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DELPHI CORPORATION

Key Events Leading to Termination of the Delphi Defined Benefit Plans

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Highlights of [GAO-12-234T](#), a testimony before the Committee on Oversight and Government Reform, House of Representatives

Why GAO Prepared This Testimony

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. Delphi filed for bankruptcy in 2005, and in July 2009, Delphi's six defined benefit pension plans were terminated and trustee by the Pension Benefit Guaranty Corporation (PBGC).

In March 2011, GAO issued a report providing a timeline of key events leading to the plans' termination ([GAO-11-373R](#)). This report focused, in particular, on events related to the reasons for GM providing retirement benefit supplements to certain Delphi employees, but not to others, and the role of the U.S. Department of the Treasury (Treasury) in those events.

GAO was asked to testify on the information gathered on the termination of Delphi's pension plans for this previous report. In preparing that report, GAO relied on publicly available documents—such as bankruptcy filings by GM and Delphi, company reports to the Securities and Exchange Commission, and press releases—and on documents received from groups with whom we have talked, including Delphi, GM, the Delphi Salaried Retiree Association, PBGC, and Treasury.

View [GAO-12-234T](#). For more information, contact Barbara D. Bovbjerg at (202) 512-7215 or bovbjerg@gao.gov.

DELPHI CORPORATION

Key Events Leading to Termination of the Delphi Defined Benefit Plans

What GAO Found

The termination of the six defined benefit plans sponsored by Delphi, and the provision of benefit protections to some Delphi employees but not others, culminated from a complex series of events involving Delphi, GM, various unions, Treasury, and 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:

- 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).

After Delphi filed for bankruptcy in 2005, GM agreed to extend the top-up agreements with these three unions in 2007, as well as to assume some of the liabilities in Delphi's hourly-employee pension plan. In 2008, GM agreed to take responsibility for approximately \$3.4 billion of Delphi's hourly plan net liabilities, to be transferred to GM in two phases. The first transfer—involving \$2.1 billion—took place in September 2008. However, in fall 2008, losses throughout the auto industry pushed Delphi near liquidation and caused GM to seek assistance from Treasury. In April and May 2009, Treasury worked with GM to develop a restructuring plan, and helped GM to determine the "best resolution" of the Delphi bankruptcy from GM's perspective.

In June 2009, Delphi stated publicly that it was unable to fund its plans. In July 2009, the "new GM," which began operations following GM's bankruptcy, maintained the top-up agreements with UAW, which represented GM's largest employee group. However, GM concluded that the Delphi hourly plan was a "\$3 billion liability that [GM] could not afford," and Treasury agreed. The second transfer of Delphi's hourly plan net liabilities never took place. On July 22, 2009, PBGC announced the termination of all six of Delphi's defined benefit plans. Because the plans were terminated with insufficient assets, and because PBGC must adhere to statutory limits, many Delphi employees will receive a reduced benefit from PBGC.

GM was not required to provide the top-ups to IUE and USWA under its own bankruptcy settlement, but Delphi remained a significant—if not the largest—supplier for GM, and GM was motivated to help resolve Delphi's bankruptcy. In September 2009, new GM agreed to provide top-ups for IUE and USWA members as well, pursuant to the 1999 agreements.

None of these agreements provided for top-ups to members of other unions or to any other noncovered employees, including all members of Delphi's salaried plan. As a result, Delphi employees covered by the GM top-up agreements are protected from losses in pension benefits due to PBGC's benefit limits, while other employees are not.

**Delphi's Six Defined Benefit Plans,
Terminated as of July 31, 2009**

- Delphi Hourly-Rate Employees Pension Plan (hourly plan): *47,176 participants*
- Delphi Retirement Program For Salaried Employees (salaried plan): *20,203 participants*
- Packard-Hughes Interconnect Non-Bargaining Retirement Plan: *1,383 participants*
- ASEC Manufacturing Retirement Program: *533 participants*
- Packard-Hughes Interconnect Bargaining Retirement Plan: *165 participants*
- Delphi Mechatronic Systems Retirement Program: *148 participants*

Source: Pension Benefit Guaranty Corporation (PBGC).

