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OVERSIGHT OF THE SIGTARP REPORT ON TREASURY'S ROLE IN THE DELPHI PENSION BAILOUT

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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OVERSIGHT OF THE SIGTARP REPORT ON TREASURY'S ROLE IN THE DELPHI PENSION BAILOUT

Wednesday, September 11, 2013

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

The subcommittee met, pursuant to call, at 1:30 p.m., in Room 2154, Rayburn House Office Building, Hon. John Mica [chairman of the subcommittee] presiding.

Present: Representatives Mica, Turner, Amash, Connolly, Pocan, and Cummings.

Also Present: Representatives Brooks, Tiberi, and Ryan of Ohio.

Staff Present: Molly Boyl, Senior Counsel and Parliamentarian; John Cuaderes, Deputy Staff Director; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Christopher Hixon, Deputy Chief Counsel, Oversight; Michael R. Kiko, Staff Assistant; Mark D. Marin, Director of Oversight; Laura L. Rush, Deputy Chief Clerk; Scott Schmidt, Deputy Director of Digital Strategy; Matthew Tallmer, Investigator; Sarah Vance, Asistant Clerk; Jaron Bourke, Minority Director of Administration; Jennifer Hoffman, Minority Communications Director; Adam Koshkin, Minority Research Assistant; Julia Krieger, Minority New Media Press Secretary; Jason Powell, Minority Senior Counsel; and Cecelia Thomas, Minority Counsel.

Mr. MICA. Good afternoon. I would like to call the Subcommittee on Government Operations to order.

Today we are conducting a hearing entitled "Oversight of the SIGTARP Report on the Treasury's Role in the Delphi Pension Bailout." Given a few minutes for the minority to appear, but I want to go ahead with the proceedings. It appears that there will be votes and they will probably be the last votes of the day, beginning at a little after 2 o'clock. So we want to try to get through at least part of the witnesses and the opening statements, but welcome everyone today.

I guess I can't start without remembering that today is September 11th. We did a memorial, a small service on the steps of the Capitol, and remembered those who lost their lives and others on the day that many of us were alive and have a memory we'll never forget. So I, too, remember them.

I will remember, too, Barbara Olson, who was killed on the plane that crashed into the Pentagon, who worked for this committee, a

wonderful young professional. We have lost her and lost a number of staffers, the 11 who worked with Senator D'Amato, who was head of the New York Port Authority. I left him in a room in the World Trade Center in a hearing I conducted there about a month before September 11th, and he and everyone who helped us during our hearing, none of them survived except for one.

And then remember Terry Lynch, who was an aide to Senator Shelby, was in the Pentagon. I left the Pentagon from Secretary of Defense office September 11th with a breakfast meeting there just a few minutes before he and others were killed, Terry Lynch. So we remember him today and others that we lost on that fateful day. So remember him.

And then Members of the Florida delegation also mourn today the loss of our recent member of the delegation, E. Clay Shaw, who passed away last night. So a day that we do remember both a former Member and the tragic events of September 11th.

In just a minute I will yield to the minority, but I want to again welcome everyone. Today we are conducting the business of the people, and part of the responsibility of this subcommittee and our committee is to look at various operations of government, Federal Government, make certain that Americans see that their taxpayer dollars are properly spent, that we conduct thorough oversight of the legislative and executive process as we intend it and as we pass them, as things are executed. So that is an important responsibility that we share today in this committee and part of our business here.

The order of business will be opening statements, I will give mine. We will recognize other members as they appear. And we may be joined with some Ohio members, I think we have, and I would like to ask unanimous consent that our colleague from Indiana, Mrs. Brooks, be allowed to participate in today's hearing. Without objection, so ordered.

So we have one member from Indiana, and I think we may have some from Ohio joining us, too, who have interest in this hearing.

So with that, then, we will recognize our panel of witnesses, hear from all of them, and then we will move to questions. So I will start with my opening statement.

Again, welcome. Today's hearing concerns a very important issue that this committee has been working on for over 3 years. In June of this year, our subcommittee convened a hearing in Dayton, Ohio, an area hard hit by the substantial losses of pensions to the Delphi retirees. At that hearing, we heard from retirees who are, unfortunately, feeling the pain of some of the Obama administration's decision to pick very distinct winners and losers in the context of the GM bailout. As part of that, unionized Delphi retirees were made whole because they just happened to be a politically favored group and, unfortunately, the salaried, non-unionized pensioners were left out in the cold.

This is somewhat sad because we used Federal money to which all these folks had contributed in their tax dollars to bail out these activities. And some were treated, again, we believe very unfairly. In fact, some 23,000, I think Mr. Turner has a great number in his district, and others that are affected.

In addition to this financial hardship, non-unionized Delphi retirees feel betrayed by their government, and also by their former employer. While the unions, we find out from a special investigator general report, the unions, we find out, were pretty heavily involved in the negotiations surrounding the GM and Delphi bailout, the salaried employees did not have a seat at the table and unfortunately were left in the dark. This whole mess could have been avoided were GM to pursue a traditional bankruptcy route and not be subject to the political whims of the administration. The traditional bankruptcy route would have been better for GM in the long run and would have mitigated the risk of politicized decision making, such as what not just our committee found, but also confirmed now by the Special IG report that verifies the way this was conducted and how the Delphi salaried retirees' pensions were affected.

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

The recent release of an audit by the Special Inspector General for the Troubled Asset Relief Program sheds light on the facts and circumstances surrounding this decision. We know that despite the Treasury's pledge not to be involved in the day-to-day operation of GM, that, in fact, Treasury and the auto task force played a major role in the decisions concerning GM operations.

As you may know, just for the record, we tried for several years to get data and information which was withheld from this committee. I'm pleased that we have had the cooperation both of the pension guaranty fund now supplying the committee information we requested that was denied, and also we've gotten information from Treasury and others that I demanded that this committee have. And I appreciate now the compliance that's 2 years overdue.

Finally, from the report, and this is not my opinion, this is the Inspector General, Special Inspector General said, and let me quote, that "despite the assurances that Treasury's role, as well as the Presidential task force for the auto industry, was purely advisory," and this is what SIGTARP found, the four Treasury auto teams, and I again quote, "played a direct role in GM's decisions and operations up to and through bankruptcy," including replacing the then-chief executive officer with Treasury's choice. So it shows a story a little bit different than we have been told and confirms, unfortunately, some of our worst suspicions.

Today we will hear from key members of the President's automotive task force about the decisions they made, what took place, how those decisions led to, unfortunately, some very gross inequity between certain classes of employees, some with unions and some non-unionized Delphi employees. We will also hear from SIGTARP and the Inspector General—Special Inspector General—and GAO, both of whom conducted thorough audits relating to this issue.

Lastly, I can't help but thank Mr. Turner of this panel for his unyielding dedication, determination, to get to the bottom of these

issues. With his assistance, we are getting more of a complete picture and the information we requested and the taxpayers deserve in what took place in this whole process. Mr. Turner has tirelessly pursued justice in the area, he represents many of the folks who were affected, and our committee is, in fact, committed to finding out exactly what happened, when, who was involved, why, and particularly why there was unfair treatment with taxpayer dollars for some and, again, the unfairness of the whole process. These decisions were made on the basis of politics and not prudence. Those responsible need to be held accountable for their actions.

I am now very pleased to recognize the distinguished ranking member, the gentleman from Virginia, Mr. Connolly, for an opening statement.

Mr. CONNOLLY. Mr. Chairman, I do have an opening statement, and I thank you. But I was running a little bit late. And out of courtesy, if the ranking member of the full committee wishes to go I would defer to him,

Mr. MICA. Mr. Cummings, then, is recognized.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank the ranking member for his courtesy.

Mr. Chairman, I want to thank you for convening what common sense would suggest will be the capstone on this committee's five-hearing inquiry into GM's decision making on Delphi pensions during the extraordinarily successful rescue of the United States automotive industry.

In 2009 the administration's auto team members came from the private sector, took up the mantle of public service, and assumed responsibility of managing the investments that the Bush and Obama administrations made to save the United States auto industry from collapse. Thanks to their work, America's automotive industry today directly employs 1.7 million people, and indirectly this industry accounts for roughly 8 million jobs nationwide. That represents 4.5 percent of all private sector employment. It also accounts for roughly $500 billion in wages being paid to workers and $70 billion in personal income tax revenue.

I thank the former auto team officials for their work to protect this industry and the American economy. You did a critical job, and you did it exceedingly well.

It is unfortunate that, regardless of these impressive results, Republicans continue to criticize the successful rescue of the American auto industry. The majority, including members of this Committee, has perpetuated the narrative that government officials made the decision that the salaried retirees of Delphi would not get top-ups. We know now that that narrative is inaccurate. SIGTARP's report makes clear that a high-ranking GM official made that decision, not the administration. SIGTARP also found that at the time of the Delphi's spinoff from GM in 1999, the pensions of Delphi's salaried workers were fully funded. That is why the high-ranking GM official believed that giving the salaried workers a top-up in 2009 would have been tantamount to paying that group of workers twice.

SIGTARP also found that the unionized workforce did not receive fully funded pensions when Delphi was spun off. To the contrary, their pensions were underfunded. But their union negotiated con-

tracts with GM to top up their pensions in the future, and when the union insisted that those contracts be honored in the bankruptcy process they were honored without question. SIGTARP found that, "No person SIGTARP interviewed could recall any discussion of the top-up agreement at the negotiations."

The facts found by SIGTARP are consistent with GAO's review, completed more than a year and a half ago. GAO detailed the business reasons for GM to honor previous agreements with certain unions. A failure to honor those agreements would have jeopardized the company's ability to move forward.

I feel bad for the Delphi employees who did not receive top-ups. There will be hard days ahead for them. They were betrayed by Delphi's management, which did not make pension payments for years after spinoff. But none of that is the fault of the government's effort to save GM. The investigation into this matter has been thorough.

As an investigative body it is critically important that we follow the facts wherever they need. And it is equally important that when we get answers we accept those answers. We now have the facts. We now have the answers. And I ask that the majority accept them.

And with that, Mr. Chairman, I yield back.

Mr. MICA. Thank the gentleman.

Yield now to the gentleman from Ohio, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

I am just astonished. And I'm sorry, Mr. Cummings, I usually don't respond directly to what someone else is saying in their opening statement, but all of that has absolutely nothing to do with this hearing whatsoever, and I hope that you actually sit down and read this report. There is nothing in this report that says that they were not involved in the PBGC's decision making with respect to Delphi's salaried retirees. In fact, this report is about the hourly, not the salaried, and you are going to see that when we have this discussion.

In fact, it does say on the hourly the opposite of what you just said—again, if you'd read the report. Page 38 says, "The Auto Team's role in the decision to top up the pensions of Delphi's UAW's workers was not advisory. Consistent with the Auto Team's practice, as with any liability, it would have been Treasury's decision as the buyer to assume or reject the liability to top-up the pensions of Delphi hourly UAW employees. The Auto Team actively negotiated and made the overall deal."

Now, there is partisan politics that shouldn't be happening here in this hearing. And the GAO report was not as extensive as this SIGTARP report has been. And I want to thank Ms. Romero, thank you for your in-depth review. This is the first time we have ever really had an insight into what the auto task force did. And I must tell you, it is just shocking, because remember the last hearing that we had, Mr. Cummings, Mr. Cummings, the last hearing we had, we had to have it because these gentlemen refused to even talk to the Inspector General. They said, we've left the government, we no longer have to answer questions on the work that we did. We have had to subpoena Treasury just to get to the bottom of what happened in these things.

So now I want to give some context of what we are doing here today because this really, really is important. And this is the fact, that in the TARP process what occurred was not just the tragedy of the Delphi salaried retirees getting their pensions cut unjustly and I believe illegally, and the courts will determine that, but what we had with the entire process was thwarted, because of TARP. Normally when you have a bankruptcy each of the parties who have an interest in either the new entity that is coming out of the old entity that is going through the bankruptcy process sits in a chair and represents their interests or they have someone who sits there in a fiduciary capacity representing their interest.

But what we had with TARP was this perversion of the process where each and every person sitting around the table suddenly became the Treasury Department. The banks became the Treasury Department, the lienholders and bondholders, the PBGC became the Treasury Department. Each and every one of these people became the Treasury Department. And what we kept saying throughout all of this, which is why we are having this hearing today, is tell us how you made your decisions. Tell us once you had all of these chairs whether or not you go to the standard of protecting the fiduciary interests of the people who were behind you because we don't believe that you did.

What we find now from the SIGTARP report, which is the first time we have ever had any insight into what occurred in the decision making, we understand that they have set this unnecessary and artificial timeline of the quick wash, that they set the terms and the conditions, they determined who had leverage and who did not, some political, some not, and clearly throughout all of this is this concept of exceeding and abusing authority. This concept of commercial reasonableness that this group used as a standard for determining their decision making that had no definition and no legal justification, had people rewarded and people who were penalized. The administration picked winners and losers, and that is what this report says. And that is what we are going to get to today.

Now, this does not decide the issue of PBGC and the Delphi salaried retirees. It was not intended to. This hearing is not to determine the end of the PBGC issue and GM issue with respect to the Delphi salaried retirees. That we will have to continue. GAO when they did their report only looked at public sources. They didn't have access to what the Inspector General did where they looked at the documents and looked at the emails between these individuals. And the SIGTARP Inspector General did not check or review the GAO work to determine whether or not additional documents were necessary or whether or not the documents that they had needed to have the GAO report amended or redone.

But it tells us what we didn't see before: The administration has said they were not involved. They said they didn't do it, that they only were on the sidecar and watched as General Motors made the decisions. And what we know now from this report is the decision making was absolutely being made by the auto task force individuals themselves, that they were—the four Treasury auto team officials played a direct role in GM's decisions and obligations up to and through GM's bankruptcy. Treasury's auto team had signifi-

cant leverage and influence on GM's decisions leading up to and through the bankruptcy first exerted by replacing the GM chief executive.

So if the document itself is allowed to go through this hearing, instead of us just reading our own texts that our staffs have written, I think we will get to what really is the truth, what really happened, what needs to happen, was there injustice, and what this committee needs to do in further investigation, because this is not over.

Thank you, Mr. Chairman.

Mr. MICA. Thank the gentleman.

Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman, and thank you for holding this hearing.

Let me just say as a member of this committee I would caution my colleague as to characterizations about what homework is done or what reading is done or not done by the distinguished ranking member of this committee. I have known Mr. Cummings a long time. He does his homework. To suggest that his opinion is wrong because he didn't read the report I think crosses the line. If you want to disagree, disagree. But to impugn the reputation of the distinguished ranking member as somebody who comes here unprepared I take exception to on his behalf and on behalf of this side of the aisle. And I urge my friend from Ohio to restrain from such characterizations.

Mr. Chairman, SIGTARP's report directly and definitively refutes the narrative we have just heard on this subject. And we just heard, for example, that this report didn't really address certain subjects. And I put up this slide.

[Slide].

Mr. CONNOLLY. On Page 29 it most certainly does. It most certainly does talk about the salary plan and explains what happened, at least from somebody's point of view, SIGTARP's, why they didn't top-off the nonunion salaried retired pensions after the 1999 separation.

This committee has explored in great depth the Federal Government's unprecedented intervention that not only rescued our Nation's auto industry, but enhanced the global competitiveness of the auto sector. Hopefully with the issuance of SIGTARP's report and today's hearing, we can finally put to rest the unsubstantiated conspiracy theories about picking winners and losers to benefit political allies.

Unfortunately, some refuse to acknowledge the sheer complexity of the challenge then facing the administration in assisting General Motors to navigate what SIGTARP characterized as; "one of the largest and fastest bankruptcies in the Nation's history."

It is easy to discount the monumental achievement in light of current auto industry conditions. Consider, just 2 years ago GM sold more than 9 million vehicles on its way to posting a record-breaking profit of $7.6 million, a company on the ropes that was looking at liquidation in 2009. Just last month GM posted its best month ever since the great recession.

We must not forget the perilous days in late 2008 when leading economic think tanks were projecting the bankruptcy of all U.S.

automotive manufacturing and that would trigger a collapse in the domestic auto industry costing us an additional 3 million jobs while we were shedding 750,000 a month. Indeed, it was estimated just the liquidation of GM alone would lose 900,000 industry jobs. And, of course, SIGTARP found; "Ultimately, GM did not fail and the broader systemic consequences of a GM failure that Treasury had feared were avoided."

Yet, the majority narrative continues to appear disinterested in convening a hearing to examine the lessons learned from all of that and from the effective Federal initiative to save the U.S. auto industry. Instead, we find ourselves holding what is now the fifth hearing to rehash some hackneyed assertions from the past.

Of course a thorough review of SIGTARP's report enables one to test, and I think ultimately debunk, those unsubstantiated claims. For example, did the administration inappropriately intervene in the decision to deny Delphi's salaried workforce top-ups as part of the nefarious scheme to use GM's bankruptcy proceedings as a cover to protect political allies? No. As SIGTARP itself reports, there was no impropriety, and it was a sound business decision, from a substantial point of view, for GM to deny pension top-ups to certain Delphi employees.

According to SIGTARP, more than a decade ago Delphi's salaried workers received full funding of their pensions when the firm was spun off from GM, while the unionized workforce did not. Instead, in exchange for underfunding union pensions in the spinoff, labor negotiated contractual agreements with GM legally binding contracts to protect the pensions of certain unionized Delphi hourly employees, not in the context of TARP, but 9 years earlier than that. This strategic decision paid off when the financial crisis hit and Delphi's unionized workforce emerged with its pensions protected.

Regrettably, Delphi's salaried workforce had not negotiated similar contracts. And when GM entered bankruptcy, the firm had no contractual obligations to top-off their pensions. As SIGTARP noted, a hypothetical GM decision to top-off those pensions, a cohort that no longer worked for nor had any association with GM by the time of TARP, would be equivalent to GM paying for the Delphi salaried pensions twice from their point of view.

The bottom line is that GM's refusal to top-off the pensions was a business decision, not a government policy decision. Nor is GM in the position before a bankruptcy judge to undertake a new financial obligation while it is trying to go through bankruptcy. In a perfect world, perhaps GM would have prioritized fairness over commercial interests and treated the pensions of all of its former employees at Delphi equally. But bankruptcy is not a perfect world. It is an unfair and staggeringly difficult battle for survival itself. And I believe the record presented by SIGTARP and the witnesses before us today clearly demonstrates that GM, supported by Treasury and the auto task force, made those tough decisions under tremendous pressure, but not political pressure.

Thank you, Mr. Chairman.

Mr. MICA. I thank the gentleman.

Mr. Amash, did you have an opening statement?

Mr. Pocan?

Mr. CONNOLLY. Mr. Chairman, could I ask unanimous consent to allow our colleague Mr. Tim Ryan of Ohio to participate?

Mr. MICA. Yes. And what I'm going to do then is we've had Mrs. Brooks, who is not a member of the panel, and we approved her. I have your request for Mr. Ryan, gentleman from Ohio. And then we have a request for Mr. Tiberi, also a gentleman from Ohio. I ask unanimous consent that both of these colleagues be allowed to participate in today's hearing. Without objection, so ordered.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. MICA. And our usual rule and procedure for those who have joined us would be we will recognize the members of the panel first and then we will go to you. I think what we are going to do, though, is if we have no further opening statements, is go right to our panel of witnesses. We are expecting votes shortly, as I said.

So with that, let me introduce our panel of witnesses. We have the honorable Christy Romero.

Before I do that let me say that, without objection, the record will also be open for additional statements to appear in the record at this point and throughout the proceedings to be fair to everyone who is now participating.

Mr. MICA. Again, the panel of witnesses, the Honorable Christy Romero is the Special Inspector General for the Troubled Asset Relief Program. Ms. A. Nicole Clowers is director of the Financial Markets and Community Investments at the United States Government Accountability Office. Ms. Barbara Bovbjerg is managing director of Education, Workforce, and Income Security Issues at the Government Accountability Office.

Mr. Matthew Feldman is a partner at the law firm of Wilkie Farr & Gallagher, and he served as legal adviser to the Treasury auto team. Mr. Steven Rattner is the chairman of Willett Advisors and served as the head of the Treasury auto team. And then we have Mr. Harry J. Wilson is the chairman, CEO, and founder of MAEVA Group and served as a member of the Treasury auto team.

And finally, Mr. Harvey Miller is a partner at the law firm of Weil, Gotshal & Manges and served as lead counsel in the General Motors bankruptcy case and was the vice chairman and managing director of Greenhill & Co.

So I welcome all of our witnesses. Let me say that this is an investigative panel, and it is our procedure to swear in all of our witnesses. So if you will stand now, all of the witnesses, raise your right hand. Do you solemnly swear or affirm that the testimony you're about to give before this subcommittee of Congress is the whole truth and nothing but the truth?

All of the witnesses, the record will reflect, answered in the affirmative. Thank you.

And let me just give you the ground rules here, too. We give you 5 minutes. If you have a lengthy statement, information you would like included in the record, just through the chair or a member, and ask consent, and we will include all of that in the record. So I would like you to summarize, try to keep it to 5.

We will also go through the entire panel and then go to questions. We are going to try to get to as many as you can of you with the 5 minute. Then we will probably have to recess for, and the staff will tell us the amount of time the votes are—actually only

one vote, so we will only recess for about 15 minutes. Give you a chance to scoot out but be back. And then we will proceed immediately until we have heard from all of you. Then we will begin the questioning. So that is the order of business.

So, again, thank you. Let me turn to our first witness, which is Christy Romero, and she is the Special Inspector General for the Troubled Asset Relief Program.

Thank you for your work, and we recognize you now for your testimony.

STATEMENT OF CHRISTY L. ROMERO

Ms. ROMERO. Chairman Mica, Ranking Member Connolly, and members of the committee, it is my honor to appear before you today.

SIGTARP was created by Congress to conduct investigations and audits related to the TARP bailout. In our investigations we have—we are a law enforcement agency and we have authority to search, seize, and arrest. So far 151 people have been charged with crimes as a result of a SIGTARP investigation, 111 of them have been convicted so far, while others await trial or a guilty plea, and of those that are convicted, so far 58 have been sentenced to prison while others await sentencing. And the average prison sentence for a SIGTARP investigated crime is 68 months, which is nearly double the national average for white collar crime.

We also conduct audits of decisions that were made related to TARP. And we issue these audits not to criticize for criticism's sake, but we issue them to ensure that our government functions at its best. We issue them to bring transparency, and we issue them so that we can learn from the past in case the government faces similar situations and decisions in the future.

Our latest audit reviewed Treasury's role in the decision to top up, or make whole, certain unionized former GM employees who worked at Delphi. And Treasury's public statement that its role in that decision was advisory has caused unnecessary confusion. It's also inconsistent with Treasury's rights under the 2008 TARP loan agreement and as the purchaser of GM in bankruptcy.

Under the TARP contract, there are certain big things, like the collective bargaining agreement with the union, where Treasury made the decision. And there are other things where Treasury could only advise GM. The top-up agreement and the collective bargaining agreement are not two separate things. The top-up is in the collective bargaining agreement. The UAW came to the negotiation with Treasury and GM with a priority list that included the top-up. There were no negotiations of the top-up. GM did not come to Treasury later to discuss it. It became a foregone conclusion that it would be included, with Mr. Rattner and Mr. Bloom of the auto team telling us that because it was on the UAW's list, it was clear that the UAW expected it to be part of the deal.

As the purchaser, known as New GM, it was Treasury who made the decision on the collective bargaining agreement, because only the purchaser could define the relationship with the union and only the purchaser could determine which obligations to take on. Both GM officials and auto team officials told us that Treasury was the purchaser who made decisions on which obligations to take on.

GM's lawyer, Mr. Miller, testified as to that today. Therefore the auto team's role could not be advisory. Who would they be advising?

It would have been much better if Treasury had been transparent, saying that we had made the decision with GM to agree to the top-up because the UAW really wanted it and we are under time pressure. It would have been much better if Treasury had simply stated that we were concerned that in addition to the traditional strike leverage, that UAW had the leverage to prolong the bankruptcy, that they did not think that GM could survive a lengthy bankruptcy and that could hurt the auto industry. They should have explained their decision and trusted the American people to hear their reasoning. American taxpayers can either agree or disagree with what the auto team did, but they are entitled to full transparency, and that is why we put that report out.

So what was the alternative? Well, one alternative would have been to actually raise and actually negotiate the top-up with the UAW. But Treasury conditioned the TARP funds on GM finishing the bankruptcy in 40 days—which had never been done—or else they would default. This severely limited the alternatives available to GM. GM's then-CEO told us they were under pressure to get the deal done, and that is why the top-up was not negotiated.

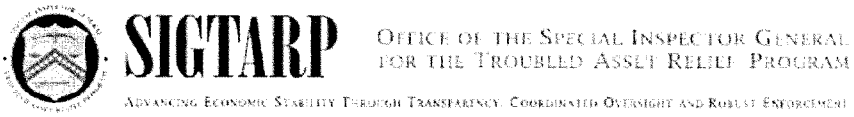
But we found that the pressure came, in part, from the 40-day time constraint, a timeframe that gave the UAW additional leverage. GM thought 40 days was unrealistic, that they needed 60 to 90 days. No one will ever know if more time in the bankruptcy would have allowed for negotiation of the top-up, but Treasury should take accountability that their 40-day condition had the effect of limiting GM's options.

Finally, there's an alternative still available today, which is for GM to consider topping-up, or contributing to, the Delphi salaried retirees today.

Thank you again, and I'm happy to answer your questions.

Mr. MICA. Thank you.

[Prepared statement of Ms. Romero follows:]



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U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

WRITTEN TESTIMONY SUBMITTED BY

THE HONORABLE CHRISTY ROMERO

SPECIAL INSPECTOR GENERAL

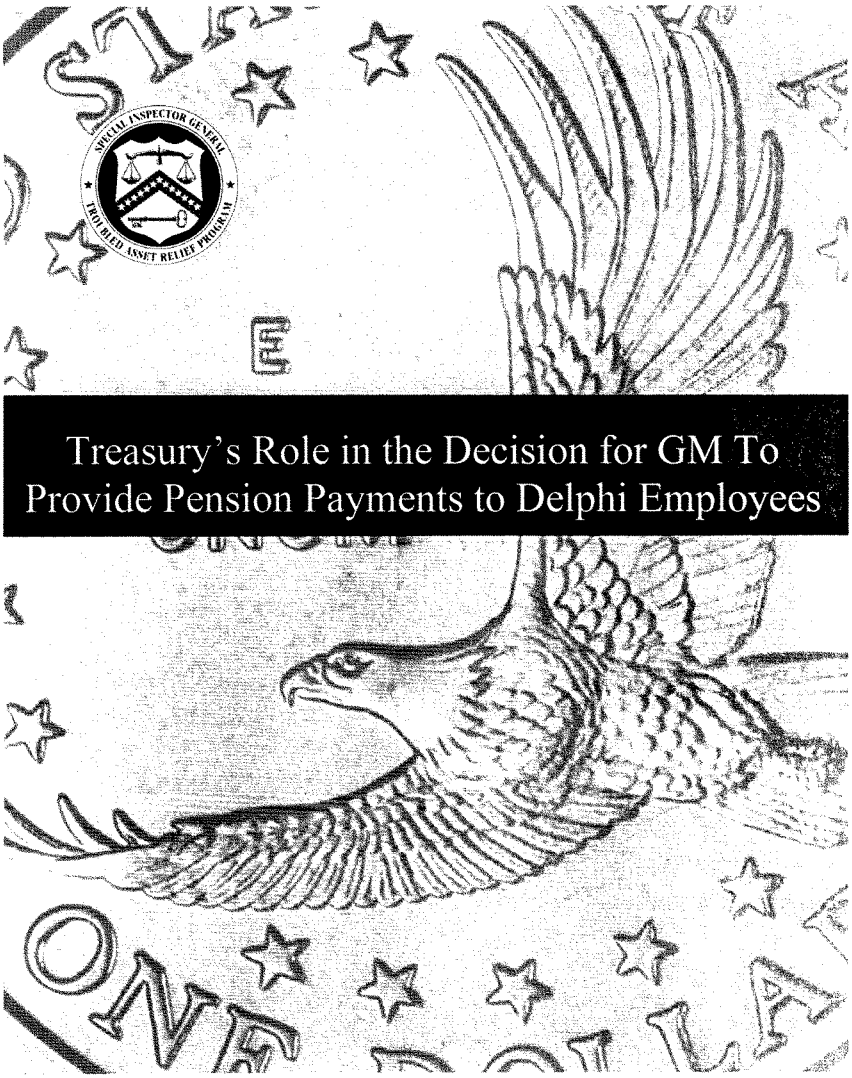
FOR THE TROUBLED ASSET RELIEF PROGRAM

(SIGTARP)

BEFORE THE
U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

September 11, 2013

Chairman Mica, Ranking Member Connolly and members of the subcommittee, I am honored to present the Office of the Special Inspector General for the Troubled Asset Relief Program's ("SIGTARP") August 15, 2013 audit report "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees." Please accept the full contents of the audit as my submitted written testimony for the hearing. I am happy to answer any questions you may have.



Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees

Special Inspector General for the Troubled Asset Relief Program

SIGTARP 13-003

August 15, 2013

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
1801 L STREET, NW, 4TH FLOOR
WASHINGTON, D.C. 20220

August 15, 2013

MEMORANDUM FOR:	The Honorable Jacob J. Lew – Secretary of the Treasury
FROM:	The Honorable Christy L. Romero – Special Inspector General for the Troubled Asset Relief Program
SUBJECT:	Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees (SIGTARP 13-003)

We are providing this report for your information and use. It discusses the U.S. Department of the Treasury's ("Treasury") role in the decision for the General Motors Corporation to top up the pension payments of certain Delphi Corporation hourly employees.

The Office of the Special Inspector General for the Troubled Asset Relief Program conducted this audit (engagement code 024), under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended.

We considered comments from the Department of the Treasury when preparing the report. Treasury's comments are addressed in the report, where applicable, and a copy of Treasury's response is included in the Management Comments section in Appendix D.

We appreciate the courtesies extended to our staff. For additional information on this report, please contact me or Mr. Bruce S. Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation (Bruce.Gimbel@treasury.gov / 202-927-8978).

Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees

The U.S. Department of the Treasury's ("Treasury") injection of Troubled Asset Relief Program ("TARP") funds in General Motors Corporation ("GM") and Chrysler Group LLC ("Chrysler") was the only bailout with a President's Designee overseeing the companies' restructurings – the Presidential Task Force on the Auto Industry ("Auto Task Force"). The Auto Task Force delegated the responsibility for GM's restructuring to four primary officials who were part of an Auto Team led by Steven Rattner. GM's bankruptcy would be one of the largest and fastest bankruptcies in our nation's history. A new company, "New GM," emerged from GM's bankruptcy in July 2009, with Treasury owning 61% of its common stock. New GM purchased substantially all of GM's assets while leaving behind many of its liabilities. One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees paid an hourly wage and represented by certain unions, and who had worked in GM's automobile parts division that was spun off into Delphi Corporation ("Delphi"). The four Treasury Auto Team officials made it clear to SIGTARP that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring.

What SIGTARP Found

The existence of Treasury's Auto Team and the role these Treasury officials played sharply contrasted with the role played by Treasury officials under other TARP programs. The four Treasury Auto Team officials played a direct role in GM's decisions and operations up to and through GM's bankruptcy. As GM's only lender and later GM's largest investor, Treasury's Auto Team had significant leverage and influence on GM's decisions leading up to and through the bankruptcy, first exerted by replacing GM's then-chief executive officer ("CEO") Rick Wagoner with Treasury's choice, Fritz Henderson. According to Mr. Henderson, this sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations. After Treasury rejected GM's restructuring plan, GM developed a new plan with significant influence and leverage from the Auto Team. One GM official said, "Ultimately it was that GM is not in control. And GM is totally dependent."

Although the Auto Team's role was supposed to be advisory for matters not requiring Treasury's consent under the TARP loan agreement, in practice, it was more than advisory. The TARP loan agreement gave Treasury the explicit right to approve transactions over $100 million and new pension obligations, but the Auto Team's influence went far beyond that right. SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence GM to make decisions in areas that did not require Treasury's consent, in line with Treasury's preferences. Auto Team officials told SIGTARP that they "had to carefully manage GM," that "we, the Government, were ultimately holding the purse strings" and "GM realized that there was no other available source of money." When an Auto Team official was asked by SIGTARP how they conveyed their preference, given that ultimately GM could do its own thing, the official said, "Well they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Driven by broader concerns about the auto industry, Treasury's Auto Team directed GM's restructuring toward bankruptcy, first through replacing the CEO who opposed bankruptcy, second by "highly" suggesting to GM that they felt "pretty strongly" that a "Section 363" bankruptcy was the best approach. Third, although CEO Henderson hoped to avoid bankruptcy through a bond exchange, the Auto Team, who opposed the exchange, communicated to GM their preference for 90% bondholder participation, a "very high" level of acceptance making bankruptcy more likely. When the exchange

failed, Treasury agreed to fund GM's bankruptcy.

Treasury's Auto Team created a condition on funding GM's bankruptcy that would serve as pressure on GM and would drive pre-bankruptcy negotiations and decisions. Treasury conditioned giving GM $30.1 billion in TARP funds on a "quick-rinse bankruptcy" that would end in 40 days because Auto Team officials thought that was the best way to save the automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Neither Treasury nor GM believed that the company could survive a lengthy bankruptcy; however, GM thought that the 40-day timeline was not realistic, with its lawyer telling the Auto Team that it was "impossibly aggressive. It's never been done." Treasury had leverage to set a timeframe that did not seem realistic to GM, and had never been done before. If GM's bankruptcy was not completed in time, GM risked losing its only source of financing and its purchaser in bankruptcy.

Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. With their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. One Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation. GM's then-chief financial officer ("CFO") Ray Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." An Auto Team official stated, "it is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on. Treasury used its significant financial leverage to get GM to reach agreement with the two stakeholders that Treasury believed could hold up GM's bankruptcy – the bondholders and the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW").

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW and resulted in New GM taking on the liability to top up the pensions of UAW's members who had worked at Delphi at the time of its 1999 spinoff from GM, increasing their pension benefit payments to their full benefit level. The Auto Team made it clear to GM that they wanted an agreement with the UAW prior to bankruptcy (which had to be before a June 1, 2009, bond payment due date) and the Auto Team actively negotiated and made the overall deal. The UAW understood that GM could not walk away from the May 18-19 negotiations and had to reach an agreement to be able to survive, and those same facts put pressure on GM. GM only had a couple of weeks to come to agreement with the UAW, and if they did not come to agreement, GM risked the UAW objecting to and prolonging the bankruptcy beyond 40 days, which GM believed would lead to liquidation. The UAW came to the negotiations with a "hit list" of priority items including the top-up. The top-ups were never discussed in the negotiations.

The Auto Team's role in the decision to top up the pensions of Delphi's UAW workers was not advisory. Consistent with the Auto Team's practice, it would have been Treasury's decision as the buyer to assume or reject the top-up liability. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included in the Master Sale and Purchase Agreement selling assets to New GM. GM could not decide on its own to agree to the new collective bargaining agreement that included the top-up because Treasury's consent was required under the TARP loan agreement and Treasury was the purchaser in bankruptcy. The decision that

New GM would honor the top-up was a joint decision by Treasury and GM with Treasury deciding to approve the UAW collective bargaining agreement with the top-up.

Even though the top-up was never discussed in the negotiations with the UAW, it became a foregone conclusion that it would be included in the new UAW agreement. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring the top-up, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Auto Team leader Rattner and another Auto Team official told SIGTARP that, because the UAW included it on their list, it was clear that the UAW expected the top-up to be part of the overall deal. Treasury had the power to object to New GM taking on the top-up obligation as part of the larger UAW agreement, but had no desire to blow up the larger deal. Although the Auto Team was concerned about the threat of a strike, they were also concerned with the UAW prolonging the bankruptcy, calling not having an agreement like "shooting yourself in the head." Auto Team leader Rattner told SIGTARP that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure," adding "it was not a ridiculous request, and one that we could have honored and needed to honor." CEO Henderson told SIGTARP that the pressure to finish the negotiations resulted in no negotiation of the top-up, "the focus was on getting the deal done," and that if the top-up was not assumed, "it would have been 'mission impossible.'"

Treasury's Auto Team and GM did not agree to top up the pensions of other former GM employees at Delphi, which did not have active employees at GM, and therefore had no leverage to hold up GM's bankruptcy. This included Delphi employees who were paid a salary and employees who were paid an hourly wage who were members of the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers ("IUE") and the United Steelworkers of America ("USW"). Although in GM's bankruptcy New GM did not assume the other top-up agreements with Delphi IUE and USW employees because those unions did not have leverage, subsequently New GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive.

Lessons Learned

GM did not fail and the broader systemic consequences of a GM failure that Treasury feared were avoided. There are two important lessons to be learned from the role that Treasury played.

First, the Auto Team's deep involvement and significant influence on GM's decisions leading up to and through GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government. The Pension Benefit Guaranty Corporation ("PBGC"), a Government-backed insurer of pensions, had an expectation that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what might have normally occurred, and could potentially have saved PBGC billions of dollars with Treasury involved. Also contributing to this expectation was the fact that the Auto Team negotiated with PBGC on behalf of GM related to what GM would pay on the pensions. Delphi and its workers, who had been former GM employees, also had the expectation that the Government would ensure that GM treat the pensions of all former GM employees at Delphi the same out of fairness. Also contributing to this expectation was the fact that TARP funds were being used, and that GM had taken the position with Delphi (and PBGC) that taking on additional pension obligations violated the TARP loan agreement and required Treasury's consent. A PBGC document stated that Delphi believed GM may be looking to the "car czar" to mandate that GM assume Delphi pensions as part of GM's use of TARP funds. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government

and make themselves into a commercial enterprise" and "it is wrong of our Government to take funds from everyone and give it to the few." However, Auto Team officials attempted to view top-ups as a private investor with one Auto Team official telling SIGTARP that the Government could not make everyone whole, saying, "I don't think that anybody thinks bankruptcy is fair."

Treasury's Auto Team did not always act as a private investor and at times acted as the Government to prevent GM from failing, concerned about financial stability in the auto industry. Although the Auto Team tried to view issues through a "commercially reasonable" lens like a private investor, they often did not act as a private investor, nor should they have. Without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns. For example, Treasury decided not to move GM's headquarters to save costs out of concerns over the impact on the city of Detroit. Treasury made other decisions based on broader concerns about the interconnectedness of the auto industry. No private investor holds the responsibility Treasury has to protect taxpayers and to promote financial stability in the economy. Treasury made the TARP injections in GM when no other private investor would lend or invest the money that GM needed, according to GM's then CFO. Concerned about too much debt on GM's balance sheet, Treasury funded GM's bankruptcy and converted what would be higher priority TARP debt to a lower priority equity ownership in New GM and, according to GM, paid more than GM's "Enterprise Value." Treasury's Auto Team took these actions based on concerns of the consequences of a GM failure on other companies in the American automotive industry, concerns not held by private investors. Even though the Auto Team tried to act as a private investor, they had considerations that no private investor would ever have had, blurring the lines between Treasury's role as the investor and as the Government.

Second, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. One Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held, but SIGTARP found that additional leverage was given by Treasury. The Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to GM's bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days. Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having leverage because they did not have current employees at GM and therefore could not hold up GM's bankruptcy.

Two liabilities that the Auto Team had already decided to assume in bankruptcy were new agreements with the UAW and bondholders. The UAW had leverage because it knew and understood from Treasury that it was committed to reorganize GM and not let GM fail. Treasury's 40-day bankruptcy condition gave the UAW and bondholders additional leverage to threaten to hold up GM's bankruptcy. They may have been able to obtain more concessions than in a traditional bankruptcy where the issues may be litigated. An Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept." With Treasury's dictate of a 40-day bankruptcy and no indication that Treasury would extend that timeframe, GM officials were under pressure, believing they had to reach agreements with the bondholders and UAW prior to bankruptcy or risk losing Treasury's funding and liquidating.

It is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities. Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in

the economy. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

What SIGTARP Recommended

SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

Treasury provided an official written response, which is reproduced in full in Appendix D. A discussion of this response and SIGTARP's response can be found in the Management Comments and SIGTARP's Response section of this report.

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Introduction

General Motors Corporation's ("GM") bankruptcy was one of the largest and fastest bankruptcies in our nation's history. Having already invested $19.4 billion in GM under two Administrations through the Troubled Asset Relief Program ("TARP"), in June of 2009, the U.S. Department of the Treasury ("Treasury") loaned GM an additional $30.1 billion from TARP to fund GM's bankruptcy, and conditioned the money on the bankruptcy ending in 40 days. In exchange for its combined $49.5 billion TARP investment, Treasury would become the majority (61%) owner of a new company that would emerge from GM's bankruptcy ("New GM"), purchasing substantially all of GM's assets, and leaving behind many of its liabilities with the old company ("Old GM"). One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees who had worked in its automobile parts division Delphi Corporation ("Delphi"), when GM spun off Delphi into an independent company in 1999. The agreement ran to Delphi employees who were paid an hourly wage (an "hourly employee") and were represented by certain unions. Delphi employees who were paid a salary (a "salaried employee") did not have an agreement for GM to pay anything toward their pensions after the 1999 spinoff. Delphi, which was GM's largest supplier of parts, had been in bankruptcy since 2005 and did not have enough money to fund its pensions.

With the first TARP injection in GM, Treasury assigned responsibility for overseeing GM's restructuring to a "President's Designee" that was later formed, in February 2009 – the Presidential Task Force on the Auto Industry ("Auto Task Force"), which delegated the responsibility for GM's restructuring to a group of Treasury officials known as the Auto Team ("Auto Team"). The existence of the Auto Team and the role they would play with GM and Chrysler Group LLC ("Chrysler") sharply contrasted with the role played by Treasury officials under other TARP programs. The auto bailout was the only TARP program with a President's Designee responsible for the restructuring of the TARP recipient. Auto Team officials would play a direct role in the decisions and operations of GM until the Auto Team disbanded in the summer of 2009, soon after both automakers' bankruptcies.

Senator Roger Wicker and Congressman John Boehner sent a letter to the Government Accountability Office ("GAO") requesting a review of five questions related to the decision that GM would top up pension payments for Delphi hourly employees beyond what the Pension Benefit Guaranty Corporation ("PBGC"), a Government-backed insurer of pensions, would pay if the pension plans were terminated, but not top up pension payments for Delphi salaried employees and related to PBGC's termination of the Delphi pensions. Former Congressman Christopher J. Lee also requested that SIGTARP work with GAO and that SIGTARP issue a separate report from GAO on one of the five questions. Congressman Michael R. Turner also requested that SIGTARP conduct a similar review after Congressman Lee left office. GAO and SIGTARP coordinated,

dividing the work into two parts that each office would address. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. To avoid duplicating GAO's work, SIGTARP did not review PBGC's decisions. The objectives of SIGTARP's audit were to determine:

- Treasury's role in the decision for GM to top up (pay the full cost of pensions less any PBGC payout) the pension plan; and
- whether the Administration or the Auto Task Force pressured GM to provide additional funding for the plan.

In December 2011, GAO issued a report that included the statement, "GM and Treasury officials stated that Treasury's role was advisory concerning GM's decisions not to take on additional Delphi pension liabilities but to honor the top-up agreements with some unions."[1] A GAO official subsequently testified before Congress in July 2012, that "the court filings, Treasury officials, PBGC officials, GM officials stated that Treasury only played an advisory role. I would note, however, in conducting our work, we coordinated with SIGTARP, and our report focused on a broad range of things, including PBGC issues, the events leading to the termination in Treasury's role. But we did not conduct an investigation, as SIGTARP is doing, and we did not interview the former [Treasury Auto Team] officials here today."[2]

SIGTARP conducted the audit from December 2010 through August 2013, in accordance with generally accepted government auditing standards as prescribed by the Comptroller General of the United States.[3] SIGTARP's work was significantly prolonged by the refusal of four key former Treasury Auto Team officials working on GM's restructuring to be interviewed by SIGTARP.[4] In July 2012, Congress held a hearing on the former Treasury officials' refusals to be interviewed. In the weeks prior to the hearing, the leader of the Auto Team, Steven Rattner, agreed to be interviewed by SIGTARP. At the Congressional hearing, SIGTARP learned for the first time that the other three former Treasury officials – Ron Bloom, Harry Wilson, and Matthew Feldman – had told Congress

[1] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011.

[2] Hearing before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the Committee on Oversight and Government Reform, 7/10/2012.

[3] For a discussion of the audit's scope and methodology, see Appendix A.

[4] Three former Treasury Auto Team officials all include their roles in GM's restructuring in their professional biographies. Ron Bloom's biography states that "he helped lead the restructuring of GM and Chrysler, and then led Treasury's oversight of the companies thereafter." Harry Wilson's biography states that "he worked as one of the four leaders of the Auto Task Force, responsible for the Treasury's role in the restructuring of GM and Chrysler. Mr. Wilson led a team that was responsible for the business and financial work of the Task Force and also led a team overseeing the financial and operational restructuring of GM, the largest in American history." Matthew Feldman's biography states that he served as Chief Legal Advisor to the Auto Task Force "assembled to help develop the overall strategy to restructure and recapitalize General Motors Corporation and Chrysler LLC, a strategy which resulted in the groundbreaking legal proceedings that implemented a comprehensive financial solution for both companies. The Auto Team conducted complex negotiations with all major constituents of both companies, including Fiat SpA (which now runs Chrysler), the United Auto Workers and major creditors of both auto makers under a compressed timeline."

that they would agree to a SIGTARP interview. Those interviews served as a turning point in SIGTARP's work because SIGTARP could not fully determine Treasury's role without interviewing the Treasury officials involved. The former Treasury officials made it clear to SIGTARP that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring, which is what this report covers. SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

Background

According to testimony from Auto Team official Ron Bloom, in 2008, the U.S. auto industry lost 50% of its sales volume and over 400,000 jobs. Ray Young, GM executive vice president and chief financial officer ("CFO") in 2008 and 2009, told SIGTARP that in March 2008 GM started looking to identify sources of financing. Young told SIGTARP that by late 2008, it became clear that there was no source of financing and no parties were interested in investing in GM. In November 2008, GM sought Government financial support. In December 2008, Treasury, under the Bush Administration, announced TARP's Automotive Industry Financing Program with the stated goal to prevent a significant disruption to the American automotive industry that would pose a systemic risk to financial market stability and have a negative effect on the U.S. economy.

On December 31, 2008, Treasury provided $13.4 billion in TARP funds in a TARP loan to GM through the Automotive Industry Financing Program, and on January 2, 2009, Treasury provided $4 billion to Chrysler. Treasury's Loan and Security Agreement ("TARP loan agreement") required GM and Chrysler to each submit by February 17, 2009, for review and approval by the President's Designee a restructuring plan showing how they would use the TARP funds to achieve "long-term viability," which was defined as "positive net present value, taking into account all current and future costs, and can fully repay the government loan."

In summary, the TARP loan agreement with GM also laid out three conditions that needed to be met for GM to achieve and sustain long-term viability and that needed to be approved by Treasury by March 31, 2009: (1) GM was required to establish an agreement with the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"), which represented nearly all of GM's union employees, as well as an estimated 500,000 retirees, that would include reduced labor costs; (2) as part of the new agreement with the UAW, the UAW would agree that at least 50% of the approximately $20 billion obligation GM had to the UAW retiree health care trust, called the Voluntary Employee Beneficiary Association plan ("VEBA"), had to be funded with GM stock; and (3) GM would commence a voluntary offer to have its bondholders who held approximately $27 billion in debt exchange their debt for GM stock. President George W. Bush said that ensuring viability would require "meaningful concessions from all involved in the automotive industry."

On February 15, 2009, President Barack Obama convened the Auto Task Force and named Treasury Secretary Timothy F. Geithner and National Economic Council Director Dr. Lawrence Summers to serve as co-chairs.[5] Treasury created the Auto Team and the Auto Task Force delegated to it the responsibility of evaluating the auto companies' restructuring plans and negotiating the terms of

[5] The Auto Task Force had 21 members including several cabinet-level officials from across the Executive Branch.

any further assistance. Leading the Auto Team was Steven Rattner, co-founder of Quadrangle Group, a private equity firm. Ron Bloom, a former investment banker and former head of collective bargaining for the United Steelworkers of America ("USW"), served as his deputy and then the head of the Auto Team after Mr. Rattner left Treasury in July 2009. With a staff of 15 people, the other key members of the Auto Team who worked on GM's restructuring with Mr. Rattner and Mr. Bloom included Matthew Feldman, who told SIGTARP that he was brought in to be the bankruptcy lawyer for Treasury, and Harry Wilson, a former member of the hedge fund management firm Silver Point Capital. Mr. Bloom told SIGTARP that Dr. Summers and Secretary Geithner gave the Auto Team a fair amount of authority, but major decisions went to Dr. Summers and Secretary Geithner.[6]

These Auto Team officials told SIGTARP that they were directed by Treasury and the Administration to act in a "commercially reasonable" manner. There were no policies and procedures defining commercially reasonable; it was subject to interpretation.[7] Auto Team leader Rattner told SIGTARP that he interpreted the commercially reasonable approach as "if we would be doing this in the private sector and spending money on it." Auto Team official Wilson testified in a deposition that "our test had to be what a commercial buyer would do" adding, "We had a fiduciary duty to use taxpayer dollars in the most appropriate way." Auto Team official Bloom told SIGTARP that he interpreted the commercially reasonable approach as a way to "minimize taxpayer investment consistent with getting the job done and creating a viable enterprise."

