EXAMINING THE DELPHI BANKRUPTCY'S IMPACT ON WORKERS AND RETIREES

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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C O N T E N T S

EXAMINING THE DELPHI BANKRUPTCY'S IMPACT ON WORKERS AND RETIREES

Wednesday, December 2, 2009
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 10:35 a.m., in room 2175, Rayburn House Office Building, Hon. Robert Andrews [chairman of the subcommittee] presiding.

Present: Representatives Andrews, Wu, Hare, Tierney, Kucinich, Fudge, Kildee, Courtney, Price, Kline, Guthrie, and Hunter.

Also Present: Representative Ehlers.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jody Calemine, General Counsel; Carlos Fenwick, Policy Advisor, Subcommittee on Health Employment, Labor and Pensions; David Hartzler, Systems Administrator; Ryan Holden, Senior Investigator; Liz Hollis, Special Assistant to Staff, Director/Deputy Staff Director; Broderick Johnson, Staff Assistant; Therese Leung, Labor Policy Advisor; Richard Miller, Senior Labor Policy Advisor; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Meredith Regine, Junior Legislative Associate, Labor; James Schroll, Junior Legislative Associate, Labor; Michele Varnhagen, Labor Policy Director; Mark Zuckerman, Staff Director; Kirk Boyle, Minority General Counsel; Casey Buboltz, Minority Coalitions and Member Services Coordinator; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Senior Legislative Assistant; Barrett Karr, Minority Staff Director; Alexa Marrero, Minority Communications Director; Ryan Murphy, Minority Press Secretary; Jim Paretti, Minority Workforce Policy Counsel; and Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel.

Chairman ANDREWS. Good morning, ladies and gentlemen. Welcome to the subcommittee. We are very pleased to have four of our distinguished colleagues with us this morning, and especially pleased that so many people traveled a long distance to be here for this very crucial issue that has, I think, been such a tragedy for so many people. I also want to take a moment at the outset to formally welcome my friend and colleague, Dr. Price, from Georgia. This is our first subcommittee hearing since he ascended to this lofty position as the senior Republican member of the subcommittee. He and I have worked together on many issues over—since he has taken that position. But this is the first time that we sat together at the dais. And I welcome you. I am very, very glad to be with you.

I especially want to commend Senator Brown and Congressman Lee, Congressman Turner, Congressman Ryan and Congressman Kildee for their active effort to make sure that this hearing took place this morning. Mr. Ryan talked to me about this a very long time ago. He has been particularly diligent in insisting that the committee address this issue and we appreciate his leadership, as well as the other three witnesses and Mr. Kildee. I frankly knew only what I had read in the media about this issue until I learned from my colleagues about this, and I must say to you that I wish we weren't having this hearing this morning. I wish that what had happened is that the promises that these families relied on for decades, for generations had been honored, but they weren't.

And in looking at the record that we are going to hear about this morning, it occurs to me that this is a case where the law has undercut reasonable expectations of reasonable people. If you go back to 2004 and you were a creditor of Delphi, if you supplied them with some good or service, you could have protected yourself by insisting on cash on delivery if you sold them something. If you were a bank lending money to Delphi, you could have protected yourself by building into the interest rate or in the guarantee structure of the deal something to foresee the day when you wouldn't get paid.

If you were a shareholder, you could have protected yourself by either not buying the stock or selling it or some other way of protecting your position. The people who could not protect themselves were the people who went to work day after day, week after week, month after month, drew that paycheck, earned it, earned it and anticipated that if God forbid the day ever came that the company had some trouble, their pension would still be there. I think the core issue here, if you go all the way back to the 2005 filing by Delphi and the 2008 filing by GM, that the committee has to at least think about when we hear from the witnesses this morning is whether the bankruptcy laws are fair in protecting the reasonable expectations of reasonable people. As I see it, the people who could not have protected themselves against this are the ones sitting in the audience today. What are you going to do, quit your job after you have been there 15 or 20 years because you think the company might go under? My understanding is under this plan, you couldn't have asked for a lump sum distribution of your pension because the plan didn't permit it.

So if you knew as many Delphi employees and retirees probably did know in 2004 and early 2005, that there was trouble ahead for the company, unlike the creditors, unlike the banks, unlike the shareholders, unlike the vendors, there was really nothing you could do to protect yourself. So here we are, with tens of thousands of people in a position where their reasonable expectations have been thwarted.

I am not going to mislead anybody this morning by saying I think there is some clear and easy solution to that problem. But I do, again, want to commend our five colleagues, Mr. Kildee and the four that are going to testify this morning, for being absolutely dogged and intense about this issue. For making sure that the Congress will listen to these stories, will understand the facts of these cases and will find whatever resources we have to provide some badly needed justice to the individuals involved in this situation. I think that a lot of things are wrong in this country today. Lord knows there are a lot of things wrong in this country today.

But I think the number one thing that people think is wrong is that there has been a basic breach of the social contract in this country between people who work for a living and people who are supposed to honor their obligations to them. And there are, in this case, tens of thousands of people who upheld your end of the bargain, went to work, followed the rules, did your job, did the things that were expected of you and did them at a high level of excellence and performance, and to have your expectations evaporate because of circumstances beyond your control and unrelated to your performance is shameful.

I do not ascribe the blame to any political party for this problem or to any sector of the economy. I think it is a problem that we mutually created and a problem that we have to mutually solve. So I am very pleased this morning we have the chance to hear about that solution.

And this time, I want to turn to my friend, the ranking member of the subcommittee, for his opening statement.

[The statement of Mr. Andrews follows:]

Prepared Statement of Hon. Robert E. Andrews, Chairman, Subcommittee on Health, Employment, Labor and Pensions

Good morning and welcome to the Health, Employment, Labor and Pensions Subcommittee hearing on Examining the Delphi Bankruptcy's Impact on Workers and Retirees.

We appreciate the attendance of today's witnesses in helping members of the subcommittee better understand the effect the bankruptcy of General Motors and Delphi Corporation has had on workers' retirement benefits.

Holding jurisdiction over the Employee Retirement Income Security Act—which was established by Congress in 1974 to protect employee welfare benefits—the Health, Employment, Labor and Pensions Subcommittee's concern is heightened when the retirement benefits of American workers are subject to significant reduction.

The subcommittee is sympathetic to the plight of the health and retirement benefits of Delphi workers and retirees. In particular, those workers and retirees under the Delphi Salaried Pension Plan, which are expected to see their retirement benefits reduced.

The purpose of today's hearing is to provide members of the subcommittee with a first-hand account from aggrieved Delphi salaried retirees. Furthermore, the subcommittee will further educate members about the General Motors/Delphi Corporations bankruptcy proceedings, as well as highlight the exposure to risk workers' face; in this particular instance, their pensions.

The recent bankruptcy proceedings of General Motors and Delphi Corporations demonstrate the degree to which employee pension benefits are exposed to either a reduction or diminishment.

Present issues regarding pension obligations of auto parts maker Delphi go back to 1999 when the company was spun off by General Motors. At the time, GM promised to takeover pension obligations for hourly workers if Delphi was ever in financial trouble. In October 2005 Delphi filed for bankruptcy protection.

Three years later, in September 2008, a deal was struck with Delphi's unsecured creditors and approved by federal bankruptcy court, authorizing the transfer of $3.4 billion of Delphi hourly employee pension obligations to GM. At the time, the move averted putting the obligations into the hands of the PBGC.

At the beginning of June 2009 GM filed for Chapter 11 bankruptcy protection. The GM bankruptcy filing interrupted the September 2008 agreement for GM to absorb the Delphi hourly employee pension obligations. Prior to filing for bankruptcy, GM absorbed $2.5 billion in pension liabilities per the September 2008 agreement. The termination of the plans makes the PBGC responsible for the benefits of 70,000 Delphi workers and retirees, including salaried employees and some hourly employees. The PBGC predicts its total obligation for Delphi's pension shortfall to be $6.2 billion.

In July 2009, the federal Pension Benefit Guaranty Corporation announced it was taking over obligations for Delphi Corporation's six pension plans, which covers over 70,000 workers and retirees. The corporation had separate plans for hourly employees and salaried employees, in addition to four smaller plans.

With respect to 47,000 hourly workers and retirees in the Delphi Hourly Pension Plan, the PBGC expected to assume $4 billion of the $4.4 billion unfunded liability, leaving a $400 million shortfall. The PBGC expects to cover $2.2 billion of the $2.6 billion in unfunded liabilities of the 20,000 workers and retirees in retirees in the Delphi Salaried Pension Plan, leaving a $400 million shortfall.

I look forward to the testimony of all of our witnesses and thank them again for participating in this important hearing.

Mr. PRICE. Thank you, Mr. Chairman. And I too want to just express to you my appreciation and look forward to the opportunity to work with you on the wonderful issues of this subcommittee. This is a great subcommittee with wonderful jurisdiction, and I am honored to be the ranking member. I also want to recognize our colleagues here and thank them for joining us this morning. It is always great to hear from our colleagues who have firsthand knowledge of what is going on in their district and how it affects their constituents, and I appreciate the second panel as well for taking time to come and share their experiences and their expertise.

Today's hearing marks the opportunity for us to examine truly Delphi Corporation's bankruptcy and the effects it had on its workers and retirees. I do look forward to hearing in detail how different types of workers and retirees will fair under Delphi's bankruptcy, and what lessons we, as policymakers, might take away from this experience as we move forward.

Before we begin, however, I would like to make two critical points. First, as our witnesses will explain today, we should all be deeply troubled to hear that certain specific workers appear to have been treated differently in connection with the company's bankruptcy than others. Some employees and retirees appear to have been given preferential treatment in the bankruptcy process and they will enjoy full benefits. Many others, some of whom we will hear from today, are facing dramatic cuts in their pension and their health benefits. Under any circumstances, it is shocking to learn that workers who worked side by side for the same company could find themselves in completely, completely uneven situations.

Apparently some would suggest for purely political reasons. Second, and even more important, it is deeply troubling to me that the role of the Federal Government in dictating this unfair outcome is entirely unclear. What was that role? Since February of this year when President Obama announced the creation of a presidential task force on the auto industry, the Federal Government has been intimately involved in reshaping this segment of our economy to an unprecedented level. What the American people do know has been pieced together through media reports and court filings, not from the administration itself.

So much for the transparency and accountability that we heard about. We do know that the Treasury Department and the President's hand-picked car czar were deeply involved in the negotiation of the restructuring of General Motors. We do know that Washington is now a majority shareholder in General Motors holding some 60 percent of its stock. We do know that the PBGC, the Pension Benefit Guarantee Corporation, has terminated Delphi's pension plans. The legality of this action is presently being challenged in Federal court. And we do know that General Motors has agreed to "top up" the pension of some workers, notably those in certain politically powerful unions, while leaving other workers and retirees high and dry.

However there is so much more that the American people and that we don't know at this point. What is the culpability of the Federal Government in this situation? What role did the White House and the auto task force play? How active was it in determining winners and losers? And what terms did they dictate? To those questions we have no answers. Here we are today with an opportunity to receive answers, and it defies logic, Mr. Chairman, that the administration and its auto task force are not going to be here before us this morning to explain their actions and their roles in these decisions. We had hoped that the senior advisor to the task force, Mr. Ron Bloom, would answer those questions.

Unfortunately it appears that the majority was not interested in having Mr. Bloom present today. This is extremely disappointing. And another example, I believe, of this administration failing to live up to its promises of accountability and of transparency. But more to the point, as a matter of substance, it leaves a huge gaping hole in our understanding of the true facts surrounding Delphi's bankruptcy, and does a disservice to those who have so much at stake in this matter.

So, Mr. Chairman, we look forward to another hearing to provide an opportunity to gain that true transparency to the decisions that were made. Political economies, politicians picking winners and losers are very dangerous. I am hopeful that this subcommittee will be allowed to completely investigate what happened in this situation. The chairman mentioned that are a lot of things wrong in this country. There are a lot of things right in this country.

But one of the things that I believe that is to the detriment of this Nation is when politicians get involved in specific decisions that pick winners and losers in what ought to be an agreement, as the chairman mentioned, recognized and adhered to previously made by free individuals and free situations. So I am honored to be joining you this morning. I appreciate the panels before us. Thank you.

[The statement of Dr. Price follows:]

Prepared Statement of Hon. Tom Price, Ranking Minority Member, Subcommittee on Health, Employment, Labor and Pensions

Good morning and thank you, Chairman Andrews. I would like to begin by thanking our two distinguished panels for appearing today. We appreciate that they have taken time out of their busy schedules to share their experiences and expertise with us.

Today's hearing marks an opportunity to examine the impact of Delphi Corporation's bankruptcy on its workers and retirees. I look forward to hearing in detail how different classes of workers and retirees will fare under Delphi's bankruptcy, and what lessons we as policymakers might take away from this experience moving forward.

I'd also like to make two critical points before we proceed with testimony.

First, as our witnesses will explain today, I am deeply troubled to hear that different categories of workers appear to have been treated very differently in connection with this company's bankruptcy. Some employees and retirees appear to have been given preferential treatment in the bankruptcy process and will enjoy full benefits. Many others—some of whom we will hear from today—are facing dramatic cuts in their pension and health benefits. Under any circumstances, it is shocking to learn that workers who worked side-by-side for the same company could find themselves in such uneven situations.

Second, and even more important, it is deeply troubling that the role of the federal government in dictating this unfair outcome is entirely unclear. Since February of this year when President Obama announced the creation of a presidential Task Force on the auto industry, the federal government has been intimately involved in reshaping this segment of our economy to an unprecedented level.

What the American people do know has been pieced together through media reports and court filings, not from the Administration itself. We know that the Treasury Department, and the President's hand-picked "car czar," was deeply involved in the negotiation of the restructuring of General Motors. We know that Washington is now a majority shareholder in General Motors, holding some 60 percent of its stock. We know that the Pension Benefit Guaranty Corporation has terminated Delphi's pension plans—the legality of which is presently being challenged in federal court. And we know that General Motors has agreed to "top up" the pensions of some workers—notably, those in certain politically powerful unions—while leaving other workers and retirees high and dry.

There is so much more that the American people do not know at this point. What is the culpability of the federal government in this situation? What role did the White House and Auto Task Force play? How active was it in determining the "winners" and "losers"? And what terms did they dictate? To those questions, we have no answers.

Here we are with an opportunity to receive answers, and yet it defies logic that the Administration and its Auto Task Force are not here before us this morning to explain their actions and their role in these decisions. We had hoped the senior advisor to the Task Force, Mr. Ron Bloom, would answer those questions. Unfortunately, Mr. Bloom's participation this morning could not be arranged.

This is disappointing and another example of this Administration failing to live up to its promises of accountability and transparency. But, more to the point, as a matter of substance, it leaves a gaping hole in our understanding of the true facts surrounding Delphi's bankruptcy, and does a disservice to those who have so much at stake in this matter.

Thank you, Chairman.

Chairman ANDREWS. Without objection, opening statements from any of the members of the committee will be accepted into the record. It is my understanding that Mr. Kildee has a specific unanimous consent request that he wanted to make at this time.

Mr. KILDEE. Yes, Mr. Chairman. Thank you very much. I ask unanimous consent that three letters, one to the President of the United States, one to the full chairman of the committees in the House and Senate who have jurisdiction over this, and one to the Secretary of Treasury, Mr. Geithner, a letter circulated by myself and Christopher Lee that they may be made part of the record.

Chairman ANDREWS. Without objection.

[The information follows:]

EDUCATION AND THE WORKFORCE
21ST CENTURY COMPETITIVENESS
EMPLOYER-EMPLOYEE RELATIONS

CO-CHAIR:
CONGRESSIONAL AUTOMOTIVE CAUCUS
CONGRESSIONAL NATIVE AMERICAN CAUCUS

Congress of the United States
House of Representatives

DALE E. KILDEE
5TH DISTRICT, MICHIGAN

RESOURCES
FORESTS AND FOREST HEALTH
NATIONAL PARKS, RECREATION, AND PUBLIC LANDS

November 4, 2005

President George W. Bush
The White House
Washington, DC 20500

Dear Mr. President:

Our nation is in a crisis and I am writing to ask that you take action to help American families.

The recent bankruptcy announcement by the Delphi Corporation has sent shockwaves through an already struggling domestic manufacturing sector, which has lost roughly 2.8 million jobs since 2001. These losses will add to the 45 million people currently without health insurance and the nearly 13 percent of Americans living in poverty. This is unacceptable. **I am concerned that your Administration and this Congress have done nothing to help our fellow Americans who are hurting.**

The clearest symptom of this crisis is the struggling domestic automobile industry. Over one million Americans rely directly on the auto industry for their livelihoods and millions more Americans are indirectly dependent. The 5th Congressional District has been hit hard by job losses in the auto manufacturing sector. A recent Detroit News article citing an internal Delphi document outlined a plan to close the Delphi Flint East manufacturing plant with 3,400 workers. I am deeply concerned about these workers and the other roughly 8,000 Delphi employees in Flint, Saginaw and Bay City. For this reason, I ask that you meet with Delphi workers in the 5th District and come visit the Delphi Flint East plant to see firsthand the work they are doing and also come to explain to these workers why their jobs, as well as those of many others in the manufacturing sector across this nation, are at risk. I know the hard working men and women in my district can compete with any other workers in the world. **But the policies of your Administration and this Congress have forced them to compete on an uneven playing field.**

Mr. President, I feel strongly that the policies of your Administration and this Congress have been devastating to families in the 5th Congressional District, the State of Michigan and this country. Our nation sorely lacks any semblance of an industrial policy, and without this we face the structural downsizing of our entire economy. Your trade polices which do more to export American jobs than American products, your unwillingness to push China and Japan on their currency manipulations, and your lack of support for domestic manufacturers and workers, have increased the difficulty for American families to make ends meet and caused our nation's status in the world to decline precipitously. Mr. President, the 5th District, the State of Michigan, and our nation are struggling and American families are hurting and indeed angry. Previous generations of Americans felt secure in knowing that their children would live better lives than they had. They now fear that their children will not enjoy such a quality of life. I ask that you stand up for America and take decisive action to save jobs, improve the economy, and help our families.

