

No. 21-495

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IN THE  
**Supreme Court of the United States**

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DENNIS BLACK, *et al.*,  
*Petitioners,*

v.

PENSION BENEFIT GUARANTY CORPORATION,  
*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit**

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**BRIEF AMICUS CURIAE OF  
U.S. REPRESENTATIVE MICHAEL R. TURNER  
(10TH DIST. OHIO) JOINED BY SIXTEEN  
PRO SE MEMBERS OF CONGRESS  
IN SUPPORT OF PETITIONERS**

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MICHAEL R. TURNER  
*Counsel of Record*  
UNITED STATES REPRESENTATIVE  
OHIO'S 10TH CONGRESSIONAL DISTRICT  
2082 Rayburn House Office Building  
Washington, DC 20515  
(202) 225-6465  
michael.turner@mail.house.gov

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

Amicus U.S. Representative Michael Turner<sup>1</sup>, representing the Tenth Congressional District of Ohio in the U.S. House of Representatives, seeks to protect the constitutional interests of the Delphi salaried retirees. Many of these retirees reside in Representative Turner's Congressional District.

The *pro se* Amici Curiae listed in the Appendix support Representative Turner's brief and are themselves Members of Congress. This bipartisan, bicameral group of sixteen lawmakers represent Congressional Districts or States that are home to many other Delphi salaried retirees.

## **INTRODUCTION**

Delphi Corporation was a subsidiary of General Motors ("GM"). It supplied parts to GM and other after-market auto parts retailers. Delphi sponsored two defined benefit plans, one for its roughly 20,000 salaried, non-unionized employees and one for its hourly, union workers. Under the Employee Retirement Income Security Act of 1974 ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") guaranteed these pensions.

In 2009, as the auto industry staggered to a halt, the U.S. Treasury created the "Auto Team" to oversee a GM reorganization as the U.S. Government sought to stabilize the auto industry and the U.S. economy. The

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<sup>1</sup> Representative Turner provided timely notice to all parties of his intent to file this brief, and all parties provided him with written consent to file this brief. No counsel for either party authored this brief in whole or in part, nor did counsel for either party make any monetary contribution intended to fund the preparation or submission of this brief.

Auto Team would provide billions in Troubled Asset Relief Program (“TARP”) funds if GM adopted a 40-day quick-rinse bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. After GM filed bankruptcy, the PBGC and the Auto Team terminated the defined benefit plan for Delphi’s salaried, non-unionized employees, leaving them without the full value of their pension benefits. The Government’s failure to protect the Delphi salaried retirees deprived them of the full value of their vested retirement without Due Process and undermines public confidence in Government sponsored pension insurance and Government action during a financial crisis. After over a decade of litigation to recover the full value of their pensions, the Delphi salaried retirees filed their Petition for a Writ of Certiorari.

### **SUMMARY OF ARGUMENT**

In addition to the issues presented in the Petition for a Writ of Certiorari, review of the Sixth Circuit’s decision is warranted because the court failed to properly consider the history and circumstances when determining that the Petitioners did not have a protected property interest in their vested – but unfunded – pension benefits. Additionally, the precedent set by the PBGC and Treasury’s Auto Team in refusing to fully fund Petitioners’ pensions serves to undermine public confidence in Government sponsored pension insurance and Executive Agency action during a financial crisis. Accordingly, certiorari should be granted to properly examine Petitioners’ property interest in the vested – but unfunded – portions of their pension benefits.

## SUMMARY OF FACTS

GM's "bankruptcy was one of the largest and fastest bankruptcies in our nation's history." RE 308-4, PageID# 12622.<sup>2</sup> The Bush and Obama administrations invested \$49.5 billion into GM through the Troubled Asset Relief Program ("TARP"). *Id.* Over the course of the 40-day bankruptcy, "GM was required to develop a restructuring plan to identify how the company planned to achieve and sustain long-term financial viability." See United States Government Accountability Office, *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits* at 5 (Dec. 15, 2011), <https://www.gao.gov/products/gao-12-168> (hereinafter "GAO Report"). GM negotiated the restructuring with the Auto Team, a group of officials from the U.S. Department of the Treasury who played a "direct role in the decisions and operations of GM until" it disbanded in the summer of 2009. RE 308-4, PageID# 12622.

The problem with these negotiations, however, was that Treasury had an incentive to self-deal to the detriment of the Petitioners. As GM's only lender, Treasury's Auto Team had significant financial leverage to influence "the decisions GM made during the time period leading up to and through GM's bankruptcy." RE 308-4, PageID# 12629. One of these areas of leverage included whether Treasury would fully fund Petitioners' vested – but unfunded – pension benefits. Treasury ultimately decided that there was "not a commercially reasonable reason to do [so]" and

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<sup>2</sup> "RE" refers to a document's record entry number in the district court (Michigan). RE 308-4 is the "Special Inspector General for the Troubled Asset Relief Program, Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees," (Aug. 15, 2013).



failed to fully fund Petitioners' vested pension benefits. RE 308-4, PageID# 12650 (quoting Auto Team official Ron Bloom, a former investment banker and former head of collective bargaining for the United Steelworkers of America).

