

Written Testimony from Bruce Gump, Vice-Chairman, Delphi Salaried Retiree Association to the House Oversight and Government Reform Sub-Committee on Regulatory Affairs, Stimulus Oversight and Government Spending. June 22, 2011

Chairman Jordan, Ranking Member Kucinich, and Members of the Committee; thank you for this opportunity to represent the thousands of Delphi Retirees who were mistreated by the Administration during its unprecedented intervention in the Auto Industry, particularly in respect to the re-making of General Motors and Delphi Corporation.

I would like to begin by stating our agreement with President Obama concerning his 2008 campaign statement *"Pension protection is something we should put at the top of our priority list. Right now, bankruptcy laws are more focused on protecting banks than protecting pensions and I don't think that's fair. It's not the America I believe in. It's time to stop cutting back the safety net for working people while we protect golden parachutes for the well off. If you work hard and play by the rules, then you've earned your pension. If a company goes bankrupt, then workers need to be our top priority, not an afterthought."*¹ I only wish his administration had actually followed this concept in their unprecedented involvement in the bankruptcies of GM and Delphi. We worked hard and played by the rules, we did everything right but this administration determined that our pensions were not worth saving while others' were. That is discrimination in the workplace to put it bluntly.

In this hearing I am hopeful that we will finally hear an explanation of what was meant in testimony offered almost exactly two years ago by the head of the President's Auto Task Force Mr. Ron Bloom when he told the House Judiciary Commercial and Administrative Law Subcommittee *"From the beginning of this process, the President gave the Auto Task Force two clear directions regarding its approach to the auto restructurings. The first was to behave in a commercial manner by ensuring that all stakeholders were treated fairly and received neither more nor less than they would have simply because the government was involved. The second was to refrain from intervening in the day-to-day management of these companies."*² From our perspective neither of these "directions" was successfully accomplished except perhaps for the transforming of our elected government into a totally commercial enterprise not constrained or obligated to inconvenient constitutional or ethical requirements. The Merriam-Webster Dictionary defines "fair" in this context as "marked by impartiality and honesty: free from self-interest, prejudice, or favoritism." We contend that the settlement reached between the Treasury, the PBGC and others was none of these. The final settlement in fact treated some groups that were more important politically very well, and those groups retained their full pensions with the plan

¹ <http://www.youtube.com/watch?v=IHJzTdCsiGk&feature=fvsv> Candidate for President Obama speaking to a group of seniors in Gresham Oregon May 18, 2008

² Statement by Ron Bloom, Senior Advisor at the U.S. Treasury Department Before the House Judiciary Commercial and Administrative Law Subcommittee, "Ramifications of Auto Industry Bankruptcies, Part II" July 21, 2009

being raised to 100% funding status and their health care plan one of the best in America. Another group, made up of people who were perceived to not have the same political importance, were treated very poorly. As a result the Delphi Salaried Retirees especially were singled out to see their promised and earned pensions turned over to the PBGC in a manner that allowed them to be reduced in many cases by 30% to 70%, and to lose ALL of their promised and earned health care insurance, and ALL of their promised and earned life insurance. A member of the Auto Task Force justified treating some groups of workers very well compared to other groups by explaining that there was “no commercial necessity to do anything for those people.” But, we think that “commercial necessity” is just a code for “political expediency.” The fact is, the groups well treated just happen to be groups that supply millions of dollars in campaign contributions to the President’s party and millions more in lobbying efforts. And even they see the injustice of this treatment. The previous UAW President Ron Gettelfinger has said *“This is a grave injustice. Our Union advocates for working people. We are advocating for the salaried retirees whose pensions have been eroded, though their dedication to the company and their years of service remained steady. No one should sit silently by and say nothing about the unfair and inequitable treatment these people are receiving. Such silence goes against the founding principles of our Union.”*³ This has been reaffirmed by the current International UAW President Bob King in the press. Also, the Ohio Senate passed unanimously a resolution calling for fair and equitable treatment of all the Delphi Retirees⁴ and the Speaker of the House wrote a personal letter stating essentially the same thing⁵. Furthermore the Ohio AFL-CIO wrote *“On behalf of Ohio’s working families and the Ohio AFL-CIO’s 700,000 members we offer our support for the introduction of a Senate Resolution that urges the President of the United States, the Secretary of the Treasury, the head of the President’s Auto Task Force, and the members of the United States Congress to treat all of the General Motors-Delphi retirees fairly and equitably and provide for the full earned pensions and other post employment benefits in the same manner for all groups regardless of their representation.”*⁶ This support is recognition by many in government and private industry that there has been a terrible injustice done and that it must be corrected. Dozens of Governors, Senators and Congressmen have written and spoken to the Administration and to GM in an attempt to have them act to correct the issue. But it has all fallen on deaf ears so far and so the precedent that many have recognized as unjust, unfair and inequitable treatment of citizens based on their perceived “commercial necessity” has been allowed to stand.

