

THE DELPHI PENSION BAILOUT: UNEQUAL TREATMENT OF RETIREES

FIELD HEARING

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
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THE DELPHI PENSION BAILOUT: UNEQUAL TREATMENT OF RETIREES

Monday, June 10, 2013

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 150, Sinclair Community College, 444 W. 3rd Street, Dayton, Ohio, Hon. John L. Mica [chairman of the subcommittee] presiding.

Present: Representatives Mica and Turner.

Staff present: John Cuaderes, Deputy Staff Director; Linda Good, Chief Clerk; and Tyler Grimm, Professional Staff Member.

Mr. MICA. Good morning. I would like to call this hearing of the Committee on Oversight and Government Reform and the Subcommittee on Government Operations to order. We are conducting this morning a field hearing of our subcommittee. The hearing title today is "The Delphi Pension Bailout: Unequal Treatment of Retirees."

I am pleased to be in Dayton today, and we are here at the request of Congressman Turner.

The order of business will be as follows. I will start with some opening statements, myself, Mr. Turner, and we will leave the record open for other members who want their statements to be made part of the record.

Today we will hear after the opening statements from two panels of witnesses, and we will have each of them give their testimony, and then we will allow for questions after we have completed the members of the panels with their testimony.

So, first of all, I want to thank Mr. Turner for his untiring support on behalf of the Delphi pensioners who were treated unfairly and again calling this matter to my attention. I took over the chairmanship of the Government Operations Subcommittee. I am the senior member of the panel. Some of you may have seen lately some of the work Mr. Turner, myself, Mr. Issa are involved in, a number of high-profile matters before the Congress. And we are the chief investigative panel in Congress, so it is our responsibility, whether they are big issues or issues like the Delphi pension issue that affects thousands of retirees, they all deserve our attention, and that is the purpose of this hearing today.

I will say also that I want to thank Sinclair Community College for hosting this. I just met President Johnson. I have a remote attachment to the community college. I found out that Sinclair has an association with two Florida community colleges, one Santa Fe

and Gainesville, and then my alma mater, the Miami-Dade Community College, which I graduated from. I am very proud of the work of community colleges and the opportunity they give so many people like myself and others.

So again, we are pleased to be here, and we will proceed. We will start with my opening statement.

I have sort of a general comment that I usually give at these hearings to explain the purpose of government oversight, Government Reform panel, explaining to folks that we exist for two fundamental purposes.

First, Americans have a right to know that money Washington takes from them is well and justly expended; and second, that Americans deserve an efficient and effective government that works for them. Our duty and responsibility 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 a right to know exactly what they got from their government and where their government must be held responsible.

We must work tirelessly and in a bipartisan fashion, and also with a partnership with citizen watchdog groups, to deliver the facts to the American people and bring reform and justice and fairness to the American people and hold the Federal bureaucracy accountable.

So that is the mission of our committee in general. As to this specific hearing today, again, this is a continuation of the committee's efforts to learn how and why salaried Delphi retirees saw their pensions cut as a result of decisions made by the Treasury Department and the Pension Benefit Guaranty Corporation.

Again, we would not be here without the untiring commitment and dedication of your congressman, who has been sort of like a pit bull on this and has not let it go and, again, brought this to my attention. I got through reading some of these volumes and others of background and immediately said to him that a great injustice is done to the people that he represents. So I know we will not stop until we pursue the truth, get the facts. Some of that has not been uncovered today, and that is the purpose of this hearing, and we are not going to stop until Delphi retirees get the justice they deserve.

The facts and circumstances about why we are here bear repeating. Delphi, and let me say this again for the record, separated, as we know, from GM and became an independent company in 1999. At that point in time, a separation agreement allowed for unionized Delphi employees to secure a guarantee from GM that in the event of a Delphi bankruptcy, GM would top-up—that is, make whole—the remainder of pensions not covered by the Pension Guaranty Fund.

In fact, no such agreement was made for the salaried employees. As such, when the Delphi plans were terminated in 2009, the salaried retirees faced immense hardship and lost health coverage and other benefits, dramatically disrupting their lives and their plans for retirement, while unionized employees maintained full pensions and benefits. Today we will hear from some of those so affected.

In addition to the financial hardship, non-unionized Delphi retirees feel betrayed by their government. This is a government program. This is government money, taxpayer money, and it picked winners and losers, and did so in an unjust fashion. While the unions were heavily involved in the negotiations surrounding the bankruptcies in GM and Delphi, the salaried employees did not have a seat at the table and, in fact, were left in the dark because of the fact that the Administration did not deem them a politically favored class.

The whole mess could have been avoided were GM to pursue a traditional bankruptcy route and not be subject to the political whims of the Obama Administration. The traditional bankruptcy route would have been better for GM in the long run and would have mitigated the risk of a politicized decision-making process such as what actually occurred with the Delphi salaried retiree pensions.

The bankruptcy proceedings that occurred were simply a legal vehicle for delivering ownership shares to the auto companies to the government. In other words, in the words of one legal scholar, instead of a traditional bankruptcy, that quote was the Obama Administration, working with the automakers, patched together a process without precedent, a bankruptcy combined with a bailout, incorporating the worst elements of both.

Issues surrounding why the pension fund for Delphi salaried retirees was terminated are extraordinarily complex. At the request of members of Congress, the Special Inspector General for the Troubled Asset Relief Program, we are conducting an audit of this issue. This report is said to be released in the near future and should provide more insight into decisions made by the Treasury Department and the Pension Guaranty Fund relating to Delphi.

So with those comments, let me say that again I strongly believe, after reviewing the record, information that is provided to me, that a great unfairness exists, that the government did, in fact, pick winners and losers unfairly, that in this government bailout they used government money. They also used government entities in making those decisions, and I believe that they did so in an improper fashion.

One of the things that I don't know is what took place in some of those proceedings. I talked to Mr. Turner last night and I intend, if necessary, we will subpoena those records and we will get the facts of who made what decisions, on what basis, and what transpired. And again, I think, based on what I have seen, the unfairness was very calculated and that we should find some way to make these retirees whole.

In addition to issuing subpoenas, as I said, if necessary, to get those documents that have been requested and that have not been provided to the committee or to Congress prior to my becoming the chair of the subcommittee.

The second thing we will do is we will hold as many hearings as necessary. This one is here, and we will also hold them in Washington until we do get the facts, and I think we also need to carefully review the findings of the Inspector General's audit report that is coming out.

So, with those comments, and with that agenda in mind to proceed on this issue, I am now pleased to yield to the gentleman from Ohio, Mr. Turner.

Mr. TURNER. Thank you. Thank you, Mr. Chairman. I have several people, obviously, to thank. First I would like to thank Sinclair Community College for hosting us; and secondly, I would like to thank the Delphi salaried retirees themselves.

Mr. Chairman, as you know from all of the materials that you have reviewed in preparation for this hearing, were it not for the Delphi salaried retirees standing up against the injustice which they faced, organizing themselves in a great structure and filing suit, pursuing the judicial process through this and working as a partner with us, we would not know the details that we know today of what occurred in the process of the Administration picking winners and losers and resulting in the Delphi salaried retirees losing a great portion of their retirement benefits.

Mr. Chairman, as you and I discussed last night, it was my intention after hosting this hearing to approach you to ask for further follow-on hearings in Washington after this hearing and for support, if need be, for issuing subpoenas, since the Administration has not been forthcoming.

I want you all to know in attendance that as a result of your great work and the record that the chairman was able to review, we did not have to wait until this hearing was over. The chairman, when I had dinner with him last night, had reviewed the materials and he said, well, I looked at this and it looks like we need some follow-on hearings in Washington, D.C., and if need be, we should issue subpoenas.

So if you would all join me in thanking the chairman both for being here —

[Applause.]

Mr. TURNER. Mr. Chairman, that doesn't mean we don't need to have this hearing, but it does mean we greatly appreciate the fact that you are dedicated to this issue, the work that you have done and the preparation for today, and your commitment to addressing the issue of injustice.

Mr. Chairman, before we proceed, I have several statements for the record from other members of Congress that could not be here with us today, and I ask for unanimous consent for those to be entered into the record.

Mr. MICA. Without objection, so ordered.

Mr. TURNER. I would also like to point out that we have here with us today staff from the offices of Congresswoman Susan Brooks and Senator Rob Portman, both of which have been excellent partners on this issue.

And as members of the Government Reform and Oversight Committee, as the chairman says, we are dedicated to the issue of trying to do investigations to right injustices. As you know, our committee is very active on the issues of Benghazi, the IRS, and other issues that appear to be scandals where the Administration has overstepped what our concept is for justice and protection of our own liberties. This injustice, what has occurred with the Delphi salaried retirees, is one that needs to be remedied.

Mr. Chairman, the Dayton region was the birthplace of the Delphi Corporation. The company was founded as the Dayton Engineering Laboratories Company, which evolved through the hard work of Ohioans into Delco, which was a division of General Motors. General Motors subsequently spun off Delphi Corporation, which at one point was the largest parts supplier to General Motors. My father worked for General Motors for over 40 years in this town.

When Delphi declared bankruptcy in 2005, the company decided to close or sell several facilities in Ohio. Here in my district, two facilities in Dayton, as well as facilities in Kettering, Moraine and Vandalia, were closed. The effect of these plant closures have been felt throughout the Dayton region as many of our family members, neighbors, and friends were Delphi employees. Whole neighborhoods have been affected by Delphi's bankruptcy, and it is appropriate that we are right here in Dayton to hear directly from the retirees here in this community.

In the wake of the General Motors bailout, the Administration picked winners and losers. There is no other way to say it. 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, 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. They see also the injustice that was done here.

I have worked alongside many members of my community and members of Congress to advocate on behalf of both the union and non-union labor to ensure that all retirees receive whatever benefits they were promised. All of the retirees, regardless of labor affiliation or not, worked alongside each other during their careers and, Mr. Chairman, there were also other unions that did not receive the full benefits and that were penalized in this process. They should not be treated any differently in their retirement.

Mr. Chairman, your assistance in bringing to light what occurred, what transpired in the Administration picking winners and losers is what will assist us in being able to set aside this injustice. No administration should be able to take taxpayer dollars and pick winners and losers and also at the same time refuse to tell the country what they did with the money, what their justification and rationale was, and they should also not be free from our oversight and review and certainly from the legal processes.

To this date, the Administration has continued to try to thwart the lawsuit that has been filed by the Delphi salaried retirees, resisting requests for production of documents and discovery requests, and they have also resisted congressional oversight as we have requested documents.

It should not take years for us to find out basically two questions, what happened and why, so that we can, then, both through a legal basis and through a congressional basis, review the decisions that were made and the effects on the people that are here.

Mr. Chairman, thank you for being here, for this hearing, and thank you for your commitment to what truly is a great injustice. Thank you.

[Applause.]

Mr. MICA. Well, thank you. Thank you again, Mr. Turner.

We will now turn to our first panel. We have two panels of witnesses.

First, Mr. Turner asked that members may have seven days to submit opening statements for the record. Without objection, so ordered.

And now, as I welcome the witnesses, let me introduce them publicly. First, Mr. Bruce Gump is a member of the Delphi Salaried Retirees Association. Ms. Mary Miller is a member of the Delphi Salaried Retirees Association. Mr. Tom Rose is also a member of the Delphi Salaried Retirees Association.

As you have heard previously, this is an investigative panel of Congress, chief investigative panel, so we do, pursuant to our committee rules, swear in all of our witnesses. So if you will please stand, rise, raise your right hand.

[Witnesses sworn.]

Mr. MICA. Let the record reflect that all three witnesses answered in the affirmative.

And we will start with Mr. Gump. I recognize you.

Let me just tell all of the witnesses, we would like you to try to limit your remarks before the subcommittee to five minutes. If you have additional data, information, or something you would like included in the record, if you would request that submission through the chair, we will include it in the official testimony and transcript of today's hearing.

So, Mr. Gump, welcome, and you are recognized.

WITNESS STATEMENTS

STATEMENT OF BRUCE GUMP

Mr. GUMP. Thank you very much, Chairman Mica and Congressman Turner, and thank you for this opportunity.

As you said, my name is Bruce Gump, and I worked for General Motors for more than 22 years, and then Delphi for 10 years as a senior engineer. I worked hard and I played by the rules. Like many others who made General Motors and Delphi able to exist by working in thousands of salaried positions, we didn't expect to be treated like yesterday's garbage by our government.

I would like to tell you what really happened because of the intervention of our government. When the President's Auto Task Force was formed, it quickly decided that in order for General Motors to be successful, it needed to secure General Motors supply of critical parts from bankrupt Delphi. So they looked at the roadblocks and worked quickly to eliminate them. Up to that point, everyone involved knew that there would be no way to resolve the Delphi situation without addressing the Pension Benefit Guarantee Corporation's liens and claims that had been placed on Delphi's assets. These liens and claims were worth billions, and they ensured that Delphi and GM could not walk away from their long-standing pension obligations.

But then the Auto Task Force was formed and took over the job of facilitating a resolution to the pension issues. They killed any hope we had of the PBGC looking out for our interests. The Auto Task Force has testified that the Treasury was “trying to facilitate an agreement where the salaried plan would get terminated and taken over by the PBGC.” And not surprisingly, that is exactly what happened. The shame of it is that the termination was entirely unnecessary. The plan was well funded, and there were alternate sponsors available.

Just a few weeks prior to the termination of the salaried pension plan, the plan’s actuary completed and AFTAP analysis that determined the plan was about 86 percent funded, better than average at that time. The bottom line is that our plan and the liens and claims that protected it were simply in the way of the President’s Auto Task Force. They were in a hurry, so they found a way to just kill the plan as quickly and efficiently as possible.

While there is ample evidence in the form of emails and testimony to show how deeply responsible a select few in Treasury were for our situation, one need look no further than Vice President Biden’s own words. In an interview with a Youngstown, Ohio television reporter on the subject he said, “We were able to protect the hourly workers. Some salaried workers got hurt, particularly the younger ones.” The “we” in that sentence refers to the Administration, of which he is a member, and confirms that the Auto Task Force under the U.S. Treasury was deeply involved in the decision to protect the hourly workers but not the salaried workers.

Also, the PBGC and Treasury have worked tirelessly to keep the records of their actions secret. If they were really proud and nothing inappropriate was done, they wouldn’t have to work so hard to keep secrets.

There have been numerous roadblocks thrown up to stop our attempts to gain understanding and justice. PBGC’s so-called administrative record was found to be incomplete, to say it kindly. PBGC refused to comply with discovery for nearly two years, and finally did after the federal court issued five additional orders. PBGC was ordered to fully comply with our discovery demands within 90 days, but they took all 90 to supply the very first documents, and then continued only in dribs and drabs. Thirty thousand documents are still missing.

PBGC offered misleading testimony while under oath about providing the administrative record. Seventy thousand documents not included in the original record have now been obtained, and the PBGC simply has no credibility.

PBGC has refused to supply non-personally identifiable Census information, as required in discovery. Congressional attempts to gain access to documents have been met with a shameful disregard and a threat to claim executive privilege over a pension issue. That is, to me, a tacit admission of guilt.

Treasury tried to stymie the SIGTARP investigation and, in fact, it took a special hearing to gain access to the principals in the President’s Auto Task Force. The Administration and the PBGC have misrepresented their actions and misled this committee for nearly four years now. It is time to bring this to an end and do

what should have been done to begin with and restore the full pensions that we earned over decades of service.

Finally, there is the economic impact of the decisions that left the salaried retirees without their full pensions and no health care insurance. According to an extended Youngstown State University study, the cost to Ohio in terms of economic activity was nearly half a billion dollars per year, and nearly 15,000 additional jobs were lost. Much of that can be recovered by restoring the pensions of the retirees.

In summary, what really happened is very different from what the PBGC and Treasury have said. We are still trying to learn more, and we won't ever give up. But all we really want is what we earned. Justice was provided to our co-workers. Real people are suffering because of this illegal and unethical treatment by our government. At the end of the day, the decisions to terminate our plan were made, vetted, encouraged and determined by the President's Auto Task Force. They played God, and they played with people's lives, and they purposely hurt tens of thousands of American citizens in the process.

Please help us force transparency into this issue by pursuing the records from Treasury and PBGC. Hold them accountable for their actions, good or bad. Show that American citizens deserve to be treated equally regardless of who they associate with or what groups or clubs they belong to. Help the Administration to live up to its promises of transparency and pension protection, and help us gain the pensions we earned, and help the economy to recover more quickly. Thank you.

[Prepared statement of Mr. Gump follows:]

Chairman Mica, Congressman Turner and (other panel members)

Thank you for this opportunity to bring the committee up to date on our efforts to be treated by our government in a fair and equitable manner, something we have been denied thus far. My name is Bruce Gump and I am the Vice-Chairman of the Delphi Salaried Retirees Association. I was employed by GM for more than 22 years and then by GM's parts spin-off Delphi for 10 years as a Senior Engineer. I worked hard and played by the rules. I contributed greatly including creating 10 intellectual properties such that last November I was inducted into Delphi's Innovation Hall of Fame. Like many others who made GM and Delphi able to exist by working in thousands of salaried positions, we expected to be rewarded for our efforts, and not treated like yesterday's garbage by our government. You have heard some of the history and expectations; I would like to tell you what really happened.

When the President's Auto Task Force was formed, it quickly decided that in order for GM to be successful, it needed to secure GM's supply of critical Delphi parts so they looked at the roadblocks and worked to quickly eliminate them. Up to that point everyone involved recognized that there would be no way to resolve the Delphi situation without addressing the PBGC liens and claims that the PBGC had placed on Delphi's assets in connection with the Salaried Plan's missed contributions and underfunding. These liens and claims were worth billions, and as long as they were in place they ensured that neither Delphi nor GM could walk away from their long-standing pension obligations.

Because the PBGC had a number of legal tools at its disposal to force GM to take responsibility for the Salaried Plan's underfunding, including its liens and claims, in 2009 the PBGC started working with Delphi to persuade GM to assume the Salaried Plan. Then the Auto Task Force was formed, and took over the job of "facilitating" a resolution of the pension issues. Once this happened, any hope we had of the PBGC looking out for our interests was gone. Again, by statute, the PBGC Director reports to a three person board, each of whom is a political appointee of the president. Those appointees, the Secretaries of Labor, Treasury and Commerce, received regular briefings from the PBGC Director on important cases generally, and early in 2009 representatives from Labor and Treasury started receiving daily briefings from the PBGC.

