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4 DELPHI PENSION FALLOUT: FEDERAL

5 GOVERNMENT PICKED WINNERS AND LOSERS,

6 SO WHO WON AND WHO LOST?

7 Monday, November 14, 2011

8 House of Representatives

9 Committee on Oversight and Government Reform

10 Washington, D.C.

11 The committee met, pursuant to call, at 9:00 a.m., at
12 Sinclair Community College, Smith Auditorium, 444 W. 3rd
13 Street, Dayton, Ohio, Hon. Darrell E. Issa [chairman of the
14 committee] presiding.

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

17 Also present: Representative Austria.

18

19 Chairman Issa. First of all, this hearing is being
20 streamed for anyone who logs in with the assumption that
21 anything you say will end up on the record.

22 [Laughter.]

23 Chairman Issa. This Congressional Investigation and
24 hearing was called by Congressman Turner -- here and one of
25 the most effective -- lastly, do not try to do amateur video
26 or too many pictures. It will be 100 percent be available
27 to you and to everyone. We post and maintain, going back
28 more than five years, all of our video of all committee
29 hearings.

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

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

41 they get from their government.

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

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

50 Without objection, so ordered.

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

54 Without objection, so ordered.

55 [The information follows:]

56

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

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

70 All members, both present and those who want to submit
71 for the record, will have five days in which to put in
72 statements and extraneous materials for the record.

73 [The information follows:]

74

75 Chairman Issa. I will allow each member who wants to
76 make a short opening statement to make one if they choose
77 to. And I think I will start with our hometown favorite,
78 Mr. Turner, first.

79 Mr. Turner. Mr. Chairman, thank you so much. Thank
80 you for bringing this Washington committee hearing here to
81 Dayton, Ohio. I appreciate you granting my request to hold
82 it here. I think that --

83 Chairman Issa. You did not give me a choice.

84 [Laughter.]

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

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

95 Representative Jordan as the chairman of the
96 subcommittee has held hearings on this issue and has been

97 very active I know not only just as a strong member of this
98 committee, but also as an Ohioan. His father, like mine,
99 retired from General Motors. My father retired from General
100 Motors after 42 years as a result of the GM bankruptcy. His
101 health insurance was impacted. We have stories like this
102 throughout our community of people who have been impacted by
103 General Motors and the Delphi bankruptcy.

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

110 In the wake of the General Motors' bailout, the
111 Administration clearly picked winners and losers without
112 transparency, without justification, and, in my opinion,
113 without respect for the men and women who dedicated years of
114 service in earning their retirement benefits. Part of the
115 hearing today is our ability to try to get some of that
116 transparency. The Administration has not been forthcoming.
117 The negotiations, the decisions, have been largely in
118 secret, and as the committee and the retirees have tried and

119 attempted to get answers they have largely been thwarted,
120 which is why it is so important to have the assistance of
121 this hearing.

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

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

135 I think as we have all said as we looked at this issue,
136 we want to know where did the money go and how do we get the
137 money put back? This is part of our quest today as we look
138 to accountability in the Administration and the decision
139 making process.

140 I also want to thank Congressman Dan Burton for being

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

145 Mr. Chairman, thank you for this opportunity, and thank
146 you for being here in Dayton, Ohio.

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

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

156 Mr. Chairman, Delphi Corporation was created in 1999 by
157 General Motors through the spinoff of the company's
158 automotive component group into a separate entity. In fact,
159 many of the current Delphi retirees, hourly and salary,
160 spent the majority of their working career, on average about
161 25 years, with GM until they were involuntarily moved to
162 Delphi.

163 Regrettably, in 2005, Delphi Corporation filed chapter
164 11 bankruptcy protection. On October 6th, 2009, four years
165 after entering into chapter 11, Delphi Corporation exited
166 bankruptcy as Delphi Holdings under a restructuring plan,
167 facilitated by the Obama Administration, and approved by the
168 U.S. District Bankruptcy Court for the Southern District of
169 New York. Under the terms of the agreement, the Federal
170 Pension Benefits Guaranty Corporation assumed responsibility
171 for all of the Delphi pension plans, roughly \$6.2 billion in
172 liability, for six Delphi pension plans covering
173 approximately 70,000 employees and retirees.