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present information about the key events leading to the termination of the defined benefit plans sponsored by the Delphi Corporation (Delphi), a global supplier of mobile electronics and transportation systems. Delphi began as part of the General Motors Corporation (GM),¹ but was spun off as an independent company in 1999. In 2005, Delphi filed for bankruptcy,² and in 2009, Delphi's six qualified defined benefit plans were terminated and trusted by the Pension Benefit Guaranty Corporation (PBGC). The termination of Delphi's plans culminated from a complex series of events involving Delphi, GM, various unions, the U.S. Department of the Treasury (Treasury), and PBGC.

This testimony presents information from a report we issued in March 2011.³ In that report, we provided a timeline of key events leading to the termination of Delphi's plans, focusing, in particular, on events related to the reasons for GM providing retirement benefit supplements to certain Delphi employees, but not to others, and Treasury's role in those events. To construct this timeline, we relied on publicly available documents, such as bankruptcy filings by GM and Delphi, company reports to the Securities and Exchange Commission, press releases; and on documents received from groups with whom we have talked, including Delphi, GM, the Delphi Salaried Retiree Association (DSRA), PBGC, and Treasury. We conducted our work from October 2010 to March 2011 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe

¹Prior to bankruptcy reorganization, GM's legal name was General Motors Corporation. The legal name of the new entity that was created through 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 report). As of October 19, 2009, General Motors Company became General Motors LLC. Throughout this report, 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."

²Voluntary Petition of Delphi Corporation, No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 8, 2005).

³GAO, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans*, [GAO-11-373R](#) (Washington, D.C.: Mar. 30, 2011).

that the information and data obtained, and the analysis conducted, provided a reasonable basis for any findings and conclusions in that product. We are continuing to conduct work on this topic, and plan to issue another report that will compare PBGC's process for terminating Delphi's pension plans with its process for terminating other large, complex plans. We expect to issue this report in December 2011.

Summary

During the 1999 spin-off negotiations between GM and Delphi,⁴ three unions secured benefit guarantees for their members: 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);⁵ and the United Steelworkers of America (USWA). The benefit guarantees included an agreement that GM would provide a retirement benefit supplement (referred to as "top-ups") to certain Delphi employees who were members of these unions should their pension plans be frozen or terminated and they were to suffer a resulting loss in pension benefits. 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 followed, summarized in figure 1 and described in more detail below, the agreements with these three unions were ultimately 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