From the outset, the Auto Task Force has testified that the Treasury was **"trying to facilitate an agreement where the salaried plan would get terminated and taken over by the PBGC," and not surprisingly, this is exactly what happened. The shame of it is that the termination was entirely unnecessary. The Plan was well funded.** Just a few weeks prior to the PBGC choosing to terminate the salaried pension plan, the plan's actuary completed an "AFTAP" analysis that determined the plan was about 86% funded, better than average at that time. The PBGC chose to entirely ignore this funding analysis.

Moreover, the PBGC's own actuaries concluded that GM assumption of the Salaried Plan would have cost GM as little as \$400 million through 2018. Given that GM wound up giving the PBGC over \$600 million in return for releasing its liens and claims related to the Delphi Salaried Plan, the obvious question here is why didn't the PBGC take a stronger stand to have GM assume the Salaried Plan?

For four years now we have been trying to gain access to records from the PBGC and Treasury so we can better understand why the salaried retirees were chosen by our government to lose everything while

others received full protection from those losses. Yet in spite of promises from everybody from the President on down to the leadership of the PBGC we have been fought every step of the way as we tried to gain access to the records that will either show why we lost everything or why we shouldn't have. Interestingly, the House Ways and Means Committee chairman recently requested records from the Treasury, and when denied suggested they could pursue those documents through the compulsory process. The response from the administration was to threaten to use Executive Privilege to keep them secret. The threatened use of Executive Privilege over a pension issue seems quite odd and a tacit agreement that those records would not support the Treasury's position that they did not make the decisions that led to the termination of our pension plan. We would really appreciate the help of this committee to gain access to those records!

When our attorneys served Treasury with a subpoena for those records, rather than complying with the subpoena and providing the transparency the administration promised, the Treasury moved to quash the subpoena in a different Federal Court which has only served to further delay our efforts thereby denying us the justice we have sought.

In addition, the PBGC previously testified in a hearing of the Oversight and Government Reform Committee that they had provided all of their records related to their termination of our plan, but since then through the Federal Court we have gained more than a million pages of very relevant documents, and they are still withholding an estimated half-million pages!

One might ask how we know that the Treasury played a major role in the decision to terminate our pension plan. While there is ample evidence, in the form of emails and testimony, to show how deeply responsible a select few in the Treasury were for our situation, one need look no further than the Vice President's own words. Vice President Biden, who spoke in an interview with a Youngstown, Ohio television reporter on the subject, said: "We were able to protect the hourly workers. Some salaried workers got hurt, particularly the younger ones." The "We" in that sentence refers to the administration of which he is a member and confirms that the Auto Task Force under the US Treasury was deeply involved in the choice to "protect the hourly workers." Also, I would note that while the PBGC has stated numerous times that everything they did in the termination of the Delphi salaried pension plan was done according to standard procedure and that they are proud of the role they played in the auto bailout, they and Treasury have worked tirelessly to keep the records of their actions secret! If they are so proud and nothing inappropriate was done, then why would they work so hard to keep those records secret?

Several of the principle actors in the termination of our pension plan profited personally, some to a very large degree.

Harry Wilson had been a partner at Silver Point Capital which shared \$1.3 billion in profit with Elliot Capital Management from Delphi's bankruptcy exit. He was paid at least \$250,000 by Silver Point in 2009. After the bailout, he was appointed to the PBGC's advisory board. Mr. Wilson also used three

different e-mail addresses including his own personal g-mail and Harvard addresses to conduct government business.

Matt Feldman came to the Treasury Department from Willkie Farr & Gallagher — the law firm that represented Silver Point Capital as it angled for a cut of the bankrupt Delphi's debt load. After the bailout in which Silver Point made so much money, he returned to the same law firm and remains there. Silver Point is presently among his clients.

Joshua Gotbaum was an operating partner at Blue Wolf Capital and represented that company in the bailout negotiations. After the bailout he was appointed Director of the PBGC.

There has been discussion about demands from the venture capital groups for the Delphi salaried pension plan to be terminated as the reason behind what happened to us. Our plan was the major obstacle because of its size, yet other pension plans which were less well funded were made whole by the infusion of funds from the taxpayers and so they were not considered liabilities that were subject to such demands.

We have had to deal with numerous and lengthy delays too. For example:

- PBGC produced what it called the "administrative record" but we found that it lacked information about the involvement of the Auto Task Force in spite of the fact that their Chief Negotiator was calling and e-mailing them on an almost daily basis regarding the Delphi pension plans. This required us to pursue a FOIA request which after a long delay resulted in heavily redacted material or entirely withheld materials.
- In spite of the Federal Judge denying multiple motions from the PBGC to have our lawsuit dismissed, and a discovery order from the court, PBGC refused to comply with the demand for documents from 2010 when the order was issued until 2012 and did so then only after forcing us to file and brief numerous motions, and only after the Court issued another FIVE orders explicitly stating our right to discovery.
- In the last order for discovery the court required PBGC to fully comply with our demands for records within 90 days, but supplied nothing until the 90th day and then was only forthcoming in dribs and drabs. It has now been more than a year and they are still withholding about 30,000 documents, and have not yet supplied a privilege log explaining why.
- We served the Treasury with a subpoena for their records regarding their involvement in the decisions to terminate our pensions. In response rather than living up to the promise of transparency made by the administration, they filed a motion to quash the subpoena and continued to keep those records secret. It should be noted that one of the arguments to quash was that the demand was "burdensome" but they had already compiled nearly all of the same information for the SIGTARP.

- Congressional attempts for much of the same information from Treasury have been met with shameful disregard and an implication that a subpoena would be met with a claim for executive privilege – over a pension issue!
- PBGC has offered misleading testimony while under oath regarding what information has been provided to the various committees and the Delphi Salaried Retiree Association. They simply lack any credibility.
- The SIGTARP investigation was so stymied by the refusal of Treasury to provide access to the principles from the Auto Task Force that a special hearing had to be held by the Oversight Committee to overcome it and get the investigation back on track.
- The PBGC has refused to supply legally required census information even after the DSRA agreed to a confidentiality process and also agreed that personally identifiable information was not required.
- After more than a year of effort requesting a meeting with the Director of Recovery for Auto Communities and Workers from the Department of Labor, who also happened to be the previous Mayor of Youngstown, Ohio, a meeting was finally held where there was a review and a proposal for resolution provided by the DSRA. The Director promised a response within three weeks, but only after repeated contacts and requests for a response and after three months had past was a response received that essentially said “go get a job...”

The point is that the administration has taken advantage of every opportunity to drag out and increase the cost of pursuing the justice we are entitled to. They have misrepresented their actions and misled the committee for nearly four years now. It is time to bring this to an end and do what should have been done to begin with – treat the salaried retirees in a fair and equitable manner by restoring the full pension they earned over decades of service.

Finally there is the economic impact of the decisions that left the salaried retirees without their full pensions and no health care insurance. According to an extended Youngstown State University study the cost to Ohio in terms of economic activity was nearly \$500,000,000 per year, and nearly 15,000 additional jobs lost – at the bottom of a major recession. After four years that amounts to nearly \$2 billion lost to the economy so far. Furthermore all of that income could have been taxed, and each transaction would have caused a sales tax that would have supported communities across the state. All of that has been lost but much of it can be recovered by returning the full pensions to the retirees.

In summary, what really happened is very different than what has been described by the PBGC and the Treasury. We are still trying to learn more and won't ever give up, but all we really want is what we earned just as was provided to our coworkers. Real people are suffering because of this horrible treatment by our government. There is no question that it looks like politically connected people forced GM to top up the hourly pensions but not the salaried pensions, even when some hourly groups had and still have no contract with New GM! At the end of the day, all of these decisions were made, vetted, encouraged and determined by the President's Auto Task Force. They played god. They played with people's lives and hurt tens of thousands of American citizens in the process.

Please help us force transparency into this issue by pursuing the records from Treasury and PBGC. Hold them accountable for their actions – good or bad. Show that American Citizens deserve to be treated equally regardless of who they associate with or what groups or clubs they belong to. Help the administration to live up to their promises of transparency and pension protection. Help us regain the pensions we earned without the use of any taxpayer funds, and help the economy to recover more quickly.

Thank you.

Mr. MICA. Thank you for your testimony, and now we will turn and recognize Mary Miller.

Welcome, and you are recognized.

STATEMENT OF MARY MILLER

Ms. MILLER. Thank you, Congressman, for inviting me to testify today. My name is Mary Miller. In 1999, General Motors decided to spin off their component parts business. This spinoff became Delphi Corporation. Delphi Corporation, the largest automotive parts supplier in the world, was integral to GMs success. Most Delphi retirees worked two-thirds or more of their careers in service to GM, and only a small part of their careers for Delphi. I worked 22 years for General Motors and only nine for Delphi. I was forced to retire in 2008 when Delphi decided to permanently close its brake operations, where I worked as an HR manager.

All GMs salaried retirees are receiving their full pensions. All GM hourly retirees are receiving their full pensions. And all Delphi hourly retirees of major unions are receiving their full pensions. So what brings us together this morning if all of these retirees are receiving their full pensions? We are here today because one key group who worked side by side with all these other people is not receiving their full pensions.

The Delphi salaried retirees' pensions were decimated in 2009 during the Auto Task Force rush to settle GMs bankruptcy. The Delphi salaried retirees lost up to 70 percent, that is 70 percent, of our hard-earned pensions. This loss has been devastating for the salaried retirees and their families. Congressmen, this has caused home foreclosures, bankruptcies, family breakups, suicides, serious stress-related illnesses, and an ongoing struggle just to pay routine bills.

How can it be legal for the government to pick winners and losers amongst its own citizens? For me and many of my fellow retirees, the burden of trying to figure out how to make ends meet gets heavier every day. We are real people. We suffer real hardships. And all the while, many of our neighbors with whom we worked side by side are receiving their full pensions.

The Delphi hourly retirees of major unions are receiving every pension dollar they earned. The American taxpayers are paying for top-ups for all of the Delphi hourly retirees of major unions, top-ups that were won during the GM bankruptcy by politically connected individuals.

The PBGC was created to help save retirement plans, and really, that is what I believe it tries to do. Just look at its efforts in the recent cases of American Airlines and Tower Automotive. What was different in our case? What was unique about our salaried pensions that allowed the PBGC to do nothing to defend and protect our pensions, pensions that were well funded and very savable?

We have heard over and over how proud the Administration is of the Auto Task Force's efforts to save automotive jobs in America. We have heard time after time how everything the Auto Task Force, the Treasury, and the PBGC did to help preserve those jobs was done normally and within the law. So, if they are so proud of everything they have done, then why are they so secretive about giving us the records we have been asking for since 2010?

They have thwarted us at every turn, denying our request for documents, not complying with our subpoena for their records, and even going to a different court to quash the subpoena. It really makes you eager to know what they are so desperate to hide that a White House attorney indicated they would use executive privilege to keep from revealing their records, if subpoenaed.

Congressmen, this is from the same administration that promised, "Transparency and the rule of law will be the touchstones of his presidency."

The PBGC has stonewalled every request we have made. The Treasury has been downright non-participative regarding every record we have asked them to provide. The House Ways and Means Committee asked for Treasury records last fall; none have been provided to date. We are asking the House Oversight and Government Reform Committee to obtain the Treasury's records so the truth about our case can finally be uncovered.

While we will never give up our fight, we do need your help to win. We need our congressional representatives to be our advocates, to be on our side, to use your power, given to make our government truly one of checks and balances, to demand this blatant wrong be righted immediately—not later this year, not next year, not sometime in the future, but now. This fight has been going on for almost four years. It is time to end this disparate treatment and settle this shameful wrong while most of our retirees are still alive. Some are not.

This can be done today with no cost to the taxpayers. The funds the PBGC received for our salaried pensions are more than enough to make our pensions whole. Please join us in our brave fight to win back what is rightfully ours. Don't let any more time slip by without pressing our case forward to resolve this shameful, shameful violation of ERISA law. Help us move from being victims to victors. Reassure us and millions of others that this is still America, the land of the free and the home of the brave. We need your help. Thank you.

[Prepared statement of Ms. Miller follows.]

Testimony of Mary T. Miller, DSRA Member

Monday, June 10, 2013

Subcommittee on Government Operations

Thank you Congressmen for inviting me to testify today.

I am Mary Miller.

General Motors decided in 1999 to spin-off their component parts business. This spin-off became Delphi Corporation. Delphi Corporation, the largest automotive parts supplier in the world, was integral to GM's success. Most Delphi Retirees worked two-thirds or more of their careers in service to GM and only a small part of their career for Delphi. I worked 22 years for GM and only 9 years for Delphi. I was forced to retire in 2008 when Delphi decided to permanently close their Brake Operations in Dayton, Ohio, where I worked as an HR Manager.

All GM salary retirees are receiving their full pensions, all GM hourly retirees are receiving their full pensions, and all Delphi hourly retirees of major unions are receiving their full pensions. So what brings us together this morning if all of these retirees are receiving their full pensions? We're here today because one key group, who worked side-by-side with all these other people, isn't receiving their full pensions. The Delphi salaried retirees have lost up to 70 percent of our hard earned pensions. The Delphi salaried retirees' pensions were decimated in 2009 during the Auto Task Force's rush to settle GM's bankruptcy. This loss has been devastating for the salaried retirees and their families—causing home foreclosures, bankruptcies, family breakups, suicides, serious stress-related illnesses, and an on-going struggle to pay routine bills.

How can it be legal for the government to pick winners and losers amongst its own citizens? For me and many of my fellow retirees the burden of trying to figure out how to make ends meet gets heavier every day. We are real people suffering real hardships. And all the while many of our neighbors with whom we worked side-by-side for years are receiving their full pensions. The Delphi hourly retirees of major unions are receiving every pension dollar they earned. The American tax payers are paying for top-ups for all of the hourly retirees of major unions—top-ups that were won during the GM bankruptcy by politically connected individuals.

The PBGC was created to help save retirement plans and that is what I believe it tries to do. Just look at its efforts in the recent cases of American Airlines and Tower Automotive. What was different in our case? What was unique about our salaried pensions that allowed the PBGC to

do nothing to defend and protect our pensions; pensions that were well funded and very savable.

We've all heard over-and-over how proud the Administration is of the Auto Task Force's effort to save automotive jobs in America. We've heard time-after-time how everything the Auto Task Force, the Treasury and the PBGC did to help preserve those jobs was done normally and within the law. If they are so proud of everything they've done then why are they so secretive about giving us the records we've been asking for since 2010? They have thwarted us at every turn, denying our request for documents, not complying with our subpoena for their records and even going to a different court to quash this subpoena. It really makes you eager to know what they are so desperate to hide that a White House attorney indicated they would use Executive Privilege to keep from revealing their records, if subpoenaed. And this from the same administration that promised "Transparency and the rule of law will be the touchstones of this presidency."

The PBGC has stonewalled every request we've made. The Treasury has been downright non-participative regarding every record we've asked them to provide. The House Ways and Means Committee asked for Treasury records last fall—none have been provided to date. We are asking the House Oversight and Government Reform Committee to obtain the Treasury's records so the truth about our case can finally be uncovered.

Our Delphi Salaried Retirees have been brave in the face of adversity. In the midst of their financial losses our members have contributed from their greatly reduced resources to fund a legal battle to win back our full pensions.

While we will never give up our fight-- we do need your help to win. We need our congressional representatives to be our advocates; to use your power, given to make our government one of checks and balances, to demand this blatant wrong be righted immediately. Not later this year, not next year, not some time in the future but NOW. This fight has been going on for almost four years. It's time to end this disparate treatment and settle this egregious wrong while most of our retirees are still living.

This can be done today with no cost to the tax payers. The funds the PBGC received for our salaried pensions are more than enough to make our pensions whole. Join us in our brave fight to win back what is rightfully ours. Don't let anymore time slip by without pressing our case forward to resolve this shameful violation of the law. Help us move from being victims to victors.

Reassure us and millions of others that this is still America—the land of the free and the home of the brave. Thank you.

Mr. MICA. Thank you.
 We will turn now to Mr. Tom Rose.
 Mr. Rose, you are recognized.

STATEMENT OF TOM ROSE

Mr. ROSE. Thank you, Chairman Mica and Congressman Turner, for holding this important hearing. Delphi salaried retirees continue to seek the truth about our pension termination, a termination that was absolutely unnecessary and, we believe, illegal.

Yes, we believe the PBGC broke the law.

My name is Tom Rose. After college and two years of military service, including a year in Vietnam, my automotive career began with GM and continued for 30 years. I spent an additional nine years with Delphi. I certainly felt that I contributed a small piece to the powerful GM that had to be bailed out in 2009. I also expected to receive my health care and pension that was earned and promised as part of my employment.

After the dust of the frantic 44-day GM bankruptcy had settled, I found myself with zero healthcare and, in my case, a 40 percent pension reduction. My carefully planned retirement was blown apart at a point in my life when recovery time and opportunities are limited. I look back and wonder what I did wrong.

I now realize that I first trusted GM/Delphi, and then I trusted the Auto Task Force that guided the bailout under the direction of Treasury. In the end, this trust was misplaced as myself and 20,000 other Delphi salaried retirees were abandoned.

We are glad that the union retirees have their full healthcare and pensions; they earned it, they deserve it, but so do we. They received their full pensions, not from obsolete union contracts, as alleged, but were topped up per direction of the Auto Task Force. As Mr. Gump stated, from Vice President Biden, "We were able to protect the hourly workers. Some salaried workers got hurt, particularly the younger ones."

Speaking for myself, I simply failed to understand how two groups of employees working for the same company, in the identical situation, could be treated so distinctly different by our own government. The preferential treatment given the union is blatantly obvious. Were salaried workers wrong to expect fair and equitable treatment from our own government?

Matthew Feldman, a member of the Auto Task Force, stated that, "We were trying to facilitate an agreement where the salaried pension plan would get terminated and taken over by the PBGC and GM would assume liability for the hourly plans." They were certainly successful in terminating our pension in spite of the fact that our plan was considered to be fully funded by third-party actuaries. They were also successful in having the taxpayers pick up the tab to fully fund hourly pensions. This reinforces my belief that Treasury and the Auto Task Force were calling the shots, and the PBGC was simply a pawn in our pension termination.

The PBGC's role is to, quote, "protect the retirement income of pension plan beneficiaries." Let me recap how they have protected us.

The PBGC's administrative record, which should clarify what happened, only serves to interject confusion. Despite the PBGC ac-

knowledging almost daily coordination with the Auto Task Force, the administrative record was almost entirely stripped of references to this coordination.

FOIA, Freedom of Information Act, requests to obtain information were answered by providing hundreds of pages of redacted material or simply withholding information. Again, this obscured the details of PBGC's actions.

