and its key constituents prior to its filing for bankruptcy to line up support and consensus in order to try to avoid delays to the 363 process.<sup>2</sup> Delay would cost enormous sums of money that would more than outweigh the potential savings and imperil the ultimate goals of preserving General Motors and the auto industry as a whole.

With respect to the preservation of the supply chain, Delphi parts were used in literally every car assembled by General Motors at that time. Moreover, Delphi supplied parts to nearly every other auto manufacturer both domestic and foreign. A complete shutdown of Delphi by its creditors which was being threatened, even before the Auto Team was formed, would have had a material negative impact across an industry that was already staring into a financial abyss. It would have been costly and ultimately unconscionable to encourage General Motors to emerge from bankruptcy, but have Delphi continue to point an economic gun to its head. As a result, in the Spring of 2009 Delphi also needed to find a path to emerge. Ultimately, that path included the PBGC terminating its various pension plans. If the Delphi creditors had agreed to continue to honor those plans that would have been a far preferable outcome. Unfortunately, those creditors refused to consider that path. As a result and as set forth in both

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<sup>1</sup> The TARP Report states incorrectly that a 40 day sale was unique or unprecedented. Neither is true. For example, the 363 sale of Lehman Brothers which was both larger and more complex than General Motors and took place during the first four days of the Lehman chapter 11 case.

<sup>2</sup> The TARP report suggests that the Auto Team only viewed the UAW and bondholders as key constituents. This was not the case. Another example not cited in the TARP Report was the Attorneys General for nearly 20 states who had organized to oppose a sale that did not respect states' lemon laws and certain state successor liability laws. Rather than fight the Attorneys General which would have taken time and caused delay, General Motors assumed these obligations.

the GAO and TARP Reports, the PBGC took the actions it believed were necessary and appropriate.

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

I am here today prepared to answer any questions the Subcommittee has concerning my role on the Auto Team.