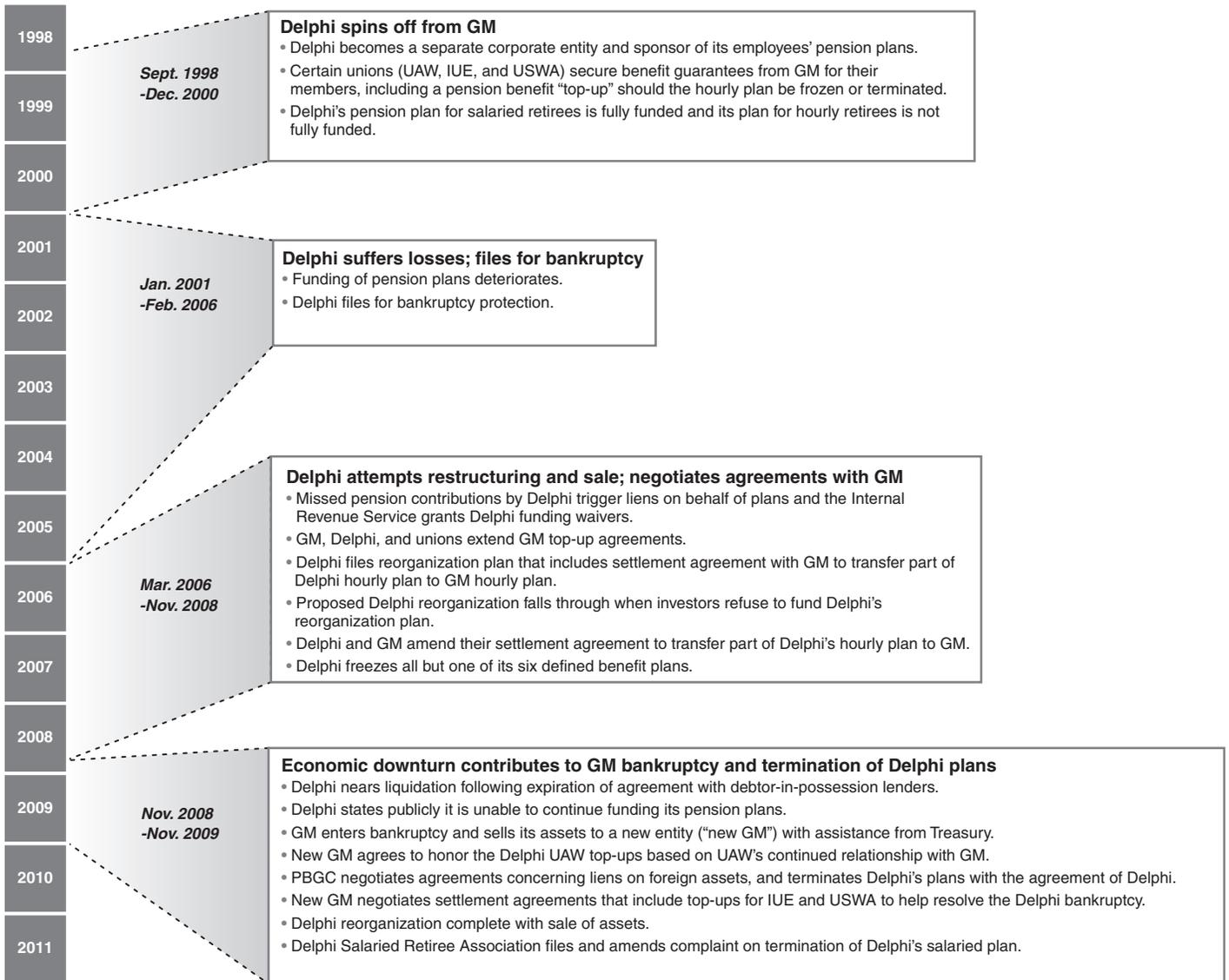
⁴For the purposes of this report, "Delphi" refers to the company prior to its emergence from Chapter 11 reorganization. Postbankruptcy Delphi is DPH Holdings Corporation, a liquidating entity, and Delphi Automotive LLP is a United Kingdom limited partnership, which was created in 2009 and purchased most of Delphi's assets.

⁵Effective October 1, 2000, IUE merged with the Communications Workers of America to become the Industrial Division of CWA (IUE-CWA); for the purposes of this report, we continue to refer to this entity as the IUE.

limits on the benefits it guarantees,⁶ 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.

⁶When a plan is terminated without sufficient assets to pay all promised benefits, PBGC determines the amount of benefit guaranteed based on certain limits specified under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1322-1322b, and related regulations, 29 C.F.R. §§ 4022.21, 4022.24 and 4022.25 (2010). While PBGC does not expect to finalize benefit amounts for each participant in Delphi's plans for several years, it anticipates that the application of these limits will result in many participants receiving a lower benefit from PBGC than that promised by their plans. For more on PBGC guarantees and the benefit determination process, see GAO, *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments*, [GAO-09-716](#), (Washington, D.C.: Aug. 17, 2009).

Figure 1: Overview of Key Events Leading to Termination of Delphi's Pension Plans



Sources: GM, Delphi, and Treasury documents.

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 UAW, IUE, and USWA, as well as other “splinter” unions.⁷ As a result of these negotiations, GM agreed to provide 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 shortfall of benefits below the level promised by the Delphi plans. “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. The top-up benefits were part of separate benefit guarantee agreements, signed between September and December 1999, between GM and certain unions representing Delphi workers—specifically, the UAW, IUE, and USWA. Also, on December 22, 1999, Delphi agreed to indemnify GM for all benefits provided by GM under the UAW benefit guarantee.⁸ At the time GM entered into these agreements, Delphi's salaried plan was fully funded while Delphi's hourly plan was not fully funded (see table 1).