Treasury's definition of long-term viability focused on GM repaying taxpayers. Auto Team officials Harry Wilson and Matthew Feldman told SIGTARP that they each believed it would take five years for GM to repay TARP. Auto Team leader Rattner told SIGTARP that the Auto Team spent a lot of time on this issue with Dr. Summers who wanted to exit as soon as possible. Auto Team Leader Rattner said the Auto Team did not know what that actually meant, but that it generally would take five to eight years to divest when a government takes a position. Former Secretary Geithner told SIGTARP that Treasury could not have a plan for how long it would own GM stock. More than four years later, GM has not fully repaid taxpayers and remains in TARP.[8]

GM's restructuring plan, submitted to Treasury in February 2009, did not plan for bankruptcy; instead it detailed the risks GM would face if it filed bankruptcy. GM's plan identified eight "key risks." One risk was that Delphi, GM's former

[6] When asked what authority was designated to the Auto Team related to GM's restructuring and what remained with Dr. Summers and him, Secretary Geithner told SIGTARP that he and Dr. Summers would sign off on consequential strategic decisions. Mr. Rattner told SIGTARP that he met with Dr. Summers and Secretary Geithner regularly, but he had little interaction or communication with the rest of the Auto Task Force.

[7] There were generally defined principles in a report from the Administration for GM to achieve greater profitability, strengthen its balance sheet, increase its competitiveness, and develop fuel-efficient cars.

[8] As of June 13, 2013, there is $9.87 billion outstanding on Treasury's TARP investment in GM. For that, Treasury owns 13.8% of GM common stock.

subsidiary and largest parts supplier, which had been in bankruptcy since 2005, had been unable to raise financing to exit bankruptcy and had underfunded the pension plans of employees who had worked at Delphi when it was part of GM.[9] GM's restructuring plan stated, "If Delphi is unsuccessful in addressing its underfunded pension plans and raising exit financing, it would represent a significant risk to the Company's revised plan."

Prior to Delphi's spinoff in 1999, all of its employees were covered by GM's pension plans, but GM had funded these pension plans at different levels. At the time of the spinoff, GM had fully funded (at 123%) the expected payments needed to cover the pension plan of Delphi salaried employees, but had underfunded (at 69%) the pension plan of Delphi hourly employees. In 1999, Delphi's three largest unions representing hourly employees negotiated pension benefit guarantees that, if Delphi could not fund its pensions, GM would "top up," or increase, pension benefit payments of the unions' hourly retirees to their full benefit levels under certain conditions (called "pension benefit guarantees," or "top-up agreements"). The three unions were the UAW, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers ("IUE"),[10] and the USW.[11] At the time, Delphi's salaried employees were not represented by a union or organized as a group or association, and they did not negotiate or receive top-up agreements.[12]

[9] Delphi was GM's largest supplier of automotive systems, components, and parts, and GM was Delphi's largest customer with annual purchases that ranged from approximately $6.5 billion to $10.2 billion from 2005 through 2008. The purpose of the spinoff, according to GM and Delphi executives, was to enable Delphi to establish a more competitive labor cost structure and to allow Delphi to manufacture and sell parts to other automakers.

[10] Effective October 1, 2000, the International Union of Electronic Workers merged with Communication Workers of America ("CWA"), becoming the IUE-CWA Industrial Division.

[11] When Delphi was spun off, unions represented about 95% of all Delphi hourly employees. The largest Delphi union in the U.S. was UAW, which represented roughly 72% of the hourly workforce. The other large unions were IUE and USW, which represented 24% and 4% of Delphi's unionized hourly workforce in the U.S., respectively. GM entered into a memorandum of understanding to extend the agreements with each of the unions – UAW, IUE, and USW – when they were set to expire in 2007. Through the memorandum of understanding, GM agreed effectively to extend the benefit guarantees indefinitely.

[12] Despite the fact that GM had fully funded the salaried pension plans when it spun off Delphi in 1999, by 2001, funding levels for both salaried and hourly pension plans were below 100%. From 2001 to 2005, Delphi suffered losses and the company filed for bankruptcy in October 2005. According to Delphi officials interviewed by SIGTARP, Delphi remained committed to funding the hourly and salaried pension plans in the early stages of Delphi's bankruptcy process between 2005 and 2007 and tried to preserve the plans. However, with the economic downturn in 2008, Delphi struggled to maintain the pension plans. According to the Delphi officials, various investors expressed interest in Delphi, but none wanted to purchase or invest in Delphi if it retained its pension liabilities.

Treasury Plans for GM's Bankruptcy, Replaces GM's CEO, and Rejects GM's Restructuring Plan

On February 17, 2009, the day they received GM's restructuring plan, the Auto Team sent a memo to Auto Task Force chairs Dr. Summers and Secretary Geithner with "first-blush impressions" of the auto companies' restructuring plans. As for GM, the memo listed four risks: (1) underfunding of pension plans; (2) foreign subsidiaries; (3) "GM's plan includes funding to purchase certain Delphi assets, but Delphi will require other funding to exit bankruptcy, address its pension liabilities and continue operations," and the "failure of Delphi to reorganize successfully will jeopardize GM's restructuring plan"; and (4) GM's plan to reduce its dealer base versus foreign automakers' dealer bases in North America. Secretary Geithner told SIGTARP that he had no recollection of costs related to Delphi or Delphi pension top-up issues and that the Auto Team could work through Delphi issues on its own. Auto Team leader Rattner told SIGTARP that there were no significant meetings between him and Dr. Summers or Secretary Geithner related to the Delphi pensions.[13]

Before and after GM submitted its restructuring plan in mid-February 2009, Treasury's Auto Team was assessing the need for GM to file bankruptcy. In his book *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* ("*Overhaul*"), Mr. Rattner stated that he thought bankruptcy was inevitable in December 2008, before he formally started at Treasury. Mr. Rattner stated in *Overhaul* that negotiations with unions, debt holders, and others to meet the conditions in the TARP loan agreement had "absolutely no chance of success." Internal Treasury documents indicate that most of the restructuring options under consideration by the Auto Team in February 2009 involved some form of bankruptcy. A February 2009 analysis conducted for the Auto Team by their financial consultant indicated that an out-of-court settlement had a low chance of success and that a prearranged bankruptcy had a moderate to high chance of success.

In his book *Overhaul*, Auto Team leader Rattner described briefing Secretary Geithner on February 11, 2009, on restructuring options, nearly all of which included bankruptcy. He recounted that Secretary Geithner thought bankruptcy was probably inevitable and said, "We need to put foam on the runway." An Auto Team official also told SIGTARP that when he started at Treasury, Secretary Geithner said the team should look at their role as laying "foam on the runway" during this tumultuous time, which the Auto Team official interpreted as looking for ways to soften the blow in the event of bankruptcy. Auto Team official Feldman, a bankruptcy lawyer who had key responsibility for GM bankruptcy planning, told SIGTARP, "By the end of February and beginning of

[13] An internal Treasury briefing agenda for a July 7, 2009, meeting with Dr. Summers and Secretary Geithner says "PBGC/pension," but Mr. Rattner did not recall the briefing. Secretary Geithner told SIGTARP he did not recall any discussions or briefings related to Delphi pensions.

March, I didn't know how GM would do in bankruptcy but couldn't see forward without bankruptcy."

The Auto Team worked independent of GM to prepare for a GM bankruptcy under Section 363 of the bankruptcy code. An Auto Team official testified in a deposition that 363 was selected because of speed, certainty, and the ability to leave behind liabilities that a commercial buyer would not want in the new company. Auto Team leader Rattner described the 363 sale in *Overhaul* as "the fastest possible bankruptcy," but he stated that they thought it would still take 6 to 15 months. Auto Team leader Rattner wrote in *Overhaul* that in March 2009, Auto Team official Feldman made a critical discovery to shorten GM's bankruptcy. Feldman determined that the "marketing period" typically used to identify potential asset purchasers in a 363 bankruptcy sale could be eliminated where there is only one source of financing available, which, in this instance, was the Government.

Mr. Rattner recounted in *Overhaul* that on March 19, 2009, while planning for bankruptcy, the Auto Team discovered that GM had a $1 billion payment to bondholders coming due June 1, 2009, but if Treasury allowed GM to make the payment, it would be awarding 100 cents on the dollar to bondholders who were only entitled to pennies.[14] Auto Team officials told SIGTARP that the upcoming payment would drive the date of GM's bankruptcy. Despite the Auto Team's bankruptcy planning, then-GM president and chief operating officer ("COO") Frederick "Fritz" Henderson told SIGTARP that bankruptcy was not discussed when GM met with Treasury in March 2009.

What followed was the Auto Team's direct involvement in the decisions affecting GM. Treasury's Auto Team used their financial leverage as GM's only lender to significantly influence the decisions GM made during the time period leading up to and through GM's bankruptcy.

Treasury's Auto Team Replaces GM's CEO

It was increasingly clear to the Auto Team that GM, under the leadership of then-chief executive officer ("CEO") Rick Wagoner, was unwilling to move toward bankruptcy. CEO Wagoner had been vocally and adamantly opposed to putting GM into bankruptcy and had done little to no planning for the possibility of bankruptcy. CEO Wagoner did not believe that the company could survive in bankruptcy because consumers would not purchase cars from an automaker in bankruptcy as there would be no guarantee that the company would be able to fulfill its long-term warranty obligations. CEO Wagoner believed that customers would view this as an unnecessary risk and avoid it by purchasing another

[14] Mr. Rattner stated in *Overhaul* that he told the *Detroit Free Press* that "bankruptcy is not our goal," while "all the while we were preparing for it." That interview took place March 16, 2009.

automaker's automobiles. He was concerned that a lack of consumer confidence would hurt sales needed for the company to continue to exist.

The Auto Team disagreed with Wagoner's view and believed that bankruptcy was the only path remaining for GM to succeed. On March 27, 2009, Auto Team leader Rattner called CEO Wagoner and GM then-president and COO Henderson to separate meetings. Mr. Henderson told SIGTARP that he felt Mr. Rattner was interviewing him. He was correct. Later that day, at Mr. Rattner's request, Wagoner resigned and Mr. Rattner asked Mr. Henderson to serve as CEO. Henderson told SIGTARP that GM's Board of Directors was upset by the replacement of Mr. Wagoner and felt that their authority to appoint the CEO had been usurped by Treasury. Mr. Henderson described his appointment as CEO as a "principal source of friction" between the board and Treasury. Mr. Henderson told SIGTARP that the Auto Team's decision to replace Mr. Wagoner with their selection sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations.

Treasury's Auto Team Rejects GM's Restructuring Plan

Three days later, on March 30, 2009, Treasury rejected GM's restructuring plan as not viable, stating in its Viability Determination Fact Sheet, "Their best chance at success may well require utilizing the bankruptcy code in a quick and surgical way." Treasury also stated in its Viability Determination that although GM had made meaningful progress in its turnaround plan over the last few years, the progress had been "far too slow." Treasury's Viability Determination stated that the deadline had nearly passed for the three TARP-required conditions: (1) establishing a new agreement with UAW to reduce labor costs; (2) obtaining all necessary approvals for changes to the VEBA retiree health care trust, which included UAW's approval; and (3) commencing an offer to bondholders to exchange debt for equity. The Auto Team viewed these conditions as a floor, not a ceiling. Treasury also indicated other "key factors" for GM's viability, such as reducing the number of brands and dealerships, and reducing the cash cost of legacy liabilities, including employee pensions and health care costs. These were key areas of focus for Treasury's Auto Team.[15]

Additionally, in its Viability Determination, Treasury stated that GM needed a "substantially more aggressive restructuring plan" to make GM viable, gave GM until June 1 to resubmit the plan, and gave GM an additional $6 billion in TARP funds – enough working capital to continue operations over the following 60 days. GM's then-CFO Young told SIGTARP that GM executives did not know how they would obtain the financing to restructure the company and they

[15] SIGTARP previously reported on the termination of dealerships in its audit, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce their Dealership Networks," released 7/19/2010.

did not know how they could shed the liabilities required by the TARP loan agreement, calling the situation "dire."

An Auto Team official told SIGTARP that broader economic considerations served as the catalyst for Treasury to offer GM the opportunity to develop a new restructuring plan. The Auto Team official told SIGTARP that GM's success or failure had "broader economic ramifications." According to that member and other Auto Team officials, the Auto Team was concerned that GM's collapse could have a cascading effect throughout the interconnected American automotive industry by causing automotive parts manufacturers and auto dealerships to fail, which could then threaten the stability of American automakers during an economic crisis. When announcing the additional TARP funds, President Obama stated, "We cannot, and must not, and we will not let our auto industry simply vanish."

Treasury's Auto Team and GM Develop a New GM Restructuring Plan

With only 60 days of funding from TARP, GM developed a new restructuring plan with significant influence and leverage from Treasury's Auto Team. Treasury's influence and leverage over GM went beyond Treasury's rights under the TARP loan agreement. Under the TARP loan agreement, Treasury had the right to approve or prohibit transactions over $100 million that were not in the ordinary course of GM's business or any increase in pension obligations. An Auto Team official stated in a deposition, "Obviously, under 100 million we didn't have any say, and we didn't have any ability to be asked for our consent or to stop it or do anything else." While this statement describes Treasury's legal rights, SIGTARP found that Treasury's Auto Team had significant influence over GM's decisions, even in the areas where Treasury's consent was not required under the TARP loan agreement. One GM official told SIGTARP, "Ultimately it was that GM is not in control. And GM is totally dependent."

Then-CEO Henderson told SIGTARP that the Auto Team was concerned about how to deleverage the company's balance sheet, and that they wanted to start from ground zero and build GM back up, restructuring everything. Then-CEO Henderson told SIGTARP, "The Auto Team from Day 1 looked at everything in detail. The Auto Team was uncomfortable with the balance sheet. Harry Wilson and the Auto Team were taking apart the plan step by step and rebuilding it step by step in Detroit."

An Auto Team official told SIGTARP the Auto Team's review was "very deep and very thorough." The same Auto Team official told SIGTARP that the Auto Team provided "direction not decisions. We were skeptical on all decisions. We had to approve the decisions, show us the data." The official told SIGTARP, "It wasn't a fight. It was a debate. We didn't involve ourselves in any day-to-day decisions." The Auto Team official told SIGTARP that he would have a call every evening at 10 p.m. with GM's then-CFO Young. The Auto Team official told SIGTARP, "There was a feeling that the Auto Team had to carefully manage GM, which would have given away Treasury's money without blinking."

Rather than merely providing advice, the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions. An Auto Team official told SIGTARP that Treasury was GM's largest lender and investor, GM's "only lifeline." Another Auto Team official testified before Congress, "While Treasury was closely involved in pressing GM management for the major changes needed to make the company profitable, we were very careful to never get involved in the specific decisions on plant closures, dealer closures, or the like. We would agree with GM on the broad strokes, which was to create a world-class auto business, and the key components of that, and they would make

the detailed decisions that needed to be made to implement those broad strokes."[16] As SIGTARP has previously reported, in its Dealership Audit,[17] in response to the Auto Team's rejection of GM's restructuring plan and its explicit comment that GM's "pace" of dealership closings was too slow and an obstacle to its viability, GM substantially accelerated its dealership termination timelines. Instead of gradually reducing its network by approximately 300 dealerships per year through 2014, as GM had proposed in the plan submitted to Treasury, GM responded to the Auto Team's direction by terminating the ability of 1,454 dealerships to acquire new GM vehicles and giving them until October 2010 to wind down operations. Although the Auto Team did not tell GM which dealerships to close, GM made the decision to accelerate the dealership closings with significant Treasury influence.

As an Auto Team official explained to SIGTARP, Treasury did not want to start running the company, but when dealing with taxpayer resources, "We, the Government, were ultimately holding that purse string," and Treasury reserved the right to tell GM that they would not back them. Another Auto Team official told SIGTARP that there were no instances where the Auto Team "crammed" a decision on GM, "but we were investing a lot of money, and we had the opportunity to disagree." This same Auto Team official told SIGTARP that the Auto Team did not impose ultimatums on GM. As this official told SIGTARP, "GM realized that there was no other available source of money."

An Auto Team official told SIGTARP that the Auto Team's approach with GM was to "push them" and to "question them." Another Auto Team official told SIGTARP the Auto Team "pushed GM toward making the changes necessary to become a viable company." A GM official told SIGTARP, "They [the Auto Team] were pushing us to be tougher and take more significant actions other than what we would have done on our own volition." When one Auto Team official was asked by SIGTARP how the Auto Team conveyed their preference or nudged GM to see things the way the Auto Team saw them, given that ultimately GM could do its own thing, the Auto Team official said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Then-CFO Young told SIGTARP that the Auto Team was "being hard on GM and scrutinizing how much money GM needed." Mr. Young told SIGTARP that the Auto Team "was persistently pressing GM executives to cut costs." An Auto Team official told SIGTARP, "We thought GM could be viable on its own if it could reduce costs and liabilities." Auto Team leader Rattner told SIGTARP that GM officials had been too generous in the past and the Auto Team had to dial

[16] Hearing before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the Committee on Oversight and Government Reform, 7/10/2012.
[17] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce their Dealership Networks," 7/19/2010.

them back. The Auto Team specifically pressed GM to be less generous in relation to Delphi and pensions.

Cutting Costs Related to Delphi

Auto Team leader Rattner told SIGTARP that Delphi was an example of where the Auto Team was less generous than GM. According to one of the Auto Team members, Messrs. Matt Feldman and Harry Wilson took the lead on Delphi issues. Mr. Wilson testified before Congress, "Delphi was bleeding approximately $150 million in cash per month. GM was supporting Delphi because Delphi was the sole supplier for certain critical GM parts, so a Delphi liquidation would have shut down all of General Motors. This was an unsustainable proposition, both for GM, and for the American taxpayer." Mr. Wilson's view, according to an email he wrote, was that they would look to eliminate all obligations, given the staggering cost of supporting Delphi.

A GM official told SIGTARP the Auto Team's reaction was that Delphi was costly to GM, and that GM should not be assuming more liabilities than necessary. That same GM official told SIGTARP, "We did not have the leverage to tell them to pound sand." For example, in March 2009, Delphi wanted an additional $150 million from GM for operating costs and for GM to purchase Delphi's global steering business. Because this was above the $100 million threshold, Treasury's consent was required under the TARP loan agreement. The Auto Team did not consent. An Auto Team official told SIGTARP that Delphi was identified as a risk, but that "obviously we would continue to urge GM, you know, don't be irresponsible about it, be tough. Give as little as you have to, but try to help get Delphi done…you can't write a blank check." Auto Team leader Rattner told SIGTARP that GM would have continued to squander a huge amount of dollars on Delphi.

Cutting Pension Costs

According to Auto Team leader Rattner, pensions were another area where the Auto Team "encouraged" GM to cut costs. GM had a pay-as-you-go pension plan for salaried employees that was not funded and GM salaried employees and retirees wanted their full pensions, but Mr. Rattner told SIGTARP that the Auto Team wanted cuts to those benefits.

In addition to pension issues relating to GM employees, between February and May 2009, GM and the Auto Team officials discussed and analyzed GM's liabilities related to Delphi's pensions. GM officials told SIGTARP that GM needed PBGC to release liens on Delphi assets so Delphi could successfully emerge from bankruptcy.[18] According to one GM official interviewed by

[18] PBGC held liens on certain Delphi assets that, according to a Delphi official, an investor or purchaser of Delphi would want free and clear title.

SIGTARP, "Ultimately to get Delphi out of bankruptcy, we needed the [pension] plans to be terminated." PBGC officials told SIGTARP that PBGC advocated that GM go beyond the top-ups and take back (assume the full cost) of both Delphi's hourly and salaried pension plans. The Auto Team and GM identified at least three options: (1) for New GM to agree to the top-up for the Delphi hourly employees consistent with the preexisting agreements (full cost of pensions less PBGC payout) (at a projected cost of approximately $1-1.5 billion for the UAW, IUE, and USW hourly employees); (2) for New GM to take back (assume) all of Delphi's pension plans, paying all obligations under the plans without a payout from PBGC (at a projected cost of $5.4 billion); and (3) for New GM to take on no obligation to top up or take back any Delphi pension plans (zero cost).[19]

GM took the position that Treasury's consent was required. A PBGC email received by Auto Team officials stated, "In discussions with Delphi and directly with PBGC, GM has stated that it cannot assume responsibility for either the previously agreed-to hourly plan pension obligations or the Delphi's salaried plan pension obligations, as doing so would represent taking on additional pension obligations in violation of the pension covenant in GM's TARP loan." A February 2009 PBGC document stated, "Delphi believes that GM, in refusing to discuss further pension plan assumptions, may be looking to the to-be-appointed car czar [Rattner] to mandate that GM assume Delphi pensions as part of GM's continued use of TARP money."[20]

Auto Team official Feldman negotiated with PBGC on behalf of GM, which contributed to an expectation that the presence of Treasury could potentially change the outcome. Mr. Rattner told SIGTARP that having the Auto Team work directly with PBGC was viewed as more efficient because it was Government to Government. Additionally, at least one GM official told SIGTARP that GM thought there was some benefit to Treasury taking the lead on dealing with the PBGC because it was "Government agency to Government agency" and Treasury would get a better deal for GM. The presence of Treasury as a Government agency created expectations on PBGC's part that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what would have normally occurred in PBGC's negotiations with a private company and potentially save PBGC billions of dollars. A PBGC official told SIGTARP when discussing the likelihood of GM's absorption of the Delphi pension plans that "as [Treasury] got involved, we were more hopeful." In a deposition, Mr. Feldman stated that the PBGC "asked us whether we would force General Motors to take the plan on." If GM were to assume the full cost of the Delphi hourly plan, it would require Treasury's approval. There was a split

[19] This audit was conducted in coordination with GAO to avoid excessive duplication of efforts. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. The objectives of SIGTARP's audit did not involve a review of PBGC's termination of the Delphi pension plans.

[20] Later, an April 17, 2009, PBGC document makes it clear that Delphi wanted the pension plans to be transferred to GM ("with support from Treasury") but that "GM contends it cannot afford the Plans, and that covenants in the Treasury loan agreement prevent GM from taking on new pension liabilities."

within the Auto Team on whether GM should assume the Delphi hourly plan, with Mr. Feldman in favor of GM assuming the hourly plan (which would go beyond the top-up), and Mr. Wilson not in favor of assuming it. The PBGC official told SIGTARP, "As it relates to the possibility of GM sucking up the hourly plan…I knew what GM's position was. It didn't have to do anything with GM. If there was any possibility that it was going to happen, it was going to come from Treasury. It would be Treasury folks because they had the right of refusal and could dictate what was going to happen."

Delphi salaried retirees and Delphi officials also hoped Treasury's presence would make a difference in whether GM would take on obligations for Delphi pensions. Treasury's Auto Team met with representatives from the Delphi salaried retirees on more than one occasion. During those meetings, the salaried retirees asked the Auto Team to consider fairness in making their pensions whole. The Auto Team also met with Delphi officials. Delphi's then-CFO John Sheehan told SIGTARP that from his perspective, GM was deferring decision making on all subjects. He also told SIGTARP, "GM wasn't in a position to dictate. Harry [Wilson] and Matt [Feldman] were the decision makers and the drivers on how this would all occur – in my view."

Treasury's Role in the Decision for GM To File Bankruptcy

SIGTARP found that Treasury's Auto Team directed GM's restructuring efforts toward bankruptcy. An Auto Team official told SIGTARP, "We didn't decide to file a bankruptcy. We decided to support a bankruptcy." That same Auto Team official told SIGTARP that GM decided to file bankruptcy and GM came to the conclusion that it could not reorganize without bankruptcy, and the question for Treasury was "do we support a GM filing or not?" While it is technically true that GM had to decide to file bankruptcy, it was the Auto Team that took steps to signal to GM their strong preference for bankruptcy and bring significant influence over GM's decision to file bankruptcy.

GM and Treasury's Auto Team had different approaches as to how to proceed in order to create a sustainable GM. GM's executives continued to prefer a restructuring of the company outside of the bankruptcy process, while the Auto Team preferred bankruptcy. According to Auto Team leader Rattner in *Overhaul*, the Auto Team had already determined that there was no alternative to bankruptcy before rejecting GM's restructuring plan on March 30, 2009. The Auto Team's March 27, 2009, replacement of GM CEO Wagoner, who did not favor bankruptcy, and the choice of Mr. Henderson as CEO, signaled the Auto Team's preference for bankruptcy and directed GM's restructuring efforts toward bankruptcy. Mr. Henderson told SIGTARP that his view on bankruptcy for GM was different than Wagoner's. Once Treasury replaced Mr. Wagoner with Mr. Henderson as CEO, there was a greater willingness by GM to consider bankruptcy. On April 1, 2009, as one of his first acts as the new CEO, Mr. Henderson told GM employees that bankruptcy was likely. However, despite that statement, Mr. Henderson told SIGTARP that his preferred approach was to restructure GM by completing a voluntary bond exchange – an offer proposed to bondholders to convert their debt to equity – hoping to avoid bankruptcy.

Auto Team officials first raised the prospect of an expedited bankruptcy with GM during the first week of April 2009, according to then-CFO Young. In his interview with SIGTARP, Young said the Auto Team "highly suggested" and felt "pretty strongly" that a Section 363 bankruptcy was the "best approach" because it would be quicker to complete than a normal bankruptcy that could take 9 to 12 months. Then-CEO Henderson told SIGTARP the Auto Team began to outline the 363 process for GM, with GM's 363 planning being similar to what the Auto Team was doing with Chrysler, but Chrysler was much simpler.[21] Then-CEO Henderson told SIGTARP that Treasury's view was that speed had real power, and that to do a deal in a commercial and fast way could only be accomplished with a 363 sale.

[21] Chrysler filed a 363 bankruptcy on April 30, 2009.

Then-CFO Young told SIGTARP that GM thought of bankruptcy as "Plan B." Then-CEO Henderson described "Plan A" as the bond exchange. CFO Young told SIGTARP that with the right terms on the bond exchange, GM was hoping to reduce its liabilities enough to avoid bankruptcy. An Auto Team official told SIGTARP that the Auto Team did not support the bond exchange and felt that a bond exchange alone was unlikely to restructure GM's balance sheet sufficiently to make GM viable. In fact, at least one Auto Team official told SIGTARP that he opposed GM's decision to proceed with the bond exchange. This same Auto Team official told SIGTARP that by the third week of April it was clear that GM needed to be shepherded through a prepackaged bankruptcy. The Auto Team also directed GM's restructuring efforts toward bankruptcy by discussing with GM their preference that 90% of bondholders participate in the bond exchange, which commenced on April 27, 2009. Henderson told SIGTARP that Treasury set the "level of acceptance" of the bond exchange "very high," making bankruptcy more likely.

Then-CEO Henderson told SIGTARP that it was not clear that bankruptcy was the only option until the bond exchange failed. GM would need to file bankruptcy by June 1, 2009, when a $1 billion bond payment came due. GM's then-CFO Young told SIGTARP that Treasury did not want to loan GM $1 billion to make this payment.

Treasury Agreed To Fund GM's Bankruptcy with $30.1 Billion from TARP, but Only for 40 Days

Treasury determined that GM would need $30 billion, but the Auto Team was concerned about giving the TARP funds in a loan that would be too much debt on GM's balance sheet, so the Auto Team proposed to senior Treasury officials that Treasury fund GM's bankruptcy with a loan that would convert to common stock ownership in New GM – the purchaser of Old GM's assets in bankruptcy. This would mean that the Government would have a substantial ownership interest in a private company. According to Rattner in *Overhaul*, the Auto Team discussed it with Lawrence Summers on May 11, 2009. Dr. Summers, Secretary Geithner, and ultimately President Obama approved an additional $30.1 billion in a TARP loan (in the form of a debtor-in-possession ("DIP") loan) that, when combined with the $19.4 billion in prior TARP injections, totaled $49.5 billion in TARP funds in GM. The TARP investment in GM would convert to 61% Government ownership of common stock in New GM.

Treasury conditioned the TARP financing on GM exiting bankruptcy in 40 days, a requirement created by the Auto Team. The TARP loan, effective on June 1, 2009, provided that the loan would default if GM failed to obtain certain bankruptcy court orders acceptable to Treasury by July 10, 2009 (40 days later). Auto Team leader Rattner has referred to GM's bankruptcy as a "quick-rinse bankruptcy." A quick-rinse bankruptcy is structured to move through legal proceedings faster than the average bankruptcy. Mr. Rattner recounted in *Overhaul* that GM hired prominent bankruptcy attorney Harvey Miller, who told Auto Team official Wilson that the timeline was "impossibly aggressive" and that "it's never been done before." GM's then-CFO Young told SIGTARP that although GM agreed that a drawn-out bankruptcy would negatively impact consumers' perceptions about GM, GM thought it would take at least two to three months to complete bankruptcy and the 40 days did not seem realistic.

SIGTARP found that Treasury conditioned giving GM $30.1 billion in TARP funds on a quick-rinse bankruptcy that would end in 40 days because Auto Team officials thought it was the best way to save the American automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Treasury Auto Team officials were concerned that if GM's bankruptcy was prolonged, consumers would stop purchasing GM's automobiles, and GM would likely fail. As one Auto Team official explained to SIGTARP, consumers might be cautious about buying cars from a bankrupt automaker. He told SIGTARP that "...one of the things you worry about when you buy a car is getting the car serviced." Therefore, in a lengthy bankruptcy, GM would run the risk of consumers saying, "The heck with it, I'll buy someone else's car," the Auto Team official told SIGTARP. Once the decision to have GM go into bankruptcy was made, the same Auto Team official

told SIGTARP, "It was in our interest to try to expedite the bankruptcy, if we could," given the risk of "getting in and getting stuck" in bankruptcy. Treasury had leverage to set conditions on TARP funds, even if it was a timeframe that did not seem realistic to GM and had never been done before. If GM's bankruptcy was not completed within the 40 days, GM risked losing its only source of financing. GM also risked losing its purchaser in bankruptcy, given that Treasury would become the majority owner of New GM. Treasury viewed the 40-day timeframe as a real deadline. One Auto Team official told SIGTARP that Treasury was willing to "walk away" rather than put in "a huge amount more. We advocated and put in a $30 billion DIP. If you let people believe you would have done anything, that number could have been multiples of that." That same Auto Team official said they tried to be "commercial." Another Auto Team official testified in a deposition that if the 40-day timeframe was not met, "We expect the company to liquidate" but "[GM] is always free to try to find alternative forms of financing."

"Cherry-picking" Assets and Liabilities

Although Treasury, through its Auto Team, had significant leverage and influence on GM's decisions and operations before the decision to file bankruptcy, Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. SIGTARP found that with their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. Then-CFO Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." One Auto Team official told SIGTARP that "We approve technically everything because we don't have to do the DIP [bankruptcy loan]. But no, not in the micro. I mean it wasn't, you know you bring us this, we approve this, we approve that. It was bring us a plan and we do a DIP or we don't do a DIP." Another Auto Team official testified in a deposition that the leverage Treasury had with Old GM was that Treasury was the only buyer for GM's assets. That same Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation.

As explained by an Auto Team official in a deposition, the 363 bankruptcy sale allowed New GM and the Auto Team to assume Old GM's assets and "cherry-pick" the liabilities that a "commercial buyer" would want and New GM would need. As that Auto Team official stated in a deposition, "It is up to the purchaser to exclude or assume liabilities." The Auto Team official further testified in the deposition, "It is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on. This same Auto Team official told SIGTARP that "our general perspective, and in general the right way to do a 363 sale as a buyer, is to assume all assets unless explicitly excluded, and to reject all – to leave behind all liabilities unless explicitly assumed." GM's then-CFO Young told SIGTARP that GM and the

Auto Team went down GM's balance sheet (including pensions and the supplier base), going over some line items in great detail.

Without policies, procedures, or guidelines interpreting how to make commercially reasonable decisions, Treasury's Auto Team made some decisions on which liabilities New GM would assume that were not commercially necessary, but the Auto Team called the decision "commercial" because it could factor into public relations and the image of New GM. One Auto Team official testified in a deposition that the Auto Team requested that GM identify "politically sensitive" liabilities. Then-CFO Young told SIGTARP that this exercise was about identifying liabilities that might present a public relations challenge if New GM did not assume them. He also told SIGTARP that assuming these liabilities conflicted with taking a strictly commercial approach because GM could operate without them. For example, the Auto Team official testified in the deposition that the Auto Team concluded that it was not commercially necessary for New GM to assume product liabilities. However, New GM assumed those liabilities because, according to the Auto Team official, failure to assume them would impact consumers' confidence in GM's products, which the Auto Team official said was a commercial basis.

In another instance, broader considerations, rather than just a commercially reasonable approach, were weighed by the Auto Team when they considered the possible closure of GM's headquarters in Detroit.[22] According to an Auto Team official, GM and the Auto Team considered moving GM's headquarters out of Detroit to its Technical Center located outside of the city because the move would consolidate GM's management operations and save money. According to Mr. Rattner's account in *Overhaul*, around May 2009, CEO Henderson told Mr. Rattner that the move would cut GM's costs and, therefore, Mr. Rattner initially supported the initiative. Nevertheless, Rattner wrote in *Overhaul* that White House and Treasury officials expressed concern about the economic impact of the move on the city of Detroit, and they retained the Detroit location.

Deals with Major Stakeholders Before Bankruptcy

According to an Auto Team official, as the buyer, Treasury determined which assets to buy and which liabilities to take on. The Auto Team established a hierarchy of importance of stakeholders and issues that had to be completed prior to GM's bankruptcy filing to ensure its success. Two liabilities that Treasury had already decided to assume were a new collective bargaining agreement with GM's union, the UAW, and an agreement with GM's bondholders. A quick-rinse bankruptcy necessitates that major stakeholders negotiate and reach consensus prior to the proceeding in order to prevent objections being filed in court by essential parties, which could delay the process. An Auto Team official told

[22] An Auto Team official told SIGTARP that the decision to retain GM's headquarters in Detroit was impacted by broader considerations.

SIGTARP that the two important stakeholders were the bondholders and the UAW. The only question was the terms of those liabilities for New GM.

An Auto Team official told SIGTARP that the strength of the negotiating parties during GM's bankruptcy and throughout labor negotiations was dictated by the leverage each group held. The looming June 1 bond payment and the 40-day time constraint on the bankruptcy limited the time for negotiation and sent a powerful message to GM and the major stakeholders. With no indication that Treasury would extend the 40 days, GM and its major stakeholders were required to reach a deal prior to bankruptcy or risk GM running out of funding and having to liquidate. Auto Team leader Rattner stated in *Overhaul* that the 40-day deadline was the financial equivalent of "putting a gun to the heads of the bankruptcy judge, GM's stakeholders, and of course Team Auto itself."

Negotiations took place on May 18-19 at Treasury headquarters and at the offices of Treasury's lawyers in Washington, D.C. According to one Auto Team official, the UAW and the bondholders were kept "in the dark" during "parallel negotiations" as deals were negotiated. According to Auto Team official Feldman's professional biography, "The Auto Team conducted complex negotiations with all major constituents of both companies [GM and Chrysler], including Fiat SpA (which now runs Chrysler), the United Auto Workers and major creditors of both auto makers under a compressed timeline." Another Auto Team official testified in a deposition that Treasury represented the owners of New GM in the negotiations. Mr. Wilson told SIGTARP that he and Mr. Bloom "set the tenor" for the talks with the UAW, while he and Mr. Feldman "set the tone" for the talks with bondholders.

Treasury's Role in Pre-Bankruptcy Deal with GM's Bondholders

SIGTARP found that Treasury made a deal with the bondholders prior to GM filing bankruptcy because of the bondholders' leverage to object to and prolong the bankruptcy. An Auto Team official told SIGTARP that establishing a deal with the bondholders would eliminate a major risk of delay in bankruptcy court. Auto Team officials told SIGTARP that GM's bondholders had the leverage to object to and prolong GM's bankruptcy. At the time of GM's bankruptcy, bondholders held approximately $27.2 billion of GM's unsecured debt, which, according to a GM public filing, "comprise[d] substantially all of Old GM's debt and a significant majority of the total unsecured claims against Old GM." An Auto Team official explained that the bonds were owned by millions of people around the world, some bonds were 100 years old, and without a settlement before bankruptcy, it would have been painstakingly difficult to try to solicit each bondholder to approve any bankruptcy plans, which would have taken at least nine months.

Mr. Feldman, who had primary responsibility within the Auto Team for negotiating with the bondholders, told SIGTARP he worked with representatives

of GM's bondholders to reach the agreement that would reduce GM's indebtedness and clear the path for GM's quick-rinse bankruptcy, but he would not have given them everything simply to get a deal. Auto Team leader Rattner stated in *Overhaul*, "We valued the package at about 12 to 15 cents on the dollar, more than what they deserved (zero)..." CEO Henderson explained to SIGTARP that in the bankruptcy, Treasury was senior to the bondholders and the VEBA trust. If GM's bondholders agreed not to oppose GM's bankruptcy, Treasury would provide additional consideration to Old GM during the bankruptcy proceeding, to the benefit of GM's bondholders.[23] CEO Henderson told SIGTARP that Treasury was in a position to provide bondholders with a better recovery than under the bond exchange. This was because Treasury would own most of the equity of New GM, and, according to Henderson, equity was something only Treasury could provide. When asked whether GM was authorized to negotiate with bondholders for a larger slice of equity (stock), an Auto Team official testified in a deposition that, for matters about what capital (stock in New GM) Treasury would be willing to extend, the only one with authority was Treasury.

Treasury's Role in Pre-Bankruptcy Deal with UAW, Which Included New GM Assuming the Top-Up of Pensions

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW. The UAW had extensive leverage representing approximately 50,000 GM employees at the time of GM's restructuring – 99% of GM's unionized workforce (according to one Auto Team official). Other Delphi and GM executives, as well as Government and UAW officials, corroborated in separate interviews with SIGTARP that UAW had significant leverage due to the threat of a labor disruption. One GM official told SIGTARP, "You couldn't run this play without the agreement of the UAW." Another GM official told SIGTARP, "All you need is one missing part and it stops production. They had significant leverage... We needed the cooperation and enthusiasm of the UAW."

In addition to the traditional strike leverage, the requirement in the TARP loan agreement for a new collective bargaining agreement, and the upcoming deadline for GM to file bankruptcy, gave the UAW additional leverage. The UAW understood that GM had to reach an agreement with it to be able to survive, and those same facts put pressure on GM. Given the need for GM to file bankruptcy by June 1, 2009, GM only had a few weeks to come to an agreement with the UAW, and if they did not come to agreement, GM risked the UAW prolonging the bankruptcy beyond 40 days, which could lead to GM liquidating. An Auto

[23] Under the proposal, New GM would issue to Old GM 10% of the common equity of New GM and warrants to purchase an additional 15% of the equity of New GM.

Team official told SIGTARP that UAW was a very major constituency that could slow down and potentially block the entire sale. The time constraint of Treasury's financing was well known to the UAW and helped give it a bargaining advantage. An Auto Team official told SIGTARP the Auto Team had "a strong preference" that GM have "a deal in place with the UAW" prior to its bankruptcy filing, adding, "And we made that known to both sides."

The Negotiations

At the May 18-19, 2009 negotiations at Treasury's offices and at the offices of Treasury's lawyers in Washington, D.C., GM's CEO Henderson and UAW's President Ron Gettelfinger sat at opposite sides of a table, with Treasury's Auto Team at the end of the table. The UAW came to the negotiations with a "hit list" of priority items that included New GM assuming the pension benefit guarantee (top-up) for the former GM employees at Delphi represented by UAW. The same UAW official who had been involved in the 1999 negotiation for the top-up (and an extension of that agreement when it was scheduled to expire in 2007) was negotiating with GM in 2009.[24] That UAW official told SIGTARP that the top-up agreement had been strongly bargained for in 1999. Auto Team leader Rattner told SIGTARP the item on the term sheet showed that it was something that was important to the UAW. Mr. Rattner told SIGTARP that "the top-up was an integral item on the list of needs for the UAW." Another Auto Team official told SIGTARP that the UAW made it clear that it cared about the "Delphi matter" and so the UAW put out these "key terms" that it "expected to be part of the overall deal."

GM's then-CFO Young told SIGTARP that the UAW negotiations were only focused on those aspects of the GM-UAW relationship that were discussed in the TARP loan agreement. These were new labor costs and changing the UAW's health care trust (the VEBA) funding to be at least 50% in GM stock. An Auto Team official told SIGTARP that the 2008 TARP loan agreement gave Treasury leverage to get the UAW to the bargaining table, with Treasury's leverage as the only source of capital. Another Auto Team official told SIGTARP, "Since this was a financial matter that would eventually affect the interest of taxpayers, we had quite strong views." This same Auto Team official explained to SIGTARP that the consideration provided to the VEBA would impact the value of

[24] GM was significantly dependent on the automotive parts produced by Delphi and agreed in 2007 to assume Delphi's hourly pension plan in two tranches to help Delphi resolve its pension liability problem and facilitate its exit from bankruptcy. The initial agreement between GM and Delphi was entered into in 2007, but was "amended and restated" in September 2008. In September 2008, GM assumed the first tranche of Delphi's hourly plan participants amounting to $2.1 billion in pension liabilities. Those Delphi hourly employees whose pensions were transferred were no longer part of Delphi's hourly pension plan. GM was due to assume the second tranche, estimated at between $3.2 billion and $3.5 billion if Delphi substantially consummated its planned bankruptcy reorganization. However, because the reorganization was not consummated, the transfer did not occur. Afterward, Delphi froze and ceased funding the hourly pension plan in November 2008. Delphi froze and ceased to fund the Delphi salaried pension plan in September 2008.

Treasury's equity, "which was really what the taxpayers were going to get back for the money they put in."

Late in the negotiations, CEO Henderson broached the topic of pensions, as reported by Auto Team leader Rattner in *Overhaul*. Mr. Rattner wrote that such changes would be worth billions of dollars to GM, but that when CEO Henderson raised it, UAW's President Gettelfinger said, "We aren't going to sit in this room if pensions are on your list." Moreover, no person SIGTARP interviewed could recall any discussion of the top-up agreement at the negotiations. UAW's then-General Counsel Dan Sherrick confirmed that negotiations focused only on "big ticket items" and that "other prior agreements," including the top-up agreement, were not negotiated. Then-CEO Henderson told SIGTARP that the pressure to finish negotiations resulted in no negotiations that he could recall related to the top-up agreement.

Then-CEO Henderson told SIGTARP that the meetings with the UAW did not initially go well, and UAW turned down a Treasury-backed proposal at 11 p.m. the second day. Auto Team leader Rattner stated in *Overhaul* that the UAW rejected the proposal at 3 a.m. At the end of two days, the UAW left the negotiations at an impasse. The UAW had leverage because it knew and understood from Treasury's public statements that Treasury was committed to reorganizing GM and not letting GM fail. An Auto Team official said, "I think they thought their leverage was they knew we would prefer all things equal to reorganize GM." One GM official told SIGTARP that, when the Federal Government came into the picture, it clearly changed the dynamics because the terms of the TARP loan agreement were clearly understood by the unions and GM needed the money. According to CEO Henderson, UAW President Gettelfinger later called Auto Team official Bloom and "the deal got done." CEO Henderson thought that Mr. Bloom sweetened the deal with warrants (options to purchase stock). Auto Team leader Rattner stated in *Overhaul* that Mr. Bloom talked to Mr. Gettelfinger the next day (May 20, 2009), and two hours later, the UAW accepted the overall deal on the collective bargaining agreement.

The Deal with UAW

Consistent with Treasury's Auto Team's practice, as with any liability, it would have been Treasury's decision as the buyer to assume or reject the liability to top up the pensions of Delphi hourly UAW employees. The top-up was never discussed in the negotiation where both GM and Treasury were present and actively negotiating. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included under the Master Sale and Purchase Agreement selling assets to New GM.[25] GM could

[25] According to the UAW, it made a number of concessions in the negotiation including: elimination of performance bonuses and cost of living adjustments, reduced holidays, scaled-back overtime rules, and frozen wages for new entry

not agree to the new collective bargaining agreement (that included the top-up) on its own without Treasury's approval. The decision that New GM would honor the top-up was a joint decision by Treasury and GM, with Treasury deciding to approve the collective bargaining agreement with the UAW that included the top-up. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring its pension benefit guarantees in bankruptcy, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Mr. Rattner told SIGTARP, "It was not a ridiculous request. And one that we could have honored and needed to honor."

Then-GM CEO Fritz Henderson told SIGTARP that GM knew about the top-up, but that "the focus was on getting the deal done." He told SIGTARP that if the pension benefit guarantee was not assumed by New GM, there would have been a strike, and "we needed a workforce."[26] However, the pressure on GM was not only the threat of a strike, but the risk that the UAW would prolong the bankruptcy. CEO Henderson told SIGTARP that if the pension benefit guarantee with the UAW was not assumed by New GM, it would have been "mission impossible." CEO Henderson told SIGTARP that renegotiating the pensions in bankruptcy would have taken a long time and would have had a negative impact on the survival of GM. CEO Henderson told SIGTARP that he sought advice from bankruptcy attorney Harvey Miller regarding GM's ability to seek modifications to pensions in bankruptcy and was told that to do so would have extended GM's bankruptcy for at least six months. GM believed this was not a risk that GM could afford to take because Treasury had given no indication that it would extend financing beyond 40 days.

Treasury had the power to object to New GM taking over the top-up obligation as part of the larger agreement with the UAW, but like GM, had no desire to blow up the larger deal. Although Mr. Rattner told SIGTARP, "Left to our own devices, we would have not done the top-up," he said that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure." Although the Auto Team was concerned about the threat of the strike, they were also concerned with the UAW prolonging the bankruptcy.[27] When asked whether they could have been tougher on the UAW, an Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept" and "You do need employees to say yes and bondholders to say yes. No one thought they [GM] could survive an 18-month bankruptcy." In an interview with SIGTARP, another Auto Team official called UAW the "big dog"

employees. GM would also be allowed to use stock to replace debt for the VEBA health care trust and other concessions.

[26] UAW officials told SIGTARP that the top-up was a priority and if New GM had not honored the top-up agreement, the UAW would have objected to the bankruptcy sale and "they would have had a workforce stoppage." A UAW official indicated to SIGTARP that the threat of a strike was real.

[27] An Auto Team official told SIGTARP that Treasury assumed it would have ownership in the company and "we had to ask ourselves what is the value of an ownership stake in GM that is not making automobiles…If they don't come to work in the morning, it's tricky to make cars."

because the union represented most of GM's workforce and a failure to establish an agreement with UAW could have resulted in GM's liquidation, which the Auto Team did not want. The Auto Team official told SIGTARP, "I don't know what would have happened" and that not having an agreement with UAW would have been like "shooting yourself in the head," adding that it could have resulted in the liquidation of GM.

GM Completes Bankruptcy in 40 Days Without Agreeing To Top Up Any Other Delphi Employee

During bankruptcy, the existing General Motors Corporation, Old GM, sold substantially all of its assets to a wholly new company, New GM, which emerged from GM's bankruptcy on July 10, 2009, with most of the company's debt and liabilities remaining with Old GM.[28] An Auto Team official told SIGTARP the quick-rinse bankruptcy was consistent with the Auto Team's commercially reasonable approach. However, GM CEO Henderson said to SIGTARP that, according to an assessment performed prior to the bankruptcy, Treasury overpaid for GM. GM's financial advisor determined that Treasury agreed to purchase New GM at more than New GM's "Enterprise Value." Auto Team leader Rattner acknowledged in a statement made to the press in December 2011 that Treasury may have overpaid. He reportedly stated, "We put more cash into GM than we probably needed to – and we knew this. It's part of why GM is so well-capitalized today."[29]

GM and Treasury had agreed that New GM would assume the liability for the top-up of pensions of UAW hourly retirees at Delphi. Treasury informed PBGC of the decision to top up rather than take back the full cost of the Delphi hourly pensions. According to a PBGC official, an Auto Team official notified PBGC, saying "We've done the math, and the liability associated with assumption is greater than the top-up."[30] According to an internal Treasury memorandum, on June 30, 2009, an Auto Team official informed PBGC that Treasury would not be able to provide financing support to GM in an amount sufficient to allow the continuation of Delphi's hourly pension plan, but that it was anticipated that GM's pension benefit guarantees to the hourly employees would be preserved. Treasury and GM did not agree to top up the pensions of any other Delphi retiree in GM's bankruptcy. However, after GM's bankruptcy, New GM decided to top up the pensions of certain Delphi "splinter unions" that had filed an objection to Delphi's bankruptcy.

Delphi Salaried Retirees

SIGTARP found that Delphi's salaried retirees had no leverage, other than what they hoped to be political leverage and that Treasury, as a Government agency,

[28] On June 1, 2009, GM filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. §§ 1101-1174) and conducted a court-supervised asset sale (under 11 U.S.C. § 363), in which substantially all of the operating assets of the company were sold to General Motors Company, or New GM, and most of the company's debt and liabilities remained in the possession of Motors Liquidation Company, or Old GM, which is being addressed in bankruptcy court. New GM emerged from GM's bankruptcy on July 10, 2009.

[29] *The Detroit News*, "Rattner: Bailout a 'Success,'" 12/16/2011.

[30] An Auto Team official told SIGTARP that he wanted to include the Delphi hourly employees because he believed that it would help push the Delphi bankruptcy through more quickly. He told SIGTARP that when he attempted to get consensus from GM, GM pushed back and did not want to absorb this liability.

would provide them with a top-up. Delphi salaried retirees had no active employees at GM, a critical difference between them and the UAW. They were not creditors in GM's bankruptcy because they did not have a preexisting agreement with GM to provide the pension benefit guarantee as did the UAW and other unions. In 1999, the salaried workers were not organized and did not negotiate a top-up agreement because their pensions had been fully funded by GM. Aware that they did not negotiate a top-up agreement with GM, representatives of Delphi's salaried employees told SIGTARP that there should have been consistent treatment and that they would have no problem if nobody got a top-up.