Even more upsetting is the fact that even now, almost two years since our plan was terminated, we still don’t know even the most basic details about the basic facts of our pension plan’s termination, what happened, who was involved, and the extent that our governmental representatives played in the PBGC’s decision-making. For example, we know that actuarial reports, completed mere weeks before the PBGC terminated our Plan, showed that the Plan was well funded, but the report

³ Letter from Ron Gettelfinger to Mike Husar, Delphi Salaried Retiree Association, dated January 15, 2010

⁴ Ohio Senate 128th General Assembly Regular Session 2009-2010 Sub. S. C. R. No. 23

⁵ Letter from Armond Budish, Speaker, Ohio House of Representatives to the Honorable Barack Obama, President of the United States dated January 27, 2010

⁶ Letter from Joesph P. Rugola President, Ohio AFL-CIO to Members of the Ohio General Assembly dated November 25, 2009

appears nowhere in the PBGC's official administrative record. In fact, that record excludes any facts or events that took place after mid-April, despite the fact that the terms of the termination were negotiated after that time. Moreover, the Plan's actuary has indicated that the PBGC commissioned yet another report that has been hidden from us so far.

Similarly, we have not seen any records of the substance of the PBGC's many closed-door meetings with the Treasury and Auto Task Force over these issues, including the "Poughkeepsie Meeting" where the final deal between the PBGC and the Treasury (among others) was finally cut. In fact the PBGC has fought "tooth-and-nail" to prevent us from obtaining any records beyond its so-called administrative record, or learning how the decisions were made that allowed billions of taxpayer provided dollars made available through the TARP program to be used for the benefit of some but not all. It has been estimated that had the Treasury had a budget of what it spent to fund the pensions of some at a 100% level, it could have funded all at a 93% level. That would normally be considered excellent coming from a bankrupt company at the bottom of a recession! But instead, some groups were funded at a 100% level because they were considered too powerful to not treat well while others were considered too weak to be able to protect themselves and so nothing was done to treat them in a fair and equitable manner. Both Old and New GM wrote in court documents that they were NOT obligated to pay the pensions of some groups of workers and they were allowed to exit bankruptcy without being held to the original contracts. However, after one visit to GM by an official from the Treasury, suddenly they announced that they were able to "top up" the pensions of some, but refused to do anything for other groups. "Top up" means that the workers receive two checks to make up their full pensions – one from PBGC and one from GM. GM even said in their 10-k document filed with the SEC that these payments were "gratuitous in nature" rather than obligatory. Some believe that because the well-treated groups strongly support the Administration, they in turn were strongly supported by the administration. In fact that belief is sufficient enough that both the GAO and the Special Investigator General for TARP have started investigations into the issue.

