Testimony
of
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Good afternoon Chairman Jordan, Ranking Member Kucinich and other Subcommittee Members. I am Vince Snowbarger, Deputy Director for Operations of the Pension Benefit Guaranty Corporation ("PBGC" or "the Corporation").

The most visible part of PBGC's work occurs when it steps in to terminate and become trustee of failed defined benefit ("DB") pension plans. First, however, PBGC tries to preserve plans and keep pension promises in the hands of the employers who make them. During FY 2010, PBGC helped 38 companies in bankruptcy keep their plans, enabling about 250,000 workers and retirees keep their full pension benefits. Every plan retained by its sponsor is a victory both for the plan's participants and for PBGC.

As part of this hearing on "Lasting Implications of the General Motors Bailout," I will testify today about the DB pension plans sponsored by companies in the automotive and auto supply industries. I will also discuss the impact the restructuring in these industries has had on the DB pension system and on the PBGC's pension insurance program.

In particular, I will describe the impact of the restructuring on the underfunded pension plans of Delphi Corporation, the nation's largest producer of auto parts. I will also describe the developments that forced us to step in to protect the pensions of Delphi's 70,000 workers and retirees. We are now responsible for about $6 billion of the plans' shortfall, but about $1.2 billion of benefits is not guaranteed by the insurance program.

PBGC

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

In 1974, Congress passed the Employee Retirement Income Security Act ("ERISA") which, among other protections, created PBGC to insure pensions earned by American workers under private-sector DB plans. We now insure the pensions of more than 44 million workers, retirees, and beneficiaries in about 30,000 DB plans. When a plan terminates in an underfunded condition – usually because the employer responsible for the plan goes out of business or can no longer fund the promised benefits – PBGC takes over the plan as trustee and pays benefits to the full extent permitted by law.

What PBGC Does

In the aftermath of the economic crisis, PBGC responded to the wave of corporate bankruptcies by stepping up its work to protect plans. Our staff negotiated with dozens of companies, in bankruptcy, through our Early Warning Program and when corporate downsizing events occurred, to preserve their DB plans.

Under the Early Warning Program, PBGC monitored more than 1,000 companies to identify transactions that could threaten a company's ability to pay pensions, and negotiated protections for the plans. We can also step in and negotiate protection for the pension plan, including a guarantee, posting collateral or additional contributions to the plan when major layoffs due to plant closures occur. In this way, last year PBGC secured an additional $250 million in protections for participants in about 20 pension plans.

When companies do enter bankruptcy, we encourage them to keep their plans ongoing. In large bankruptcy cases, the stakes for workers and retirees and the pension insurance program can be tremendous. If a company can exit bankruptcy with its pension plans ongoing, PBGC can avoid taking on substantial liabilities. If the company sheds its plan, PBGC can be saddled with the addition of billions of dollars to its deficit. Unfunded benefits can also mean benefit losses to those workers, retirees, and beneficiaries whose benefits exceed the amounts guaranteed by law.

During FY 2010, the agency worked with debtors and creditors to help 38 companies who were reorganizing in bankruptcy keep their plans. As a result, approximately 250,000 workers and retirees continue to enjoy their full pension benefits, while continuing to be protected by PBGC insurance coverage. This is almost 2½ times the number of participants in plans that failed.

Despite PBGC's efforts to preserve pensions, 147 underfunded single-employer plans did terminate in FY 2010, most often in bankruptcy, and PBGC took up responsibility for an additional 109,000 workers, retirees, and beneficiaries.

For the past 36 years, PBGC has stepped in to pay benefits – on time, every month, without interruption. These benefit payments are important, often crucial, to the retirement income security of retirees and workers in trusteed plans, many of whom worked decades for their promised benefits. In FY 2010, PBGC paid nearly $5.6 billion in benefits to about 801,000 retirees and beneficiaries in 4,200 failed plans; another 669,000 participants will receive benefits in the future. Since the beginning of FY 2011, PBGC has become responsible for current and future benefit payments for another 30,000 individuals.

Governance and Structure

PBGC is a wholly-owned federal government corporation overseen by a three-member Board of Directors consisting of the Secretary of Labor, who is the Chair, and the Secretaries of Commerce and Treasury. The Corporation is administered by a presidentially-appointed, Senate-confirmed Director. The Corporation also has a seven-member Advisory Committee appointed by the President to represent the interests of labor, employers, and the general public.

PBGC operates two pension-insurance programs, which are financially separate. The single-employer program covers about 34 million workers, retirees, and beneficiaries in about 26,000 single-employer plans. The smaller multiemployer program – which covers collectively bargained plans that are maintained by two or more unrelated employers – protects more than 10 million workers, retirees, and beneficiaries in about 1,500 multiemployer plans.

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

AUTO INDUSTRY

In 2009, as GM and Chrysler requested government assistance, President Obama established the Presidential Task Force on the Auto Industry (Auto Task Force) to evaluate the companies' restructuring plans. The Auto Task Force consulted PBGC to determine the scope of pension underfunding in the automotive and auto supply industries.

As part of the Troubled Asset Relief Program, Treasury provided funding to help GM and Chrysler fund their operations while they restructured. To implement the restructuring plans, both companies filed for bankruptcy reorganization. When New GM and New Chrysler emerged in 2009, they assumed sponsorship of all the old companies' DB plans. As a result, more than 700,000 participants in the GM plans and more than 250,000 participants in the Chrysler plans kept their full plan benefits.