GM had taken the position in February and March 2009 that it had no preexisting obligation to the salaried employees and that the TARP loan agreement prohibited it from increasing its pension benefits without Treasury's consent, and therefore GM alone could not authorize benefits for the salaried retirees. GM's then-CEO Henderson told SIGTARP that Treasury's consent would have been necessary. When asked whether Treasury's consent was necessary to top up the salaried workers, a GM executive told SIGTARP that ultimately Treasury had to agree. The cost was also over the $100 million threshold requiring Treasury's consent.

A Delphi salaried retiree told SIGTARP, "Unlike the UAW, the only leverage we had was political. The UAW had leverage because they were building parts." Therefore, Delphi salaried retirees have pushed for action to protect their pensions by appealing to the President, members of Congress, and Treasury officials for assistance. On June 6, 2009, after a Congressman sent a letter to the President and the Auto Team appealing on behalf of the Delphi salaried retirees, GM briefly considered what, if anything, could be done to top up the pensions of Delphi's salaried retirees. On June 6, 2009, Delphi salaried retirees forwarded to then-GM CEO Fritz Henderson an email with the subject, "Congressman Lee Makes Direct Appeal to President Obama Demanding Fairness for Delphi Salaried Retirees." Immediately, CEO Henderson got in touch with Mr. Rattner, forwarding him the email. Mr. Rattner promptly emailed other members of the Auto Team and Advisor to the President Brian Deese, saying that he had had a long conversation with CEO Henderson on this and other matters. He wrote, "With respect to the Delphi retirees, [then-GM Treasurer] Walter Borst is apparently preparing some kind of proposal for how to do something for them that is defensible. Fritz seems relaxed/ambivalent. We should be hearing more about this over the next 24 hours."

Auto Team leader Rattner told SIGTARP that GM came to the Auto Team because "GM wanted to do something for the [Delphi] salaried retirees." Mr. Rattner discussed it with then-GM CEO Henderson. Although Mr. Rattner could not remember the specifics of the conversation, he told SIGTARP that he thought there was nothing defensible from a commercial standpoint that could be done for the Delphi salaried retirees. Mr. Rattner told SIGTARP, "We didn't

think there was anything defensible. We felt bad, but we didn't think it was justifiable."

GM's then-CEO Henderson told SIGTARP that he asked then-GM Treasurer Borst if there was anything that could be done for the Delphi salaried retirees. CEO Henderson told SIGTARP that Treasurer Borst told him that nothing could be done and the salaried plan was well funded when Delphi was spun off. Treasurer Borst told SIGTARP he informed CEO Henderson that GM was unable to take action. Treasurer Borst told SIGTARP, "We didn't have a benefit guarantee agreement [with the salaried retirees] like the one the hourlies had." According to CEO Henderson, the salaried plan had been fully funded at the time of the spinoff and that there was no preexisting agreement to provide the salaried retirees with a pension benefit guarantee. CEO Henderson told SIGTARP that Mr. Borst had explained that if GM found a way to fund the top-up during GM's bankruptcy, it would be as if GM had funded the plan twice. As CEO Henderson expressed to SIGTARP, "It was terrible for those who lost their benefits," but he explained that from a commercial standpoint GM had already fully funded Delphi's salaried pensions at the time of Delphi's spinoff and there was no basis to do so again. According to a Treasury document, it was estimated that Delphi salaried retirees would lose approximately $440 million in pension benefits. A top-up would be expected to cost an equivalent amount.

The presence of the Government changed the Delphi salaried retirees' expectations. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government and make themselves into a commercial enterprise." He continued, "It is wrong of our Government to take funds from everyone and give it to the few." After the decision was made not to provide a top-up for salaried employees, the President read a letter from a Delphi salaried retiree and asked his advisors for information. Lawrence Summers prepared a briefing memo to the President in August 2009; however, there was no further action.

Although Delphi salaried retirees had asked Auto Team official Bloom to consider preserving the pensions out of fairness, Auto Team official Bloom told SIGTARP that GM "did not provide a top-up to the salaried guys because I think [GM] concluded there was not a commercially reasonable reason to do it." Mr. Bloom added that GM's automotive parts suppliers "received a hundred cents on the dollar," the UAW's retirees received a number "less than a hundred, but more than the bondholders," and some got less than the bondholders. Mr. Bloom told SIGTARP that they could not make everyone whole and "That's not to say that people didn't lose a lot or [were] hurt or were treated in a way that – sort of in a human way you would say that's unfair. I don't think that anybody thinks bankruptcy is fair. It is what it is, though."

Delphi Hourly Employees Represented by Smaller Unions

SIGTARP found that although in GM's bankruptcy, GM did not assume the other top-up agreements for Delphi IUE and USW hourly employees because those unions did not have leverage, subsequently GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive. Then-CEO Henderson told SIGTARP that GM did not assume the IUE/USW pension benefit guarantees in GM's bankruptcy because there were no active IUE or USW employees at GM.[31] According to a representative of both unions, the IUE and USW knew that they had little chance of succeeding in holding up or affecting GM's bankruptcy. GM did not have any discussions with these unions prior to filing for bankruptcy. Although the unions filed objections in GM's bankruptcy, the GM bankruptcy judge dismissed their objections.[32]

From approximately July 10 to July 22, 2009, GM was negotiating with the IUE and USW, which had filed objections in Delphi's bankruptcy, had active workers at Delphi, and had told GM in the case of the IUE that representatives had asked that union to file for strike authorization.[33] Then-CEO Henderson told SIGTARP that after GM's 363 sale, there were residual issues with the IUE because the Auto Team had given parameters to GM to reduce by two-thirds post-employment benefits such as health care and pensions. Then-CEO Henderson told SIGTARP that GM had proposed a 62% reduction in employment benefits, but Mr. Rattner told them it had to be two-thirds. Given that these negotiations took place after New GM emerged from GM's bankruptcy, the Auto Team was not involved in the same way they had been, leading up to and through the bankruptcy.[34]

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[31] "They are just dramatically less relevant," Auto Team official Bloom told SIGTARP. "They didn't have nearly the same footprint and the drama that UAW had, the overwhelming majority of General Motors employees." Bloom told SIGTARP that as to those two unions, given his prior employment with USW, he made a conscious decision not to involve himself.

[32] The court ruled that New GM needed "a properly motivated work force" to succeed, which required that it "enter into satisfactory agreements with the UAW." In commenting on the other unions, the bankruptcy judge ruled, "And the Purchaser is not similarly motivated, in triaging its expenditures, to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM."

[33] An IUE official told SIGTARP that the union was prepared for a protracted conflict if GM had decided not to uphold IUE's top-up agreement: "Without a doubt, it would have been fought on the factory floors and in the district courts."

[34] Following the bankruptcy sale from Old GM to New GM on July 10, 2009, the Auto Team told SIGTARP that they began to shift from active daily contact with GM to a less hands-on approach. Members of the Auto Team indicated that Lawrence Summers was the principal advocate for a quick withdrawal of Government involvement in GM, an approach that was also strongly supported by Secretary Geithner. Nevertheless, Auto Team members acknowledged to SIGTARP that there were outstanding issues relating to GM that remained after the bankruptcy and for which the Auto Team still had some level of involvement. As Mr. Rattner said to SIGTARP regarding continued involvement, "We agreed with Larry Summers that there were some loose ends that we had not finished." Another Auto Team official described it as "clean up" telling SIGTARP, "While they were out, there was still stuff that needed to get finalized and implemented, *etc*...And then largely, although there was a bit of a transition period, largely we then moved into a monitoring role." Steven Rattner was one of the first to depart in late July 2009.

In July 2009, internal Government emails between the Auto Team and Advisor to the President Brian Deese discussed GM's need to address issues with Delphi's "splinter unions." Auto Team officials did not recall details related to the emails.[35] When Senator Charles Schumer took a position that GM should assume the Delphi salaried retiree pensions, Mr. Deese emailed Mr. Rattner this "may complicate the optics of doing anything for the splinters." Other emails from Mr. Deese stated, "We will continue to face intense scrutiny on this issue. The politics of terminations is quite intense" and "we need to work on a clear rationale for the outcomes we're moving toward, as well as an explanation of respective roles." Mr. Rattner emailed members of the Auto Team that he had spoken with Fritz Henderson about "our logic on the splinters, which he [Henderson] was fine with. [Auto Team Analyst] Sadiq [Malik] should speak to Janice [Uhlig][36] about the details, particularly how the reallocation of the $417mm would work." [37] Auto Team member Feldman emailed members of the Auto Team about health care/pension benefit changes for IUE and USW employees, and Mr. Deese responded that the company's organizing principle was parity between GM salaried and non-UAW hourlies. Mr. Deese referenced a discussion about health care costs and the "credible fairness arguments to augment the hourlies' recovery based on the pension disparity, but that for all the reasons we discussed that would not be possible. However, I think the logic of that conclusion strongly counsels in favor of bringing the top-up through. Otherwise, we're moving in the opposite direction from a position that we all agreed was itself on the edge of fairness."

In the emails from middle to late July 2009, Mr. Feldman told the Auto Team and Mr. Deese, "GM had separately concluded that as part of reaching a resolution with the splinters they needed to be prepared to honor the top-up." Mr. Deese later emailed the Auto Team that he told an IUE official that "this is GM's negotiation," that they should only engage in discussions if there is a "risk that GM would go substantially beyond what we had discussed with them," to which Mr. Feldman replied, "I continue to think we should stay out. We have given GM our input but this is up to GM." CEO Henderson told SIGTARP that the input Treasury gave was the two-thirds reduction.

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[35] Mr. Deese may have been emailing about this matter because Mr. Bloom sent the splinter unions to Mr. Deese because of Mr. Bloom's prior employment with the USW. Also, the splinter unions met with the President on July 13, 2009, but pensions were not discussed. SIGTARP was unable to interview Mr. Deese about these emails and these events because the Administration declined to make him available for an interview because until just recently he was an advisor to the President. The Administration cited what it referred to as a long-standing practice. The Administration also did not grant SIGTARP's request for an interview with Dr. Summers, although White House Counsel advised SIGTARP that they contacted Dr. Summers and that he indicated to them that he had no specific recollection of, or involvement in, the issue of the Delphi pensions. Dr. Summers is not a current employee of the Administration.

[36] Janice Uhlig was a GM health care finance executive involved in the benefit analysis for GM.

[37] The $417 million figure related to health care costs related to the two-thirds reduction in certain costs for GM that Mr. Rattner had set for GM as a guideline during the GM bankruptcy.

Although the meaning of these Government emails is unclear, GM officials told SIGTARP that they did not know the views of Treasury or the White House. GM Associate General Counsel Frank Jaworski told SIGTARP that Mr. Feldman asked for updates on the progress of negotiations but did not express any views of the White House or Treasury. He told SIGTARP that there were no constraints or limitations placed by Treasury during the talks with the unions. Then-CEO Henderson told SIGTARP that he did not remember talking to anyone in the Administration about the top-up or that anyone put limitations or constraints on the negotiations. He told SIGTARP that he did not recall any suggestion that GM provide the top-up, or anyone at Treasury or the Administration (such as Mr. Deese) wanting GM to provide the top-up. CEO Henderson told SIGTARP that there was no pressure to provide the top-up from the Administration or Treasury.

On September 10, 2009, as part of a larger settlement agreement that also addressed retiree health care, New GM agreed to honor IUE's and USW's Delphi top-up agreements at an estimated cost of $350 million. CEO Henderson told SIGTARP that providing the top-up was necessary "to get the deal done," saying there was a clear inference that IUE could strike at Delphi, which would have shut down GM.[38] GM's then-CFO Young told SIGTARP, "If Delphi shut down, we shut down."[39] Then-CEO Henderson and another GM executive told SIGTARP that although Treasury knew about these top-ups and did not oppose them, GM did not seek Treasury's consent because the TARP loan agreement prohibiting GM from taking on new pension liabilities was between Treasury and Old GM, not New GM.

[38] One GM official told SIGTARP that the unions got the agreement because liquidation of Delphi would have been a disaster for GM.

[39] GM's former CFO Young told SIGTARP that if the Delphi bankruptcy had gone on longer, it would have been difficult for GM and GM would have had to develop an alternative means to obtain parts. Delphi exited bankruptcy in October 2009.

Conclusion

The U.S. Department of the Treasury's ("Treasury") injection of Troubled Asset Relief Program ("TARP") funds in General Motors Corporation ("GM") and Chrysler Group LLC ("Chrysler") was the only bailout with a President's Designee overseeing the companies' restructurings. With the first TARP injection of $13.4 billion in December 2008, Treasury assigned responsibility over GM's restructuring to the President's Designee. In February 2009, the President designated the Presidential Task Force on the Auto Industry ("Auto Task Force"), which delegated the responsibility for GM's restructuring to four primary officials who were part of an Auto Team ("Auto Team"), three of whom worked at Treasury from February 2009 to the summer of 2009,[40] led by Steven Rattner, who was called the "car czar."[41] The existence of the Auto Team and the role these Treasury officials played sharply contrasted with the role played by Treasury officials under other TARP programs. These four Auto Team officials played a direct role in GM's decisions and operations up to and through one of the largest and fastest bankruptcies in our nation's history. A new company referred to as New GM emerged from GM's bankruptcy in July 2009, with Treasury owning 61% of its common stock on behalf of taxpayers. New GM purchased substantially all of GM's assets while leaving behind many of its liabilities.

One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees who had worked in its automobile parts division Delphi Corporation ("Delphi"), when GM spun off Delphi into an independent company in 1999. The agreement ran to Delphi employees who were paid an hourly wage (an "hourly employee") and were represented by certain unions. Delphi employees who were paid a salary (a "salaried employee") did not have an agreement for GM to pay anything toward their pensions after the 1999 spinoff. Delphi, which was GM's largest supplier of parts, had been in bankruptcy since 2005 and did not have enough money to fund its pensions. When interviewed by SIGTARP, the four Treasury Auto Team officials made it clear that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring.

As GM's only lender and later GM's largest investor, Treasury, through its Auto Team, had significant leverage and influence on GM's decisions leading up to and through the bankruptcy. Before and after GM submitted its restructuring plan to Treasury, the Auto Team had been assessing bankruptcy, and in February was planning (but not discussing with GM) a GM bankruptcy that would sell assets to a buyer, leaving behind many of its liabilities. The Auto Team believed this type of bankruptcy (called a "363 sale" for a section of the bankruptcy code) would be quicker than a normal 9 to 12 months bankruptcy. They were also planning this

[40] The fourth primary official continued to work on the Auto Team until the fall of 2011.

[41] The Auto Task Force was co-chaired by former Treasury Secretary Timothy Geithner and former National Economic Council Director Lawrence Summers.

type of bankruptcy for Chrysler. The Auto Team first exerted their significant influence on GM by replacing GM's CEO Rick Wagoner (who adamantly opposed bankruptcy) with Treasury's choice, Fritz Henderson, a move that GM's Board of Directors viewed as Treasury usurping their power. Mr. Henderson told SIGTARP that the Auto Team's decision to replace Mr. Wagoner with their selection sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations.

Importantly, three days later, on March 30, 2009, Treasury rejected GM's restructuring plan that did not plan for bankruptcy, required a new plan signaling that GM may need bankruptcy, and injected $6 billion in TARP funds in GM – enough financial support to last 60 days. With only 60 days of funding, GM developed a new restructuring plan with significant influence and leverage from Treasury's Auto Team. The December 2008 TARP loan agreement gave Treasury the explicit right to approve transactions over $100 million and new pension obligations, but the Auto Team's influence went far beyond that legal right. One GM official told SIGTARP, "Ultimately it was that GM is not in control. And GM is totally dependent."

Although the Auto Team's role was supposed to be advisory for matters not requiring Treasury's consent under the TARP Loan Agreement, in practice it was more than advisory. SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions in areas that did not require Treasury consent. One Auto Team official described Treasury as GM's "only lifeline." The Auto Team exerted the influence that came with that position. According to numerous interviews of Auto Team and GM officials, the Auto Team "was persistently pressing" and "pushed" GM to take more significant actions than GM would have done on its own, actions in line with Treasury's preferences. As SIGTARP previously reported in its prior audit, in response to the Auto Team's rejection of GM's restructuring plan and its explicit comment that GM's "pace" of dealership closings was too slow and an obstacle to its viability, GM substantially accelerated its dealership termination timelines.[42] Although the Auto Team did not tell GM which dealerships to close, GM made the decision to accelerate the dealership closings with significant Treasury influence.

An Auto Team official told SIGTARP that "There was a feeling that the Auto Team had to carefully manage GM, which would have given away Treasury's money without blinking." Another Auto Team official explained to SIGTARP that Treasury did not want to start running the company, but when dealing with taxpayer resources, "We, the Government, were ultimately holding that purse string," and Treasury reserved the right to tell GM that they would not back them. A third Auto Team official told SIGTARP that they did not cram down decisions

[42] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks," 7/19/2010.

on GM, "but we were investing a lot of money, and we had the opportunity to disagree." There was no need for ultimatums. As one Auto Team official told SIGTARP, "GM realized that there was no other available source of money." When an Auto Team official was asked by SIGTARP how the Auto Team conveyed their preference or nudged GM to see things the way the Auto Team saw them, given that ultimately GM could do its own thing, the Auto Team official said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Driven by broader concerns about the auto industry, Treasury's Auto Team directed GM's restructuring efforts toward filing for bankruptcy. The Auto Team took steps to signal to GM their strong preference for bankruptcy and bring significant influence over GM's decision to file bankruptcy. The Auto Team's replacement of GM CEO Wagoner, who did not favor bankruptcy, and the choice of Mr. Henderson as CEO, signaled the Auto Team's preference for bankruptcy and directed GM's restructuring efforts toward bankruptcy. GM CEO Henderson was open to bankruptcy but only as "Plan B." He hoped to avoid bankruptcy by getting bondholders to exchange their debt for GM stock. Despite the exchange being a condition under the TARP loan agreement, Treasury's Auto Team did not believe that the bond exchange alone would make GM viable and asserted their leverage as the primary financial support of GM. In the first week of April 2009, the Auto Team "highly suggested" to GM that they felt "pretty strongly" that a Section 363 bankruptcy was the "best approach." The Auto Team opposed GM's decision to proceed with the bond exchange and communicated to GM their preference that 90% of the bondholders participate in the exchange, a "level of acceptance" that was "very high," making bankruptcy more likely, according to then-CEO Henderson. CEO Henderson told SIGTARP that it was not clear that bankruptcy was the only option until the bond exchange failed. With a $1 billion bond payment coming due June 1, 2009, which Treasury would not fund, GM asked Treasury to fund GM's bankruptcy. Having already invested $19.4 billion in TARP funds and out of concern that a GM failure could have a cascading effect throughout the automobile industry by causing related companies to fail, Treasury agreed to fund GM's bankruptcy with a $30.1 billion TARP loan. Not wanting the TARP debt on GM's balance sheet, Treasury decided that its combined $49.5 billion in TARP loans would convert to 61% ownership of common stock in New GM, the purchaser in bankruptcy.

Treasury's Auto Team created a condition on funding GM's bankruptcy that would serve as pressure on GM and would drive pre-bankruptcy negotiations and decisions. Treasury conditioned giving GM $30.1 billion in TARP funds on a "quick-rinse bankruptcy" that would end in 40 days because Auto Team officials thought that was the best way to save the automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Treasury Auto Team officials deemed speed as essential and were concerned that if GM's bankruptcy was prolonged, consumers would stop purchasing GM's automobiles, and GM would likely fail. Neither Treasury

nor GM believed that the company could survive a lengthy bankruptcy; however, GM thought that the 40-day timeframe was not realistic. GM's bankruptcy lawyer told the Auto Team that the timeline was "impossibly aggressive. It's never been done." Treasury had leverage to set conditions on TARP funds, even if it was a timeframe that did not seem realistic to GM and had never been done before. If GM's bankruptcy was not completed in time, GM risked losing its only source of financing and its purchaser in bankruptcy.

Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. With their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. GM's then-CFO Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." One Auto Team official told SIGTARP that "We approve technically everything because we don't have to do the DIP [debtor-in-possession bankruptcy loan]. But no, not in the micro. I mean it wasn't, you know you bring us this, we approve this, we approve that. It was bring us a plan and we do a DIP or we don't do a DIP." One Auto Team official testified in a deposition that the leverage Treasury had with Old GM was that Treasury was the only buyer for GM's assets. That same Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation. One reason why the Auto Team had chosen a 363 bankruptcy sale was the ability to "cherry-pick" assets and liabilities that New GM would take on. An Auto Team official stated in a deposition, "it is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on.

A quick-rinse bankruptcy requires consensus with major stakeholders, and Treasury used its significant financial leverage to get GM to reach agreement with the two stakeholders that Treasury believed could hold up GM's bankruptcy – the bondholders and the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"). The 2008 TARP loan agreement required new agreements with both of these groups. Treasury made a deal with the bondholders in the weeks prior to GM filing bankruptcy because of the bondholders' leverage to object to and prolong the bankruptcy. The Auto Team was actively involved in the negotiations out of concern that the bondholders were a major risk of delaying the bankruptcy if they objected. Treasury was in a position to provide bondholders with a better recovery than under the bond exchange. This was because Treasury would own most of the equity of New GM, and, according to Henderson, equity was something only Treasury could provide. In exchange for the bondholders agreeing not to oppose the bankruptcy, Treasury gave additional consideration to Old GM during the bankruptcy proceeding, to the benefit of GM's bondholders.

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW and resulted in New GM taking on the liability to top up the pensions of UAW's members who had worked at Delphi at the time of its 1999 spinoff from GM, increasing their pension benefit payments to their full benefit level.[43] Members of the Auto Team were actively involved in the negotiations with UAW that took place on May 18-19, 2009, at Treasury's offices and at the offices of Treasury's lawyers in Washington, D.C. One Auto Team official testified in a deposition that Treasury represented the owners of New GM in the negotiations. GM and Auto Team officials were concerned that the UAW, referred to as "the big dog" by an Auto Team official, represented 99% of GM's unionized employees and could stop production with a strike. In addition to the traditional strike leverage, the requirement in the TARP loan agreement for a new collective bargaining agreement and the Auto Team's 40-day timeframe for bankruptcy gave the UAW additional leverage. An Auto Team official told SIGTARP that the UAW was a very major constituency that could slow down and potentially block the entire sale. The Auto Team made it very clear to GM and the UAW that it was essential that they reach an agreement with UAW prior to GM's bankruptcy filing. The UAW understood that GM could not walk away from negotiations and had to reach an agreement with it to be able to survive, and those same facts put pressure on GM. Given the need for GM to file bankruptcy by June 1, 2009 when a $1 billion bond payment came due, GM only had a couple of weeks to come to an agreement with the UAW, and if they did not come to agreement, GM risked the UAW objecting to and prolonging the bankruptcy beyond 40 days, which GM believed would lead to liquidation.

The UAW came to the negotiations with a "hit list" of priority items that included New GM assuming the pension benefit guarantee ("top-up") for the former GM employees at Delphi represented by UAW. Since February 2009, the Auto Team had been analyzing options concerning the top-ups of Delphi employees and had been negotiating with the Pension Benefit Guaranty Corporation ("PBGC"), the Government entity that insures pensions. The May 2009 UAW negotiations only focused on those aspects that were discussed in the TARP loan agreement, which included GM funding retiree health care costs using New GM stock, with Treasury as the majority owner of New GM. According to Mr. Rattner's book, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* ("*Overhaul*"), when GM's CEO raised pensions, the UAW's president reportedly said, "We aren't going to sit in this room if pensions are on your list." At the end of two days, the UAW left the negotiations at an impasse. The UAW president called Auto Team official Ron Bloom the next day, and they made the overall deal for a new collective bargaining agreement. The

[43] Delphi was GM's largest supplier of auto parts and had been in bankruptcy since 2005.

top-up was never discussed in the negotiations where both GM and Treasury were present and actively negotiating.

The Auto Team's role in the decision to top up the pensions of Delphi's UAW workers was not advisory. Consistent with the Auto Team's practice, as with any liability, it would have been Treasury's decision as the buyer to assume or reject the liability to top up the pensions of Delphi hourly UAW employees. The Auto Team made it clear to GM that they wanted an agreement with the UAW prior to bankruptcy and the Auto Team actively negotiated and made the overall deal. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included in the Master Sale and Purchase Agreement selling assets to New GM.[44] GM could not decide on its own to agree to the new collective bargaining agreement that included the top-up because Treasury's consent was required under the TARP loan agreement and Treasury was the purchaser in bankruptcy. The decision that New GM would honor the top-up was a joint decision by Treasury and GM with Treasury deciding to approve the collective bargaining agreement with the UAW that included the top-up.

Even though the top-up was never discussed in the negotiations with the UAW, it became a foregone conclusion that it would be included in the new UAW collective bargaining agreement. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring its pension benefit guarantees in bankruptcy, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Auto Team leader Rattner and another Auto Team official told SIGTARP that, because the UAW included the top-up on their list, it was clear that the UAW expected the top-up to be part of the overall deal. Treasury had the power to object to New GM taking on the top-up obligation as part of the larger agreement with the UAW, but had no desire to blow up the larger deal. Although the Auto Team was concerned about the threat of the strike, they were also concerned with the UAW prolonging the bankruptcy. An Auto Team official told SIGTARP that not having an agreement with UAW would have been like "shooting yourself in the head," adding that it could have resulted in the liquidation of GM. Auto Team leader Rattner told SIGTARP that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure." Auto Team leader Rattner told SIGTARP, "It was not a ridiculous request. And one that we could have honored and needed to honor."

Then-GM CEO Henderson told SIGTARP that the pressure to finish the negotiations resulted in no negotiation on the top-up, and although GM knew about the top-up, "the focus was on getting the deal done." CEO Henderson told SIGTARP that renegotiating the pensions in bankruptcy would have taken a long

[44] According to the UAW, it made a number of concessions in the negotiation including: elimination of performance bonuses and cost of living adjustments, reduced holidays, scaled-back overtime rules, and frozen wages for new entry employees. GM would be allowed to use stock to replace debt for the VEBA health care trust, and other concessions.

time – a risk that GM did not believe it could afford to take because Treasury had given no indication that it would extend financing beyond 40 days. CEO Henderson told SIGTARP that if the pension benefit guarantee with the UAW was not assumed by GM, it would have been "mission impossible."

Treasury's Auto Team and GM did not agree to top up the pensions of other former GM employees at Delphi, which did not have active employees at GM, and therefore had no leverage to hold up GM's bankruptcy. This included Delphi employees who were paid a salary and employees who were paid an hourly wage who were members of the IUE and USW unions. These two groups of employees had pension plans that had become underfunded. Although the hourly employees at these unions had a preexisting top-up agreement, there were no discussions regarding the top-up agreement with GM and these unions prior to GM's bankruptcy. Although in GM's bankruptcy New GM did not assume the other top-up agreements with Delphi IUE and USW employees because those unions did not have leverage, subsequently New GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive.[45]

Delphi's salaried retirees had no leverage, other than what they hoped would be political leverage and that Treasury, as a Government agency, would provide them with a top-up. The Delphi salaried employees were not represented when Delphi was spun off. GM had fully funded (at 123%) the expected payments needed to cover the salaried employees' pension plan at the time of Delphi's spinoff and there was no top-up agreement in place. They did not have active employees at GM and were not creditors in GM's bankruptcy. They sought to use their only tool, political pressure, to improve their position in the hopes that Treasury would provide them with the same treatment as Delphi UAW employees. GM officials took the position with PBGC and Delphi, and confirmed in SIGTARP interviews, that GM did not believe it had the ability to provide a top-up for the salaried employees on its own because the TARP loan agreement prohibited GM from increasing pension benefits without Treasury's consent. The cost was also over the $100 million threshold requiring Treasury's consent. According to a Treasury document, it was estimated that Delphi salaried retirees' would lose approximately $440 million in pension benefits. A top-up would be expected to cost an equivalent amount.

[45] The interconnectedness of Delphi to GM provided the IUE and USW hourly employees leverage in Delphi's bankruptcy where these employees filed objections to the bankruptcy and threatened to strike. New GM began negotiations with the IUE and USW shortly after its emergence from GM's bankruptcy in an effort to resolve remaining issues. As part of a larger settlement, New GM agreed to top up the pensions of these workers at an estimated cost of $350 million. GM executives believed that a shutdown at Delphi could shut GM down. Given that these negotiations took place after New GM emerged from GM's bankruptcy and the Auto Team was disbanding, the Auto Team was not involved in the same way they had been leading up to and through the bankruptcy. According to then-CEO Henderson, GM did not seek Treasury's consent because the TARP loan agreement prohibiting GM from taking on new pension liabilities was between Treasury and Old GM, not New GM.

Ultimately, GM did not fail and the broader systemic consequences of a GM failure that Treasury had feared were avoided. There are two important lessons to be learned from the role that Treasury's Auto Team played.

First, the Auto Team's deep involvement and significant influence on GM's decisions leading up to and through GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government. PBGC had an expectation that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what might have normally occurred, and could potentially have saved PBGC billions of dollars with Treasury involved. Also contributing to this expectation was the fact that the Auto Team negotiated with PBGC on behalf of GM related to what GM would pay on the pensions. Delphi and its workers, who had been former GM employees, also had the expectation that the Government would ensure that GM treat the pensions of all former GM employees at Delphi the same out of fairness. Also contributing to this expectation was the fact that TARP funds were being used, and that GM had taken the position with Delphi (and PBGC) that taking on additional pension obligations violated the TARP loan agreement and required Treasury's consent. A PBGC document stated that Delphi believed GM may be looking to the "car czar" to mandate that GM assume Delphi pensions as part of GM's use of TARP funds. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government and make themselves into a commercial enterprise" and "it is wrong of our Government to take funds from everyone and give it to the few." However, Auto Team officials attempted to view top-ups as a private investor. An Auto Team official told SIGTARP that the Government could not make everyone whole, saying, "I don't think that anybody thinks bankruptcy is fair."

Treasury's Auto Team did not always act as a private investor and at times acted as the Government to prevent GM from failing, concerned about financial stability in the auto industry. Although the Auto Team tried to view issues through a "commercially reasonable" lens like a private investor, they often did not act as a private investor, nor should they have. Without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns. For example, Treasury decided not to move GM's headquarters to save costs out of concerns over the impact on the city of Detroit. Treasury made other decisions based on broader concerns about the interconnectedness of the auto industry. No private investor holds the responsibility Treasury has to protect taxpayers and to promote financial stability in the economy. Treasury made the TARP injections in GM when, according to GM's then CFO, no other private investor would lend or invest the money that GM needed. Concerned that the TARP loans would be too much debt on GM's balance sheet, Treasury funded GM's bankruptcy and converted what would be higher priority debt to a lower priority equity ownership in New GM and, according to GM, paid more than GM's "Enterprise Value." Treasury's Auto Team took these actions based on

concerns of the consequences of a GM failure on other companies in the American automotive industry, concerns not held by private investors. Even though Treasury, through the Auto Team, tried to act as a private investor, they had considerations that no private investor would ever have had, blurring the lines between Treasury's role as the investor and as the Government.

Second, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. One Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held, but SIGTARP found that additional leverage was given by Treasury. The Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to GM's bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days. Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having leverage because they did not have current employees at GM and therefore could not hold up GM's bankruptcy.

Two liabilities that the Auto Team had already decided to assume in bankruptcy were a new agreement with the UAW and an agreement with the bondholders. The UAW had leverage because it knew and understood from Treasury that it was committed to reorganize GM and not let GM fail. Moreover, Treasury's 40-day bankruptcy condition gave the UAW and bondholders additional leverage to threaten to hold up GM's bankruptcy. They may have been able to obtain more concessions than in a traditional bankruptcy where the issues may be litigated. An Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept." With Treasury's dictate of a 40-day bankruptcy and no indication that Treasury would extend that timeframe, GM officials were under pressure, believing they had to reach agreements with the bondholders and UAW prior to a June 1 bankruptcy filing or risk losing Treasury's funding and liquidating.

It is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities. Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in the economy. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

Management Comments and SIGTARP's Response

Treasury provided an official written response in a letter dated August 9, 2013. (Full text in Appendix D). In its response, Treasury noted: (1) that the decision to top up pensions of certain hourly Delphi retirees, but not for salaried Delphi retirees, had sound commercial reasons; (2) that Treasury does not believe that the facts support the conclusions regarding the decision-making process and Treasury states that the report is based on interviews of the former Treasury [Auto Team] officials done without Treasury being present; and (3) Treasury was not given the executive summary of the report and therefore Treasury does not think they received the full draft report prior to publication.

The report highlights the multiple factors which affected the decision-making process leading up to and through the GM bankruptcy and Treasury's role in the decision to top up certain Delphi retirees. As the report makes clear, the consideration of commercial reasonableness was only one factor driving the decisions. The report's conclusions are well-supported. SIGTARP has a rigorous quality control system designed to ensure that audits are performed and reports are issued in accordance with professional standards and legal and regulatory requirements. SIGTARP's system of quality control was recently reviewed as part of the Council of the Inspectors General on Integrity and Efficiency external peer review program and assigned the highest rating. SIGTARP provided Treasury with a complete draft of the report including the conclusion. The executive summary is typically drafted after receiving Treasury's response, and is a summary of the conclusion provided to Treasury, with no new information. Therefore, Treasury was missing no information in the report.

Appendix A – Objectives, Scope, and Methodology

SIGTARP performed this audit under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. We initiated this audit as part of our continuing oversight of TARP and in response to a request from former Congressman Christopher J. Lee in a letter dated August 3, 2010. We later received an additional request to conduct the audit by Congressman Michael R. Turner on March 3, 2011. The requesters asked SIGTARP to conduct a review related to GM's decision to top up certain Delphi hourly retirees' pension benefits. In response, the audit's objectives were to review:

- Treasury's role in the decision for GM to top up the pension plan; and
- whether the Administration or the Auto Task Force pressured GM to provide additional funding for the plan.

The audit engagement was announced in November 2010 and we conducted our audit work from December 2010 through August 2013 in Washington, D.C., New York, N.Y., San Antonio, Texas, Chicago, Ill., Pittsburgh, Pa., and Detroit, Mich. This audit was conducted in coordination with GAO to avoid excessive duplication of efforts. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. The objectives of SIGTARP's audit did not involve a review of PBGC's termination of the Delphi pension plans.

SIGTARP interviewed current and former officials from GM, Delphi, UAW, IUE, USW, the Delphi Salaried Retirees Association, PBGC, and Treasury. In addition to testimonial evidence, SIGTARP reviewed documents concerning the Auto Team, GM, Delphi, UAW, IUE, USW, PBGC, and the Administration, including emails, contracts, calendar appointments, letters, memorandums, written policies, procedures, guiding principles, press releases, public announcements, and written analyses. SIGTARP also reviewed court documents, including depositions and motions, filed in the GM and Delphi bankruptcies and in litigation brought by the Delphi Salaried Retirees Association.

SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

SIGTARP conducted this audit in accordance with generally accepted government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. SIGTARP believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

Limitations on Data

SIGTARP generally relied upon Treasury to identify and provide relevant documentation, including email communications and other Treasury records. To the extent that the documentation provided to SIGTARP by Treasury did not reflect a comprehensive response to SIGTARP's documentation requests, SIGTARP's review may have been limited.

Use of Computer-Processed Data

SIGTARP did not use any computer-processed data to complete this audit.

Internal Controls

SIGTARP did not perform an assessment of internal controls because such an assessment was not relevant to accomplishing the audit's objectives.

Prior Coverage

SIGTARP previously performed an audit related to Treasury's Automotive Industry Financing Program and GM's restructuring, titled "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks."[46] The audit reviewed, among other things, the role the Auto Team played in GM and Chrysler's decision-making process regarding auto dealership closings.

GAO has issued two related reports. In March 2011, GAO issued a report outlining the timeline leading to the Delphi pension top-ups and in November 2011 GAO issued a testimony statement based on the March 2011 timeline.[47] In December 2011, GAO issued a report that addressed PBGC's termination of Delphi's hourly and salaried pension plans.[48] In July 2012, GAO issued an additional testimony statement.[49]

[46] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks," 7/19/2010.

[47] GAO-11-373R, "Key Events Leading to the Termination of the Delphi Defined Benefit Plans," 3/30/2011. GAO also published a testimony based on its March 2011 report, GAO-12-234T.

[48] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011.

[49] GAO also published a testimony based on its March 2011 and December 2011 reports, GAO-12-909T.

Appendix B – Acronyms and Abbreviations

Acronym or Abbreviation	Definition
Auto Task Force	Presidential Task Force on the Auto Industry
Auto Team	a group of Treasury officials responsible for overseeing GM's restructuring, who reported to the Auto Task Force
CEO	chief executive officer
CFO	chief financial officer
Chrysler	Chrysler Group LLC
COO	chief operating officer
Delphi	Delphi Corporation
DIP	debtor in possession
GAO	Government Accountability Office
GM	General Motors Corporation
IUE	International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers
New GM	General Motors Company – name of the company after GM's bankruptcy was completed in July 2009
Old GM	General Motors Corporation
PBGC	Pension Benefit Guaranty Corporation
SIGTARP	Office of the Special Inspector General for the Troubled Asset Relief Program
TARP	Troubled Asset Relief Program
TARP loan agreement	Treasury's Loan and Security Agreement
Treasury	U.S. Department of the Treasury
UAW	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America
USW	United Steelworkers of America
VEBA	Voluntary Employee Beneficiary Association plan

Appendix C – Audit Team Members

This audit was conducted and the report was prepared under the direction of Bruce S. Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation, Office of the Special Inspector General for the Troubled Asset Relief Program.

Staff members who conducted the audit and contributed to the report include Simon Galed, Jonathan Lebruto, Eric Mader, John Poirier, and Samuel Withers.

Appendix D – Management Comments

ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 9, 2013

Christy L. Romero
Special Inspector General
for the Troubled Asset Relief Program
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Response to SIGTARP's Draft Report: "Treasury's Role in GM's Decision To Provide Pension Payments to Delphi Employees"

Dear Ms. Romero:

Thank you for the opportunity to review the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) draft report of June 28, 2013 titled "Treasury's Role in GM's Decision To Provide Pension Payments to Delphi Employees." This letter provides Treasury's official response to the report.

The report makes clear that GM's decision to provide supplemental pension benefits, or "top-ups," to certain Delphi hourly retirees, but not to do so for salaried retirees, was driven by sound commercial reasons. The draft report highlights a number of important facts in this regard that we have previously noted. Specifically, the report confirms:

- In 1999 GM spun off Delphi, an important auto parts supplier, into a separate company.
- At that time, the Delphi hourly pension plan was underfunded, whereas the Delphi salaried plan was fully funded.
- Also at that time, certain Delphi hourly employees negotiated for, and GM agreed to provide, pension top-up benefit guarantees so that those hourly employees were entitled to full pension benefits regardless of whether Delphi could fund them.
- Delphi salaried employees did not negotiate for, nor did they ever receive similar top-up benefit guarantees from GM.
- Following the 1999 spin off, the participants in the Delphi salaried pension plan no longer worked for, nor had any other connection to, GM.
- The UAW, which represented many of the participants in the Delphi hourly pension plan,

represented the vast majority of GM's workforce in 2009 when GM was trying to complete a restructuring.

- GM negotiated a new collective bargaining agreement with the UAW as part of that restructuring in which the UAW agreed to a number of wage and benefit concessions.

Therefore, GM treated the participants in the Delphi hourly and salaried pension plans differently because they were differently situated:

- GM honored the 1999 contractual obligation to certain Delphi hourly employees who were represented by the UAW for sound commercial reasons—to achieve overall labor cost reductions and ensure that it had a properly motivated workforce.

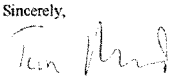
- In contrast, GM never had a contractual obligation to top-up the salaried retirees' pension benefits and there was no valid commercial justification for granting one in 2009. Topping up the salaried pension plan would have been equivalent, as SIGTARP highlights, to GM paying for the salaried pension plan twice.

Nevertheless, the report makes a number of judgments and characterizations, particularly with regard to the decision-making process, that we do not believe to be supported by the facts stated above, or any others in the report. In this regard, much of the report is based upon interviews with individuals where no Treasury representative was present. Several of the former Treasury officials that you interviewed have told us that certain quotes attributed to them in the report are inaccurate or taken out of context, and that the report's characterizations of the decision making process are inconsistent with their recollections of what happened. Lastly, Treasury was not given the full draft report prior to publication—the executive summary was omitted, for example.

While the bankruptcies of GM and Delphi have required painful sacrifices from all stakeholders, including the employees and retirees of each company, this Administration – as well the prior Administration – made the right choice to support the American auto industry. The actions taken brought needed stability to the auto industry and helped save more than a million American jobs. In addition, all three U.S. auto manufacturers are now operating at a profit – something that had not occurred since prior to the financial crisis in 2004 – and the auto industry is now putting thousands of Americans back to work, reversing some of the employment declines in years past.

Thank you once again for the opportunity to review and comment on the report. We look forward to continue working with you in the future.

Sincerely,



Timothy G. Massad
Assistant Secretary for Financial Stability

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SIGTARP Hotline

If you are aware of fraud, waste, abuse, mismanagement, or misrepresentations associated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline.

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By Mail:

Hotline: Office of the Special Inspector General
for the Troubled Asset Relief Program
1801 L Street., NW, 3rd Floor
Washington, D.C. 20220

Press Inquiries

If you have any inquiries, please contact our Press Office:

Troy Gravitt
Director of Communications
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Legislative Affairs

For Congressional inquiries, please contact our Legislative Affairs Office:

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202-927-9159

Obtaining Copies of Testimony and Reports

To obtain copies of testimony and reports, please log on to our website at www.SIGTARP.gov.

Mr. MICA. And as I said, we will withhold questions.

Now we have two GAO representatives, and we are going to recognize, I guess, Barbara Bovbjerg as the witness from GAO.

So welcome, and you are recognized.

STATEMENT OF BARBARA D. BOVBJERG AND A. NICOLE CLOWERS

Ms. BOVBJERG. Thank you so much, Mr. Chairman, Mr. Connolly, members of the committee. Thank you for inviting me and my colleague, Nicole Clowers, here today to speak about the termination of the Delphi pension plans. Our testimony today will address the timeline of key events leading to the plan's termination and the role of Treasury in these activities. This information is drawn from our 2011 reports prepared for Mr. Turner and others and relies on publicly available documents.

First, the pension plan terminations. In 1999, the Delphi Corporation, once part of GM, was spun off as an independent company, and as part of that arrangement GM was required to bargain with the unions affected by the spinoff. In those negotiations, GM agreed to provide top-ups to the unionized employees, meaning that if something went wrong with the pension plans for these employees under Delphi, GM would make good on their promised benefits. At the time of these agreements Delphi's hourly plan was not fully funded. In contrast, the salaried employees' plan was fully funded.

So fast forward to October 2005 when Delphi filed for bankruptcy. All Delphi pension plans were underfunded, and Delphi was not planning to make any contributions to these plans during the bankruptcy process. Hence, the prospects for those plans, and for the participants' future benefits, got substantially worse.

By the fall of 2008, Delphi was still in bankruptcy, and economic conditions had deteriorated throughout the auto industry. GM's losses led the company to seek assistance from the Federal Government. By April 2009, the Department of the Treasury was working with GM to develop a restructuring plan. And by June, GM, too, had filed for bankruptcy.

In June, as part of an arrangement for GM to emerge from bankruptcy, GM and the UAW agreed to modify wages, benefits, and work rules to be more cost competitive and agreed that New GM would assume all employment-related obligations and liabilities for any employee benefit plan covered by collective bargaining agreements. This, in effect, maintained the benefit guarantees GM agreed to in 1999.

Meanwhile, Delphi and PBGC began the process of what is called the distress termination of Delphi pension plans. In accordance with governing statutes, PBGC estimated that Delphi plans were $7 billion underfunded, with PBGC expected to bear $6 billion of that shortfall and Delphi plan participants the remaining billion. However, per the settlement agreement, GM provided top-up payments to all unionized workers. No such agreement pertained to salaried workers, and this is where the situation stands today.

So let me turn to the role of Treasury in these decisions. As GM's primary lender, Treasury played a significant role in helping GM emerge from its bankruptcy, which included resolving the Delphi bankruptcy. However, with regard to GM decisions about the Del-

phi pension plans, the court filings and statements from GM and Treasury officials that we reviewed suggest that Treasury deferred to GM's business judgment.

According to these records and to Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of sponsoring the entire Delphi hourly plan itself upon emerging from bankruptcy. Treasury also agreed with GM's rationale not to assume the Delphi salaried plan since that plan had been fully funded when GM transferred it to Delphi in 1999.

As for the top-ups, Treasury officials said that Treasury did not explicitly approve or disapprove of GM's proposal to honor previously negotiated top-up agreements with some unions. Treasury stated that its aim was to ensure that the New GM would only assume the liabilities of the old GM that were commercially necessary. Due to New GM's continued dependence on the UAW workforce and the workforce of the other unions, Treasury officials felt GM had solid commercial reasons to agree to the top-up pensions of those retirees.

I'd like to conclude with a few thoughts about these pension terminations. Under pension insurance laws, when companies go bankrupt and leave their plans with large unfunded liabilities, some participants may not get the full benefits promised to them by their employer. This, unfortunately, is not unusual. What makes the Delphi terminations different is the linkage to the GM bankruptcy and GM's role as a pension benefit guarantor.

Additionally, Treasury's multiple roles in this process, as SIGTARP just noted, have led to concerns about transparency to Congress and to the public. Although Treasury has established policies to separate its multiple interests, we believe the most effective means of addressing concerns about these different roles is for Treasury to be as transparent as possible about its activities.

And that concludes our statement, Mr. Chairman. Ms. Clowers and I are happy to answer questions.

Mr. MICA. Thank you.

[Prepared statement of Ms. Bovbjerg and Ms. Clowers follows:]

G02542 41-2

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

For Release on Delivery
Expected at 1:30 p.m.
Wednesday, September 11, 2013

DELPHI PENSIONS

Key Events Leading to Plan Terminations

Statement of

Barbara D. Bovbjerg, Managing Director, Education, Workforce, and Income Security Issues, and

A. Nicole Clowers, Director, Financial Markets and Community Investment Issues

GAO-13-854T

GAO Highlights

Highlights of GAO-13-854T, a testimony before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

The Delphi Corporation was a global supplier of mobile electronics and transportation systems that began as part of GM and was spun off in 1999. Delphi filed for bankruptcy in 2005, and in July 2009, PBGC terminated Delphi's six defined benefit pension plans and assumed trusteeship of the plans. Because of the resulting differences in participant benefits, questions have been raised about how PBGC came to terminate the plans, whether treatment for certain Delphi workers was preferential, and the role of Treasury in these outcomes.

GAO's testimony describes 1) key events related to the termination of Delphi pension plans and the reasons for GM providing retirement benefit supplements to certain Delphi employees, and 2) Treasury's role in those events. The testimony is primarily based on GAO's March and December 2011 reports that examined these and other related issues. In preparing these reports, GAO relied on publicly available documents—such as GM and Delphi bankruptcy filings, Treasury officials' depositions, and company reports to the Securities and Exchange Commission—and on documents received from groups GAO interviewed, including Delphi, GM, the Delphi Salaried Retiree Association, PBGC, and Treasury.

View GAO-13-854T. For more information, contact Barbara Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov or A. Nicole Clowers at (202) 512-8678 or clowersa@gao.gov.

September 11, 2013

DELPHI PENSIONS

Key Events Leading to Plan Terminations

What GAO Found

The termination of the six defined benefit plans that were sponsored by the Delphi Corporation (Delphi) and the provision of benefit protections to some Delphi employees, but not others, culminated from a complex series of events involving Delphi, the General Motors Corporation (GM), various unions, the U.S. Department of the Treasury (Treasury), and the Pension Benefit Guaranty Corporation (PBGC). When Delphi spun off from GM in 1999, three unions secured an agreement that GM would provide a retirement benefit supplement (referred to as "top-ups") for their members should their pension plans be frozen or terminated and they were to suffer a resulting loss in pension benefits. These three unions were: (1) the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); (2) the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE); and (3) the United Steelworkers of America (USWA). No other Delphi employees had a similar agreement to receive a top-up, including salaried workers and hourly workers belonging to other unions. Over the course of events that unfolded over the next decade, the agreements with these three unions ultimately were preserved through the resolution of the bankruptcies of both GM and Delphi. Because Delphi's pension plans were terminated with insufficient assets to pay all accrued benefits, and because PBGC must adhere to statutory limits on the benefits it guarantees, many Delphi employees will receive a reduced pension benefit from PBGC compared with the benefits promised by their defined benefit plans. Those Delphi employees receiving the top-ups will have their reduced PBGC benefit supplemented by GM while others will not.

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy. Treasury's effort to restructure GM included helping GM find the best resolution of the Delphi bankruptcy from GM's perspective. This effort was guided by the following principles: preserving GM's supply chain, resolving Delphi's bankruptcy as quickly as possible, and doing so with the least possible amount of investment by GM. However, court filings and statements from GM and Treasury officials suggest that Treasury deferred to GM's business judgment on decisions about the Delphi pension plans—that is, their sponsorship and the decision to honor existing top-up agreements. According to public records and Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of taking over sponsorship of the Delphi hourly plan, but that the company had solid commercial reasons to honor previously negotiated top-up agreements with some unions. According to court filings, Treasury officials said that Treasury did not explicitly approve or disapprove of GM's agreement to honor previously negotiated top-up agreements and PBGC officials stated that PBGC decided to terminate the plans independently of Treasury input. Nevertheless, as GAO has previously reported, Treasury's multiple roles created potential or perceived conflicts of interests. GAO has emphasized the importance of transparency and disclosures of Treasury's actions as a means to help mitigate potential or perceived conflicts related to these roles.