Table 1: Funding History for Delphi's Salaried and Hourly Pension Plans, 1999-2009

Dollars in millions

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	July 2009 ^c
Salaried plan												
Assets ^a	\$2,449	\$2,449	\$2,455	\$2,256	\$1,959	\$2,532	\$2,703	\$3,027	\$3,439	\$3,600	\$2,371	\$2,456
Liabilities ^b	2,251	1,996	2,260	2,704	3,131	3,562	4,087	4,463	4,346	3,924	4,419	4,574
Net assets	198	453	196	(448)	(1,172)	(1,030)	(1,384)	(1,437)	(907)	(324)	(2,048)	(2,119)
Funded percentage	108.8%	122.7%	108.7%	83.4%	62.6%	71.1%	66.1%	67.8%	79.1%	91.7%	53.7%	53.7%
Company Contributions	\$0	\$0	\$0	\$0	\$0	\$276	\$0	\$140	\$126	\$125	\$105	\$0

⁷The 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 & Display Union Local 59; International Brotherhood of Teamsters; International Brotherhood of Boilermakers; International Union of Operating Engineers; and United Catering Restaurant Bar & Hotel Workers.

⁸This indemnification would allow GM to have a claim against Delphi for any expenses incurred by GM for coverage of guaranteed benefits.

Hourly plan											
Assets ^a	\$2,806	\$4,247	\$3,780	\$3,627	\$4,854	\$5,763	\$6,621	\$7,214	\$7,015	\$3,732	\$3,659
Liabilities ^b	4,063	4,620	5,535	6,323	7,531	8,408	8,894	10,212	9,734	6,792	7,035
Net assets	(1,257)	(373)	(1,756)	(2,695)	(2,677)	(2,646)	(2,273)	(2,998)	(2,720)	(3,060)	(3,376)
Funded percentage	69.1%	91.9%	68.3%	57.4%	64.5%	68.5%	74.4%	70.6%	72.1%	54.9%	52.0%
Company contributions	\$1,225	\$1,125	\$0	\$400	\$714	\$600	\$485	\$108	\$69	\$157	\$0

Source: GAO analysis of Delphi Corporation data.

^aAssets are year-end fair market values of plan assets.

^bLiabilities are the projected benefit obligations, or present value of benefits projected to be paid. Throughout this report, we have characterized the value of plan assets and liabilities based on available documents. It is often the case that the value of assets and liabilities from these sources is substantially different than their values at the point of termination. PBGC has reported that, at the time they were terminated, the Delphi plans were underfunded by approximately \$7 billion on a termination basis.

^cJuly 2009 figures are approximate as of July 31, 2009.

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

Over the period 2001 to 2005, Delphi suffered large losses, and the company filed for bankruptcy in October 2005. During the bankruptcy, Delphi failed to make required minimum contributions to the plans and, as a result, liens were triggered by federal statute on behalf of the plans. Beginning in March 2006, PBGC took steps to perfect these liens in accordance with law.⁹ While Delphi was in bankruptcy and attempting to restructure, in May 2007, the Internal Revenue Service (IRS) granted Delphi waivers that temporarily allowed Delphi to forego making minimum contributions to its plans and to provide letters of credit as collateral for the waivers.

Shortly thereafter, Delphi and GM agreed to extend the top-up agreements with UAW, IUE, and USWA. 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. The splinter unions negotiated for other benefits at

⁹Perfecting a lien involves registering it with the proper legal authority, resulting in it becoming a secured interest and thereby receiving a higher priority in bankruptcy.

this time, but were not guaranteed top-ups; nor were any agreements reached regarding 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 in order 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 that GM would take responsibility for approximately \$3.4 billion of net liabilities in Delphi's hourly plan in two phases. In phase 1, 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 phase 2, upon "substantial consummation" of Delphi's reorganization, the remaining assets and liabilities in Delphi's hourly plan were to be transferred to GM. No comparable arrangements were made concerning 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 as well.¹⁰

¹⁰A freeze is an amendment to a defined benefit 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).

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

Beginning in the fall of 2008, economic conditions deteriorated throughout the auto industry. Delphi experienced declining revenues as GM and other manufacturers sharply reduced production in light of 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. On April 21, 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.