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

184 When questioned about the disparate treatment of Delphi

185 employees and retirees, to this day executives for GM only
186 say that the company agreed to supplement Delphi union
187 employees and retirees because it had promised to do so in
188 1999, and that the company did not supplement Delphi non-
189 union employees or retirees because it, "is not something
190 that GM has any control over." And GM does not have a legal
191 obligation, nor does it have the money to refund those
192 pensions. The explanations offered by GM are woefully
193 insufficient.

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

206 On June 22nd, 2011 during the last committee hearing on

207 this issue, when I questioned Mr. Bloom about his statement,
208 he flatly and unequivocally denied that he ever said that.
209 Unfortunately for Mr. Bloom, this statement was corroborated
210 by a reporter for the *Detroit Free Press*, and in a book by
211 Mr. Bloom's former boss, auto czar Steve Radner.

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

216 [Laughter.]

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

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

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

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

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

249 Chairman Issa. And with that, we will recognize the
250 chairman of the subcommittee who has done more to further

251 this, if he chooses?

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

257 Chairman Issa. Thank you.

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

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

271 You know, I am very concerned about the unfair
272 treatment received by Delphi salaried retirees during the

273 Delphi and GM bankruptcy proceedings. The Administration,
274 as Mr. Burton pointed out, picking winners and losers with
275 Delphi retirees is something that should trouble I think all
276 Americans.

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

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

294 Thank you, Mr. Chairman. I yield back.

295 Chairman Issa. Thank you. Does the gentleman wish
296 unanimous consent?

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

301 Chairman Issa. Without objection, so ordered.

302 [The information follows:]

303

304 Chairman Issa. We now recognize our first panel of
305 witnesses, Mr. Steven Gebbia.

306 Mr. Gebbia. Gebbia.

307 Chairman Issa. Gebbia. He is a former executive
308 director for employee benefits and salary policies at Delphi
309 Corporation. And Mr. Chuck Cunningham is the former senior
310 executive at Delphi Corporation.

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

313 Do you solemnly swear that the testimony you will give
314 will be the truth, the whole truth, and nothing but the
315 truth?

316 Let the record reflect that both witnesses answered in
317 the affirmative. Please take a seat.

318 Now the rules of the committee are pretty
319 straightforward. Your entire statement will be placed in
320 the record, plus any additional remarks that you would like
321 in the next five days. We would ask you to stick to the
322 five-minute rule, which means that when the green light
323 comes on, you may begin, when the yellow light comes on,
324 please summarize, and when it gets red, I am going to gavel
325 you fairly quickly, and I will do that for each of the

326 panels. This really allows us to quickly get to the
327 portions not in the record, which is the questions and
328 answer that I think you want to give you to us as much as we
329 want to receive it.

330 Mr. Cunningham?

331

332 STATEMENTS OF CHUCK CUNNINGHAM, FORMER EXECUTIVE AT DELPHI
333 CORPORATION; AND STEVE GEBBIA, FORMER EXECUTIVE AT DELPHI
334 CORPORATION

335 STATEMENT OF CHUCK CUNNINGHAM

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

339 My name is Chuck Cunningham, and I am a retiree who
340 worked 27 years for GM and three for Delphi. I now serve as
341 the DSRA legal liaison to our Washington law firm,
342 coordinating the activities between the retirees and our
343 attorneys.

344 In 2009, the Obama Administration decided to bail out
345 General Motors through an expedited bankruptcy. We are not
346 here today to discuss the merits or the wisdom of that
347 bailout. That is not for us to discuss. But we are to talk
348 about the consequences of those actions that were
349 devastating for one group, the Delphi salaried retirees.

350 In order to ensure a successful emergence from
351 bankruptcy for GM, the issue of Delphi had to be dealt with.

352 And that was a task the auto task force and the Treasury
353 took up, because Delphi was previously spun off from GM. It
354 was their major parts supplier, and in order for GM to be
355 successful in the future, it had to be a viable Delphi. It
356 just had not happened. We understand that. I think
357 everybody understands that.