DSRA's lawsuit was brought in September 2009, and after numerous objections, Judge Tarnow of the U.S. District Court for the Eastern District of Michigan ordered discovery in 2010. The PBGC did not produce a single document until June 2012, and only then after the court issued another five orders explicitly stating our right to discovery. The last of these orders was issued in March 2012, with a requirement to be completed within 90 days. After 15 months, the PBGC has still not fully complied.

Treasury has never participated in discovery. Why not? Isn't the current administration the alleged most open and transparent ever? I don't mean to be critical. After all, the DSRA consists of both Republicans and Democrats. But the huge disconnect between words and actions is shameful.

As you know, the PBGC has also stonewalled numerous congressional requests for information.

Recently, the PBGC announced that final benefit determination for our pensions could not occur until 2015, thus forcing continued financial uncertainty on salaried retirees.

So I ask, is this how the PBGC protects us? I could go on but, in summary, justice delayed is justice denied.

Fortunately, there is some good news. A solution exists for the salaried pension plan. In recent meetings with Treasury and PBGC, a proposal has been presented that fully funds the salaried pension plan, both retroactively and going forward. This proposal can be implemented immediately and with zero taxpayer money required. This would also fulfill the political solution as suggested by Judge Tarnow.

Congressmen, today we are asking for your help in requiring Treasury and PBGC to end this harm that was needlessly inflicted upon this group of American citizens. After almost four years, one Senate hearing, six House hearings, continuous PBGC delays and no Treasury participation, this has gone on long enough. A solution exists, and the time to implement this is now. Thank you.

[Prepared statement of Mr. Rose follows:]

Testimony of Tom Rose
Delphi Salaried Retirees Association
Monday, June 10, 2013
Oversight & Government Reform Subcommittee on Government Operations

Thank you, Chairman Mica, and Congressman Turner for holding this important hearing. Delphi salaried retirees continue to seek the truth about our pension termination; a termination that was absolutely unnecessary and - we believe - illegal.

My name is Tom Rose. After college and two years of military service, including a year in Vietnam, my automotive career began with GM and continued for 30 years. I spent an additional nine years with Delphi. I certainly felt that I contributed a small piece to the powerful GM that had to be bailed out in 2009. I also expected to receive my health care and pension that was earned and promised as part of my employment. After the dust of the frantic 44-day GM bankruptcy had settled, I found myself with zero health care and – in my case – a 40% pension reduction. My carefully planned retirement was blown apart at a point in my life when recovery time and opportunities are limited. I look back and wonder what I did wrong. I now realize that I first trusted GM/Delphi, and then I trusted the Auto Task Force that guided the bailout under the direction of Treasury. In the end, this trust was misplaced as myself and 20,000 other Delphi salaried retirees were abandoned by GM and the Auto Task Force.

We are glad that the union retirees have their full health care and pensions – they earned it, they deserve it, but so do we. They received their full pensions, not from obsolete union contracts as alleged, but were topped up per direction of the Auto Task Force. As Vice President Biden stated "(The PBGC is) an independent agency. We can't direct them to make good on all pensions we were able to protect the hourly workers. Some salaried workers got hurt, particularly the younger ones." Speaking for myself, I simply fail to understand how two groups of employees, working for the same company, in the identical situation, could be treated so distinctly different by our own government. The preferential treatment given the union is blatantly obvious. Were salaried retirees wrong to expect fair and equitable treatment from our own government?

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The PBGC's role is “to protect the retirement income of pension plan beneficiaries.” Let me recap how they have protected us:

- The PBGC's administrative record, which should clarify what happened, only serves to interject confusion. Despite the PBGC acknowledging almost daily coordination with the Auto Task Force, the administrative record was almost entirely stripped of references to this coordination.
- FOIA requests to obtain information were answered by providing hundreds of pages of redacted material or simply withholding information. Again, this obscured the details of PBGC's actions.
- DSRA's lawsuit was brought in September, 2009, and, after numerous objections, Judge Tarnow, of the U.S. District Court for the Eastern District of Michigan, ordered discovery in 2010. The PBGC did not produce a single document until June, 2012, and only then after the Court issued another five Orders explicitly stating our right to discovery.
- The last of these orders was issued in March, 2012 with a requirement to be completed within 90 days. After 15 months, the PBGC has still not fully complied.
- Treasury has never participated in discovery Why not? Isn't the current administration the alleged most open and transparent ever? I don't mean to be critical. After all, the DSRA consists of both Republicans and Democrats. But the huge disconnect between words and actions is shameful.
- As you know, the PBGC has also stonewalled numerous Congressional requests for information.
- Recently, the PBGC announced that final benefit determination for our pensions could not occur until 2015, thus forcing continued financial uncertainty on salaried retirees. So I ask Is this how the PBGC protects us?

- I could go on, but in summary, justice delayed is justice denied.

How long must this continue? Sadly, with the dual negative impact of loss of health care and full pensions, many salaried retirees find themselves living below federal poverty level guidelines. This has created many hardships, as Mary Miller testified.

Finally, some good news! A solution exists for the salaried pension plan. In recent meetings with Treasury and PBGC, a proposal have been presented that fully funds the salaried pension plan, both retroactively and going forward. This proposal can be implemented immediately and with zero taxpayer money required. This would also fulfill the political solution as suggested by Judge Tarnow.

Congressmen, today we ask for your help in requiring Treasury and PBGC to end this harm that was needlessly inflicted upon this group of American citizens. After almost four years, one Senate hearing, six House hearings, continuous PBGC delays and no Treasury participation, this has gone on long enough. A solution exists, and the time to implement it is now!

Thank you.

Matthew Feldman deposition, July 21, 2009, Washington, D. C.

Vice President Biden Remarks to WFMJ-TV reporter, May 17, 2012, Warren, OH
<http://www.youtube.com/watch?v=WT8rSAROMZQ>

Mr. MICA. Well, I want to thank all three of our witnesses, and I will start with some questions.

First, tell me the Delphi Salaried Retirees Association, Mr. Gump, Mr. Rose, Ms. Miller, what is its genesis, and how long has it been in existence?

Mr. GUMP. The DSRA was formed at the time when Delphi was being pushed into bankruptcy. In the course of just two weeks, we went from being totally nonexistent to being fully formed, incorporated as a nonprofit, represented in court, with over 2,000 members.

Mr. MICA. Did you represent the salaried retirees in any of the discussions before TARP, the Auto Task Force, the Pension Guaranty Fund?

Mr. GUMP. No. The only representation that we had was in the bankruptcy court, and that was really only over the health care issue.

Mr. MICA. Okay.

Mr. GUMP. I should say that we were actually denied the opportunity to be represented during all the pension issues. Those meetings were held behind closed doors.

Mr. MICA. So no one represented your particular group, the salaried retirees, in these discussions? No formal group represented?

Mr. GUMP. That is correct.

Mr. MICA. Were there any public hearings? I don't know.

Mr. GUMP. No.

Mr. MICA. Everything was done behind closed doors?

Mr. GUMP. As far as the decisions to terminate the pensions, yes. All of that was made behind closed doors.

Mr. MICA. Okay. Mr. Rose, you just mentioned a solution, and I think, Ms. Miller, you spoke about it. Ms. Miller, you said that there was enough funds that had been paid into the Pension Guaranty Fund to adequately compensate the affected salaried employees whose pensions were denied. How did you come up with that?

Ms. MILLER. That is correct. Our attorneys were in the meeting with the Treasury and the PBGC recently and submitted a proposal —

Mr. MICA. That is what Mr. Rose and you were talking about?

Ms. MILLER. Yes, that is what he was talking about. The proposal identifies —

Mr. MICA. So you could isolate the funds. Of course, you have the names and records. NSA probably has their phone numbers, too.

[Laughter.]

Ms. MILLER. Yes, it was factually backed up. It wasn't just like a desire.

Mr. MICA. Right. So you have approximately 20,000 salaried employees that were affected. Do you know the exact number or approximate?

Mr. ROSE. I believe it is about 20,300.

Mr. MICA. Oh, 20,300?

Mr. ROSE. Yes.

Mr. MICA. It was interesting in reading some of the documentation, most of them had worked for GM before and had pretty long histories of working with GM before working with Delphi. I am sure that is also documentable, Ms. Miller.

Ms. MILLER. Right. I mean, Delphi wasn't in existence until 1999. So anyone who would be eligible to retire had to have had a long career with GM before we were spun off into Delphi.

Mr. MICA. Actually, they got shafted even though they had been part of the principal parent company.

Now, let's go back to the Pension Guaranty Fund issue. There was a report, the Towers Watson report. When was that issued? Was that issued before they made their decision or after they made their decision?

Mr. GUMP. Before they made their decision, and only just a couple of weeks before, okay? So it was a very —

Mr. MICA. And is that the report that also said it was 86 percent funded?

Mr. GUMP. That is correct.

Mr. MICA. And I think historically, many plans that were terminated performed far worse than that. In fact, that was a pretty high funding and performance level?

Mr. GUMP. It was better than the average of the top 100 largest plans in America at the time. That average was about 84 percent. So the Delphi plan was actually well funded. And remember, we were at the very trough, the very bottom of a major recession. So almost every plan in America was underfunded at the time.

Mr. MICA. So everyone believes, then, it was just an arbitrary decision that was either—we don't know, but forced on the Pension Guaranty Fund in this matter.

Mr. ROSE. The average funding level of the top 100 plans was 84 percent, as Bruce suggested, and none of those top 100 plans were terminated, yet ours was terminated at 86 percent.

Mr. MICA. So, basically a political decision, and just excluding a class which happened to be the salaried workers.

Mr. GUMP. Chairman Mica, one of the concerns we have and the reason that we need the Census information is to understand how it is that PBGC determined that our plan was only 46 percent funded. Somehow they modified the liabilities of the plan to make it appear as though it was much worse funded than it really was.

Mr. MICA. Well, I was also appalled by the record of failure to respond both to our committee, to the courts, and the courts had some pretty specific directives—I think you cited those—in which they still haven't complied, not just our committee. Mr. Turner had confirmed that Ways and Means had also, because they oversee Treasury, had been denied the information.

And the Freedom of Information requests, were those made by your group again, the Delphi Salaried Retirees?

Mr. ROSE. Yes.

Mr. MICA. Okay. And most of what you got, you said, was redacted or not germane?

Mr. ROSE. Yes, heavily redacted or simply not supplied. Some emails were "Dear So-and-So," blacked out completely, "sincerely."

[Laughter.]

Mr. MICA. Well, unfortunately, that seems to be what we have run into. I am the most senior member of the panel. My seniority is greater than even Mr. Issa. And so I have seen a lot in my 21 years. I have never seen an era in which they have denied at least the rightful committees of Congress information. Our committee, as

you know, we had to hold the Attorney General in contempt, and we still don't have the rightful information we are entitled to. We are now still in court even after he was held in contempt to get that.

I talked to Mr. Turner last night and staff, and we are going to go back, I will go back and have discussions with Mr. Issa. If necessary, we will see if the subcommittee can issue subpoenas for the information.

The other thing, too, is we have held so far Mr. Holder in contempt. It may be necessary to go after additional folks in different agencies. We have TARP. We have the Auto Task Force, the Pension Guaranty Fund, Treasury, maybe even the United Auto Workers. Does anyone know if any of the other union groups were in communication on a resolution of their part of the pension settlement?

Mr. GUMP. UAW was, in fact, part of the discussions that happened in Poughkeepsie, New York during the auto bailout. The negotiations that happened —

Mr. MICA. You were not invited to Poughkeepsie.

Mr. GUMP. We were not invited.

Mr. MICA. Who else was in Poughkeepsie? There were two other smaller unions?

Mr. GUMP. Treasury, PBGC, General Motors, Delphi, and UAW are all that I am aware of. The IUE and the Steelworkers had separate negotiations that resulted in the top-ups. It should be clear, by the way, I noted in —

Mr. MICA. They were separate from Poughkeepsie?

Mr. GUMP. Yes, separate from the Poughkeepsie meeting.

But I want to make clear, too, that the new General Motors was under no obligation to those old contracts. They were held by the bankruptcy court to not be liable to those old contracts. Those old contracts still do exist, but they are with old GM, not new GM. And yet it is new GM that is topping up the pensions. Supposedly, new GM chose to pay a billion dollars to top-up the pensions for the IUE and the Steelworkers. So those negotiations happened separately, not as a part of the bankruptcy process, and certainly not as a result of contracts.

Mr. MICA. It is estimated it is going to take—well, they are going to spend about \$20 billion—that will be at a loss to the government to correct the pension situation. How much additional would it cost to cover the salaried employees?

Mr. GUMP. Nothing. It will cost the government nothing. The money —

Mr. MICA. You base that on the money that has been paid into the fund.

Mr. GUMP. That is correct. There was a waterfall fund. What happened was that in order to get the agreement of the PBGC to abandon the only tool that ERISA really allows them, and that is to file liens and claims against the assets of the company, they abandoned those in exchange for stock in new Delphi. Now, the company didn't even exist when they made that deal, but over time it did actually work out, and Delphi was able to purchase back that stock for about three times the original value. So that was the waterfall fund.

However, those liens and claims were sort of like the key to the car. You might buy a car for \$20, but you can't drive it without the key. So what is the value of the key? That was what the liens and claims were. Delphi's foreign assets that the claims were against were worth between \$3 billion and \$4 billion at the time, and they couldn't dispose of them until those liens and claims were disposed of.

So Treasury was in a hurry. There was no time to get this done in any other way, so they simply terminated the plan and got PBGC to accept stock in a nonexistent company at the moment in order to get them to agree to abandon their claims.

Mr. MICA. How much have you had to spend so far, Mr. Rose, in illegal pursuit?

Mr. ROSE. Delphi salaried retirees, after paying increased health care costs from reduced pension dollars, have contributed \$3.8 million to our counsel, who has done an excellent job for us. In addition, the government has spent \$2 million defending the lawsuit of our own taxpayer money. All of this for something that didn't need to happen.

Mr. GUMP. Just to clarify, if you don't mind, that \$2 million is how much they paid an outside law firm. Their own internal expenses, we don't know what they are.

Mr. MICA. On top of that.

Mr. GUMP. Yes.

Mr. MICA. Well, again, this is very frustrating. I can imagine your frustration, being ignored. Sometimes in Congress we do have a change in various leadership committees and panels, but I have taken this on and will pursue it, and I think we will look at any avenue we can to work with your group and try to, again, ascertain the facts.

It is just deplorable that these agencies of government would be so non-responsive both to Congress and the courts. Again, this is a huge amount of taxpayer money. I think maybe Ms. Miller testified that everybody is boasting about the success of the bailout, and everyone has forgotten the 20,000-plus salaried retirees that got left behind in this whole process and now are ignored even in simple discovery of the facts.

So we will crank it up and pursue it. Are there any other suggestions as to how we might—I have likely suspects—how we might get —

[Laughter.]

Mr. MICA.—information from others, any other entities or agencies or individuals that might be good to haul before us?

Mr. GUMP. Certainly, Mr. Chairman, and we would be happy to work with you outside of this to identify those people.

Mr. MICA. Okay. Well, again, thank you for your testimony.

Let me yield now to Mr. Turner.

Mr. TURNER. Mr. Chairman, thank you so much. Thank you for your dedication to the details of this issue and for your understanding about the personal impacts and the fact that our government shouldn't work this way, that this is an injustice that no one should have to withstand.

Mr. Rose, you indicated that the government had spent \$2 million on outside counsel in defending the lawsuit. I want to correct

that a little bit. They have been spending \$2 million on outside counsel to stop you from getting documents for you to go forward with the agreement.

[Laughter.]

Mr. TURNER. No one has been defending a lawsuit because the lawsuit is not moving because they won't even come forward.

You mentioned the redacted emails.

With your approval, Mr. Chairman, I would like to enter into the record these examples that I have. The first one says, "Here is Skadden's latest draft of the agreement," and then it says six lines removed, deleted. So we don't get anything on the agreement.

The next one, draft PBGC settlement agreement, seven lines removed, regards, Alison. This is one that has no text of the email.

The next one, 20 pages of the email are deleted.

The next one, government attachment, deleted.

This one, I like this one because it says, "Ron, a few items from our phone conversation this morning about the proposed Delphi PBGC settlement agreement." And then it says 10 lines removed. Then it says, "Please call me if you have any questions, John."

[Laughter.]

Mr. TURNER. We have a few questions and we will be calling, John.

[Laughter.]

Mr. TURNER. And the next one, deleted, 34 pages. After this, the next one, deleted 17 pages. The next one, deleted four pages. All of these show that there is no substance to these emails.

Mr. MICA. Will the gentleman yield?

Mr. TURNER. Yes.

Mr. MICA. So some of these individuals might have information. Have any of them been hauled before our committee?

Mr. TURNER. A few of them have come before when they refused to testify before SIGTARP, the independent review for the expenditures of TARP. We held a hearing solely on the question of why aren't you answering the questions. We were not able to go farther into the substance of what their answers would be.

Mr. MICA. Well, I would like to sort through them. The ones who haven't had the privilege or opportunity, maybe we can haul them in. Thank you. I yield back.

[Laughter.]

Mr. TURNER. Thank you, Mr. Chairman.

Mr. MICA. Without objection, these will be made part of the record.

Mr. TURNER. Thank you so much.

Mr. Chairman, as you described with respect to this process, when Delphi and General Motors went into bankruptcy, under the umbrella of TARP we had banks, we had bondholders, we had the PBGC, we had General Motors, we had unions and general creditors. What usually happens in a bankruptcy is that each of those parties are independent. They are brought before the court, and the court expects that each of them are going to have the rights of the people that they represent.

But in this instance, because TARP was put in place, the government had become the banks. The government had become the bondholders. The government was PBGC. The government acquired

General Motors due to political connections. There was a close relationship between the Administration and the unions, and other creditors were pushed aside, and certainly the Delphi salaried retirees were pushed aside.

Mr. ROSE, I would like to ask you a question about that. Federal law established that the PBGC is supposed to be an independent agency. But when it came to the General Motors bailout, the PBGC really stopped being an independent agency, and I believe you have some comments and would bolster that. But also, Vince Snowbarger, who came before us, talked initially about that all of these parties were acting independently. None of us believe that. He is now retired, and I believe he has appeared in your litigation. Is there any additional information we have about that so-called independence between all those parties that basically became Timothy Geithner?