Chairman Mica, Ranking Member Connolly, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the termination of Delphi's pension plans. As you know, the Delphi Corporation (Delphi) was a global supplier of mobile electronics and transportation systems that began as part of the General Motors Corporation (GM) and was spun off as an independent company in 1999.[1] Following Delphi's bankruptcy, the Pension Benefit Guaranty Corporation (PBGC), the government corporation that insures private-sector defined benefit (DB) plans, terminated Delphi's six plans in July 2009. The plans were estimated to be underfunded by a combined $7.2 billion at termination, of which PBGC expected to cover about $6 billion.[2] Since the termination, there has been controversy over different pension benefit outcomes for certain unionized and non-unionized Delphi retirees. Further, the involvement of the U.S. Department of the Treasury (Treasury) in the bankruptcy of GM, Delphi's former parent company, raised questions for some about the role that Treasury played in PBGC's decision to terminate Delphi's pension plans, the decisions by GM to provide retirement benefit supplements ("top-ups") to certain Delphi employees, and the resulting outcomes for Delphi plan participants.

Our testimony discusses (1) key events related to the termination of Delphi pension plans and the reasons for GM providing top-ups to certain Delphi employees, and (2) Treasury's role in those events. Our comments are based on our March and December 2011 reports that examined these issues and on our body of work on the federal assistance provided to the

[1]At the time of the spinoff, Delphi established two pension plans, with assets and liabilities transferred from their GM counterparts: the Delphi Hourly-Rate Employees Pension Plan (hourly plan) and the Delphi Retirement Program for Salaried Employees (salaried plan). Delphi acquired four more plans after the spin-off from GM. Before bankruptcy reorganization, GM's legal name was General Motors Corporation. The legal name of the new entity created in the bankruptcy process is General Motors Company (the entity that purchased the operating assets of the pre-reorganization corporation, which we discuss later in this statement). As of October 19, 2009, General Motors Company became General Motors LLC. Throughout this statement, in cases where a distinction is important, we refer to the pre-reorganization corporation as "old GM" and the post-reorganization company as "new GM."

[2]A DB plan promises a benefit that is generally based on an employee's final pay and years of service. The employer is generally responsible for funding all or most of the benefit, investing and managing plan assets, and bearing the investment risk.

automakers through the Automotive Industry Financing Program.[3] To construct a timeline of events and identify Treasury's role in those events for our reports, we relied on publicly available documents, such as bankruptcy filings by GM and Delphi, Treasury officials' depositions, company reports to the Securities and Exchange Commission, press releases; and documents received from groups we interviewed, including Delphi, GM, the Delphi Salaried Retiree Association (DSRA), PBGC, and Treasury. We also reviewed the August 2013 report from Special Inspector General for the Troubled Asset Relief Program (SIGTARP) that examined Treasury's role in GM's decision to provide top-ups for certain hourly workers, including whether the Administration or Treasury pressured GM to provide additional funding for the hourly plan.[4] Our review differed from SIGTARP's review in terms of focus, scope, and methodology.[5]

We performed the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained

[3]See GAO, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans*, GAO-11-373R (Washington, D.C.: Mar. 30, 2011); *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits*, GAO-12-168 (Washington, D.C.: Dec. 15, 2011); *Troubled Asset Relief Program: Automaker Pension Funding and Multiple Federal Roles Pose Challenges for the Future,* GAO-10-492 (Washington, D.C.: Apr. 6, 2010*); Troubled Asset Relief Program: Continued Stewardship Needed as Treasury Develops Strategies for Monitoring and Divesting Financial Interests in Chrysler and GM*, GAO-10-151 (Washington, D.C.: Nov. 2, 2009).These products provide details on the scope and methodology of this work.

[4]Special Inspector General for the Troubled Asset Relief Program, *Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees*, SIGTARP 13-003 (Washington, D.C.: Aug. 15, 2013).

[5]Both GAO and SIGTARP were asked to examine various issues surrounding the termination of the Delphi pension plans. To mitigate potential overlap between our efforts, we agreed to focus on different aspects of the termination. For example, the two 2011 GAO reports focused primarily on PBGC's decision to terminate the Delphi defined benefit plans and how benefits were determined for different Delphi retirees, including the events leading to the payment of top-ups to certain Delphi employees, and how the termination of the plans compared to the termination of other large pension plans. In contrast, SIGTARP focused on whether GM's decision to provide additional funding for the hourly plan was influenced by Treasury or the Administration.

provides a reasonable basis for findings and conclusions based on our audit objectives.[6]

Key Events Leading to the Termination of Delphi's Pension Plans

Three Unions Secured Top-Up Agreements in Negotiations Following Delphi's Spin-Off from GM

As part of Delphi's spin-off from GM in 1999, GM was required to collectively bargain with the unions affected by the spin-off—including the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (IUE); and the United Steelworkers of America (USWA), as well as other "splinter" unions.[7] As a result of these negotiations, GM agreed to pay top-ups to "covered employees" with UAW, IUE, or USWA if the Delphi pension plans were terminated or frozen at a later date, covering any difference between the amount PBGC would pay them and the benefit amount promised by the Delphi plans.[8] Also, on December 22, 1999, Delphi agreed to indemnify GM for all benefits provided by GM under the UAW benefit guarantee.[9] At the time GM entered into these agreements, Delphi's salaried plan was fully funded while Delphi's hourly plan was not

[6]For additional information on scope and methodology, see GAO-11-373R, GAO-12-168, GAO-10-492, and GAO-10-151.

[7]The splinter unions include the International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Michigan Regional Council of Carpenters, Local 687 and Interior Systems, Local 1045; International Brotherhood of Painters and Allied Trades of the United States and Canada, Sign and Display Union Local 59; International Brotherhood of Teamsters; International Brotherhood of Boilermakers; International Union of Operating Engineers; and United Catering Restaurant Bar and Hotel Workers.

[8]"Covered employees" were generally defined as those who had been represented by these unions as GM workers and now as Delphi workers with no break in employment or seniority as of May 28, 1999.

[9]This indemnification would allow GM to have a claim against Delphi for any expenses incurred by GM for coverage of guaranteed benefits.

fully funded.[10] GM officials said that because the salaried plan was fully funded at the time of the spinoff, Delphi recognized that the plan was Delphi's responsibility; Treasury officials would also later note, in a legal brief commenting on GM's decision to pay top-ups, that the salaried plan was fully funded at the time GM transferred it to Delphi.

After Delphi Filed for Bankruptcy, Delphi and GM Agreed to Extend the Top-Up Agreements with the Three Unions

From 2001 to 2005, Delphi suffered large losses, and the company filed for bankruptcy in October 2005. After Delphi filed for bankruptcy, Delphi and GM agreed to extend the top-up agreements with UAW, IUE, and USWA.[11] The splinter unions negotiated for other benefits at this time, but were not guaranteed top-ups. No other agreements were reached in relation to top-ups for salaried workers.

In September 2007, GM and Delphi entered into a global settlement agreement that included a plan to transfer assets and liabilities from Delphi's hourly pension plan to the GM hourly pension plan, and for Delphi to freeze new accruals to its hourly plan. The agreement did not establish a specific effective date, but listed various conditions that had to be met for it to become effective. Before becoming effective, the agreement was modified in September 2008, based on further negotiations described below.

Under Delphi's initial reorganization plan, the company planned to emerge from bankruptcy without terminating its pension plans. However, in April 2008, the deal with investors that would have made this possible fell through. Five months later, in September 2008, Delphi and GM amended their September 2007 global settlement agreement to specify

[10]According to data provided by Delphi, based on a fair market valuation of plan assets the Delphi salaried plan was 108.8 percent funded as of year-end 1998 and 122.7 percent funded as of year-end 1999 while the Delphi hourly plan was 69.1 percent funded as of year-end 1999. A plan is fully funded if as of a particular date, plan assets equal or exceed the relevant measure of plan obligations. However, for the typical pension plan invested in a mix of stocks and bonds, measures of funded status can be highly volatile, so that a plan that is fully funded on one date could be substantially less than fully funded on a subsequent date.

[11]In June 2007, GM, Delphi, and UAW entered into a memorandum of understanding (MOU) extending the GM benefit guarantee for Delphi UAW workers, which would be enforceable if benefit accruals for future credited service in the Delphi hourly plan were frozen and if the plan were terminated. On August 5, 2007, GM and Delphi entered into a MOU with Delphi IUE, and on August 16, 2007, with Delphi USWA, providing the same top-up guarantee as the Delphi UAW MOU.

that GM would take responsibility for approximately $3.4 billion of net liabilities in Delphi's hourly plan in two phases. In the first phase, GM would assume a portion of Delphi's hourly plan with net liabilities of $2.1 billion. This transfer took place on September 29, 2008. In the second phase, upon "substantial consummation" of Delphi's reorganization, the remaining assets and liabilities in Delphi's hourly plan would be transferred to GM. No comparable arrangements were made for a transfer of assets and liabilities for Delphi's salaried plan or other smaller plans. In September 2008, Delphi froze its salaried plan and three of its smaller plans, and in November 2008, Delphi froze its hourly plan.[12]

Losses throughout the Automotive Industry Pushed Delphi Near Liquidation and GM to Seek Assistance from Treasury

Beginning in the fall of 2008, economic conditions deteriorated throughout the automotive industry. Delphi experienced declining revenues as GM and other manufacturers sharply reduced production in response to rapidly falling sales. According to documents provided by PBGC, when Delphi's financing agreement with its debtor-in-possession (DIP) lenders expired on April 21, 2009, Delphi's operations were threatened by the prospect of imminent liquidation. At that point, PBGC determined that it would seek termination of the Delphi salaried and hourly pension plans to avoid the losses that would result if the DIP lenders were to foreclose on their collateral and break up Delphi's controlled group. However, at the request of Delphi and the DIP lenders, PBGC agreed not to proceed with the termination in order to allow the parties to continue negotiating. In exchange, the DIP lenders agreed to give PBGC advance notice of any decision to foreclose so that PBGC could commence termination of the Delphi pension plans in time to protect PBGC's claims.

Meanwhile, GM's losses in the fall of 2008 led the company to seek assistance from Treasury through the Automotive Industry Financing

[12]A freeze is an amendment to a DB plan to limit some or all future pension accruals for some or all participants. For more information on types of freezes and their effects, see GAO, *Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, GAO-08-817 (Washington, D.C.: July 21, 2008).

Program (AIFP).[13] As a condition of receiving this assistance, GM was required to develop a restructuring plan to identify how the company planned to achieve and sustain long-term financial viability. In April and May 2009, Treasury worked with GM to develop a restructuring plan through the Presidential Task Force on the Auto Industry (Auto Task Force) and its staff (auto team).[14] On June 1, 2009, GM filed for bankruptcy and sought the approval of the bankruptcy court for the sale of substantially all of the company's assets to a new entity ("new GM").[15] In court documents, a Treasury official stated that Treasury was mandated by the President to act in a "commercially reasonable manner" as it related to GM's restructuring and ensure that the new GM assumed only those liabilities of the old company that were thought to be "commercially necessary" for the new company to operate.[16] As GM's primary lender, Treasury was concerned about GM's overall exposure to risks related to

[13]In December 2008, Treasury established AIFP under the Troubled Asset Relief Program (TARP) to help stabilize the U.S. automotive industry and avoid disruptions that would pose systemic risk to the nation's economy. TARP was originally authorized under the Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110-343, div. A, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261). EESA originally authorized Treasury to purchase or guarantee up to $700 billion in troubled assets. The Helping Families Save Their Homes Act of 2009 amended EESA to reduce the maximum allowable amount of outstanding troubled assets under EESA by almost $1.3 billion, from $700 billion to $698.741 billion. Pub. L. No. 111-22, div A, § 402(f),123 Stat. 1632, 1658. Under EESA the appropriate committees of Congress must be notified in writing when the Secretary of the Treasury, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines that it is necessary to purchase other financial instruments to promote financial market stability. § 3(9)(B), 122 Stat. 3767 (codified at 12 U.S.C. § 5202(9)(B)). The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, (1) reduced Treasury's authority to purchase or insure troubled assets to $475 billion and (2) prohibited Treasury from using its authority under EESA to incur any additional obligations for a program or initiative unless the program or initiative already had begun before June 25, 2010. Pub. L. No. 111-203, § 1302, 124 Stat. 1376, 2133 (2010).

[14]Treasury established an internal working group—the auto team—to oversee AIFP and provide analysis in support of the Auto Task Force.

[15]On June 1, 2009, GM filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. §§ 1101-1174) and conducted a court-supervised asset sale (under 11 U.S.C. § 363), in which substantially all of the operating assets of the company were sold to General Motors Company, or "new GM," and most of the company's debt and liabilities remained in the possession of Motors Liquidation Company, or "old GM," to be addressed in bankruptcy court. New GM emerged on July 10, 2009.

[16]Deposition of Treasury Official at 185, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009) and Motion of Defendants U.S. Department of the Treasury et al. at 10, No. 2:09-cv-13616 (E.D. Mich. Feb. 16, 2010).

distressed suppliers, including Delphi. Specifically, Treasury was concerned about how GM's Delphi liabilities would fit within the new company's business plan. According to a Treasury official's deposition, Treasury's mandate to restructure GM included helping GM determine the "best resolution" of the Delphi bankruptcy from GM's perspective, which was guided by three principles (see table 1). However, according to Treasury's February 2010 court motion, the Auto Task Force did not dictate what should be done with the Delphi pensions.

Table 1: Treasury's Guiding Principles for Resolving GM's Liabilities Related to Delphi

Principle	Treasury rationale
Development of a resolution that guaranteed the "sanctity" of GM's supply chain	Treasury did not want GM's attention, which was focused on its own restructuring, to be diverted to finding suppliers for the products provided by Delphi.
Quick resolution of the Delphi bankruptcy	Treasury wanted Delphi's bankruptcy to conclude sooner rather than later, given that Delphi already had been in bankruptcy for 3 years.
A resolution that required the least possible amount of investment by GM	Because GM already had invested billions of dollars in Delphi during Delphi's bankruptcy process, Treasury believed that GM should not provide additional money to Delphi absent an overall resolution of the Delphi bankruptcy.

Source: Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

In May 2009, Treasury had anticipated that Delphi's salaried pensions would be terminated, but that GM would assume additional liabilities for the Delphi hourly plan, as called for in the second phase of the September 2008 agreement. Additionally, on June 1, 2009, Delphi announced that its hourly plan would be "addressed by GM." However, the second phase transfer called for Delphi to pay a $2.055 billion administrative claim to GM, which it could not do. In the Treasury official's deposition, it was noted that shortly after GM's bankruptcy filing, GM notified Treasury that it had not built sufficient funding into its restructuring plan to take on the hourly plan, but that it had built in the assumption that it would provide the top-up for Delphi UAW retirees. The second phase of the transfer of hourly plan liabilities from Delphi to GM was not in GM's reorganization plan and never took place.

GM's Reorganization Maintained Delphi UAW Top-Ups Based on UAW's Continued Relationship with GM

As part of the sale of the assets of old GM to new GM, GM negotiated with UAW—which represented its largest employee group—to modify wages, benefits, and work rules to be more cost competitive. As a result of these negotiations, GM and UAW agreed that new GM would assume all employment-related obligations and liabilities under any assumed employee benefit plan relating to employees who are or were covered by UAW collective bargaining agreements in its master sale and purchase

agreement, which included GM's obligation to provide top-ups to Delphi UAW retirees.[17] No other negotiations took place that resulted in comparable obligations concerning top-ups for members of the two other unions, IUE and USWA (although they had previously secured top-up agreements with GM) or for the splinter unions or the salaried employees who had no previous top-up agreements with GM.

On June 19, 2009, IUE and USWA objected to the proposed sale of GM's assets because retirees of Delphi represented by IUE and USWA would not receive the same benefits as retirees of Delphi represented by UAW.[18] The court overruled these unions' objection to the sale, stating that new GM needed a "properly motivated workforce to enable [new GM] to succeed," requiring it to enter into "satisfactory agreements with the UAW" and was not "similarly motivated in triaging its expenditures to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM."[19] Accordingly, the bankruptcy court approved the sale of GM's assets on July 5, 2009, and those assets were conveyed to new GM on July 10, 2009.

Delphi Publicly Stated That It Was Unable to Fund Its Plans and the Plans Were Terminated

On June 1, 2009, Delphi, citing its inability to fund its plans and a lack of feasible alternatives, publicly stated that PBGC "may initiate an involuntary termination" of the Delphi salaried plan. Delphi and GM entered into agreements with PBGC that provided PBGC an unsecured claim in Delphi's bankruptcy and released PBGC's current claims and

[17]The master sale and purchase agreement outlined, among other things, the assets being sold by old GM to new GM and the liabilities being assumed by new GM from old GM. In re GMC, 407 B.R. 463, 481 (Bankr. S.D.N.Y. 2009) (Decision on debtor's motion for approval of (1) sale of assets to Vehicle Acquisitions Holdings LLC; (2) assumption and assignment of related executory contracts; and (3) entry into UAW retiree settlement agreement).

[18]Objection to Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k) and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (II) Schedule Sale Approval Hearing, In re General Motors Corporation, No. 09-50026(REG) (Bankr. S.D.N.Y. June 19, 2009).

[19]407 B.R. 512.

foreign liens on Delphi's assets on July 21, 2009.[20] On July 22, 2009—12 days after the sale of old GM's assets to new GM—PBGC announced the termination of all six of Delphi's qualified DB plans, and on August 10, 2009, PBGC assumed trusteeship of the plans. PBGC determined that the Delphi pension plans were underfunded by $7 billion when they were terminated. PBGC estimated that it would need to make up about $6 billion of that shortfall using PBGC funds,[21] leaving plan participants to bear the loss of the $1 billion difference through reduced benefit amounts provided by PBGC, consistent with statutory limitations.[22]

New GM Ultimately Agreed to Provide Top-Ups for IUE and USWA to Help Finalize Delphi's Bankruptcy

The approval of the sale of old GM did not resolve IUE's and USWA's claims that new GM was required to continue to provide the pension benefit guarantees in accordance with collectively bargained agreements. Both old GM and new GM denied these claims. According to a company filing, new GM maintained that it was not obligated to assume or to continue to abide by old GM's collective bargaining agreements with IUE and USWA, while old GM maintained that it was entitled to cancel or terminate all obligations arising from collective bargaining agreements between old GM and IUE or USWA. In the summer of 2009, IUE and USWA shifted the focus of their objections from the GM bankruptcy settlement to the Delphi bankruptcy settlement. On July 9 and July 15,

[20]PBGC agreed to release its $196 million of foreign liens (foreign subsidiaries had not filed for bankruptcy) and other termination claims in exchange for a $3 billion unsecured claim in Delphi's bankruptcy, a $70 million cash contribution from GM, and 10 percent of the first $7.2 billion of distributions from Delphi Automotive LLP, the newly created British partnership that purchased most of Delphi's assets.

[21]GM also assumed about $2 billion in net liabilities when it accepted the transfer of about a fourth of Delphi's hourly plan in September 2008. In addition, GM expects to pay an estimated $1 billion in top-up benefits to Delphi hourly employees.

[22]PBGC pays participant benefits only up to certain limits set forth by the Employee Retirement Income Security Act of 1974. 29 U.S.C. §§ 1322 and 1322a. Participants whose benefits under the plan would otherwise exceed these statutory limits may have their benefits reduced to the guaranteed amount, unless the plan has sufficient assets to pay the nonguaranteed portion of their benefits, either in part or in full.

2009, IUE and USWA, along with some of the splinter unions, filed objections against Delphi's proposed reorganization plan and sale.[23]

While new GM maintained that it was not obligated to provide top-ups to Delphi IUE and USWA retirees, it did have reason to want to resolve Delphi's bankruptcy, given GM's reliance on Delphi for parts.[24] Moreover, IUE and USWA, which still represented part of Delphi's workforce, needed to give their consent to finalize the sale of assets in Delphi's bankruptcy.[25] According to a GM official's court declaration, a prolonged cessation in the supply of parts from Delphi to GM would have had a "devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts

[23]Preliminary Objection of IUE-CWA to Motion for Order Authorizing and Approving the Equity Purchase and Commitment Agreement Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code, No. 05-44481 (RDD), (Bankr. S.D.N.Y. July 9, 2009) and Joinder of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union to Preliminary Objection of IOUE Locals and IBEW and IAM to Debtors' Motion for Order Authorizing and Approving Modified Plan of Reorganization, No. 05-44481 (RDD), (Bankr. S.D.N.Y. July. 15, 2009). Objection to Debtors' Proposed Modifications to Debtors' First Amended Plan of Reorganization (As Modified) at 2, No. 05-44481 (RDD) (Bankr. S.D.N.Y. July 15, 2009).

[24]According to a July 2009 declaration of a GM official, since the spin-off from GM, Delphi was GM's largest component parts supplier, accounting for approximately 11.3 percent of GM's North American purchases and 9.6 percent of GM's global purchases in 2008. Declaration of Randall L. Pappal in Support of Debtors' Motion for Entry of Order Approving (I) Master Disposition Agreement for Purchase of Certain Assets of Delphi Corp., (II) Related Agreements, (III) Assumption and Assignment of Executory Contracts, (IV) Agreement with PBGC, and (V) Entry into Alternative Transaction in Lieu Thereof, at 4, In re General Motors Corp., No. 09-50026 (Bankr. S.D.N.Y. July 8, 2009).

[25]Master Disposition Agreement among Delphi Corp.; GM Components Holdings, LLC; Gen. Motors Co., Motors Liquidation Co.; DIP Holdco3, LLC; and the Other Sellers and Other Buyers Party Hereto at 96 (July 26, 2009).

suppliers."[26] As a result, new GM signed a settlement agreement in September 2009 that, among other things, required new GM to provide top-ups to retirees of Delphi represented by IUE or USWA who were covered by the benefit guarantee agreements that GM had entered with IUE and USWA in 1999.[27] As part of the settlement agreement, IUE and USWA agreed to withdraw their objections against Delphi's bankruptcy, resulting in the completion of Delphi's reorganization on October 6, 2009, with the sale of its assets.

GM's agreements with certain unions gave rise to differences in participant benefits. Because Delphi's pension plans were terminated with insufficient assets to pay all accrued benefits in July 2009, and because PBGC must adhere to statutory limits on the amount of benefits it guarantees to individuals, many Delphi retirees will receive less from PBGC than their full benefit promised by Delphi. Based on PBGC's review of cases as of June 2011, when we conducted our December 2011 study, just under half of both the hourly and salaried plan retirees had received reductions in their promised benefits due to the application of statutory benefit limits. However, those participants in the hourly plan receiving the top-ups were protected from such benefit reductions because GM had agreed to supplement their PBGC benefit to replace any benefit loss, while other hourly employees as well as employees in Delphi's salaried plan and the other smaller plans were not protected from such losses.

[26]The July 2009 declaration of a GM official stated that Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts that are used in almost every GM product line in North America and identified several ways in which a cessation of parts delivery by Delphi could affect GM, including that (1) most parts that Delphi manufactures for GM are not readily available from an alternate source, and while GM could accelerate efforts to re-source Delphi parts in the event of a supply interruption, the sheer magnitude of the parts to be re-sourced and revalidation required would take at least several months to achieve; (2) because GM operates on a just-in-time inventory delivery system, GM plants relying on just-in-time shipments may run out of inventory of such parts and have to shut down within a matter of days, if Delphi ever ceased shipping even a small fraction of production parts to GM; and (3) the shutdown of GM plants as a result of termination of deliveries of affected parts from Delphi could idle tens of thousands of GM workers, significantly decrease GM's revenues, and increase GM's costs to expedite resourcing efforts.

[27]Settlement Agreement Between and Among GMCO/MLC-IUE-CWA and USWA Regarding Retiree Health Care, Life Insurance, Pension Top-Up, and Modification and GMCO Assumption of MLC-IUE-CWA CBA, dated Sept. 10, 2009.

Treasury Worked with GM to Resolve the Delphi Bankruptcy

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy in terms of GM's interests. However, court filings and statements from GM and Treasury officials suggest that Treasury deferred to GM's business judgment about the Delphi pension plans—that is, their sponsorship and the decision to honor existing top-up agreements. According to public records and Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of sponsoring the Delphi hourly plan. Additionally, PBGC officials have maintained that their agency's decision to terminate the Delphi plans was made independent from Treasury's input. As we reported in 2011, Treasury officials said that while Treasury did not explicitly approve or disapprove of GM's agreeing to honor previously negotiated top-up agreements with some unions, it agreed that GM had solid commercial reasons to enter into such an agreement.

Decisions Related to Plan Sponsorship

From Treasury's initial discussions with PBGC about Delphi's pensions in April 2009 until after GM's bankruptcy filing on June 1, 2009, Treasury had anticipated that PBGC would terminate Delphi's salaried pension plan but that GM would assume the remaining portion of Delphi's hourly plan, as called for in the second phase of the September 2008 agreement.[28] According to a Treasury official's deposition and our interviews with Treasury officials, Treasury agreed with GM's rationale not to assume the now underfunded Delphi salaried plan, because that plan had been fully funded when GM transferred it to Delphi in 1999. However, the Treasury official's deposition indicated that Treasury thought it was reasonable for GM to assume the Delphi hourly plan for UAW-represented workers, because of UAW's continuing role with the new GM and because the hourly plan, which covered both the UAW and other union-represented workers, had not been fully funded at the time the plan was transferred from GM to Delphi in 1999.[29]

According to our review of the records, Treasury was involved in discussions with PBGC and GM on how to address Delphi's pensions before GM's bankruptcy filing. Specifically, according to a Treasury official's deposition, initial discussions with PBGC, GM, and Treasury in

[28]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

[29]According to the deposition, Treasury was not focused on the other unions' plans at this time but was concerned about UAW because of UAW's role for new GM.

April and May 2009 centered on trying to reach an agreement under which, among other things, the Delphi salaried plan would be terminated and GM would assume the hourly pension plan. According to PBGC officials, discussions in April and May 2009 revolved around how to deal with Delphi's pension plans in light of the collapse of the automotive market, growing concerns about Delphi's imminent liquidation and inability to maintain its pension plans, and GM's own financial difficulties and impending bankruptcy. However, PBGC officials told us that they had not yet reached any agreement with GM or Delphi about the future of the Delphi pension plans.

According to court filings, GM officials first informed Treasury on June 3, 2009, (shortly after GM's bankruptcy filing) that they had concerns about taking on the hourly plan and had not built the cost of doing so into their restructuring plan. In June 2009, GM developed and provided Treasury with an assessment of the costs of Delphi's pensions, which explained that the restructuring plan did not assume the transfer of remaining Delphi hourly or salaried plans. The assessment also stated that, subject to certain conditions, GM was obligated to absorb the second transfer of Delphi's hourly plan but did not expect Delphi to meet those conditions.[30] GM also noted that it was not obligated to absorb Delphi's salaried plans. After reviewing GM's calculations and engaging in discussions with GM's pension team, Treasury agreed with GM's assessment that taking on the Delphi hourly plan was a "3 billion dollar liability that GM could not afford."[31] In a legal brief, Treasury asserted that the department did not dictate what should be done with the Delphi pensions and that Treasury agreed with GM's decisions.[32]

As we reported in 2011, according to PBGC, Treasury did not play an active role in PBGC's decision to terminate the Delphi plans, although by statute the Secretary of the Treasury is one of PBGC's three board

[30]The assessment added that since the first transfer in September 2008, the unfunded liability for the remainder of Delphi's hourly plan had increased from $1.5 billion to approximately $3.2 to 3.5 billion as of March 31, 2009.

[31]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009). Upon termination in July 2009, PBGC calculated that the underfunding of the hourly plan totaled $4.4 billion.

[32]Motion of Defendants U.S. Dep't of the Treasury et al. to Dismiss or, in the Alternative, for Summary Judgment at 24, No. 2:09-CV-13616 (E.D. Mich. Feb. 16, 2010).

members.[33] According to PBGC officials, PBGC's director at the time informed the board of PBGC's decision to seek termination of the Delphi plans, gave the board advance notice of subsequent implementation of that decision, and routinely kept the board informed of the agency's actions in the Delphi bankruptcy case, consistent with PBGC's practice in other large cases. The law gives the board responsibility to establish and oversee PBGC policies, but according to PBGC, the board decides broad policy issues that may arise from cases without getting involved directly in those cases.[34] For their part, Treasury officials acknowledged that the department had multiple roles in this process by virtue of its roles in PBGC oversight and in managing the U.S. investment in new GM, but noted that Treasury does not communicate with PBGC about its GM investment activities.[35] Moreover, in response to questions from Congress, the Treasury Secretary stated that Treasury did not make the decision to terminate Delphi's pension plans.[36]

Decisions Related to Top-Up Agreements

Although GM decided not to assume the second installment of Delphi's hourly plan, GM did decide to honor existing top-up agreements for commercial reasons that Treasury found reasonable. As noted in a Treasury official's deposition, during GM's bankruptcy process, GM was prepared to honor the obligation of providing top-ups to Delphi UAW retirees, while the situation was less clear in relation to comparable agreements with IUE and USWA. GM officials told us that the company agreed to honor the top-up agreement with UAW during its restructuring because of its dependence on the union, whose members made up a substantial part of GM's workforce. As previously noted, GM agreed to

[33]29 U.S.C. § 1302(d). As we reported in GAO-12-168, PBGC's decision to terminate the plans was ultimately precipitated by the apparent lack of a viable sponsor, impending foreclosure on Delphi's assets, and the prospect of increased losses for PBGC and the plans that would occur upon liquidation. Our examination of PBGC termination decisions for nine of its ten largest insurance claims (Delphi's being the tenth) shows the agency making assessments similar to those it made for the Delphi pension plans. See GAO-12-168 for more details on this work.

[34]29 U.S.C. § 1302(d) and (f).

[35]GAO-10-492.

[36]The Federal Bailout of AIG: Hearing before the H. Comm. on Oversight and Government Reform, 111th Cong. 310 (2010) (answers to questions for the record from Timothy Geithner, Secretary of the Treasury).

provide top-ups to the Delphi UAW retirees as part of GM's master sale and purchase agreement, to which Treasury gave its approval.

According to a Treasury official's deposition, Treasury was kept apprised of GM's ongoing bargaining with IUE and USWA on a variety of issues, including the top-ups.[37] According to Treasury officials, Treasury's consent for transactions greater than $100 million, which had been required before GM's bankruptcy, was not required of new GM. Therefore, Treasury's consent was not required when the settlement agreement was signed 2 months after new GM began operations. Negotiations resulted in the September 2009 settlement agreement between new GM, old GM, IUE, and USWA. According to the agreement, the parties entered into it after consideration of the "factual and legal arguments regarding these issues, as well as the costs, risks, and delays associated with litigating these issues."[38]

As we reported in 2011, although Treasury officials said Treasury did not explicitly approve or disapprove of GM providing top-ups to the Delphi UAW, USWA, and IUE retirees, Treasury subsequently commented on GM's decision. In its legal brief, Treasury stated that GM had solid commercial reasons for providing the top-ups.[39] Specifically, Treasury stated that its aim in negotiating the details of GM's reorganization plan was to ensure that new GM would assume only those liabilities of old GM that were "commercially necessary" for new GM to operate. Treasury noted in the brief that because of new GM's dependence on the UAW workforce and the costs, risks, and delays associated with litigating USWA's and IUE's claims related to the Delphi bankruptcy, new GM had solid commercial reasons to agree to provide the top-ups to the Delphi UAW, USWA, and IUE retirees. Additionally, Treasury officials noted that, unlike the hourly plan, the salaried plan was fully funded at the time GM transferred it to Delphi. Also, because GM was never obligated to provide top-ups to the salaried or other retirees not represented by UAW, IUE,

[37]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

[38]Settlement Agreement Between and Among GMCO/MLC-IUE-CWA and USWA Regarding Retiree Health Care, Life Insurance, Pension Top-Up, and Modification and GMCO Assumption of MLC-IUE-CWA CBA, dated Sept. 10, 2009.

[39]Motion of Defendants U.S. Dep't of the Treasury et al. at 28, No. 2:09-cv-13616 (E.D. Mich. Feb. 16, 2010).

and USWA, GM did not have any legal obligation to agree to provide top-ups to these groups.

Treasury's Multiple Roles Created Perceived or Potential Conflicts

The termination of Delphi's pension plans culminated from a complicated and intertwined set of events involving Delphi, GM, various unions, and Treasury, as well as PBGC. That some participants will not get the full benefits promised to them by their employer is not unusual when companies go bankrupt and leave their plans with large unfunded liabilities. At the same time, the role that GM and Treasury played in the events leading up to termination caused the process to be unusual in several respects. As we have reported previously, Treasury's multiple roles in situations involving the auto industry and workers' pensions created potential tensions and challenges.[40] These roles include shareholder, creditor, investor, regulator and policymaker. For example, with regard to its roles in the termination of the Delphi pension plans, Treasury, as a policymaker, had an interest in safeguarding taxpayer investment. However, as a regulator—through the Secretary of the Treasury's role on PBGC's board—its role was to protect the financial viability of workers' pension plans. These roles created perceived or potential conflicts as decisions were made about the timing of the termination of the plans.

In examining lessons learned from the government's assistance to private companies, we have also previously reported that being both a creditor and a shareholder in private companies—as Treasury was for a period time for GM—created another conflict for the government.[41] For instance, as a major creditor, the government was more likely to be involved in an entity's operations than it was when acting only as a shareholder, and operational decisions that it imposed could affect returns on taxpayer investments. Additionally, the varied and sometimes conflicting roles of the government as a shareholder, creditor, regulator, and policymaker potentially subjected private companies to greater government scrutiny and pressure than they might have otherwise experienced. In particular, the government's investments in these companies increased the level of

[40]See, GAO-10-492 and GAO, *Financial Assistance: Ongoing Challenges and Guiding Principles Related to Government Assistance For Private Sector Companies,* GAO-10-719 (Washington, D.C.: Aug. 3, 2010).

[41]GAO-10-719.

government and public oversight and scrutiny these companies received, as policymakers, elected officials, and regulators worked to ensure that taxpayer interests were protected. The companies may also have been subjected to pressure from government officials to reconsider or alter business decisions that affected the companies' bottom lines. For example, Chrysler and GM faced pressure to reinstate many of the auto dealerships they had slated for closure.[42]

Although Treasury has established policies to separate these interests, and various parties told us that Treasury did not play an active role in decisions regarding Delphi's plans, potential tensions due to these multiple roles remained. Treasury established various structures to mitigate any potential or perceived conflicts of interest related to its investment in the automakers. For example, Treasury developed core principles to guide its oversight of its investments: (1) acting as reluctant shareholder, for example, by not owning equity stakes in companies any longer than necessary; (2) not interfering in the day-to-day management decisions; (3) ensuring a strong board of directors; and (4) exercising limited voting rights. As we reported in 2010, according to Treasury officials, the use of these core principles helped limit the reach and ability of the government to exert its powerful influence on the business and operational matters of the companies. In addition, Treasury established a protective barrier between the Treasury officials (beneath the Secretary level) who made policy-related decisions with respect to investments in GM and the Treasury officials who were responsible for regulating pensions or overseeing the operations of PBGC. Despite these efforts, we noted in 2010 that tensions among the multiple roles remained. To help mitigate the potential or perceived tensions, we emphasized the importance of Treasury regularly communicating with Congress about its oversight and activities related to its investments in the automakers.[43] In response to a previous recommendation, Treasury implemented a revised reporting policy, attempting to balance concerns about publicly disclosing proprietary information in a competitive market with the need for greater transparency.

[42]GAO-10-151.

[43]GAO-10-492.

This concludes our prepared statement. We would be pleased to answer any questions you may have.

GAO Contacts and Staff Acknowledgments

For further information on this testimony or GAO's March and December 2011 reports on the termination of Delphi's pension plans, please contact me at (202) 512-7215 or bovbjergb@gao.gov, or A. Nicole Clowers, Director, Financial Markets and Community Investment Issues at (202) 512-8678 or clowersa@gao.gov. Other key contributors to this statement include Mark M. Glickman, Heather Krause, Raymond Sendejas, and Margie Shields. Contact points for our Congressional Relations and Public Affairs offices may be found on the last page of this statement.

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Mr. MICA. And as I said, we will get to questions in a little while after we have heard from the others.

Let's see. We have next Mr. Feldman. Matthew Feldman is a partner in Wilkie, Farr & Gallagher.

Welcome, and you are recognized.

STATEMENT OF MATTHEW A. FELDMAN

Mr. FELDMAN. Thank you. Mr. Chairman and members of the committee, I understand that I have been invited to appear before you today to discuss my role with the Treasury Department's auto team, which I joined in March 2009 as legal adviser and on which I served until August 2009. The Treasury Department recruited me to join the auto team from my career as an attorney in private practice where I specialized in reorganizing and restructuring large businesses, not unlike the American automobile manufacturers that were in significant financial distress in 2009.

I believe that the work of the auto team contributed to a successful effort to avert disastrous consequences to both the American automobile industry and the American economy as a whole. Now, just 4 years after emerging from bankruptcy, both General Motors and Chrysler are selling cars and adding jobs at a pace most thought unachievable. I remain proud of my service, and I'm prepared today to assist the committee in reaching a complete understanding of the auto team's work with respect to General Motors and in particular its relationship with its critical supplier, Delphi Corporation, during what was a difficult time and an unprecedented challenge for all involved.

Although it is wonderful to see the dramatic recovery of the automobile manufacturers and the thousands of American jobs that were saved and have been created as a result of our work, I'm mindful that the restructurings that the auto team worked on required many Americans to make great personal sacrifices. As a result of the Delphi bankruptcy, for example, Delphi's lenders, some of which had purchased Delphi's debt at a steep discount, exerted significant influence over Delphi, and ultimately the PBGC, which forced the PBGC to terminate Delphi's pension plans. As a result of what occurred during the Delphi bankruptcy, there are Delphi retirees who, unfortunately, will collect less than their full pension benefits.

As stated by the Special Inspector General for the Troubled Asset Relief Program in her August 15 report to Treasury Secretary Lew, in 1999, when General Motors spun out Delphi as a separate company, Delphi's pension plan for its salaried employees was significantly overfunded, but the pension plans for hourly workers were significantly underfunded. To garner support and consent from the UAW and other unions for the Delphi spinoff and to avoid having to make a significant payment in 1999, General Motors and the UAW entered into a top-up agreement whereby General Motors agreed to make whole hourly employees being transferred to Delphi on their pension obligations in the unlikely but ultimately real event that Delphi defaulted on its pension obligations.

Following years of mismanagement and malfeasance, Delphi was forced to file for bankruptcy in 2005 after having allowed both its salaried and hourly pension plans to become underfunded, a situa-

tion that ultimately led the PBGC to conclude it needed to take action to terminate both plans.

As stated by the GAO in its March 30, 2011, report to Congress on the topic, the PBGC reached its own conclusion to terminate the Delphi pension plans, presumably after concluding that this was proper action to take under applicable law and that among the limited options available for these plans, the termination and takeover by the PBGC was the best choice available. While I can understand why all parties involved would have preferred if General Motors had assumed these Delphi pension plans, taking on these liabilities in full would have threatened GM's future success as it exited from its own bankruptcy. While General Motors was not willing to assume all of the pension plans, as the SIGTARP report makes clear, because GM viewed a well motivated workforce at its own facilities and at its largest supplier as critical to ensuring an uninterrupted supply chain, General Motors made the commercially reasonable and necessary decision to honor its legal obligation memorialized in the top-up agreement with the UAW.

The decision to assume the UAW top-up agreement was bargained for by the UAW and agreed to by General Motors after having been extended by the parties once in 2007. As this committee is aware, unfortunately, many of Delphi's employees did not have similar top-up agreements with General Motors, and some of the employees will face a shortfall in their pension placements.

The auto team agreed that honoring the top-up agreement was a prudent business decision. We believed that doing so would protect both General Motors' and the American taxpayers' collective investment in the company. The desire to limit General Motors' stay in bankruptcy was purely economic. Every week of bankruptcy where General Motors continued to carry all of its costs but generated little or no revenue would cost the American taxpayers $1 billion. The need for General Motors to complete a 363 sale in a short time period was intended, among other benefits, to limit the costs being borne by taxpayers.

While I'm pleased that General Motors and other American automobile manufacturers have become successful, profitable contributors to our economy, I recognize that the restructuring process has resulted in painful but necessary sacrifices on many of Delphi's stakeholders. As a bankruptcy practitioner and restructuring specialist, I've seen similar circumstances all too often. It is without a doubt one of the most difficult, disheartening aspects of my job, and I have only the deepest sympathies for everyone affected. I'm here today and prepared to answer any of the questions of the committee.

Mr. MICA. Well, thank you.

[Prepared statement of Mr. Feldman follows:]

G0254241-3

STATEMENT OF MATTHEW FELDMAN

TO

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF RESPRESENTATIVES

September 11, 2013

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. MICA. We have 4 minutes left before the vote, so what we are going to do is we will recess now. Now, I'm told there will be three votes, so this will be a little bit longer. It usually takes us 15 minutes, another 5 and 5, probably be back here about 10 minutes of, to 5—10 minutes of to the hour of 3 o'clock, somewhere there, and we will come back.

Mr. Rattner, you will be the first recognized, Mr. Wilson and Mr. Miller we will go through. And so you don't want to wander too far off.

So with that, the committee stands in recess until after these votes.

[Recess.]

Mr. MICA. I'd like to call the subcommittee back to order. I appreciate everyone's patience in dealing with the votes. We ended up with—first they said one, then they said three, and we ended up with two. So we should have some other members returning, but we're going to go ahead and take off where—I'm sorry—take—continue as to where we left off, and I think we left off with Mr. Feldman and we're going to go to Mr. Rattner now.

Mr. Steven Rattner is Chairman of the Willett Advisors. Welcome, sir, and you're recognized.

STATEMENT OF STEVEN RATTNER

Mr. RATTNER. Thank you, Mr. Chairman. It is sometimes difficult to recall that just 5 years ago the American auto industry was in a severe crisis that threatened its very existence and the broader American economy. It is incontrovertible that absent government intervention, both General Motors and Chrysler would have been forced to cease production, close their doors, and lay off virtually all their workers. These shutdowns would have reverberated through the entire auto sector, causing innumerable suppliers to almost immediately also stop operating. More than a million jobs would have been lost, at least for a time. Michigan and the entire industrial Midwest would have been devastated. Everything we did in the government at that time was driven by our profound desire to prevent such an economic calamity while honoring our responsibilities to the taxpayers, and by any objective measure, I believe our efforts were a success.

Today, General Motors is once again profitable and healthy. It has gone from a company that was hemorrhaging money before the financial crisis to one that turned a $1.2 billion profit in its most recent quarter, driven by strong North American sales.

The restructuring of GM's contract with the United Auto Workers provided the company with new flexibility to use its workforce efficiently and expanded its ability to hire new workers at considerably lower costs. And GM has vastly improved its product lineup so that it is once again selling the kinds of cars consumers want to buy, and demonstrating the power of American ingenuity, engineering and manufacturing. At the same time, the government is successfully winding down its ownership stake in GM and returning the company to private hands.

Of the $51 billion that the taxpayers invested in GM, more than $34 billion has been repaid to the Treasury, and Treasury has stated that further GM stock sales are planned in the coming year. It

makes clear that the government's actions were a necessary and prudent emergency measure to get GM back on its feet, not a permanent government takeover of private industry, as some at the time feared.

This remarkable turnaround could not have occurred without significant restructuring at GM, a restructuring that regrettably but inevitably involved painful sacrifices from all of GM's stakeholders, but particularly its bond holders, dealers, suppliers, employees and retirees.

It is not easy to make these kinds of decisions under any circumstances. It was particularly challenging in the crisis atmosphere that GM was facing at the time. No one wants to get cents on the dollar of their investment or have their dealership closed or see their incomes or benefits reduced. These are personal pocket book issues for those affected, and unfair almost by definition.

To understand the decisions that were made, I believe it is important to appreciate that the Auto Task Force had two overriding goals: to restore a viable and thriving auto industry while acting as a prudent custodian of taxpayer funds. To achieve these goals, we were guided by the principle that Treasury, as GM's partner in bankruptcy, was entitled to set parameters and provide guidance to GM that was consistent with what would be commercially reasonable.

In accordance with that principle, the Auto Task Force helped GM determine the broad strategic policies that would return the company to competitiveness at the least cost and risk to taxpayers. Day-to-day management remained the responsibility of GM.

I know the subcommittee is interested in one of those decisions in particular, which was GM's decision to honor a pre-existing commitment to provide supplemental pension benefits, or top-ups, to certain hourly employees at Delphi, a critical GM parts supplier that was itself in bankruptcy. Other hourly employees and salaried employees at Delphi were not provided similar top-ups.

Although I fully understand that it was painful for the salaried employees who saw their pensions cut and perhaps made more painful by the fact that some of their hourly colleagues did receive top-ups, I believe the Special Inspector General's report makes clear that GM's decision to honor its top-up agreement in bankruptcy was consistent with a commercially reasonable approach.

The Delphi hourly employees who received top-ups were differently situated from the salaried employees who did not. For reasons that predated GM's bankruptcy and the work of the Auto Task Force, GM had fully funded the salaried employees' pensions, but not the hourly employees' pensions before the Delphi spin-off in 1999. At that time, the hourly employees negotiated for a top-up agreement from GM, but the salaried employees, who were fully funded, did not.

As the Special Inspector General's report explains, GM was therefore under no obligation to top-up the salaried employees' pension, and indeed doing so on its own initiative would have been like paying for the pensions twice. Such an action, while generous, would not have been consistent with the goals of restoring the GM—of restoring GM to viability or protecting U.S. taxpayers' investment.

It is certainly true that in bankruptcy GM had the option of refusing to honor its agreement to top up the hourly workers' pensions as well. Again, I think the Special Inspector General's report makes clear that its decision to honor the prior agreement was consistent with what was commercially reasonable.

Those employees were represented by the UAW, the same union that represented 99—represents 99 percent of GM's unionized workforce. UAW is an absolutely critical party to bring to the negotiating table. They had the power to hold up the deal in bankruptcy or to strike, either of which could have been devastating to GM's efforts to get back on its feet, and in turn, to the U.S. economy. This disparity in bargaining leverage may not seem fair, but it was the reality. And as I mentioned earlier, GM extracted considerable concessions from the UAW in order to reduce GM's labor costs going forward and get it on a sustainable profitable path. Five years later, I think it is clear that the government's extraordinary intervention in the American auto industry has been a success.

I deeply wish that the actions we took did not have to be taken, but I am proud that we avoided a devastating dissolution of this vital sector of the economy and gave the American auto industry the opportunity to once again lead and succeed. Thank you.

Mr. MICA. Thank you.

[Prepared statement of Mr. Rattner follows:]

60254242-

Statement of Steven Rattner

Before the Subcommittee on Government Operations,
House Oversight and Government Reform Committee

September 11, 2013

Chairman Mica, Ranking Member Connolly, and members of the Subcommittee, good afternoon and thank you for the opportunity to speak to you today about the extraordinary and successful effort, which spanned two Administrations, to save the American auto industry. As you know, I served in the Treasury Department from February to July 2009 as lead auto advisor, reporting to the Secretary of the Treasury and the Director of the National Economic Council. Because I left government service in July 2009, I want to remind the Subcommittee that I am not in a position to discuss events that occurred after that date nor current policy.

It is sometimes difficult to recall that just five years ago, the American auto industry was in a severe crisis that threatened its very existence and the broader American economy. It is incontrovertible that absent government intervention, both General Motors and Chrysler would have been forced to cease production, close their doors, and lay off virtually all workers. Those shutdowns would have reverberated through the entire auto sector, causing innumerable suppliers to almost immediately also stop operating. More than a million jobs would have been lost, at least for a time. Michigan and the entire industrial Midwest would have been devastated.

Everything we in the government did at that time was driven by our profound desire to prevent such an economic calamity, while honoring our responsibilities to the taxpayers. And by any objective measure, I believe our efforts were a success.

Today GM is once again profitable and healthy. It has gone from a company that was hemorrhaging money before the financial crisis to one that turned a $1.2 billion profit in its most recent quarter, driven by strong North American sales. The restructuring of GM's contract with the United Auto Workers provided the company with new flexibility to use its work force efficiently and expanded its ability to hire new workers at considerably lower costs. And GM has vastly improved its product lineup, so that it is once again selling the kinds of cars consumers want to buy and demonstrating the power of American ingenuity, engineering, and manufacturing.

At the same time, the government is successfully winding down its ownership stake in GM and returning it to private hands. Of the $51 billion that the taxpayers invested in GM, more than $34 billion has been repaid to the Treasury. And Treasury has stated that further GM stock sales are planned in the coming year. This makes clear that the government's actions were a necessary and prudent emergency measure to get GM back on its feet, not a permanent government takeover of private industry, as some at the time feared.

This remarkable turnaround could not have occurred without significant restructuring at GM—a restructuring that regrettably, but inevitably, involved painful sacrifices from all of GM's stakeholders, but particularly its bondholders, dealers, suppliers, employees, and retirees. It is not easy to make these kinds of decisions under any circumstances; it was particularly

challenging in the crisis atmosphere GM was facing at the time. No one wants to get cents on the dollar of their investment, or have their dealership closed, or see their incomes or benefits reduced. These are personal, pocketbook issues for those affected, and unfair almost by definition.

To understand the decisions that were made, I believe it is important to appreciate that the Auto Task Force had two overriding goals: to restore a viable and thriving auto industry while acting as a prudent custodian of taxpayer funds. To achieve these goals, we were guided by the principle that Treasury, as GM's investor and partner in bankruptcy, was entitled to set parameters and provide guidance to GM that was consistent with what would be commercially reasonable. In accordance with that principle, the Auto Task Force helped GM determine the broad strategic policies that would return the company to competitiveness at the least cost and risk to taxpayers. Day-to-day management remained the responsibility of GM.