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

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

373 Now, we hear many, many times from people that advocate

374 on the part of the Administration and the task force that it
375 was contractual. It was done in 1999. The truth of the
376 matter is, as Representative Burton so well put, these
377 things would have been thrown out in bankruptcy court. They
378 always were. A less than astute student in bankruptcy knows
379 that. But they were not.

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

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

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

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

414 Instead --

415 Chairman Issa. If you could summarize.

416 Mr. Cunningham. Okay. We are in a legal conflict
417 right now, and we are moving forward with it, but we are in

418 the discovery stage and moving very slowly. The PBGC has
419 failed to give us the information that the Federal judge has
420 demanded of them. We have had a motion to compel on many
421 other issues. Three times they have been told to comply,
422 but they will not comply.

423 Chairman Issa. Thank you.

424 Mr. Cunningham. Thank you.

425 [Prepared statement of Mr. Cunningham follows:]

426

427 Chairman Issa. Mr. Gebbia?

428

429 STATEMENT OF STEVEN GEBBIA

430 Mr. Gebbia. I am Steven Gebbia, former executive
431 director of employee benefits for Delphi Corporation. I
432 held that position since Delphi's inception in 1999 until I
433 retired in June earlier this year in 2011. During this
434 entire time, I held administrative responsibilities for
435 Delphi's local employee benefit plans, including the U.S.
436 salaried and hourly defined benefit pension plans that were
437 involuntarily terminated by the PBGC in July of 2009.

438 My administrative responsibilities included designing
439 and developing the various pension plans and negotiating
440 their provisions with the unions, ongoing communications
441 with employees, retirees, unions, and oversight of the day-
442 to-day administration of these pension plans. This
443 oversight involved frequent interaction with Towers Watson,
444 a consulting firm hired by Delphi to conduct actuarial work
445 on these pension plans, including annual evaluations of
446 these plans as required by law.

447 During the almost four-year period during Delphi's
448 bankruptcy cases up until the PBGC involuntarily terminated
449 Delphi's pension plans, Delphi's management team repeatedly

450 communicated to employees its desire to retain these plans
451 as part of the bankruptcy restructuring. Like others, I was
452 very surprised when I learned that the pension plans were
453 going to be terminated and taken over by the PBGC, and I was
454 extremely disappointed when I learned that it was decided
455 that only the hourly employee pension benefits, but not the
456 salaried employee pension benefits, would be topped up by
457 General Motors, and, therefore, would be made whole.

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

465 During our discussion, Towers Watson offered to me and
466 the members of my staff that while the salaried pension plan
467 was not fully funded at the time of the involuntarily
468 termination, it was, however, funded well above a level that
469 would have required mandatory termination of this plan. In
470 fact, Towers Watson stated that this plan had enough assets
471 to pay benefits for decades to come, and that they also

472 opined that this plan was very salvageable should there be
473 any sincere desire to save it.

474 They stated the reasons for their opinions were based
475 on these four items: one, the data derived from their most
476 recent actuarial evaluation of the plan; two, the fact that
477 the plan was frozen in October of 2008, meaning no new
478 benefits would accrue going forward from that point in time;
479 three, the equity market, the stock market, at that time
480 were at a historic low, keeping asset values lower than they
481 normally would have been; and, four, the discount rates were
482 also extremely low by historical standards, thereby
483 overstating the plan's liability valuations over the near
484 term.

485 Towers Watson further offered that they believed that
486 other bankruptcy cases existed where pension plans were
487 funded at levels lower than the Delphi salary pension plans
488 but had not been taken over by the PBGC.

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

494 This concludes my statement.

495 [Prepared statement of Mr. Gebbia follows:]

496

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

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

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

517 So, if we could just go through a couple of numbers to
518 make sure I get this right. If I look at the two figures

519 that are most significant, if General Motors had said this
520 is all the money we can do to try to make as whole as we can
521 everybody, even with the termination, basically leaving the
522 salaried employees with about a 70 percent discount, and
523 making whole the roughly twice as many union employees, it
524 comes out to about to 66 percent if you simply divide the
525 money equally. Is that roughly what you are seeing, is that
526 the haircut that you took would have been less than half as
527 much had the same amount of money been broadly put into all
528 the pensions?