It's no surprise that Treasury came to this conclusion. The Petitioners had no leverage: they had no active employees at GM and they were not represented by a powerful union during negotiations with the Auto Team. RE 308-4. Additionally, in 1999, during Delphi's spinoff from GM, GM had more than fully funded (at 123%) the expected payments for Petitioners' pension plan, negating the need for Petitioners to negotiate a pension benefit guarantee for a top-up to the full benefit levels should Delphi fail to fund Petitioners' pensions. *Id.* At that point in 1999, GM had *underfunded* the pension plan for the *hourly* employees at only 69%. *Id.* Most importantly, however, is the fact that Treasury had its own incentive to refuse to fully fund Petitioners' vested pension benefits – not only was Treasury a GM shareholder, but the Secretary of Treasury sits as one of three directors on the PBGC's board and the PBGC ultimately would foot the bill for the top-up of Petitioners' pensions. *See* 29 U.S.C. § 1302(d)(1).

Although Petitioners lacked negotiation leverage with Treasury and GM, their situation did not lack political interest. Multiple members of Congress expressed concern about Petitioners' pensions. On 3 June 2009, Representative Boehner, the house minority leader, and I sent a letter to Mr. Bloom urging Treasury and the Auto Task Force to "support the assumption of Delphi Corporation's hourly and salaried pension obligations by General Motors." Amicus Brief Appendix ("App.") 2a. On 13 January 2010,

myself and three other members of Congress wrote to then-Treasury Secretary Timothy Geithner asking about the “disparate treatment of Delphi employees and retirees . . .” App. 5a. From 2009 until 2013, Congress held eight hearings on topics pertaining to Petitioners’ pensions, the lasting implications of GM’s bailout, and the ongoing challenges facing Delphi retirees. Cong. Research Serv., *Delphi Corporation: Pension Plans and Bankruptcy* (Jan. 23, 2014), <https://crsreports.congress.gov/product/pdf/R/R42076>. Lawmakers introduced eight pieces of legislation to address this issue and related issues. *Id.* Along with 18 other Lawmakers, I even asked President Obama to reconsider the funding of Petitioners’ pensions. App. 7a – 10a.

Importantly, on 30 September 2020, myself and 17 other members of Congress wrote President Trump, asking his administration to “intervene on behalf of [Petitioners] to ensure that the [PBGC] restores [Petitioners’] pensions to the greatest extent possible and makes [them] whole.” App. 11a. Partially because of this letter, President Trump promulgated a Memorandum in October 2020, directing the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Labor (the PBGC’s three directors) to review the Delphi matter and, within 90 days, inform the president of any appropriate action that may be taken to address Petitioners’ lost pension benefits and to bring additional transparency to the decision to terminate the plan. White House, *Mem. On the Pensions of Delphi Corp. Retirees and Other Retirees Covered by Vulnerable Pension Plans* (Oct. 22, 2020), <https://www.presidency.ucsb.edu/node/346069>. Nearly one year later and after 30 Members of Congress inquired about the Presidential Memorandum, Treasury finally responded in a one-page letter indicating that

the PBGC's three Directors unilaterally concluded that "Congressional action would be required to restore these lost pensions" and therefore they "have not taken further steps on this issue." App. 14a. As of the filing of this brief, I am not aware of an official response to the Presidential Memorandum from the PBGC despite my inquiries and my Freedom of Information Act Request.

### ARGUMENT

Instead of examining these circumstances to determine whether Petitioners maintained a property interest in the full amount of their vested – but unfunded – pension benefits, the Sixth Circuit focused exclusively on whether the "private contract between the [Petitioners] and Delphi" created the "source of the purported property interest." Pet. App. 19a. However, property interests are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits that support claims of entitlement to those benefits." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). In addition to contravening footnote 10 in *Nachman Corp. v. Pension Benefit Guaranty Corporation*, 446 U.S. 359 (1980), as Petitioners argue, the Sixth Circuit also failed to properly consider the history and circumstances of GM's unprecedented bankruptcy in determining that Petitioners did not have a protected property interest in the vested – but unfunded – pension benefits. Additionally, the precedent set by the PBGC and Treasury's Auto Team in refusing to fully fund Petitioners' pensions undermines public confidence in Government sponsored pension insurance and Executive Agency action during a financial crisis.