U.S. automakers sponsor some of the largest private sector DB plans, and many auto suppliers also sponsor DB plans insured by PBGC. Even before the GM and Chrysler bankruptcies, DB plans sponsored by auto suppliers were significantly underfunded. We closely monitor troubled companies with underfunded plans and, where possible, negotiate to obtain plan protections.

PBGC has worked on behalf of DB plan participants and the pension insurance program as an unsecured creditor in numerous bankruptcy cases, and as a contingent unsecured creditor in the GM and Chrysler bankruptcies. In 2007, when Daimler AG sold its interest in Chrysler to Cerberus, PBGC obtained a $1 billion guarantee for the pension plans from Daimler and an additional $200 million contribution from Chrysler. In conjunction with Chrysler's reorganization in 2009, we renegotiated Daimler's $1 billion guarantee and obtained $600 million in contributions for the Chrysler pension plans and a $200 million guarantee from Daimler. The bankruptcy court approved the agreement, Daimler made the contributions, and the $200 million guarantee remains in effect.

Since 2004, about 50 auto suppliers with DB plans have filed for bankruptcy protection. PBGC terminated and trusteed the plans of about half of those auto suppliers. During the same period, however, about half of those auto suppliers emerged from bankruptcy with their pension plans ongoing. For example, in 2009, we reached an agreement with Visteon Corp. to provide additional protection for their pension plan covering more than 5,300 former employees of the automotive supplier. Visteon ultimately agreed to accelerate a $10.5 million cash contribution to the plan, provide a $15 million letter of credit, and provide for a guaranty by certain affiliates of certain contingent pension obligations of up to $30 million. Separately, in 2010, Visteon was able to emerge from bankruptcy as a stronger company with its pension plans ongoing.

DELPHI CORPORATION

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

Delphi's Bankruptcy

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

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

In September 2007, Delphi filed a reorganization plan with the bankruptcy court. As part of the reorganization, GM and Delphi entered into a settlement agreement to transfer part of

Delphi's Hourly plan to GM's Hourly plan. Under the reorganization plan, Delphi was to continue to sponsor all its other pension plans, including the Salaried plan. Delphi did not plan to transfer any pension liability to PBGC.

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

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

The second transfer of liabilities to GM was to be made upon Delphi's emergence from bankruptcy. Unfortunately, the severe downturn in the auto markets made it impossible for Delphi to afford the Salaried plan or to pay to GM the consideration previously promised for transfer of the remaining portion of the Hourly plan to GM.

Recoveries and Benefit Payments

Delphi's proposed modifications to its plan of reorganization, approved by the bankruptcy court in late July 2009, called for the liquidation of Delphi, the sale of its remaining valuable assets, and termination of the Delphi plans; and the modifications included provisions for settlement of PBGC's claims. The settlement included in Delphi's modified plan of liquidation provided PBGC with a $3 billion general unsecured claim against Delphi's bankruptcy estate. In addition, the investors in the new company that had agreed to purchase Delphi's foreign subsidiaries, which included New GM, required PBGC to release its liens and claims on those foreign assets before the purchase could proceed. At the time of the settlement, PBGC had a $196 million lien on behalf of the Salaried plan. The September 2008 transfer of Hourly plan liabilities to GM eliminated PBGC's lien on behalf of the Hourly plan.

In exchange for the release of the Salaried plan lien and PBGC's other claims, PBGC reached an agreement with the buyers that provided PBGC with a $70 million cash payment from GM and a membership interest in the new company, which had been created as a U.K. partnership. PBGC's membership interest provided that PBGC would receive approximately ten percent of the first $7.2 billion of distributions that the new Delphi partnership made to its members. The cash payment and membership interest effectively paid PBGC's Salaried plan lien and, in the context of Delphi's bankruptcy gave PBGC a reasonable recovery on its other claims; therefore, PBGC released its claims against, and statutory liens on, Delphi's foreign subsidiaries. In March of 2011, new Delphi redeemed PBGC's stake in the company for $594 million.

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

Since PBGC became trustee of the Delphi plans in August 2009, we have been making uninterrupted payments to retirees and putting new retirees into pay status as they apply. Participants receive estimated payments until calculations are final. Calculating benefits for the 70,000 workers and retirees in the six Delphi plans poses challenges because of complex benefit structures and mergers and acquisitions that took place throughout the life of the plans. It will take several years to fully review Delphi's plans, verify participant information, and determine benefit amounts. We plan to issue most final benefit determinations in 2013. A group of Delphi Salaried plan participants has sued PBGC and the Treasury Department seeking to undo the plan termination. The litigation is ongoing.

CONCLUSION

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

In part, this also may be due to PBGC's own efforts. We continued to respond to the recent wave of corporate bankruptcies by stepping up and stepping in. We worked tirelessly to convince companies, both in and out of bankruptcy, to preserve their plans. In many instances, this approach worked. However, underfunding in plans sponsored by financially weak companies remains high, and PBGC's effort to preserve pensions can only succeed where the plan sponsor's business survives and is large enough to support the pensions. In the unfortunate cases like Delphi, where the sponsor failed and liquidated and the remaining business was a fraction of the size of the unfunded pension liabilities, PBGC is forced to, and will, step in to protect the pensioners from the fate suffered by the Studebaker retirees some fifty years ago.

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

I would be happy to answer any questions.