To be clear: the Delphi Salaried Pension Fund was not in distress when the PBGC chose to terminate it, and was in fact funded in a similar manner and at a similar level as the average of the top 100 pension funds in America at the time. Instead, it was unnecessarily and illegally terminated using a process that denied the participants any due process or even representation at the negotiating table. Those that were represented included the Treasury, the PBGC, GM, Delphi and the UAW, but who of that group should have represented the Salaried Retirees? It was certainly not the function of the UAW. GM and Delphi had already turned their backs on us. The United States Treasury, a function of our elected government not only did nothing to represent us, but found it convenient to purposely treat us badly. In fact, during this process we have been told by some that we were simply considered not big, rich or powerful enough to matter, and that we were "just a bunch of Republicans." That, I believe, is the source of the statement from the Auto Task Force when they said there was no "commercial necessity to do anything for those people." In this unprecedented intrusion of the United States Government into a private industry bankruptcy, some groups were able to find hope, but all we got was the audacity!

It is frightening to even think about allowing this precedent to stand when it could be used as a justification in almost anything else the government does! Consider Social Security – when will some groups be considered "commercially unnecessary"? What about Medicare or even the Military in which my own son will soon be serving as are many other of our members' sons and

daughters. Will this “commercially necessary” precedent now established allow some government official to decide one group of soldiers is not “commercially necessary” and arrange for them to take on the most dangerous tasks while some other more powerful and politically supportive groups are protected? Simply stated, this is a precedent that must not be allowed to stand. The taxpayers expect the government to follow the concept of “commercial necessity” when it comes to commodities like pens and paper, but the citizens of this country are NOT commodities, and this decision, this precedent makes them into less than citizens – all of whom deserve to be treated with respect and dignity. The Constitutional precepts of “Equal Protection” and “Due Process” must be followed by our government at all times, not just when it is politically or commercially convenient. This is why we must not allow our government to become simply a commercial enterprise and “behave in a commercial manner.”

In the end it was political expediency which caused the Treasury to orchestrate our current situation. The Treasury was simply in a hurry to get GM out of the bankruptcy which they had forced it into. Because GM needed Delphi to remain a major supplier, and the PBGC held liens on Delphi’s foreign assets to protect the pension plans, the Treasury brokered a deal where the PBGC gave up their liens on those assets on the cheap. Instead of obtaining the full value of those liens for the benefit of the pensioners whose plan they were supposed to be protecting, for example by insisting that GM fund or “top up” the funding of the Salaried Plan, the PBGC and Treasury instead agreed to a deal whereby everybody wins except the Salaried Retirees. Amazingly, the PBGC, as administered by the President’s Cabinet Members is acting exclusively for the benefit of GM instead of the benefit of the citizens for whom it is a trustee.

The economic effect of this decision on my community was calculated by the Youngstown State University Department of Urban and Regional Studies.⁷ Dr. Frank Akpadock announced that the result on the local economy was nothing short of “catastrophic.” When his results are extended to include the other lost benefits along with pensions for all the affected groups, the overall cost to the economy of the United States is about \$1.6 billion per year, every year, for the next 20 to 30 years. In addition, because the economic activity is reduced so significantly, about 85,000 American Citizens who had nothing to do with the Automotive Industry have or will see their employment simply evaporate.

When the Emergency Economic Stabilization Act of 2008 that created the Troubled Asset Relief Program – called TARP – was written, Congress wrote in section 113 titled “Minimizing Negative Impact”: *“The Secretary shall use the authority under this Act in a manner that will minimize any potential long-term negative impact on the taxpayer, taking into account the... overall economic benefits of the program, including economic benefits due to improvements in economic activity and the availability of credit, the impact on the savings and pensions of individuals, and reductions in losses to the Federal Government.”* We respectfully submit that the Secretary of the Treasury did not do everything possible to meet this obligation.

⁷ Measuring the economic impact of pension reductions and health care cuts on the salaried retirees of Delphi Packard Electric Systems resident in the Mahoning Valley, Ohio. Frank Akpadock, Ph.D. Senior Research Associate and Regional Scientist. Public Service Institute Center for Urban and Regional Studies Youngstown State University. September, 2009.