Mr. ROSE. Well, contrary to Mr. Snowbarger's testimony before the prior hearing here in Dayton, since then he has retired and has been deposed by our attorneys, and it was stated there was no conflict in the PBGC's role, and actually I think we found out just the opposite. Certainly Tim Geithner, for example, had a triple role in this entire termination. It is obviously Treasury, the Secretary of the Treasury, chief lender to GM, certainly the head of the Auto Task Force that was driving this, and he is also on the PBGC board. So there was a tremendous conflict of interest.

Mr. TURNER. Mr. ROSE, part of the reason why everyone is upset about this is because this should be a relatively easy review process. We are dealing with issues of math and law. What does the math say, and what laws apply. Unfortunately, the answers that we frequently get throughout this process are subjective, what people think the numbers are or what they think should have been done, not issues of what is the math and what is the law.

Our effort is, of course, to get the information and data, apply math and apply the law and determine what occurred and whether or not your rights were violated, as I believe they were, and where the monies were and how they should be put back.

You mentioned delays in final benefit determination. What does that mean for you, and in a practical sense does it mean that you have to continue to receive your pension under its current reduction? As you go to 2015, we are still dealing with math and law, but they are not even giving you answers for the future, right?

Mr. ROSE. That is correct. What they have given us right now is a preliminary pension, okay? Well, it is very preliminary, and they have to say they have to do the calculations to perform a final determination. We are all living with financial hardships. In many cases, salaried retirees are living below Federal poverty level guidelines. And now, it will be until after 2015, six years after termination, that we are forced to live under continued financial uncertainty.

Mr. TURNER. So one of the issues really at the bottom of it, it is not just that they won't tell us the math and the law for how they decided to terminate the pension, take over the pension and give you the numbers of your reduction, they still aren't even telling you the math and the law for what the future is.

Mr. ROSE. That is correct.

Mr. TURNER. And that is obviously part of what we need to do, and I know that your lawyers are pursuing.

Ms. Miller, you talked passionately about the difficult struggles that retirees have had. Could you tell us a little about your own story?

Ms. MILLER. Well, I think the biggest thing for me has been the loss of health care. When I retired from Delphi, I expected at that time to pay about \$200 a month for myself and my children that are still in school, in college. And now, to cover myself and my boys, it is \$2,300 a month. I can't do that on my reduced pension. I mean, it is impossible. And to not have health care after all these years of being able to provide that for my family really makes me feel that I have let them down and gives me great worry about what might happen to them. So that is with me every day.

Mr. TURNER. Mr. Gump, the chairman was saying that when we had these emails that were released to the committee but were redacted, so they are worthless on their face, the committee had called forward these individuals when they had refused to answer questions to SIGTARP, the special Inspector General, and our focus then was to get them to comply with the answers. But they still haven't answered you.

So what tools do you think are needed to ensure that the Administration responds completely and effectively? Does the law need to be changed, or is it just that the law needs to be enforced?

Mr. GUMP. I think the law needs to be enforced. The laws are in place to prevent this and to have the ability to know what happened and why. The issue here is that these people acted behind closed doors in a very rapid manner and they cut some corners, and they knew that they did it. They even have some conversations about that. But they don't want us to know that they knew that they were doing it because that would call into question how they acted at all.

PBGC tried to follow a very rapid termination plan and a plan that wasn't necessary to be terminated at all. So they had to manipulate the numbers. They won't let us know how they did that. They have had to follow a certain process, an involuntary termination process that required them to meet certain criteria that were not met. So they had to manipulate the plan to make it appear as though it met that criteria.

So there are a number of pieces here that should be available to us, and the tools to get to them do exist. We simply need to enforce those rules. Issuing a subpoena to force them to give up the information would be one that we would be very grateful for. We have tried to issue our own subpoena, and Treasury simply moved to quash it. So assistance to gain access to those records, which do exist, would be very helpful.

Mr. TURNER. Mr. Chairman, when we called the members of the Auto Task Force forward to the Government Reform Subcommittee to ask them why they were not answering SIGTARP, the independent general counsel, they said, well, we are not in the government anymore, we shouldn't have to answer any questions about what we did when we were in government. Well, that is not how our government works, and I appreciate your commitment to that.

And with that, I yield back.

Mr. MICA. Well, thank you.

Again, I want to just ask one question on the amount of money that is estimated to make this whole. Is there an estimate, Ms. Miller?

Ms. MILLER. I am going to defer.

Mr. MICA. You mentioned the Pension Guaranty Fund that these folks had paid into, and with 20,000 folks, most of them 20 years or more paying into it before it was terminated, that would have been a sizable contribution.

Mr. GUMP. Certainly, there are estimates of that. The AFTAP analysis that was done prior gives us some background. We need to have Census information in order to have it fully accurate. But I want you to consider the fact that PBGC has agreed that the assets of the plan at the time of termination were about \$2.3 billion, and based on their own published return-on-investment numbers, those assets should be something over \$4 billion now. So there is more than enough money in the plan already to fully fund it, especially when you add into it the income from the waterfall and other sources that were there.

Mr. MICA. Well, again, I think Mr. Turner pointed out that all these actions were government agencies, and I am stunned to find out that you were totally excluded—that is my understanding—from any of the negotiations in Poughkeepsie with the Auto Task Force, TARP, Treasury. You never had an opportunity to participate, while some of the others did, in fact, and also did benefit. And now the fact that we are finding it almost impossible through Congress or congressional efforts to date, and the courts to date, to obtain information on how all this came down.

As I said, we will see about our ability to issue subpoenas and consult with Mr. Issa when we return, and then I think I would like to also call in some of these folks from some of the information that you have gotten that has been redacted and that I have seen here submitted and see if we can't get them to tell us the rest of the story. We will haul in those who have not been hauled in and go back to the agencies.

Sometimes in Washington, I have found that you can be very powerful and you can be very well placed, you can be very financially well off, but you just have to be a persistent bastard to get things done.

[Laughter.]

Mr. TURNER. I don't know if I should be offended or not.

[Applause.]

Mr. MICA. Well, the worst combination for the offenders in this case is they have two very persistent bastards.

[Applause.]

Mr. MICA. Well, we made a little light here at the end, but this is a very serious matter, and it boils down to the basic fairness of government and how it treats people, and also the use of taxpayer money. I did not vote for TARP. I did not vote for the bailout. I come from a business background. I just have not followed that course. I did arrange for, as chairman of Aviation, to assist the airlines with a loan guarantee fund, of which every penny was paid back, and we made about a third of a billion dollars after 9/11, and

actually consulted because there were several TARP proposals that were absolutely horrible, but I couldn't support it in the end.

Nonetheless, this has transpired, and people's lives have been dramatically unfairly impacted, and the government was responsible for all of this, using government funds and government agencies to make the decisions that have led to this unfairness.

So I think what we will do is thank you for testifying, coming before the committee, keeping this open and pursuing it, which your association has done on behalf of the salaried employees.

We will excuse you at this time. We may in the next seven days have additional questions we will submit to you, and they will be made part of the record. So thank you again for your participation.

I am going to call up the second panel, and we will excuse, again, Mr. Gump, Ms. Miller, and Mr. Rose. We will ask staff to go ahead.

I am not going to recess. I want to go ahead and pursue the witnesses. So we will ask them to come up. If people have to excuse themselves briefly, do that.

We have two additional witnesses, and let me introduce them as they come up and take their seats. One is Mr. Paul Dobosz, as a member of the Delphi Salaried Retirees Association. The second witness is Mr. James Sherk, and he is a senior policy analyst in labor economics at the Heritage Foundation.

As I mentioned before to our previous witnesses, this is a chief investigative panel in the Congress, our committee and the subcommittee. We will swear you in in just a minute. I also advise you that we would like you to keep your remarks to approximately five minutes, and through request of the chair, glad to submit additional information or data, any requests you have through the chair into the official record.

So with that, we do have Mr. Dobosz and Mr. Sherk. Welcome. I will ask you, pursuant to committee rules, to stand and be sworn in. Raise your right hand.

[Witnesses sworn.]

Mr. MICA. The record will reflect that the witnesses answered in the affirmative.

I welcome you again, pleased to have you with us this morning.

We will recognize Mr. Dobosz first. I hope I pronounced it right. Close?

Mr. DOBOSZ. Not quite, but it will do.

Mr. MICA. Okay. Tell me.

Mr. DOBOSZ. It is actually a Polish name. It is pronounced Dobosz.

Mr. MICA. Dobosz, okay.

Mr. DOBOSZ. But no one gets it right, so I don't worry about it.

[Laughter.]

Mr. DOBOSZ. When I was in college, I would hear people say my name, I would just sort of snake my hand up and say "Here" the first time they called the roll.

Mr. MICA. Well, I am married to a half-Polish, maiden name Szymonik, S-z-y. You have the S-Z on the end.

Mr. Dobosz, you are recognized, and welcome.

STATEMENT OF PAUL DOBOSZ

Mr. DOBOSZ. Okay. Chairman Mica, Congressman Turner, thank you for the opportunity to address you on a matter that has profoundly altered the lives and financial futures of over 20,000 Delphi salaried employees/retirees and their families.

I am a retired Delphi engineer who served those companies loyally for 37 years. The last nine of those years of employment were with Delphi. Like my colleague Bruce Gump, I have received Delphi's highest engineering honors for numerous patents and other intellectual property contributions that helped make Delphi a technology leader and enabled the company to win nearly half a billion dollars in new business.

At the time I retired in December of 2008, my wife and I had carefully planned for financial self-sufficiency with a retirement plan built around a three-legged stool of personal savings, my Delphi pension, and then someday, Social Security benefits. I never imagined that just seven months later I would see that stool kicked out from under me by Federal government institutions charged with defending and preserving pension plans such as mine.

As I sat in the courtroom of Federal Judge Arthur Tarnow, I could scarcely believe my ears as I heard the PBGC's attorney tell the judge it was the obligation of the PBGC to protect the PBGC and its assets. When Judge Tarnow asked him who was looking out after the interests of the pensioners, the attorney was speechless.

In the short time that I have to address you this morning, I would like to share how unnecessary the termination of our already frozen pension plan was, especially in light of actuarial data the PBGC had in hand concerning the assets and liabilities of our plan. The salaried pension plan had already been frozen in October of 2008. That meant it was no longer accruing any liabilities. The plan had also been closed to new hires since January of 2001. Those new employees received a defined contribution benefit in its place.

The PBGC was acutely aware that the economy was in a trough and that the financial markets were in the beginning stages of a recovery. The decreased valuation of the plan's assets represented a snapshot in time rather than a realistic determination of their ability to pay benefits and their long-term viability. At the time of the termination, the Dow was hovering around 9,000. But four years later, the Dow is now at 15,000, an increase of 67 percent. A market recovery of that proportion has grown the value of the plan's assets. But unfortunately for retirees, that makes no difference because the PBGC's valuation of those assets, for the purpose of benefit computations, is frozen in time at July 2009 numbers.

Well, that raises an obvious question. If the Delphi salaried plan's assets were merely experiencing the effects of a dip in the financial markets, why was the PBGC so agreeable to terminating a plan to its own potential financial detriment? The answer to that question lies in political influence. Delphi's hedge fund debtor-in-possession lenders and other politically influential players in the GM bailout were able to exert that force on the PBGC via the U.S. Treasury and the Auto Task Force to clear all pension liabilities from Delphi's balance sheet.

With the knowledge we have gained from discovery, we now know that despite the public insistence that the Delphi salaried plans were severely underfunded, the PBGCs own internal analysis of potential scenarios to preserve the Delphi salaried plan show that very modest additional funding would have been required to fully meet the plan's obligations. Actuarial reports in the PBGCs possession showed the real asset-to-liability ratio at 75 percent or, as previously mentioned, 86 percent, utilizing even some pessimistic economic assumptions.

Meanwhile, the PBGC continued to justify that termination by citing asset-to-liability ratios of around 46 percent. Independent actuaries who benchmarked the Delphi salaried plan against peer plans that they had deemed adequately funded judged that the Delphi salaried plan funding was at least on a par with those plans.

All of that uncertainty and conflicting numbers continues to hang over the heads of retirees who, four years after plan termination, are still waiting for accurate accounting of assets and liabilities seized by the PBGC and, most importantly, their final PBGC benefit amount. In response to an inquiry by Congressman Turner, the PBGC recently stated that they are unlikely to have this task completed anytime soon, in fact, before 2015. Now, that is six years after the termination took place. In my mind, there is no credible excuse for taking six years to account for assets and liabilities and compute benefit amounts according to a set formula.

I could dive deeper into what we have learned in this arduous four-year battle to recover our pensions that were seized to benefit the politically powerful, but time severely limits how much I can share in this forum. Delphi salaried retirees aren't asking for a handout. We are asking for our government to behave in an open and honest manner and to comply with laws and regulations without regard to political influence or power. This issue may not garner very widespread attention and front-page headlines, like the IRS scandals currently are, but it represents an equally blatant abuse of political power.

Thank you for the opportunity to testify before the committee.

[Prepared statement of Mr. Dobosz follows:]

Testimony of Paul J. Dobosz

June 10, 2013

Chairman Mica, Congressman Turner, and distinguished members of the committee

Thank you for the opportunity to address you on a matter that has profoundly altered the lives and financial futures of over 20,000 Delphi salaried employees, retirees, and their families.

My name is Paul Dobosz. I am a retired GM and Delphi engineer who served those companies loyally for 37 years; the last 9 of those years of employment were with Delphi. Like my colleague Bruce Gump, I have received Delphi's highest engineering honors for numerous patents and other intellectual property contributions that helped to make Delphi a technology leader and enabled the company to win nearly half a billion dollars in new business.

At the time I retired in December of 2008, my wife and I had carefully planned for financial self sufficiency with a retirement plan built around a 3 legged stool of personal savings, my Delphi pension, and someday, Social Security benefits. I never imagined that just 7 months later I would see that stool kicked out from under me by Federal government institutions charged with defending and preserving pension plans such as mine.

As I sat in the courtroom of Federal Judge Arthur Tarnow, I could scarcely believe my ears as I heard the PBGC's attorney tell the judge it was the obligation of the PBGC to protect the PBGC and its assets. When Judge Tarnow asked him who was looking out for the interests of the pensioners, the attorney was speechless.

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The PBGC was acutely aware the economy was in a trough and that financial markets were in the beginning stages of recovery. The decreased valuation of the plan's assets represented a snapshot in time rather than a realistic determination of their ability to pay benefits and their long term viability. At the time of termination the Dow was hovering around 9000 but 4 years later, the Dow is at 15,000, an increase of 67%. A market recovery of that proportion has grown the value of the plan assets but unfortunately for retirees, it makes no difference because the PBGC's valuation of those assets, for purposes of benefit computation, is frozen in time at the July 2009 numbers.

That raises the obvious question, if the Delphi salaried plan's assets were merely experiencing the effects of a dip in the financial markets, why was the PBGC so agreeable to terminating a plan to its own financial detriment? The answer to that question lies in the political influence Delphi's hedge fund Debtor in Possession lenders and other politically influential players in the GM Bailout were able to exert on the PBGC via the US Treasury and Auto Task Force to clear all pension liabilities from Delphi's balance sheet.

With the knowledge gained from discovery, we now know that despite its public insistence that the Delphi salaried plans were severely underfunded, the PBGC's own internal analysis of potential scenarios to preserve the Delphi salaried plan showed that very modest additional funding would be required to fully meet the plan's obligations. Actuarial reports in the PBGC's possession showed the real asset to liability ratio at 75% or greater utilizing even the most pessimistic economic assumptions. Meanwhile the PBGC continued justifying its termination by citing asset to liability ratios of around 46%. Independent actuaries who benchmarked the Delphi salaried plan against peer plans that they deemed adequately funded judged that the Delphi Salaried plan funding was on a par with those plans.

All of the uncertainty and conflicting numbers continues to hang over the heads of retirees who, four years after plan termination, are still waiting for an accurate accounting of assets and liabilities seized by the PBGC, and their final PBGC benefit amount. In a response to an inquiry by Congressman Turner, the PBGC recently stated they are unlikely to have this task completed before 2015, six years after the termination took place. There is no credible excuse for taking 6 years to account for assets and liabilities and to compute benefit amounts according to a set formula.

I could dive deeper into what we have learned in this arduous four year battle to recover pensions that were seized to benefit the politically powerful but time severely limits what can be shared in this forum. Delphi salaried retirees aren't asking for a handout, we are just asking our government to behave in an open and honest manner and to apply laws and regulations without regard to political influence or power. This issue may not garner the widespread attention and front page headlines the IRS scandals have generated, but it represents an equally blatant abuse of political power.

I thank you for this opportunity to testify before the committee and I would be happy to answer any questions you might have.

Mr. MICA. Well, thank you.

Now we will turn to Mr. Sherk. He is affiliated with the Heritage Foundation but appears to be testifying on his own behalf today as a result of his review of this matter.

Welcome, sir, and you are recognized.

STATEMENT OF JAMES SHERK

Mr. SHERK. Chairman Mica and Congressman Turner, thank you for inviting me to testify. My name is James Sherk, and I am a senior policy analyst in labor economics at the Heritage Foundation. But as you said, the views I express in this testimony are my own. It should not be construed as an official position of the Heritage Foundation.

This morning I want to explain that the United Auto Workers received unusual preferential treatment during the auto bailout and that without this favoritism, the taxpayers would not have lost money. There are several important facts about the bailout for you to consider.

The first fact is that the United Auto Workers received highly unusual preferential treatment. Bankruptcy law gives the courts the authority to rewrite union contracts to make companies viable again. In a normal bankruptcy, union pay at General Motors and Chrysler would have been reduced to market rates. Instead, while the union did make significant sacrifices on behalf of new hires, incumbent workers retained most of their existing compensation packages.

As the UAW put it, "For our active members, these tentative changes mean no loss in your base hourly pay, no reduction in your healthcare, and no reduction in pensions." This rarely happens at unionized companies in bankruptcies.

Bankruptcy law also provides for secured creditors to recover their claims before unsecured creditors, and for similarly situated unsecured creditors to receive similar treatment. This also did not happen.

General Motors owed approximately \$20 billion to a trust fund paying UAW retiree health benefits and \$30 billion to its unsecured bondholders. These claims had the same legal priority. However, the union enjoyed a substantially greater recovery on its debts. For their \$30 billion in claims, General Motors' unsecured bondholders received stocks and warrants worth, in present value, \$8.7 billion. Had the UAW received equal treatment, it would have recovered the same proportion of its debts, about \$5.9 billion. Instead, the union collected assets worth \$20.4 billion, over three times as much.