I would be happy to meet with you at the White House to discuss how this can be accomplished, but I would rather talk with you while we visit the workers at Delphi Flint East. Thank you for your prompt consideration of this request to help American workers and their families. I look forward to hearing from you.

Sincerely,

Dale E. Kildee

Dale E. Kildee, M.C.

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U.S. CONGRESS,
Washington, DC, July 10, 2009.

Hon. BARNEY FRANK, *Chairman;* Hon. SPENCER BACHUS, *Ranking Member, Committee on Financial Services, U.S. House of Representatives, Washington, DC.*

Hon. CHRISTOPHER DODD, *Chairman;* Hon. RICHARD SHELBY, *Ranking Member, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.*

DEAR CHAIRMEN AND RANKING MEMBERS: We are writing to respectfully request immediate committee hearings into the treatment of Delphi Corporation's pension obligations and its impact on thousands of retirees and their families in our states.

As a result of restructuring negotiations between Delphi Corporation, General Motors (GM) and the Treasury Department's Automotive Task Force, Delphi's hourly retiree pension obligations will be assumed by GM while Delphi's salaried pension obligations will default to the Pension Benefit Guaranty Corporation. This means salaried retiree pension benefits could be cut by as much as 70 percent, if not eliminated entirely, for approximately 15,000 retirees and their families across the country. With their health and life insurance benefits now discontinued, Delphi retirees are depending on these promised pension benefits for their financial security.

Delphi's hourly and salaried retirees worked side-by-side for many years, mostly as GM employees. Yet now, facing the same painful circumstances, they are being treated so differently and inequitably by their government. Collectively and separately, we have appealed to GM, Delphi and the Administration to intervene and provide fair and equitable treatment for Delphi's hourly and salaried retirees.

Also, given the fact that American taxpayers now hold a 60 percent stake in the new GM, many Members have requested information from the Auto Task Force on how this decision was reached, including all pertinent correspondence and communication between GM, Delphi and the Task Force. This is an important step to help shed light on the decision-making in this case and to promote transparent and open government.

In addition, we believe that Congress also has a responsibility to exercise its oversight authority in this matter. As the committees of jurisdiction, we are respectfully requesting immediate congressional hearings into the disposition of Delphi's retiree pension obligations and a thorough examination of the decision that resulted in these inequitable outcomes for hourly and salaried retirees.

We fully understand that the restructuring of America's auto industry will require shared sacrifice and responsibility, which makes the need for a congressional examination into the disparate treatment given to Delphi's hourly and salaried retirees all the more urgent and necessary.

Since Delphi's reorganization plan is scheduled for court action on July 23, 2009 we thank you in advance for your immediate consideration of this request.

Sincerely,

CHRISTOPHER J. LEE,
TIM RYAN,
JOHN A. BOEHNER,
BART STUPAK,
VERNON EHLERS,
DALE KILDEE,
DAVID CAMP,
CAROLYN KILPATRICK,
CANDICE MILLER,
MARCY KAPTUR,
THADDEUS MCCOTTER,
JOHN BOCCIERI,
DAN BURTON,
MARCIA FUDGE,
MIKE PENCE,
CHARLES WILSON,
MICHAEL TURNER,
PARKER GRIFFITH,
PETE HOEKSTRA,
TRAVIS CHILDERS,
STEVE AUSTRIA,
BENNIE THOMPSON,
STEVEN LATOURETTE,
ERIC MASSA,
JEAN SCHMIDT,
DAN MAFFEI,
PATRICK TIBERI,
LOUISE SLAUGHTER,
ROBERT ADERHOLT,
SILVESTRE REYES,
GREGG HARPER,
BRIAN HIGGINS,
GINNY BROWN-WAITE,
JIM MARSHALL,
F. JAMES SENSENBRENNER, JR.,
GARY C. PETERS,
ROBERT LATTA,
MARY JO KILROY,
J. RANDY FORBES,
STEVE DRIEHAUS,
JIM GERLACH,
MICHAEL H. MICHAUD,
MIKE ROGERS (MI),
JOHN CONYERS, JR.,
Members of Congress.

U.S. CONGRESS,
Washington, DC, June 24, 2009.

Hon. TIMOTHY F. GEITHNER, *Secretary,*
U.S. Department of Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC.

DEAR SECRETARY GEITHNER: We are writing in regards to the recent involvement by the U.S. Treasury Department's Automotive Task Force concerning the pension obligations of Delphi Corporation.

We are concerned about the inequitable decision to default the Delphi Corporation's salaried retiree pension plan to the Pension Benefit Guarantee Corporation (PBGC), while General Motors agreed to assume the auto parts supplier's hourly retiree pension obligations. Through referral to the PBGC, salaried retirees' pension payments are likely to be cut drastically, as much as 70 percent by some estimates. It is fundamentally unfair that two groups of retirees from the same company, who worked side-by-side for so many years, and who are faced with the same unfortunate situation, are being treated so differently by the federal government.

At a minimum, in the interest of transparency and accountability, we believe the 15,000 salaried Delphi retirees nationwide—not to mention the American taxpayers who now own a 60 percent stake in the new GM—deserve a full and public explanation of how this inequitable decision was made.

For this reason, we respectfully request that you direct the Auto Task Force to make public all documents concerning how this decision was reached, including all pertinent documents, written communications and memoranda between the Automotive Task Force, General Motors, Delphi Corporation and their agents or representatives.

Thank you for your urgent consideration of this important matter. We look forward to hearing from you.

Sincerely,

CHRISTOPHER J. LEE,
BRIAN HIGGINS,
ROBERT LATTA,
DANIEL MAFFEI,
VERNON EHLERS,
MARY JO KILROY,
GREGG HARPER,
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CANDICE MILLER,
DALE KILDEE,
Members of Congress.

Chairman ANDREWS. At this time, I am going to introduce our member panel very briefly since each of these gentlemen is known to each of us. Senator Sherrod Brown, we welcome back to his home in the House of Representatives. Sherrod is the Junior Senator from Ohio. He was elected to the Senate. He was demoted in 2006. He left the House for the Senate. Everybody picked that up. He currently sits on the Senate Health, Education, Labor and Pensions Committee, the Banking, Housing and Urban Affairs Committee, and is chairman of its Subcommittee on Economic Policy, the Veterans' Affairs Committee and the Ethics Committee, the Agriculture and Nutrition Subcommittee, and as chairman of its subcommittee on Hunger, Nutrition and Family Farms. Sherrod, welcome back. It is always great to have you here.

Congressman Chris Lee is in his first term, representing New York's 26th Congressional District. He currently sits on the House Committee on Financial Services where I know there is votes going on this morning. So we will try to accommodate that. He certainly has made a very positive impression in his first term and we are glad he is with us here as well.

Congressman Michael Turner is the Representative of the 3rd District of Ohio after being elected in 2002. I believe he was mayor of Dayton before that; is that right? He is a Member of the House Armed Services Committee where he and I traveled together to Iraq and was named as a ranking member on the Strategic Forces

Subcommittee, and is a member of the Readiness Subcommittee. He also serves on the House Committee on Oversight and Government Reform where he serves on the National Security and Foreign Affairs Subcommittee, as well as the Domestic Policy Subcommittee.

And we welcome Congressman Tim Ryan back to the committee. He started here with us when he first joined the House. He was elected to the Congress in 2002. He is now in his fourth term representing Ohio's 17th District, which, I guess, Youngstown is the largest community. He currently serves on the Subcommittee on Labor, Health and Human Services, Education Related Agencies Subcommittee on the legislative branch and the Subcommittee on Energy and Water Development on the Appropriations Committee. Tim, you have been tireless in making this hearing take place this morning. We are glad to have you with us.

At this time we are going to go to our member panel. I would say to the panelists that it is the custom of this subcommittee, although not the rule, that we don't engage in questions and answers too much with the member panel so we can get to the citizens that have come here. But obviously, if any members want to ask you a question, we would be happy to have that and you are welcome to make your statements, Sherrod, welcome.

STATEMENT OF THE HON. SHERROD BROWN, A U.S. SENATOR FROM THE STATE OF OHIO

Senator BROWN. Thank you very much, Mr. Chairman and Ranking Member Price. Congratulations on your new position. And, Mr. Chairman, thank you for your understanding of a complicated, yet in many ways, very simple set of issues. So thanks for that. And special thanks to Congressman Kucinich and Congresswoman Fudge from Ohio who sit on the health panel too, and their work on this, and especially Tim Ryan and Mike Turner, who have joined all of us in Ohio in understanding how important this issue is, not just for the Mahoning Valley and the Miami Valley, but our whole State.

I appreciate the opportunity to speak out on behalf of representatives of the Delphi retirees and thousands of Ohioans who are paying the price of the Delphi bankruptcy and lost health care and dramatically reduced pensions. For many workers and retirees in my State and across the Nation there is—as the chairman pointed out—a crisis of confidence in our social contract. Pension benefits earned over a long lifetime of service are dramatically reduced in the wake of bankruptcy. When PBGC assumes trusteeship of a pension plan and can only pay benefits up to what is guaranteed in law, final benefits can sometimes take months or years to calculate with the retiree responsible for any overpayment.

Earlier this week, I was in Congressman Kucinich's district and at a steel plant. I talked to one retiree who owes literally $18,000 back to the PBGC because of a miscalculated overpayment. Early retirement supplemental benefits, health benefits are not guaranteed. Retirees are in no position to make up for these losses when their pension is assigned to the PBGC. They feel betrayed by the system that gave them certain expectations as Chairman Andrews pointed out in a system that is supposed to protect them. The Federal Government stepped in to bail out the auto industry. It was the right thing to do. TARP financing has enabled General Motors to quickly move through bankruptcy. TARP financing enabled GM to address its pension obligations. TARP saved thousands of jobs in a key sector of our economy. However, all too many workers, as we know too well, who spent most of their careers as GM employees were left out.

Tom Rose, a Delphi retiree, who started his career with GM in 1969 summarized the sentiment of many Delphi retirees when he told the Dayton Daily News our defined pension depended on a trust that was broken. In the case of Delphi hourly employees under certain collective bargaining agreements, GM agreed to make up the difference between PBGC benefits and what the retiree earned. The Delphi salaried employees and some of the hourly employees represented by the International Union of Operating Engineers, the International Brotherhood of Electrical Workers and the machinists unions had no such agreement and are facing drastic reductions in their pension benefits.

So it is salaried workers and some union workers also. They are simply looking for fair treatment. Other Delphi retirees are facing the loss of their health benefits, which is why Congressman Ryan and I introduced legislation with Representatives Fudge and Kucinich and Turner and other members of the Ohio delegation to fund a voluntary employees beneficiary association, VEBA, to help them with the cost of health care. They too are looking for fair treatment. At our Senate Health Committee hearing last month, we heard testimony about how Delphi pushed many workers into early retirement with the assurance that their pension benefits would be safe. That simply was not true.

Now these retirees face the greatest losses in income. A 54-year-old Delphi salaried retiree named John wrote my office and said 31 years of effort to secure a pension are being ruined in the bankruptcy court. Creditors who only have several years of revenue at risk are given higher priority. I have been looking for a job for 10 months without success. If my pension goes to PBGC, my family will likely be living below the poverty level. The loss of pension and health care benefits will add to the economic devastation of an area already reeling from job losses. In the two areas in Ohio that have probably been hit hardest by this awful recession are the areas represented by Congressman Ryan in the Mahoning Valley, Youngstown-Warren area and by Congressman Turner, the Miami Valley, Dayton, Springfield—Dayton in his case in that area.

A Youngstown State University study estimates an annual fiscal impact of nearly $58 million resulting in over 1,700 employment losses. Protecting the pensions supports economic recovery, workers at the steel plant in Cleveland, a different issue, but who lost significant PBGC money went back to work, three whom I met with earlier this week have all been there more than 30 years, they went back to work because they lost so much of their pension on an issue that Congressman Kucinich worked so hard on and are in PBGC and they had to go back to work as a result. If they had been treated fairly and gotten their full pensions, if the company had funded them, they would be retired, living relatively comfortably and new workers would be replacing them at the steel plant.

Protecting retirement security is one of the purposes of the bailout of our financial system. We can't bail out an industry while leaving thousands of retirees who have loyally served out in the cold. We should be able to resolve this. Thank you, Mr. Chairman.

[The statement of Senator Brown follows:]

Prepared Statement of Hon. Sherrod Brown, a U.S. Senator From the State of Ohio

Good Morning.

I would like to thank Chairman Andrews, Ranking Member Price, and all of the Members of the Subcommittee for holding this hearing.

I appreciate the opportunity to join my colleagues in the House and the representatives of the Delphi retirees to speak out on behalf of the tens of thousands of Ohioans who are paying the price of the Delphi bankruptcy in lost health care and reduced pensions.

For many workers and retirees in Ohio and across the nation, there is a crisis of confidence in our social contract. Pension benefits earned over a lifetime of service are dramatically reduced in the wake of bankruptcy.

When PBGC assumes trusteeship of a pension plan, it can only pay benefits up to what is guaranteed in law. Final benefits can sometimes take months or years to calculate, with the retiree responsible for any overpayment.

Early retirement, supplemental benefits, and health benefits are not guaranteed. Retirees are in no position to make up for these losses when their pension is assigned to the PBGC. They feel betrayed by the system that was supposed to protect them.

The federal government stepped in to bail out the auto industry. TARP financing has enabled General Motors to quickly move through bankruptcy. TARP financing enabled GM to address its pension obligations. TARP saved thousands of jobs in a key sector of our economy. However, some workers, many of whom spent most of their careers as GM employees, were left out.

Tom Rose, a Delphi retiree who started his career with General Motors in 1969, summarized the sentiment of many Delphi retirees when he told the Dayton Daily News: "Our defined pension depended on a trust that was broken."

In the case of Delphi hourly employees under certain collective bargaining agreements, GM agreed to make up the difference between the PBGC benefit and what the retiree had earned. The Delphi salaried employees and some of the hourly employees such as those represented by the International Union of Operating Engineers, the International Brotherhood of Electrical Workers (IBEW), and the Machinists unions had no such agreement and are facing drastic reductions in their pension benefits. They are looking for fair treatment.

Other Delphi retirees are facing the loss of their health benefits, which is why Congressman Ryan and I introduced legislation with Representatives Fudge, Kucinich, Turner, and other members of the Ohio delegation to fund a Voluntary Employees' Beneficiary Association to help them with the cost of health care. They, too, are looking for fair treatment.

At our Senate HELP Committee hearing last month, we heard testimony about how Delphi pushed many workers into early retirement with the assurance that their pension benefits would be safe. That was not true. Now these retirees face the greatest losses in income.

John, a 55-year old Delphi Salaried retiree wrote my office, "Thirty-one years of effort to secure a pension are being ruined. In the bankruptcy court, creditors who only have several years of revenue at risk are being given higher priority. I have been looking for a job for 10 months without any success. If my pension goes to the PBGC, my family will probably be living below the poverty level."

The loss of pension and health care benefits will add to the economic devastation of an area already reeling from job losses. A Youngstown State University study estimated an annual fiscal impact of nearly $58 million, resulting in over 1700 employment losses.

Protecting the pensions supports economic recovery.

Protecting retirement security was one of the purposes of the bailout of our financial system.

We cannot bail out an industry while leaving thousands of retirees who have loyally served it out in the cold.

We should be able to resolve this.
Thank you for inviting me to testify.

Chairman ANDREWS. Thank you, Senator. It is great to have you with us. Congressman Lee, welcome to the subcommittee.

STATEMENT OF THE HON. CHRISTOPHER LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LEE. Thank you. I would like to thank the Chairman, Ranking Member Price and the rest of the subcommittee members for giving me an opportunity to speak about an issue that is very near and dear to me and many of the constituents that I represent here in western New York. Mr. Chairman, you convened this hearing to investigate the handling of Delphi Corporation's pension obligations and I truly do commend you for doing so and as a result of this restructuring, negotiations between Delphi, GM and the Treasury Department's auto task force, many Delphi workers and retirees have seen changes to their pensions. We all know that is very evident.

However, as you are aware, these changes were not equally distributed among these current and former Delphi and GM employees. As a result of the restructured negotiations between Delphi Corporation, GM and the auto task force, Delphi's pension obligations will default to the Pension Benefit Guarantee Corporation. However, certain hourly workers will experience little or no pension reduction because of the unprecedented agreement brokered by the auto task force for GM to top up these pensions. You will hear from members of the Delphi Salaried Retiree Association discuss this in further detail.