I know that the Subcommittee is interested in one of those decisions in particular, which was GM's decision to honor a pre-existing commitment to provide supplemental pension benefits, or "top-ups," to certain hourly employees at Delphi, a critical GM parts supplier that was itself in bankruptcy. Other hourly employees and salaried employees at Delphi were not provided similar top-ups. Although I fully understand that it was painful for the salaried employees who saw their pensions cut—and perhaps made more painful by the fact that some of their hourly colleagues did receive top-ups—I believe the Special Inspector General's report makes clear that GM's decision to honor its top-up agreement in bankruptcy was consistent with a commercially reasonable approach.

The Delphi hourly employees who received top-ups were differently situated from the salaried employees who did not, for reasons that pre-dated GM's bankruptcy and the work of the Auto Task Force. GM had fully funded the salaried employees' pensions, but not the hourly employees' pensions, before the Delphi spin-off in 1999. At that time, the hourly employees negotiated for a top-up agreement from GM but the salaried employees, who were fully funded, did not. As the Special Inspector General's report explains, GM was therefore under no obligation to top-up the salaried employees' pensions, and indeed, doing so on its own initiative would have been like paying for the pensions twice. Such an action, while generous, would not have been consistent with the goals of restoring GM to viability or protecting U.S. taxpayers' investment.

It is certainly true that in bankruptcy, GM had the option of refusing to honor its agreement to top-up the hourly workers' pensions as well. Again, I think the Special Inspector General's report makes clear that its decision to honor the prior agreement was consistent with what was commercially reasonable. Those employees were represented by the UAW, the same union that represents 99% of GM's unionized workforce. The UAW was an absolutely critical party to bring to the negotiating table. They had the power to hold up a deal in bankruptcy or to strike, either of which could have been devastating to GM's efforts to get back on its feet and in turn, to the U.S. economy. This disparity in bargaining leverage may not seem fair, but it was the reality. And as I mentioned earlier, GM extracted considerable concessions from the UAW in order to reduce GM's labor costs going forward and get it on a sustainable, profitable path.

Five years later, I think it is clear that the government's extraordinary intervention into the auto industry has been a success. Today, the Big Three are alive and well, turning consistent profits, and helping to anchor the recovery of the American economy and lead a renaissance in American manufacturing. A million jobs were saved and more are being added. It is important to remember that this outcome was not inevitable. It involved creativity and shared sacrifice and a considerable investment by the American people. I deeply wish that the actions we took did not have to be taken, but I am proud we avoided a devastating dissolution of this vital sector of the economy and gave the American auto industry the opportunity to once again lead and succeed.

Thank you, and I am happy to answer any of your questions.

Mr. MICA. We will recognize now Mr. Harry Wilson, Chairman and CEO of the MAEVA Group. Welcome, and you're recognized.

STATEMENT OF HARRY J. WILSON

Mr. WILSON. Thank you. Mr. Chairman, Ranking Member Connolly, and members of the subcommittee, thank you for the opportunity to testify before you today on this somber anniversary of the attacks on 9/11.

I'm here to report, at your request, on the 2009 auto rescues and the recent SIGTARP report on Delphi pensions. I'd like to make several comments on the report. First, I believe the value of the report makes clear that General Motors' management acted in a commercially reasonable manner in determining how they would treat various groups of Delphi retirees.

As the report makes clear, General Motors had a choice: Option A, they could choose to not provide any funding at all for Delphi's underfunded pension plan; option B, they could choose to fully fund, top-up or even assume all of Delphi's underfunded pension plans at great cost; or option C, they could choose to fund or top-up only the plans they needed to preserve the viability of GM's own reorganization process.

As the SIGTARP report clearly shows, Option A was not a viable option. GM's CEO at the time, Fritz Henderson, indicated that if the pension guaranty of the UAW was not assumed by New GM, there would have been a strike, and thus it was: mission impossible.

On Option B, GM management believed there was no commercial justification for it, which would have involved assuming the pensions of nearly 70,000 salaried and hourly pensioners, a majority of whom GM had never committed to support after the 1999 Delphi spin-off, a group that included 20,000 salaried employees, 18,675 hourly employees and 2,000 other employees.

At Delphi itself, none of the prospective investors in Delphi had indicated any willingness to maintain Delphi's pension funds, so unfortunately there was just no contractual or market-based support for Option B.

And that left only Option C, the path GM ultimately pursued, where they agreed to assume existing top-up agreements only in cases where they felt they needed to in order to successfully emerge from bankruptcy and operate successfully thereafter.

The record clearly supports these facts; however, I do need to disagree with and correct for the record several characterizations made in the summary and conclusions sections of the SIGTARP report. First, the report makes several points criticizing the commercial approach which the auto team was tasked to utilize. For example, SIGTARP implies the auto team worked too closely with GM management in developing a viable plan for GM's restructuring; however, the facts at the time and the results since repudiate this criticism.

When the auto team was first formed, GM had already failed multiple times to develop a viable plan on its own, and the Treasury, and thus the American taxpayer, was funding multi-billion-dollar monthly losses with no end in sight. Time was of the essence. And in that spirit, the auto team worked closely with GM

management as they developed their revised viability plan, offering real time feedback and helping speed along a process that would normally take months and would have costs tens of billions of dollars more than it ultimately did.

This was exactly the type of work which the auto team had been created to do: to determine if there was a path to viability for General Motors, and if so, work with management to achieve that path.

The commercial success of General Motors since this work was completed is beyond dispute. Just last week, a Bloomberg article on the resurgence of the American auto industry stated, "Detroit has come full circle, from bankruptcy to boom." Those fatter profits come from trimmer companies that radically restructured operations, shed debts, and overhauled their lineups.

SIGTARP also argues that Treasury inadvertently created a negotiating leverage for the UAW due to its aggressive time line for the restructuring process. Nothing could be further from the truth. The UAW had enormous leverage because they represented nearly 100 percent of the GM hourly workers with the skills to manufacture cars, and they are prepared to use that clout to press certain key issues. Nothing else in the restructuring process provided them any additional leverage, nor did they need more.

Furthermore, the SIGTARP report is silent on what viable alternatives, if any, there might have been for the path GM pursued.

Like all choices in the real world, all the difficult decisions that were made during the auto rescues were about a series of tradeoffs of bad and less bad options. For example, SIGTARP implies the auto team should not have established such an aggressive restructuring time line; however, all industry commentators, GM management and the auto team itself, in fact, not a single contrary voice that I'm aware of were convinced that GM could not survive a prolonged bankruptcy. As a result, there was no viable procedure or alternative to a very rapid Section 363 sale. Moreover, Section 363 sales like this have been done at times in the past for exactly these reasons. So in reality, neither GM management nor Treasury had a practical alternative, unfortunately, to the course that was followed. This is not to say that these choices were at all satisfactory. Sadly, the costs inherent in a restructuring as difficult as General Motors' are massive and tragic. In a better world, none of these difficult and painful actions would have been necessary; however, it is equally clear that for General Motors, there was not a viable alternative path available to it, and far greater costs and tragedies were avoided as a result of the work that was done by both companies, their many advisers, and the Bush and Obama administrations.

I look forward to discussing these issues with you today. Thank you.

Mr. MICA. Thank you.

[Prepared statement of Mr. Wilson follows:]

GO 254242.2

Written Testimony of Harry Wilson, Former Senior Advisor to the Secretary of the Treasury
Before the House Subcommittee on Government Operations

September 11, 2013

Chairman Mica, Ranking Member Connolly and members of the Subcommittee, thank you for the opportunity to testify before you today. I am here to report, at your request, on the government's efforts in 2009 to avoid a catastrophic collapse of the U.S. automotive industry and specifically the recent SIGTARP report entitled, "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees."

My testimony today is in my capacity as a former Treasury official. I left Treasury in early August 2009, so that is the limit of my direct knowledge.

First, some brief background on myself. I have spent the vast majority of my career in the private sector, working at some of the best financial firms in the country, with a focus on fixing troubled businesses.

As the late 2008 financial crisis deepened, and the Bush and then Obama administrations began to intervene through TARP, I felt it was critical that Treasury had people with the restructuring skills that I had in order to maximize the prospects for success and minimize the cost to taxpayers.

So though I am a lifelong Republican, I joined the Auto Team in early March 2009 and focused primarily on the General Motors rescue. After General Motors exited bankruptcy, I wrapped up my work and left the Treasury. I currently run a turnaround and transformation firm I founded, The MAEVA Group, LLC.

Let me turn to the subject of today's hearing, the recent SIGTARP report. I would like to provide comments in several respects.

First, I believe the body of the report makes clear that General Motors management acted in a commercially reasonable manner in determining how they would treat various groups of Delphi retirees.

General Motors had a choice. Option A, they could choose to not provide any funding at all for Delphi's underfunded pension plans. Option B, they could choose to fully fund ("top up") or even assume all of Delphi's underfunded pension plans. Or, Option C, they could choose to fund/"top up" only the plans they needed to preserve the viability of GM's own reorganization process.

As the SIGTARP report clearly shows, Option A was not a viable option. GM's CEO at the time, Fritz Henderson, indicated that if the pension benefit guarantee with the UAW was not assumed by New GM, there would have been a strike and thus it was "mission impossible."[1]

GM management believed there was no commercial justification for Option B, which would have involved assuming or "topping up" the pensions of nearly 70,000 salaried and hourly pensioners,[2] a majority (20,203 salaried, 18,675 hourly and 2,209 retirees in smaller plans)[3] of whom GM had never committed to support after the 1999 Delphi spin-off[4] (with the salaried plan being substantially overfunded at the time of the spin-off)[5] and who had no ongoing commercial relationship with General Motors. At Delphi itself, none of the prospective investors in Delphi had indicated a willingness to maintain its pension funds.[6] Unfortunately, there was no contractual or market-based support for Option B.

That left only Option C, the path GM ultimately pursued, where they agreed to assume existing "top up" agreements only in cases where they felt they needed to in order to successfully emerge from bankruptcy and operate successfully thereafter.

The record clearly supports these facts.

However, I need to disagree with, and correct for the record, several incorrect characterizations made in the summary and conclusion sections of the SIGTARP report.

First, the report makes several points criticizing the commercial approach which the Auto Team was tasked to utilize. For example, SIGTARP implies the Auto Team worked too closely with GM management in developing a viable plan for GM's restructuring.[7] However, the facts at the time and the results since repudiate this criticism. When the Auto Team was first formed, GM had already failed multiple times to develop a viable plan on its own and the Treasury, and thus the American taxpayer, was funding multi-billion dollar monthly losses. Time was of the essence. In that spirit, the Auto Team worked closely with GM management as they developed their revised viability plan, offering real-time feedback (rather than waiting weeks for a new plan and squandering precious time at great cost) and helping speed along a process that would

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[1] SIGTARP 13-003, "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees," 7/15/2013, p. 25. Similar comments from multiple GM officials on p. 22 and from UAW officials on page 25. While one Delphi salaried retiree acknowledged the UAW's leverage on page 28, representatives of Delphi's salaried retirees told SIGTARP that "they would have no problem if nobody got a top-up" – but what if the logical extension of that position led to the liquidation of General Motors and Delphi?

[2] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011, p. 6.

[3] GAO-12-168, p. 34.

[4] GAO-12-168, p. 19.

[5] GAO-12-168, p. 14.

[6] SIGTARP 13-003, p. 6: "According to the Delphi officials, various investors expressed interest in Delphi, but none wanted to purchase or invest in Delphi if it retained its pension liabilities."

[7] SIGTARP 13-003, pp. 9 (Wagoner resignation "an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations"), 11 ("Treasury's influence and leverage over GM went beyond Treasury's rights under the TARP loan agreement"), 34 ("SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions in areas that did not require Treasury consent").

normally take months and would have cost tens of billions of dollars more than it did. Counter to SIGTARP's assertion that such work, among other similar examples, was "not advisory in nature," this was exactly the type of work which the Auto Team had been created to do: determine if there was a path to viability for General Motors and, if so, work with management to achieve that path.

The commercial success of General Motors since this work was completed in 2009 is beyond dispute. Just last week, a Bloomberg article on the resurgence of the American auto industry stated, "Detroit has come full circle, from bankruptcy to boom . . . Those fatter profits come from trimmer companies that radically restructured operations, shed debts and overhauled their lineups . . . [John Casesa, senior managing director at Guggenheim Partners LLC, added,]'It's a fundamentally different industry.'"[8]

SIGTARP also argues that Treasury inadvertently created negotiating leverage for the UAW due to its aggressive timeline for the restructuring process.[9] Nothing could be further from the truth. The UAW had enormous leverage because they represented nearly 100% of the GM hourly workers with the skills to manufacture cars, and they were prepared to use that clout to press certain key issues. Nothing else in the restructuring process provided them any additional leverage, nor did they need more. The enormous time pressure that GM's operating losses and impending maturities placed on the overall restructuring process had an impact on all stakeholders – from Treasury to management to investors to the UAW -- and pressed each stakeholder similarly towards the eventual deal.

Furthermore, the SIGTARP report is silent on what viable alternatives (if any) there might have been to the path GM pursued. Like all choices in the real world, all of the difficult decisions made during the auto rescues were about a series of trade-offs. For example, SIGTARP implies that the Auto Team should not have established such an aggressive restructuring timeline.[10] However, all industry commentators, GM management and the Auto Team itself were universally convinced that GM could not survive a prolonged bankruptcy; as a result, there was no viable procedural alternative to a very rapid Section 363 sale. Moreover, Section 363 sales like this have been done at times in the past for exactly these reasons, where the business could not sustain a prolonged bankruptcy process.

Similarly, SIGTARP implies that Treasury could have reversed the decision by GM management to honor the UAW top-up,[11] while citing throughout the report uncontradicted testimony from GM, the UAW and the Auto Team that such an action would likely have led to a UAW strike and thus the shuttering of General Motors! This striking inconsistency is not explained adequately in the report and is thus an unfair assertion.

In reality, neither GM management nor Treasury had a practical alternative, unfortunately, to the course that was followed with the Delphi retirees.

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[8] Bloomberg News, "American Auto Profits Showing Signs of Beating 1990s' Best: Cars," by Keith Naughton and Craig Trudell, 9/5/2013.
[9] SIGTARP 13-003, Summary and p. 37.
[10] SIGTARP 13-003, Summary and p. 36.
[11] SIGTARP 13-003, p. 38.

This is not to say that these choices were at all satisfactory. Sadly, the costs inherent in a restructuring as difficult as General Motors' are massive and tragic: reduced pensions, uncompensated product liability victims, billions of investor dollars lost, tens of thousands of lost jobs and, importantly, the moral hazard resulting from such government intervention. In a better world, none of these difficult and painful actions would have been necessary; however, it is equally clear that, for General Motors and its interaction with Delphi in 2009, there was not a viable alternative path available to it, and far greater costs and tragedies were avoided as a result of the work that was done by a large group of people at both companies, their many advisors, the Bush and Obama Administrations and the US Treasury.

I look forward to discussing these issues with you today.

Mr. MICA. And we will now turn to our last witness, Mr. Miller. And Mr. Miller is a senior member of an international law firm. And welcome, and you're recognized.

STATEMENT OF HARVEY R. MILLER

Mr. MILLER. Thank you, Mr. Chairman, Mr. Connolly, and members of the committee for the opportunity to participate in this hearing.

I acted as the lead attorney for General Motors in connection with its restructuring under Chapter 11 of the Bankruptcy Code via a sale pursuant to Section 363 to an entity sponsored and financed by the U.S. Treasury and the governments of Canada and Ontario through its Export Development Canada.

During the period preceding the commencement of the Chapter 11 case, General Motors was subjected to substantial adverse circumstances, beginning in 2007, as the subprime mortgage crisis began to surface and affect auto and truck sales. That was compounded by a surge in oil prices in the summer of 2008 and further diminished—that further diminished consumer demand and caused sales to erode. As a result, GM's liquidity began to dry up. Conditions worsened with the financial crisis ignited by the conservatorships for Fannie Mae and Freddie Mac and ultimately the bankruptcy of Lehman Brothers. The future of the automotive industry looked bleak and the parts supplier industry had supplies which were beginning to fail.

President Bush recognized the potential calamity, and directed the U.S. Treasury to enter into a financing agreement with General Motors that resulted in the secured loan agreement to avoid the consequences to the American automotive industry and the loss of hundreds of thousands of jobs then at stake.

Unfortunately in 2009, conditions continued to erode. The Obama administration inherited the administration of the secured loan agreement, and GM needed additional financing. The auto team was appointed and got involved in the negotiations as to additional financing.

Central to those negotiations was the protection of taxpayer monies, and therefore the requirement that GM submit a feasible business plan that provided the prospect of restored viability and recovery of monies advanced.

The auto team conducted intensive due diligence in discharging its functions. The important point is that the auto team and the government at all times acted in the same manner as a private secured lender attempting to protect its loan, but also complicated by the desire to retain an American automotive industry.

In that context and in the face of the deepening global economic crisis, it became obvious that without radical surgery, restructuring its finances and operations, GM would fail, and that would cause a chain reaction throughout the automotive industry.

That led to the exploration of alternative issues and possible solutions. That led to the direction of conducting a Section 363 sale under the Bankruptcy Code, a process which was not at least at that point totally novel, and had been used in many other similar situations.

As it became evident that there was no access to credit for General Motors and the large amount of debt outstanding to the United States, the only source of financing and investment was the U.S. Treasury and the Export Development of Canada.

Integral to the process, as amply described in my written testimony, was that the end result would be an operating efficient company capable to compete in its own marketplaces with a prospect of returning to the purchase of all or a good portion of its loans and investments. Incidentally, that is the same objective that ultimately was the objective of the Unsecured Creditors Committee that was appointed in the Chapter 11 cases to recover some return on claims of unsecured creditors, which I might say included salaried employees of both GM and ultimately through Delphi's own Chapter 11 case.

This is the normal process in Chapter 11 cases involving Section 363 sales, private lenders and investors, and a process that was used basically in the Bethlehem Steel case. In Section 363 situations, the purchaser is an active participant in the structuring of the sale and often selects the assets which are to be purchased and the executory contracts which should be assumed and leases and along those avenues.

In connection with a 363 sale that anticipates a operating—an ongoing operations, labor unions have a level of leverage that other participants don't have. A sale is not going to be successful if you cannot operate the plant, and to operate the plant, you have to have workers and labor piece, and that was what—one of the main objectives in connection with the Section 363 sale and the restructuring of General Motors.

As I set forth in the written testimony, the relationship with Delphi Corporation was very complex. Delphi was a major supplier to GM, and without those supplies, it would have been impossible for GM to continue to operate its plant. 60 percent of steering parts came from Delphi.

The two Chapter 11 cases in some respects were joined at the hip. It turned out to be a very successful operation. GM is successful, Delphi is successful, and I think the government and the GM management did a great job in coming up with a feasible plan.

Thank you for this opportunity.

Mr. MICA. Thank you.

[Prepared statement of Mr. Miller follows:]

G0254242-3

Testimony of

Harvey R. Miller [1]

before the

Subcommittee on Government Operations

of the

House of Representatives Committee on Oversight and Government Reform

113th Congress, 1st Session

for Hearing on

"Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees"

September 11, 2013

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[1] Senior Partner, Weil, Gotshal & Manges LLP, New York, New York. The views expressed in this testimony are expressed solely on behalf of myself and not on behalf of any other person or entity.

I greatly appreciate the opportunity to testify in these oversight hearings as to the role of the United States Department of the Treasury (the "U.S. Treasury") and the Presidential Task Force on the Auto Industry appointed by President Barack Obama in February 2009 (the "Auto Team") in the decision and actions taken by General Motors Corporation ("GM") in connection with its reorganization pursuant to chapter 11 of the United States Bankruptcy Code in 2008/2009 and its relationship to its former subsidiary and major parts supplier, Delphi Corporation ("Delphi").

I am a practicing attorney and senior member of the international law firm of Weil, Gotshal & Manges LLP ("Weil") that maintains its principal office in New York, New York. For the past 50 years, I have specialized in matters relating to debtor-creditor relationships with an emphasis on restructuring, rehabilitating, and reorganizing distressed business entities. I created the Business Finance and Restructuring group at Weil. Over the course of my professional career, I have represented debtors, secured and unsecured creditors, trustees, and creditors' committees and have served as a trustee in bankruptcy cases and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*).[2]

I am currently an Adjunct Professor of Law at the New York University School of Law, where I have taught a seminar on chapter 11 bankruptcy and reorganization law since 1975. I also am an Adjunct Lecturer in Law at Columbia Law School, Columbia University, where I have taught a course on Corporate Reorganization and Bankruptcy Law for the past 13 years.

I served as lead restructuring counsel to GM in connection with its historic chapter 11 case. In addition, during the period of September 1, 2002 to March, 2007, I was a Vice Chairman and Managing Director of Greenhill & Co., LLC ("Greenhill"), an investment

[2] Since approximately 1973, I have been a conferee and member of the National Bankruptcy Conference and I also am a fellow of the American College of Bankruptcy.

banking firm located in New York, New York. During that time, Greenhill was engaged to advise GM in connection with the chapter 11 cases initiated by Delphi and its affiliates. I was the Greenhill team leader relative to that engagement.

It is my understanding that the Subcommittee is desirous of understanding the circumstances concerning GM's relationships with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW"), the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers-Communication Workers of America (the "IUE-CWA") and the United Steel Workers (the "USW"), the agreements made with those collective bargaining agents as part of the reorganization of GM that provided for certain pension benefits for Delphi hourly employees, and the U.S. Treasury's role in that process. A review of the economic realities and circumstances that precipitated the commencement of GM's chapter 11 cases and GM's reorganization pursuant to a sale of substantially all of its economically viable assets to an entity sponsored and financed by the U.S. Treasury and Export Development Canada ("EDC") pursuant to section 363(b) of the Bankruptcy Code will demonstrate that GM's actions with respect to the unionized hourly employees and pensioners and the role of the U.S. Treasury and Auto Team and EDC were all motivated by the mutual desire to successfully reorganize and rehabilitate GM so that it would be economically viable and continue to be a major commercial and manufacturing business for the U.S. and Canada employing many thousands of persons, as well as enabling the preservation of the domestic automotive supply business. This was accomplished in the most dire of economic circumstances. The fiscal crisis of 2008 had resulted in virtual cessation of ordinary commercial transactions. Essentially, credit markets had closed down as the world faced the real probability of a depression that might exceed the Great Depression of the 1930s.

The Epic Saga of the Reorganization and Rehabilitation of GM

The events that led to the commencement of chapter 11 cases by GM and the prosecution of the chapter 11 cases are set forth in detail in the attached paper that I presented in various legal conferences.[3] The paper describes the circumstances that precipitated the financial distress of GM, as well as its efforts to avoid resorting to the protections afforded by chapter 11. It also sets out the evolution of the rehabilitation negotiations and the pursuit of a credible plan that would save the American automotive industry.

The Chapter 11 Process and the 363 Transaction

The essence of restructuring is to preserve going concern values and create a viable economic unit. This process typically involves the contraction of the overall business enterprise of a chapter 11 debtor to its core business and the concomitant elimination of costs, operations, facilities, executory contracts, and unexpired leases that provide no benefit or contribution to ongoing future viability. This is the normal process that occurs in the restructuring and reorganizing of a chapter 11 debtor.

GM's chapter 11 cases were more complex and difficult given the size and nature of GM's business and its dependency on adequate financing and consumers. Essentially, it was concluded that a traditional or classic chapter 11 case would not be successful as consumers would be resistant and ultimately not purchase vehicles from a company in chapter 11. To preserve going concern value and instill confidence on the part of consumers, speed was of the essence. The only source of financing for a reorganization was the U.S. Treasury and EDC, as described in the attachment.

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[3] General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry

As noted in the attached, the purchaser of assets pursuant to a section 363(b) sale typically plays a dominant role in the development of the planned sale. The purchaser is intent on purchasing a viable business and desirous of protecting its investment and return. Typically the purchaser determines which assets it will purchase and which liabilities it will assume that are necessary to assure the future success of the business to be created. Section 363(b) sales are the daily grist of bankruptcy courts. In today's economic environment, secured creditors dominate the sale process as, generally, they provide the financing to achieve the completion of the transaction. The U.S. Treasury, as GM's largest secured creditor as well as GM's post-chapter 11 financier to the extent of $33.3 billion, acted in the same manner as other secured creditors would act in selecting the assets it would purchase and liabilities it would assume, and the terms and conditions under which it would purchase the assets. In the case of GM, the U.S. Treasury and EDC were motivated by the desire to preserve the going concern but yet protect the taxpayers' money by requiring a feasible plan post the section 363 sale. In connection with an ongoing commercial enterprise, it is necessary that the purchaser be assured that the business be able to operate with the appropriate workforce.

As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 (69%) were hourly employees and 72,000 (31%) were salaried. Approximately 68% of GM's total of approximately 91,000 U.S.-based employees were represented by unions as of March 31, 2009. The UAW represented the largest portion of the unionized employees. In addition, the UAW was also GM's largest unsecured creditor because of the prior restructuring of GM's healthcare obligations through the use of voluntary employee beneficiary associations under section 501(c)(9) of the Internal Revenue Code of 1986. The claim totaled approximately $20.6 billion.

In order to successfully reorganize GM's business and operations, the UAW's collective bargaining agreement and GM's retiree benefit plans needed to be restructured; plants needed to be closed; and the UAW needed to share in the sacrifice. But, GM and the Auto Team had to balance these objectives against the reality that without a continuing experienced labor force, the objective of the purchase could not be achieved. In that perspective, the organized labor representatives had a degree of leverage in the negotiations.

Delphi

A significant aspect of GM's reorganization in 2009 was the resolution of GM's relationship with Delphi and GM's related purchase of certain Delphi assets used primarily to manufacture parts for GM in order to stabilize and secure the supply of essential parts for New GM (the "Delphi Transaction"). GM and Delphi had a long and complex history arising from their interdependent relationship. Delphi originally consisted of divisions and subsidiaries of GM until GM's spin-off of Delphi in 1999. The objective of the spin-off was to reduce the interdependence of both entities and enable Delphi to attract business from other equipment manufactures. As part of the spin-off, GM continued to be responsible for certain obligations to unionized employees that were transferred to Delphi. The process was not completed by 2006 and Delphi continued to be one of GM's largest component parts supplier and Delphi's largest customer. In 2008, Delphi accounted for approximately 11.3% of GM's North American purchases and 9.6% of GM's global purchases. Indeed, Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts used in essentially every GM product line in North America.

Consistent with industry practice, GM operated on a "just-in-time" inventory delivery system, under which component parts from suppliers are typically assembled onto

vehicles by GM within a few hours of the delivery of the parts to the vehicle assembly facility. Under the "just-in-time" system, GM generally maintained little or no inventory of parts on site; instead, it relied upon frequent and regular shipments of parts from its suppliers, such as Delphi. Most parts that Delphi manufactured for GM were not readily available from an alternate source due to, among other things, capacity issues within the automotive parts supply industry, the length of time needed to validate and obtain safety regulatory approval of a new supplier's parts, and lead time to develop and build tools for manufacture. If Delphi ever ceased shipping even a small fraction of production parts to GM, the GM plants relying on such shipments may have run out of inventory of such parts and, thus, shut down production. The shutdown of GM plants as a result of termination of deliveries of automotive parts from Delphi would have endangered the recovery by the purchaser, i.e., the U.S. Treasury and EDC. Accordingly, in the same fashion as private secured lenders and purchasers participate in the development of the sale process to achieve the desired objective, the Auto Team was a participant.

At the time of the Delphi Transaction, Delphi itself was struggling in its own complicated and contentious chapter 11 cases that had been pending for four years. GM was an active participant in the Delphi cases. Because of the symbiotic relationship, GM was anxious to see the reorganization of Delphi be successful. Nonetheless, the relationship was adversarial, as Delphi attempted to extract concessions and financing from GM.

It is important to note that in connection with any chapter 11 reorganization of a unionized commercial enterprise, organized labor occupies a position of economic leverage. Without the unionized employees continuing to work, the reorganization as a going concern will fail. That leverage, and the principles of the national labor laws, make unions and their pensions a critical force in the reorganization process. Salaried employees do not have the same

protection or leverage. Their claims will simply fall into the class of general unsecured creditors. In most cases, they are easily replaceable. During Delphi's chapter 11 cases, GM did expend billions of dollars and incurred additional liabilities in connection with Delphi's unionized employees to protect its supply base. For example, GM made several critical contributions to facilitate Delphi's implementation of new agreements with its unions in 2006, 2007 and 2009, including the transfer of significant pension and post-retirement health care obligations to GM, and also provided liquidity to Delphi by committing to extend financing to Delphi of up to $500 million and accelerating the payment of $300 million in trade payables to Delphi. However, GM's efforts were insufficient to restore Delphi's capital position and stabilize its operations, as the economy began its decline in 2007 and into the financial crisis of 2008/2009.

To ensure the continued and uninterrupted supply of its auto parts, pursuant to the Delphi Transaction, New GM purchased Delphi's global steering business and Delphi's U.S. plants that supplied parts primarily to GM. At the time of the Delphi Transaction, Delphi's hourly and salaried pension plans were significantly underfunded (by $3.2 billion with respect to the hourly plan and $2.1 billion with respect to the salaried plan). The PBGC had asserted liens against the assets of Delphi's non-debtor affiliates, including those that were being sold to GM, to attempt to secure certain of the PBGC's pension-related claims against Delphi's ERISA control group. GM was not willing to purchase the assets while they were subject to the threat of the PBGC liens and required the removal of the PBGC's alleged liens as a condition to closing the Delphi Transaction.

To resolve the PBGC's asserted liens, GM, Delphi, the PBGC and the Auto Team engaged in internal negotiations regarding an agreement to satisfy the PBGC's asserted liens. As part of that agreement, GM could make a cash payment to the PBGC and/or assume all or some

portion of the net underfunded liability of Delphi's hourly pension plan if such contributions were necessary to enable the Delphi Transaction (or an acceptable alternative) to proceed and the contributions were outweighed by the benefits New GM would receive from the Delphi Transaction. As noted in the Report of the Special Inspector General for the Troubled Asset Relief Program, New GM agreed to honor the IUE's and USW's agreements with Delphi concerning the pension protections in order to complete the Delphi Transaction, which was critical to GM's rehabilitation and the protection of the investments and financings to be made by the U.S. Treasury and EDC.

Conclusion

Chapter 11 is complex and stressful process. It results in losses and hardships to many constituencies. But, as Congress recognized when it enacted the United States Bankruptcy Code, it is in the best interests of the nation to provide a process for distressed businesses to preserve and protect going concern values and enable restructured businesses to go on as economically viable and able to compete in its marketplace. The decisions made in dealing with the pension plans of the Delphi employees represented by the UAW, IUE and the USW were necessary to protect taxpayer money and achieve the objective of preserving an American manufacturing base that would continue to provide employment opportunities and serve the communities in which the business operated. Unfortunately, salaried employees and other constituencies did not possess the same bargaining power and leverage as organized labor/pensioners. The U.S. Treasury and EDC acted with the objective of protecting their investment in the same manner as private investors and lenders in New GM. The objectives of the section 363 GM sale and the Delphi Transaction have been largely achieved. An industry

was rescued and is more stable and contributing to the welfare of the nation. It was a worthwhile solution and achievement.

Thank you, again, for the opportunity to testify at this important Hearing.

ATTACHMENT 1

General Motors Corporation, *et al.* The Epic That Preserved Large Segments of the U.S. Automotive Industry

Harvey R. Miller
Senior Partner
Weil Gotshal & Manges LLP
Presented at the William J. O'Neill Regional Bankruptcy Institute
June 6, 2013

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General Motors Corporation, *et al.* – The Epic That
Preserved Large Segments of the U.S. Automotive Industry
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A. For over one hundred years, GM, inclusive of its approximately 463 direct and indirect wholly-owned subsidiaries, was a major component of the U.S. manufacturing and industrial base, as well as the market leader in the automotive industry. Its brands were the standard bearer in the development of the American automotive industry. Over many years, GM supplied one in every five vehicles sold in the United States. It was the largest original equipment manufacturer ("**OEM**") in the country and the second largest in the world. 1

B. In 2007 GM's global revenues were approximately $181 billion. Global revenues recorded for fiscal year 2008 aggregated approximately $150 billion. As of March 31, 2009, GM had consolidated global recorded assets and liabilities of approximately $82.29 billion and $172.81 billion, respectively. 2

C. GM over 100 years grew into a worldwide leader in products and services related to the development, manufacture, and marketing of cars and trucks under various brands, including Buick, Cadillac, Chevrolet, GMC, Daewoo, Holden, HUMMER, Opel, Pontiac, Saab, Saturn, Vauxhall, and Wuling. It produced nearly 450 million vehicles globally and operated in virtually every country in the world. 2

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A. Worldwide Financial Crisis; Increased Fuel Prices; International Competition 4

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III. U.S. Government Financial Assistance 6

A. The administration of President George W. Bush and its Secretary of the Treasury, Henry M. Paulson, recognized the draconian consequences of a GM failure, e.g., the loss of hundreds of thousands of jobs and the sequential shutdown of hundreds of ancillary and related businesses. 6

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A. It became clear in the Spring of 2009 that an out-of-court restructuring was not possible. The only alternative to preserving going concern values and provide a means to save jobs and repay the U.S. Treasury was the reorganization process under the Bankruptcy Code. 10

B. In that context, it became obvious that the only feasible source of financing of a reorganization case was the U.S. Treasury. The parties entered into intensive negotiations that resulted in agreement to implement a transaction under which substantially all the major core assets of GM would be purchased by a U.S. Treasury-sponsored purchaser (subject to any higher or better offer) in an expedited process under section 363 of the Bankruptcy Code (the "**363 Transaction**"). 10

C. Under this scenario, the purchaser would create a "New GM" that would purchase assets selected by it. Those purchased assets would constitute the new reorganized GM. New GM would then immediately operate free of the liabilities of the bankrupt Old GM and, thereby, preserve the going concern values, avoid systemic failure, provide employment, protect the many communities dependent on the continuation of the business, and restore consumer confidence, as well as provide for potential recovery by the U.S. Treasury of its claims. 11

D. The chapter 11 process selected and pursued in providing for a sale under section 363 of the Bankruptcy Code was consistent with generally-accepted practices and procedures followed in bankruptcy and chapter 11 cases to preserve going concern values and businesses through expeditious sales. In such proceedings the purchaser would be privately financed and, pending the implementation of the sale, the secured creditor of the debtor would provide debtor-in-possession (DIP) financing to bridge the sale. Because of the size of GM and the outstanding secured indebtedness held by the U.S. Treasury, as well as the severe economic conditions that prevailed in 2009, there existed no available financing from any nongovernmental source. The process developed complied with the accepted practice for such sales that had been approved and effected during the years preceding the GM chapter 11 cases. The U.S. Treasury, as the secured creditor, agreed that it would provide DIP financing through the chapter 11 process – but only if the sale occurred on an expedited basis. 11

E. Both the Government of Canada and the Government of Ontario, through Export Development Canada ("**EDC**"), Canada's export trading agency, agreed to participate in the DIP financing (discussed below) to assure the long-term viability of GM's North American enterprise and to (i) preserve value of the business, restore consumer confidence, and mitigate the devastating damage that GM and the industry would suffer if GM's major business operations were to remain in bankruptcy for any extended period and (ii) avoid the enormous costs of

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financing a lengthy chapter 11 case. The U.S. Treasury also agreed that it would provide New GM with adequate postacquisition financing that would further its long-term viability. 11

F. The 363 Transaction was embodied in a Master Sale and Purchase Agreement among GM and its debtor subsidiaries (the "**Sellers**" or the "**Debtors**") and Vehicle Acquisition Holdings LLC, a purchaser sponsored by the U.S. Treasury (the "**Purchaser**"), dated as of June 1, 2009 (the "**MSPA**"). 11

G. The 363 Transaction was a material element of the U.S. Treasury program to revitalize the domestic automotive industry. It contemplated that substantially all of GM's core operating assets, which were essential for New GM to be a profitable and competitive operating entity (including the capital stock of the majority of its subsidiaries), would be sold and transferred to the Purchaser, which would immediately begin operations. 11

H. A fundamental premise of the U.S. Treasury program was to revive consumer confidence in GM products and services for the benefit of GM's employees, its extended vendor and supplier and dealer network, and the families and communities that depend on GM operations. 11

I. The purchase price paid by the Purchaser was equal to the sum of 12

J. In addition, it was provided that if the Bankruptcy Court determined that the estimated amount of allowed general unsecured claims and allowed asbestos personal injury claims collectively exceeded $35 billion, then the Purchaser would issue up to an additional 2% of the outstanding common stock of the Purchaser as of the closing of the 363 Transaction. 12

K. The assets excluded from the 363 Transaction, as well as the proceeds of the sale, were to be administered in the continuing chapter 11 cases to support the liquidation of such assets, wind-down, or other disposition of the chapter 11 cases and to provide distributions to holders of allowed claims against the Debtors. 12

L. The proposed 363 Transaction addressed GM's debt obligations and significantly restructured GM's future legacy obligations to its employees through a settlement with the UAW. Under the UAW Retiree Settlement Agreement, the Purchaser, from the assets it acquired, agreed to provide to the UAW VEBA, among other things, ... 13

M. Resolution of the legacy retirement benefit issues and work rules for a refocused employer was a gating issue. 13

N. Team Auto, with input from the U.S. Treasury, the Presidential Task Force, and the Canadian EDC, fully negotiated the MSPA and completed its due diligence as to the assets to be acquired and contracts to be assigned to the Purchaser 13

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O. In sum, under the 363 Transaction, the equity of the Purchaser, i.e., New GM, was distributed initially as follows: 13

P. The 363 Transaction had the following benefits: 14

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A. The GM "bailout" has been the subject of many criticisms, including 17

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A. The 363 Transaction prevented the collapse of manufacturing in the Midwest, with New GM positioning itself again as a strong contender in the automotive manufacturing sector. 21

B. The 363 Transaction preserved jobs and income 22

C. The 363 Transaction allowed a substantial majority of GM dealerships to continue operations while providing a compassionate wind-down period for terminated and discontinued dealers. 22

D. The 363 Transaction helped stabilize the U.S. and global economies. 23

Weil

Memorandum

September 10, 2012

To	From
Distribution	Harvey R. Miller

Re General Motors Corporation, *et al.* – The Epic That Preserved Large Segments of the U.S. Automotive Industry

This memorandum sets forth the circumstances that resulted in the rehabilitation and reorganization of General Motors Corporation and its subsidiaries and affiliates ("**GM**") that preserved significant portions of the American automotive industry and helped alleviate a global financial crisis. GM was rehabilitated through the traditional use of chapter 11 of title 11 of the United States Code ("**Bankruptcy Code**"). The GM chapter 11 cases followed established procedures under the Bankruptcy Code to resuscitate a distressed business entity and thereby preserve employment opportunities and sustain the interests of communities in which the entity operated and maintained its businesses. Because of the economic chaos resulting from the subprime mortgage crisis and the failure of Lehman Brothers Holdings Inc. on September 15, 2008, which caused the collapse of global financial markets, and given the size of GM, GM had no access to financing other than from the United States. Thus, in order to save the U.S. automotive industry, including hundreds of automotive parts suppliers and the hundreds of thousands of jobs involved, the United States Government, initially under President George W. Bush and, thereafter, under President Barack Obama, together with the Canadian EDC, became the financiers of GM and, ultimately, the purchasers of GM's core assets. These actions enabled the rehabilitation and reorganization of GM as an ongoing viable business.

The facts and circumstances that led to and resulted in the GM reorganization were:

I. The GM Business Prior to the Commencement of the Chapter 11 Reorganization Case on June 1, 2009

A. For over one hundred years, GM, inclusive of its approximately 463 direct and indirect wholly-owned subsidiaries, was a major component of the U.S. manufacturing and industrial base, as well as the market leader in the automotive industry. Its brands were the standard bearer in the development of the American automotive industry. Over many years, GM supplied one in every five vehicles sold in the United States. It was the largest original equipment manufacturer ("**OEM**") in the country and the second largest in the world.

B. In 2007 GM's global revenues were approximately $181 billion. Global revenues recorded for fiscal year 2008 aggregated approximately $150 billion. As of March 31, 2009, GM had consolidated global recorded assets and liabilities of approximately $82.29 billion and $172.81 billion, respectively.

C. GM over 100 years grew into a worldwide leader in products and services related to the development, manufacture, and marketing of cars and trucks under various brands, including Buick, Cadillac, Chevrolet, GMC, Daewoo, Holden, HUMMER, Opel, Pontiac, Saab, Saturn, Vauxhall, and Wuling. It produced nearly 450 million vehicles globally and operated in virtually every country in the world.

1. GM's automotive operations included four automotive segments – GM North America, GM Europe, GM Latin America/Africa/Mid-East, and GM Asia Pacific – each of which functioned as independent business units with coordinated product development and functional support.

2. Substantially all of GM's worldwide car and truck deliveries (totaling 8.4 million in 2008) were marketed through retail dealers in North America and distributors and dealers outside North America, most of whom were independently owned.

3. In addition to products sold to dealers for consumer retail sales, GM sold cars and trucks to fleet customers, including rental car companies, commercial fleet companies, leasing companies, and governmental units.

D. GM's Dealer Network

1. GM used an extensive dealer network. Substantially all retail sales occurred through its network of independent retail dealers and distributors.

2. As of April 30, 2009, there were 6,099 GM vehicle dealers throughout the United States. The dealers made the primary sales and service interface with consumers of GM products. Dealers not only sold new cars, but also provided service and parts for vehicle maintenance and a market for trade-ins of used vehicles in connection with new vehicle purchases.

3. GM and dealers provided extensive warranties in connection with vehicle sales that extended over long periods and were critical elements in the sales.

E. GM's Vendors and Suppliers

1. GM and its vendors and suppliers had a symbiotic relationship, with each depending on the other for survival.

2. As the nation's largest automobile OEM, GM used the services of thousands of vendors and suppliers, resulting in approximately $50 billion in annual supplier payments.

   a. In North America, GM used a network of approximately 11,500 suppliers. There were over 600 suppliers whose sales to GM represented over 30% of their annual revenues.

   b. Many automotive suppliers depended, in whole or in part, on GM for survival.

3. GM relied on its vendors and suppliers for continuity in operations.

   a. Approximately 75% to 85% of every GM automobile consisted of components made by entities other than GM. Any interruption in the flow of such components, even a temporary one, would be disruptive and costly.

   b. Consistent with industry practice, GM operated on a "just-in-time" parts and inventory delivery system. Component parts from numerous vendors and suppliers typically were assembled onto vehicles within a few hours of the delivery of the parts and components to GM assembly facilities. Consequently, even if one supplier ceased shipping production parts and components, the GM plants relying on such shipments would be materially and adversely affected and could be forced to shut down.

   c. Most parts that a given vendor or supplier manufactured for GM were not readily available from alternate sources because of, among other things, (i) capacity constraints within the automotive parts supply industry (including the practice of "sole source suppliers" of many parts and components), (ii) the significant length of time (up to 36 months) required to validate safety and environmental regulatory compliance of a new supplier's parts, and (iii) the lead time required to develop and build tools for manufacture of particular parts and components.

      (i) For example, Delphi Corporation, which had been struggling as a chapter 11 debtor in possession since October 2005, had provided over 60% of GM's North American steering columns – almost 3 million per year. That volume simply could not be replaced quickly as there was not enough excess capacity to accommodate GM's needs or time to validate the parts. The Delphi situation confirmed the critical implications to GM of a shutdown of a major supplier.

F. GM's Employees

1. As of March 31, 2009, GM employed approximately 235,000 employees worldwide, of whom 163,000 (69%) were hourly employees and 72,000 (31%) were salaried employees.

2. Approximately 68% of GM's total of approximately 91,000 U.S.-based employees were represented by unions as of March 31, 2009.

3. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("**UAW**") represented the largest portion of U.S. unionized employees. The UAW also was GM's largest unsecured creditor because of the prior restructuring of GM's healthcare obligations through the use of voluntary employee beneficiary associations ("**VEBAs**") under section 501(c)(9) of the Internal Revenue Code of 1986. The claim totaled approximately $20.6 billion.

II. Significant Factors Leading Up to the Financial Distress and Lack of Liquidity at GM and the Commencement of the Chapter 11 Reorganization

A. Worldwide Financial Crisis; Increased Fuel Prices; International Competition

1. The global economic collapse and deterioration of the financial markets abetted a liquidity crisis at GM that began to surface during the end of 2007 and exploded in 2008. It materially affected the automotive sector as vehicle sales declined and foreign carmakers intensified competitive efforts.

2. GM's financial distress was exacerbated by substantial increases in the price of crude oil to nearly $150 per barrel during 2008. This precipitated a sharp downturn in driving and sales in the large vehicle segments of the automobile market in which GM was dominant and most profitable.

3. The negative business aspects were further exacerbated by a sharp decline in the global economy, including substantial increases in unemployment and a freeze-up of consumer and business lending.

4. The resulting drop in new vehicle sales led to a steep erosion in GM revenues and, in turn, significant operating losses.

5. As a result, between early May and the middle of June 2008, GM's common stock price declined from over $23 per share to under $15 per share and its long-term bonds traded down from the mid-70s to the high 60s.

B. Instability in Financial Markets

1. Even as fuel prices stabilized and moderated to some degree during the fall of 2008, GM faced sharply deteriorating U.S. economic conditions during the second half of 2008 and the first quarter of 2009, constituting the worst economic downturn and credit market environment since the Great Depression of the 1930s.

2. The continuing economic contraction and the crisis in the financial markets as 2008 proceeded severely affected consumers, as both income and financing for buyers and lessees of automobiles evaporated. Access to credit significantly contracted or became nonexistent.

3. The contraction in vehicle sales and purchase orders from OEMs began to cause the bankruptcies of major auto parts suppliers, including Delphi Corporation, Dana Corporation, Collins & Aikman Corporation, Tower Automotive, Inc., and Dura Automotive Systems, Inc., among others.

4. As the general economy continued to deteriorate, GM explored programs to conserve and raise cash through various capital markets actions, such as

   a. Anticipating a liquidity crunch, in the summer of 2008, GM explored raising as much as $3 billion through a public offering of common and mandatory convertible preferred stock. Because of the rapidly and severely contracting financial and public markets, the prospects for such equity offerings faded by June 2008.

   b. GM's Treasury Office engaged independent financial advisors to assist in exploring a variety of alternative strategies, including a liquidity preservation plan and the possible issuance of secured debt.

   c. GM's financial advisors indicated that the market capacity for such a financing as of July 2008 was approximately $2 to $4 billion. However, GM's ability to raise additional secured borrowing was constrained by its existing secured loans and restrictive provisions in various public bond indentures. Nevertheless, GM attempted to pursue secured financing until early September 2008, when the global financial markets totally collapsed.

5. During the early part of September 2008, the U.S. Treasury announced the conservatorships of Fannie Mae and Freddie Mac. It caused further financial turmoil.

6. On September 15, 2008, Lehman Brothers Holdings Inc., the fourth largest U.S. investment bank, commenced a chapter 11 reorganization case. In the weeks that

followed, it became clear that there were no prospects for GM to launch any debt offering, even on a secured basis.

7. GM also had explored selling a variety of core and noncore assets. Such transactions were not able to be consummated on reasonable terms given the contracting credit markets, the expanding recession, and increasing concerns as to the financial viability of GM.

8. The combination of the sharp run-up of gasoline prices with its direct impact on GM's most profitable vehicle segments, rapid declines in the housing/mortgage/credit sectors, the freeze-up of equity and debt capital markets, and the lowest levels of consumer confidence in nearly thirty years, had an unprecedented effect on the automotive industry generally, and GM in particular.

9. During 2008 new vehicle sales fell to their lowest per capita levels in half a century, putting automakers under enormous financial stress. Sales of GM's products dropped as its market share in the largest single market for its products, the United States, steadily declined. The automobile market was flooded with imports from foreign OEMs with far lower cost structures and dramatically lower legacy benefit obligations.

10. GM's U.S. market share had steadily declined from 45% in 1980 to 22% in 2008.

11. GM's sales were materially affected by the overall decline in domestic automobile sales, which continued unabated given the deteriorating economy and financial markets. The Seasonally Adjusted Annual Rate ("**SAAR**") of automobile sales for the United States industry declined from 15.6 million units in January 2008 to 9.8 million units in January 2009, which was the lowest level since 1982. This affected all domestic OEMs, but GM in particular, as well as automotive parts suppliers. For the fourth quarter of 2008, GM's domestic automobile sales were down 36% compared to the corresponding period in 2007.

12. The extraordinary conditions and exogenous events of 2008 and 2009 caused GM's liquidity to rapidly erode to a level below what was necessary to operate its business. GM was compelled to reach out to the U.S. Government for financial assistance to sustain its operations.

III. U.S. Government Financial Assistance

A. The administration of President George W. Bush and its Secretary of the Treasury, Henry M. Paulson, recognized the draconian consequences of a GM failure, e.g., the loss of hundreds of thousands of jobs and the sequential shutdown of hundreds of ancillary and related businesses.

B. Viability Plan I

1. On November 21, 2008, the Speaker of the House of Representatives, Nancy Pelosi, and the Senate Majority Leader, Harry Reid, released a letter to the chief executive officers of GM, Chrysler LLC ("**Chrysler**"), and Ford Motor Company outlining a framework for the domestic OEMs to request government loans, which required, among other things, submission of additional information demonstrating future economic viability of the particular OEM.

2. In response, on December 2, 2008, GM submitted to the Senate Banking Committee and the House of Representatives Financial Services Committee a proposed viability plan ("**Viability Plan I**"), pursuant to which GM committed to using proposed government financing exclusively to sustain and restructure its operations in the United States and aggressively retool its products.

   a. Viability Plan I also requested that the Bush Administration provide an immediate loan of $4 billion to insure minimum liquidity through the end of 2008, a second $4 billion draw in January 2009, a third $2 billion draw in February 2009, and a fourth $2 billion draw, at an unstated date in 2009, for a total secured term loan of $12 billion.

   b. GM also requested access to an incremental $6 billion secured line of credit, for a total of $18 billion in projected government loans.