The same thing happened to Chrysler. Chrysler's first lien secured creditors collected \$2 billion on their \$6.9 billion in debt, 29 cents on the dollar. Chrysler's second lien secured creditors collected nothing. Legally, the UAW's claims had lower priority than both the first and the second lien secured creditors, so the union should have also received nothing until all the secured creditors were paid in full. Instead, the union got securities and ownership shares in new Chrysler worth, in today's dollars, present value, \$9.7 billion. And as we have discussed today, UAW members also

received special treatment at Delphi when it filed to have the PBGC take over its pension plans.

Half of the Delphi retirees, both salaried and hourly, faced reductions in their pensions. Now, old GM had an agreement with the unions to top-up the pensions in case Delphi went bankrupt, but that was only a liability for old GM. New GM had no such liability. Instead, nonetheless, new GM's management, while being overseen by the Obama Administration, supplemented the pensions of the unionized retirees at a cost of \$1 billion. The non-union retirees, again, recovered nothing.

The United Auto Workers received highly and unusual favorable treatment during the bailout and the bankruptcy.

The second fact about the bailout to be aware of is that the automakers could have been kept in business without any of this favoritism. They could have produced the same number of cars and made as much money at much less cost to taxpayers. There was no business reason to provide this favoritism. The Obama Administration's justification is that the United Auto Workers were essential to basically prevent them from striking. But in 2009, they had little leverage and had no plans whatsoever to go on strike. Even if the union had gone on strike, General Motors and Chrysler have had no difficulty filling their new Tier 2 positions that pay less than what the transplant automakers pay. The companies could have simply continued operations with replacement workers. There was no reason for this preferential treatment.

Had the government treated the UAW in the manner required by bankruptcy law, the entire bailout would have amounted to subsidized loans instead of the bailout that they got. The UAW's excess recovery did nothing to keep the automakers in business.

The third fact is that this union favoritism caused the taxpayer losses on the bailout. The Congressional Budget Office and the Treasury Department estimate that taxpayers will lose between \$17 billion and \$20 billion on the bailout. These losses would not have occurred if the Administration had given the UAW standard treatment in the bankruptcy. If the bankruptcy had reduced union compensation to market rates, GM's labor costs would have fallen, raising the value of the government's ownership in new GM. This would have saved taxpayers almost \$5 billion.

The union trust fund's disproportionate recovery also came at taxpayer expense. The excess shares in securities that the union got could have gone to the Treasury and to the taxpayers instead. Not doing so cost taxpayers \$14.5 billion at General Motors and almost \$10 billion at Chrysler. And not giving the bailout to the hourly retirees at Delphi would have further reduced the cost of the bailout by \$1 billion.

In total, the UAW received \$30 billion more than it would have under normal bankruptcy proceedings. The entire loss to the taxpayers comes from these funds diverted to the union. The Administration could have kept the automakers running without losing a dime.

Thank you. I appreciate the opportunity to explain how the unusual treatment given to the UAW caused the taxpayers to lose billions on the bailout of General Motors and Chrysler.

[Prepared statement of Mr. Sherk follows:]



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CONGRESSIONAL TESTIMONY

**Auto Bailout or UAW Bailout?
Taxpayer Losses Came from
Subsidizing Union Compensation**

**Testimony before
Committee on Oversight and Government
Reform
United States House**

June 10, 2013

**James Sherk
Senior Policy Analyst in Labor Economics
The Heritage Foundation**

Chairman Mica, Ranking Member Connolly, and Members of the Committee on Oversight and Government Reform, thank you for inviting me to testify this morning. My name is James Sherk. I am a Senior Policy Analyst in Labor Economics at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.¹

The government bailout of General Motors (GM) and Chrysler between 2008 and 2009 will cost taxpayers between \$17 and \$20 billion. The entirety of these losses occurred because the Administration gave the United Auto Workers (UAW) special treatment. The UAW recovered far more in the bankruptcy than it had a legal right to:

- Legally, the UAW's claims had the same status as those of other unsecured creditors, but the UAW recovered a much greater proportion of the debts that General Motors and Chrysler owed the union.
- Bankruptcy typically brings uncompetitive wages down to competitive levels. However, existing UAW members did not take pay cuts at General Motors.
- The restructured General Motors used taxpayer funds to "top up" the pensions of unionized retirees at Delphi, its bankrupt former parts subsidiary. New GM had no legal obligation to do so and nonunion employees did not receive similar benefits.
- These subsidies to UAW compensation cost taxpayers \$30.0 billion—more than the government spends each year on foreign aid or on extended unemployment insurance benefits. They account for the entire net taxpayer losses in the bailout.

UAW members at General Motors and Chrysler are among the most highly paid workers in America. High salaries are good, but they must be earned. The taxpayer losses came from the special treatment that President Obama bestowed on the UAW. The auto bailout was actually a UAW bailout.

Detroit Bankruptcy

General Motors, Chrysler, and Ford were in serious trouble well before the recession started. Decades of mistakes by both unions and management had saddled the firms with massive debts, unsustainable labor costs, product-quality problems, and an overgrown dealer network. Yet Ford mortgaged its assets, began to restructure in 2007, and did not need a bailout. The recession brought these problems to a head at GM and Chrysler. As consumers cut back on discretionary purchases—like cars—both firms ran out of money. To become profitable again the automakers needed to restructure through bankruptcy, removing obligations they could no longer afford.

GM and Chrysler instead asked Washington for a taxpayer bailout. The Bush Administration used the Troubled Asset Relief Program (TARP) to loan GM and

¹ This testimony is adapted from a Heritage Foundation *Backgrounder* of the same name co-authored with Todd Zywicki. The report was initially published in June 2012 and updated in June 2013. As with this testimony, the *Backgrounder* does not reflect an official view of the Heritage Foundation.

Chrysler enough money to stay operational for the first several months of the Obama presidency. To his credit, President Obama denied the automakers the straight-up bailout they asked for. Instead, the Obama Administration forced the companies into bankruptcy as a condition of receiving government support and funded them through the bankruptcy process. The bankrupt automakers sold their assets to new "General Motors" and new "Chrysler"—companies created, capitalized, and partially owned by the government. The taxpayers spent a total of \$80 billion on Chrysler, General Motors, and General Motors' finance arm, Ally Financial.²

A substantial amount of these funds will never be repaid. The government has already written off or realized losses of over \$11 billion.³ More losses will come as the government sells its remaining stake in GM and Ally Financial. The Congressional Budget Office estimates that the auto bailout will ultimately cost taxpayers a total of about \$17 billion.⁴ The Treasury Department is even more pessimistic and projects that taxpayers will lose \$19.6 billion.⁵

These losses could have been avoided. The administration could have kept both GM and Chrysler operating without losing any taxpayer dollars had it not given preferential treatment to the United Auto Workers. Instead the UAW fared fare better than unions typically do in bankruptcy cases. This preferential treatment explains the entirety of the taxpayer losses.

Bankruptcy Liabilities

General Motors and Chrysler had substantial liabilities entering bankruptcy—a major reason they went bankrupt in the first place. General Motors owed \$6 billion to secured creditors and \$30.2 billion to unsecured creditors. Chrysler owed \$6.9 billion to first-lien secured creditors and \$2 billion to second-lien secured creditors.⁶ Chrysler also owed

² U.S. Department of the Treasury, "Troubled Asset Relief Program (TARP): Monthly Report to Congress—April 2013," May 10, 2013, Figure 2, <http://www.treasury.gov/initiatives/financial-stability/reports/Documents/April%202013%20Monthly%20Report%20to%20Congress.pdf>.

³ U.S. Department of the Treasury, "Troubled Asset Relief Program (TARP): Monthly Report to Congress—April 2013," Figure 1.

⁴ Congressional Budget Office, "Report on the Troubled Asset Relief Program—May 2013," May 23, 2013, p. 6, http://www.cbo.gov/sites/default/files/cbofiles/attachments/44256_TARP.pdf.

⁵ U.S. Department of the Treasury, "Troubled Asset Relief Program (TARP): Monthly Report to Congress—April 2013," May 10, 2013, Figure 2. See also footnote 1 on the page following the figure, which shows that the gain in GM share prices between March 31 and April 30 reduces taxpayer losses from \$20.28 billion to \$19.55 billion.

⁶ Congressional Oversight Panel, "September Oversight Report," September 9, 2009, Figures 1 and 2, <http://cybercemetery.unt.edu/archive/cop/20110402043042/http://cop.senate.gov/documents/cop-090909-report.pdf> (accessed May 31, 2012). The bankruptcy courts have recognized \$30.2 billion (not the initial \$27 billion estimate) in claims against GM. See Motors Liquidation Company GUC [General Unsecured Creditors] Trust, "Form 8-K - GUC Trust Quarterly Section 6.2(C) and Budget Variance Report as of March 31, 2013" April 23, 2013, <https://www.mlcguctrust.com/Download-KeyDocument.aspx?Document=81>.

about \$5 billion to unsecured trade creditors, and owed billions more in obligations to dealers and for warranties.⁷

The United Auto Workers had also created significant liabilities for the automakers. The union raised Detroit's labor costs 50 percent to 80 percent above that of the transplant automakers, such as Toyota and Nissan. In 2006, General Motors paid its unionized workers \$70.51 an hour in wages and benefits. Chrysler paid \$75.86 an hour.⁸ These costs put the Detroit automakers at a significant competitive disadvantage.

Detroit's higher labor costs also included generous retirement and health care benefits. UAW employees at GM and Chrysler can collect pensions in their 50s.⁹ The automakers also provided UAW retirees with full health coverage until they became eligible for Medicare. At that point UAW retirees collected generous additional health coverage from the automakers on top of Medicare. While the average Medicare recipient spends \$4,200 a year out of pocket,¹⁰ UAW retirees in 2011 had maximum out-of-pocket expenses of \$285.¹¹

To reduce the financial burden of these benefits, the Detroit automakers negotiated a Voluntary Employee Beneficiary Association (VEBA)¹² with the UAW in 2007. The VEBA—funded by the automakers and partially controlled by the UAW—assumed financial responsibility for retiree health benefits. When General Motors filed for bankruptcy in 2009 it owed \$20.6 billion to the UAW Retiree Medical Benefits Trust.¹³ Chrysler owed the VEBA \$8 billion.¹⁴ These obligations were unsecured.

⁷ Deniz Anginer and A. Joseph Warburton, "The Chrysler Effect: The Impact of the Chrysler Bailout on Borrowing Costs," paper presented at the Federal Reserve Bank of Cleveland's Conference on Resolving Insolvent Large and Complex Financial Institutions, April 14–15, 2011, p. 8, http://www.clevelandfed.org/research/conferences/2011/4-14-2011/Anginer_Warburton.pdf.

⁸ DaimlerChrysler, "Media Briefing Book": Competitive Labor Cost Comparison, p. 37, http://chryslerlabortalks07.com/Media_Briefing_Book.pdf.

⁹ General Motors, "GM Manufacturing and Labor Resources Media Handbook: Pension Plan," p. 22, http://web.archive.org/web/20090126012238/http://www.media.gm.com/manufacturing/handbook/pensions_401k.pdf. Note that the average age at retirement of a GM hourly employee is 56.

¹⁰ Kaiser Family Foundation, "Medicare Chartbook, Fourth Edition, 2010," November 4, 2010, Figure 7.4, <http://facts.kff.org/chart.aspx?cb=58&sctn=168&ch=1788>.

¹¹ Sharon Terlep and Matthew Dolan, "Pension Trusts Strapped," *The Wall Street Journal*, November 7, 2011, <http://online.wsj.com/article/SB10001424052970203707504577011901934288534.html>.

¹² The VEBA is formally called the UAW Retiree Medical Benefits Trust. Although technically a separate entity, the UAW VEBA exists solely to provide benefits to UAW members, and the terms UAW and UAW VEBA are used interchangeably in this testimony.

¹³ Bankruptcy petition filed by General Motors Corporation in the U.S. Bankruptcy Court, Southern District of New York, June 1, 2009, http://docs.motorsliquidationdocket.com/pdf/ib/01_50026.pdf. The \$20.6 billion excludes the assets in the GM "internal VEBA," which were also transferred to VEBA.

¹⁴ Congressional Oversight Panel, "September Oversight Report," Figure 1. See also the testimony of Ron Bloom before the Congressional Oversight Panel, "Regarding the Treasury's Automotive Industry Financing Program, July 27, 2009. The \$8 billion excludes the approximately \$2 billion in assets in the Chrysler "internal VEBA," which were also transferred to the UAW VEBA.

By 2009, General Motors and Chrysler lacked the money to pay their creditors, including the UAW. The Obama Administration rightly required both automakers to file for bankruptcy as a condition of receiving further money from the government.

Violating Principles of Bankruptcy

A cornerstone of bankruptcy policy is the requirement that creditors' priorities are preserved in bankruptcy in the same order as they are preserved outside bankruptcy, a concept known as the "absolute priority rule." The fundamental difference in priorities is between secured creditors on one hand and unsecured creditors on the other. Secured creditors, such as the bank that issues a mortgage or loans money to buy a car, have the right to seize the identified property if people fail to make payments. Unsecured creditors, such as credit card issuers, can sue individuals personally if they do not pay their bills, but cannot foreclose on someone's house unless mortgage holders are paid off first. Secured credit, therefore, is less risky than unsecured credit because it is a guarantee that the lender will be paid before unsecured creditors are paid. In exchange, debtors pay a lower interest rate to borrow on a secured loan (just as mortgage interest rates are much lower than credit card interest rates).

While most companies (including General Motors) are able to fund their operations through the issuance of unsecured bonds, Chrysler's bonds were secured, a testament to Chrysler's chronic financial struggles and the risk of lending to the company.¹⁵ In bankruptcy, the secured status of these bonds should have meant that the secured creditors would be paid in full before any money was allocated to subordinate creditors, such as the UAW's VEBA plans. Instead, the plan imposed by the government forced Chrysler's secured creditors to accept only 29 cents on the dollar, while the UAW recovered most of the value of its claims.

Another bankruptcy principle was also violated in both cases. A fundamental principle of bankruptcy law is the presumption that similarly situated creditors should receive similar treatment in bankruptcy unless there is a compelling reason to do otherwise.¹⁶ Thus, all unsecured creditors should be treated similarly regardless of whether their claims arise from bonds or unfunded pension liabilities. Yet, in both cases, the UAW's unsecured claims were treated much more generously than those of other unsecured creditors.

Preferential Treatment for the Union Trust Fund

The UAW's claims had the same legal priority as those of other unsecured creditors. However, the union did substantially better in the bankruptcy. For their \$30.2 billion in claims, General Motor's unsecured creditors received 10 percent of the stock of New

¹⁵ Ford, beset by similar financial struggles, funded its turnaround through the issuance of secured debt as well, pledging as collateral, among other items, the famous blue "Ford" oval nameplate.

¹⁶ 11 USC, §1123(a)(4) requires that a bankruptcy plan of reorganization "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

GM, and warrants to purchase 15 percent more at preferred prices.¹⁷ When they were distributed those shares and warrants were worth, in present value, \$8.7 billion.¹⁸

Had the Administration treated the UAW VEBA as it did other unsecured creditors, the VEBA would have recovered the same proportion of its debts. General Motors' \$20.6 billion obligation to the UAW would have been exchanged for 6.9 percent of the stock of New GM, and warrants to purchase 10.3 percent more at preferred prices. Those stocks and warrants would have been worth, in present value terms, \$5.9 billion.¹⁹

Instead, the United Auto Workers collected far more of its debts than the other unsecured creditors did. The VEBA received 17.5 percent ownership of New GM, \$6.5 billion of perpetual preferred stock paying a 9 percent dividend, and a note payable for \$2.5 billion (repaid early for \$2.8 billion).²⁰ The UAW sold a portion of its stake in New GM for \$3.4 billion in late 2010.²¹ The UAW VEBA still owns about 10 percent of New GM. Its remaining stake is worth \$5.5 billion at current market prices. In present value terms, the UAW VEBA recovered a total of \$20.4 billion.²²

If the UAW VEBA had been treated like GM's other unsecured creditors, the bailout would have cost taxpayers \$14.5 billion less. The union received highly preferential treatment.

The same thing happened at Chrysler. Chrysler's first-lien secured creditors collected \$2 billion on their \$6.9 billion in debt—just 29 cents on the dollar. Chrysler's second-lien secured creditors received nothing in bankruptcy for their \$2 billion in debt.²³ They were completely wiped out. Chrysler's unsecured trade creditors also recovered none of the \$5 billion they were owed.

Legally, the UAW's claims had lower priority than those of all secured creditors. The union should have recovered nothing on its claims until secured creditors—both first-lien and second-lien—were paid in full. Since the first-lien creditors were only partially paid

¹⁷ Motors Liquidation Company GUC [General Unsecured Creditors] Trust, "Form 8-K - GUC Trust Quarterly Section 6.2(C) and Budget Variance Report as of March 31, 2013." The series A warrants were intended to purchase 7.5 percent of GM at \$10 a share; the series B warrants were intended to purchase 7.5 percent of GM at \$18.33 a share.

¹⁸ Heritage Foundation calculations from the "GUC Trust Quarterly Section 6.2(C) and Budget Variance Report as of March 31, 2013" See the appendix for the methodology. Note that this values the shares and options not yet distributed to unsecured creditors at GM's closing share price of \$34.64 on May 30, 2013.

¹⁹ See the appendix for the methodology.

²⁰ U.S. Securities and Exchange Commission, "General Motors Corporation," Form 8-K, May 28, 2009, <http://www.sec.gov/Archives/edgar/data/40730/000119312509119940/d8k.htm>. The VEBA also received warrants to purchase additional shares of GM if the market capitalization of the company exceeds \$75 billion before December 15, 2031. That is roughly twice GM's current market capitalization. GM has the option of repurchasing the perpetual preferred stock for \$6.5 billion after December 31, 2014.

²¹ Joann Muller, "UAW Cashes In on GM IPO; Pledges to Help GM Stay Viable," *Forbes*, November 18, 2011, <http://www.forbes.com/sites/joannmuller/2010/11/18/uaw-cashes-in-on-gm-ipo-pledges-to-help-gm-stay-viable/>.

²² See the appended methodology for details of this calculation.

²³ Congressional Oversight Panel, "September Oversight Report," Figure 1.

and the second-lien creditors were wiped out, the UAW would have normally, along with the other unsecured creditors, recovered nothing. The Administration decided nonetheless to give the UAW trust a 55 percent ownership stake in New Chrysler (subsequently diluted to 41.5 percent), currently worth \$3.46 billion, and a note payable for \$4.6 billion earning 9 percent interest.²⁴ The UAW trust recovered most of the value of its claims.