But what this decision means as to the pension benefits for salaried Delphi retirees could be cut as much as 70 percent for approximately 20,000 workers across this country. And that is just wrong. Just in the last year alone, the last year alone, their health care benefits gone, life insurance benefits gone, and now this. Delphi retirees have long depended on these benefits for their financial security and retirement. I have with me here today just in the last week hundreds of pieces of correspondence that I received from Delphi retirees from across the country in just one week.

Their stories, I have got to tell you, are painful to read. These letters tell you the stories of men and women who have worked for 20, 30, even longer that GM and Delphi, doing their job day in and day outer, building American products, helping our local economy across the country. And these are places like western New York, Ohio, Michigan. These men and women have worked for Delphi with the promise of current and future compensation funded through the efforts by these workers. They were depending on these benefits for a safe, secure and healthy retirement. One such person I want to make note of is a gentleman, David Chad from Lock Port, New York. Worked for GM for 25 years, Delphi for another 10. He had anticipated retirement pension. His anticipated retirement pension had already been cut by 30 percent from what was originally promised by him by Delphi back in October of 2008. He was promised health care benefits once he retired until he reached the age of 65. And these are gone.

Now the PBGC is expected to dramatically reduce his pension benefits on top of what was already cut in 2008. And he described his personal situation like this. Uncertainty of benefits, no health care and a 401(k) designed over 35 years ago to be supplemented with a healthy pension. It has shattered his retirement plans. And after carefully planning his retirement that he thought would begin in his early 60s, he now expects to work until the age of at least 70. He is certainly not alone.

These are countless stories I have read and other stories like these throughout the country. And I ask unanimous consent to submit these letters for the record.

Chairman ANDREWS. Without objection.

[The letters, of which a sampling follows, have been entered into the permanent record and are archived at the Committee's office:]

December 2, 2009

Dear Elizabeth Mortenson,

As Rep. Lee's Labor expert, I wanted to make sure that you and he were aware of what UAW retirees are looking at. It seems like the salaried retirees are getting most of the press. (I understand that this is rightfully so at this point in time – They really got screwed!)

Please let me clarify some of the Hourly worker points of view. If you would file for reference, I would appreciate it.

1. We were always told – and read written word – that the 1999 Spinoff agreement would guarantee that GM would cover Delphi hourly pensions in the event of a Delphi failure FOR 7 YEARS following the spin off. Apparently Delphi's 2005 failure got "under the wire" even though the plan wasn't actually terminated until July 09. They went with the Delphi bankruptcy date of 10-2005.
2. The retirement incentive that dead-lined on Dec 31, 2006 (the one that I took) specified that the normal 30 years & out deal would be in effect. (I just made it with 30 yrs 4 months.) Those with less than 30 years were offered what was known as a "slide", which kept those with 27, 28, & 29 years on the Delphi payroll at a reduced rate (yet out of the plant) until such time as they achieved the 30 year mark – at which they could retire with 30 & out benefits. (While they waited, there were no restrictions on getting another job.) (That pay, as well as the $35,000 bonus that I received, were said to be paid for out of the pension fund.)
3. Negotiations were on-going at the time of GM's pre-bankruptcy failing fortunes for GM to absorb the Delphi hourly pensions into the straight GM Pension fold. They did agree to absorb all liability for those that retired from the former Harrison Division of GM, <u>and REMARKABLY</u> all those <u>lower seniority</u>, hourly people that took the slide option. (The lower seniority people were able to get back onto the GM pension boat with no worries about PBGC lowered levels.) (The UAW representative stated that they simply ran out of time to negotiate the rest of us into the deal prior to the bankruptcy declaration.) Extending the deal to lower seniority UAW members seems counter-intuitive to the normal seniority-is-king operation in a labor union. I can only surmise that a "women & children first" mindset was employed where the members in the weakest position were taken care of first.
4. All 30 yr. + hourly retirees that left between the 1999 spin-off and GM's bankruptcy declaration had their pensions handed over to the PBGC. According to details shared at a meeting with a UAW Rep, held at NCCC in August 09, GM made a deal to "Top Off" this group's benefits (to make them whole in what they get now – over and above the much lower limits of PBGC coverage.)
5. The trouble with the #4 topic is that no one will admit to, or show evidence that that such a "Top Off" provision exists. Rumors to the "Top Off" agreement are acknowledged on the PBGC website, but they disavow any evidence as well.

Even UAW officials stonewall the membership with regard to paperwork on the issue. It is all verbal discussion!

6. We were told that it would take a year or more for PBGC to sort out who gets what from them, due to widely varying years of service, marital status, and most importantly the retiree's age as of Delphi's plan termination date of July 31, 2009. Those of us between the ages between a possible 48 – for someone who started when they were 18 yrs. of age - and 55 years are said to be particularly vulnerable to loss of more than half of the agreed amount of pension according to PBGC rules.
7. Due to the lack of paperwork, the "agreement" is very disconcerting, especially in light of recent rumors of a Chinese takeover of GM.
8. Typical questions are:

- Will the "Top Off" provision be honored? (We all understand that another failure of GM would mean disaster, but what about an outright sale of a viable GM to a foreign owner?)
- How can I appeal any PBGC decision, when at the present time, I appear to be made whole?
- Despite much anti-UAW sentiment throughout the USA, is anyone considering the large amount of taxes we paid – and still do?
- Also I would like You All to realize this also. I and many other Hourly worker's have compensable disabilities that keep Us from being gainfully employed. So if Our pensions are not Guaranteed were does this leave Us in the future.

Long story shortened – It's all very scary!
I write this in hopes that Rep. Lee pays attention to the collection of individuals' tales as well as the so-called big picture.

Sincerely,

John Kiedel

6291 Bayview Station,

Newfane,

New York

14108

716-778-9253

Mr. LEE. Delphi's hourly and salaried retirees worked side by side for many years, mostly as GM employees. Yet they are now being treated so differently and so inequitably by their government and with some bearing a small burden while others take the lion's share. Many of my colleagues, including those sitting with me on this panel today, have appealed to GM, Delphi and the administration to intervene and provide fair and equitable treatment for Delphi's hourly and salaried retirees.

At a minimum, these decisions and how these decisions were reached ought to be explained sufficiently to these workers. I want to call your attention to an important congressional request that demands the attention of this committee. On June 24th, more than 5 months ago, a bipartisan group of 22 Members wrote to Treasury Secretary Tim Geithner to request that he direct the auto task force to make public all documents concerning how the decision to dispose of these pensions were reached, including relevant documents, written communications and memoranda between the Auto Task Force, GM, Delphi and their agents and representatives. And I also ask unanimous consent to have this put into the——

Chairman ANDREWS. Without objection.

Mr. LEE. Following the Senate Health, Education, Labor and Pensions hearing, Pensions in Peril, which examined this issue, a similar request was made. To date, we have not received a single response back from Secretary Geithner on this request. And in light of the administration's commitment to transparency and open government and given that the American taxpayer is now a majority shareholder of GM, I believe it is the taxpayers who deserve answers and a full explanation as to how these inequitable decisions were made.

On behalf of Delphi's retirees and the American taxpayers who are financing GM's recovery, I am here to seek the support of this committee for this request and your assistance in demanding the immediate release of these documents from the auto task force and the Treasury Department. I am grateful that this committee is beginning to investigate what is truly happening here, but how can proper oversight be performed on these decisions if the administration will not release the information it used to make the decisions. Only through the public release of these documents can Congress effectively exercise its oversight authority and responsibility. And I thank the chairman and ranking member to have this opportunity to speak on my constituents' behalf.

Chairman ANDREWS. Thank you. We appreciate your participation.

[The statement of Mr. Lee follows:]

Prepared Statement of Hon. Christopher Lee, a Representative in Congress From the State of New York

I'd like to begin by thanking Chairman Andrews, Ranking Member Price, and the other members of the subcommittee for giving me the opportunity to testify here today.

Mr. Chairman, you have convened this hearing to investigate the handling of Delphi Corporation's pension obligations, and I commend you for doing so. As a result of the restructuring negotiations between Delphi Corporation, General Motors, and the Treasury Department's Automotive Task Force, many Delphi workers and retirees have seen changes to their pensions. However, as you are aware, these changes were not equally distributed among these current and former Delphi and GM employees.

As a result of restructuring negotiations between Delphi Corporation, GM and the Auto Task Force, Delphi's pension obligations will default to the Pension Benefit Guaranty Corporation. However, certain hourly workers will experience little or no pension reduction because of the unprecedented agreement brokered by the Auto Task Force for GM to "top up" those pensions. You will hear from members of the Delphi Salaried Retiree Association to discuss this in further detail, but what this decision means is that pension benefits for salaried Delphi retirees could be cut by as much as 70 percent for approximately 20,000 retirees and workers across the country. Just in the last year, their health and life insurance benefits have been canceled, and now this. Delphi retirees have long depended on these benefits for their financial security in retirement.

I have with me here today hundreds of pieces of correspondence I received just in the last week from salaried Delphi retirees from across the country. Their stories are painful to read. These letters tell the stories of men and women who worked for 20 or 30 years or even longer for Delphi, building good American products and contributing to their local economy and communities in Western New York, in Ohio, in Michigan and elsewhere. These men and women worked for Delphi with the promise of current and future compensation funded through the effort of each worker. They were depending on these benefits for a safe, secure and healthy retirement.

One such person is 53yearold David Chatt from Lockport, New York. David worked for GM for 25 years and Delphi for an additional 10 years. His anticipated retirement pension had already been cut by 30 percent from what was originally promised him by action Delphi took in October of 2008. He was promised health care benefits once he retired until he reached the age of 65, and these are gone. Now the PBGC is expected to dramatically reduce his pension benefits, on top of what was already cut in 2008. He described his personal situation like this: "uncertainty of benefits, no health care, and a 401(k) designed over 35 years to be supplemented with a healthy pension, has shattered [his] retirement plans." After carefully planning a retirement in good faith that would begin in his early 60s, he now expects to have to work until 70.

He's certainly not alone. There are countless other stories like this in these letters, and I ask unanimous consent to submit these letters for the record. [WAIT for response]

Delphi's hourly and salaried retirees worked sidebyside for many years, mostly as GM employees. Yet they are now being treated so differently and inequitably by their government, with some bearing a small burden while others take the lion's share. Many of my colleagues, including those sitting with me on the panel today, have appealed to GM, Delphi and the Administration to intervene and provide fair and equitable treatment for Delphi's hourly and salaried retirees. At minimum, these decisions—and how these decisions were reached—ought to be explained sufficiently to these workers.

I want to call your attention to an important congressional request that demands the attention of this Committee. On June 24, more than five months ago, a bipartisan group of 22 Members wrote to Treasury Secretary Timothy Geithner to request he direct the Auto Task Force to make public all documents concerning how the decision to dispose of these pensions was reached, including relevant documents, written communications and memoranda between the Auto Task Force, GM, Delphi, and their agents and representatives. I ask unanimous consent to have this letter submitted for the record. [WAIT for response]

Following the Senate Health, Education, Labor, and Pensions' hearing "Pensions in Peril" which examined this issue, a similar request was made.

To date, we have not received a response from Secretary Geithner to this request. In light of this Administration's commitment to transparent and open government, and given that the American taxpayers are the majority owners of GM, I believe that taxpayers deserve answers and a full explanation of how these inequitable decisions were made.

On behalf of Delphi's retirees, and the American taxpayers who are financing GM's recovery, I am here to seek the support of this committee for this request and your assistance in demanding the immediate release of these documents from the Auto Task Force and the Treasury Department. I am grateful that this committee is beginning to investigate what happened here, but how can proper oversight be performed on these decisions if the Administration will not release the information it used to make its decisions? Only through the public release of these documents can Congress effectively exercise its oversight authority and responsibility. I thank the Chairman and Ranking Member in advance for their consideration of this long overdue request.

I again thank the committee for the opportunity to testify here today and look forward to working with you all to continue to pursue this matter.

Chairman ANDREWS. Congressman Michael Turner, welcome to the committee.

STATEMENT OF THE HON. MICHAEL R. TURNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. TURNER. Thank you, Mr. Chairman, Ranking Member Price. Chairman Andrews, I want to thank you for your comments concerning this being an issue of trust and values. And, Ranking Member Price, I want to thank you for your comments concerning questions of the actions of this administration that facilitated this result. The bankruptcy of Delphi Corporation has had a major impact on my community of Dayton, Ohio. The Dayton region is actually the birthplace of Delphi. The company was founded as the Dayton Engineering Laboratories Company which evolved through the hard work of Ohioans into Delco, a division of General Motors.

General Motors subsequently spun off Delphi, which, at one point, was the largest parts supplier of General Motors. Mr. Chairman, my father worked in General Motors factories for over 40 years. When Delphi declared bankruptcy in 2005, the company decided to close or sell several facilities in my congressional district, including 2 facilities in Dayton, as well as a facility in Kettering, Moraine and Vandalia.

The job loss at these facilities has been estimated at over 5,000 jobs. The effect of these plant closures have been felt throughout the Dayton region as many of our family members, neighbors and friends were Delphi employees. The closure of these facilities also has an impact beyond individual job loss. Whole neighborhoods have been affected by Delphi's bankruptcy through increased foreclosures and community services that have been affected as a result of an eroded tax base. The job loss associated with Delphi's bankruptcy was further increased by the closing of a General Motors's plant in Moraine, Ohio, which resulted in the loss of 5,000 additional jobs. The job losses also extended to small manufacturers and suppliers throughout Ohio who lost Delphi and General Motors as clients.

Since Delphi entered bankruptcy in 2005, many of us in Ohio have worked on a bipartisan basis to assist those affected in the State. I have worked with my colleague Senator Brown to help secure emergency assistance for auto workers and with Representative Tim Ryan to help provide trade adjustment assistance to dislocated workers. Today's hearing is in response to yet another loss to my community at the hands of Delphi Corporation.

This summer, Delphi when they petitioned for the United States Supreme Court's approval to turn over pensions for salaried retirees to the Pension Benefit Guarantee Corporation, resulted in an additional loss to my constituents. These actions are resulting in approximately 15,000 salaried Delphi retirees from across the country taking a severe cut in their promised pension benefits. I want to go a little further. We keep talking about promises. Item these are earned pension benefits. Benefits that as a result of their hard work should have been there for them upon their retirement. By some estimate, this means a 70 percent reduction in pensions and for some retirees the news compounds the prior loss of health care benefits.

Earlier this year, a bipartisan group of Ohio representatives petitioned the administration to help retirees from General Motors' plants in Dayton and Warren to receive insurance benefits. While these retirees were not entirely made whole, some were able to receive a baseline of benefit protections. However, not all groups have had these results. Delphi salaried retirees, as well as some of the so-called splinter unions, it says IUOE, IBEW and IAM still face benefit reductions.

Local leadership for the Delphi salaried retirees in my district estimate that nearly 1,000 retirees in the Dayton area will be affected by the bankruptcy court's decision. This treatment of salaried retirees is particularly troublesome in comparison to the benefits received by some in organized labor organizations.

I have worked along with the members of this panel to advocate on behalf of both union and nonunion labor to ensure that all retired workers receive whatever benefits they were promised. Mr. Chairman, all of these retirees, regardless of labor affiliation or not, worked alongside each other during their careers. They should not be treated differently in retirement. Salaried retirees made their careers by supporting Delphi Corporation. Congress and President Obama's administration owe it to these hard working men and women to pursue aggressive oversight in this matter and to work toward a solution.

Before I conclude, I would like to recognize Tom Rose, who drove here from Dayton, Ohio to Washington, D.C. For today's hearing, as well as the other retirees who are present, all of which, Mr. Chairman, are attending this hearing in hopes of answers as to how this issue can be addressed. They have my continued commitment to work with this panel on their behalf. Mr. Chairman, while Delphi has been permitted to survive, their retirees continue to struggle. This problem should not have been allowed to occur and the administration's actions appear to have encouraged this result. And this outcome only encourages companies in the future to underfund their pensions and then to walk away from their obligations. I appreciate your holding this hearing today, and we look forward to additional answers. Thank you.

Chairman ANDREWS. Thank you very much, Congressman.

[The statement of Mr. Turner follows:]

Prepared Statement of Hon. Michael R. Turner, a Representative in Congress From the State of Ohio

Thank you Chairman Andrews and Ranking Member Price for holding this hearing today and inviting me to testify.

The bankruptcy of Delphi Corporation has had a major impact on my community of Dayton, Ohio.

The Dayton region is the birthplace of Delphi Corporation. The company was founded as the Dayton Engineering Laboratories Company which evolved, through the hard work of Ohioans, into Delco, a division of General Motors. General Motors subsequently spun off Delphi Corporation, which at one point, was the largest parts supplier to General Motors. Mr. Chairman, my father worked for General Motors for over 40 years.

When Delphi declared bankruptcy in 2005, the company decided to close or sell several facilities in my congressional district including two facilities in Dayton, as well as facilities in Kettering, Moraine, and Vandalia. The job loss at these facilities has been estimated at over 5000 jobs.

The effect of these plant closures has been felt throughout the Dayton region as many of our family members, neighbors, and friends were Delphi employees.

The closure of these facilities also has an impact beyond individual job loss. Whole neighborhoods have been affected by Delphi's bankruptcy through increased foreclosures, and community services have been affected because of an eroded tax base.

The job loss associated with Delphi's bankruptcy was further increased by the closing of the General Motors assembly plant in Moraine, Ohio, which resulted in the loss of five thousand additional jobs. The job losses also extend to small manufacturers and suppliers throughout Ohio who lost Delphi and GM as clients.