3. Congress elected not to enact enabling legislation.

4. GM then was compelled to seek immediate direct financial support from the U.S. Treasury or confront suspension of operations.

C. U.S. Treasury Facility and Viability Plan II

1. On December 19, 2008, President George W. Bush, recognizing the potential consequences of GM ceasing operations, announced that the U.S. Treasury would make short-term, emergency funding available to GM and Chrysler under the Troubled Asset Relief Program ("**TARP**") to prevent both companies from failing and closing.

2. On December 31, 2008, GM and the U.S. Treasury entered into an agreement (the "**U.S. Treasury Loan Agreement**") that provided GM with emergency financing of up to an initial $13.4 billion pursuant to a secured term loan facility (the "**U.S. Treasury Facility**").

3. GM borrowed $4 billion from the U.S. Treasury on December 31, 2008 and an additional $5.4 billion on January 21, 2009. The remaining $4 billion was borrowed on February 17, 2009.

4. A number of GM's domestic subsidiaries guaranteed GM's obligations under the U.S. Treasury Facility. The U.S. Treasury Facility also was secured by a lien on substantially all the unencumbered assets of GM and the guarantors, as well as a junior lien on encumbered assets, subject to certain exceptions. The U.S. Treasury Facility was also secured by a pledge of the equity interests held by GM and the guarantors in certain foreign subsidiaries, subject to certain exceptions.

5. In consideration for the loans provided under the U.S. Treasury Loan Agreement, GM also issued to the U.S. Treasury (i) a warrant to purchase up to 133,035,597 shares of GM common stock (subject to adjustment) and (ii) a related promissory note in the principal amount of approximately $749 million, due on December 30, 2011 (together with other similar notes, the "**Warrant Notes**").

6. The U.S. Treasury Facility required that GM develop a business plan proposal to demonstrate future viability. Subsequent to December 2, 2008, when GM submitted Viability Plan I, however, economic conditions had continued to erode globally, which, combined with increased public speculation about GM's future and survival, negatively affected GM's sales, volume, revenues, and cash flow.

7. After the national election, in February 2009 President Barack Obama appointed the Presidential Task Force on the Auto Industry, which included cabinet level officials, to evaluate available options (the "**Presidential Task Force**").

   a. The members of the Presidential Task Force were: the Secretary of the U.S. Department of the Treasury, Timothy F. Geithner; the Director of the National Economic Council, Lawrence H. Summers, the Secretaries of Transportation, Commerce, Labor, and Energy; the Chair of the President's Council of Economic Advisers; the Director of the Office of Management and Budget; the Environmental Protection Agency Administrator; and the Director of the White House Office of Energy and Climate Change.

   b. The Presidential Task Force advisors (Team Auto) included Ron Bloom, Senior Advisor to the U.S. Treasury; Steven L. Rattner, Counselor to the U.S. Treasury; Harry Wilson, an investment banker; and Matthew A. Feldman, a restructuring attorney.

8. On February 17, 2009, GM submitted to the Presidential Task Force its revised business plan to achieve and sustain GM's long-term viability, international competitiveness, and energy efficiency ("**Viability Plan II**"). It was intended to comprehensively address GM's revenues, costs, and balance sheet for its U.S. and

foreign operations, as well as GM's plan to reduce petroleum dependency and greenhouse gas emissions.

9. After review of Viability Plan II by Team Auto, on March 30, 2009, President Obama announced that Viability Plan II was not satisfactory and did not justify a substantial new investment of taxpayer dollars. The President outlined a series of actions that GM needed to take to receive additional federal assistance, including reaching an agreement with the UAW and GM's bondholders regarding debt reduction and the submission of a revised business plan that was more realistic and aggressive in terms of scope and timing.

10. President Obama indicated that the U.S. Treasury, as the largest secured creditor of GM, would extend additional limited working capital loans to sustain GM for another sixty days to enable GM to continue operations and develop and implement a more aggressive and comprehensive viability plan satisfactory to the U.S. Government that would include a model to not only survive, but also succeed in the competitive, global markets and repay its obligations.

11. The U.S. Government set a deadline of June 1, 2009 for GM to demonstrate that its viability plan would fundamentally transform GM into a profitable and competitive OEM.

12. On April 22, 2009, the U.S. Treasury Loan Agreement was amended to increase the U.S. Treasury Facility by $2 billion to $15.4 billion. GM borrowed the additional $2 billion of secured working capital loans on April 24, 2009.

13. On May 8, 2009, GM announced its first quarter 2009 results. Its total net revenues had decreased by $20 billion (or 47.1%) in the first three months of 2009. Operating losses increased by $5.1 billion from the prior quarter. During this same period, GM had negative cash usage of $9.4 billion and available liquidity deteriorated by $2.6 billion due, in large part, to lower sales volumes. Sales by GM's dealers in the United States fell to approximately 413,000 vehicles in the three months ended March 31, 2009, a decline of approximately 49% compared to the corresponding period in 2008.

14. To protect its claims against GM and avoid the cessation of operations with attendant consequences to the global economy, on May 20, 2009, the U.S. Treasury Loan Agreement was amended to increase the U.S. Treasury Facility by $4 billion. GM borrowed the additional $4 billion of secured working capital loans on May 22, 2009.

15. On April 27, 2009, as part of the continued effort to achieve long-term viability and avoid bankruptcy, GM launched a public exchange offer for the approximately $27 billion of its outstanding unsecured bonds (the "**Exchange Offer**").

a. GM viewed the Exchange Offer as a means to continue operations and avoid the precipitous decline in revenues that would result from a prolonged bankruptcy case.

b. At the time the Exchange Offer was announced, GM disclosed that, if it did not receive enough tenders to consummate the Exchange Offer, it would expect to commence a chapter 11 case to preserve the going concern value of the business.

c. The terms of the Exchange Offer were the subject of extensive negotiations between GM and the U.S. Treasury, as consummation of the Exchange Offer required the satisfaction or waiver of several conditions imposed by the U.S. Treasury as the largest secured creditor and potential contributor to GM's deleveraging.

(i) Among such conditions, the results of the Exchange Offer had to be acceptable to the U.S. Treasury, including the overall level of participation by bondholders in the Exchange Offer.

(ii) Consummation of the Exchange Offer was also conditioned on, among other things, the conversion to equity of (a) at least 50% of GM's outstanding U.S. Treasury debt at June 1, 2009 (approximately $10 billion) and (b) at least 50% (approximately $10 billion) of GM's future financial obligations to a new VEBA, for a total projected additional debt reduction of approximately $20 billion.

16. The Exchange Offer expired on May 26, 2009 without achieving the threshold of required tendered acceptances from GM bondholders.

17. No other private or public financing was available to GM. Access to credit was nonexistent.

IV. The Onset of the Chapter 11 Reorganization Case and the 363 Transaction

A. It became clear in the Spring of 2009 that an out-of-court restructuring was not possible. The only alternative to preserving going concern values and provide a means to save jobs and repay the U.S. Treasury was the reorganization process under the Bankruptcy Code.

B. In that context, it became obvious that the only feasible source of financing of a reorganization case was the U.S. Treasury. The parties entered into intensive negotiations that resulted in agreement to implement a transaction under which substantially all the major core assets of GM would be purchased by a U.S. Treasury-sponsored purchaser (subject to any higher or better offer) in an expedited process under section 363 of the Bankruptcy Code (the "**363 Transaction**").

C. Under this scenario, the purchaser would create a "New GM" that would purchase assets selected by it. Those purchased assets would constitute the new reorganized GM. New GM would then immediately operate free of the liabilities of the bankrupt Old GM and, thereby, preserve the going concern values, avoid systemic failure, provide employment, protect the many communities dependent on the continuation of the business, and restore consumer confidence, as well as provide for potential recovery by the U.S. Treasury of its claims.

D. The chapter 11 process selected and pursued in providing for a sale under section 363 of the Bankruptcy Code was consistent with generally-accepted practices and procedures followed in bankruptcy and chapter 11 cases to preserve going concern values and businesses through expeditious sales. In such proceedings the purchaser would be privately financed and, pending the implementation of the sale, the secured creditor of the debtor would provide debtor-in-possession (DIP) financing to bridge the sale. Because of the size of GM and the outstanding secured indebtedness held by the U.S. Treasury, as well as the severe economic conditions that prevailed in 2009, there existed no available financing from any nongovernmental source. The process developed complied with the accepted practice for such sales that had been approved and effected during the years preceding the GM chapter 11 cases. The U.S. Treasury, as the secured creditor, agreed that it would provide DIP financing through the chapter 11 process – but only if the sale occurred on an expedited basis.

E. Both the Government of Canada and the Government of Ontario, through Export Development Canada ("**EDC**"), Canada's export trading agency, agreed to participate in the DIP financing (discussed below) to assure the long-term viability of GM's North American enterprise and to (i) preserve value of the business, restore consumer confidence, and mitigate the devastating damage that GM and the industry would suffer if GM's major business operations were to remain in bankruptcy for any extended period and (ii) avoid the enormous costs of financing a lengthy chapter 11 case. The U.S. Treasury also agreed that it would provide New GM with adequate postacquisition financing that would further its long-term viability.

F. The 363 Transaction was embodied in a Master Sale and Purchase Agreement among GM and its debtor subsidiaries (the "**Sellers**" or the "**Debtors**") and Vehicle Acquisition Holdings LLC, a purchaser sponsored by the U.S. Treasury (the "**Purchaser**"), dated as of June 1, 2009 (the "**MSPA**").

G. The 363 Transaction was a material element of the U.S. Treasury program to revitalize the domestic automotive industry. It contemplated that substantially all of GM's core operating assets, which were essential for New GM to be a profitable and competitive operating entity (including the capital stock of the majority of its subsidiaries), would be sold and transferred to the Purchaser, which would immediately begin operations.

H. A fundamental premise of the U.S. Treasury program was to revive consumer confidence in GM products and services for the benefit of GM's employees, its extended vendor and

supplier and dealer network, and the families and communities that depend on GM operations.

1. Knowing that GM's business would exist and be supported in the form of New GM, consumers would have confidence that if they purchased a GM vehicle, there would be a dealer network and U.S. Government support to assure parts, warranty service, and a market for future used GM vehicle trade-ins and vehicle recovery.

2. A viable company would help preserve and support jobs and benefits, not only for GM's employees, but also for the employees of GM's suppliers and dealers, all of which would help support the market for GM vehicles with attendant benefit to the economy as a whole.

I. The purchase price paid by the Purchaser was equal to the sum of

1. a credit bid by the Purchaser in an amount equal to the amount of indebtedness owed to the Purchaser as of the closing pursuant to the UST Credit Facilities (as defined in the MSPA) and the DIP Facility, less approximately $7.7 billion of indebtedness under the DIP Facility (estimated to be $48.7 billion at July 31, 2009);

2. the Warrant Notes previously issued by GM to the U.S. Treasury;

3. the issuance by the Purchaser to the Debtors of 10% of the common stock of the Purchaser as of the closing;

4. the issuance by the Purchaser to the Debtors of New GM Warrants to purchase up to 15% of the shares of common stock of the Purchaser on a fully-diluted basis, with the initial exercise prices for equal amounts of the New GM Warrants based on $15 billion and $30 billion equity values of the Purchaser; the warrants would be exercisable through the seventh and tenth anniversaries of issuance, respectively, and the Debtors could elect partial and cashless exercises; and

5. the assumption by the Purchaser of the Assumed Liabilities (as defined in the MSPA).

J. In addition, it was provided that if the Bankruptcy Court determined that the estimated amount of allowed general unsecured claims and allowed asbestos personal injury claims collectively exceeded $35 billion, then the Purchaser would issue up to an additional 2% of the outstanding common stock of the Purchaser as of the closing of the 363 Transaction.

K. The assets excluded from the 363 Transaction, as well as the proceeds of the sale, were to be administered in the continuing chapter 11 cases to support the liquidation of such

assets, wind-down, or other disposition of the chapter 11 cases and to provide distributions to holders of allowed claims against the Debtors.

L. The proposed 363 Transaction addressed GM's debt obligations and significantly restructured GM's future legacy obligations to its employees through a settlement with the UAW. Under the UAW Retiree Settlement Agreement, the Purchaser, from the assets it acquired, agreed to provide to the UAW VEBA, among other things,

1. shares of common stock of the Purchaser representing 17.5% of the Purchaser's total outstanding common stock;

2. a note of the Purchaser in the principal amount of $2.5 billion;

3. shares of cumulative perpetual preferred stock of the Purchaser in the amount of $6.5 billion;

4. warrants to acquire 2.5% of the Purchaser's equity; and

5. the assets held in the GM VEBA to be transferred to the Purchaser as part of the 363 Transaction.

M. Resolution of the legacy retirement benefit issues and work rules for a refocused employer was a gating issue.

1. Concessions were necessary to ensure future viability. Because the Bankruptcy Code contains provisions that limit a debtor's ability to modify retiree benefits and collective bargaining agreements without protracted negotiations and possible litigation that, in GM's case, would have jeopardized an expeditious exit from bankruptcy for the operating assets, the consensual arrangement with the UAW was critical to the preservation of going concern values and the creation of an entity that could repay the U.S. Government financing. Without a continuing experienced labor force, the value of the acquired assets would have equated to liquidation values.

2. Team Auto actively participated in negotiating the amended collective bargaining agreement with the UAW that was essential to make New GM a viable investment for the Purchaser.

N. Team Auto, with input from the U.S. Treasury, the Presidential Task Force, and the Canadian EDC, fully negotiated the MSPA and completed its due diligence as to the assets to be acquired and contracts to be assigned to the Purchaser.

O. In sum, under the 363 Transaction, the equity of the Purchaser, i.e., New GM, was distributed initially as follows:

1. U.S. Treasury received 60.8% of New GM Common Stock and $2.1 billion of Series A Preferred Stock;

2. Canadian EDC received 11.7% of New GM Common Stock and $400 billion of Series A Preferred Stock;

3. UAW's new VEBA received 17.5% of the Purchaser's New Common Stock, $6.5 billion of Series A Preferred Stock, and 6-year warrants to acquire 2.5% of New GM Common Stock with an exercise price based on $75 billion total equity value; and

4. The Debtors (Old GM) received 10% of New GM Common Stock plus up to an additional 2% of New GM Common Stock if general unsecured claims exceed $35 billion and two sets of warrants, each to acquire 7.5% of outstanding New GM Common Stock with exercise prices of $15 billion and $30 billion total equity value.

P. The 363 Transaction had the following benefits:

1. preserved the value of GM core assets and businesses as an operating enterprise (i.e., going concern value, not liquidation value);

2. avoided the domino effect upon other OEMs and Tier I suppliers that would have followed a GM liquidation;

3. continued employment for hundreds of thousands of persons at GM as well as employees of those entities that relied upon GM as their source of business and revenues;

4. protected the many communities dependent on the continuation of the business;

5. restored consumer confidence in GM and its products and dealers;

6. established an automotive manufacturing business that would be viable, competitive, and reliable, as well as a standard bearer and bellweather industry considered essential for the United States; and

7. avoided exacerbating the economic recession that engulfed the United States in 2009.

V. The General Motors Chapter 11 Case

A. GM commenced the chapter 11 case on June 1, 2009 in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**").

B. Implementing the 363 Transaction

1. Concurrently with the filing of its voluntary chapter 11 petitions, GM filed a motion with the Bankruptcy Court seeking approval of the 363 Transaction, under which the Debtors would sell their core operating assets to the U.S.-sponsored Purchaser in exchange for a package of cash and noncash consideration valued at over $90 billion, subject to higher or better offers.

2. On June 2, 2009, the Bankruptcy Court, after notice and a hearing, approved the notice and related procedures and set June 19, 2009 as the deadline for parties to object to the 363 Transaction; June 22, 2009 as the deadline to submit any higher or better bids; and June 30, 2009 as the date for a hearing to consider approval of the 363 Transaction.

3. Although hundreds of objections to the 363 Transaction were filed, GM did not receive any meaningful bids nor any alternative proposals to the 363 Transaction. No objector argued that the 363 Transaction was not in the best interests of GM and its economic stakeholders.

4. In connection with certain objections, the parties in interest engaged in ten days of expedited discovery. GM produced several hundred thousand pages of documents, responded to extensive interrogatories, and submitted its CEO and others to depositions. A three-day evidentiary hearing was held before the Bankruptcy Court from June 30 to July 2, 2009, during which five witnesses testified and affidavits and declarations were submitted and considered.

5. The evidentiary record was undisputed and established that the 363 Transaction was a sound exercise of GM's business judgment and was the only viable alternative to a liquidation that would severely diminish values and, further, that the sale would avoid cataclysmic ramifications to the national economy. It also found that the U.S. Treasury, with the support of the Canadian EDC, was the only entity prepared to finance the chapter 11 case and such financing was conditioned on the satisfaction of certain milestones for completion of the sale transaction.

6. On July 5, 2009, the Bankruptcy Court entered an order (the "**Sale Order**") overruling all remaining objections and authorizing the 363 Transaction. The Bankruptcy Court issued an 87-page written decision in support of the Sale Order, *In re General Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009). The Sale Order was affirmed by the United States District Court for the Southern District of New York in two decisions, *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43 (S.D.N.Y. 2010) and *Parker v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 430 B.R. 65 (S.D.N.Y. 2010).

7. The sale of GM's continuing businesses and related core assets closed on July 10, 2009. On the closing date, the Purchaser took on the name General Motors Company, i.e., New GM, and the entity formerly known as General Motors Corporation changed its name to Motors Liquidation Company ("**MLC**").

8. Less than eighteen months later, in November 2010, New GM conducted an initial public offering of shares of common stock acquired by the U.S. Treasury and Canadian EDC and returned as a listed corporation on the New York Stock Exchange. The U.S. Treasury and the Canadian EDC recovered approximately $11.7 billion and $1.2 billion, respectively, from the sales proceeds. Currently, the U.S. Treasury and the Canadian EDC only holds 500,065,254 and 140,084,746 shares of New GM Common Stock, respectively, with the U.S. Treasury holding 30% and the Canadian EDC holding 8.4% of New GM Common Stock.

9. MLC prosecuted the chapter 11 cases following the sale to manage the liquidation and wind-down of the noncore assets as well as the resolution of all claims against it (i.e., those liabilities not assumed by New GM), including environmental issues and disposition of closed plants.

10. On December 8, 2010, MLC proposed its chapter 11 plan, which provided for the establishment of four trusts whose primary objective was to liquidate the noncore assets over time and resolve the outstanding liabilities transferred to the respective trusts. The chapter 11 plan was overwhelmingly accepted by MLC's creditors (97% of creditors entitled to vote in number and 85% in dollar amount of claims) and became effective on March 31, 2011.

11. MLC's chapter 11 plan provided for the distribution of the proceeds of the 363 Transaction, i.e., 150 million shares of New GM Common Stock; warrants to acquire 136,363,635 newly issued shares of New GM Common Stock, with an exercise price set at $10.00 per share; and warrants to acquire 136,363,635 newly issued shares of New GM Common Stock with an exercise price of $18.33 per share.

12. Today, the chapter 11 plan has been fully consummated as the shares issued by New GM have been distributed to the Motors Liquidation Company General Unsecured Claims (GUC) Trust to hold, administer, and direct the distribution of such shares for the benefit of holders of allowed general unsecured claims against MLC. The Motors Liquidation Company GUC Trust itself has distributed over 120 million shares of New GM Common Stock, and over 220 million shares of New GM Common Stock in connection with the New GM Warrants, to the holders of allowed general unsecured claims against MLC. Because creditors who received distributions were free to sell their shares or hold them, the precise recovery for MLC's creditors is difficult to ascertain. However, depending on the

price of New GM Common Stock, creditor recovery has ranged from approximately 12% to 20%.

VI. Addressing Criticisms of GM as a "Bailout"

A. The GM "bailout" has been the subject of many criticisms, including

1. Government ownership of a commercial business is improper and could not be successful;

2. Certain creditors, namely the UAW, received preferential treatment in the chapter 11 cases and as part of the 363 Transaction; and

3. President Obama and his administration abused their power and constitutional obligations by sponsoring the reorganization of GM.

B. The Structure of the GM Reorganization

1. Criticisms

a. During the planning stages of the "bailout," it was argued that the U.S. Government could not take effective control of GM without becoming a failed political exercise.

b. The reorganization would be used by President Obama to achieve parochial political objectives to control not only whether GM and Chrysler could reorganize, but also to dictate how a reorganization or liquidation would occur (e.g., which plants to close, which vendor and supplier contracts to assume, which brand names to retire) to the prejudice of certain creditors and other parties.

2. Responses

a. GM's restructuring was unaffected by political objectives other than a universal desire to prevent the shutdown of the U.S. automotive manufacturing sector and the systemic failures that would result.

b. Presidential Task Force and Team Auto

(i) The organization and utilization of the Presidential Task Force and Team Auto separated the negotiation of the actual terms of the 363 Transaction from the political arena.

(ii) Team Auto was not the product of partisan politics, and its members and workforce covered the political spectrum. They were recruited largely from the financial community and Wall

Street law firms. They were persons of outstanding expertise enlisted without regard to political affiliation. They understood distressed investing restructuring and managed the process as if it was a nongovernmental restructuring and reorganization.

(iii) The Presidential Task Force mandated that Team Auto conduct due diligence, make reasonable business judgments, and assist in designing a transaction directed to saving the industry and maximizing value of the reorganized enterprise rather than satisfying noneconomic objectives.

(iv) The momentum and speed of the 363 Transaction and the identity of the negotiators enabled the restructuring process to stay on track.

(v) The Presidential Task Force required New GM to objectively project a business plan to succeed in the competitive global automotive market by creating accountability to generate positive cash flow and maintain a competitive balance with other OEMs.

(vi) The MSPA did not contain any conditions favoring specific constituencies. The MSPA was free of political influences. The guiding principle included the development of a feasible, performable business plan that would produce a viable OEM capable of competing in the marketplace and provide the basis to repay the government loans and investments.

c. Need for Speed

(i) The speed of GM's bankruptcy case was necessary to meet business concerns and was not designed to squelch opposition.

(ii) GM had completed negotiating the 363 Transaction with the U.S. Treasury by the time it commenced its chapter 11 case on June 1, 2009. GM, with the oversight of Team Auto, reached agreements with an ad hoc group of bondholders and the UAW that assured New GM of the ability to immediately and in a seamless fashion reenter the automotive market as a viable, competitive OEM.

(iii) The Bankruptcy Court approved the 363 Transaction, and the sale was consummated, 39 days after the commencement of the chapter 11 case, a process that implemented the objectives of preventing systemic failures that would have aggravated the depressed economy.

d. Liquidation would have eliminated the possibility that unsecured creditors would receive any distributions and could have exacted a greater toll on taxpayers through a substantial loss on the existing loans to GM, as well as lost jobs, decreased tax revenues, and increased expenditures for unemployment assistance, healthcare, and environmental remediation.

C. Preferential Treatment of the UAW

1. Criticism

a. The UAW obtained preferential treatment in the 363 Transaction over other creditors pursuant to an allegedly sweetheart transaction and for political reasons.

2. Response

a. The settlement agreement between New GM and the UAW is an example of the realistic economic approach taken in all 363 transactions, i.e., labor always presents a crucial issue if a work force is necessary to the success of the purchased business. The provisions of the National Labor Relations Act and the Bankruptcy Code gave the UAW significant leverage.

(i) The sale of the core assets of GM only made sense if the business could continue and going concern values were maintained. To attain that objective, the Purchaser must be assured that it has the requisite workforce. The NLRA requires a purchaser of a unionized business to negotiate in good faith a successor agreement with an existing union. Given the precarious nature of GM at the time, it is unlikely that GM could have survived a protracted renegotiation.

(ii) Section 1113 of the Bankruptcy Code enables rejection of a collective bargaining agreement a lengthy, difficult statutory process. Compliance with section 1113 would have been impossible in the time frame that was available with respect to the 363 Transaction. Section 1114 of the Bankruptcy Code similarly makes modifications of retiree benefits a lengthy, difficult process. Even if successfully prosecuted, the Bankruptcy Court cannot compel union members to return to work. After rejection pursuant to the NLRA, the parties must resume negotiations in good faith and unions may resort to self-help, i.e., strike.

b. The U.S. Government at the outset conditioned any funding of GM on the resolution of legacy obligations to employees and a streamlining of production to reduce costs. The UAW's collective bargaining agreement

and GM's retiree benefit plans needed to be restructured; plants needed to be closed; and the UAW needed to share in the sacrifice.

c. In connection with the 363 Transaction, the UAW made significant concessions, including reductions in overtime pay, bonuses, and benefits to induce the Purchaser to go forward. The revised collective bargaining agreement with New GM created greater competitive flexibility to increase and decrease production capacity as necessary by permitting temporary flex employees, suspending the job security program, and creating new special attrition plans to reduce head count. Also, a number of retiree benefits were reduced or eliminated.

D. Need for Speed

1. Criticism

a. The speed of the 363 Transaction was unnecessary and potentially sacrificed the rights of creditors.

b. The 363 Transaction constituted a sub rosa plan of reorganization that proceeded without the protections of plan development, confirmation, and consummation under the Bankruptcy Code.

2. Response

a. The timing of the 363 Transaction was dictated by numerous factors, including the lack of financing, the concern over erosion in value, and, most critically, the almost universal conclusion that the operations could not be sustained during a protracted chapter 11 process. The timing was in line with other expedited sales under section 363(b) of the Bankruptcy Code, such as in the chapter 11 case of Lehman Brothers Holdings Inc.

b. No other realistic alternatives were available. No credible party expressed an interest in funding an alternative transaction. There were no merger partners, acquirers, or investors willing and able to purchase GM's assets and businesses. The U.S. Treasury and Canadian EDC were the only lenders willing and able to finance continued operations. No debtor in possession financing was available from private sources. The U.S. Treasury was the only entity that had the wherewithal and the inclination to provide such financing and, then, only on the premise that going concern value would be preserved. The only means of reasonably accomplishing that objective was the expedited sale process pursuant section 363 of the Bankruptcy Code.

c. Surveys taken prior to the GM chapter 11 reflected that consumers needed to have confidence in GM's products, i.e., that a GM would exist in the future to stand behind its products. GM and the U.S. Treasury were aware that consumers would not purchase vehicles from an OEM in a bankruptcy case.

d. The 363 Transaction enabled objectors to voice their opposition in a meaningful way. The Bankruptcy Court held extended hearings over three days to consider all objections and GM's affirmative case. Over 850 objections and responses were filed.

e. The 363 Transaction did not dictate the terms of a plan of reorganization, as determined by the judicial decisions. MLC subsequently did propose a chapter 11 plan that was accepted by claimants and confirmed by the Bankruptcy Court on March 29, 2011 and, thereafter, consummated on March 31, 2011.

E. Failure of Due Process

1. Criticism

a. The speed of the 363 Transaction and of the chapter 11 case deprived creditors of due process.

2. Response

a. All aspects of GM's chapter 11 case, including the 363 Transaction, were fully transparent and subject to notice and an opportunity to be heard by a neutral third party tribunal—the Bankruptcy Court.

b. The substantial discovery that was made on an expedited basis was made available to all opponents of the 363 Transaction.

VII. Accomplishments of the 363 Transaction

A. The 363 Transaction prevented the collapse of manufacturing in the Midwest, with New GM positioning itself again as a strong contender in the automotive manufacturing sector.

1. Today, the Big Three (i.e.., Chrysler, GM, and Ford) are all profitable for the first time in seven years, adding shifts and facilities across the United States.

2. Before commencing its chapter 11 case, GM had lost its position as the world's top-selling automaker to Japanese rival Toyota. Three years after its chapter 11 case, New GM regained its title as top-selling automaker.

3. New GM has posted a net profit for the past ten straight quarters, posting its largest-ever annual profit in 2011.

4. New GM's strongest global region in terms of finances and vehicles sold is North America, where it has remained the market leader.

5. GM and Chrysler sold 3.8 million vehicles in the United States in 2011, up 14% and 26% respectively from 2010.

6. New GM is a public reporting company under Section 12(b) of the Securities and Exchange Act of 1934. Its shares of common stock, par value $0.01, are publicly traded under the symbol "GM" on the New York Stock Exchange. As of June 30, 2012, there were 1,565,941,048 shares of common stock outstanding. New GM's current market recapitalization is approximately $36.6 billion, and the average daily volume of shares traded is approximately 7.8 million. As of June 20, 2012, New GM had consolidated reported global assets and liabilities of approximately $151,987,000,000 and $110,377,000,000, respectively.

B. The 363 Transaction preserved jobs and income

1. Direct job losses that would have resulted from a disorderly bankruptcy and closing of GM would have been tremendous. *See* "A Look Back at GM, Chrysler and the American Auto Industry," Executive Office of the President of the United States, Apr. 21, 2010 (explaining that, according to certain studies, the direct and indirect jobs at risk were estimated to be up to 3.3 million, yet recognizing that none of the studies accounted for jobs that would have been created at other companies, like Ford or Toyota, had GM and Chrysler no longer been competing in the marketplace). Between March 2008 and March 2009, the automobile industry shed 410,000 jobs. Analysts have estimated that at least one million jobs could have been lost had GM and Chrysler liquidated.

2. Since the consummation of the 363 Transaction, the automobile industry has added approximately 230,000 jobs – the most growth in a decade. The industry expects to add 167,000 jobs by 2015.

3. In addition to saving more than 1 million jobs, the 363 Transaction prevented the loss of over $96 billion in personal income.

4. New GM has added shifts at several U.S. facilities since the fall of 2009 to meet growing demand, adding several thousands of direct jobs and reopening at least one plant.

C. The 363 Transaction allowed a substantial majority of GM dealerships to continue operations while providing a compassionate wind-down period for terminated and discontinued dealers.

D. The 363 Transaction helped stabilize the U.S. and global economies.

1. Absent the 363 Transaction, a GM liquidation would have had a catastrophic impact on the U.S. economy.

   a. Hundreds of thousands of persons would have been thrown out of work, along with the termination of health benefits and retirement benefits for current and former employees and their families, adding to the burden of the federal, state, and local governments to provide relief to such persons.

   b. There would have been a worldwide shutdown of GM's suppliers and dealers with similar consequences.

2. The failure of GM might have resulted in the failure of Chrysler or Ford because of shared single-source suppliers that would have failed without volume purchases from one of the big three. This would have triggered a further cascade of failures throughout the auto manufacturing industry among part suppliers.

Mr. MICA. And I thank all of our witnesses for their testimony, and we will turn to questions now.

First I want to talk to the Special Inspector General, Ms. Romero. I just about fell out of my chair when you cited the number of convictions and also the people charged with stealing from TARP. Could you repeat that again for the record?

Ms. ROMERO. Absolutely. I really appreciate you raising this. So SIGTARP's a law enforcement agency, so we conduct criminal investigations. As a result of our investigations so far, 151 people have been charged with crimes and 111 of them have been convicted so far. The others are waiting trial or——

Mr. MICA. 111 convicted.

Ms. ROMERO. Yep. 58 of those——

Mr. MICA. Let me just say, good work. I don't think any of the American people—I mean, TARP is always touted as such a success and everything, but it looks like when you open the cupboard, the rats find their way to the cheese and steal a lot of it.

When we talk about this whole topping-up of pensions, this isn't—this wasn't a normal bankruptcy. It would have been handled quite differently, wouldn't it, Ms. Bovbjerg, if this was a regular bankruptcy?

Ms. BOVBJERG. Normally in bankruptcy when plans are being terminated—and just to be clear, usually PBGC is terminating plans because there is no viable sponsor and they're underfunded.

Mr. MICA. But the whole bankruptcy was—it wasn't handled like a normal bankruptcy, right?

Ms. BOVBJERG. From a PBGC perspective——

Mr. MICA. What's the difference—what was the difference in this, in how this was handled?

Ms. BOVBJERG. What made these terminations unique was the presence of GM.

Mr. MICA. Yeah. But, again, the whole difference in what was done here is the topping-up, and, again, what took place was that they were using what? That's the question. Can you answer that? Anyone know? Taxpayer money? Is that the truth?

Ms. BOVBJERG. It's a little unclear, because it's all fungible. I mean, we were not—we were not looking to track that, but——

Mr. MICA. I know, but where the hell did the money come from? Excuse the expression. It came from the taxpayers. Even Mr. Miller, the minority witness, just said that it was—it was taxpayer money, and most of it's deficit money, $0.40 on the dollar, but that's the difference. I have been in business, and you file bankruptcy and you go through a court proceedings. And there may be some protection of pensions through a Pension Guarantee Fund if you're a participant, et cetera, but the difference here is that taxpayer money was making up the difference.

Now, some of you all participated in a—it was the presidential—President's Auto Task Force. Raise your hand if you participated. Okay. Three here. Okay. Did you all participate in the Poughkeepsie meeting? Did you participate in the Poughkeepsie meeting, Feldman? No?

Mr. FELDMAN. Not familiar.

Mr. MICA. You weren't there. Were you there, Rattner.

Mr. RATTNER. I——

Mr. MICA. Were you there, Wilson.

Mr. WILSON. Do you mean the Poughkeepsie Delphi mediation?

Mr. MICA. Yeah.

Mr. WILSON. Yes.

Mr. MICA. But the other two were not. So you're the only one at the table that was there, right?

Mr. WILSON. I think that's correct.

Mr. MICA. Okay. And I understand there were union representatives at that meeting, and that was the basis of a lot of discussion that was taken prior to making a final decision as to how this was going to all play out, but there was no one—not—no one from the non-salaried side of the equation, was there?

Mr. WILSON. Sir, I don't recall that. The primary participants were representatives of GM and Delphi.

Mr. MICA. But were there union representatives? I was told there was a union representative. Does anyone know?

Mr. WILSON. There were dozens of people there. I don't know for sure.

Mr. MICA. Do you know, Ms. Romero, if there were.

There were dozens of union representatives.

Mr. WILSON. No. There were dozens of people. I can't tell you for sure——

Mr. MICA. Well, I'm told there was no one representing the non-salaried where a lot of the decisions were made, which seems a little bit unfair. And, again, I think——

Mr. WILSON. Can I ask you who—who you think was representing the unions, because I don't recall anyone there who did.

Mr. MICA. I was told that there was representation.

Mr. WILSON. Was it by a source that was there as——

Mr. MICA. No. By my staff, and they're usually fairly reliable. Today's only Wednesday. Okay.

Mr. Rattner, to you. You talked about this being a success and GM and Chrysler wouldn't make it without it, but others made it without it, Ford and a whole host of others. Isn't that correct, too?

Mr. RATTNER. That's correct.

Mr. MICA. Yeah. And they made good decisions. I mean, I was in business. I would have loved to have somebody fund me when I had losses or wasn't making money or was on the verge of bankruptcy, but here again, I think the principal difference is that we used taxpayer money for the bailout.

Does anyone have any idea, Ms. Bovbjerg, of how much money was used for—I heard there was some resolution of liability for healthcare debt.

Ms. BOVBJERG. We did not look at the VEBA, is I think what you're asking about, the retiree health.

Mr. MICA. Yeah.

Ms. BOVBJERG. I know that there had been some provision, perhaps in the settlement.

Mr. MICA. But I was told that that was—that was also part of the bailout.

Ms. BOVBJERG. It—we did not look at that.

Mr. MICA. You don't know. Do you know, Ms. Romero?

Ms. ROMERO. I don't know the exact amount.

Mr. MICA. But what I'm trying to do is figure——

Ms. ROMERO. It's clearly part of the bailout.

Mr. MICA. —figure out how much of the pension top-up cost and the healthcare, any of the money that probably will not be paid back to the taxpayers. It won't be paid back as opposed to some of the other money. Is that correct?

Ms. ROMERO. The estimated amount—this is what GM and Treasury were working with at the time for the top-up of the union employees, this would be all the unions, was $1 billion to $1.5 billion.

Mr. MICA. And that won't be paid back. There's no mechanism for that.

Ms. ROMERO. No. It's not a—it's not separate than the TARP funds that have to be paid back anyway where Treasury expects a loss.

Mr. MICA. All right. And, again, we only have one person that was at the Poughkeepsie meeting, so we will try to find out exactly who was there.

My last question is, I've only chaired this with—and Mr. Connolly as my ranking member since the beginning of the year, however, the inquiry into this matter has gone on for at least 2 years previous. You've been involved for how long, Ms. Romero?

Ms. ROMERO. 3 years.

Mr. MICA. And how would you describe the folks from TARP and Treasury, all the government folks that were involved, Pension Guarantee, as their cooperation as your investigation has gone forward?

Ms. ROMERO. Well, this audit was very much delayed by the refusal of four auto team members to be interviewed, yes.

Mr. MICA. Well, I made one pledge when I became chairman to Mr. Turner that all hell would break loose if we did not get a response. I did think at the beginning that they'd finally become responsive, but I will not tolerate, as chair of a subcommittee or participating in this committee, with non-responsiveness from any of the agencies. And there will be—and I think Mr. Connolly shares this, too. We expect and demand the information. I know that's been turned over, it's been late, and I know that they did everything to delay to keep information from you. And I think that's a sad commentary, because the story does need to be told and I think that it's our responsibility to look into how this unfolded and how taxpayer money was used and if people were treated fairly with taxpayer money.

So, again, I thank you for your perseverance and the good job you did, and I wish you good luck on the conviction of the balance of those folks that stole out of the cookie jar.

Comment.

Ms. ROMERO. Thank you. We'll get them.

Mr. MICA. All right. Thank you.

Mr. CONNOLLY. You go get them.

Thank you, Mr. Chairman.

By the way, just to clear up something, Mr. Wilson, you're under oath, your testimony is you do not recall any union reps at that Poughkeepsie meeting. Is that correct.

Mr. WILSON. That's correct.

Mr. CONNOLLY. Thank you.

Mr. WILSON. I don't recall that.

Mr. CONNOLLY. Just want to make—get it in the record, since you were the only one at the table who was there.

Ms. Bovbjerg, you—I think I heard you characterize the bankruptcy as unusual. Is that correct?

Ms. BOVBJERG. From the perspective of plan termination and the PBGC, it was unusual. PBG's—PBGC's role in it was as it has been with other terminations. We were asked to look at the perspective of PBGC and we looked at the 10 largest terminations. And, you know, every one, of course, has it's different twists and turns, but they were all pretty much the same. PBGC is mainly governed by ERISA, so most of what they do is in statute.

What was different here were the top-ups and the presence of GM. If Delphi had emerged from bankruptcy and tried to top-up the plans, PBGC would have given the plans back.

Mr. CONNOLLY. Gotcha.

Ms. BOVBJERG. Because if they can do that——

Mr. CONNOLLY. Right.

Ms. BOVBJERG. —any employer can do that.

Mr. CONNOLLY. If I may, because I want to explore the narrative here that some are trying to establish, let's go back. The top-off GM negotiated at the time of the spin-off of Delphi was with the unions. Is that correct.

Ms. BOVBJERG. Yes.

Mr. CONNOLLY. At the time, the union workers being represented, their pensions weren't fully funded. Is that correct?

Ms. BOVBJERG. Correct.

Mr. CONNOLLY. The salaried workers who now are complaining about the fact that they didn't get topped off, unlike the union workers, in fact they were fully funded at the time of the spin-off. Is that correct?

Ms. BOVBJERG. Yes. Their plan was overfunded.

Mr. CONNOLLY. Subsequently something happened, so they—okay. So they were fully funded, the union folks weren't. The union folks negotiated a contract to try to correct that and get a top-off, salaried workers didn't. No taxpayer dollars yet. And, of course, no one thinks Delphi goes under, but it does.

Mr. TURNER. [Presiding.] Mr. Connolly.

Mr. CONNOLLY. And——

Mr. TURNER. Can I interrupt for just a moment.

Mr. CONNOLLY. I'm sorry?

Mr. TURNER. I'm sorry, Mr. Connolly. If I could—if I could interrupt for just a moment, and I'll give you additional time.

As you're having this discussion, that's not necessarily the—a complete characterization of what the issue is. As Ms. Bovbjerg knows, the issue also is on the termination and on the funding itself——

Mr. CONNOLLY. Right.

Mr. TURNER. —and on the dispute of the assets. So we're on the top-up, and I just want to make certain that her answers are understood to be limited to just this——

Mr. CONNOLLY. Yes.

Mr. TURNER. —issue of the top-up.

Mr. CONNOLLY. Thank you.

Mr. TURNER. There are multiple other issues leading up to termination——

Mr. CONNOLLY. Yeah.

Mr. TURNER. —that are at risk.

Mr. CONNOLLY. I thank the chair. Yeah. I'm just trying to key off on the narrative here to make sure I understand what happened and when, but you're—obviously there were other issues that we have to—you're quite correct in addressing.

So subsequently, subsequent to the spin-off, things went south.

Ms. BOVBJERG. Yes.

Mr. CONNOLLY. And the salaried workers who had not negotiated a top-off, so there was no contractual obligation to give them one, sued to try to get one. Is that correct?

Ms. BOVBJERG. Yes.

Mr. CONNOLLY. And what happened to that lawsuit?

Ms. BOVBJERG. They're still in court.

Mr. CONNOLLY. I'm sorry?

Ms. BOVBJERG. They're still in court.

Mr. CONNOLLY. Are you sure about that? They're still in court? Suit's still pending.

Ms. BOVBJERG. Yes.

Mr. CONNOLLY. Okay. So they can pursue the route of litigation. But if you're suing GM to get a top-off from a new—I mean, from a court point of view if you're in bankruptcy, why would a court—I'm just—I'm talking about, you know, in theory. Why would a court approve a new obligation.

Mr. TURNER. Would you mind if I hop in for a moment again?

Mr. CONNOLLY. Yeah.

Mr. TURNER. I'll give you additional time. I just want to take time out of my time to clear that up.

That's an isolated case. The issue is not a suit for top-up. The issue is one of valuing asset, the termination of the pension plan to begin with. The issue of going south, that actually is in dispute as to whether or not there were sufficient assets within the plan prior to termination and whether or not these gentlemen exerted influence on the termination, and so it's not really just an issue of we're going to court to get a top-up.

The process of the top-ups was really the discussion of determining, post Treasury's denial, that they were not involved or were they involved. And here from the report we have, they were.

Mr. CONNOLLY. I want to be clear, Ms. Bovbjerg. There were multiple lawsuits, and the one against GM was thrown out. It's not pending. Is that correct?

Ms. BOVBJERG. That's correct.

Mr. CONNOLLY. All right. Just because it's a little misleading to say it's still pending. The GM suit is not. And that's what I'm getting at. Is there, was there any kind of implied commitment, certainly there was no contractual commitment, but was there some implied commitment to keep these folks whole by GM 9 years after the separation from Delphi?

Ms. BOVBJERG. I'm sorry. I didn't understand your question completely. Can you—that there was an implied commitment?

Mr. CONNOLLY. Well, that—in some of the conversation, there seems to be some idea that either GM or the taxpayers have an ob-

ligation to folks who found themselves not whole in their pensions, but that population is a population that was not covered under the contractual agreement with the unions, it's 9 years later, GM is in bankruptcy. They pursued, you know, their legal route against GM, and that was thrown out.

And what I was going to get at is what court in the land, bankruptcy court would look at this situation and say even though this is, you know, one of the largest bankruptcies ever, it's the largest automotive manufacturer in the world, 900,000 jobs are at stake, and we're looking at is there a plan we can salvage the company with or do we liquidate—thank God we didn't go to the route of liquidation, but it was an option—while we're doing all that, let's take on a new obligation, that is to say one that you are not contractually obligated to it right now, topping-off or making whole these—this category of pensioners.

Mr. TURNER. Mr. Connolly——

Ms. BOVBJERG. No. I can't really speak to the intent of the bankruptcy court.

Mr. TURNER. And if I could hop in for just one moment again.

Mr. CONNOLLY. Yeah.

Mr. TURNER. Because I know—and you've been, you know, incredibly kind and diligent, I know, in the manner of looking at this. This is one where there are unfortunately members who've been working on it for 4 years, so the distinctions I know that you're struggling with, perhaps you can help with.

The issue of contractual obligations, there are no contractual obligations post bankruptcy. There was a labor agreement, and, of course, salaried retirees—salaried employees don't have a labor agreement, so they have no contractual obligation. So it's the distinction in how they sit as to whether or not there was a prior agreement, but entering into bankruptcy, they all sit equally, because bankruptcy voids all the agreements, they have to be redone, it's—they have to be renegotiated. So it's not fair to say they didn't have one and they did. It's how are they treated as they go through the bankruptcy process. And then—and that is in her report for the GAO.

Mr. CONNOLLY. Yeah. Well, whether it's fair or not is a different issue. That's a subjective judgment, but your distinction is fair. There is a distinction. But I do note for the record one had a contractual—a contract, one did not. One was whole at the time of separation, one was not. And there's no evidence, but correct me if I'm wrong, that somebody from Treasury or the administration politically decided help this group, not that group, or is there, Ms. Bovbjerg?

Ms. BOVBJERG. We reviewed public documents. We in fact separated a bit, and I guess I would ask Nicki to talk about——

Mr. CONNOLLY. Yeah. I——

Ms. BOVBJERG. —the methodology.

Mr. CONNOLLY. Fair enough. I'll turn to Ms. Romero. I'm just asking whether you—if GAO encountered—encountered anything.

Ms. Romero.

Ms. ROMERO. I'm a little bit lost. What was the question?

Mr. CONNOLLY. Well, I'm trying to lead us up through this narrative, with the help of my good friend——

Mr. TURNER. Can I reask your question.

Mr. CONNOLLY. Sure.

Ms. BOVBJERG. Excuse me, Mr.——

Mr. TURNER. His question was with respect to the top-up. Is there evidence that you uncovered that established that it was solely politically motivated.

Mr. CONNOLLY. Or at all politically motivated.

Ms. ROMERO. Well, just so you know, all of our audits we look at everything, so what we were interested in is what were all the reasons, all the factors and considerations that went in to the decision that GM and Treasury made on the top-up. So we didn't exclude one factor or focus on one factor, and we did not find evidence that political clout of the UAW was a factor in GM and Treasury's decision.

Mr. CONNOLLY. Thank you. Mr. Chairman, I think fairly my time is probably up, and I thank you for your guidance.

Mr. MICA. [Presiding.] Thank the gentleman, and recognize now Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

First off, thank all of you for your participation in this, because what we're doing is recreating what occurred so we can find out whether or not what occurred was proper and how to address it.

Ms. Romero, there were a number of people who threw political accusations when this first started, and I wanted to ask you a question I think should help us in dissolving the political tension, and that is, you are a President Obama appointee, are you not?

Ms. ROMERO. I am.

Mr. TURNER. Thank you.

Mr. Rattner, according to the SEC website, November 18th, 2012, the Securities and Exchange Commission charged you—charged former Quadrangle Group principal, Steven Rattner, yourself, with participating in a widespread kickback scheme to obtain investments from New York's largest pension fund.

I'm going to ask consent that the portions of the SEC website concerning those charges be entered into the record and the full text of the complaint on the kickback scheme in the pension fund.

Mr. MICA. Without objection, so ordered.

Mr. TURNER. Mr. Rattner, did you pay a settlement in that matter?

Mr. RATTNER. Yes.

Mr. TURNER. What was the amount of that settlement.

Mr. RATTNER. It was about a little over $6 million.

Mr. TURNER. I think it's, according to the website, $6.2 million that you paid to settle that claim of a kickback scheme with respect to a pension fund.

Mr. Rattner, you indicated that the decisions that were applied with respect to the pensions were those of commercially reasonable. Could you define commercially reasonable for me?

Mr. RATTNER. Commercially reasonable, in our minds, would be decisions that you would—that a private actor would make in order to ensure in this particular case that money that was being invested was being invested wisely.

Mr. TURNER. When you considered that private actor, would you consider a private actor that was involved in a kickback scheme for

pension funds or those that had not been? You don't have to answer that, Mr. Rattner.

Mr. RATTNER. Thank you.

Mr. TURNER. Ms. Bovbjerg, you were in Dayton and you did an excellent job describing the GAO report, and I greatly appreciate your distinction that your report is not, as Ms. Romero's is, a detailed analysis of documents and records requested from the government and the Treasury Department and reviewed.

You did in your report specifically dedicate a section to, I believe it is on page 9, the issue of Treasury's multiple roles. When I did my opening, I indicated that part of the concern in all this is that Treasury through TARP became multiple people. I mean, that Treasury's on the board of the PBGC, Treasury became new GM, Treasury became the bond holders and, you know, some of the equity holders.

And you indicated this: You said in previous reports, we also have examined the challenges posed to Treasury due to its multiple roles as a private pension regulator and a GM shareholder as well as having its secretary serve on the PBGC board.

Now, you testified earlier, which is why I want to clarify this, you said, well, PBGC viewed this normally. Now, you have not reviewed all the emails that we have and that Ms. Romero has, so the word "normally" I'm a little concerned about. So let's just go back to what I recall you having said in Dayton and end it with this. In Dayton, you said those Treasury's multiple roles did have the appearance of a conflict of interest, from which you were concerned and noted in your report.

Is that still accurate today?

Ms. BOVBJERG. Yes. And I'd like to ask Ms. Clowers to jump in, because she leads our auto work at GAO and was—probably in her report was the first place that——

Mr. TURNER. Okay. We'll get to that in a minute, because I only have 5 minutes and I have to get back to Ms. Romero, but we'll take your answer for the record.