If those assets had gone to the Treasury, the bailout would have cost taxpayers—in present value terms—\$9.7 billion less.²⁵ Instead, the Administration gave those assets to the UAW, despite bankruptcy law assigning their debts lower priority.

Limited Concessions by Union Members

Section 1113 of the Bankruptcy Code gives bankruptcy courts explicit authority to force the rewriting of collectively bargained union contracts—like other contracts—in order to help the company become viable again. Just as bankruptcy courts reduce un-supportable debts in order to rehabilitate a company, they also reduce un-supportable union compensation and practices to competitive rates so that the company will be viable post-bankruptcy. In April 2012, for instance, the recently bankrupt American Airlines broke its union contracts after months of wrangling between management, and after the unions failed to produce a revised agreement. In other cases, the mere threat by a bankrupt company of breaking the union contract is sufficient to extract wage and benefit concessions from recalcitrant unions, as happened when Delta and United Airlines filed bankruptcy.

With GM, the UAW made some concessions during the 2009 bankruptcy. The union allowed GM to expand the use of entry-level “Tier 2” workers making half as much as regular workers.²⁶ This was a significant concession—by current employees on behalf of future employees.

The UAW also accepted limited concessions for existing “Tier 1” members. The union agreed to suspend their cost-of-living adjustments and performance bonuses. The union also agreed to reduce paid time off and place restrictions on overtime. The union further agreed to eliminate the JOBS bank that paid laid-off employees nearly full wages for not working.²⁷

These changes reduced the automakers’ costs, but they retained most of the existing members’ compensation structure. As a result, GM’s post-bankruptcy compensation of \$56 an hour averaged across regular Tier 1 and entry-level Tier 2 employees is still

²⁴ UAW Retiree Settlement Agreement between New Carco Acquisition, LLC, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, April 2009.

²⁵ This does not necessarily mean that the union profited from the bailout. See the methodology for an explanation of these calculations.

²⁶ UAW General Motors, “Modifications to 2007 Agreement and Addendum to VEBA Agreement,” May 2009, at http://www.uawlocal1853.org/wp-content/uploads/uawgm_may2009.pdf, and Center for Automotive Research (CAR), “2011 Detroit 3-UAW Labor Contract Negotiations,” November 29, 2011, <http://www.cargroup.org/?module=Publications&event=View&pubID=36>.

²⁷ UAW General Motors, “Modifications to 2007 Agreement and Addendum to VEBA Agreement.”

higher than all the transplants.²⁸ The Tier 1 workers' labor will still cost \$64 an hour at the end of the current contract.²⁹ As the UAW explained it to its members, "For our active members these tentative changes mean no loss in your base hourly pay, no reduction in your healthcare, and no reduction in pensions."³⁰

Even President Obama's "car czar" Steven Rattner has admitted that the UAW should have made larger concessions on wages and that doing so would have substantially reduced the cost of the bailouts. Rattner stated: "We asked all the stakeholders to make very significant sacrifices. We should have asked the UAW to do a bit more. We did not ask any UAW member to take a cut in their pay."³¹

Lost Savings. In a normal bankruptcy, the pay and benefits of existing union members likely would have been reduced, probably to prevailing labor market rates. Only the taxpayer bailout allowed the UAW to avoid this. Moreover, one reason why the Senate rejected a bailout of the automakers in December 2008 was the UAW's refusal to reduce their compensation to market rates.³² But once the decision was made to divert already appropriated TARP funds to the task—a use that Treasury Secretary Henry Paulson initially deemed to be beyond the scope of the legitimate use of the TARP funds—neither the Bush nor Obama Administrations pressed this point.

If the bankruptcy had lowered GM's average labor costs down to market rates, its costs would have fallen by \$800 million a year. Such concessions would have reduced operating costs and the size of the government's infusion of funds into the companies. They would have also raised profitability and thus the value of the government's stake in GM. These concessions would have saved taxpayers—in present value terms—approximately \$4.8 billion.³³

Unionized Delphi Retirees Treated Differently. UAW members also received preferences at Delphi, the auto parts manufacturer and former GM subsidiary. When GM spun off Delphi, the automaker agreed to supplement Delphi's UAW members' pensions if the company went bankrupt. Delphi did go under, and in 2009 filed to have the Pension Benefit Guarantee Corporation (PBGC) take over its pension plan.

When the PBGC takes over pension benefits it guarantees them, but only to a limit. When Delphi filed for bankruptcy the maximum pension benefits were \$54,000 a year for

²⁸ Center for Automotive Research, "2011 Detroit 3-UAW Labor Contract Negotiations."

²⁹ Ibid.

³⁰ Ibid.

³¹ Alex Nishimoto, "Rattner Says UAW Wages Should Have Been Cut During Bailouts," *Motor Trend*, December 16, 2011, <http://wot.motortrend.com/rattner-says-uaw-wages-should-have-been-cut-during-bailouts-147425.html#ixzz1saq52d2e>.

³² These concessions reportedly were demanded primarily by southern Senators, such as Bob Corker (R-TN), as those states are home to numerous transplant factories, and they objected to bailing out Detroit's overpaid workers on the backs of their home-state constituents. See Josiah Ryan, "UAW Must Make Concessions in Exchange for Auto Bailout, Republican Says," CNSnews.com, December 12, 2008, <http://cnsnews.com/news/article/uaw-must-make-concessions-exchange-auto-bailout-republican-says>

³³ This is an approximation. Investors would probably view GM more favorably if the UAW made deeper concessions than it did, raising its price-earnings ratio above its historical rates.

retirees aged 65 and above, with lower benefits for early retirees.³⁴ About half of Delphi's union and non-union workers faced reductions in their pension benefits.³⁵

New GM no longer had an obligation to supplement the Delphi pensions. The bankruptcy filing eliminated its contractual obligation to do so. However, New GM's management—while being overseen by the Obama Administration—nonetheless agreed to spend \$1 billion to supplement the pensions of Delphi's UAW retirees and the pensions of retirees belonging to two smaller unions. The non-union employees were not so fortunate—GM did not supplement their pensions.³⁶

The TARP Inspector General is now investigating whether the Administration pressured GM to give the unions special treatment. The Inspector General “believes the Auto Task Force played a role in the pension decision,” but lacked the legal authority to force it to testify.³⁷ Former Administration officials—including “car czar” Ron Bloom, Rattner's successor—refused for over a year to cooperate with the investigation or answer questions until the House Oversight Committee threatened to subpoena them. Only then did the Administration officials agree to testify. Had New GM treated Delphi's union and non-union employees equally, the Treasury could have paid \$1 billion less for the bailout. Instead, some workers became more equal than others.

UAW Favored Over Other Unions

The Obama Administration also favored the UAW over other unions during the bankruptcy proceedings. Approximately 2,500 employees at GM's Moraine, Ohio, assembly plant belonged to the International Union of Electrical Workers (IUE). They were among GM's most productive workers. When GM negotiated its 2007 contract with the UAW, it agreed to transfer work from Moraine to UAW facilities. The bankruptcy deal that the Administration oversaw barred these laid-off IUE members from transferring to any of the UAW facilities. While GM has rehired many laid-off UAW members, IUE employees have remained on the sidelines.³⁸

Bailout Losses Entirely Due to UAW Subsidies

³⁴ U.S. Government Accountability Office, “Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits,” Report to Congressional Requesters, GAO-12-168, December 2011, Table 2, <http://www.gao.gov/assets/590/587045.pdf>.

³⁵ Ibid, Table 3.

³⁶ Ibid. The smaller unions were the United Steel Workers and the International Union of Electrical Workers. GM originally only topped-up the UAW pensions, but subsequently topped up the pensions of members of these unions as well.

³⁷ Letter from Christy Romero, Special Inspector General for TARP, to Representatives Darrell Issa, Michael Turner, and Elijah Cummings, Committee on Oversight and Government Reform, U.S. House of Representatives, May 9, 2012, at http://turner.house.gov/uploadedfiles/5-9-12_to_mrt_-_sig tarp_letter_re_former_task_force_employees_refusing_to_testify.pdf, and Jerry Zremski, “Officials Say They Deferred to GM on Pensions,” *The Buffalo News*, July 11, 2012 at <http://www.buffalonews.com/city/capital-connection/washington/article943280.ece>.

³⁸ Sharon Terlep, “UAW Freezes Rival Out of Rebound,” *The Wall Street Journal*, April 29, 2012, <http://online.wsj.com/article/SB10001424052702304177104577307184099140656.html>.

Adding all of this together—the disproportionate recovery of debts for the UAW trust funds, allowing the UAW to retain above-market pay, and subsidizing Delphi’s unionized pensions—shows the Administration redistributed \$30.0 billion more to the UAW than it would have received had it been treated as it usually would in bankruptcy proceedings.³⁹ Taxpayers lost between \$17 billion and \$20 billion on the auto programs.⁴⁰ Thus, the entire loss to the taxpayers from the auto bailout comes from the funds diverted to the UAW.

Had the government treated the UAW in the manner required by bankruptcy law, the taxpayers would have been able to recoup their entire investment in the company. The program would have amounted to subsidized loans instead of a direct bailout. The Administration could have kept the automakers running without losing a dime.

Accomplishing this would have been straightforward. At Chrysler, the Treasury—not the UAW—could have received the \$4.6 billion note and ownership of 41.5 percent of the company.⁴¹ At General Motors, the bankruptcy process could have operated normally, reducing GM’s compensation to market levels and raising the value of the government’s shares. The Treasury could have also received the \$2.5 billion note, the \$6.5 billion in preferred stock, and the excess shares of GM given to the union. The Administration could have directed the firm not to treat Delphi’s UAW members better than non-union retirees and put less money into GM. Had the Administration done so American taxpayers would not have lost \$17 to \$20 billion.

Preferential treatment for the UAW was not necessary to keep GM or Chrysler in business. The UAW did not plan on organizing a strike in 2009. Even if it had, General Motors and Chrysler would have had no difficulty filling entry-level positions even though they paid less than transplant automakers.⁴² The auto bailout was actually a UAW bailout.

The Staggering Size of the Bailout

President Obama handed the United Auto Workers \$30.0 billion—more than the U.S. spent on all foreign aid programs in 2012 (\$20.0 billion). The union collected three-quarters more than NASA’s \$17.2 billion budget for 2012.⁴³ This was as much money as Congress appropriated at the start of the year to keep unemployment insurance benefits

³⁹ These figures are in present value terms.

⁴⁰ These figures only include losses from taxpayer dollars spent by the government. They may underestimate the full impact of the bailout, as they exclude indirect taxpayer losses, such as the preferential tax treatment provided for Net Operating Losses and the “Cash for Clunkers” program.

⁴¹ The Treasury actually received 6 percent of New Chrysler, which was subsequently sold to Fiat for \$500 million. Had the Treasury received the UAW’s share, the government’s stake in the company would have been 47.5 percent.

⁴² The average cost to the Detroit automakers of entry-level workers is \$33.70 an hour. Center for Automotive Research, “2011 Detroit 3-UAW Labor Contract Negotiations.”

⁴³ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Historical Tables*, Table 4.1: “Outlays by Agency, 1962–2017,” <http://www.whitehouse.gov/omb/budget/Historicals> (figures are for 2012).

extended at 73 weeks.⁴⁴ The UAW subsidies cost two and a half times as much as Congress spent last year on the Executive Office of the President, the legislative branch, and the judicial branch combined (\$12.1 billion);⁴⁵ more than the Department of Labor spent on job training programs (\$11.2 billion);⁴⁶ and almost as much as running the entire Department of Justice (\$31.2 billion).⁴⁷

Consequences for UAW Members. This spending greatly benefited the UAW and its members. Without the Administration's favoritism, the union VEBAs would face a severe funding shortfall. This would force the union to increase the retirement age. UAW members would have had to wait until their 60s to collect retiree health benefits. The UAW would also have had to significantly reduce benefits for retirees enrolled in Medicare. The retiree health benefits would have become a modest supplement to Medicare.

Similarly, a smaller bailout would have required incumbent UAW members, not just new employees, to accept pay and benefit cuts. Average labor costs would have fallen to the same levels as the foreign transplants, approximately \$47 an hour. While this is still substantially higher compensation than the average manufacturing worker (\$33.52 an hour) it would still reduce UAW members' standard of living.⁴⁸ Such cuts would be painful but typical for firms reorganizing in bankruptcy. Moreover, while the UAW's members were spared much of the pain of bankruptcy, other workers were not so lucky—most notably those belonging to other unions and those enrolled in the Indiana State Police Pension Trust and the Indiana State Teachers' Retirement Fund, which held Chrysler's secured bonds that lost value through the politicized bankruptcy process.

Consequences for Taxpayers. These benefits for UAW members do not justify a \$30 billion taxpayer handout. No one should, of course, begrudge well-paid workers their success. When it is earned, high compensation is good. If UAW members can earn \$70 an hour through their productivity, they are entitled to the fruits of their labor. Those who succeed because of their own efforts have earned their high pay.

However, highly compensated workers should not be entitled to automatically continue to receive high pay. They must continue to earn it through their productivity. If their compensation contributes to their companies' bankruptcy they should not be allowed to maintain their living standards by taxing their fellow citizens.

⁴⁴ Congressional Budget Office, "H.R. 8, American Taxpayer Relief Act of 2012," January 1, 2013. Note that the bill kept extended UI benefits through 2013, which allows some workers who begin collecting extended benefits in late 2013 to continue to collect them in 2014.

⁴⁵ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2012: Historical Tables*.

⁴⁶ U.S. Department of Labor, "FY 2013 Congressional Budget Justification: Employment and Training Administration," p. 23, <http://www.dol.gov/dol/budget/2013/PDF/CBJ-2013-V1-03.pdf> (accessed May 31, 2012). Figures are for FY 2012.

⁴⁷ U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011: Historical Tables*.

⁴⁸ Department of Labor, Bureau of Labor Statistics, "Employer Costs for Employee Compensation," Table 6, Q4 2012.

UAW members at General Motors and Chrysler are among the most highly paid workers in America. They received more than \$70 an hour in wages and benefits before the bankruptcy, and between \$52 and \$56 an hour now. The average American worker—whose taxes paid for the bailout—earns \$30.84 an hour in wages and benefits.⁴⁹ Few Americans have the ability to retire before they can collect Social Security. Fewer still receive retirement health coverage in addition to Medicare.

Conclusion

The Obama Administration defends the cost of the auto bailout on economic grounds. The President argues that providing the money was necessary to prevent an economic catastrophe. But even if government intervention for the limited purpose of providing post-bankruptcy financing was deemed necessary due to the illiquidity of credit markets at the time, there was still no rationale for diverting tens of billions of taxpayer dollars (including taxes paid by the employees of the UAW's lower-paid competitors) to the UAW. The preferences given to the UAW account for the entire net cost of the bailout. The bailout would have cost \$30.0 billion less had the UAW been treated like GM's and Chrysler's other creditors. Instead, the Administration violated basic principles of bankruptcy law and transferred that money to the UAW—at taxpayer expense.

⁴⁹ Ibid, Table 1.

Methodology - Appendix

This testimony estimates the costs to taxpayers of the more favorable treatment given to the United Auto Workers (UAW) compared to similarly situated creditors in the auto bailout. It compares the amount that the UAW received to the amount it would have received given equal treatment, expressed in present values.

The current share price of GM stock was taken as its closing price on May 30, 2013, of \$34.64. A \$1 decrease/increase in GM's share price after this date will increase/decrease taxpayer losses by approximately \$240 million and will decrease/increase the UAW's recovery by approximately \$160 million.

Chrysler VEBA

Chrysler's secured first-lien creditors collected only \$0.29 per dollar of debt that they were owed, and Chrysler's secured second-lien creditors and unsecured trade creditors collected nothing. Since the VEBA's \$8 billion in debt was unsecured, the union would normally have also collected nothing. Consequently, the cost of the bailout was assessed as the cost of the assets which the union VEBA received, and which could have gone to the Treasury Department instead.

For purposes of analysis it was assumed that the payout to senior creditors of Chrysler is invariant regardless of whether the subsequent return went to the government or the UAW. So, it was assumed that the payout from the Chrysler note and equity is the same under either scenario, but simply that it went to the government instead of the UAW.

The stock of New Chrysler is not currently publicly traded. The UAW and Fiat (which owns a majority stake of Chrysler) are currently engaged in litigation over the price Fiat must pay to buy out the union's shares. The courts have not yet resolved this issue. Instead the UAW's stake in Chrysler was valued using the \$8.33 billion market capitalization implied by the Treasury's sale of its 6 percent ownership of Chrysler to Fiat for \$500 million. That values the union's shares at \$3.46 billion.

The \$4.6 billion note was valued by bringing past payments into the present using the interest rate of a Treasury bill of that maturity to reflect the Treasury's cost of borrowing. For example, the \$315 million interest payment made on July 15, 2010, was brought forward using the interest rate of a three-year Treasury bill issued on July 15, 2010, of 0.98 percent.

Future payments were discounted using a higher interest rate to reflect the risk that they may not be paid. Throughout negotiations with the automakers, the UAW assumed a 9 percent discount rate on future obligations. To maintain comparability with the UAW's estimates, and to avoid differences resulting from separate choices of discount rates, future payments were discounted at 9 percent. Arguments can be made for a lower

discount rate. Choosing a lower rate would increase the present value of the assets—and thus the subsidy—given to the UAW.

The total value of the UAW's recovery is the sum of the value of the union's shares and the present value of the past and future payments on the note payable—\$9.7 billion.

Note that the UAW did not necessarily profit on the bailout at Chrysler. The \$8 billion reflects the estimated discounted present value of payments in April 2009 that GM was obligated to make to VEBA. The \$9.7 billion figure is expressed as a present value in 2013; and a different discount rate was used to bring past payments forward than that calculation did. As a result the calculations treat payments owed or made between 2009 and 2013 differently, and the figures are not directly comparable.

General Motors VEBA

General Motors' unsecured creditors were owed \$30.2 billion and received 10 percent of New GM, warrants to purchase 7.5 percent of New GM at \$10 a share (series A warrants), and warrants to purchase another 7.5 percent at \$18.33 a share (series B warrants).

Data on the distribution of stocks and warrants to unsecured creditors were taken from the General Unsecured Creditors Trust.⁵⁰ The value of the stocks and warrants already distributed was assessed at the opening price of GM stock on the days they were distributed. The remaining undistributed 21.9 million shares and 39.8 million warrants for GM stock were valued at GM's current share price. Past payments were also brought into the future using the interest rate on Treasury securities to calculate the present value. The total present value of the shares and warrants distributed to unsecured creditors is \$8.7 billion.