Since Delphi entered bankruptcy in 2005, many of us in Ohio have worked on a bi-partisan basis to assist those affected in our state. Specifically, I have worked with my colleague Senator Brown to help provide emergency assistance for auto workers and with Representative Tim Ryan to help provide trade adjustment assistance to dislocated workers.

Today's hearing is in response to yet another loss to my community at the hands of Delphi Corporation.

This summer, Delphi petitioned for, and the United States Bankruptcy Court granted authority to turn over pensions for salaried retirees to the Pension Benefit Guarantee Corporation (PBGC). These actions are resulting in approximately 15,000 salaried Delphi retirees from across the country taking a severe cut in their promised pension benefits. By some estimates, this means a 70 percent reduction in pensions, and for some retirees, this news compounds the prior loss of health care benefits.

Earlier this year a bi-partisan group of Ohio representatives petitioned the Administration to help retirees from General Motors plants in Dayton and Warren, Ohio to receive insurance benefits. While these retirees were not entirely made whole, some were able to achieve a baseline of benefit protections.

However, not all groups have had these results. Delphi Salaried Retirees, as well as some so-called "splinter unions" such as the IUOE, IBEW, and IAM still face benefit reductions.

Local leadership for the Delphi Salaried Retirees in my district estimate that nearly 1000 retirees in the Dayton area will be affected by the Bankruptcy Court's decision. This treatment of salaried retirees is particularly troubling in comparison to the benefits received by some in organized labor organizations.

I have worked along with all the members of this panel to advocate on behalf of both union and non-union labor to ensure that all retired workers receive whatever benefits they were promised.

Mr. Chairman, all of these retirees, regardless of labor affiliation or not, worked alongside each other during their careers. They should not be treated differently in their retirement.

Salaried retirees made their careers by supporting Delphi Corporation. Congress and President Obama's Administration owe it to these hard working men and women to pursue aggressive oversight in this matter, and to work toward a solution.

Before I conclude, I would like to recognize Tom Rose for driving from Dayton, Ohio to Washington, DC for today's hearing, as well as the other retirees who are in attendance. You have my continued commitment to work on your behalf.

Mr. Chairman, while Delphi has been permitted to survive, their retirees continue to struggle. This problem should not even have been allowed to occur. I appreciate your holding this hearing today as we look for additional answers.

Thank you.

Chairman ANDREWS. Mr. Rose said he had driven to be here today. Can he stand? Welcome, sir. I am glad you are with us this morning. Thanks for paying our salaries. We appreciate it. We hope we can earn them for you today. Congressman Tim Ryan, welcome back to the committee. And thank you for your efforts to make today a reality.

STATEMENT OF THE HON. TIM RYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. RYAN. Thank you, Mr. Chairman. I would also like to thank you—it has been months since we had talked and you right out of gate said yes, we will help you. And I appreciate you helping me keep my commitment to the Delphi salaried retirees. So I appreciate that. Congressman Price, congratulations on the promotion. Members of the Committee, Congressman Kucinich, Congresswoman Fudge from Ohio and Mr. Kildee, thank you for all your help helping address this issue.

I would also like to thank Chairman Miller, who was a big part of allowing this to happen here. And I would also like to thank Ohio's Governor, Ted Strickland, for his support, and Senator Sherrod Brown for all his work on this issue, including a hearing in the Senate and for particular reasons, the original Packard Electric was started in my district in Warren, Ohio by the Packard Brothers.

So this has been a company that has been around for a long, long time in Warren, Ohio. And now with this bankruptcy, it has all come to a head here. And bankruptcy, as you know, has too often been used as a means to jettison commitments as you stated earlier, made the workers and leave behind retirees and that needs to change. One category of those left behind is the hourly retirees represented by the IUE-CWA, the United Steel Workers International Association of Machinists, Teamsters, IBW, International Union of Operating Engineers, and others who lost health care benefits and pensions. While the IUE-CWA, USW and others had their pensions topped off under agreement with GM, thanks to the efforts of this administration and others, their health care benefits are in danger of being lost.

And furthermore, some workers with the smaller unions have still been left completely behind. The other category, which we will hear about today, is the Delphi salaried retirees, who, I believe, should have had their issues regarding both pensions and health care dealt within the context of the GM bankruptcy.

Thankfully the PBGC will pay the retirees a large percentage of their promised benefits. But even with that, many retirees will see substantial losses. This is unacceptable and needs to be fixed. Furthermore, all retirees from Delphi will see substantial reductions in or outright elimination of health care coverage. Without the stimulus bill, the situation would be even worse since many retirees are eligible for an 80 percent health care tax credit.

I have spoken with many retirees who are now concerned about how they would be able to afford their mortgages, their health care costs and even their children's college tuition bills, including Nick Dragovich IUE-CWA local 717 in my district who drove out to be at this hearing. Nick started at Delphi, then called Packard Electric shortly after high school and worked there through GM's ownership and the Delphi spinoff, putting in over 34 years of service. In exchange for that service, he, like everyone else with Local 717, has been bounced around by companies that do not want to honor their commitments.

The harm of lost pensions and health care does not stop with the direct losses. There are so many retirees in my congressional district that the losses will flow to everyone in the region. As Senator Brown mentioned, a recent Youngstown State University study state that the total losses to the Mahoning Valley could be over $57 million annually. Those losses translate into over 1,700 job losses in our region. The bankruptcy system must be reformed to give a higher creditor status to retirees.

Many of the creditors currently above retirees are in a position to make informed decisions about the creditworthiness of borrowers and set rates accordingly as you mentioned in your opening statement. Furthermore, we need to tighten ERISA and other pension protection laws to preserve promised benefits. H.R. 1322, introduced by Congressman John Tierney, is a great example of exactly what needs to be done to prevent more situations like Delphi's and what my region saw over the last 30 years in the steel industry. An employee cannot possibly plan for unexpected cuts and promised benefits after the game has been played. Once again, we see systematic misalignment of who pays for other people's risks.

But unfortunately, even if these steps are taken, it is too late to help many of my constituents. That is why I have introduced with Congressman Sherrod Brown H.R. 3455 to establish a voluntary employee beneficiary association for former Delphi employees. This bill would use unspent money already authorized by the Emergency Economic Stabilization Act of 2008 to provide health coverage to both hourly and salaried retirees of the Delphi Corporation.

I ask that the text of these remarks and accompanying documents, including a letter from the President of the Ohio AFL-CIO, John Rugola, be included in the record. And this is another example of how this is bipartisan and both union and nonunion folks hanging together. So I ask that these be added to the record. And I thank you again, Chairman Andrews, for your commitment that you kept on behalf of our workers. Thank you.

[The statement of Mr. Ryan follows:]

Prepared Statement of Hon. Tim Ryan, a Representative in Congress From the State of Ohio

Chairman Andrews, Congressman Price, and Members of the committee, thank you for allowing me this time to address the Delphi bankruptcy and how it has affected my congressional district. Chairman Miller, thank you as well for your efforts to bring attention to this matter. I would also like to thank Ohio's Governor Ted Strickland for his support, and Senator Sherrod Brown for all he has done on this issue in the United States Senate. Bankruptcy has too often been used as a means to jettison commitments made to workers and that needs to change.

Delphi was spun off from GM in 1999 as an independent parts supplier. Most of the operations spun off had been a part of GM for twenty to thirty years. Within a few years Delphi began a steep decline and filed for bankruptcy in 2005. At that time roughly 150,000 people worked for Delphi, many of whom were represented by collective bargaining agreements. The United Auto Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, United Steel Workers, International Association of Machinists, Teamsters, International Brotherhood of Electrical Workers, International Union of Operating Engineers, and others represented Delphi employees. Very few bankruptcy issues were resolved in a timely manner, and the company languished in bankruptcy court for nearly 4 years.

During the time the company was in bankruptcy, the various pension funds fell further and further behind on the balances required to meet their obligations. This was compounded by an aggressive push for early retirement by Delphi's management to trim the workforce. When Delphi terminated the pension plans and sent their obligations to the Pension Benefit Guaranty Corp they covered approximately 70,000 workers and were under funded by over 7 billion dollars.

One category of those left behind include the hourly retirees represented by the IUE-CWA, USW, IAMAW, Teamsters, IBEW, IUOE, and others who lost health care benefits and pensions. While the IUECWA, USW and others had their pensions topped off under agreement with GM, thanks to the efforts of this administration and others, their health care benefits are in danger of being lost. Furthermore some workers with the smaller unions have still been left completely behind.

The other category are Delphi salaried retirees who I believe should have had their issues regarding both pensions and healthcare dealt within the context of the GM bankruptcy.

Thankfully the PBGC will pay the retirees a large percentage of their promised benefits, but even with that, many retirees will see substantial losses. The younger retirees who were promised the largest early retirement benefits as part of the buyouts Delphi forced on them will see the largest cuts as many of those payments are not insured by the PBGC. Furthermore all retirees from Delphi will see substantial reductions in or outright elimination of health care coverage. Without the stimulus bill the situation would be even worse as many retirees are eligible for an 80% credit

I have spoken with many retirees who are now concerned about how they will be able to afford their mortgages, their health care costs, and even their children's college tuition bills, including Nick Dragojevic, a member of the IUE-CWA local 717 in my district who drove out to be at this hearing. Nick Started at Delphi, then called Packard Electric shortly after high school and worked there through GM's ownership and the Delphi spin off putting in over thirty four years of service. In exchange for that service, he like everyone else with local 717 has been bounced around by companies that do not want to honor their commitments.

But it does not stop with the direct losses. There are so many retirees in my congressional district that the losses will flow to everyone in the region. A recent Youngstown State University study stated that total losses to the Mahoning Valley could be over 57 million dollars annually. Those losses translate into over 1,700 job losses in my region. The costs to local governments will also be extraordinary through lost revenue and increased need for services.

So the people least responsible for the bankruptcy of a company like Delphi are in the end, the ones who lose their job over it. The bankruptcy system must be reformed to give a higher creditor status to retirees. Many of the creditors currently above retirees are in a position to make informed decisions about the creditworthiness of borrowers and set rates accordingly. Retirees are in no position to make those kinds of decisions. Just imagine what would happen if an employee walked into the C.E.O.'s office and said, "Boss you're overleveraged and I'm concerned about future obligations so I would like a three percent raise in retirement benefits to cover additional insurance on my exposure". They would be laughed out of the room, but the banks, hedge funds, and other lenders who could do exactly that and often fail spectacularly to do just that, are the ones protected by the bankruptcy code.

Furthermore we need to tighten ERISA and other pension protection laws to preserve promised benefits. H.R. 1322 introduced by Congressman John Tierney is a great example of exactly what needs to be done to prevent more situations like Delphi's and what my region saw in the steel industry. An employee cannot possibly plan for unexpected cuts in promised benefits after the game has been played. They cannot go back 25 years and invest more to cover the investment losses and mismanagement of their employer. Once again we see systematic misalignment of who pays for other people's risks.

But unfortunately, even if these steps are taken, it is too late to help many of my constituents. That is why I have introduced H.R. 3455 with bipartisan support to establish a Voluntary Employee Beneficiary Association for former Delphi employees. This bill would use unspent money already authorized by the Emergency Economic Stabilization Act of 2008 to provide health coverage to both hourly and salaried retirees of the Delphi Corporation. If we can use that money to save the bacon of those that made the very errors calculating risk that put us in this position, surely we can use the leftovers to save the innocent bystanders who spent years of their lives working for Delphi and GM.

I ask that the text of these remarks and accompanying documents be added to the record. Once again, thank you to the committee for your time and attention.

Chairman ANDREWS. Thank you. And Mr. Dragovich, is he here today that was mentioned? Welcome, sir. We appreciate you being with us today as well and all of our guests this morning. At this time, if any of the members on either side have questions for the member panel, we welcome them. And then we would excuse them. Mr. Tierney, did you have questions?

Mr. TIERNEY. I have one brief comment, Mr. Chairman, if you will bear with me.

Chairman ANDREWS. Of course.

Mr. TIERNEY. Mr. Ryan, I want to thank you for your mention of House Resolution 1322, which deals with retiree health benefits and the obligation of companies to maintain those. I do want to make the point however and invite Mr. Lee and Mr. Turner and the minority ranking member over here to join on that bill if they are serious about this. This is not a union bill versus a nonunion bill. This deals with all people that are working and get disfranchised on that. We have not had anybody from your side, except for Mr. Jones, sign on to that bill. So if we are serious about doing something for this category of people, I hope you will join it or give us a reason why you haven't and then we can move forward on that.

And there is language also in the health care bill that would be supportive of this concept and I extend the invitation and look forward to engaging with your offices on it. Thank you.

Chairman ANDREWS. Thank you, John, for your good work on this issue. Anybody else on our side? Mr. Kildee?

Mr. KILDEE. I was sold, I use the word, when this thing began to dawn upon us what really had happened, that from the very beginning, this became a bipartisan matter. Christopher Lee met with me on the House floor, suggested a letter and asked me if I would co-sign it. And that gave me some hope this had risen above some of the partisanship we find down there to a bipartisanship. And I want to thank you especially, thank all of you, but you especially.

Chairman ANDREWS. Thank you, Mr. Kildee. Anyone on the minority side? Dr. Price, I know you have a unanimous consent request to propound.

Mr. PRICE. I do, Mr. Chairman. If I may, I ask unanimous consent that our colleagues off the committee be allowed to join us for the second panel and be permitted to ask questions of the panelists.

Chairman ANDREWS. Without objection. Gentlemen, you are welcome to come up to the dais and participate in the hearing in that way, each of you. Sherrod, you would be too.

Mr. PRICE. Well, I don't know about that.

Chairman ANDREWS. Of course he would. If I may, before you depart, let me say this to the members, we appreciate your testimony. What I am hearing is a focus on two points, the first is that it is the bipartisanship that each of you mentioned and Mr. Kildee just mentioned, that we need to work together on this and we will continue to do that.

And the second is I understand the focus on the policy questions, but I really do want our focus to be on trying to help these individuals who were hurt by this situation. It will do them no good if we pass some law that helps somebody 15 or 20 years from now. We really do want to focus to the extent that we can on the actual people who were actually injured by this and do the best we can for them. So thank you, gentlemen. Please join us for the balance of the hearing if you would like to. At this time we are going to ask that the panel step forward, the second panel.

I am going to start to introduce the second panel as they come forward to give us a little more time. The first witness will be Mr. Bruce Gump. Mr. Gump is a member of the Delphi salaried retirement association. He is a former salaried employee of General Motors and Delphi. Mr. Gump, where do you live? What town are you from?

Mr. GUMP. Warren, Ohio.

Chairman ANDREWS. Welcome. He comes from Warren, Ohio, to be with us this morning. Mr. Charles Cunningham is a member of the Delphi Salaried Retirement Association. Mr. Cunningham is a former employee of GM and Delphi. He retired after 31 years of employment with those corporations in 2002. Mr. Cunningham, you are from where?

Mr. CUNNINGHAM. Warren, Ohio.

Chairman ANDREWS. From Warren as well. Welcome. I am glad that you are with us. And returning to the committee is Dr. Norman Stein. Dr. Stein is a senior consultant with the pension rights center and a Douglas Arant professor of law At the University of Alabama Law School. After joining the faculty in 1984, he received his BA from New College and his JD from Duke University.

Before we proceed, I also do want to make sure the record reflects that two of our other colleagues have played a major role in making this hearing happen this morning. That is Mr. Kucinich from Cleveland and also Ms. Fudge also from that area in Ohio. I did not mean to neglect mentioning them earlier, but this has been a team effort. And again, both Dennis and Marcia have expressed their interest in this. And as is typical with each of them, has taken this very seriously and very personally. And we appreciate that. For the newcomers to the committee, here is the way the rules work. The written statements that you have made will be a part of the record of the hearing without objection.

So what you wrote will be part of the record. We ask you to try to make an oral synopsis of your testimony to last about 5 minutes. When you are done, we will have questions from the members of the committee who will ask you about what you had to say so we can learn from each other and hopefully find some solutions. In front of you is a light box. The green light will go on when you start talking. When you have about a minute left, the yellow light will go on which tells you we would like you to try to wrap up. Don't worry if you go beyond it a bit. There is no penalty for that here. But we just ask you to be as brief as you could if the red light goes on so that we can hear from as many members as possible. The most productive hearings tend to be those where there can be a lot of interaction between the witnesses and the members and we would like to try to maximize that today. So we are very happy that you are with us. And, Mr. Gump, we are going to start with you. Welcome to the subcommittee.

STATEMENT OF BRUCE GUMP, MEMBER, DELPHI SALARIED RETIREMENT ASSOCIATION, AND FORMER SALARIED EMPLOYEE OF GENERAL MOTORS AND DELPHI

Mr. GUMP. Good morning, Chairman Andrews and Ranking Member Price and members of the committee. Thank you for the opportunity to be able to describe the effect of the Delphi bankruptcy on our members. The DSRA is made up of highly educated and qualified people who were employed as secretaries and technicians, engineers and salespeople, accountants and many other positions. They worked for Delphi with the promise of current and future compensation funded through the effort of each worker. They all looked forward to a safe, secure and healthy retirement. The salaried employees were told at the time Delphi was spun off from

GM, and again at the time bankruptcy was declared, that our pension and other post-employment benefits were a foremost priority for the company.