GM's losses in the fall of 2008 led the company to seek assistance from Treasury through the Automotive Industry Financing Program (AIFP).¹¹ 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).¹² On June 1, 2009, GM filed for bankruptcy and sought the approval of the bankruptcy court for the sale of substantially all of the

¹¹In 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. § 115(a), 122 Stat. 3780. The Public-Private Investment Program Improvement and Oversight 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, 402(f), 123 Stat. 1656, 1658. EESA requires that the appropriate committees of Congress 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)).

¹²Treasury established an internal working group—referred to as the auto team—to oversee AIFP and provide analysis in support of the Auto Task Force.

company's assets to a new entity ("new GM").¹³ 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.¹⁴ As GM's primary lender, Treasury was concerned about GM's overall exposure to risks related to 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 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 2).¹⁵ However, as Treasury asserted in a February 2010 court motion, the Auto Task Force did not dictate what should be done with the Delphi pensions.¹⁶

¹³On 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 began operations on July 10, 2009.

¹⁴Deposition of Treasury Official at 185, No. 05-44481 (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).

¹⁵According to the December 19, 2008, pre-bankruptcy loan agreement between Treasury and GM, Treasury had the right to review and prohibit any "asset sale, investment, contract, commitment, or other transaction not in the ordinary course of business proposed to be entered into with a value in excess of \$100 million," referred to as a "material transaction." Treasury also needed to sign off on the purchase agreement under which old GM sold substantially all of its assets to new GM. This agreement established which contracts would be assumed by new GM. After July 10, 2009, the only approval right, pursuant to the new loan agreement, was if new GM needed funds from an escrow account.

¹⁶The Special Inspector General for the Troubled Asset Relief Program (SIGTARP) is conducting an audit of Treasury's role in GM's decision to provide top-ups for hourly workers, including whether the Administration or Auto Task Force pressured GM to provide additional funding for the hourly plan. SIGTARP has not announced when it expects to complete this audit.

Table 2: Treasury’s Three 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 had already been in bankruptcy for 3 years by this point.
A resolution that required the least possible amount of investment by GM	Because GM had already 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 at 36 and 37, No. 05-44481 (RDD) (Bankr. S.D.N.Y. July 21, 2009).

In assisting with GM’s reorganization, Treasury conducted analysis confirming GM’s assessment of the Delphi pension liabilities. Specifically, 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 phase 2 of the September 2008 agreement. Additionally, on June 1, 2009, Delphi announced that its hourly plan would be “addressed by GM.” According to a Treasury official deposition, there was a reasonable argument for GM to assume the Delphi hourly plan for UAW-represented workers, given that UAW’s role was continuing with the new GM and that the hourly plan was not fully funded at the time the plan was transferred from GM to Delphi in 1999. However, the phase 2 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. Treasury’s auto team assessed GM’s analysis on the potential cost of GM taking on the Delphi hourly pension plan and agreed with GM’s conclusion that the hourly plan was a “\$3 billion liability that General Motors could not afford.”¹⁷ Phase 2 of the transfer of hourly plan liabilities from Delphi to GM was not in GM’s reorganization plan and never took place.

¹⁷Deposition of Treasury Official, No. 05-44481 (RDD) (S.D.N.Y. July 21, 2009).

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 that are or were covered by UAW collective bargaining agreements in its master sale and purchase agreement, to which Treasury gave its approval.¹⁸ Thus, the master sale and purchase agreement included only GM's obligation to provide top-ups to Delphi UAW retirees.¹⁹ No other negotiations took place that resulted in comparable obligations concerning top-ups for members of the two other unions, IUE and USWA, even though they had previously secured top-up agreements with GM; nor for the splinter unions or the salaried employees who had no previous top-up agreements with GM. As noted in a Treasury official deposition, because of the bargaining between GM and UAW concerning the GM bankruptcy and new UAW agreement, GM was prepared to honor the obligation of providing top-ups to UAW Delphi retirees, while the situation regarding comparable obligations with the other unions was less clear.

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.²⁰ 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

¹⁸In re General Motors Corp, 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).

¹⁹The 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.