At the time of the bankruptcy GM owed the UAW VEBA \$20.56 billion in unsecured payments. If these obligations received equal treatment with the other unsecured creditors the union would have received $\$20.56 \text{ billion} \div \$30.2 \text{ billion} = 68.1$ percent of the equities given to the bondholders. This recovery would amount to 6.8 percent of New GM (102 million shares), series A warrants for 5.1 percent of the company (93 million warrants), and series B warrants to purchase another 5.1 percent (93 million warrants). Valued at GM's opening stock price on the days the shares and warrants were distributed to the unsecured creditors, these equities would be worth \$5.9 billion.

The UAW received 260 million common shares of New GM, \$6.5 billion in perpetual preferred stock paying a 9 percent dividend, and a note payable for \$2.5 billion that was repaid in October 2010 for \$2.8 billion. The UAW sold 100 million of these shares at the IPO for \$34 a share, raising \$3.4 billion, and retains 160,150,000 shares in its portfolio. The value of the note payable, the already paid dividend payments, and the shares sold in the IPO were expressed in present values using the appropriate short-term treasury bill

⁵⁰ Motors Liquidation Company GUC [General Unsecured Creditors] Trust, "Form 8-K - GUC Trust Quarterly Section 6.2(C) and Budget Variance Report as of March 31, 2013."

rates on those dates. The value of the unsold shares of GM was calculated using the opening price of GM stock on May 30, 2013, of \$34.64 a share— \$5.5 billion. Future dividend payments and the repurchase of the \$6.5 billion in preferred stock on December 31, 2014, were discounted using the 9 percent discount rate. In total the UAW recovered assets with a present value of \$20.4 billion.

The difference between the value of the UAW's actual collection and the value of a proportional collection is the cost to the Treasury of the UAW preferences—\$14.5 billion.

Part of the UAW's greater recovery reflects the fact the union held onto their shares and GM's stock price went up. The unsecured creditors' shares and warrants were valued at GM's stock price the day they were issued. This difference in investment performances increased the value of the UAW's recovery relative to the unsecured creditors but does not reflect a politicization of the bankruptcy as such. An alternative assumption is that the unsecured creditors held onto their shares and warrants and enjoyed the same investment returns. Under this assumption the unsecured creditors' recovery would have been \$10.2 billion. A proportionate recovery for the UAW would thus be \$7.0 billion—68.1 percent of the unsecured creditors' recovery. Making this assumption reduces the value of the subsidy give to the UAW at GM by \$1.1 billion, and reduces the total union subsidy to \$28.9 billion.

Delphi Retirees

The decision to supplement Delphi's unionized retirees' pensions cost GM an estimated \$1 billion as of December 2010. It was assumed that had GM not done so the Treasury would have reduced its investment in GM by \$1 billion (as of December 2010) with no loss in business performance. The \$1 billion was expressed in present value using the appropriate treasury bill rate.

Labor Costs

Average hourly labor costs for UAW members remain above the rates paid by transplant automakers. It was assumed that, without special preferences for the UAW, the GM bankruptcy would have reduced hourly labor costs to the midpoint of the transplants— \$47 an hour. This \$9 an hour reduction in GM's labor costs, multiplied by 48,000 hourly employees working 35.5 hours a week for 52 weeks a year, would have reduced GM's labor costs by approximately \$800 million a year. These costs are approximations. GM plans to increase its workforce, which would increase the value of these concessions.

The value of these concessions to the Treasury Department was assessed by assuming this \$800 million a year was retained entirely as profits and that investors assigned the same price-earnings (P/E) ratio to GM as they did historically. These estimates should be taken as an approximation. It is likely that management would have invested a portion of these savings elsewhere. It is also likely that with lower labor costs and greater investments investors would value the company more highly than they currently do. This

would raise GM's P/E ratio. However, reliably quantifying how much GM's P/E ratio would hypothetically rise is not possible. GM's historical P/E ratio was used and all savings were treated as profits to avoid such speculation.

At the P/E ratio at which GM's shares sold in the IPO—approximately 12—an extra \$800 million in earnings would have increased GM's market capitalization by \$9.6 billion, and the value of the 28 percent of the company the Treasury Department sold, by \$2.7 billion. The Treasury sold 40 percent of its holdings in GM in December of 2012, and another 12 percent in April 2013. At that time GM traded at a P/E ratio of approximately 10. As of May 30, 2013, GM shares traded for a P/E ratio of just under 12. However, this represents GM's highest P/E ratio since its IPO. To avoid inflating the estimates by using overly optimistic P/E ratio projections this report assumes the Treasury's remaining shares as also sold at a P/E ratio of 10.

Under these assumptions, increasing earnings by \$800 million a year would raise GM's market capitalization by \$8.0 billion. This would raise the value of the shares the Treasury Department sold in December and April, as well as its remaining stake by \$2.1 billion. Forgone past payments were brought into the present using the appropriate short-term Treasury bill rate. In present value terms, maintaining UAW compensation above market rates thus cost taxpayers an estimated \$4.8 billion.

General Motors owes about \$20 billion in unfunded UAW pension obligations, one of the major factors depressing its share price. Bankrupt companies often discharge these obligations to the Pension Benefit Guarantee Corporation (PBGC). The PBGC guarantees pension benefits up to a maximum amount. Discharging the pension obligations would have reduced pension benefits for many UAW retirees while raising costs for the government and increasing the value of GM stock. The Administration directed GM not to discharge its pension obligations. It was assumed that if minimizing taxpayer losses had been an Administration priority it would have similarly directed General Motors not to transfer its pension obligations to the PBGC. This represents a departure from normal bankruptcy practice, which focuses on returning the company to viability, not minimizing taxpayer losses. Had GM discharged its pension obligations, the Treasury would have recovered a substantial portion—but not all—of the PBGC losses through the resulting appreciations of the government's shares in the company.

Discounting Values

Because these events occurred over different periods of time, each transaction is discounted to the present time period to provide an accurate estimation of the current value of the preferential treatment. Transactions occurring in the past used the (then current) Treasury bill rate, for the appropriate length of time, to calculate the present value of this transaction. Following the assumptions made by the UAW, events occurring in the future use a 9 percent discount rate.

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Mr. MICA. Thank you both for your testimony, and I will turn to some questions now.

Mr. Sherk, let me ask you a question. The Pension Guaranty Fund was terminated for the salaried employees. Do you know if it was terminated for the hourly or kept in place?

Mr. SHERK. My understanding is it was terminated for both, but then the hourly employees received a top-up from new GM.

Mr. MICA. So, in other words, the top-up would have had to come from taxpayer money because they were operating basically on the lifeline that was thrown to them by the Federal Government at the time.

Mr. SHERK. That is exactly right. New GM was a creation of the taxpayers. It was capitalized and created by the Treasury, and all the initial operating funds they had came from taxpayer funds.

Mr. MICA. Now, when we get through with this, I have seen that some stock has recently been stole—sold.

[Laughter.]

Mr. MICA. A slip of the tongue there. Some of the stock has been cashed in at about \$34, \$35. It would have to be in the \$50 range, I think, to break even?

Mr. SHERK. That is right. If it had been sold at \$50 right from the get-go —

Mr. MICA. But the total amount that the taxpayers are going to end up paying, are you familiar with it? I heard the estimate is \$17 to \$20?

Mr. SHERK. Yes, it depends on the—the taxpayers still have about 200 million shares of new GM, and it depends what price those —

Mr. MICA. What price the balance is sold?

Mr. SHERK. Yes. So it is —

Mr. MICA. A potential \$15 billion to \$20 billion?

Mr. SHERK. That is right.

Mr. MICA. The other thing, too, is it looked like the topping up of the unionized retirees' pensions was about \$1 billion, but the UAW got \$30 billion in perks from the bailout. Can you explain how you calculate that?

Mr. SHERK. That is right. There were three different assessing preferences they received. The first was for the union retiree medical benefits trust fund, also called AVIBA. Which had about \$20 billion was owed to them at General Motors and —

Mr. MICA. At the time of the bankruptcy.

Mr. SHERK. At the time of the bankruptcy, and about \$8 billion, and this was basically future claims brought into present value terms in 2009. And they should have recovered at the same rate as the unsecured creditors of both companies.

Now, at General Motors, they were covered at about triple the rate of the unsecured creditors, and at Chrysler the secured creditors weren't even paid off. They got 29 cents on the dollar, the first claim secured creditors. So the union should have also got nothing, and all those excess shares that the unions recovered could have gone to the taxpayers instead.

Mr. MICA. So you have the salaried employees, the secured—were they bondholders?

Mr. SHERK. At General Motors, the secured creditors were made whole, but the unsecured creditors collected at a much lower rate than the unsecured.

Mr. MICA. Okay.

Mr. SHERK. At Chrysler, the secured creditors got 29 cents on the dollar. The unsecured creditors got nothing.

Mr. MICA. And you said that is a huge liability on the healthcare side. Was that GM and Chrysler?

Mr. SHERK. It was for both of them. It was \$14.5 billion at General Motors, the excess recovery. It was about \$20 billion that was owed at General Motors, and about \$8 billion was owed at Chrysler. And then the unions got shares and stocks in the company that became worth quite a lot of money.

Mr. MICA. The breakdown of the \$30 billion is mostly healthcare?

Mr. SHERK. It is mostly healthcare with about \$10 billion at Chrysler, \$14.5 billion at GM for those healthcare costs.

Mr. MICA. How did the retirees find their healthcare situations, or were you completely taken out of the healthcare?

Mr. DOBOSZ. Yes. We received a notice in February of 2009 that as of April 1st we would no longer have company-provided healthcare. At that point, we could buy it individually. In my case, for my wife and myself, it was \$1,600 a month. This was before the pension termination took place. We realized that this was a very non-viable situation, and so we organized a voluntary benefits association, AVIBA, that was HCTC qualified, and now our retirees have access to that through the end of this calendar year until the new health care law takes effect, and that provides premium subsidies. It brings the premiums down for a family to maybe \$500 to \$600. I am not familiar with the current numbers on that but somewhere in that range, as opposed to \$1,600.

Mr. MICA. Well, okay. You saw your pensions cut, your healthcare eliminated. On the other side, the hourly —

Mr. DOBOSZ. Their healthcare is assured, and their pensions are whole. It is a totally different treatment.

Mr. MICA. So they used taxpayer money also to underwrite that.

Mr. DOBOSZ. That is correct.

Mr. MICA. The losses were staggering, or the indebtedness of the healthcare, a huge portion of that. Now, what happened with that? That was just written off also?

Mr. DOBOSZ. The healthcare portion?

Mr. MICA. Yes, again for the new GM. Did they come out of this with no healthcare liability?

Mr. DOBOSZ. Yes. The unions actually became the healthcare providers for the retirees, and it was funded with this money that they received from the bailout.

Mr. MICA. So the Pension Guaranty Fund, which was supposed to help you, did not help you. It had about \$2.3 billion in assets at the time they threw you overboard, and you had this huge liability on healthcare, which was also absorbed by the taxpayer. So you got doubly shafted. Even if you got your retirement back, you are still shafted on the healthcare side.

Mr. DOBOSZ. Until our people are Medicare eligible, and we had a group of fairly young retirees because our demographics were

such that as Delphi started closing a lot of operations, people were being pushed to either retire early or they had no other options.

Mr. MICA. Well, most of this effort has been to seek some justice in the pension, but the healthcare is actually—you have not been able to pursue. There is nothing to pursue there. You just got shafted, and the taxpayer money which—ironically, you were paying taxes all that time and ended up bailing out the incredible amount of money for healthcare that was due.

Mr. DOBOSZ. Yes. And I do have to say, the health coverage tax credit that we are eligible for has been a lifesaver for many of our people because without it, they would be going naked without any coverage.

Mr. MICA. Mr. Sherk, you heard some of the testimony by the previous witnesses that, again, the Pension Guaranty Fund acted arbitrarily, that in fact with 86 percent of the assets available, they were still terminated. Do you see that as correct? In their figures, is there enough there, if they were treated fairly, and that still could be the case, to make whole their retirement?

Mr. SHERK. I haven't had the opportunity to review those, the 86 percent figure. If that is true, that they were 86 percent funded when they were terminated, then it is very hard to see a justification for the termination, that there are a lot of funds, especially in 2009, that were terminated—sorry, that were not terminated.

Mr. MICA. That were not even in that good a shape.

Mr. SHERK. Yes.

Mr. MICA. Well, again, I think we need to get additional data. I was impressed with your report. I will have to get this posted online. I guess you are releasing it today, your statement. You actually covered more than you did in your testimony, some 16 pages of background information, and pretty in-depth. So we appreciate you providing that to the committee and your testimony.

Let me yield to Mr. Turner.

Mr. TURNER. Mr. Chairman, thank you so much for your statements on the issues of healthcare, because that is one that also illustrates the inequity. If you look at the issue of the health care tax credit that they currently have been utilizing, it is expiring. With the Obamacare increases in premiums that are expected, and the pension reductions that each of these individuals have received, the financial impact on them is even greater as they look to what they may be facing in future costs for health insurance and healthcare.

I know how this impacts families directly. My father was IUE from General Motors, not Delphi, in his retirement. But he was not UAW as a result in the bankruptcy of General Motors. He lost his healthcare after working for General Motors for over 40 years. Luckily, he was able to go onto my mother's retirement health insurance. But without that, we would have been facing a significant crisis, as many of these families are facing. They did face, of course, increased costs, but they would have had a crisis, as many of these families have struggled with. I appreciate your highlighting that because that is absolutely a taxpayer-funded difference.

Whenever you have an issue like this where the government does something and it doesn't make sense and you try to do oversight,

and the government doesn't respond to requests for documents and information, you become increasingly suspect. But another area where you can become increasingly suspect is if you call people forward and ask them questions and the answers that they give you are disingenuous, where there are clearly misrepresentations.

Mr. Chairman, we have had hearings where we have asked people why was UAW topped up in the bankruptcy, and the answer has been to us, well, there was a pre-existing agreement between GM and the UAW for topping up the pensions. We all know, as Mr. Sherk was saying, one that would have been under the bankruptcy with old GM, and it was not binding in bankruptcy. And if you ask the next question in the hearing, yes, but this was a bankruptcy, wasn't that agreement voided, the testifier will say, yes, it was voided. But their initial answer to us, which is the disingenuous one, is where there was an agreement for it to be done.

I would like each of you, if you could give us other examples that come to mind of answers that we have received that just don't make sense, because when they tell you one thing and you actually know another, I think it leads you to conclude that they are not telling the truth. I know the frustrating process of lack of answers certainly gives us suspicion. But the frustrating process of getting incorrect or misleading answers is even more so, and I am certain that perhaps each of you could contribute to our overall perception of why this has been really a stonewalling from the administration.

Mr. DOBOSZ. I guess my biggest frustration is when I ask a question of the PBGC, or when we do, we wind up with an answer that just creates another question. I am trying to think of an example. There are so many of them. But in general, let me just focus on something very recently.

We had something sprung on us about a month ago that, oh, by the way, you are not going to get your full PBGC amount from the PBGC. There was some sort of a private annuity with three insurance companies. Therefore, a portion of your pension is going to be paid by them, and we will pay the difference between what we used to pay you and that amount.

So I asked them the question, I said why, then,—first of all, I asked them the question, is this a guaranteed benefit coming from the private annuity? And they said, no, that is totally outside of the pension. So my next logical question was, if it is not an insured benefit, why is it included in the cap that you capped my benefits at?

I have sent three follow-up emails to the PBGC asking them for details on how this was calculated, more details about this annuity and why it should be maintained as a part of the cap, and I keep getting the response, we will give you an answer in three days, we will give you an answer in three days. We are so sorry, we will give you an answer in three days.

So it is just a constant delaying cycle, and you can't get a straight answer. You don't have any idea what is going on, and you really don't have any idea what you are going to wind up with long term, so you can't even plan for the worst, because there is a possibility right now, if the PBGC decides they are paying any of these people too much, that they will start clawing it back.

Mr. SHERK. The answer to me that sounds the most disingenuous, when they are asked why did you give these preferences to the unions, why did they collect so much for the rebo, why didn't they make more concessions, it is always a business necessity. We needed to maintain the business relationship with the union and basically keep them happy to ensure productive future operations.

That is ludicrous. That is beyond ludicrous. The union was not going to go on strike in the fall of 2008 and early 2009. They knew the alternative to the bailout was the liquidation of the company and all of their members losing their jobs. They had absolutely no leverage to insist that they get \$30 billion in taxpayer money redistributed to them. There was no business necessity to do that. And even if the union had gone on strike, the companies have had no difficulty filling these Tier 2 positions that pay far less than what the incumbent workers were enjoying. They could have continued operations with replacement workers.

There was simply no necessity to give the union \$30 billion in order to keep the companies running. And yet, every time they are asked why did you do this, that is the response, business necessity, we had to ensure smooth operations.

That dog just won't hunt. It is not remotely plausible.

Mr. TURNER. Well, thank you both for addressing that. As we have said through these hearings, that has been one of the aspects that has been most troubling, that if you don't ask the second question, they will leave you with a misleading answer.

Mr. Chairman, as I go to yield back, I want to thank you once again for taking your time to be here. You are a man of action and have a great reputation in Congress of being highly substantive. The fact that you have come to Dayton, Ohio to hear this story today I know is time that you are taking both from your work in Congress, your district, and your family. As you know, we are hoping that the message today would be one that would be a call of action. The power of your gavel is significant, and we appreciate that you brought it here today, and I look forward to any way that I can assist you in what you see might need to come out of this.

This is one of those items where, if no one holds the administration accountable, no one will ever know what happened or what should happen. And that is the difference in our job of oversight, is looking at what happened and what should happen, and that is how we get justice and resolution.

With that, Mr. Chairman, thank you for being here today.

Mr. MICA. Thank you, Mr. Turner, for your participation, and also your persistence in bringing this matter before me and our subcommittee and the full committee.

As I said, the manner in which we are going to proceed, I see a dramatic failure of our success in obtaining even the basic documents and information that I think Congress is entitled to. So whatever steps I need to try to secure that information, we will pursue that, be it subpoenas.

Additionally, we will convene another hearing, a full subcommittee hearing in Washington. I want to go back through the documents of some of these folks that you cited today and see who has testified, who has not testified, who was involved in making these decisions, and we will ask them to testify. It will either be

voluntary or involuntary. We may need subpoenas there, so I will need your support in working with the committee to demand the appearance of those witnesses and that information.