In addition, PBGC's director, Charles Millard, said in May of 2008 that we will act forcefully to protect Delphi's pension plans and we will draw down certain letters of credit and keep liens in place on the company's assets until Delphi has successfully emerged and made its pension plans whole. These liens were on Delphi's foreign assets which were not included in the bankruptcy, thus salaried employees were given assurances by both the company and the PBGC that our pension plan was being properly managed and protected when in reality the company was not adding funds to the plan and in the end the PBGC did not protect the plan by using their valuable liens.

I will leave the description of the legalities of the process up to Mr. Cunningham, but suffice it to say for now that we have definitive evidence that the PBGC acted under powerful influence from the Department of Treasury, the Secretary of which was charged with the rescue of the auto industry and also happens to be a board member of the PBGC to release the liens put in place to protect Delphi's pension plans.

Consequently, the plan was terminated in a very underfunded condition. This will cause many participants' pensions to be reduced by 30 to 70 percent and any supplements that were used to coerce early retirement will be eliminated. Even though the hourly pension plans were also transferred to the PBGC, they will not experience any pension reduction because of the unprecedented agreement brokered by the auto task force for General Motors to top up those pensions. Dr. Edward Montgomery and Ron Bloom of the Auto Task Force explained the reason for this discrimination against salaried retirees by telling us the administration had chosen to follow a commercial model in dealing with the auto industry bankruptcies.

Since the salaried retirees had no commercial value to General Motors or Delphi, we therefore received no protection or benefit from the Auto Task Force. We believe this is a very dangerous precedent to follow. Consider what would happen if the United States Government chose to follow exactly the same thought process regarding health care or social security or even contract law.

As Congressman Ryan had written, because government assistance is taxpayer subsidized, additional considerations must be included beyond the usual business judgments that take place in the bankruptcy courts. We believe the United States Treasury determined the standard of fairness when they helped GM fund the benefits of the unionized workers and that same standard should be applied to all worker groups involved.

I will now take a moment to describe some of the effects of the treatment of the workers in the communities. On average, the salaried retiree will lose about $300,000 over his or her lifetime because of the transfer of the PBGC. Some, including me, will have incomes below the national poverty level. A woman who was forced into retirement at age 54 after more than 30 years of dedicated service had lost all of other health care insurance and will lose more than half of her pension. She could barely afford to purchase a high deductible health care insurance policy to provide some protection for herself and her self-employed husband. Two weeks later, she learned that she might have cancer. Because of the high deductible policy she had, she had to bear the entire burden of the costs of the tests that determined if she would live or die.

A study by Dr. Frank Akpadock of Ohio's Youngstown State University showed that the local economy in the northeast Ohio region known as the Mahoning Valley, already damaged by the loss of the steel industry, will sustain an additional loss of $161 million per year leading to about 5,000 additional nonautomotive, downstream jobs that will be lost in that economy. That will cause the unemployment rate in my community to rise to more than 20 percent. Taken to a national level, the result will be about 85,000 Americans who will see, through no fault of their own, their jobs simply evaporate due to the unfair and inequitable treatment of the auto industry worker groups.

In summary, we believe that Delphi's salaried pension plan was improperly terminated, the taxpayer provided funds supplied by the Congress through the Department of Treasury were applied in a discriminatory manner, based on an ill-conceived commercial model and the liens put in place to protect the value of our pension plan were eliminated because the Auto Task Force and GM were in a hurry. We lost the protection of the United States Government and significant portions of our pensions because it was inconvenient for the Auto Task Force to follow the rules. We ask only for fair and equitable treatment for all worker groups in the auto industry bankruptcies.

We all have the same contract with our government. Thank you. I would be happy to answer questions.

Chairman ANDREWS. Mr. Gump, thank you. You did a great job. Very well said. And we are happy that you are with us this morning.

[The statement of Mr. Gump follows:]

Prepared Statement of Bruce Gump, Delphi Salaried Retirees Association

Good morning Chairman Andrews, Ranking Member Price and members of the committee. Thank you for this opportunity to describe the effect of the Delphi Bankruptcy on our members.

The DSRA is made up of highly educated and qualified people who were employed as secretaries, technicians, engineers, sales people, accountants, and many other positions. They worked for Delphi with the promise of current and future compensation funded through the effort of each worker. They all looked forward to a safe, secure and healthy retirement.

The salaried employees were told at the time Delphi was spun off from GM and again at the time bankruptcy was declared that our pension plan and other post employment benefits were a "foremost priority" for the company. In addition PBGC Director Charles Millard said in May of 2008 "We will act forcefully to protect Delphi's pension plans." And "We will draw down certain letters of credit and keep liens in place on the company's assets until Delphi has successfully emerged and made its pension plans whole." These liens were on Delphi's foreign assets which were not included in the bankruptcy.

Thus salaried employees were given assurances by both the company and the PBGC that our pension plan was being properly managed and protected, when in reality the company was not adding funds to the plan, and in the end, the PBGC did not protect the plan by using their valuable liens.

I will leave the description of the legalities of the process up to Mr. Cunningham, but suffice it to say for now that we have definitive evidence that the PBGC acted under powerful influence from the Department of the Treasury (the Secretary of which was charged with the "rescue" of the auto industry and also happens to be a Board Member of the PBGC) to release the liens put in place to protect Delphi's pension plans. Consequently, the plan was terminated in a very underfunded condition. This will cause many participants' pensions to be reduced by 30% to 70%, and any supplements that were used to coerce early retirement will be eliminated.

Even though the Hourly Retirees' pensions were also transferred to the PBGC, they will not experience any pension reduction because of the unprecedented agreement brokered by the Auto Task Force for GM to "top up" those pensions. Dr. Edward Montgomery and Ron Bloom of the ATF explained the reason for this discrimination against Salaried Retirees by telling us the Administration had chosen to follow a "commercial model" in dealing with the auto industry bankruptcies. Since the salaried retirees had no "commercial value" to GM or Delphi, we therefore received no protection or benefit from the Auto Task Force. We believe this is a very dangerous precedent to follow. Consider what would happen if the United States Government chose to follow exactly the same thought process regarding health care or social security or even contract law. As Congressman Ryan has written: "Because government assistance is taxpayer subsidized, additional considerations must be included beyond the usual business judgments that take place in the bankruptcy courts."

We believe the United States Treasury determined the "standard of fairness" when they helped GM fund the benefits of the unionized workers and that same standard should be applied to all worker groups involved.

I will now take a moment to describe some examples of the effects of this treatment on workers and communities:

The average Salaried Retiree will lose about $300,000 over his or her life. Some will have incomes below the national poverty level.

A woman, who was forced into retirement at age 54 after more than 30 years of dedicated service has lost all of her health care insurance and will lose more than half of her pension. She could barely afford a high deductible health care insurance policy to provide some protection for herself and her self-employed husband. Two weeks later learned she might have cancer. Because of the high deductible policy, she had to bear the entire burden of the tests to determine if she would live or die.

A study by Dr. Frank Akpadock of Ohio's Youngstown State University showed that the local economy in the NE Ohio region known as the Mahoning Valley, already damaged by the loss of the steel industry, will sustain an additional loss of $161 Million per year, leading to about 5000 additional non-automotive jobs lost. That will cause the unemployment rate in that community to rise to more than 20%. Taken to a national level, the result will be about 85,000 Americans who, through no fault of their own, will see their jobs simply evaporate due to the unfair and inequitable treatment of the auto industry worker groups.

In summary, we believe the Delphi Salaried Pension plan was improperly terminated. The tax-payer provided funds supplied by the Congress to the Department of the Treasury were applied in a discriminatory manner based on an ill-conceived "commercial model," and the liens put in place to protect the value of our pension plan were eliminated because the Auto Task Force and GM were in a hurry. We lost the protection of the United States Government and significant portions of our pensions because it was inconvenient for the ATF to follow the rules.

We ask only for fair and equal treatment for all worker groups in the auto industry bankruptcies. We all have the same "contract" with our government.

Chairman ANDREWS. Mr. Cunningham, welcome. We are happy you are here as well.

STATEMENT OF CHARLES CUNNINGHAM, MEMBER, DELPHI SALARIED RETIREMENT ASSOCIATION, AND FORMER EMPLOYEE OF GM AND DELPHI

Mr. CUNNINGHAM. Thank you, Chairman Andrews and Ranking Member Price and the entire committee. It is great to have the opportunity to be here and testify. And Chairman Andrews, I agree with you that dialogue is the best way to get an answer. So I am going to try to keep this brief so we have time for dialogue.

Chairman ANDREWS. Please take your time, though, sir. Don't rush. Say what you want to say.

Mr. CUNNINGHAM. I won't rush. I will just keep it brief. Okay? I would like to expand a little bit on portions of Bruce Gump's testimony and really particularly relating to the Treasury's role in the GM and Delphi bankruptcies and the ultimate effect on the salaried employees' pensions. Delphi pension disposition was dictated by the U.S. Treasury. And it was really dictated to meet the requirement of an expedited GM bankruptcy. The successful emergence of bankruptcy by GM required that Delphi, GM's largest parts supplier, also emerge from bankruptcy as a viable entity. The last obstacle in settling Delphi's bankruptcy was Delphi's pension plan liabilities, although other options were considered, including GM taking back all of Delphi's pension plans, union and salaried. The final solution dictated by the Treasury was to turn over all plans to the PBGC. The Treasury then brokered a deal between GM, Delphi and the PBGC for the PBGC to surrender its liens against Delphi's overseas assets valued at between $2 and $4 billion and accept only $70 million in payment from GM as well as an unsecured claim which was essentially worthless. The PBGC then began its termination process for Delphi pensions. Subsequently, the Treasury agreed to provide GM with the funding to top off hourly UAW pensions to prevent the hourly people from having their pensions reduced to the PBGC statutory limit. After deliberation with GM and eventually the Treasury, the IUE-CWA and the United Steel Workers also had their pensions topped up by GM. This action promoted by the Treasury was not taken as a result of contractual obligations. That is one thing that has been talked about so many times that this was contractual. And honestly, I need the members of this committee to understand, this was not a contractual obligation. In fact, in public documents, GM's CEO or former CEO as of yesterday, Fritz Henderson, has stated that these were not obligations contractually, but they were gratuitous contributions. And, in fact, most cases in bankruptcy, as I hope our colleague on the panel would say, would—that these contractual obligations particularly those that were side agreements, would have been dismissed in bankruptcy court. So this was a purely political decision. For what reason I cannot tell you. I mean, I can only speculate. But it was not done for contractual reasons. The other 3 unions that were mentioned by the previous panel, they all had contracts also and they also had side agreements. I heard them argue that in bankruptcy court which I personally attended. So it wasn't contractual. There were other reasons for the top-offs that were given to the 2 unions. As a result of these actions, directed by the Treasury, certain groups will receive their full amount of earned pensions while others will be relegated to 30 to 70 percent of their pensions. A lot of our retirees are young and a lot of them get larger reductions because of their age and because of the amount of funding. What is equally disconcerting is that the PBGC was obviously coerced into surrendering valuable liens. I mean, they had a chance to get between $2 and $4 billion that was substantial in this case to help fund these pensions and chose to walk away from them so that Delphi was an assured parts supplier to GM. These would have significantly improved our funding levels. The assertions we are making are well supported in documents found in the GM and Delphi bankruptcy proceedings, mandatory

SEC filings by GM and the administrative record of the PBGC. We believe that further significant evidence concerning discrimination against the Delphi salaried retirees exists in the Treasury and automotive task force documents relating to the GM and Delphi bankruptcies. We have requested these documents under the Freedom of Information Act over 2 months ago, but the production of these documents by the Treasury has not been forthcoming. In fact, a written request for these documents was also made by Senator Enzi following the Senate hearing on pensions on October 29, 2009. To date, this request has also been ignored. And as you heard earlier, a bipartisan group of the House Members had requested this same information months and months ago. This is not transparency. This is not what we would expect from our government. I think it is outrageous that we don't know why we were treated in this manner or that our congressional leaders can't know it. We are not looking for special treatment. We are only asking you as elected officials to assist us in securing fair and equitable treatment guaranteed under our constitution. Nothing more, certainly nothing less. Thank you.

Chairman ANDREWS. Mr. Cunningham, thank you for being so persuasive and articulate. We appreciate it very much.

[The statement of Mr. Cunningham follows:]

Prepared Statement of Charles Cunningham, Delphi Salaried Retirees Association

Good Morning, my name is Chuck Cunningham and I am a Delphi Salaried Retiree. I spent 28 years with General Motors and 3 years with Delphi before retiring in 2002.

I would like to thank Chairman Andrews, Ranking Member Price and the entire Health, Employment, Labor, and Pensions subcommittee for the opportunity to testify here today.

I would like to expand upon portions of Bruce Gump's testimony particularly relating to the Treasury's role in the GM and Delphi Bankruptcies and the ultimate effect upon the salaried employees pensions.

The Delphi pension disposition was dictated by the U.S. Treasury to meet the requirement of an expedited GM bankruptcy. A successful emergence from bankruptcy by GM required that Delphi, GM's largest parts supplier, also emerge from bankruptcy as a viable entity. The last obstacle in settling Delphi's bankruptcy was Delphi's pension plans liabilities. Although other options were considered, including GM taking back all of Delphi's pensions plans, union and salary, with the financial backing of the Treasury, the final solution, dictated by the Treasury, was to turn over ALL the plans to the PBGC.

The Treasury then brokered a deal between GM, Delphi and the PBGC for the PBGC to surrender its liens against Delphi's overseas assets, valued at between $2-4 billion, and accept $70 million in payment, as well as, an unsecured claim which was essentially worthless. The PBGC then began its termination of the Delphi pensions. Subsequently, the Treasury agreed to provide GM with the funding to "top off" hourly UAW pensions to prevent the hourly people from having reduced pensions to the PBGC statutory limit.

After deliberation with GM, and eventually the Treasury, the IUE/CWA and the United Steelworkers also had their pensions "topped off" by GM. This action, promoted by the Treasury Department, was not taken as result of contractual obligations but was "gratuitous" as described by GM CEO Fritz Henderson in public documents.

As a result of these actions, directed by the US Treasury, certain groups will be receiving the full amount of their earned pensions while others will be relegated to receive a reduced amount in accordance with the PBGC limitations. Many Delphi salaried retirees will only receive somewhere between 30-70% of their earned pensions. What is equally disturbing is that the PBGC was obviously coerced into surrendering valuable liens which could have significantly improved the level of funding for all the plan participants.

The assertions we are making are well supported in documents filed in the GM and Delphi bankruptcy proceedings, mandatory SEC filings by GM and the Administrative Record of the PBGC. We believe that further significant evidence concerning discrimination against the Delphi salaried retirees exists in the Treasury and the Automotive Task Force documents related to the GM and Delphi bankruptcies. We have requested these documents under the Freedom of Information Act over 2 months ago, but the production of these documents by the Treasury has not been forthcoming. In fact, a written request was also made by Senator Enzi following the Senate Hearing on Pensions on Oct. 29, 2009 and, to date, this request has also been ignored.

The Delphi salaried retirees are not looking for special treatment in this matter. We are asking our elected officials to assist us in securing fair and equitable treatment guaranteed under our Constitution. Nothing more and, certainly, nothing less.

Thank you again for your time and attention. I will be happy to answer any questions you may have.

Chairman ANDREWS. Professor Stein, welcome back to the committee. You have been a great resource for us over the years. We are happy you are back with us this morning.

STATEMENT OF NORMAN STEIN, SENIOR CONSULTANT, PENSION RIGHTS CENTER, AND DOUGLAS ARANT PROFESSOR OF LAW, UNIVERSITY OF ALABAMA LAW SCHOOL

Mr. STEIN. Thank you, Mr. Chairman, Members of the subcommittee, for inviting me here to speak with you this morning on the impact of Delphi's bankruptcy and Delphi's workers and retirees. The story of Delphi's retirement and health commitments to its employees and their extraordinary devaluation in bankruptcy is a heart wrenching human story in an inordinately complex factual and legal setting. It is a story that underscores both the success of the PBGC program and some of its shortcomings. As such, it provides a moment to rethink the various compromises made in ERISA and bankruptcy law between assuring worker pension expectations and constraining costs on plan termination.

What has happened and is happening to thousands of Delphi employees who have lost medical benefits and have suffered pension reductions is tragic. And Congress should certainly consider providing relief to these hard working but hard hit Americans, but it is critical that we view their loss in its larger historical and social welfare context. The enactment of ERISA was in part a response to the 1964 termination of the pension plan for American employees of Studebaker. At that time, there was no PBGC to ensure employee benefits from a terminated defined benefit plan. Plan participants in Studebaker and other companies received benefits from available plan assets. And if there were not sufficient plan assets, benefits were paid, reduced or eliminated in accordance with the plan provisions allocating insufficient assets to various benefit categories. In Studebaker, the plan had enough assets to pay full benefits only to retirees. Other employees received nothing or next to nothing. It was this tragedy that helped frame the need for a Federal insurance system for defined benefit plans and more generally underscored the need for a Federal pension reform statute which ultimately led to enactment of ERISA and the important protections in which millions of employees and retirees now rely. The PBGC has been an extraordinarily effective agency over the last 3 decades. Without it, millions of employees would have suffered catastrophic losses, consigning many to poverty in old age. Even with the distressingly large losses that some Delphi employees have suffered, every Delphi employee is better off because Congress created the PBGC. And we should not lose sight that the losses in Delphi are not typical. Historically, 85 percent of participants in terminating pension plans suffer no pension losses.