Consider just a 10 year time horizon: \$16 billion of economic activity has been lost because the Delphi Retirees did not receive the same benefit of protection and support that other groups in the auto industry did. Each of those transactions represents income for somebody, and if taxed at 15% then the US Government will NOT collect \$2.4 billion and local governments will NOT collect \$960 million in sales taxes calculated using an average 6% rate. This does not include the INCREASED COST to the US Government for programs supported by them such as unemployment compensation and retraining. Nor does it include the devastating long term costs of personal bankruptcies and home foreclosures – many of which have already happened along with family breakups and other horrible situations.

And so as a result of this discriminatory decision by the US Treasury to fully fund pensions and benefits for one group while leaving other groups out, economic activity is significantly REDUCED, there is a strong NEGATIVE impact on the savings and pensions of thousands of individuals, and the Federal Government will see significantly more LOSSES than they would otherwise. To me, that obviously is not living up to the requirements of the TARP, and is a policy error that MUST be corrected.

This hearing is titled “Lasting Implications of the General Motors Bailout” so I would like to explain some of those lasting implications from the perspective of the retirees. If the retiree was a member of the most favored group, there are no significant changes in their future. They can participate in the economy and pretty much just follow the plan they had when they retired. If they are in a less favored group, then while they still have their full pensions thanks to the allowed use of TARP funds provided to General Motors, their health care insurance was drastically reduced and so until they reach Medicare eligibility, they will have to reduce their participation in their local economies by several hundred dollars per month. But if they were part of the least favored, the least protected group, like me, then for many their pensions were reduced by 30% to 70% - a devastating blow that will require they either curtail nearly any other activities, or that they go back to the workforce and try to take jobs from those who were already competing for them. To make it worse, the complete loss of health care insurance requires an additional several hundred dollars per month expenditure or be one slip-on-the-stairs away from total financial ruin. The loss of their pensions is for the rest of their lives, and for the salaried group there is no inflation adjuster, so the extremely low income they now have will at some point, and for many that point will be very soon, they will fall below the poverty level for income in the United States. This will be their fate after 30 or 40 or more years of service to the company that was just as important and just as significant as those who are in the more favored groups. The only difference between them and the other groups is that the United States Government chose winners and losers, and they were simply chosen to be the losers. This effect will be lasting indeed, and the entire economy of the county will feel it. The administration constantly points to, and wants everybody to ONLY see the jobs that were saved, but at what expense? The loss of credible expectation of fair government, the loss of their futures, and in some cases their health and their families. That is a very high expense to pay by one group so another group can live well!

To explain just some of the effects on the citizens of America, I have taken a few excerpts from more than 800 written testimonies offered at a field hearing of the Oversight and Investigations subcommittee of the House Financial Services Committee held in Canfield, Ohio last July – nearly a year ago:

From David Clute: During the GM/Delphi bankruptcy exits, those whose duty it was to protect the basic rights of all working men and women, gathered together and using TARP funds, unfairly facilitated an outcome that benefited only selected groups. As a result of this discrimination my annual income in retirement is more than \$6500.00 BELOW POVERTY LEVEL GUIDELINES for the state of Indiana and all of my Health Insurance has been eliminated. I do not exaggerate when I say my life has been devastated. I worked 30 years to earn my promised pension and benefits just like many of those at the same company whose pensions and benefits were protected by our government. I cannot understand why I am not worthy of the same protection.

From Albert Campbell: The inequitable treatment I have received at the hands of the Treasury and the PBGC has destroyed me financially. Two days ago I received the foreclosure notice on my home. So where do my family and I go now that we are losing our home due to this treatment by Treasury and the PBGC?

From David Gulledge: Suddenly I was losing 50% of my pension because I am salary and in the Obama Administration words "you have no commercial value". My wife has now lost her job, I am a heart attack quadruple bypass survivor that is 61 years old now and no one will hire because of medical history. I will most likely lose my house, and am having a hard time because bills outnumber the money coming in. My government has taken my honor and betrayed me. This country is not the country my father fought for, why am I losing everything I have and have worked for? Please answer me that, I am a citizen with no rights. I don't see any need in going on anymore, when a person's word is nothing, and a person's country slams them, why even live anymore.