This is the kind of issue that could easily get swept under the rug or ignored. It affects 20,000 people, which is significant. But Washington is miles away, and sometimes attention gets diverted to other issues. But I believe this is one that does require our response. Sometimes these issues do take a while to pursue, but I think it should be pursued, and you have my commitment, Mr. Turner, that we will keep this high on the radar and action screen for the next months and weeks ahead here so it won't be ignored.

It is a grave injustice that, again, taxpayers who were GM employees, Delphi employees, and now retirees, would see their government not only abandon them but take their resources and unfairly distribute them and leave them behind. So if there is a remedy, we will look for that. I can't guarantee it, but we will certainly pursue the matter.

I want to thank both of the two witnesses on this panel and the three witnesses that appeared before us today.

There being no further business before the Subcommittee on Government Operations, this meeting and hearing is adjourned.

[Whereupon, at 11:44 a.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

House Oversight & Government Reform Committee
Subcommittee on Government Operations

Testimony of Congressman Tim Ryan (OH-13)

June 10, 2013

Members of House Oversight & Government Reform Subcommittee on Government Operations thank you for allowing me this time to address the Delphi bankruptcy and how it has affected my congressional district. Congressman Turner, thank you as well for your efforts to bring attention to this matter.

Delphi was spun off from GM in 1999 as an independent parts manufacturer. Most of the operations spun off had been a part of GM for twenty to thirty years. Within a few years Delphi began a steep decline and filed for bankruptcy in 2005. At that time roughly 150,000 people worked for Delphi, many of whom were union. The UAW, IUE-CWA, USW, IAM, Teamsters and others represented Delphi employees. Very few bankruptcy issues were resolved in a timely manner, and the company languished in bankruptcy court for nearly 4 years.

During the time the company was in bankruptcy, the pension fund fell further and further behind on its funding obligations. This was compounded by an aggressive push for early retirement to trim the workforce. When the pension plans were eventually terminated by Delphi and sent to the Pension Benefit Guaranty Corp they covered approximately 70,000 workers and were underfunded by over 7 billion dollars.

Thankfully the PBGC will pay the retirees a large percentage of their promised benefits, but even with that, many retirees will see substantial losses. The younger retirees who were promised the largest early retirement benefits as part of the buyouts Delphi pushed on them will see the largest cuts as many of those payments are not insured by the PBGC. Furthermore all retirees from Delphi will see substantial reductions in or outright elimination of health care coverage.

I have spoken with many retirees who are now concerned about how they will be able to afford their mortgages, their health care costs, and even their children's college tuition bills. But it does not stop with the direct losses. There are so many retirees in my congressional district that the losses will continue to flow to everyone in the region. A recent Youngstown State University study stated that total losses to the Mahoning Valley could be over 57 million dollars annually. Those losses translate into over 1,700 job losses in my region.

In the 112th Congress I committed to ensuring that Delphi retirees continue to get the opportunity to have their voice heard. I introduced with Congressman Mike Turner the Restoring Essential Safeguards for a Transparent, Open, and Reliable Executive under FOIA Act (HR 4232), which would allow more access for the American taxpayers requesting

information relevant to the federal government's multibillion dollar bailout of the financial and auto industries.

Most recently, I joined with Congressman Turner to create the Auto Industry Pension Task Force for the 113th Congress. The Congressional Auto Industry Pension Task Force will serve as an informal group of Members dedicated to issues related to the termination of Delphi Salaried Retiree pensions and educating other Members on the subject. Retirees shouldn't have to worry whether their employer will deliver on the health care, or any other benefits, they have rightfully earned after a lifetime of hard work. This is an issue that, whether directly or indirectly, has touched all families in the Mahoning Valley. Many of our family members, friends, neighbors and coaches have all been devastated by this situation. I will continue to work with the Treasury Department and the Obama administration through these tough economic times until we secure the retirement benefits that my constituents have spent their lives working so hard for. I will also continue to work towards creating a level playing field for our workers and ensuring economic stability when they retire.

Finally, I am aware that many of my constituents who have been affected by this crisis have also contacted me regarding the Health Coverage Tax Credit (HCTC), which is a federal income tax credit that covers most of the cost of qualified health insurance for eligible taxpayers and their family members. As you are aware, the Affordable Care Act (ACA) terminated the HCTC program. Starting in 2014, those participants in the HCTC will have access to the qualified health plans through the Health Insurance Exchanges. But to be sure that all HCTC participants, especially Delphi retirees who rely on HCTC, are not burdened by the shift to a new healthcare system, I am proposing a new law that would allow any HCTC participant to remain in the HCTC program if they so choose. In the coming weeks, I'll be reaching out to my congressional colleagues to build support for my measure.

Thank you for the opportunity to provide testimony at this important hearing.

SUSAN W. BROOKS
 MEMBER OF CONGRESS
 5TH DISTRICT, INDIANA
 1505 LONGWORTH HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515
 (202) 225-2276
 11611 NORTH MERIDIAN STREET, SUITE 415
 CARMEL, IN 46032
 120 EAST 9TH STREET, SUITE 101
 ANDERSON, IN 46016

Congress of the United States
House of Representatives
 Washington, DC 20515-1405

June 10, 2013

The Honorable John Mica
 Chairman of Subcommittee on Government Operations
 Committee on Oversight
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Michael Turner
 Committee on Oversight
 U.S. House of Representative
 Washington, DC 20515
<http://susanwbrooks.house.gov/>

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COMMITTEE
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Dear Mr. Chairman and Congressman Turner:

Thank you for taking the initiative to hold this hearing today, and your continuing diligence in securing a successful resolution to this arduous issue. Like the witnesses before you today, hundreds of people from the 5th district of Indiana have been adversely affected by the bankruptcy of Delphi and the subsequent diminution of pension benefits.

This hearing is important because there remains a substantial amount of unanswered questions that need to be answered regarding the lead-up to the Delphi bankruptcy and the termination of their pension plans: Did the Treasury exert undue influence in restructuring Delphi with no pension liability, did the PBGC follow its own rules and procedures when deciding to eliminate the pension plans, are administration officials negotiating in good faith to resolve lingering problems affecting 20,000 middle-class auto workers? To this end, I am looking forward to reading testimony from this hearing and inspecting the upcoming Special Inspector General for the Troubled Asset Relief Program (SIGTARP) report that will hopefully provide an in-depth and authoritative answer to all of the aforementioned questions.

Pensioners, many of whom worked side-by-side with one another, deserve equal treatment and shouldn't be severely and unfairly punished simply for not participating in a union. With some salaried retirees losing up to 70% of their pension while their union counterparts receive a "top-off" to make them whole is simply unconscionable. The Delphi Salaried Retirees Association (DSRA) has put forth a reasonable proposal to resolve this issue that would ensure that salaried-retirees are made whole while preventing any expense to the taxpayer. I would hope that Treasury and PBGC officials take a serious look at this proposal that would restore rightfully earned benefits to middle-class retirees and their families.

I commend you both for staying attuned to this issue that has affected too many Americans, and hope that the hearing today will uncover more information about the scope and depth of the problems that these pensioners must face. I hope that this will be yet another step towards achieving a fair, equitable, and mutually beneficial resolution for both the government and Delphi retirees.

Sincerely,



Susan W. Brooks
 Member of Congress

(b)6-Personal Privacy

From: Morris Karen
Sent: Thursday, July 16, 2009 4:31 PM
To: Stone, Merrit; Wolfe, Craig A.; Frohman, Jacob J.; Rohwer, Gabrielle
Cc: Menke John; Owen Wayne
Subject: FW: Draft PBGC Settlement Agreement
Attachments: Clean PBGC Settlement Agreement Draft.doc; Redline PBGC Settlement Agreement Draft.doc

Here is Skadden's latest draft of the settlement.

(b)5 -Gov't Pre-Decisional - 6 Lines Removed

From: Herriott, Allison V [mailto:Allison.V.Herriott@skadden.com]
Sent: Thursday, July 16, 2009 4:15 PM
To: Morris Karen; Menke John
Cc: Heisler, Ron E
Subject: Draft PBGC Settlement Agreement

FOIA CONFIDENTIAL TREATMENT REQUESTED

(b)5 -Gov't Pre-Decisional - 7 Lines Removed

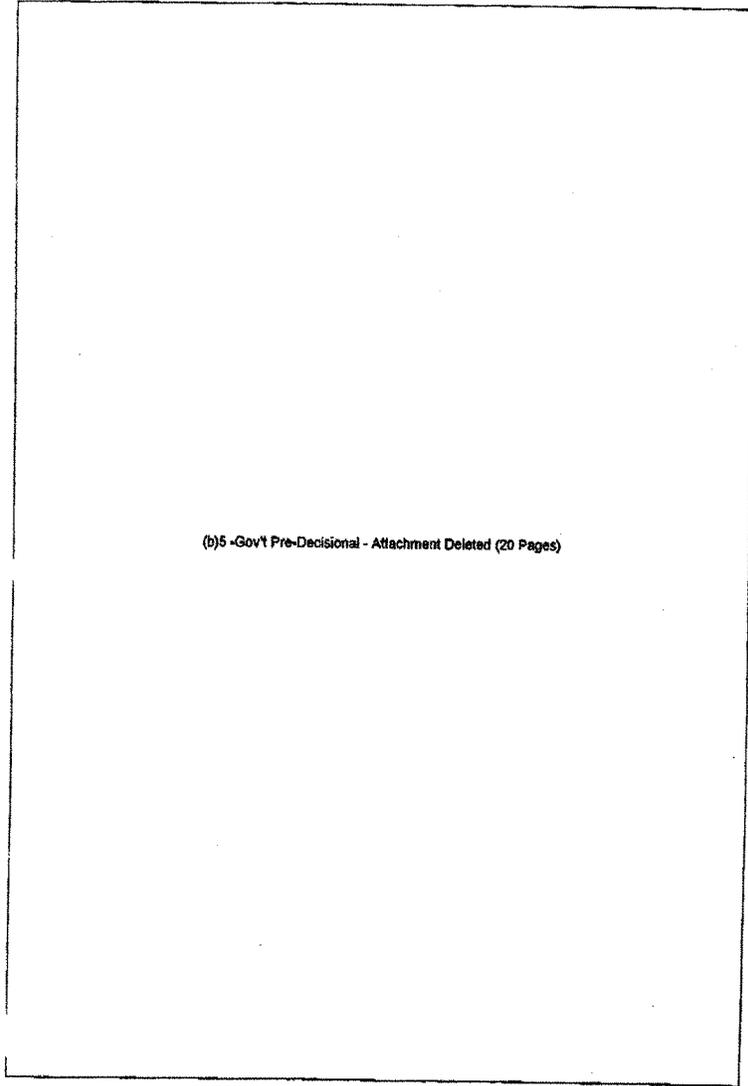
Regards,
Allison

Allison K. Verderber Herriott
 Associate
 Skadden, Arps, Slate, Meagher & Flom LLP
 155 N. Wacker Drive
 Chicago, IL 60606
 (312) 407-0868 (direct phone)
 (312) 827-9332 (direct facsimile)

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(b)8-Personal Privacy

From: Menke John
Sent: Tuesday, June 02, 2009 3:52 PM
To: Meisler, Ron E
Cc: Owen Wayne; Landy Ralph; Morris Karen
Subject: RE: Delphi/PBGC settlement

Oops. Forgot to attach the document.

(b)5 -Gov't Pre-Decisional
Attachment Deleted

From: Menke John
Sent: Tuesday, June 02, 2009 3:38 PM
To: Meisler, Ron E
Cc: Owen Wayne; Landy Ralph; Morris Karen
Subject: Delphi/PBGC settlement

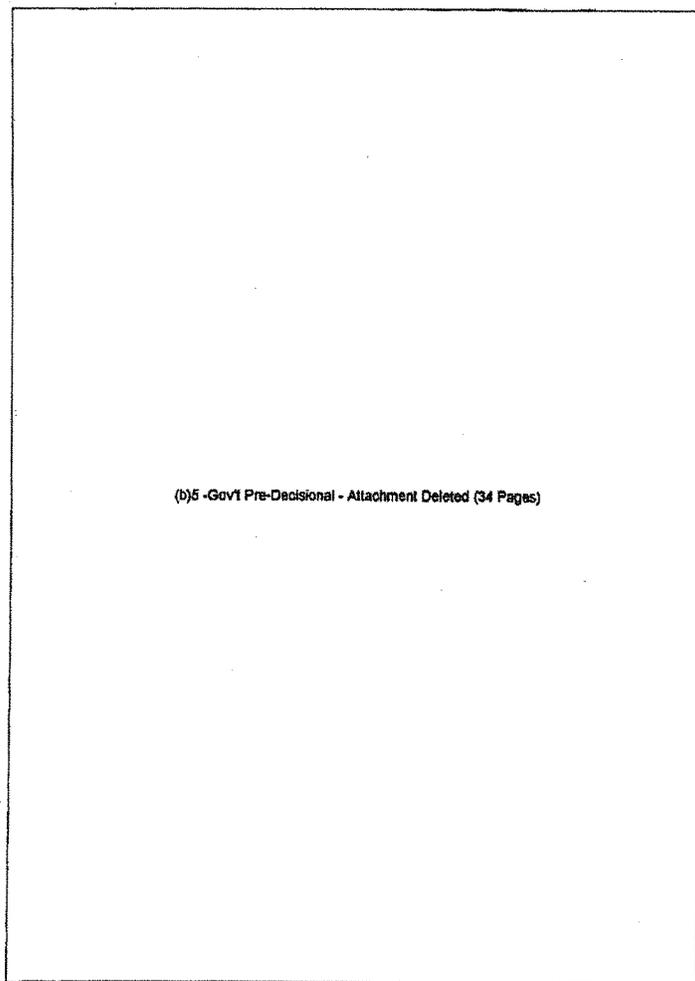
Ron:

A few items from our phone conversation this morning about the proposed Delphi/PBGC settlement agreement:

(b)5 -Gov't Pre-Decisional - 10 Lines Removed

Please call me if you have any questions.

John M.



(b)5 - Gov1 Pre-Decisional - Attachment Deleted (34 Pages)

NOV-14-2011 11:34 FROM: MILLER CHEVALIER

TO: 9375125164

P. 7/11

(b)(6)-Personal Privacy

From: Morris Karen
Sent: Tuesday, July 07, 2009 3:37 PM
To: Owen Wayne
Subject: Fw: stipulation
Attachments: Redline ch2-753481-1.doc; Clean ch2-752775-3.doc

----- Original Message -----
From: House Joseph
To: Morris Karen; Menke John
Cc: Cann Dana
Sent: Tue Jul 07 15:25:28 2009
Subject: FW: stipulation

----- Original Message -----
From: Matthew.Feldman@do.treas.gov [mailto:Matthew.Feldman@do.treas.gov]
Sent: Tuesday, July 07, 2009 3:19 PM
To: House Joseph
Subject: Fw: stipulation

----- Original Message -----
From: Zujkowski, Joseph <Joseph.Zujkowski@cwI.com>
To: Feldman, Matthew
Cc: Haker, Oren <Oren.Haker@cwI.com>
Sent: Mon Jul 06 23:55:56 2009
Subject: Re: stipulation

Matt,

The most recent version of the agreement is attached above.

Thanks,

Joe

From: Matthew.Feldman@do.treas.gov <Matthew.Feldman@do.treas.gov>
To: Haker, Oren
Sent: Mon Jul 06 22:03:29 2009
Subject: stipulation

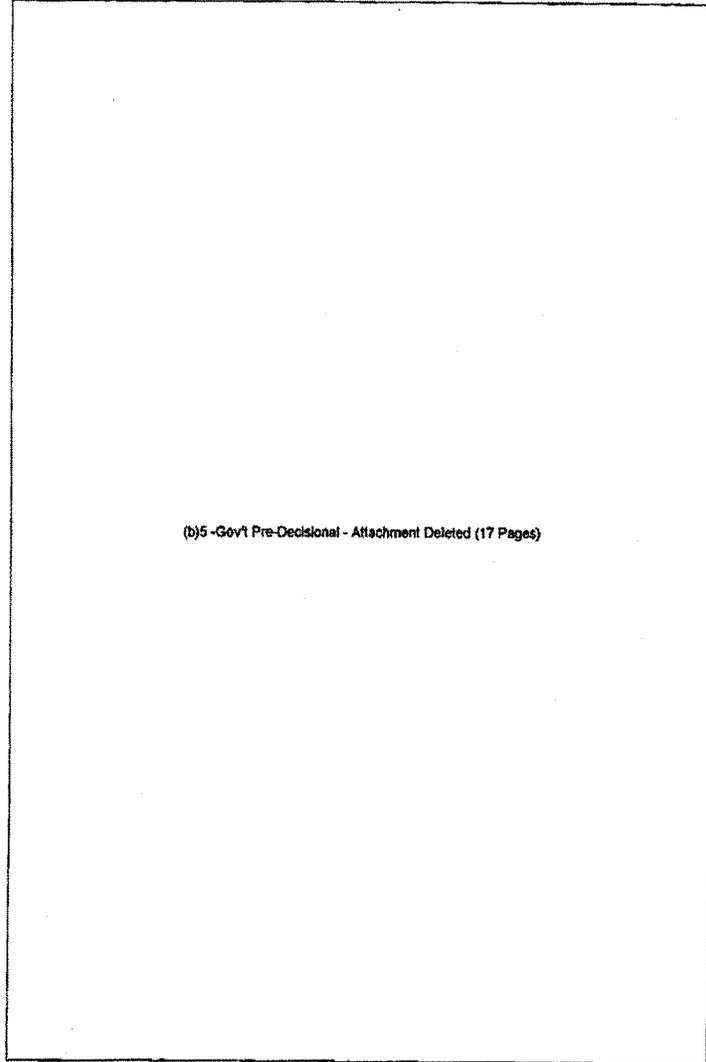
Can you send me the most recent version of the stip. I want to review.

thanks.

"EMF <CWT.COM>" made the following annotations.

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(b)(6)-Personal Privacy

From: Rae Michael
Sent: Monday, July 20, 2009 8:29 PM
To: Spatcher Jeffrey; Deneen Terrence; Morris Karen; Menke John; Owen Wayne; House Joseph; Cann Dana; Kish Heather
Subject: PBGC edits to Delphi and GM press releases
Attachments: PBGC edits - 072009 Delphi Pension Statement Templated ver 2.doc; PBGC edits - Rider to Press Release re PBGC Settlement Agreement.doc

Please review to make sure I picked up all of our comments. And, as we discussed, these edits do not include our reaction to GM's edits on Delphi's release, so that point needs to be communicated separately from these docs. Thanks.