From the broader perspective the PBGC is an amazing success story. And we need to ensure that PBGC has the strength and resources to continue its important mission and that effective funding rules make unfunded plan terminations such as the one we are seeing today a rare occurrence.

I turn now to the PBGC guarantees and limitations on them and how they affected Delphi employees and retirees. The PBGC guarantee program has undergone extensive modification since ERISA's enactment in 1974, but the essentials of the actual benefit guarantees and limitations on them have been relatively stable. It is important to keep in mind that the limitations are statutory and PBGC does not have discretion to vary the guarantees even under the compelling circumstances that we have heard today.

PBGC guarantees are subject to two types of limitations. The first is structural. The PBGC does not guarantee all plan benefits but only what we might think of as basic retirement benefits. The second is that these basic retirement benefits are subject to a dollar limit, which in 2009, the year that the Delphi plan terminated, was $54,000. The dollar cap applies to a benefit in the form of a single life annuity commencing at age 65. If the benefit is taken before 65 or with a survivor annuity, the benefit guarantee is actuarially reduced so that it will be lower than $54,000 a year.

So let's start with benefits that were not eligible for the PBGC guarantees. These were normal retirement benefits that were not vested; certain supplemental early retirement benefits which were paid only until an employee becomes eligible for Social Security benefits; and, finally, subsidized early retirement benefits, if—as of the plan's termination—an employee had met all the criteria for the subsidy, which in the case of Delphi was, for most employees, 30 years of service.

Many employees, some of whom were only months away from qualifying for a subsidized early retirement benefit, lost tremendously valuable pension benefits. Salaried Delphi employees then lost benefits primarily in three ways. Many lost the opportunity to qualify for the most valuable benefit under the plan, the subsidized early retirement benefit, because they fell short of the 30-year requirement. Many lost their temporary supplemental benefits, and some lost benefits because their basic benefits exceeded the maximum annual guarantee.

My written testimony includes a number of suggestions for legislative action that could improve the statute's protections of employees of the future. As you have mentioned, this is not going to be very helpful to the Delphi employees who are here. But thank you for the opportunity to speak with you, and also Congressman Andrews, teaching at Drexel, where I understand you are very good friends with the Dean.

Chairman ANDREWS. I am indeed.

Mr. STEIN. I may need a note from you explaining why I missed my train and will be an hour late for class.

Chairman ANDREWS. I will tell Dean Dennis that you have excuse to be at least an hour late, because we appreciate that you are here.

Mr. STEIN. My students will be happy, I am sure, though.

Chairman ANDREWS. I am sure they will not be, but I appreciate that. Thank you, each of the three panelists.

[The statement of Mr. Stein follows:]

Prepared Statement of Norman P. Stein, Senior Consultant, Pension Rights Center, and Douglas Arant Professor of Law, University of Alabama Law School

Thank you, Mr. Chairman and members of the committee, for inviting me here to speak with you this morning on the impact of Delphi's bankruptcy on Delphi's workers and retirees. I am a professor of law at both the University of Alabama and the Earl Mack School of Law at Drexel University. I also work with the Pension Rights Center on a variety of policy-related activities. I am, however, testifying on my own behalf this morning and my views should not be attributed to any of the organizations with which I am affiliated.

The story of Delphi's retirement and health commitments to its employees, and their extraordinary devaluation in bankruptcy, is a heart-wrenching human story in an inordinately complex factual and legal setting. It is a story that underscores both the success of the PBGC program and some of its shortcomings. As such, it provides a moment to rethink the various compromises made in ERISA between assuring worker pension expectations and constraining costs on plan termination, or put in interrogative form, how should we allocate the economic fallout when a pension plan terminates without adequate funding?

I have divided my testimony into three parts. The first part provides some historical background and context for thinking about the PBGC and the Delphi workers and retirees. The second part provides an overview of the limits of PBGC pension guarantees, with an emphasis on the losses suffered by Delphi salaried employees. The third part suggests some statutory changes to ERISA and bankruptcy law that Congress might consider in light of the Delphi bankruptcy.

Background and Context

What has happened, and is happening, to thousands of Delphi employees who have lost medical benefits and have suffered pension reductions, is tragic—and Congress should certainly consider providing relief to these hard-working but hard-hit Americans. But it is critical that we view their loss in its larger historical and social welfare context.

The enactment of ERISA was, in part, a response to the termination of the pension plan for American employees of Studebaker, when it shut down its United States operations in 1964. At that time, there was no PBGC or other program to ensure employee benefits from a terminated defined benefit plan. Plan participants received benefits from available plan assets, and if there were not sufficient plan assets, benefits were paid, reduced, or eliminated in accordance with the plan's provisions allocating assets to various benefit categories.

In Studebaker, the plan had been inadequately funded and did not have enough assets to pay full benefits only to those who had retired or were at retirement age. Other employees received nothing or next to nothing.

It was this tragedy that helped frame the need for a federal insurance system for defined benefit plans and more generally underscored the need for a federal pension reform statute, which ultimately lead to enactment of ERISA and the important protections on which millions of employees and retirees now rely.

The PBGC has been an extraordinarily effective agency over the last three decades. Without it, millions of employees would have suffered catastrophic losses, consigning many of them to poverty in old age. Even with the distressingly large losses that some Delphi employees have suffered, every Delphi employee is better off because Congress created the PBGC.

And we should not lose sight that the losses in Delphi are not typical—historically, 85% of participants in terminating plans have not suffered any pension loss.

From this broader perspective, the PBGC is an amazing success story and we need to ensure that the PBGC has the strength and resources to continue its important mission and that funding rules make underfunded plans a rare occurrence.

The PBGC Benefit Guarantees and Delphi Salaries Employees

The PBGC guaranty program has undergone extensive modification since ERISA's enactment in 1974, but the essentials of the actual benefit guarantees and limitations on them have been relatively stable. It is important to keep in mind that the limitations are statutory—they are in the statute that PBGC administers [1]—and PBGC does not have discretion to vary the guarantees even under the compelling circumstances presented today.

PBGC benefit guarantees are subject to two types of limitations. The first type of limitation is structural: PBGC does not guarantee all plan benefits, but only what we might think of as the basic vested retirement benefit. The second limitation is that this basic retirement benefit is subject to a dollar limit, which is stated in terms of a benefit in the form of a single life annuity commencing at age 65. The maximum guarantee amount for a life annuity commencing at age 65 is $54,000 for plans terminating in 2009, when the Delphi plan terminated. The guarantee is actuarially reduced if the benefit commences before age 65 or if it includes a survivor annuity.

So let us start with benefits that were not eligible for the PBGC guarantee. These include:

(i) normal retirement benefits that were not vested;

(ii) subsidized early retirement benefits, unless as of the plan's termination an employee had met all the criteria for the subsidy (in Delphi, this was 30 years of service, or a combination of age and service totaling 85);

(iii) some supplemental benefits that are paid only until an employee attains the age of Social Security eligibility. (The idea is that once an employee attains Social Security eligibility, these benefits are replaced by Social Security benefits, so that retirement income remains stable despite the expiration of the supplemental benefits.)

Many employees, some of whom were only months away from qualifying for a subsidized early retirement benefit, lost tremendously valuable potential benefits.

I also note here that this is not simply a plan termination problem under Title IV of ERISA. When a plan sponsor sells a division or divests a subsidiary, employees with long years of loyal service can lose subsidized early retirement benefits because they no longer work for the same controlled group, even though they continue to work for the same company or division, doing exactly the same work they did before, often in exactly the same location.

And of course, the $54,000 dollar maximum guarantee for benefits that are ensured by PBGC was reduced for employees who begin receiving benefits before age 65 or who took benefits in the form of a joint-and-survivor annuity.[2] Again, this is mandated by the statute that the PBGC administers.

Salaried Delphi employees, then, lost benefits primarily in three ways: many lost the opportunity to qualify for the most valuable benefit under the plan—the subsidized early retirement benefit—because they did not have 30 years of service; many lost a portion of their supplemental benefit; and some lost benefits because they exceeded the maximum guarantee level.

Some Possible Statutory Changes

In light of the Delphi bankruptcy, Congressional might want to re-evaluate some provisions of Title IV, pension law generally, and bankruptcy. Here are some candidates for such re-evaluation:

1. It might be time to adjust some of the features of the PBGC guarantee, particularly for employees and retirees who take benefits prior to normal retirement age or as a joint-and-survivor annuity. An increase in the guarantee amount for married participants who take a joint-and-survivor annuity would have the beneficial effect of encouraging more participants to choose such annuities.

2. A relatively costless measure would be to allow employees who have lost their jobs to begin receiving guaranteed benefits but to later suspend benefits, with a concomitant increase in the guarantee amount. An alternative might be to allow retirees to establish a tax-deferred savings vehicle to which they can contribute their early retirement benefits until they reach age 65.

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[1] In some cases, the limitations are in 30-year old regulations interpreting the statute.

[2] When a company such as Delphi essentially disappears, it is often difficult for an employee to wait until age 65 to begin receiving benefits, so they take the benefits immediately despite the reduced guarantee level. And I can tell you from many conversations over the years, that employees often do not understand why a benefit under the nominal guarantee level gets a smaller guarantee amount, simply because they are married and take a joint-and-survivor benefit or because they begin receiving benefits before age 65.

3. Perhaps there should be some limited cost-of-living adjustments in the guarantee limits after plan termination, even if this is paid for by temporarily reducing the annual increases to the guarantee amount that applies at plan termination.

4. The PBGC and participants in health and retirement plans might be given expanded protections in bankruptcy proceedings by improving their priority above other unsecured creditors.

5. The problem of cliff-eligibility requirements for subsidized early retirement benefits, not only in underfunded plan terminations but also in cases of sales of subsidiaries or divisions or other corporate reorganizations, destroys important and reasonable employee expectations about when they are able to retire. It may be that when an event such as plan termination or a corporate structural change occurs, employees should receive a pro-rata portion of the subsidy, based on how close they came to fulfilling the eligibility requirements for such subsidies. In addition, or as an alternative, employees who continue working at the same desk after termination or a corporate restructuring should continue to be able to qualify for the subsidy.

6. It may be time to re-examine the Title IV asset allocations to different classes of benefits. The current allocations create a cliff—people who are either retired or could retire within 3 years of plan termination, can receive all of their benefits, while employees just a day younger can have their benefits substantially reduced.

7. The Pension Protection Act amended ERISA to provide that the date of plan termination is retroactive to the date a plan sponsor entered bankruptcy. Because Delphi filed for bankruptcy proceedings prior to the effective date of that PPA provision, the date of plan termination was in 2009 rather than 2006. If the Delphi plan termination date had been subject to this rule, the losses suffered by Delphi employees would have been far worse. This rule unfairly defeats employee expectations and Congress might consider repealing it.

Chairman ANDREWS. I want to try to get us into the problem-solving mode here, if we can. And I think, Mr. Cunningham, Mr. Gump, you may know these facts best of anyone in the room. It is my understanding that the difference between the obligation assumed by the PBGC and making your group whole is the difference between 4.4 billion and $4 billion; is that right?

Mr. CUNNINGHAM. No.

Chairman ANDREWS. Is that insufficient?

Mr. CUNNINGHAM. That is incorrect.

Chairman ANDREWS. What is the shortfall?

Mr. CUNNINGHAM. The shortfall is probably, as best we can tell, in the neighborhood of $2.6, $2.7 billion.

Chairman ANDREWS. So it is substantial. What is the difference that 400 million and the 2.6?

Mr. CUNNINGHAM. Well, the $400 million is the difference between what the PBGC says is not in there, after they put the 2 billion in for the plan. They keep talking about 2 billion. We would think it would be 2.2. But no, I think you would find any actuary tell you it was about $2.6,$2.7 billion, how much it is underfunded.

Chairman ANDREWS. Without treading on any proprietary information, there is litigation over this issue, correct?

Mr. CUNNINGHAM. Absolutely there is, yes.

Chairman ANDREWS. In the course of that litigation have you retained an actuary to come up with this number?

Mr. CUNNINGHAM. No, we have not. But we have done that, had actuarial work done prior to that.

Chairman ANDREWS. Where I am going with this is I think the legislation Mr. Ryan and others have initiated on the VEBA concept provides us with an interesting vehicle to try to solve your problem, to try to solve the immediate problem. And I want some grip on the scope of that solution. Your claim is that the foreign assets against which the lien was released are worth—what did you say?

Mr. CUNNINGHAM. Between 2 and $4 billion. That can be found, although we can't excuse that here today.

Chairman ANDREWS. Okay, I don't want you to discuss anything that would imperil your litigation.

Mr. CUNNINGHAM. No, but I can tell you that that is in the PBGC administrative record.

Chairman ANDREWS. Okay.

Mr. CUNNINGHAM. It was done by an independent agent, working for the PGBC.

Chairman ANDREWS. They got an appraisal of the assets?

Mr. CUNNINGHAM. They got an appraisal of the assets.

Chairman ANDREWS. And that is a public record.

Mr. CUNNINGHAM. It is part of the PBGC record.

Chairman ANDREWS. And your testimony is that the assets were in fact liquidated for like $70 million.

Mr. CUNNINGHAM. That is correct. In an unsecured claim, which we know in the Delphi bankruptcy is worthless.

Chairman ANDREWS. So if we took the low-end valuation at 2 billion, and your testimony is 70 million, there would be a difference there of $1.8-something billion.

Mr. CUNNINGHAM..93.

Chairman ANDREWS. And if there was a way that that could somehow be recovered, or at least funded, that would close a lot of the gap that exists, if not all.

Mr. CUNNINGHAM. It certainly would, Chairman. We would be happy if you could do that today.

Chairman ANDREWS. I would be shocked if I could do that today.

I just wanted to get some—you know, lawsuits sometimes settle. And I would never presume to suggest to people how they should settle a lawsuit, but an interesting approach would be that I don't think you need statutory authority to create a VEBA. I think you can just create one. I am not sure about that. But if the VEBA could be created as part of the settlement of the lawsuit and, in part, funded, it would go part of the way toward closing this gap that exists. Here is where I think we want to get. And this does not help you immediately, but I think it is a fair picture of the goal.

Professor Stein, if defined benefit obligations of employers were treated as the highest priority under the bankruptcy law, what would have happened to Mr. Gump's and Cunningham's Delphi?

Mr. STEIN. It would depend in part on how high their priorities were and what assets were secured. I think one of the questions about foreign assets is they may have a very high face value, but they may be subject to other liens——

Chairman ANDREWS. But I am asking a slightly different——

Mr. STEIN [continuing]. Other liens, and also, yes, some of the assets. You know, you have to factory in South America that has some value as a going——

Chairman ANDREWS. But is it fair to say that there would be a lot more money available for their fund if they had higher priority in the bankruptcy——

Mr. STEIN. Actually I think there are two things. One is a higher priority in bankruptcy and the ability to create liens prior to plan termination. Currently they can only create liens for delinquent contributions prior to plan termination. In bankruptcy, by the time you get to plan termination, it is too late.

Chairman ANDREWS. I think the most creative solution to this problem is one that would recognize that your class of people here should be the first to benefit from a change in a broader law. In looking at this case, I believe that to assume that the expectations of pensioners should be on an equal or lesser playing field than that of lenders and creditors and shareholders is really rather astonishing, because you are not in a position to protect yourself the way they are. So, given that fact, and given the unusual governmental involvement here, because of the government's ownership stake in GM—which I hope is not repeated for lots of reasons—I think it would give us the basis to maybe take Mr. Ryan's legislation, work with it, and try to figure out a way to come to some solution that would have a practical impact for each of you. I cannot promise you that, but I think he has given us a very promising start that we could work from.

I want to recognize my friend, the Ranking Member.

Mr. PRICE. Thank you, Mr. Chairman, and I want to thank the panelists, Mr. Gump, Mr. Cunningham especially, for your remarkably candid and compelling testimony about the challenges that you are facing right now. And I am astounded at the unresponsiveness of members of the administration to give information about how these decisions were made, and we all should be. So I want to thank you for the information that you provided to us today.

Mr. Gump, regarding that evidence you say in your testimony that "We have definitive evidence that PBGC acted under powerful influence from the Department of Treasury on the release of these liens." Would you care to expand on that?

Mr. GUMP. I could. But if you wouldn't mind, I would ask you to transfer that question to Mr. Cunningham who is actually closer to that issue than I am. So, if you wouldn't mind.

Mr. PRICE. Yeah, let me do that as well. Let me make certain that I didn't have another item on your testimony. Let me do that. Let me go to Mr. Cunningham and talk about that evidence as well. And discuss, if you will, a little more about the release of the liens, why you think that occurred, and the nature of that evidence that you discussed.

Mr. CUNNINGHAM. Okay. First of all, the Treasury involvement is clear in the documents related to the GM bankruptcy, part of the Bankruptcy Court files. I mean you'll see them in the testimony, you'll see them all through the Bankruptcy Court filing in the GM bankruptcy. And we have—I believe we have submitted some of those to the committee. If not, we will get them to you, those specific pages.

We also have a tremendous wealth of information contained in the PBGC administrative record that references the Treasury, references the various scenarios and how this occurred. Unfortunately, we are still—and this is another irony; we are still battling with some other folks to be able to make those records public, even though they are available to you folks. We have been asked not to make them available in public. But they are there, they are there on the administrative record of the PBGC. And the detail that must be out there with the Treasury and the Automotive Task Force would be tremendous. I mean we have verbal statements from people, but not in writing.