Ms. Romero, in the GAO report they state this sentence when—their testimony today, they say, as we reported in 2011, Treasury officials said, which is why the distinction of GAO looked at public documents, that while Treasury did not explicitly approve or disapprove of GM's agreeing to honor previously negotiated top-up agreements with some unions, it agreed that GM had solid commercial reasons, which is that distinction that Mr. Rattner tried to explain to us of what the definition of commercially reasonable is.

In your written testimony today, I believe on page 44, you state that the auto team made it clear—no. That was another provision—that they specifically did approve them and played a role. And could you talk about those two roles? In your report you talk about two things: one, that as the purchaser, they had a construct in the agreement that required that issues that were over $100 million and that related to pensions must be approved by them; and secondly, from the dialogue that you reviewed, that you understand that they were involved.

So could you explain those two issues to me as to how that statement that GAO looked at the public reports is not accurate.

Ms. ROMERO. So, yeah, let me talk about what we found. This is what I opened with in my opening statement. There was no way for Treasury's role to be advisory. The TARP loan agreement from 2008 sets up basically two roles for Treasury. For the big things, like things over $100 million or big decisions like the collective bargaining agreement, Treasury has the approval rights. They are the decider. There's other things where Treasury would just give advice to GM.

The top-up only appears in the collective bargaining agreement. It's not some separate agreement. And the discussion of the top-up has been confusing so far, because it's been as if the top-up was somehow a separate agreement that was separately negotiated and GM made a decision on it and came to the auto team and said, we'd like to do this. None of those facts are what we found to have actually happened. It appears in the collective bargaining agreement.

The other part of this, not just the collective—not just Treasury's rights to approve the collective bargaining agreement, Treasury became the purchaser in bankruptcy, and that changed everything as well. Mr. Miller in his written testimony, and he was GM's bankruptcy lawyer, says that the U.S. Treasury acted in the same manner as other secured creditors would act in selecting the assets it would purchase and liabilities it would assume. And that's what Mr. Wilson told us and that's what GM officials told us. GM officials told us we weren't in control. We could make recommendations, but it's ultimately up to the purchaser. An obligation that would be assumed would be the collective bargaining agreement and all of the obligations that were in it; therefore, it was Treasury's role, direct role, to make that decision as the purchaser, just like they did with any other obligation that the purchaser took on.

Mr. TURNER. Thank you for the additional time. I see my time has expired. I look forward to the second round.

Mr. MICA. I recognize now Mr. Ryan. Mr. Ryan.

Mr. RYAN. Thank you, Mr. Chairman. Thank you for holding this hearing, and I appreciate everyone's participation here.

This is obviously for me, representing Ohio, northeast Ohio, is a bittersweet moment, which is why I'm thankful to be able to sit here and be able to be on this committee, which I don't normally sit, because Ohio has benefited greatly from what has happened in the auto industry in the past couple years. One in every eight jobs in Ohio is related to the auto industry, and that makes its way down through the supply chain, as you all know.

On the other end of this is a group of people who live in my congressional district primarily, and Mr. Turner's as well and some in Columbus that are Delphi salaried, who have been devastated, families devastated. And I think Mr. Feldman mentioned, you go through this a lot. We go through it a lot too for those of us who represent older industrial areas. And I hope as we talk about bankruptcy—this is one or two bankruptcies that we're talking about, and I hope I get as much enthusiasm from my friends on the other side about reforming bankruptcy laws for all Americans, because for me and my congressional district, this has been going on for a long, long time. That's not what this hearing is about, but these are people who have been not made whole and who have been harmed,

and we're here to try to figure out how to help those people, but there's a broader issue that I'll set on the side about bankruptcy laws, and I'll be looking forward to support from the other side of the aisle to reform those laws, like the Delphi salary folks who sat in my office the other day said they would be willing to help us make those changes.

To sit in a meeting with these folks, who didn't do anything wrong, paid money in, had a pension, were ready to go, worked hard their whole lives, and sit here and hear the stories as I heard the other day, I walk into a room, you know, two or three of the eight people sitting there, I call coach, because they were a former coach or a coach in our community. These aren't people who make, you know, a kagillion dollars just because they happen to be white collar; these are hardworking people who, in my estimation, got a raw deal, and we're trying to figure out how to make this whole.

I want to make one other point as well. There's a lot of splinter unions that were involved here. We talk a lot about Delphi salaried, but there is a list of splinter unions: the machinists, electrical workers, Michigan Regional Council of Carpenters, Local 687 and Interior Systems, International Brotherhoods of Painters and Allied Trade, Sign and Display Union, Teamsters, boilermakers, operating engineers, catering, restaurant, bar and hotel workers. Lots of other splinter unions are in the same position, so I don't want us to forget anybody as we go through this process.

I also would like to say that the people responsible for the bankruptcy of a company like Delphi that's having a ripple effect throughout our community are the ones losing their pension over this whole thing, and clearly something is terribly wrong with the bankruptcy system, but let me just say these guys can't go back. These men and women can't go back 25 years and say, okay, this is what our portfolio's going to look like because of the bankruptcy. They can't go back and do that.

And I want to say very clearly that I do not believe that Congress or the retirees still have a complete picture of what happened in this situation. And if it's determined by—through the evidence produced here or in the court in the lawsuit that Delphi salaried retirees and the splinter unions were unjustly harmed due to politics or favoritism, that they must be made whole. And I will continue to pursue that.

So let me get to some questions here. First a question is going to go to Ms. Bovbjerg, who testified a little bit about the GAO report in 2011. Do you feel that the PBGC was forthcoming with the documents for the GAO report in 2011?

Ms. BOVBJERG. I did. We had no reason to believe they were not.

Mr. RYAN. So recently the court has ordered PBGC to turn over additional documents as well, and communications. And is it of your opinion that those new documents or that new communication would somehow influence the 2011 report?

Ms. BOVBJERG. No, because when we approached that report, we were very clear that there were a number of questions that the requesters asked, and we took the ones that we could deal with in public documents. And, you know, we might talk to PBGC, people at Treasury, people for clarification of a public document. We did not interview the auto team. We did not look at emails. That was

a question that was about whether Treasury had exerted political pressure in this process, and GAO did not feel that we could do that work, that that was more appropriate for an IG office, hence the split between our methodologies.

Mr. RYAN. If I could take an extra minute here, Mr. Chairman.

Mr. MICA. Go right ahead.

Mr. RYAN. One of the things I want to ask you is about the range of recovery ratios with regard to the terminated plans. And did you feel that the PBGC in any way left monies on the table with the—with those plans that maybe could have bumped the value of the plan assets? There's some discrepancy between the Delphi salary folks. Maybe, Nicole, if you'd like to touch upon this as well, whoever can answer it best. There's some discrepancy where our folks, salaried folks are saying, well, we think we could have gotten a lot more revenue for the plan.

Do you believe, in your participation in this case, that there were monies left on—possibly left on the table?

Ms. BOVBJERG. We did not see that. We saw that out of $7 billion owed on these plans, PBGC got $700 million in recoveries. That's not really outside the range of what they've gotten in the 10 largest terminations. They did better with airlines. They got up to 38 percent. But on some they got nothing. They tried to do what they can.

So we did not—we didn't evaluate a particular, you know, foreign lien or something like that, but we did look at the process and whether they followed it, and what we saw was that they followed the process as they have with other terminations. And most of it is required by ERISA, by the pension law.

Mr. RYAN. I know I'm way, way over my time, so I yield back, Mr. Chairman.

Mr. TURNER. Mr. Chairman, could I have just——

Mr. MICA. Yes. In fact, I'll——

Mr. TURNER. Ms.——

Mr. MICA. —my time for——

Mr. TURNER. Ms. Bovbjerg, I'm just going to take this and pass it back, because I think what Mr. Ryan is asking is incredibly important.

I think the reason why several people are struggling with your answers today as opposed to the answers that you gave in Dayton is that they're—you're not giving answers that are in the context of what you did. I mean, you're—you looked at public documents, and you were not given the issue of the influence and how it occurred, but yet your statements today appear to be a little stronger, and I just want to assist you in the confines of what I know your report says.

You did not find that PBGC did everything according to their rules and regulations. You—you don't—you had no information of that, you had no emails, you had public documents, you did not interview those who were involved in the GM bankruptcy. So to state that conclusion, which actually is the subject matter of ongoing litigation, is far more expansive than I think you intend, and I think that's how the panel's hearing it. So I want to give you a chance to confine your answer back to, I did not find anything that would indicate those in the things that we—in the documents that

we reviewed. It's not that you can conclusively say that everything was hunky dory, correct?

Ms. BOVBJERG. We did not do a compliance review.

Mr. TURNER. Thank you.

Ms. BOVBJERG. You are correct. What we did look at was how might this termination have been different from others, and we——

Mr. TURNER. And you found nothing that told you different in the public domain, but you——

Ms. BOVBJERG. Right.

Mr. TURNER. —had no access to the others, and that's why you were helpful to us, but you can't give a conclusion beyond that, and I think that's what we've kind of struggled with.

Ms. BOVBJERG. And we can't talk about motivations——

Mr. TURNER. Right.

Ms. BOVBJERG. —of people.

Mr. TURNER. Right.

Ms. BOVBJERG. That's what we don't know.

Mr. TURNER. So I appreciated your work, I appreciate your dedication through your statements. I just want to make clear its limitations for today for today's purposes.

Thank you, Mr. Chairman.

Mr. MICA. Mr. Turner, if you want to take an additional 3 minutes, you can just continue and then I'll take——

Mr. TURNER. Thank you.

Mr. MICA. I'll yield to Mr.—back to this side and then myself, so we will do a second round.

Mr. TURNER. Mr. Feldman, I believe—and let's hold for a moment. I believe that—you know, you're under oath and we have met before in this format.

Mr. FELDMAN. Yes.

Mr. TURNER. And I struggle on the issue of the Auto Task Force involvement. As you know, GAO does a report that says Treasury says that they weren't involved in the top-up. Ms. Romero's report says conclusively that obviously Treasury was involved in it extensively, because of one, by the terms of TARP, you were required to be at Treasury, and two, you actually were, because she looked at the documents and the like.

I have previously asked you, and I—I'm not saying that you have misrepresented anything to us, but I have previously asked you and struggled with an understanding of your role in the discussion of your role on the termination of pension plans, because I believe that it's been unclear to people trying to determine what occurred that you were involved in discussions with respect to the termination or non-termination of pension plans of old GM as they went through the bankruptcy process.

Now, you don't deny that, right? You don't deny that you were involved in discussions with respect to the termination or non-termination of pension plans from old GM as they went through the bankruptcy process; is that correct?

Mr. FELDMAN. Congressman, just to be clear, of old GM? Old——

Mr. TURNER. Well, of GM that's going through the bankruptcy, of the existing plans as it went—as it went through with respect to going forward with the bankruptcy and the new GM.

Mr. FELDMAN. In contrast to——

Mr. TURNER. Let me shorten it.

Mr. FELDMAN. Sure.

Mr. TURNER. Were you involved in discussions with respect to termination or non-termination of pension plans in the GM bankruptcy.

Mr. FELDMAN. Of General Motors as opposed to Delphi? That was the distinction I was asking you.

Mr. TURNER. I see. Give me the distinction if there is one, then.

Mr. FELDMAN. Sure. I don't recall being involved in discussions of termination of pension plans of General Motors. I don't recall being part of those discussions, to the extent that there were discussions about that.

With respect to Delphi, certainly I spoke with Joe House from the PBGC, who communicated to me what the PBGC's thinking was with respect to the Delphi pension plans both on the hourly side and the salary side.

Mr. TURNER. Okay. Let's stop there. And, yeah. I said mine was broad pension plans, because I wanted you to give me the—to walk me here.

So in that speaking with Joe House of PBGC with respect to termination or non-termination, did you ever advocate or have a position?

Mr. FELDMAN. Not that I recall, no.

Mr. TURNER. Okay. Well, I'm going to hand you your June 18th email to Joe House, and maybe it'll help you recall. I'll give you a moment to read it.

Because the question I asked you is specifically structured with respect to your own email.

Let me reask you the question.

Mr. Feldman, did you advocate with respect to the issue of termination or non-termination with respect to issues relating to Delphi pension plans?

Mr. FELDMAN. I recognize what the email says. I still would——

Mr. TURNER. Okay. Pause——

Mr. FELDMAN. —disagree with the——

Mr. TURNER. —because if you're not going to answer yes, I will just read it for the record. This is Matt Feldman on June 18th in response to Joe House. He says, Thanks. I'll call you later today or tomorrow. We'll enter this into the record.

Mr. TURNER. We are having a sit-down in the de-hourly plan in the a.m. There is a split as to what should happen. There are some wanting to see it terminate. I've—that's you—been advocating, the next word is "hard"—I have been advocating hard for our deal, emphasis on our deal, because that would include you, and I believe that will be the conclusion, meaning I've been advocating hard for our deal and I believe that I'm going to win, I believe that will be the conclusion, but wanted to give you a heads-up.

Mr. Feldman, you didn't say you didn't do this. You said you didn't recall it. The email speaks for itself. I'm going to ask you the question again. Did you advocate with respect to the termination or non-termination of a Delphi pension plan? Were——

Mr. FELDMAN. As part of our broader understanding with the PBGC, obviously I did. That's what the email says, but it's very

narrow and, frankly, misleading to just say, did you advocate for a position on the pension plan, which is——

Mr. TURNER. I had terminate. I said terminate.

Mr. FELDMAN. I'd like to put it into a broader context.

Mr. TURNER. Mr. Feldman, I'm only using your word, which is "terminate." I'm putting nothing else behind it. So for the record your answer is, yes, this is your email, and, yes, you did advocate, as this says, "hard" with respect to the issue of termination or non-termination. I'll yield my time and come back to Ms. Romero.

Mr. MICA. And to be fair, I yielded you the balance of the time, so you had the full 5 minutes, and then I had given Mr. Connolly some extra time. So the other side has about 30, 45 seconds extra coming.

Let me yield to the ranking member, who has arrived. So you have 6 minutes Mr. Ranking Member.

Mr. CUMMINGS. Can you hold on for a second? Just real quick, I've been watching this clock. Can you explain that timing again to me, because I have seen——

Mr. MICA. Well——

Mr. CUMMINGS. I have counted about almost 10 minutes just since I've been sitting here, and I came in when you gave him 3 minutes.

Mr. MICA. I gave him my——

Mr. CUMMINGS. An additional 3 minutes. Oh, I see.

Mr. MICA. I gave him my time.

Mr. CUMMINGS. Okay. Okay.

Mr. MICA. We are in the second round and I gave him my time.

Mr. CUMMINGS. I see. Okay. All right.

Mr. MICA. Then he took some of it, and I said, well, go ahead and take the balance of your time.

Mr. CUMMINGS. Okay. I got you.

Mr. MICA. And then he went over. I keep this pretty good, Mr. Cummings.

Mr. CUMMINGS. I just want to make sure that——

Mr. MICA. So right now you have 6 minutes.

Mr. CUMMINGS. Thank you.

Mr. MICA. And if you want 10——

Mr. CUMMINGS. Very well.

Mr. MICA. —then I will give him more time.

Mr. CUMMINGS. Very well. Thank you, Mr. Chairman. I know you to be a fair man. That's why I have always admired you. And I really mean that.

Ms. Romero, I want to thank you for your thorough audit. I, for one, I do sympathize with the Delphi salaried workers whose pensions will not be what they thought and planned on. That is a very sad situation, a very unfortunate situation. I was surprised to learn from your report that the Delphi salaried workers' pensions had been fully funded at the time Delphi spun off from GM in 1999. Is that right? Is that correct?

Ms. ROMERO. Yes.

Mr. CUMMINGS. Those pensions were fully funded when Delphi started as an independent company. Is that right?

Ms. ROMERO. Yes.

Mr. CUMMINGS. All right. Now, Ms. Bovbjerg and Ms. Clowers, it is my understanding that the salaried pensions actually overfunded at the time of the spinoff, they were overfunded at the time of the spinoff. Do you know the exact figure?

Ms. BOVBJERG. It was close to 120 percent.

Mr. CUMMINGS. So they were overfunded.

Hello? Are you talking? Are you saying something?

Ms. BOVBJERG. Yes.

Mr. CUMMINGS. Okay.

Ms. BOVBJERG. Yes. Overfunded.

Mr. CUMMINGS. So something happened between 1999 and 2009 that caused the fully funded pensions of Delphi salaried workers to become underfunded by 2009.

Ms. Romero, what happened and who is responsible?

Ms. ROMERO. Who is responsible for the plan being——

Mr. CUMMINGS. Yeah.

Ms. ROMERO. —fully funded? That would be Delphi.

Mr. CUMMINGS. Yeah. And so it was Delphi management who did not continue to make pension payments, and their failure to make payments resulted in Delphi's salaried workers with underfunded pensions. Is that a fair statement?

Ms. ROMERO. That is correct.

Mr. CUMMINGS. All right. Now, Ms. Romero, your audit probed the decision about what to do about those underfunded pensions. The question came up in the context of GM's bankruptcy in 2009 during which the United States Government provided a loan and then a debtor in possession financing to enable GM to survive as a domestic automaker. Is that correct?

Ms. ROMERO. That is correct.

Mr. CUMMINGS. Now, the SIGTARP report identifies the reasons GM officials did not want to top-up the pensions of the Delphi salaried employees in 2009. Let me read from your report, Ms. Romero. It says, "GM's CEO told SIGTARP that Mr. Borst"—that's GM's treasurer—"had explained that if GM found a way to fund the top-up during GM's bankruptcy, it would be as if GM had funded the plan twice. As CEO Henderson explained, GM had already fully funded Delphi's salaried pensions at the time of Delphi's spinoff, and there was no basis to do so again."

That is part of your report. Is that right?

Ms. ROMERO. That is correct. That is what GM's CEO told us.

Mr. CUMMINGS. Well, do you stand by that finding?

Ms. ROMERO. Well, it is not a finding, it is just what a witness told us in our audit.

Mr. CUMMINGS. Okay. So according to this, had GM commercial business reasons not to top-up the Delphi salaried pensions—well, let me go back. Did you find anything that contradicted the statement that I just read?

Ms. ROMERO. No, I did not find anything that contradicted it. There is a bigger context, which is included in the report.

Mr. CUMMINGS. All right. So GM had commercial business reasons not to top-up the Delphi salaried pensions in 2009. Those were not the Treasury Department's reasons, those were not the Obama administration's reasons, those were GM's reasons. Is that right?

Ms. ROMERO. Well, this is where I need to add a little context. So the earlier page of my report right before the statement talks about had GM taken the position that it was prohibited under the TARP loan agreement from increasing the—giving the top-up to the salaried workers without Treasury's consent. So GM alone took the position that they alone could not do the top-up, and GM's CEO Mr. Henderson at the time told us that Treasury's consent would have been necessary, that Treasury ultimately had to agree under the TARP loan agreement.

So what happened was that Mr. Henderson went to Mr. Rattner. And according to both of them, according to Mr. Rattner, he says that GM came to them because: "GM wanted to do something for the salaried retirees. Mr. Rattner discussed it with the CEO, and although he didn't remember the specifics of the conversation, he told SIGTARP there was nothing defensible from a commercial standpoint. He says, this is from Mr. Rattner: "We didn't think there was anything defensible. We felt bad, but we didn't think it was justifiable."

What happened then is Mr. Rattner sends an email to the rest of the auto team saying that he had spoken to Mr. Henderson and he wrote in his email with respect to the Delphi retirees, Walter Borst, who was the treasurer, is apparently preparing some kind of proposal for how to do something for them that is defensible.

Mr. CUMMINGS. Well, let me ask you this.

Ms. ROMERO. Right.

Mr. CUMMINGS. Now, the quote I gave you a little earlier, Borst had said that it would be like funding it twice. Is that right?

Ms. ROMERO. Right. So I'm putting it in context. So Mr. Henderson talks to Mr. Rattner, goes to him and says, we'd like to do something for the salaried retirees. Mr. Rattner says something to Mr. Henderson, we don't know the exact specifics, but says basically we don't think there is anything commercially defensible. Then Mr. Borst, who is the treasurer for GM, goes to look to see if there is something defensible. He is trying to see if there is something defensible. And he and Mr. Henderson—because that is the standard that Treasury, the auto team had given them. It is not necessarily GM's standard. The commercially reasonable standard is the standard that the auto team had given, and remember GM took the position that Treasury had to make the decision on the salaried, that they did not have authority. So then Mr. Borst goes to try to prepare something that would fit into Treasury's standard, the commercially defensible standard, and comes back, and he and Mr. Henderson can't come up with anything.

Mr. CUMMINGS. Now, explain that commercially, the standard that you just talked about. Explain that to me.

Ms. ROMERO. Sure. The commercially reasonable standard doesn't exist other than through the auto team and through TARP. It's the marching orders that the auto task force, through Mr. Summers and Mr. Geithner, give to the auto team as to how they should be making decisions. And so there is no definition of it or standard, it is just interpreted, and it is interpreted by the auto team that that means to act like a private investor, is essentially how they take it.

They tried to do that every time. What we found in our audit was they made some decisions that were not what a private investor would make. So, for example, deciding not to move the headquarters of GM through Detroit, which would save money. These are other governmental concerns that come into play that a private investor wouldn't have. And so that commercially reasonable standard, commercially defensible, is the auto team standard. It's not necessarily GM's standard, it is the auto team's standard. And so that's what they were looking for.

Mr. CUMMINGS. Right. Let me just—I see I'm running out of time—let me just get to Mr. Miller. GM's treasurer and CEO made an assessment, GM had already fully funded the salary of the retiree pensions 10 years earlier when Delphi was spun off from GM. They got the money, but they had no contractual agreement that obligated GM to further top-up those pensions, as I understand it.

Mr. Miller, isn't that how you read the report? Is that how you read it.

Mr. MILLER. Yes, sir.

Mr. CUMMINGS. I can't hear you I'm sorry.

Mr. MILLER. Yes, sir.

Mr. CUMMINGS. Mr. Rattner Mr. Feldman, and Mr. Wilson, is that finding by the SIGTARP about GM's actions and reasons for not giving Delphi's salaried retirees a top-up consistent with your memory? Mr. Rattner first.

Mr. RATTNER. The reason being that it was not commercially reasonable?

Mr. CUMMINGS. Right.

Mr. RATTNER. Yes, that is my memory.

Mr. CUMMINGS. Mr. Feldman?

Mr. FELDMAN. My memory as well, sir.

Mr. CUMMINGS. Mr. Wilson?

Mr. WILSON. Yes, sir.

Mr. MICA. Okay. I calculate I have approximately 2 minutes left in this round. I've not asked any questions. I gave my 5 to him. And then Mr. Ryan would be next.

Do you want to go first, Mr. Ryan, and I'll save my 2 minutes?

Mr. RYAN. Thank you, Mr. Chairman.

Mr. Rattner, there were some discussions about terminating the plan. Can you talk to us about how those discussions went? I mean, a lot of this stuff, there's still a lawsuit and things going on with documents being released. But from your vantage point, can you enlighten us about what those discussions were when it came to we want to terminate the plan?

Mr. RATTNER. When you say terminate, you're referring to the salaried plan?

Mr. RYAN. Yes.

Mr. RATTNER. The discussions were very much I think along the lines of what you've heard the last few minutes, which is that we understood that the failure to provide any financial support to the salaried plan would leave those retirees with reduced benefits. We were not happy about that. We didn't think it was obviously a very good outcome for them. We spent a considerable amount of time thinking about whether there was anything that we could recommend be done for them, and we concluded that it was not com-

mercially reasonable or defensible as a matter of normal bankruptcy procedures.

Mr. RYAN. You said to SIGTARP in my reading of it that GM officials had been too generous in the past and the auto team had to dial that back a little bit, that was in the SIGTARP report, and that you guys needed to press General Motors to be less generous in relation to the Delphi and the pensions. Now, to what extent did the auto team press that issue? And did that adversely affect even the possibility of the top-ups?

Mr. RATTNER. Among the problems at General Motors was that they did not act in a way that one would call commercially reasonable at all times. In fact, they often didn't act in a way that was commercially reasonable, which was a good part of why they were in bankruptcy or insolvent and Ford, for example, wasn't. So there were any number of places and times when General Motors would recommend or suggest doing something that we did not feel was commercially reasonable, and this was one of them.

Mr. RYAN. Ms. Romero, you mentioned that at times the commercially reasonable standard was used and then at times it was not used. You mentioned one example. Were there other examples where the auto team did not follow that standard?

Ms. ROMERO. So let me be very clear here. I think what our report talks about, and this is what we found, they tried to use the commercially reasonable standard and act as a private investor. But in the end, they were still the government. So there were broader concerns that a private investor would not have. I will give you a few of them. One, to invest in GM in the first place when no private investor was investing in GM, according to what GM's CFO told us. That was done out of concern about saving GM because of the impact a GM failure could have on the broader auto industry. A private investor wouldn't necessarily have those same concerns.

Two, deciding not to move GM's headquarters out of Detroit for reasons about how it would impact the city of Detroit. Mr. Rattner talks about this in his book. Those are not considerations that a private investor would normally have. Another one was deciding when they made the additional TARP injection as a loan to fund the bankruptcy, rather than take it as debt, which is what it would be, they were worried about too much debt being on GM's books, so they decided to convert that to an equity interest, an ownership interest in the new company. That has lower priority in bankruptcy. That had bigger concerns, broader concerns than a private investor.

And finally on what they decided to pay for GM as the purchaser, there was information in the bankruptcy court, CEO Henderson, GM CEO Henderson talked to us about that, that Treasury ended up paying more than the enterprise value—I believe this is in Mr. Rattner's book—more than GM's enterprise value.

All of these decisions are just some examples where the auto team had to consider other things, other than just dollars and cents, and not act as just a private investor would. And, frankly, they shouldn't have, they're the government, and that's one of the lessons learned out of this.

Mr. RYAN. Well, I guess as my time is winding down I'm going to argue on behalf of my constituents and these Delphi salaried folks that they should have been included in some of these. If we are not following that standard all the way through, if that is not a hard line standard, and I understand this is a very, very unique situation, that that should be considered. We have $57 million a year getting pulled out of our local economy because of the pensions, and these Delphi salaried were concentrated in areas like mine, like Mr. Turner's and others, that that should have been considered as the whole bankruptcy proceeding was going on, as the headquarters was, which I think is a good move. But there were other moves that could have been made, in my opinion, that could have topped these folks off, and in my estimation if you're not going to follow that hard line rule when it comes to commercially reasonable, then there's others who lose out because of that. And that's ultimately why we're here.

And my time is out, and I just would like to make one final pitch to my colleagues on the other side, that this happens all the time. The distinction here is that the government was involved. But there are bankruptcies every single day in this country, and we need bankruptcy reform because these workers that we're talking about are unique to this particular circumstance, and we're going to advocate as hard as we can for them, but there are thousands and thousands and thousands of other workers across this country who end up on the short end of the stick, who are last in line when it comes to getting made whole, and they get screwed. In Youngstown, Ohio, in Akron, Ohio, in Cleveland, Ohio, in Pittsburgh, and all through the industrial Midwest we have seen this for 30 years. And so I hope that we get the enthusiasm from the other side when it comes to bankruptcy reform as well.

Mr. Chairman, I'm very thankful for this hearing.

Mr. Turner, thank you for your work and cooperation on this as well. And I hope this leads to some situation where these men and women could be made whole.

Thank you very much.

Mr. MICA. Thank you. I've got about 1 minute and a half, and my 2 minutes, it is about 3–1/2 minutes, I guess, left from this side, which I'll take since I've asked no questions in the second round and yielded my 5.

First of all, Ms. Romero, in the '99 spinoff, you keep talking about topping-up employees. Was that just salaried employees or nonsalaried employees, one or both?

Ms. ROMERO. The discussions in 1999 were an agreement to top-up the hourly employees, not the salaried employees. The salaried employees weren't represented at that time and their pension plan was fully funded.

Mr. MICA. Okay. I just wasn't clear as to what took place, which was some years previous. But the final decision, I mean, when you just cut to the chase, there may be problems in bankruptcy and we may need to do bankruptcy reform, this was not a typical bankruptcy in a civil proceeding, was it?

Ms. ROMERO. No. And this wasn't even typical for a TARP program.

Mr. MICA. Yeah.

Ms. ROMERO. This is the only situation in TARP where you have members of Treasury, Treasury officials being so deeply and significantly involved in the company.

Mr. MICA. Exactly. And again you said it was ultimately Treasury's decision as the buyer to assume or reject the top-up liability. Treasury, last time I checked, was the United States of America public, using public money. I thought Mr. Ryan said, used the term I try not to use, "screwed," because it gets my wife upset, but basically that's what happened, some people got screwed here in this proceeding. And the unfairness is that those people had also paid their taxes, et cetera, into the Treasury of the United States and should have been treated fairly.

Now, probably some of this would never have occurred if everyone would have cooperated. But before I became the chair, for 2 years we couldn't even get the documentation nor the cooperation. Mr. Turner turned to me when I became chair, we did the hearing in June, and I demanded the documentation, and you finished your report, and I think you did an admirable job. You're just reporting the facts. And again this isn't the typical situation. Mr. Rattner had talked about commercially acceptable or reasonable process, and I guess they were trying to cover their bases in all of this.

But, Mr. Wilson, you testified last summer that unions did not receive special treatment. Is that correct?

Mr. WILSON. I believe so, yes.

Mr. MICA. You did?

And, Ms. Romero, did you say and your report find that unions received special treatment in the GM bailout and the bankruptcy proceedings.

Ms. ROMERO. Well, Treasury gave additional leverage to certain stakeholders and those were two, the UAW and the bondholders.

Mr. MICA. But they gave, again, something special to the union folks, right?

Ms. ROMERO. They established the hierarchy of who would get a deal cut prior to the bankruptcy, and those were the two groups that the auto team picked.

Mr. MICA. Mr. Wilson, any change in light of their findings?

Mr. WILSON. No, that is just not correct. The UAW and the bondholders had enormous leverage because they are critical components of a potential restructuring transaction. That's why they had leverage and that's why they were important to the deal. It wasn't because of anything that Treasury did, as I described both in my written and verbal testimony.

Mr. MICA. And what were the nonunion employees? Chopped liver?

Mr. WILSON. Unfortunately, anyone who——

Mr. MICA. They were just dumped overboard.

Mr. WILSON. No. That's not——

Mr. MICA. But again, the union side, maybe they were entitled to this, the top-up, and I have no problem with that. But what I have a problem with is thousands of people left behind, and we're using taxpayer money for the top-up. And we also had a testimony today of a billion dollars that won't be returned to the Treasury. So I don't view that as fair for all.

And Mr. Ryan, Mr. Turner have to go back and face these people. I faced some of them at the hearing we held in June. Mrs. Brooks isn't here. She told me one person that she ran into this week is basically homeless, who was one of these employees that she talked to this past week.

And we will leave the record open. Some of the Members weren't able to return after the votes, and she's one of them, to cite in the record what this is, how this has affected folks.

So, again, we're dealing with Federal taxpayer funds and how they were distributed, and some people were unfairly treated, according to the report. And Treasury did have the discretion to make a different decision, wouldn't that be correct, Ms. Romero?

Ms. ROMERO. Absolutely it was their decision.

Mr. MICA. Okay. Let me——

Mr. RYAN. Mr. Chairman, if I could just——

Mr. MICA. Go right ahead.

Mr. RYAN. I just want to make a point, that there were eight or nine other unions. I just don't want to leave anybody out. So it was the salary, but that list of union members that I gave were also on, we can't forget them as we're advocating for this, that there were other, seven, eight, nine unions that were also included that had been left out. We talk about the Delphi salary, but it is also these splinter unions as well.

Mr. MICA. And, Mr. Ryan, I think every one of them should have been treated fairly.

Mr. RYAN. Yeah. Agreed.

Mr. MICA. Again, it is taxpayer money. I've been involved in business and I have seen bankruptcies and I have seen how they're settled and there is a lot of unfairness. There are things that we could do to correct that. This was not a civil or commercial bankruptcy in any sense of the normal way these things are conducted. Again——

Mr. RYAN. That's why I'm sitting here with you, Mr. Chairman.

Mr. MICA. That's my beef. And if there were some way, in a bipartisan manner, to make people whole, I mean TARP is still not done. I don't know if legislatively that can be done or however. But I think it is a great injustice to thousands of people. And our job is to, again, try to be fair to those folks. I'd be glad to work with you and others, both sides of the aisle, to see what we could do.

Mr. RYAN. Well, Mr. Turner and I have been working on this for a long time and we welcome that opportunity, as well as the HCTC extension for the next year, because a lot of these folks are having huge, huge healthcare costs as well. So I appreciate that, Mr. Chairman, and let's make something happen.

Mr. MICA. Okay. Any additional questions?

Mr. RYAN. No. Just thank you.

Mr. MICA. Mr. Turner, additional questions?

Mr. TURNER. Thank you. I have three. And I do want to acknowledge Mr. Ryan's dedication and just hard work on this. This has been really a team ball project here and a bipartisan project. Rob Andrews is being another, of course on the other side of the aisle, and certainly in the Senate there are a couple others. And a follow-up to my congratulations to Mr. Ryan, thanks to Mr. Ryan, I unfortunately had to step out, and while I was gone Mr. Ryan asked a

question to Mr. Rattner. And so I'm going to paraphrase, not having been in the room, your answer, and I'm going to ask you to say it again and elaborate on it so that I could understand it.

He was discussing with you the termination of the salaried pension plan, and you indicated that you had had considerable discussion on the termination of the salaried plan. Is that a correct characterization of what occurred when I was not in the room?

Mr. RATTNER. I'm not sure with whom you are thinking we had discussions.

Mr. TURNER. Well, first off, did you have any discussions with respect to the termination of the salaried pension plan?

Mr. RATTNER. Yes.

Mr. TURNER. And those discussions occurred prior to its termination?

Mr. RATTNER. Correct.

Mr. TURNER. Who did you have those discussions with?

Mr. RATTNER. I had one or more discussions with Fritz Henderson, who was then the CEO of General Motors, and we had a number of discussions among the auto team members.

Mr. TURNER. So you spoke to Mr. Feldman?

Mr. RATTNER. I believe so.

Mr. TURNER. So when I asked Mr. Feldman whether or not he'd had any discussions and he didn't recall it, you do recall having had a conversation with Mr. Feldman with respect to terminating the salaried pension plan.

Mr. RATTNER. I thought your question to Mr. Feldman was in the context of the PBGC.

Mr. TURNER. Did you recall having discussions with PBGC with respect to termination of the plan?

Mr. RATTNER. I don't recall.

Mr. TURNER. Would you deny that you did?

Mr. RATTNER. I said I didn't recall.

Mr. TURNER. So you don't recall whether or not you did or didn't, right? You could have.

Mr. RATTNER. I could have, but I don't recall.

Mr. TURNER. Well, luckily, with the subpoenas that have been issued, we're going to get even more of the information because Mr. Feldman had no recollection of his discussion with respect to termination of the pension plans until I handed him his own email. And, Mr. Rattner, I look forward to addressing that issue with you again with perhaps your own emails.

Mr. Wilson, one of the issues in the GAO report is this concept of the conflicts of interests, the multiple roles of Treasury, is I think the heading in the report. And we talk about Treasury having a—the Treasurer on the board of PBGC, we have Treasury as TARP, purchaser of GM, we have auto task force Treasury, we have many of those. You've left the auto task force, you've left any role at Treasury. But it's my understanding you were subsequently appointed to the PBGC advisory committee. Is that correct?

Mr. WILSON. I was recommended by Senator Mitch McConnell's staff to the White House that ultimately decided to appoint me as a representative of the people at large.

Mr. TURNER. So was that a yes? I didn't understand it.

Mr. WILSON. Yes.

Mr. TURNER. Are you still on the PBGC advisory committee?

Mr. WILSON. Yes.

Mr. TURNER. Okay.

Ms. Romero, thank you for the clarity of your answers among what at times becomes a heated and an obtuse, I don't know, where the answers here are not always the clearest.

On your report, on page 29, you state that the audit—in the audit you state that after the decision was made to not make the salaried retirees whole, Dr. Summers prepared a briefing memo for President Obama in August of 2009. Can you tell us who Dr. Summers is?

Ms. ROMERO. Larry Summers was one of the heads, with Secretary Geithner, of the auto task force.

Mr. TURNER. I know it's in the report. I just wanted for the clarity of the record for it to be stated. Was this memo provided to you or your staff?

Ms. ROMERO. We were provided access, but we were not given the memo.

Mr. TURNER. So you've seen the memo?

Ms. ROMERO. No, I have not seen the memo.

Mr. TURNER. Someone on your team did see the memo?

Ms. ROMERO. I should say this. Someone on my team saw a draft of an email that contained the memo.

Mr. TURNER. Do you know what was in the memo?

Ms. ROMERO. Yes.

Mr. TURNER. Could you tell us please?

Ms. ROMERO. Sure. A Delphi salaried retiree had written a letter to the President to describe his personal situation. The President had asked his advisers for information about the situation. The memo discussed how this person would receive less benefits on their pension, it describes the 1999 agreement, the spinoff of Delphi. It describes discussions between the UAW and GM in 1999. It then discusses how, as part of GM's bankruptcy, the top-up for the UAW retirees would be given, but not for the salaried employees. It discusses that the salaried retirees did not have leverage because they did not have current workers at GM. And it also discussed how the salaried plan was fully funded by GM in 1999.

Mr. TURNER. Do you know who briefed the President from that memo?

Ms. ROMERO. The memo came from Mr. Summers. I don't know if there was any verbal briefing to the President.

Mr. TURNER. And no action to reverse the decision came from the President or the White House that you are aware of after the memo informing the President that the salaried retirees lacked the leverage of UAW?

Ms. ROMERO. That's correct. We did not see any change or any action taken after the memo to the President.

Mr. TURNER. Ms. Romero, I'm going to read something from your written statement that I would like you to elaborate on because I think it really goes to the issue of the power and authority that Treasury exerted here. You say, "An Auto Team official told SIGTARP that the Auto Team's approach with GM was to 'push them' and to 'question them.' And another one said we pushed GM

toward making the changes necessary to becoming a viable company."

And when asked how is it that this was done, at the bottom of the paragraph on page 12, which is the third paragraph down, the auto team official said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender, we had a fair amount of leverage."

Now, that's a constant theme throughout your report. Could you elaborate on that just a moment? Because that is, I mean, that is fairly "but for" GM goes away if they don't do what Treasury says.

Ms. ROMERO. Well, I think this goes to the bigger issue and I think the best way to discuss this is to tell what you the auto team told us and tell you what GM told us.

So Mr. Bloom told us, from the auto team, that Treasury did not want to start running the company but when dealing with taxpayer resources, we, the government, were ultimately holding the purse strings and we reserve the right to tell GM we would not back them. So when we asked Mr. Bloom how the auto team conveyed its preferences or nudged GM to see things the way the auto team did, given that ultimately GM could do its own thing, that's when he said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

GM officials told us, there's a just a couple statements, one, ultimately it is that GM is not in control and GM is totally dependent. The auto team replacing the CEO was an early indicator that Treasury as the main investor would have significant influence over GM's decisions and operations. GM officials told us the auto team was pushing GM to be tougher and take more significant actions other than what we would have done on our own volition, that GM put forward recommendations, but ultimately the purchaser made decisions, which was Treasury.

So there were a lot of situations that we found where the auto team can take the position that they did not intend to have significant influence on GM's decisions and operations. But we have GM officials telling us that they felt that they were not in control and that the auto team did have significant influence on GM's decisions and operations.

So the auto team may not have intended to have significant influence, and they may not believe that they had it, but they did. And if I can just take 2 seconds I want to read one part in Mr. Rattner's book, which is very much on point. This is quoting from Mr. Rattner's book, "Larry"—meaning Mr. Summers—"Larry had pushed us from the start to play down team auto's role and keep the emphasis on GM and Chrysler managing their own affairs. That ended up being partly true of GM in the sense that Harry"—meaning Mr. Wilson—"and his team tried to set parameters and assumptions for its executives in the hope that they then could produce the specifics of a restructuring plan."

And he goes on to say, "In reality the talent and determination of Harry"—and then he named David and Sadiq, who were on the auto team—"were what really drove the process. As we drafted press statements and fact sheets I would constantly force myself to write that GM had done such and such. Just once I would have liked to write 'we' instead." And that is what Mr. Rattner wrote,

that's consistent with what we found, that the public statements Treasury made downplayed their influence, downplayed their role.

Mr. TURNER. Thank you.

Mr. MICA. Thank you.

Mr. Connolly, I yield you 10 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman. I want to come back to that in a minute.

But, Mr. Wilson, you objected that Ms. Romero was inaccurate when she said Treasury gave leverage to the union and bondholders. You weren't really allowed to explain your objection. Please do so now.

Mr. WILSON. Sure. There is no doubt that UAW and the bondholders had a lot of leverage, but it was not in any part as a result of Treasury actions or anyone else's actions. They had a lot of leverage because they were critical actors in the restructuring. We needed the UAW to manufacture cars and therefore they were critical for that, and they would always be critical. And the bondholders were critical because they were a large stakeholder. Even though they had no ongoing involvement, they were critical because they could object and hold up the proceedings and cost the taxpayers lots of—billions of dollars in a prolonged bankruptcy that would also imperil the potential viability of General Motors.

Mr. CONNOLLY. So good point you're making here, that the leverage they had was self-created by virtue of their power over many years, it wasn't something conferred upon them by Larry Summers or Mr. Rattner?

Mr. WILSON. That's correct.

Mr. CONNOLLY. Mr. Miller, Mr. Rattner, Mr. Wilson, Mr. Feldman, any and all of you, but here's GM facing bankruptcy. Why would they choose to honor these union contracts? Could there be a good business reason to do that or is it just because somebody somewhere said take care of the unions? Is it at all conceivable there could be a business reason, if you want to save the industry and save GM through the bankruptcy process and have them come out whole, that you might want to honor that contract?

Mr. MILLER. The issue is that without honoring the contracts, there wouldn't be any workforce. And the last time that GM, I forget the year, allowed a strike to go on, it was exceedingly expensive and almost destroyed the company.

To operate and become feasible, you must have the workers who produce the product. And that was a prevailing theme, even though the negotiations were very difficult with the union in trying to get concessions. But it's a long history going back to Walter Reuther of a lot of adversity. But without a labor force, there is no feasibility.

And as far as the GM management was concerned, if the United States of America wanted to pay everybody and GM not file a bankruptcy petition, that would have been perfectly fine. But from my observation what the auto team was concerned about is how do you protect taxpayer money? If you're just going to open up the door and everybody is going to be paid, well, then you don't need the bankruptcy.

But bankruptcy is a zero-sum game. There's only so much value, and the fight is who's going to share in that value, and there are

priorities that are commanded by the bankruptcy code and there are business reasons why, unfortunately, from my perspective, unions have a lot of leverage. And the question is, how much money are you going to put in? From my perspective, again, United States and Canada operated as if they were secured lenders. They were trying to protect their investment.

And after all, you're talking about a company which, as people have described here, prior to bankruptcy was too lax, they took on too much credit, they gave out too much money. Well, what this task force was trying to do was to make sure that GM stayed within the line of what would be feasible to get to a viable company.

Mr. CONNOLLY. And, in retrospect, and, again, I'd invite others, would it be fair to say looking back that actually that kind of worked out?

Mr. MILLER. Yes.

Mr. CONNOLLY. That it was a wise business decision not to vitiate the contract or ignore it?

Mr. MILLER. From my perspective yes.

Mr. CONNOLLY. Mr. Rattner, Ms. Romero quoted from your book a conversation you had with Larry Summers. Would you comment on her comment?

Mr. RATTNER. Yes. Ms. Romero I don't think fully understands the difference between being involved in day-to- day operations and being involved in a restructuring. And she has sort of tossed those back and forth without making the right distinction.

We had no involvement in the day-to-day running of General Motors. We did not decide what kind of cars they were going to make. We did not decide which plants were going to function. We did not decide how much they were going to discount their new model, we didn't pick new models, we didn't pick executives. We didn't do any of the things that one would associate with the: "day-to-day running of the company."

The section she read from my book pertains entirely to the efforts that we made to effect the restructuring of General Motors in which we were heavily involved. We were investing ultimately a total of $50 billion, I think $12 billion of it under the Bush administration, into the company, and we had a responsibility to the taxpayer to be sure that money was invested wisely. And if we had not been involved in those restructuring plans, if we had not pushed back on General Motors, if we had not insisted on a viable restructuring plan then I would be relatively confident in saying we would be sitting here in front of you having a different discussion, which is, why were you not watching over the taxpayer money? Why were you not involved in this restructuring? Why did you not insist that it was being done in commercially reasonable terms?

Mr. CONNOLLY. Ms. Romero, you have heard Mr. Rattner's explanation, and from his point of view you perhaps misread what the nature of that conversation was, namely it was focused on restructuring, not on day-to-day management and operational decisions.

Ms. ROMERO. So earlier when I talked about the actions of what Treasury's influence was, what I did was I read quotes from Mr. Bloom, who is not here, on the auto team, and I also read quotes from GM officials. And I think this is what's important. This is

what I was saying earlier. It may be that the auto team went into their job not intending to get so involved or have such significant influence on the decisions and operations of the company. And it may be that as they sit there today and look back at what they did that they don't think that they had that influence. But ultimately the only one who can say whether they felt that influence was the company itself. And what the company officials told us in interview after interview after interview after interview was that they were not in control, that the leverage was held by Treasury.

And when they talk about we weren't involved in the selection of executives, one of the first things they did was Mr. Rattner went to GM and asked the CEO to resign and then put in his own replacement, his own pick of the CEO. And that CEO told us that GM's board was very upset by that and said that the auto team had usurped their authority. And he said to us that was an early indicator that Treasury as the investor would have a significant influence on our decisions and operations. Those are his words.

So when Mr. Rattner talks about our interpretation is wrong, we aren't interpreting, we are laying out for the public all of the things that the auto team told us and all the things that GM officials told us.

Mr. CONNOLLY. All right, Ms. Romero, let me just posit a little devil's advocate.

Ms. ROMERO. Sure.

Mr. CONNOLLY. The U.S. taxpayer is pumping tens of billions of dollars to save this company and try to make sure we don't lose all those jobs and the whole industrial core of our economy. And it's not entirely unexpected that the existing GM management team watching this thinks what a pain in the butt, who needs their interference, I'll take your money, and keep your opinion to yourself, thank you very much, because we really have done nothing wrong, we actually know what we're doing and you people don't. And they're going to resent any intrusion, any second guessing, any kind of new leadership change. That's kind of human nature. And as a taxpayer and as somebody who oversees taxpayer investments, I'm not entirely unsympathetic to Mr. Rattner and his team trying to protect my interests.

Now, maybe from someone's point of view it went too far. But the fact that you're relying on GM interviews, while I'm not entirely surprised having mucked it to up to a fare thee well and forced the taxpayer to bail them or let them go under, that they resent our exercising some oversight responsibilities. Couldn't that be the case, Ms. Romero?

Ms. ROMERO. I think it absolutely could be the case. I do want to point out it's not just we are relying on interviews of GM. We interviewed 84 people. We are also relying on the interviews of the auto team officials who sat here today and another auto team official, Mr. Bloom, who did not, and the statements they've said.

But I think you raise a really good point, Ranking Member Connolly, which is maybe that's in the taxpayer's best interest and we're okay with that. Our point is just be transparent. Just say it and let the American people judge, like yourselves, and all of us who funded the bailout, do we agree or disagree. But the point is don't hide behind roles or don't try to downplay your involvement.

Just tell the truth. Because you know what? The American people are pretty smart. We know there was a crisis. We know something had to be done with GM. And we understand that their role was monumental and that they had to do something to restructure GM.

If you'd just be transparent and tell the truth, then the American people will decide. And that's what we've done. What we did in our report, as you'll see, there is not a lot of judgments in our report on this. What there is, is we just told it like a story, a chronological story, put the facts out there, so that the American people and all of you can decide whether you agree or disagree.

Mr. CONNOLLY. Thank you. It's a fascinating story. I know we will return to it.

And, Mr. Chairman, thank you so much for allowing me to——

Mr. MICA. You have 30 seconds.

Mr. TURNER. Okay. Great. Mr. Connolly——

Mr. MICA. You went over your 30 seconds.

Mr. TURNER. As usual.

Mr. MICA. I'm going to give him the 30 seconds and then we'll be exactly even. So reset the clock, give Mr. Turner 30 seconds.

Mr. TURNER. Maybe it's the Federal Express deliveryman here on the 30-second speaking. Could I start while you're setting it?

What I'm going to say, Mr. Connolly, Ms. Romero once again has been incredibly articulate about what her position is and what she has done. And you are absolutely right and you're both right that she does not conflict with your conclusions or opinions. What she conflicts with is the public statements that have been made and the statements by Treasury, and that's the part that is disturbing, I think, to all taxpayers, is that there's one story being told and there's one that's being reality. And it's not as if they relied on interviews. They had papers and emails.

Mr. Rattner, I want to give you one opportunity because we all know that your statement about picking executives is not accurate. Do you want to amend that? Because you're under oath. And we know when people are speaking sometimes they get a little carried away. If you'd like to recharacterize that, I think everybody here would be very pleased.

Mr. RATTNER. I was referring to picking executives below the CEO level. We did, obviously, it's public record, we did obviously make a decision that there needed to be a new CEO. It was in the context of a commercially reasonable investment decision.

Mr. TURNER. Great, because I didn't want you to be subject to perjury for saying something that was wasn't accurate or truthful.

Thank you.

Mr. MICA. I think everyone's had ample opportunity. I know we could go on. And there are additional questions. There are questions from members that are not here that will be submitted. And with concurrence of the minority, we're going to leave the record open for a period of 2 weeks. And I will advise the witnesses, too, that they may submit questions to you to respond which will be part of the record, made part of the record.