529 Mr. Gebbia. I am not sure I can speak to that.

530 Chairman Issa. That is roughly the arithmetic --

531 Mr. Cunningham. I guess would go to --

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

538 Mr. Cunningham. To give you a reference to that, I
539 would agree with you, and I think that work on both sides of
540 the --

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

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

554 Chairman Issa. You know, one of the things that our
555 committee has to look at is, can we unring the bell? I
556 think for many people here today, that is one of the biggest
557 challenges. When we get to the third panel, the third panel
558 is going to basically say due process was executed pursuant
559 to our rules. We had no choice. You back up and say maybe
560 they are right. Assuming that a bankruptcy did not give a
561 clean bill of health to a very unusual deal, assuming that
562 they did not do a Claude Act the way they did with Bernie

563 Madoff and say, no, no, this was a preferential payment, and
564 that preferential payment has to be divided throughout the
565 entire plan, all of those would haves, could haves, and
566 should haves we are going to look at.

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

574 Mr. Gebbia. Well, I think interesting enough, some
575 people say, well, you know, you are asking Congress to
576 appropriate money. We are not. In fact, the PBGC has
577 stated in an affidavit in the legal text that they are
578 putting \$2.1 billion into our plan. If you add that
579 together with the \$2.4 that they admit was the amount that
580 plan was funded, that comes out to \$4.5. Watson Wyatt came
581 in somewhere between \$3.4 and \$4. All we would like to do
582 is sit down with PBGC and work through those numbers. We
583 believe that under normal actuarial data, that we could have
584 a fully funded pension administered by the PBGC, which is

585 totally legal, but we cannot even get them to give us the
586 option. And it is a shame.

587 Chairman Issa. Thank you. I am going to be respectful
588 of the five-minute rule also, and I will recognize Mr.
589 Burton?

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

592 [Applause.]

593 Mr. Burton. Has the judge moved a contempt citation
594 against them for not complying?

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

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

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

604 Mr. Burton. Well, if that is not the case, and, of
605 course, you are the lawyer and I am --

606 Mr. Gebbia. I am not a lawyer. I am the liaison.

607 Mr. Burton. Well, whatever you are.

608 [Laughter.]

609 Chairman Issa. Folks, please do not applaud to find
610 out that he is not a lawyer. Please.

611 [Laughter.]

612 Chairman Issa. The gentleman may continue.

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

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

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

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

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

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

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

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

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

651 Chairman Issa. I thank the gentleman.

652 Mr. Turner. -- Mr. Jordan has held because we are
653 getting the picture of really the crux of the problem in
654 that we do not have the information from the Administration
655 as to how these decisions were made for a full and complete
656 understanding of what was the process that was undertaken,
657 what was the decision making that was undertaken, and how
658 can we review it through congressional oversight, how can
659 the courts review it, to determine if you have been treated
660 fairly and properly.

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

667 But the pension plans, if I am understanding you, is
668 that you were unaware of any reason why your pension plan on
669 an entitlement basis, a legal basis, would have less
670 standing than other pension plans with Delphi and General
671 Motors, because you went into the bankruptcy process that
672 your pension would have been as great of a contractual

673 obligation and heavily federally regulated so that when you
674 went into the process, you did not expect it would be
675 handled differently than the other pension. Is that
676 correct?

677 Mr. Gebbia. That is absolutely correct.

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

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

695 Mr. Gebbia. It is correct, from my standpoint, yes.

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

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

712 [Applause.]

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

715 Mr. Turner. And the troubling aspect of the fact that
716 the taxpayers' dollars were there is not in dispute, but I

717 am going to ask you to provide some asset valuation, because
718 it seems to me that the PGBC is giving us answers as to what
719 the financial status of the pension was before it went into
720 bankruptcy. It has used its financial status and bankruptcy
721 and even its status as it came out. My understanding is
722 that the basis of your complaint is that you do not agree
723 with their assessment as to the valuation of the assets
724 before the handling of the assets during bankruptcy or even
725 the manner in which they were valuating or allocating assets
726 as they came out. Is that correct?