²⁰Objection 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).

way of exception, no longer work for GM.”²¹ 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 foreign liens on Delphi’s assets on July 21, 2009. 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. On July 22, 2009—12 days after the sale of GM’s assets to new GM—PBGC announced the termination of all six of Delphi’s qualified defined benefit plans, and on August 10, 2009, PBGC assumed trusteeship of the plans. PBGC stated that the Delphi pension plans were underfunded by \$7 billion when they were terminated. PBGC estimates that it will need to make up about \$6 billion of that shortfall using PBGC funds, leaving plan participants to bear the loss of the \$1 billion difference through reduced benefit amounts provided by PBGC.

²¹407 B.R. 512.

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.²² 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, 2009, IUE and USWA, along with some of the splinter unions, filed objections against Delphi's proposed reorganization plan and sale.²³ On July 15, 2009, Delphi Salaried Retiree Association (DSRA) filed an objection against Delphi's bankruptcy based on Delphi's modified plan including the termination of the salaried plan, among other things. On July 30, 2009, the Delphi bankruptcy court overruled the IUE, USWA, and DSRA objections and authorized the consummation of Delphi's modified reorganization plan.

Delphi remained a significant—if not the largest—supplier for GM. Thus, although GM was not required to provide the top-ups to IUE and USWA under its own bankruptcy settlement, GM was motivated to resolve Delphi's bankruptcy, and Treasury, as previously noted, was interested in a quick resolution of the Delphi bankruptcy that required the least possible amount of investment by GM, but that guaranteed the “sanctity” of GM's supply chain. According to the Delphi–GM master disposition agreement, IUE's and USWA's consent was required to finalize the sale

²²Settlement 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.

²³Preliminary 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 & 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).

of assets in Delphi's bankruptcy.²⁴ As a result, new GM continued negotiating with IUE and USWA to resolve their objections against Delphi's bankruptcy case.

On September 10, 2009, new GM, old GM, IUE, and USWA signed a settlement agreement 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 1999.²⁵ The parties entered into this agreement after consideration of the "factual and legal arguments regarding these issues, as well as the costs, risks, and delays associated with litigating these issues." In its February 2010 court motion, Treasury noted that in light of these costs, new GM had solid commercial reasons for agreeing to provide top-ups to Delphi retirees represented by IUE or USWA. 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.

The settlement agreement did not provide top-ups to the splinter unions or to any other noncovered employees, including all members of Delphi's salaried plan. On September 14, 2009, DSRA filed a complaint against PBGC in U.S. district court related to the termination of Delphi's salaried plan.²⁶ DSRA amended its complaint on November 5, 2009, to include new GM, Treasury, and the Auto Task Force as defendants. However, in

²⁴Master 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).

²⁵Settlement 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.

²⁶Complaint for Equitable Relief, No. 2.09-cv-13616 (E.D. Mich. Sept. 14, 2009).

March 2010, the court dismissed the claim against new GM,²⁷ and in September 2011, dismissed the claim against Treasury.²⁸

Mr. Chairman and Members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee might have.

GAO Contact and Staff Acknowledgments

For further information regarding this testimony, please contact me at (202) 512-7215 or bovbjergb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include Margie K. Shields (Assistant Director), Mark M. Glickman (Analyst-in-Charge), James Bennett, Julie DeVault, Heather Krause, Edward Leslie, Kathy Leslie, and Craig Winslow.

²⁷First Amended Complaint, No 2:09-cv-13616 (E.D. Mich. Nov. 5, 2009). On March 12, 2010, the court dismissed GM as a party to the DSRA lawsuit. The court stated that if the plaintiffs showed new facts and circumstances that demonstrated new GM's conduct is not subject to the release and injunction provisions of the approved Delphi modified plan and plan modification order, then the plaintiffs could bring a future claim against new GM. Black v. Pension Benefit Guaranty Corp., No. 2:09-cv-13616 (E.D. Mich. March 12, 2010) (Order dismissing General Motors LLC).

²⁸In September 2011, the court dismissed the retirees' claims against Treasury and Treasury officials. Order Granting Defendant United States Department of the Treasury, Presidential Task Force on the Auto Industry, Timothy F. Geithner, Steven L. Rattner, and Ron. A. Bloom's Reviewed Motion to Dismiss, No. 09-13616 (E.D. Mich. Sept. 1, 2011).

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