Mr. PRICE. Do you have any sense of why this deal was cut?

Mr. CUNNINGHAM. Oh, absolutely. There is no reason—there is no question as to why the deal was cut. GM needed to exit bankruptcy early, that is number one. Number two is, in order for GM to be successful post-bankruptcy, they had to have a viable Delphi, because Delphi was still by far and large their largest supplier. Delphi could not execute the sale to the DIP financers without having those overseas assets available.

If you look at the valuation in this company, the valuation of the entire Department of the Interior of Delphi was exceeded by the value of those overseas assets. It wasn't just a factory that would be sold; these were ongoing commercial operations that were making profit. And in fact this was done on a net present-value basis, which I considered to be very conservative. And I think it could be worth between 5 and $7 billion, but their evaluator was very conservative. So that is why it was done.

Mr. PRICE. The genesis——

Mr. CUNNINGHAM. It had to get done in a hurry, as Bruce had said.

Mr. PRICE. And the genesis for all of this notion is that all of this had to be done in a hurry.

Mr. CUNNINGHAM. Absolutely.

Mr. PRICE. And the rush on that was due to——

Mr. CUNNINGHAM. Due to the government and the Treasury, at least from what we can ascertain, as well as many public statements, that they could not allow GM to languish in bankruptcy more than about 60 days; that that would hurt GM and hurt the sales, and it had to be done. In fact, some of this, I have to applaud some of these people, they did a beautiful job on some of the things. Unfortunately we got thrown under the bus.

Mr. PRICE. Yeah. My time is running out, but I wanted to get to at least one other issue, and that is the whole notion of whether there was a contract in place to top-up these pensions of some of the workers. You mention that in your testimony. Why do you believe some folks have said there was a contract that necessitated the topping——

Mr. CUNNINGHAM. Because I think that is expeditious on their part to say that. I believe the Treasury would much rather have people believe that this was a contractual obligation.

But let me point out one thing in the GM bankruptcy hearing. Tom Kennedy, the attorney for the IUE questioned Fritz Henderson and said, Why are you giving the top-off to the UAW and not to us? And Fritz Henderson said, Because we don't have any IUE employees anymore. Your people work for Delphi, you are of no use, we do not have a contract with you. That was the statement by Fritz Henderson.

It was followed through until whatever forces came out that got the IUE topped off also. I can't speak to who did that. We know it was prompted by the Treasury, but where the influence came from I can't tell you.

Chairman ANDREWS. Thank you. The Chair recognizes the gentleman from Illinois, Mr. Hare.

Mr. HARE. Thank you. Mr. Chairman, thank you for having the hearing today. Just three questions maybe for the panel, or Professor Stein. But it has been stated the administration chose to follow a commercial model when dealing with all bankruptcies. Just what exactly is a commercial model and how is it applied?

Mr. GUMP. The best we can answer that would be that from all the publications that have come out from Mr. Ratner, et cetera, who explained this in various magazines. They chose to act as a business. When they were interfering—if I could use that term—in the business of General Motors, the government chose to act as a business, and so be commercial, think commercially, all the things associated with what is it going to take for the company to succeed as a company. And so the government essentially said when it came to the retirees there was no value to helping the retirees because they are not doing anything to produce profit for their company. And so they chose, the government chose to not protect or benefit the retirees.

In the case of the UAW, because of the issues associated with potential job stoppages or whatever that might happen, they had to take care of UAW, which we think is a very good thing. Those folks earned their pensions and benefits also, and so it is a very good thing that they were able to receive—at least a very, very large portion of them. However, because the IUE had been cut off, and because the salaried folks had no commercial value to the company, the government just decided, as Mr. Cunningham said, to throw us under the bus.

Mr. HARE. I don't mean to interrupt you, but what is considered commercial value? What do they mean by that when they say you have no commercial value?

Mr. GUMP. We had no ability to help the company create a profit. So because we were retirees, no longer working for the company, as any retiree in America is, we already earned our benefits. We are not working for the company anymore. The compensation that we should be getting is compensation for the work that we have already put in. But today, and because we are retirees, we are not working for the company and helping them generate a profit. In this situation, the government chose to say that we also deserved no protection.

Mr. HARE. Well, let me just say this from my perspective. Maybe you can help me out here. Several of the unions that were topped off in terms of their pensions were made whole, if you will, or——

Mr. CUNNINGHAM. The two largest unions, the UAW, the IUE-CWA and United Steelworkers were topped off. That represented 98, 99 percent of the unionized workers at Delphi, yes.

Mr. HARE. Well, I would just say back in my district, John Deere is the world headquarters, and it is about 10 minutes from my district office, but I know that their management people had to file a suit when they cut their health care benefits.

It seems to me you work for the company, you put all these years in, and I agree with the Chairman, instead of—my father used to say, God put eyes in the front of our heads so we don't have to look backward all the time. I do think we have to maybe take a look at this.

I would like to be able to work with Mr. Ryan and anybody here on the committee to make sure that the people who were left out of the pensions get the pensions. You put the time in, you worked, you made the company what the company is. The people on the line, the people in the offices, the people that—you know, every position it just seems to me.

And to take that, a 30 to 70 percent hit, when you have worked your entire life for a company and given it everything you had—and not just the person, it seems to me, is affected, your whole family too. I mean, ordinary people, it just seems to me—which I think we all are really—you want to put your kids through school, you want to have a home, and you want to be able to get some decent health care. At the end of the day, after working your whole life for a company, you would like to have a pension you can count on.

And I think to lose that kind of funds and to lose that kind of money is something we have to fix, and we have to fix it quickly. And then we can look at and argue how this might have happened and figure that out, but we have got to pick up these people.

How many total people—and I know my time has run out—are affected by this?

Mr. GUMP. The salaried plan has about 20,000 in it, the IUE was somewhere around 70,000.

Mr. HARE. So you have 90,000 people who have paid taxes, American citizens; a lot of these people I am assuming served in the military and they are getting shorted 30 to 70 percent.

We have got to fix this problem and I will be happy to work with my friend, Congressman Ryan, or anybody here on the committee to help solve this problem. I don't think anybody ought to be left out on the pension program simply because you were management or because you were a union, and maybe not small enough. So I think we have an obligation to help you out and I would be more than happy to do that. Thank you, Mr. Chairman.

Chairman ANDREWS. Thank you Mr. Hare. The Chair is pleased to recognize the Ranking Member of the full committee, Mr. Kline.

Mr. KLINE. Thank you, Mr. Chairman, and I thank the panelists for being here.

Mr. Chairman, it is always interesting to me when you speak. You are indeed a distinguished attorney and I am sure were a fine litigator. We know that you are a famous student, a law student, but I always get a little bit nervous when you try to do math in your head.

I, on the other hand, being a Marine, have none of the above. I cannot do math in my head, I am not a famous litigator. I was a poor student in all those things. But regardless of doing math in one's head, we have got a huge difference here in money. We are talking about $70 million and 2 billion or 4 billion, or perhaps more in dollars. Regardless of where you do your math, with a pencil or in your head, is a big difference.

And I am concerned about two things here. Some have already been addressed. And that is, is there something that be can be done, the VEBA or something, addressing the issue of the Delphi employees, the salaried employees in some of the smaller unions today. But part of what we ought to be doing and I think what we are doing in this hearing, in this committee, is what is at the root of this problem? What happened? Who made decisions?

And I am very, very concerned that—I have heard language and looked at testimony here today. Mr. Gump or Mr. Cunningham, you said the PBGC walked away from $2- to $4 billion. And, Mr. Gump, in your testimony you note that you have definitive evidence that the PBGC acted and are a powerful influence for the Department of Treasury. My colleague Mr. Price was trying to get at that earlier.

The PBGC as Mr. Stein has testified—and by the way, Professor, it is good to see you back here again. The PBGC has been a very, very important backstop for so many retirees in America as companies have gone into bankruptcy, and we want to be careful to preserve that. But it is an independent organization, or it should be an independent organization. And the board, as I understand, is made up of several Department Secretaries—Treasury, Labor, Commerce. And so the potential for influence might be there through that board. But that is something we ought to know about, Mr. Chairman. We in this committee we ought to know about that, we ought to look at that. We need to understand that the role of the Auto Task Force in this, who made decisions there, who cut deals and why.

And so I am hoping, Mr. Chairman, that we will be able to get answers, not just from this panel, but maybe we need to hear from the PBGC itself. Maybe we need to hear from the Auto Task Force to understand how these decisions were made, and is it something that we ought to be able to prevent in the future, not just for the Delphi employees, but make sure that there isn't undue influence, if in fact there was, and we ought to determine whether or not there was such influence.

So I don't have a question for this panel. I think you have been very frank and forthcoming in giving us your best information and describing the numbers to us. But I think we have work to do here. I am eager that we get on with both of those problems: What can we do for them now and what can we do to uncover what happened and how we got here? I thank you and I yield back.

Chairman ANDREWS. I thank my friend from Minnesota.

The Chair is pleased to recognize the gentleman from Ohio, Mr. Kucinich, who has brought his usual tenacity and focus to this issue, for 5 minutes.

Mr. KUCINICH. Mr. Chairman, I want to thank you for holding this hearing. And I think the first thing we should recognize is that the salaried employees and those who had a union contract are really in the same boat. They are both getting denied their economic rights. We have got to be careful that we don't let anyone split unity between two groups that may come to the table from a different place, for sure, but they are both appealing to this Congress for recognition of the fact that they worked a lifetime, to come to the end of their work days only to be told that the money they were promised at the beginning would not be there in terms of their retirement benefits.

Mr. Chairman, I don't think there is anything in our democratic society that could shake people's confidence more in our economic system and in our government than the inability, the unwillingness, through either ineptness or fraud, to deliver on a promise of economic security in people's golden years that they worked for.

This isn't something that people are asking to be given, some kind of a government handout. People worked for this. Corporations have a moral responsibility. It should be first in line, not last in line.

Mr. Ryan and I were in a bankruptcy court together a few years ago when the steel industry in Ohio was struggling to survive. And employees were basically told, you know, get at the end of the line with the other creditors.

Why can't they be first, and ahead of the banks? Why can't we have laws that say that we recognize the contribution of workers to this economy as actually having precedence over those who are making profits based on paper-shoveling? It really is a statement of the values in our economy, it really is.

It really is a challenge to capitalism itself when you can have workers who are told they can have a piece of the dream if they give 20, 30, 40 years to a corporation, and then at the end of the time, say, "Guess what? The money is not there." Really. Really.

Why aren't there criminal penalties attached to that? If someone holds up a grocery store they will get 20, 30 years in jail. What if you hold up your workforce, what if you hold them up with a pen? The fundamental question is of economic justice here; the economic justice due to salaried employees and hourly employees as well.

And this Congress has a lot of work to do, as you know, Mr. Chairman, to be certain that we look at all laws that can not just protect workers in the future, but to see if we can find a way to help people who are struggling right now, because there will be a lot of American families who will find it tough to be able to hold on when they find that the money they counted on for their economic security in the future just isn't going to be there. What do they do?

Let's not split the aspirations of salaried workers and hourly workers. I am a strong union man, but at the same time, if people are getting the shaft and they are not belonging to a union, that might make our case down the road as to why the fundamental economic justice movement in our society is to make sure people have the right to organize.

Thank you very much.

Chairman ANDREWS. Thank you very much, Mr. Kucinich.

The Chair is pleased to recognize our guest for this hearing, the gentleman from New York, Mr. Lee, for 5 minutes. Welcome to the committee.

Mr. LEE. Thank you, sir, and I will try to keep it brief. I truly appreciate what you have done on behalf of these retirees. I just have one or two points. And I ask first and foremost to reiterate the frustration of not having Mr. Bloom here on an issue that is so important and trying to really understand how these decisions were made is unfortunate. And you do have my commitment that we will continue to try to push for him to be honest with the retirees on truly what has happened. I think that is an important part of this hearing we do not want to lose sight of.

But the other part—and I have to commend my colleagues who are talking here—it was mentioned, the fact that all you are looking for is fairness, not looking for anything special, you just want to be treated equally. And if there is pain to be shared, let's do it on a united front. And that is the part that from day one when I got involved with this issue, I have had the utmost respect for the individuals who are in this room. And that really is—my hat is off to you, but it is truly what has inspired me to want to help as much as I can.

One other question. I know the Chairman has outlined a potential remedy. I am curious if any of you had thoughts or ideas on what else could be done to help try to assist retirees in this situation, and that is open to any of you.

Mr. CUNNINGHAM. I believe that—and I liked what the Chairman suggested, I think that is excellent. But I believe the money is there now. I believe the money is within GM right new to top off—top up our pensions as well as the others. Although the number from a net present-value standpoint might be 2.6, 2.7 billion——

Chairman ANDREWS. Would the gentleman yield for one second so I can ask a question about that? And, again, if this is something you can't answer I appreciate it. Is GM a defendant in the suit that you brought?

Mr. CUNNINGHAM. Yes, it is.

Chairman ANDREWS. Okay.

Mr. LEE. Go ahead.

Mr. CUNNINGHAM. I believe that GM has the money. And I think it is, again, just outrageous to think that GM is choosing to use the money they are drawing down now, in the words of GM, to look at acquisitions and restructuring, most of which are overseas. They are talking about using billions of dollars of taxpayers' money to invest in, potentially, Opel or other foreign entities, while they could be putting that money to work to pay for our pension top-up. And it wouldn't be 2.7 billion straight up-front. In fact, it would be very small in the opening years.

So I believe the money is available. It was given to them by the Treasury. They said it is not required, the drawdown is not required for the day-to-day operations of the business. So if they don't need it for that, they ought to be able to use some of it, a very small part every month, to supplement us as they have the other groups. So I think that remedy is very simple, it is out there, it is available tomorrow.

Mr. LEE. Thank you. Mr. Gump, anything you wanted to add?

Mr. GUMP. Only that the issue is really—the issue we are fighting about here is about how the United States Government interfaces with the people of the United States. In this particular case, the United States Government chose to kind of pick and choose who and what groups they were going to support.

This letter that was introduced by Congressman Ryan from the President of the Ohio AFL-CIO is written on behalf of the 700,000 members of the AFL-CIO in the State. And it calls for retirees to be fairly and equitably treated; provide for the full earned pensions and other post-employment benefits in the same manner for all groups, regardless of their representation.

I am strongly union also. I believe that unions are absolutely necessary in our business model. And in spite of the fact that I was salaried, the reason I am salaried is because no union was available at the time. I would have been happy to have joined one.

I would also like, if you wouldn't mind, to introduce a concurrent resolution, currently being considered in the Ohio General Assembly, that calls for fair and equitable treatment for all workers' groups.

Chairman ANDREWS. Without objection, it will be made part of the record.

[The information follows:]

JOSEPH P. RUGOLA,
PRESIDENT, OHIO AFL–CIO,
November 25, 2009.

To: MEMBERS OF THE OHIO GENERAL ASSEMBLY.
Subject: DELPHI RETIREES.

STATEMENT OF SUPPORT

On behalf of Ohio's working families and the Ohio AFL-CIO's 700,000 members we offer our support for the introduction of a Senate Resolution that urges the President of the United States, the Secretary of the Treasury, the head of the President's Auto Task Force, and the members of the United States Congress to treat all of the General Motors-Delphi retirees fairly and equitably and provide for the full earned pensions and other post employment benefits in the same manner for all groups regardless of their representation.

CHAMPION TOWNSHIP TRUSTEES

RESOLUTION 2009-53
November 2, 2009

Whereas, the GM-Delphi Retirees have experienced discrimination regarding their treatment by the Automotive Task Force, General Motors and Delphi through a lack of fair and equitable treatment comparable to other stakeholders; and,

Whereas, this unfair discrimination was based on perceived "commercial value" of the Retirees by their Federal Government; and,

Whereas, the Youngstown State University Economic Impact Study compiled by Dr. Frank Akpadock demonstrates a devastating yearly impact in terms of both economic activity and employment on the local economy as a result of the transfer and reduction of benefits through the Pension Benefit Guaranty Corporation, and loss of health care insurance; and,

Whereas, the economic impact of that loss of earned deferred income and healthcare benefits will dramatically and negatively impact the security and welfare of the citizens of this township; and,

Whereas, earned deferred incomes of both Hourly and Salaried Retirees of Delphi are integral to the maintenance of public service for this community; and,

Whereas, we deem the situation, as it now stands, to be unfair, unethical and unreasonable,

NOW, THEREFORE, BE IT RESOLVED, that The Township of Champion, does hereby call on the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the President and Chief Executive Officer of Delphi Corporation, to immediately remedy this injustice, treat GM-Delphi Hourly and Salaried Retirees fairly and equitably in relation to other GM-Delphi Retirees, and provide for the receipt of the full pensions and health care insurance GM-Delphi Hourly and Salaried Retirees were promised over a lifetime of employment for a lifetime of work.

BE IT FURTHER RESOLVED, that this resolution shall, immediately upon passage, be submitted to the President of the United States, the Secretary of the U.S. Department of the Treasury, the Head of the President's Auto Task Force, the Chairman of General Motors, the President and Chief Executive Officer of General Motors, the Chairman of Delphi Corporation, and the President and Chief Executive Officer of Delphi Corporation.