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

734 Mr. Cunningham. Representative Turner, if I may make a
735 point. After getting knowledge of that Towers Watson
736 report, we contracted with PDS&M, which is a wholly-owned
737 subsidiary of Wells Fargo, to do a follow-up analysis for
738 the court. They found the same thing, that our pension plan

739 was funded at the time of termination. In fact, higher than
740 that, had over 80 percent, and that it stood above the
741 midpoint of the hundred largest pension plans in the country
742 at that time, none of which were terminated.

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

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

753 Chairman Issa. Will the gentleman yield?

754 Mr. Turner. Yes.

755 Chairman Issa. I just want to interject into this
756 portion of the testimony that although the committee has
757 been receiving documents from the PBGC -- I always hate
758 trying to say that -- relatively unredacted, we have gotten
759 almost no documents from Treasury. I know that will not be
760 as much mentioned in their dialogue, but it is one of the

761 early frustrations, that even the committee is having
762 trouble getting from Treasury, the behind the scenes
763 decision separate from the actual decision about witnesses
764 we have here today.

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

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

775 So, the idea that we need to bind up all these
776 decisions, particularly, as Mr. Turner pointed out, when
777 taxpayer dollars are stake, and when the auto task force
778 made up of Federal employees is making the decision, that is
779 the key issue here. And when you start down this road,
780 which is why I have been troubled by this whole process
781 where government gets this involved in the private sector,
782 where you have the President of the United States firing the

783 CEO of General Motors, where you have the auto task force
784 taking over, that is the problem. And we just want to
785 continue to look at this, delve into this, and get the
786 answers needed for transparency that is needed for taxpayers
787 to understand what is going on.

788 With that, I would yield back my time. I would be
789 happy to yield time to --

790 Chairman Issa. Mr. Austria?

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

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

801 Let me first of all say that I applaud your
802 determination to ensure that Delphi retirees receive a fair
803 pension. However, it is concerning to me that while the
804 trial court has ordered this discovery, and you mentioned

805 that there a lot of documents or some of the documents have
806 been redacted as far as much of the information, which is
807 very troubling. PBGC continues to delay and refuse to
808 comply with these orders.

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

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

822 [Laughter.]

823 Mr. Cunningham. It is a little odd, but that is what
824 we are doing. I mean --

825 Mr. Austria. It sounds like an unfair fight to me.

826 Mr. Cunningham. Well, you know, they can spend all the

827 money they want on attorneys, and, believe me, we have
828 wonderful attorneys, the best we could have. But, you know,
829 it gets a little long, and it gets very expensive. But we
830 are not going to quit.

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

846 What was your position on that?

847 Mr. Cunningham. We were never invited to the table in
848 any way, shape, or form. Delphi salaried retirees were not

849 invited to the table. Meetings were held, in fact, a
850 meeting which we would love to get information on was held
851 in Poughkeepsie, New York, at the direction of the
852 bankruptcy court. The PBGC and its attorney, one which is
853 here today, I think, were there. UAW was there. The
854 Treasury Department was there. GM was there. Delphi
855 salaried retirees were not there. So, all the constituents
856 were there, except us.

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

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

869 So, you know, we were not going to be part of the
870 process. The decisions were made. If you go back, we have

871 a lot of information, not enough, not all of it. But if you
872 go back to even the written testimonies of Matthew Sullivan
873 from the automotive task force, you will see that, you know,
874 they basically orchestrated this whole thing, and the PGBC
875 was complicit.

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

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

891 But the union represents UAW, correct, that they might
892 strike if they did not get topped up. Everybody knows that.

893 Do you believe as people who did not get the benefit, that
894 the real difference was that salaried workers could not
895 reasonably, you know, current workers threatened to walk off
896 the job in order to ensure that you got the same benefit.
897 Is that really what separated, in your mind, the difference
898 between large organized labor using current willingness to
899 strike or it pulls out of the deal, if you will, by saying
900 it would versus the inability of you as retirees not
901 represented by a union that would take current workers and
902 strike? Do you believe that that was, more than anything
903 else --

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

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

913 Mr. Gebbia. It is the only way I can see it. I mean,
914 that is the way a logical person would look at it.

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

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

920 [Recess.]