From Brenda Jones: I am now 58 years old cannot find a job to supplement my income; I still have a mortgage and car payment. I was pretty self-sufficient but now I rely on my children to help pay my bills.

From Carl Nagy: I have applied for literally dozen[s] of engineering jobs. No one wants to hire a 58 year old even though I have an engineering degree, MBA, and a Professional Engineers License. ... I have been substitute teaching for [just above minimum] wages to help make ends meet. They are not meeting. I need new hearing aids. I can't afford them. I don't know when I will ever be able to buy a new car, let alone a new GM car. We don't go out to eat anymore. We don't go shopping. I need to have surgery on my neck, but have put it off due to the having to pay the deductibles.

From Charles Smith: I have looked for a job but even with a college degree and experience it has been difficult. I have a 90 year old mother whom I must help take care of and I cannot leave the area for any amount of time. My mother has given me money to keep me going but her nest egg is running out. My family, wife Bev, and I need the pension [reinstated] so we can continue to make payments and get out of debt. I am really disappointed being a US citizen to be treated so unfairly by our government.

From Dan Shapiro: I deeply request that you help me answer my granddaughters when they ask: Grampa, Should I go to college? (Answer: Whatever you do, be sure to join a really big union!)

From Barbra Burns: I have lost almost 50% of my pension. It's difficult to find a decent paying job. Currently my income is below the poverty level. I am definitely worse off today than I was before President Obama was in office. All I am asking for is fair and equitable treatment.

From Bill Martindale: After more than 40 years with this company, I have been forced to find other work (at lower pay) in order to support myself and my family as the pension I get from PBGC is insufficient... I am at poverty level. I can no longer assist my two daughters with helping to repay their college loans ... I drive two old G.M. vehicles ('03 and 04 Chevies) and will not be able to ever purchase a new car again and, if I do, it will not be a G.M. product.

From Brian Bower: GM & Delphi bankruptcies and the recent unfair use of TARP funds by the Treasurer have destroyed my retirement security. I am forced to accept these unfair changes without any representation or consideration while others who worked side by side with me will continue to be awarded full retirement benefits. That is not equality as stated in our constitution.

From Bruce Naylor: my pension was absorbed by the PBGC and reduced by 38%. I lost my job and was declined unemployment. Now we are always late on our house payments, and scramble to cover utilities. My plan to educate myself for a real service role of teacher is out of reach...

These citizens, these people who are not just commodities, always felt they had done the right thing. They obeyed the law and their superiors at work, they believed the promises made by those employers, and certainly by their government. Now they feel betrayed; they are angry, they are hurt and they are scared because of the discriminatory treatment they have received. Can anybody blame them?

We call on our elected officials to correct what amounts to a policy error and cause a fair and equitable settlement to be achieved for all of the Delphi Retirees. It was the US Treasury itself that established the "standard of fairness" when they chose to help protect the represented workers from GM and Delphi. That same standard must be used for all workers, not just the chosen groups. We also call on the members of this committee to obtain the records of the "Poughkeepsie Meeting" where all the deals were cut. Finally, we call on the Congress to correct the ERISA laws and the Bankruptcy code so that workers are protected from conditions beyond their control. Just do what the President said and our children won't have to deal with having to prove their "commercial necessity" to this government. *"If a company goes bankrupt, then workers need to be our top priority, not an afterthought."*

We look forward to the Obama Administration living up to the Vice-President's statement from one of the weekly addresses to the nation: *"That's why the President and I remain focused on, not just recovering from this recession. We're focused on making sure that if you work hard, play by the rules, you'll be able to get ahead, put your kids through college, [and] retire with dignity and security."*⁸

⁸ <http://www.whitehouse.gov/the-press-office/2011/05/28/weekly-address-resurgent-american-auto-manufacturers-signal-economy-rise>