Mr. MICA. So we have completed this hearing. I thank the witnesses for their participation. I thank the members for their involvement. I think it is an important issue. I'm sorry that it was not resolved before Mr. Connolly and I took over the subcommittee,

but, again, we now have the report of the Special Inspector General, we have additional information. If we need additional hearings to resolve pending issues we'll conduct that. But I promised a field hearing, which we conducted, and a Washington hearing as we completed and got the SIGTARP report.

So I thank all of you for your participation. There being no further business before the Government Operations Subcommittee this hearing is adjourned.

[Whereupon, at 4:47 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement of Chairman John Mica (FL-07)
Subcommittee on Government Operations
Committee on Oversight and Government Reform

"Oversight of the SIGTARP Report on Treasury's Role in the Delphi Pension Bailout"

September 11, 2013

Today's hearing concerns an important issue that this Committee has been working on for over three years. In June, this Subcommittee convened a hearing in Dayton, Ohio – an area hard-hit by the substantial loss of pensions to Delphi retirees.

At that hearing we heard from the retirees who are feeling the pain of the Obama Administration's decision to pick winners and losers in the context of the GM bailout. Unionized Delphi retirees were made whole because they are a politically favored group while the salaried non-unionized pensioners were left out in the cold.

In addition to financial hardship, non-unionized Delphi retirees feel betrayed by their government and their former employer. While unions were heavily involved in the negotiations surrounding the bankruptcies of GM and Delphi, the salaried employees did not have a seat at the table and were left in the dark.

This whole mess could have been avoided were GM to pursue a traditional bankruptcy route and not be subjected to the political whims of the Obama Administration.

A traditional bankruptcy route would have been better for GM in the long run and would have mitigated the risk of politicized decision making, such as what occurred with the Delphi salaried retirees' pensions.

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

The recent release of an audit by the Special Inspector General for the Troubled Asset relief program sheds light on the facts and circumstances surrounding this decision. We now know that despite Treasury's pledge to not be involved in the day-to-day operations of GM that, in fact, Treasury and the Auto Task force played a major role in decisions concerning GM's operations.

Today we will hear from key members of the President's Automotive Task Force about the decisions they made that led to the gross inequity between unionized and non-unionized Delphi employees. We will also hear from SIGTARP and GAO, both of whom conducted thorough audits related to this issue.

Lastly, I want to thank Mr. Turner for his unyielding dedication to getting to the bottom of this issue. Mr. Turner has tireless pursued justice in this area and this Committee is committed to finding out exactly what happened and why. If these decisions were made on the basis of politics and not prudence, those responsible will be held to account for their actions.

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

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House of Representatives
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ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Subcommittee on Government Operations
Hearing on "Oversight of the SIGTARP Report on Treasury's Role in the Delphi Pension Bailout"

September 11, 2013

Thank you, Mr. Chairman, for convening what common sense would suggest will be the capstone on this Committee's five hearing inquiry into GM's decision-making on Delphi pensions during the extraordinarily successful rescue of the U.S. automotive industry.

In 2009, the Administration's Auto Team members came from the private sector, took up the mantle of public service, and assumed responsibility for managing the investments that the Bush and Obama Administrations made to save the U.S. auto industry from collapse.

Thanks to their work, America's automotive industry today directly employs 1.7 million people. Indirectly, this industry accounts for roughly 8 million jobs nationwide. That represents 4.5% of all private sector employment. It also accounts for roughly $500 billion in wages being paid to workers and $70 billion in personal income tax revenue.

I thank the former Auto Team officials for their work to protect this industry and the American economy. You did a critical job, and you did it exceedingly well!

It is unfortunate that, regardless of these impressive results, Republicans continue to criticize the successful rescue of the American automotive industry. The majority, including members of this Committee, has perpetuated the narrative that government officials made the decision that the salaried retirees of Delphi would not get pension "top-ups."

We know now that that narrative is false.

SIGTARP's report makes clear that a high ranking GM official made that decision, not the Administration. SIGTARP also found that, at the time of Delphi's spin-off from GM in 1999, the pensions of the Delphi salaried workers were fully funded. That is why the high-ranking GM official believed that giving the salaried workers a top-up in 2009 would have been tantamount to paying that group of workers twice.

SIGTARP also found that the unionized workforce did not receive fully funded pensions when Delphi was spun-off. To the contrary, their pensions were underfunded. But their union negotiated contracts with GM to top-up their pensions in the future. And when the union insisted that those contracts be honored in the bankruptcy process, they were honored without question. SIGTARP found that "no person SIGTARP interviewed could recall any discussion of the top-up agreement at the negotiations."

The facts found by SIGTARP are consistent with GAO's review, completed more than a year and a half ago. GAO detailed the business reasons for GM to honor previous agreements with certain unions. A failure to honor those agreements would have jeopardized the company's ability to move forward.

I feel bad for the Delphi workers who did not receive top-ups. There will be hard days ahead for those people. They were betrayed by Delphi's management, which did not make pension payments for years after spin-off. But none of that is the fault of the government's effort to save GM.

The investigation into this matter has been thorough. As an investigative body, it is critically important that we follow the facts where they lead. And it is equally important, that when we get answers, we accept those answers. We now have the facts. We have the answers. I ask the majority to accept them.

Thank you.

Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Opening Statement of Ranking Member Gerald E. Connolly (VA-11)
Subcommittee on Government Operations
Committee on Oversight and Government Reform
Oversight of the SIGTARP Report on Treasury's Role in the Delphi Pension Bailout

September 11, 2013

Thank you Mr. Chairman for holding today's hearing to examine the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) report examining Treasury's Role in GM's Decision to provide pension payments to Delphi employees. SIGTARP's report directly and definitively refutes the Republican narrative on this subject.

This Committee has explored, in great depth, the Federal Government's unprecedented intervention that not only rescued our Nation's auto industry, but enhanced the global competitiveness of domestic auto manufacturers. Hopefully, with the issuance of SIGTARP's report and today's hearing, we can finally put to rest the unsubstantiated conspiracy theories about picking winners and losers to benefit political allies. Unfortunately, some refuse to acknowledge the sheer complexity of the challenge that faced the Administration in assisting General Motors (GM) navigate what SIGTARP characterized as, "…one of the largest and fastest bankruptcies in our nation's history."

It is easy to discount the Administration's monumental achievement in light of current auto industry conditions. Consider that just two years ago, GM sold more than 9 million vehicles, on its way to posting a record-breaking profit of $7.6 billion, and surpassing Toyota as the global sales leader of automobiles. To date, GM has returned $34 billion to American taxpayers out of the $51 billion total investment, and just last month, GM posted its best month of sales since the dark days of the Great Recession.

We must not forget the perilous days of late 2008, when leading economic think tanks were projecting a bankruptcy of U.S. automakers that would trigger a collapse of the domestic auto industry, and eliminate more than 3 million American jobs in a single year. Indeed, it was estimated that the liquidation of GM alone would trigger a loss of 900,000 industry jobs.

Of course, as SIGTARP's report states, "Ultimately, GM did not fail and the broader systemic consequences of a GM failure that Treasury had feared were avoided." Yet, the majority appears disinterested in convening a hearing to examine lessons learned from the effective Federal initiative to

(OVER)

save the U.S. auto industry. Instead, we find ourselves holding what is now the fifth hearing to rehash the same tired and false allegations.

Of course, a thorough review of SIGTARP's report enables one to test, and ultimately debunk, these unsubstantiated claims. For example, did the Administration inappropriately intervene in the decision to deny Delphi salaried workforce top-ups as part of a nefarious scheme to use GM's bankruptcy proceedings as a cover to protect political allies? No. As SIGTARP reports, there was no impropriety, and it was a sound business decision for GM to deny pension top-ups to certain Delphi employees.

According to SIGTARP, more than a decade ago, Delphi's salaried workers received full funding of their pensions when the firm was spun-off from GM, while the unionized workforce did not. Instead, in exchange for underfunding union pensions in the spin-off, labor negotiated contractual agreements with GM – *legally binding contracts* – to protect the pensions of certain unionized Delphi hourly employees – not in the context of TARP, but nine years earlier. This strategic decision paid off when the financial crisis hit and Delphi's unionized workforce emerged with its pensions protected as a result of GM's decision to honor its legally binding contractual obligations.

Regrettably, Delphi's salaried workforce had not negotiated similar contracts years ago, and when GM entered bankruptcy proceedings, the firm had *no* contractual obligation to top-up the pension benefits of retired Delphi employees. As SIGTARP noted, a hypothetical GM decision to top-up participants in the Delphi salaried pension plans – a cohort that *no longer worked for, nor had any other association with, GM* after 1999 – would be equivalent to GM paying for the Delphi salaried pension plan twice.

The bottom line is that GM's refusal to top up the pensions of certain Delphi employees during bankruptcy proceedings was a business decision, not a government policy decision. Nor was GM in a position before a bankruptcy judge to undertake a new financial obligation, as this would have been.

In a perfect world, perhaps GM would have prioritized fairness over commercial interests, and treated the pensions of all of its former employees at Delphi equally. However, bankruptcy is not a perfect world. It is a deeply unfair and staggeringly difficult battle for survival.

I believe the record presented by SIGTARP and the witnesses before us today clearly demonstrates that GM, supported by Treasury and the Auto Task Force, made tough choices under tremendous pressure and the very real threat of liquidation – and with absolutely no evidence whatsoever of political favoritism, or "picking winners and losers."

-END-

Statement for the Record

The Honorable Paul Ryan
First District of Wisconsin

House Oversight and Government Reform Subcommittee on Government Operations
Hearing on
"Oversight of the SIGTARP Report on Treasury's Role in the Delphi Pension Bailout."
September 11, 2013

Mr. Chairman,

I commend the House Oversight and Government Reform Subcommittee on Government Operations decision to hold a hearing to discuss the recent report from the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) report titled "Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees." I find the information contained within the report troubling; though, it confirms the suspicions that I and many others have had regarding the unprecedented role Treasury played in decisions made during GM's bankruptcy settlement.

For years, Treasury and Auto Task Force officials have insisted that they played no significant role in the decisions made by GM during the company's filing for bankruptcy. However, the SIGTARP report states that "Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy" and that "Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences." It is now clear that one of these "preferences" was topping-off the pension plans of employees who they saw as vital to their goal of accomplishing a "quick-rinse bankruptcy," while leaving Delphi salaried-employees with nothing to show for the pensions they spent years investing in. In short, the Treasury exercised the all too familiar practice of government picking winners and losers.

Though these Delphi retirees still wait for an appropriate resolution to this matter, I am encouraged by recent efforts to help bring clarity to the decisions made regarding Delphi pension plans. On August 9th, 2013, Oversight Committee Chairman Darrell Issa issued a subpoena to Treasury Secretary Jacob Lew for the release of all Treasury, Auto Task Force, and Pension Benefit Guarantee Corporation documents pertaining to retirement or pension benefits for GM and Delphi employees. I have also submitted numerous requests for these documents in the past, and I am hopeful that they will finally be released in the near future.

Again, I thank the Subcommittee on Government Operations for holding this hearing, and I remain committed to working with my colleagues in Congress on this important issue.

SEC Charges Steven Rattner in Pay-to-Play Scheme Involving New York State Pension Fund

FOR IMMEDIATE RELEASE
2010-224

Washington, D.C., Nov. 18, 2010 — The Securities and Exchange Commission today charged former Quadrangle Group principal Steven Rattner with participating in a widespread kickback scheme to obtain investments from New York's largest pension fund.

Additional Materials

- Litigation Release No. 21748
- SEC Complaint

The SEC alleges that Rattner secured investments for Quadrangle from the New York State Common Retirement Fund after he arranged for a firm affiliate to distribute the DVD of a low-budget film produced by the Retirement Fund's chief investment officer and his brothers. Rattner then caused Quadrangle to retain Henry Morris – the top political advisor and chief fundraiser for former New York State Comptroller Alan Hevesi – as a "placement agent" and pay him more than $1 million in sham fees even though Rattner was already dealing directly with then-New York State Deputy Comptroller David Loglisci and did not need an introduction to the Retirement Fund.

The SEC alleges that after receiving pressure from Morris, Rattner also arranged a $50,000 contribution to Hevesi's re-election campaign. Just a month later, Loglisci increased the Retirement Fund's investment with Quadrangle from $100 million to $150 million. As a result of the $150 million investment with Quadrangle, the Retirement Fund paid management fees to a Quadrangle subsidiary. By virtue of his partnership interest in Quadrangle and its affiliates, Rattner's personal share of these fees totals approximately $3 million.

Rattner agreed to settle the SEC's charges by paying $6.2 million and consenting to a bar from associating with any investment adviser or broker-dealer for at least two years.

"New York State retirees deserve investment advisers that are selected through a transparent, conflict-free process, not through payoffs, undisclosed financial arrangements and movie distribution deals," said Robert Khuzami, Director of the SEC's Division of Enforcement.

David Rosenfeld, Associate Director of the SEC's New York Regional Office, added, "Rattner delivered special favors and conducted sham transactions

that corrupted the Retirement Fund's investment process. The assets of New York State workers were invested for the hidden purpose of enriching Morris and Loglisci's brother."

The SEC previously charged Morris and Loglisci for orchestrating the fraudulent scheme that extracted kickbacks from investment management firms seeking to manage the assets of the Retirement Fund. The SEC charged Quadrangle earlier this year.

According to the SEC's complaint against Rattner filed in U.S. District Court for the Southern District of New York, Morris informed Rattner in the fall of 2003 that Loglisci's brother was involved in producing a film called "Chooch." Morris suggested that Rattner help Loglisci's brother with the theatrical distribution of the film. Rattner met with Loglisci's brother and agreed to assist him, but Rattner's efforts did not lead to a distribution deal. Approximately one year later, Loglisci's brother contacted Rattner about DVD distribution of "Chooch." Within days of speaking to Loglisci's brother, Rattner contacted Loglisci about investing in a new Quadrangle private equity fund being marketed by the firm. Rattner told Loglisci that he had arranged a meeting between Loglisci's brother and a Quadrangle affiliate — GT Brands — to discuss a possible DVD distribution deal.

The SEC alleges that after Loglisci's brother met with GT Brands and telephoned Rattner to complain about the treatment he had received from GT Brands, Rattner warned a GT Brands executive to treat Loglisci's brother "carefully" because Quadrangle was trying to obtain an investment through Loglisci. After GT Brands made clear to Rattner that it was not interested in distributing the film, Rattner instructed the GT Brands executive to "dance along" with Loglisci's brother. According to an e-mail, Rattner telephoned Morris to inquire whether "GT needs to distribute [the Chooch] video" in order to secure an investment from the Retirement Fund. Morris offered to "nose around" to determine how important the DVD distribution deal was to Loglisci. GT Brands ultimately reversed course and offered to manufacture and distribute the DVD at a discount from its standard fee. Rattner approved the proposed terms of the distribution deal.

The SEC's complaint alleges that in late October 2004, after Rattner and others from Quadrangle had already met with Loglisci and the Retirement Fund's private equity consultant and received encouraging feedback from both of them, Morris met with Rattner and offered his placement agent services to Quadrangle. Morris warned Rattner that Quadrangle's negotiations with the Retirement Fund could always fall apart. Although Quadrangle was already working with a placement agent, Quadrangle agreed to pay Morris as well.

According to the SEC's complaint, soon after Quadrangle retained Morris as a placement agent and Rattner had advised Morris that GT Brands was moving forward with the deal to distribute the Chooch DVD, Loglisci personally informed Rattner that the Retirement Fund would be making a $100 million investment in the Quadrangle fund.

The SEC alleges that Morris later contacted Rattner and pressed him for a financial contribution to Hevesi's re-election campaign. Although Rattner purportedly had a personal policy that he would not make political

contributions to politicians who have influence over public pension funds, Rattner agreed to find someone else to make the contribution. After speaking with Morris, Rattner asked a friend and the friend's wife to each contribute $25,000 to Hevesi's campaign. The day after these contributions were communicated to Hevesi's campaign staff, Hevesi telephoned Rattner and left him a message thanking him for the contribution. In late May 2006, Rattner's friend transmitted the promised campaign contributions to Rattner, who forwarded the two checks to Hevesi's campaign. Approximately one month later, Loglisci committed the Retirement Fund to an additional $50 million investment in the Quadrangle fund.

In settling the SEC's charges without admitting or denying the allegations, Rattner consented to the entry of a judgment that permanently enjoins him from violating Section 17(a)(2) of the Securities Act of 1933 and orders him to pay approximately $3.2 million in disgorgement and a $3 million penalty. The settlement is subject to court approval. Rattner also consented to the entry of a Commission order that will bar him from associating with any investment adviser or broker-dealer with the right to reapply after two years.

The SEC's investigation was conducted by Joseph Sansone and Maureen Lewis of the New York Regional Office. The investigation is continuing.

# # #

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http://www.sec.gov/news/press/2010/2010-224.htm

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	**10-CV-**
-against-	**COMPLAINT**
STEVEN L. RATTNER,	
Defendant.	

Plaintiff Securities and Exchange Commission ("Commission"), for its complaint against defendant Steven L. Rattner ("Rattner"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action involves one part of a wide-ranging scheme to extract kickbacks from investment management firms seeking to manage assets held in trust by the New York State Common Retirement Fund ("Retirement Fund"). The primary perpetrators of the scheme were Henry Morris ("Morris"), the top political advisor and chief fundraiser for former New York State Comptroller Alan Hevesi, and David Loglisci ("Loglisci"), the former New York State Deputy Comptroller. Morris, Loglisci and several others involved in this "pay to play" scheme were previously charged in a separate action (*SEC v. Morris, et al.*, 09-CV-2518 (CM)). In the

instant action, the Commission charges Rattner, a former managing principal of the private equity firm Quadrangle Group LLC ("Quadrangle") for entering into undisclosed *quid pro quo* arrangements with Morris and Loglisci in order to secure an investment from the Retirement Fund.

2. In 2005 and 2006, Rattner and Quadrangle secured $150 million in investments from the Retirement Fund for Quadrangle after arranging for a Quadrangle affiliate to distribute the DVD of a low-budget film that Loglisci and his brothers had produced, and by agreeing to pay more than $1 million in purported "finder" fees to Morris even though Quadrangle had already presented the investment proposal at issue directly to Loglisci.

3. Although the DVD deal and the sham "finder" fee paid to Morris created a clear conflict of interest, Rattner and Quadrangle failed to disclose the DVD deal or the true nature of the payment to Morris to the Retirement Fund's Investment Advisory Committee ("IAC"), which is required by state law to monitor and give advice regarding the Retirement Fund's investments, or to anyone else that was not involved in the scheme.

4. By virtue of the foregoing conduct Rattner directly or indirectly, singly or in concert, violated Section 17(a)(2) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)(2)].

5. Unless Rattner is permanently restrained and enjoined, he will again engage in the acts, practices, transactions and courses of business set forth in this Complaint and in acts, practices, transactions and courses of business of similar type and object.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to the authority conferred by Section

20(b) of the Securities Act [15 U.S.C. § 77t(b)], seeking to restrain and enjoin permanently Rattner from engaging in the acts, practices, transactions and courses of business alleged herein. The Commission also seeks a final judgment ordering Rattner to pay disgorgement, prejudgment interest and civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

7. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)]. Rattner, directly or indirectly, singly or in concert, has made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Some of the transactions, acts, practices and courses of business at issue occurred in the Southern District of New York. During the relevant period, Rattner resided in and maintained his principal place of business in New York, New York. The New York State Comptroller maintains an office in New York, New York, and Loglisci worked in that office during the relevant period.

THE DEFENDANT

8. **Rattner** resides in New York, New York. Rattner founded Quadrangle in 2000 and served as its managing principal until February 2009, when he became the head of the Presidential Task Force on the Auto Industry. In July 2009, Rattner resigned from that position. During the relevant period, Rattner was also a managing principal of Quadrangle Equity Management LLC, formerly a registered investment adviser, and Quadrangle Securities LLC, formerly a registered broker-dealer. Rattner previously held Series 7, Series 24, and Series 63

licenses.

OTHER RELEVANT PERSONS AND ENTITIES

9. **The Retirement Fund** is a public pension fund that during the relevant period held over $150 billion in assets for more than one million New York State employees, retirees and other beneficiaries. The Retirement Fund is the largest pension fund in New York and the third largest pension fund in the country. Pursuant to New York statute, the New York State Comptroller is the sole trustee of the Retirement Fund.

10. **Morris** resides in New York City and East Hampton, New York. Morris was the top political advisor and chief fundraiser for Alan Hevesi, the New York State Comptroller from January 2003 through December 2006. During the relevant period, Morris was a registered representative associated with Searle & Co. ("Searle"), a Connecticut-based broker dealer.

11. **Loglisci** resides in Norwalk, Connecticut. Beginning in 2003, he served as the Director of Alternative Investments for the New York State Comptroller, overseeing investments in private equity funds. In April 2004, Loglisci was promoted to Deputy Comptroller and Chief Investment Officer and served in that position until his resignation in mid-2007. In March 2010, Loglisci pled guilty to parallel criminal charges in connection with his role in the pay-to-play scheme.

12. **Quadrangle**, a Delaware limited liability company, is a private investment management and advisory firm based in New York City that specializes in investing in media and communications companies. During the relevant period, Rattner was a managing principal of Quadrangle.

13. **Quadrangle GP Investors II, L.P. ("Quadrangle GP")**, a Delaware limited

partnership, is a Quadrangle affiliate and the general partner of Quadrangle Capital Partners II, L.P., a private equity fund in which the Retirement Fund invested $100 million in 2005 and an additional $50 million in 2006. During the relevant period, Rattner was an indirect owner of Quadrangle GP and served on its Investment Committee. In April 2010, the Commission brought a related action against Quadrangle and Quadrangle GP. *SEC v. Quadrangle Group LLC, et al.*, 10-CV-3192 (LAK). On April 19, 2010, the Court entered a final consent judgment permanently enjoining Quadrangle and Quadrangle GP from violating Section 17(a)(2) of the Securities Act and ordering them to pay a civil penalty in the amount of $5 million.

THE DEFENDANT'S VIOLATIVE CONDUCT

Overview of the Scheme

14. Beginning in 2003, Morris and Loglisci devised and implemented a wide-ranging scheme to extract monetary payments and other benefits from investment management firms seeking to do business with the Retirement Fund. Pursuant to this scheme, Morris and Loglisci caused the Retirement Fund to invest billions of dollars with numerous investment management firms, including Quadrangle, which together paid millions of dollars to Morris and others in the form of "finder" or "placement agent" fees in order to obtain those investments from the Retirement Fund.

15. Loglisci also benefited from the scheme. Among other things, Loglisci obtained funding and other consideration for a low-budget film, titled *Chooch*, that Loglisci and his brothers produced. As discussed in more detail below, Rattner arranged for a company owned by a Quadrangle affiliate to distribute the DVD of *Chooch* on discounted terms in order to help Quadrangle secure an investment from the Retirement Fund.

Rattner's Dealings with Morris, Loglisci and the Retirement Fund

16. As described more fully below, Rattner arranged for the undisclosed DVD distribution deal for the Loglisci film and the "finder" fee payment to Morris in order for Quadrangle to obtain an investment from the Retirement Fund.

17. In December 2003, Morris met with Rattner, whom Morris knew from his political work, to discuss obtaining investments from the Retirement Fund and other large public pension funds. In the course of this meeting, Morris informed Rattner that Loglisci, whom Rattner knew to be a high-ranking official at the Retirement Fund, had a brother who was involved in producing a low-budget film named *Chooch*. Morris specifically asked Rattner, who has ties to the entertainment industry, whether he could help Loglisci's brother obtain financing for the theatrical distribution of the film. Within days of that meeting, Loglisci's brother contacted Rattner and personally made the same request. Although Rattner undertook to assist Loglisci's brother with respect to securing theatrical distribution for *Chooch*, those efforts did not lead to a distribution deal.

18. Approximately one year later, in the fall of 2004, Loglisci's brother again contacted Rattner, this time to ask him for help in securing a DVD distribution deal for *Chooch*. Rattner again agreed to assist Loglisci's brother and arranged for him to meet with executives at GT Brands LLC ("GT Brands"), an infomercial and DVD distribution company that was owned by one of Quadrangle's private equity funds. Also in the fall of 2004, Rattner and Quadrangle began soliciting the Retirement Fund for an investment in a new private equity fund that Quadrangle was then marketing, Quadrangle Capital Partners II Fund, L.P. ("Quadrangle Fund II"). Within days of speaking to Loglisci's brother about a DVD distribution deal for *Chooch*,

Rattner arranged a meeting with Loglisci to discuss an investment in Quadrangle Fund II. In the course of soliciting Loglisci for an investment in Quadrangle Fund II, Rattner told Loglisci that he had arranged a meeting between Loglisci's brother and GT Brands concerning a DVD distribution deal for *Chooch*, and Loglisci thanked Rattner for the assistance.

19. Shortly after the foregoing discussions between Rattner and Loglisci, Loglisci's brother met with a GT Brands executive to discuss a possible DVD distribution deal for *Chooch*. According to an e-mail sent to Rattner by GT Brands' chief executive officer after that meeting, GT Brands found Loglisci's brother to be "very unrealistic and naïve" and was inclined to "take a pass" on distributing the *Chooch* DVD. The following day, after Loglisci's brother telephoned Rattner to complain about the treatment he received from GT Brands, Rattner advised the GT Brands' chief executive officer to treat Loglisci's brother "carefully" given Loglisci's importance to Quadrangle. As a result, GT Brands representatives met with Loglisci's brother for a second time later that fall. In late November 2004, GT Brands' chief executive officer once again told Rattner that GT Brands was not inclined to distribute the *Chooch* DVD and had reached the point in its discussions at which it would "typically disengage."

20. Although GT Brands was not interested in distributing *Chooch*, Rattner, in an email, instructed GT Brands' chief executive officer to "dance along" with Loglisci's brother while Rattner figured out whether Quadrangle "needed" to do a distribution deal in order to secure an investment from the Retirement Fund. According to an email sent by Rattner, Rattner telephoned Morris to inquire whether "GT needs to distribute [the *Chooch*] video" and, in response, Morris offered to "nose around" to determine how important the DVD distribution deal was to Loglisci.

21. Despite GT Brands' avowed lack of interest in distributing the *Chooch* DVD, GT Brands reversed course and ultimately offered to manufacture and distribute the *Chooch* DVD in exchange for 12 percent of the net revenue generated by the distribution of the film, which was a discount from GT Brands' standard fee of between 15 and 20 percent. Rattner approved the proposed terms of the distribution deal and, in December 2004, GT Brands and Loglisci's brother reached agreement on the DVD distribution deal for *Chooch*.

22. At approximately the same time that Rattner arranged for GT Brands to distribute the *Chooch* DVD, Rattner and Quadrangle decided to retain Morris as a "placement agent" even though Rattner was already dealing directly with Loglisci and Quadrangle thus did not need Morris to provide an introduction In late October 2004, after Rattner and others from Quadrangle had already met with Loglisci and the Retirement Fund's private equity consultant and had received encouraging feedback from both of them, Morris met with Rattner and offered his placement agent services to Quadrangle. Morris warned Rattner that Quadrangle's negotiations with the Retirement Fund could always fall apart.

23. Although Quadrangle was already working with a placement agent, Quadrangle agreed to pay Morris a "fee" as well. On January 10, 2005, Quadrangle GP, which was the general partner of Quadrangle Fund II, entered into a written agreement to pay Searle, the broker-dealer with which Morris was affiliated, a sliding fee ranging from 1.1 to 1.5 percent of the amount that the Retirement Fund invested in Quadrangle Fund II above $25 million. A few days later, Rattner e-mailed Morris to advise him that GT Brands was also moving forward with the deal to distribute the *Chooch* DVD. Approximately three weeks later, Loglisci personally informed Rattner that the Retirement Fund would be making a $100 million investment in

Quadrangle Fund II. In March of 2005, after GT Brands had memorialized its DVD distribution deal with the production company controlled by Loglisci's brother (Chooch LLC), the Retirement Fund formally committed to purchase a $100 million limited partnership interest in Quadrangle Fund II.

24. As a result of the Retirement Fund's $100 million investment in Quadrangle Fund II, Quadrangle GP paid Searle purported placement fees of $1.125 million in five installments starting on or about October 26, 2005 and continuing through at least June 2007. Searle then remitted 95 percent of these fees to Morris pursuant to Morris's arrangement with Searle. Between September 2005 and November 2007, Chooch LLC, the film production company controlled by Loglisci's brother, received approximately $88,000 in revenue as a result of the distribution of the *Chooch* DVD.

25. Neither Rattner nor anyone else at Quadrangle or Quadrangle GP ever disclosed the *Chooch* DVD distribution agreement or Quadrangle GP's payments to Morris -- and the conflict of interest that these dealings presented -- to any member of the Comptroller's staff (other than Loglisci) or to the IAC. In April 2005, Quadrangle GP made a written disclosure to the Retirement Fund stating that it had not paid any placement agent, finder or other individual other than those referenced in a "side letter" that was drafted in connection with the Retirement Fund's investment in Quadrangle Fund II. Although the side letter disclosed Quadrangle GP's agreement to pay placement fees to Searle, neither the written disclosure nor the side letter mentioned Morris's receipt of fees, the *quid pro quo* nature of these payments, or the Quadrangle affiliate's agreement to distribute the *Chooch* DVD and the discounted terms of that distribution deal.

26. In late 2005 or early 2006, after the Retirement Fund had agreed to invest $100 million with Quadrangle, but before the firm had completed fundraising for Quadrangle Fund II, Morris contacted Rattner and pressed him for a financial contribution to Comptroller Hevesi's re-election campaign. Although Rattner purportedly had a personal policy that he would not make political contributions to politicians who have influence over public pension funds, Rattner agreed to find someone else to make the contribution. After speaking with Morris, Rattner asked a friend and the friend's wife to each contribute $25,000 to Hevesi's campaign, for a total contribution of $50,000. The day after these contributions were communicated to Hevesi's campaign staff, Hevesi telephoned Rattner and left him a message thanking him for the contribution. In late May 2006, Rattner's friend transmitted the promised campaign contributions to Rattner, who forwarded the two checks to Hevesi's campaign. Approximately one month later, Loglisci made a verbal commitment that the Retirement Fund would purchase an additional $50 million worth of limited partnership interests in Quadrangle Fund II. This commitment was memorialized on December 13, 2006.

27. As a result of the Retirement Fund's $150 million total investment in Quadrangle Fund II, the Retirement Fund paid management fees to a Quadrangle subsidiary from 2005 through 2010. By virtue of his partnership interest in Quadrangle and its affiliates, Rattner's share of these fees totals approximately $3 million.

CLAIM FOR RELIEF

Section 17(a)(2) of the Securities Act

28. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 27.

29. As a result of the conduct described above, Rattner directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

30. By reason of the foregoing, Rattner, singly or in concert, directly or indirectly, has violated, and unless enjoined will again violate, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently enjoining and restraining Rattner, and his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, from violating, directly or indirectly, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

II.

Ordering Rattner to disgorge the ill-gotten gains he received from the violations alleged herein, and to pay prejudgment interest thereon.

III.

Ordering Rattner to pay civil monetary penalties pursuant to Section 20(d) of the

Securities Act [15 U.S.C. § 77t(d)].

IV.

Granting such other and further relief as the Court deems just and proper.

Dated: November 18, 2010
New York, New York

By:

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U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 21748 / November 18, 2010

Securities and Exchange Commission v. Steven L. Rattner, 10 CV 8699 (S.D.N.Y.)

SEC CHARGES STEVEN RATTNER IN PAY-TO-PLAY SCHEME INVOLVING NEW YORK STATE PENSION FUND

The Securities and Exchange Commission today charged former Quadrangle Group principal Steven Rattner with participating in a widespread kickback scheme to obtain investments from New York's largest pension fund.

The SEC alleges that Rattner secured investments for Quadrangle from the New York State Common Retirement Fund after he arranged for a firm affiliate to distribute the DVD of a low-budget film produced by the Retirement Fund's chief investment officer and his brothers. Rattner then caused Quadrangle to retain Henry Morris – the top political advisor and chief fundraiser for former New York State Comptroller Alan Hevesi – as a "placement agent" and pay him more than $1 million in sham fees even though Rattner was already dealing directly with then-New York State Deputy Comptroller David Loglisci and did not need an introduction to the Retirement Fund.

The SEC alleges that after receiving pressure from Morris, Rattner also arranged a $50,000 contribution to Hevesi's re-election campaign. Just a month later, Loglisci increased the Retirement Fund's investment with Quadrangle from $100 million to $150 million. As a result of the $150 million investment with Quadrangle, the Retirement Fund paid management fees to a Quadrangle subsidiary. By virtue of his partnership interest in Quadrangle and its affiliates, Rattner's personal share of these fees totals approximately $3 million.

Rattner agreed to settle the SEC's charges by paying $6.2 million and consenting to a two-year bar from associating with any investment adviser or broker-dealer.

The SEC previously charged Morris and Loglisci for orchestrating the fraudulent scheme that extracted kickbacks from investment management firms seeking to manage the assets of the Retirement Fund. The SEC charged Quadrangle earlier this year.

According to the SEC's complaint against Rattner filed in U.S. District Court for the Southern District of New York, Morris informed Rattner in the fall of 2003 that Loglisci's brother was involved in producing a film called "Chooch." Morris suggested that Rattner help Loglisci's brother with the theatrical distribution of the film. Rattner met with Loglisci's brother and agreed to assist him, but Rattner's efforts did not lead to a distribution deal. Approximately one year later, Loglisci's brother contacted Rattner about DVD distribution of "Chooch." Within days of speaking to Loglisci's brother, Rattner contacted Loglisci about investing in a new Quadrangle private equity fund being marketed by the firm. Rattner told Loglisci that he had arranged a meeting between Loglisci's brother and a Quadrangle affiliate – GT Brands – to discuss a possible DVD distribution deal.

The SEC alleges that after Loglisci's brother met with GT Brands and telephoned Rattner to complain about the treatment he had received from GT Brands, Rattner warned a GT

Brands executive to treat Loglisci's brother "carefully" because Quadrangle was trying to obtain an investment through Loglisci. After GT Brands made clear to Rattner that it was not interested in distributing the film, Rattner instructed the GT Brands executive to "dance along" with Loglisci's brother. According to an e-mail, Rattner telephoned Morris to inquire whether "GT needs to distribute [the Chooch] video" in order to secure an investment from the Retirement Fund. Morris offered to "nose around" to determine how important the DVD distribution deal was to Loglisci. GT Brands ultimately reversed course and offered to manufacture and distribute the DVD at a discount from its standard fee. Rattner approved the proposed terms of the distribution deal.

The SEC's complaint alleges that in late October 2004, after Rattner and others from Quadrangle had already met with Loglisci and the Retirement Fund's private equity consultant and received encouraging feedback from both of them, Morris met with Rattner and offered his placement agent services to Quadrangle. Morris warned Rattner that Quadrangle's negotiations with the Retirement Fund could always fall apart. Although Quadrangle was already working with a placement agent, Quadrangle agreed to pay Morris as well.

According to the SEC's complaint, soon after Quadrangle retained Morris as a placement agent and Rattner had advised Morris that GT Brands was moving forward with the deal to distribute the Chooch DVD, Loglisci personally informed Rattner that the Retirement Fund would be making a $100 million investment in the Quadrangle fund.

The SEC alleges that Morris later contacted Rattner and pressed him for a financial contribution to Hevesi's re-election campaign. Although Rattner purportedly had a personal policy that he would not make political contributions to politicians who have influence over public pension funds, Rattner agreed to find someone else to make the contribution. After speaking with Morris, Rattner asked a friend and the friend's wife to each contribute $25,000 to Hevesi's campaign. The day after these contributions were communicated to Hevesi's campaign staff, Hevesi telephoned Rattner and left him a message thanking him for the contribution. In late May 2006, Rattner's friend transmitted the promised campaign contributions to Rattner, who forwarded the two checks to Hevesi's campaign. Approximately one month later, Loglisci committed the Retirement Fund to an additional $50 million investment in the Quadrangle fund.

In settling the SEC's charges without admitting or denying the allegations, Rattner consented to the entry of a judgment that permanently enjoins him from violating Section 17(a)(2) of the Securities Act of 1933 and orders him to pay approximately $3.2 million in disgorgement and a $3 million penalty. The settlement is subject to court approval. Rattner also consented to the entry of a Commission order that will bar him for two years from associating with any investment adviser or broker-dealer.

The SEC's investigation was conducted by Joseph Sansone and Maureen Lewis of the New York Regional Office. The investigation is continuing.

For further information, see Litigation Release No. 20963 (March 19, 2009); Litigation Release No. 21001 (April 15, 2009); Litigation Release No. 21018 (April 30, 2009); Litigation Release No. 21036 (May 12, 2009); and Litigation Release No. 21487 (April 15, 2010).

See Also: SEC Complaint

http://www.sec.gov/litigation/litreleases/2010/lr21748.htm

Sigmon, Andy

From: Khalil, Michael [mkhalil@milchev.com]
Sent: Monday, September 09, 2013 1:45 PM
To: Sigmon, Andy
Subject: FW: Update on Auto Suppliers

Follow Up Flag: Follow up
Flag Status: Flagged

From: Matthew.Feldman@do.treas.gov [mailto:Matthew.Feldman@do.treas.gov]
Sent: Thursday, June 18, 2009 1:08 PM
Subject: Re: Update on Auto Suppliers

Thx. I'll call you later today or tomorrow. We are having a sit down on the D Hourly Plan in the am. There is a split as to what should happen. There are some wanting to see it terminate. I've been advocating hard for our deal and I believe that will be the conclusion but wanted to give you a heads up.

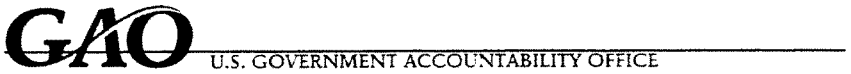
----- Original Message -----
From: House Joseph <House.Joseph@pbgc.gov>
To: Feldman, Matthew
Sent: Thu Jun 18 13:01:06 2009
Subject: Fw: Update on Auto Suppliers

Heads up, our budget liaison at OMB requested an update from us re: what we're seeing on auto suppliers in advance of a session these OMB folks are apparently having with Harry this afternoon. The attachment contains some of our off-the-shelf stuff.

Sent from my BlackBerry Wireless Handheld

From: Rae Michael
To: 'Kinneen, Kelly' <Kelly_Kinneen@omb.eop.gov>; 'Chantel_M._Boyens@omb.eop.gov' <Chantel_M._Boyens@omb.eop.gov>; 'Julie_A._Kalishman@omb.eop.gov' <Julie_A._Kalishman@omb.eop.gov>
Cc: Deneen Terrence; House Joseph; Archeval Kristina; Cann Dana; Ranade Neela
Sent: Thu Jun 18 12:55:32 2009
Subject: Update on Auto Suppliers

Kelly, Chantel, and Lisa,
As discussed, attached is a brief update on our exposure to auto suppliers, prepared by our Department of Insurance Supervision and Compliance. This includes an update on Delphi (our largest exposure), and several other auto suppliers that are in bankruptcy, or that may file in the near future.
Let us know if you have any questions or need anything further.
Thanks.
Michael



441 G St. N.W.
Washington, DC 20548

October 10, 2013

The Honorable Michael R. Turner
Subcommittee on Government Operations
Committee on Oversight and Government Reform
House of Representatives

Dear Representative Turner:

Enclosed please find GAO's response to your questions regarding my testimony before the House Subcommittee on Government Operations on September 11, 2013, at the hearing entitled, "Oversight of the SIGTARP Report on Treasury's Role in the Delphi Pension Bailout."

Sincerely yours,

Barbara D. Bovbjerg
Managing Director, Education, Workforce, and
Income Security Issues

Enclosure

cc: The Honorable John Mica, Chairman
Subcommittee on Government Operations

The Honorable Gerald Connolly, Ranking Member
Subcommittee on Government Operations

Response to questions from Representative Turner

When you appeared before the Subcommittee on Government Operations, you gave testimony regarding the funding status of the Delphi pension plans. These questions seek clarification on some of your testimony regarding that issue. In your response, please cite and provide the source information you used in answering these questions.

Responses below concerning the funded status of Delphi's plans on an accounting basis, at the time Delphi was spun off from GM, are from data included in GAO-11-373R, Enclosure IV (p. 21). These data were provided by Delphi Corporation's Treasurer based on Old Delphi's publicly-reported data in 10K and SEC filings. Data on plan funded status on a termination basis come from PBGC Pension Information Profiles on Delphi's plans.

The assumptions and methods used to calculate plan funded status on an ongoing or accounting basis differ from those used to calculate funding on a termination basis. The accounting basis presumes an ongoing plan, whereas the termination basis does not. The main differences in measurement bases are the discount rate used to calculate the present value of benefits; the expected retirement age used to estimate when benefits will commence, which affects the estimated amount of early retirement benefits that will become payable; and whether wages and salaries are projected forward beyond the measurement date. PBGC's termination-basis measure also takes into account that, when a plan of a financially weak company terminates, more individuals tend to retire early with subsidized benefits. These early retirements often substantially increase plan liabilities and, consequently, plan underfunding.

Specifically, you testified that at the time of the Delphi spin-off from General Motors, 1999, the Delphi salaried plan was over-funded.

1. **What was the funding percentage on an accounting, ongoing basis?**

   At year-end in 1999, the funding percentage of the Salaried plan, on an accounting basis, was 122.7 percent.

2. **What was the funding percentage on a termination basis?**

   In March 1999, PBGC measured funding for the Salaried plan of 91 percent, assuming a plan termination date of October 1, 1999.

3. **Can you please clarify what the total plan assets were at that time?**

   At year-end in 1999, total plan assets of the Salaried plan were reported to be: $2.449 billion.

4. **Can you please clarify what the total plan liabilities were at that time?**

   At year-end in 1999, total plan liabilities of the Salaried plan were reported to be: $1.996 billion, measured on an accounting basis.

Similarly, you testified that the Delphi hourly plan was underfunded.

5. What was the funding percentage on an accounting, ongoing basis?

At year-end in 1999, the funded percentage of the Hourly plan, on an accounting basis, was 69.1 percent.

6. What was the funding percentage on a termination basis?

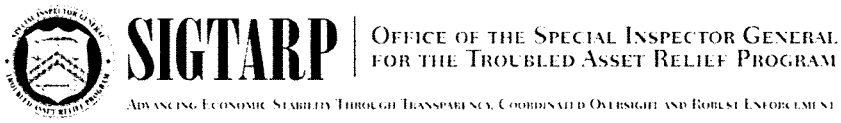
In March 1999, PBGC measured funding for the Hourly plan of 52 percent, assuming a plan termination date of October 1, 1999.

7. Can you please clarify what the total plan assets were at that time?

At year-end in 1999, total plan assets of the Hourly plan were reported to be: $2.806 billion.

8. Can you please clarify what the total plan liabilities were at that time?

At year-end in 1999, total plan liabilities of the Hourly plan were reported to be: $4.063 billion, measured on an accounting basis.



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HOUSE OVERSIGHT AND GOVERNMENT REFORM
GOVERNMENT OPERATIONS SUBCOMMITTEE

QUESTIONS FOR THE RECORD:

THE HONORABLE CHRISTY ROMERO

SPECIAL INSPECTOR GENERAL

FOR THE TROUBLED ASSET RELIEF PROGRAM

FROM SEPTEMBER 11, 2013 HEARING

October 10, 2013

Representative Susan Brooks' Questions for Christy Romero, Special Inspector General for the Troubled Asset Relief Program:

1.) You mention on page 14 of your report that GM took the position that Treasury's consent was required to determine who would ultimately be topped off after Delphi went into bankruptcy. You say that initially an Auto Team official stated that neither program would be topped-off. Please tell me what ultimately changed that allowed GM to assume responsibility of the hourly workers?

Answer: As reported in SIGTARP's audit, GM could not agree to the new collective bargaining agreement (that included the top-up) on its own without Treasury's approval. The decision that New GM would honor the top-up was a joint decision by Treasury and GM, with Treasury deciding to approve the collective bargaining agreement with the UAW that included the top-up. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring its pension benefit guarantees in bankruptcy, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Mr. Rattner told SIGTARP, "It was not a ridiculous request. And one that we could have honored and needed to honor."

2.) The government is supposed to be a good steward of taxpayer money by making prudent business decisions, while on the other hand ensuring workers treat everyone fairly. Why in this case did the government insert itself to the detriment of 1,800 pensioners in my district?

Answer: The best answer to this question comes from what Treasury Auto Team officials told SIGTARP. As reported in our audit, Treasury had the power to object to New GM taking over the top-up obligation as part of the larger agreement with the UAW, but like GM, had no desire to blow up the larger deal. Although Mr. Rattner told SIGTARP, "Left to our own devices, we would have not done the top-up," he said that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure." Although the Auto Team was concerned about the threat of the strike, they were also concerned with the UAW prolonging the bankruptcy. When asked whether they could have been tougher on the UAW, an Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept" and "You do need employees to say yes and bondholders to say yes. No one thought they [GM] could survive an 18-month bankruptcy." In an interview with SIGTARP, another Auto Team official called UAW the "big dog" because the union represented most of GM's workforce and a failure to establish an agreement with UAW could have resulted in GM's liquidation, which the Auto Team did not want. The Auto Team official told SIGTARP, "I don't know what would have happened" and that not having an agreement with UAW would have been like "shooting yourself in the head," adding that it could have resulted in the liquidation of GM.

3.) In his prepared statement, the head of the President's Auto Taskforce, Stephen Rattner, testified that "the Special Inspector General's report makes clear that GM's decision to honor its top-up agreement in bankruptcy was consistent with a commercially reasonable approach." I took away a diametrically different assessment from your report and read that GM was forced by the Auto Task Force to top-off union employees despite its best interests. I was wondering if

you could clarify if you believe top-up agreements exclusively for union workers was in fact "commercially reasonable?"

Answer: SIGTARP did not conclude in its audit whether the top-up of Delphi hourly employees was commercially reasonable or not. Rather we reported, although the Auto Team tried to view issues through a "commercially reasonable" lens like a private investor, they often did not act as a private investor, nor should they have. Without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns. Even though the Auto Team tried to act as a private investor, they had considerations that no private investor would ever have had, blurring the lines between Treasury's role as the investor and as the Government. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

Representative Pat Tiberi's Questions for Christy Romero, Special Inspector General for the Troubled Asset Relief Program:

1.) How did the involvement of the federal government, using taxpayer dollars, affect the unfair treatment of the Delphi salaried retirees?

Answer: The best answer to this question relates to leverage. As we reported in our audit, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. One Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held, but SIGTARP found that additional leverage was given by Treasury. The Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to GM's bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days. Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having leverage because they did not have current employees at GM and therefore could not hold up GM's bankruptcy.

Two liabilities that the Auto Team had already decided to assume in bankruptcy were a new agreement with the UAW and an agreement with the bondholders. The UAW had leverage because it knew and understood from Treasury that it was committed to reorganize GM and not let GM fail. Moreover, Treasury's 40-day bankruptcy condition gave the UAW and bondholders additional leverage to threaten to hold up GM's bankruptcy. They may have been able to obtain more concessions than in a traditional bankruptcy where the issues may be litigated. An Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept." With Treasury's dictate of a 40-day bankruptcy and no indication that Treasury would extend that timeframe, GM officials were under pressure, believing they had to reach agreements with the bondholders and UAW prior to a June 1 bankruptcy filing or risk losing Treasury's funding and liquidating.

SIGTARP found that Delphi's salaried retirees had no leverage, other than what they hoped to be political leverage and that Treasury, as a Government agency, would provide them with a top-up. Delphi salaried retirees had no active employees at GM, a critical difference between them and the UAW. They were not creditors in GM's bankruptcy because they did not have a preexisting agreement with GM to provide the pension benefit guarantee as did the UAW and other unions. In 1999, the salaried workers were not organized and did not negotiate a top-up agreement because their pensions had been fully funded by GM.

Auto Team leader Rattner told SIGTARP that GM came to the Auto Team because "GM wanted to do something for the [Delphi] salaried retirees." Mr. Rattner discussed it with then-GM CEO Henderson. Although Mr. Rattner could not remember the specifics of the conversation, he told SIGTARP that he thought there was nothing defensible from a commercial standpoint that could be done for the Delphi salaried retirees. Mr. Rattner told SIGTARP, "We didn't think there was anything defensible. We felt bad, but we didn't think it was justifiable."

2.) Did Treasury have other options available to them regarding Delphi salaried retirees?

Answer: Yes. Treasury could have decided to have GM top-up the Delphi salaried retirees.

3.) In your opinion, did the TARP legislation permit the Treasury to take the actions they did with regards to the auto bailout?

Answer: The Emergency Economic Stabilization Act of 2008 (EESA) governs Treasury's administration of TARP and gave Treasury broad authority over the use of TARP funds. EESA authorizes the Treasury Secretary "to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and the policies and procedures developed and published by the Secretary." EESA also authorizes the Secretary "to manage troubled assets purchased under this Act." An important part of EESA established SIGTARP to conduct audits and investigations related to TARP. SIGTARP published this audit to bring transparency to these events so that the American public and this Committee can form their own conclusion about the appropriateness of Treasury's actions.

4.) Did Treasury's actions best represent the interests of the federal government and the American taxpayers?

Answer: SIGTARP published this report to bring transparency to how these decisions were made to give every American the facts they need to determine for themselves whether Treasury's actions best represent the interests of the federal government and the American taxpayers. As reported in the audit, we found that there are two important lessons to be learned. First, the Auto Team's deep involvement and significant influence on GM's decisions leading up to and through GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government. Second, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. It is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities. Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in the economy. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the troubled asset relief program, please contact the SIGTARP Hotline.

Via Online: WWW.SIGTARP.GOV
Via Toll Free Phone: 877-SIG-2009
Via Fax: 202-622-4559

Via Mail: Hotline, Office of the SIGTARP
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