Thomas Tracey, Chairman	✓ yes	____ no
Robert Farmer, Vice Chairman	✓ yes	____ no
Jeffrey S. Hovanic, Trustee	✓ yes	____ no

CHAMPION TOWNSHIP BOARD OF TRUSTEES

149 Center Street East
Warren, Ohio 44481
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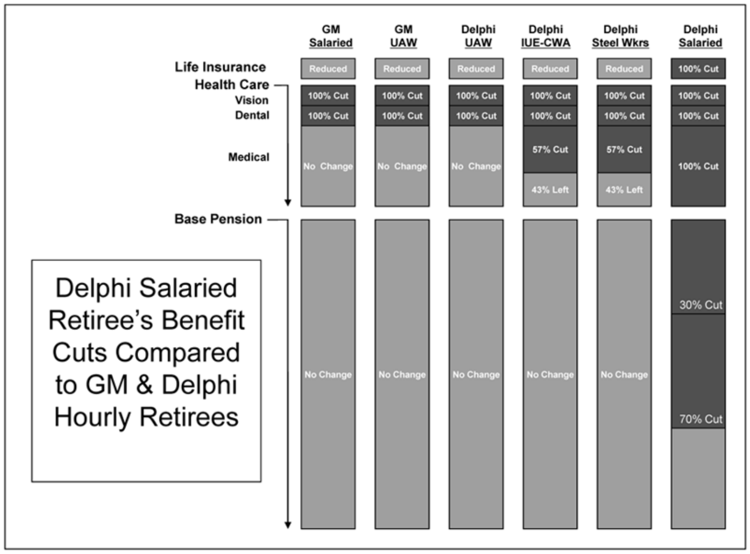

Mr. GUMP. I would be happy to leave those here.

The point I am trying to make: Everyone that we have spoken to, other than the administration who has tried to justify their actions based on a commercial model and determining that one person has more commercial value than another, is a question that we settled in this country a long time ago and we shouldn't have to discuss it today.

Trying to justify on that, every other person that I have spoken to, be they in politics, in business, be they in any other conditions, has said this is just a matter of right and wrong. It is a mistake.

And quite honestly—and I don't believe there was malice involved here, at least I don't want to believe that there was malice involved here—the issue is really more one that there was a policy that was improperly implemented and taken a little too far and it created an error. It is just an error that needs to be corrected, that is all this is. And it needs to be backed up. It is not difficult to do so.

I absolutely agree with Mr. Cunningham, the money is available. It is not this difficult to make this happen, and it just needs to be done. So I would be happy to introduce these, and I didn't mean to take too much time.

Mr. LEE. That is fine. I yield back.

Chairman ANDREWS. The Chair recognizes Mr. Kildee.

Mr. KILDEE. Thank you very much, Mr. Chairman. Dr. Stein——

Mr. STEIN. It is Mr. Stein, actually.

Mr. KILDEE. Whatever. I will give you a doctorate.

Mr. STEIN. Thank you. My brother is doctor and I think would object.

Mr. KILDEE. All I got was an MA.

What changes could or should Congress make in ERISA or in the bankruptcy laws to help those already hurt, or to prevent such harm from befalling others in the future? Or is there any need to change law?

And the second part of my question here. You also mention in your testimony that losses for Delphi workers are not typical; that historically 85 percent of participants in plans have not suffered any pension losses. I ask you this question. How adequate is the reporting obligation of companies to the PBGC and how strongly does PBGC enforce that reporting?

From what I can gather in the 33 years I have spent here in Congress serving on this committee is that there isn't—there is fuzziness of information going back and forth. You can fall into a situation where there is not much money being put into the PBGC.

If you could answer both those questions. Any changes in law and how well is PBGC enforcing information coming to them?

Mr. STEIN. Let me start with the second question. I think one of the problems that we are seeing here, and that we see often when we have terminations of underfunded plans, is employees are completely unprepared. No one really told them that this is possible. In fact, the message I think employees get from employers and from, to some extent, the PBGC, is your benefits are secure. And in fact that is true for a lot of people, but it is not true for everyone. And when there are losses, the losses are great. And people should know exactly what would happen—plan termination, if it happens, what would be the result?

I think there are a number of changes in the law that would be really helpful, I think Chairman Andrews is exactly right that PBGC and participants should be given much more consideration in bankruptcy, and even before bankruptcy.

I think one of the problems here, and this is one reason I hope I am—the liens that PBGC can get before bankruptcy only attach to—only relate to delinquent contributions. They have to wait until bankruptcy when it is essentially too late to get a lien on a company for underfunding that doesn't relate just to delinquent contributions. And PBGC really should be able to go in, when a plan is seriously underfunded, and create a lien before termination. That would have really helped in this situation.

I made a number of suggestions, I think it would take too long to deal with here, to itemize here, of changes that might happen.

Something else the committee might look at. I know or I have heard that not all TARP funds have been expended. One of the things that upset me about the use of TARP funds is that it has not been focused on the real life pain of real people, employees. And perhaps some TARP money could be used, not only to help the Delphi employees, but there are other employees who also have, because of the economy turndown, suffered pension loss. And maybe that is a possibility.

I also want to say that I think all the Delphi employees who have lost benefits have a compelling story to tell. But if you think about prioritizing, the employees that are in the worst shape are those already retired or very close to retirement, who are up against this $54,000 annual limit, which moves downward if you take a survivor benefit for your spouse; which moves downward if you start your pension a few years early. They have, I think, the most compelling story to tell.

The younger employees who suffered tremendous losses—the losses that they suffered is the ability to take full retirement at earlier ages—they have a pretty good story to tell too; but I don't think it is as compelling as people who are very close to retirement, or who have already retired.

So if there is limited money to go around, where I would focus it initially are people who are retired and very close to retirement and then look at the subsidized early retirement benefits.

Mr. KILDEE. One thing that has bothered me in my 33 years, you ask a company how fully funded is your pension plan and they say, oh, it is about 100 percent. One said we are over 100 percent funded. And you can never get that from PBGC. We are operating in——

Mr. STEIN. Yeah, and of course what it means to be 100 percent—it shouldn't have different meanings—but you ask somebody what 100 percent funding means, you will get very different answers depending on who you are asking and what their interest is.

And one of the things which I think you might look at, GM transferred money when they set up Delphi to the salaried pension plan and said it was fully funded. I spent some time trying to track this down, and I couldn't come up with a complete story. But I wonder whether under a realistic definition of full funding, the plan in fact was fully funded in 1999 when the assets were transferred.

Mr. KILDEE. It is hard to pull a number out of PBGC and the company. I think we need a change of attitude also, rather than a change of law, or maybe a little bit of both. Thank you very much.

Chairman ANDREWS. Mr. Kildee, thank you. I am going to turn now to Mr. Ryan and invite him and Mr. Lee to continue working with us and the others as we work on this issue. I think we have heard some promising ideas today. And, again, Tim, using your legislation with your colleagues as a starting point, we can work together on it. But we are glad you are with us this morning.

Mr. RYAN. Great. I just wanted to thank you again. One question, Bruce—and I know you know the answer to this—if you could share with the committee how many years you worked for General Motors.

Mr. GUMP. That depends on how you want to calculate it. The number of years I was paid for was 32 years and 7 months. I probably worked closer to 42 or 43 years altogether at 8 hours a day. Working 30 percent or more overtime is not at all uncommon amongst the salaried employees. So while we didn't pay union dues, we certainly paid dues to the company. All that overtime was gratis; it was free, unpaid.

So in addition to that, we probably had—in my case it was probably on the order of 3 or 4 years away from my family, weeks or months at a time on various travel excursions for the company.

So you know, the answer—I know you want a simple number, but honestly when it comes to trying to determine whether or not one is worthy, if you will, of protection from the United States Government to receive the same benefits that our friends in the unions have, I think it is important to understand we paid our dues; we have depended on the company and our government. And at this point in time, we have been let down by both. So we would really like to have that corrected. Thank you.

Mr. RYAN. I would just like to add, Mr. Chairman, it is complicated where we are from, because we have a General Motors plan that is going to make the Chevy crews. They just added a second shift, so we are seeing some of the benefits. But we also have thousands of employees who I don't think would be willing to buy GM cars anymore, should this situation continue. And just to say that working with you, I am more optimistic after this hearing than before with trying to build coalitions in Congress to get this done and your personal willingness to help us. But this could be and would be a stimulus for other local communities when you talk about 50-plus millions of dollars rippling throughout a couple of concentrated areas in Ohio. I think this would very much stimulate our local economy.

And the TARP money, again I voted for TARP. I was here when things were happening, and voted for it and supported it. But we have an opportunity, I think, to use some of this money now to help average families, middle-class families that we are obligated.

So I want to thank Bruce and Chuck and Marianne and Nick for you all coming down here and being so tenacious with me and with our staffs. This is a very important issue and there is nothing more heartbreaking, especially—Mr. Kildee represents Flint, Michigan. So he knows exactly what we have gone through in our area. And there is nothing more heartbreaking than promises not being kept and watching families have to go through that.

Dr. Stein—I am going to call you Dr. Stein now that you are promoted—mentioned that things are a lot better now than they were when the steel mill would close in Youngstown 30 years ago, you would show up for work and the gate would be locked and that was it. Things have improved, but we are not done yet. So we will keep going.

I thank you very much for your help, the staff and the committee on this as well. So thank you.

Chairman ANDREWS. Tim, thanks for your leadership and we look forward to working with you, Mr. Lee, and your colleagues.

At this time I will turn to my friend the Ranking Member, Mr. Price, for any closing remarks that he has.

Mr. PRICE. Thank you, Mr. Chairman. I think this has been a wonderfully helpful hearing in gaining insight into the specific challenge that many hourly and salaried workers at Delphi have, based upon what has occurred. And really the wrong that has occurred and the information that has to be gained. This has been remarkably helpful in providing that foundation of information.

But I think, as my colleagues have said, and we could have agreement on, there is information out there that we need, that we don't have. And so I would hope that the committee continues to work, to go forward in gaining that information from the administration, from the Secretary of the Treasury, from the PBGC and others as to what happened.

Yes, we do need to make certain that we correct what has occurred to date, but we can't make certain that it doesn't happen again unless we know how this one happened in the first place. I thank the Chairman.

Chairman ANDREWS. I thank my friend.

I want to thank the witnesses for really helping educate the panel, helping us learn not only about your situation but how we might address similar situations and prevent them. What I take away from this is a renewed commitment to work with the Members and Senators who care about this, and with you. And I break it into what we do not know and what we do know.

What we do not know are some, as Dr. Price said, some facts that we do need the answer to about the valuation of those assets, the decision-making dynamic around the release of those assets, and the ways this decision was made. I agree we do need that information.

What we do know is that tens of thousands of people have taken an awful hit as a result of this. We also know that there are two vehicles through which we could address that hit, try to fix this problem. The first is the legislation Mr. Ryan has proposed, along with the other members. It gives us some framework within which we can work. And the second is the litigation that you have launched, which, although it is a separate branch of government, a separate thing, it is quite useful, frankly,to have that out there at this time as well.

What we would like to do is help you in whatever way we can to remedy this hurt that you have suffered, this wrong that you have suffered. But then, as Dr. Price has suggested, use the lessons learned from this situation to construct better laws so that this doesn't happen to other people in the future.

One of the reasons I am sitting here today is that when was 14 years old, my father who had worked for 38 years at shipyard came home and said he wasn't going back to work the next Monday because the yard was closed. He was 61. This is before ERISA. And so he got one severance check that was probably worth 15 percent of what his pension was. Never got a pension. He wound up at the age of 61 back in the workforce, was fortunate enough to find a job with our hometown, picking up mail every morning at the post office and doing the banking for the local government in our town, and literally worked until the day he died when he was 75 years old because he never got a pension.

This is personal. And the fact that this could happen to somebody after the law of 19—had this happened to him after 1974, his pension would have been protected and he would have had a very different last few years of his life. But we are thankful he had those years and he was healthy enough to work and did it. We were grateful that he was.

But the fact that this is post-ERISA, post-1974, and you have relied upon these promises and because of circumstances beyond your control, for which you have no causal effect, you have to suffer these consequences, is just wrong. And rather than just say that, we would like to try to take it to the next step and figure out some way to try to help you and then learn from the lessons that you have taught us today to try to prevent for other people down the road.

As previously ordered, members will have 14 days to submit additional materials for the hearing record.

[The statement of Mr. Kildee follows:]

Prepared Statement of Hon. Dale E. Kildee, a Representative in Congress From the State of Michigan

Chairman Andrews, I would like to thank you for holding this important hearing. Thank you to our witnesses testifying today as well.

The Delphi pension issue is an issue that greatly affects my constituents in the 5th District of Michigan and that is why I requested this hearing. Until recently my district had two Delphi plants in Saginaw and one in Flint.

I believe it is both fiscally and morally right to ensure retirees receive the benefits they were promised by their employers and have planned on having during their retirement years.

Delphi retirees were promised a lifetime pension and health benefits. However, they have now learned that those promises were not 100% guaranteed.

These Delphi retirees have seen their pensions taken over by the Pension Benefit Guaranty Corporation (PBGC).

While the hourly workers will receive a top-off of their pension plans thanks to the commitment GM made to those workers when Delphi spun off from GM in 1999.

GM did not make the same guarantees to salaried employees and has stated that the salaried plan was fully funded when Delphi spun off from GM. Unfortunately for the 20,000 Delphi salaried retirees, they will be limited to the benefits from the PBGC as things stand now.

We will hear from the second panel about how workers have been affected by Delphi's bankruptcy. The loss of retirement benefits will have a devastating impact on thousands of workers and their families.

These individuals spent a lifetime working towards their retirement, only to find that their retirement benefits were not there when they needed them.

I hope that today we will have a meaningful discussion on possible remedies, including possible legislation, to benefit our workers and retirees and look forward to working with the Committee and with our witnesses to help find legislative solutions to ensure that retirees receive the pension and health benefits that they have earned.

[The statement of Mr. Boehner follows:]

Prepared Statement of Hon. John Boehner, a Representative in Congress From the State of Ohio; Minority Leader, U.S. House of Representatives

Chairman Andrews and Ranking Member Price, thank you for holding a hearing on the "Impact of Bankruptcy on Delphi Workers."

The bankruptcy of Delphi has far-reaching impact in the 8th District. Delphi had multiple facilities in the Dayton area and many retirees live in my district. Many of these individuals spent most of their careers as General Motors (GM) employees before Delphi was spun-off as an independent company.

After over three years in bankruptcy, bankruptcy court approved a reorganization plan for Delphi at the end of July. As part of its reorganization, Delphi terminated its pension plans in June, defaulting responsibility for the pension plans of its workers and retirees to the Pension Benefit Guaranty Corporation (PBGC). Reportedly, this is the fourth-largest takeover of plans in terms of people covered and second-largest based on the amount of money PBGC will pay out. More than 70,000 workers are affected.

Subsequently, Delphi's former parent company, GM, topped off the pensions of thousands of hourly workers and retirees under UAW and other union contracts. However, 15,000 salaried retirees still face significant cuts to their pensions based on PBGC rules and maximum benefits. Affected retirees may lose up to 70 percent of their expected pension benefits. Hourly and salaried employees and retirees worked side-by-side during their careers yet now are receiving disparate, inequitable treatment.

In June, I joined Congressman Mike Turner (R-OH) in writing Ron Bloom, Senior Advisor on the Auto Industry at the U.S. Department of Treasury, asking the Automotive Task Force to support the assumption of Delphi Corporation's hourly and salaried pension obligations by GM. Mr. Bloom's response, dated October 14, 2009, states, in part, "While GM has agreed to assume Delphi's hourly pension plans, unfortunately there simply is no realistic alternative to the termination of the existing Delphi salaried pension plans and the transition of their stewardship to the PBGC."

However, the taxpayer-funded rescue of GM, combined with the government-directed bankruptcy and reorganization of GM, has resulted in unprecedented government involvement and intervention in the workings of a private company and the economy. Neither GM nor the Automotive Task Force has provided a full explanation as to why some Delphi pension obligations will be met by GM while the salaried retirees are not made whole. I commend you for highlighting these issues during this hearing, but I am disappointed that an Administration official was unavailable to testify to bring some much needed transparency to this process.

On June 26, 2009, joined by 7 of my Republican colleagues, I introduced a Resolution of Inquiry—H.Res. 591. This resolution requests that President Obama transmit all information in his possession relating to certain specific communications with and financial assistance provided to General Motors Corporation and Chrysler LLC to the United States House of Representatives. This resolution focuses on the role of the Presidential Task Force on the Auto Industry in any negotiation or approval of the companies' plans for reorganization.

In regard to salaried retirees' benefits, the resolution seeks information regarding the role of the Task Force in negotiating, reviewing, approving, determining, or in any other aspect relating to, levels of and reductions in the employee and retiree benefits of General Motors' salaried employees and non-union hourly retirees.

On July 10, the House Committee on Financial Services considered the resolution for amendment. While I am not a member of this committee, I am pleased that Congressman Chris Lee (R-NY) offered an amendment, which was adopted, to include determination of pension benefits of Delphi retirees as part of the inquiry.

The resolution passed the committee by voice vote. I am hopeful that this resolution will be scheduled for a vote on the House Floor. The American people, especially those affected by the bankruptcy proceedings, deserve to be a part of an open and transparent process.

Chairman ANDREWS. Any member who wishes to submit follow-up questions in writing to the witnesses should coordinate with the Majority staff within 14 days.

Without objection, the hearing is adjourned.

[Whereupon, at 12:23 p.m., the subcommittee was adjourned.]

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