**I. THE SIXTH CIRCUIT FAILED TO CONSIDER THE HISTORY AND CIRCUMSTANCES OF GM'S "QUICK RINSE" BANKRUPTCY IN DETERMINING THAT PETITIONERS DID NOT HAVE A PROTECTED PROPERTY INTEREST IN THE VESTED - BUT UNFUNDED - PENSION BENEFITS.**

A court should examine the history and overall circumstances in determining whether a protected property interest exists. *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998). In *Phillips*, this Court determined that interest earned on the principal deposited into an Interest on Lawyers Trust Account (IOLTA) is the private property of the lawyer's client for the purpose of the Takings Clause of the Fifth Amendment. *Id.*<sup>3</sup> In determining whether "existing rules or understandings [stemming] from an independent source such as state law" created protected property in the interest on the accounts, this Court evaluated the history and circumstances of the creation of the accounts in addition to the specific rules applying to IOLTAs. *Id.*, at 164 (quoting *Board of Regents*, 408 U.S. 564). For example, this Court cited a mid-1700's English common law case holding that "[i]nterest shall follow the principal, as the shadow of the body. . . ." *Phillips*, 524 U.S. 165 (citations and internal quotation marks omitted). This Court evaluated the precedent set by client accounts in other States. *Phillips*, 524

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<sup>3</sup> This Court in *Phillips*, however, did not "express any opinion on the question whether the [interest income from the IOLTA accounts] had been 'taken' by the State or 'as to the amount of just compensation, if any, due to [the clients]'" *Brown v. Legal Foundation of Wash.*, 538 U.S. 216, 220 (2003) (quoting *Phillips*, 524 U.S. 172).

U.S. 156. This Court distinguished IOLTAs from other types of accounts, such as income-only trusts and marital community property. *Id.* This Court differentiated IOLTA funds from government safeguarded funds because IOLTA accounts “are managed entirely by banks and private attorneys.” *Id.*, at 171.

Most importantly, however, this Court in *Phillips* looked at the Government’s purpose in taking the earned interest in the first place, expressing the possibility of a different outcome if “the interest income generated by IOLTA accounts was transferred to the [Government] as payment ‘for services rendered. . . .’” *Id.*, at 171 (quoting *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449, U.S. 155, 157 (1980) which, in a narrowly tailored holding, determined that the interest earned on an interpleader fund in the lower court’s registry is protected property, and the lower court’s withholding of that interest violated the Fifth Amendment’s purpose to prevent “Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Webb’s Fabulous Pharmacies, Inc.*, 449 U.S. 163 (citations and internal quotation marks omitted)). In sum, this Court considered the history and overall circumstances in addition to the plain meaning of IOLTA’s statutory language in determining that the interest income generated by funds held in IOLTA accounts is “the private property of the owner of the principal.” *Phillips*, 524 U.S. 172 (internal quotation marks omitted).

The Sixth Circuit failed to examine the history and overall circumstances in determining whether Petitioners maintained a protected property interest in their vested – but unfunded – pension benefits and instead focused exclusively on the source document for

Petitioners' retirement plan. This ignores the precedent set by this Court in *Phillips* and *Webb's Fabulous Pharmacies*. It also ignores the reality of Delphi's spinoff from GM and the political landscape of GM's subsequent quick rinse bankruptcy. In 1999, during Delphi's spinoff from GM, Delphi's Salaried Plan was funded at 123%, and the hourly plan funded at only 69%, so it makes sense that the unions representing hourly employees would negotiate for a top-up, and that the non-union Petitioners did not receive such a guarantee. Additionally, the Sixth Circuit determined that Petitioners did not have a property interest in the vested pension benefits "*by necessary implication*" merely because the Salaried Plan document affirmatively provides that *funded* benefits are nonforfeitable. Pet. App. 19a, (emphasis added). This is a very narrow reading of one sentence in the Salaried Plan drafted 10 years before GM's unprecedented bankruptcy, when the distinctions between funded and unfunded benefits were less meaningful to the then over-funded Petitioners.

However, the actual circumstances of GM's bankruptcy further bolsters Petitioners' property interest in their vested pension benefits. Every other pensioner associated with GM received full pension benefits after the bankruptcy *except* the Petitioners. The Delphi hourly plan participants avoided reductions in their pension benefits because "they were transferred into GM's plan prior to PBGC's termination of the Delphi plan." GAO Report at 28. Or, post-bankruptcy GM agreed to top up the hourly employees represented by smaller unions. RE 308-4, PageID# 12660. The International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW") represented 99% of GM's unionized workforce at the time of its restructuring and had immense bargaining

leverage over GM. RE 308-4. Treasury and GM agreed that post-bankruptcy GM would “assume the liability for the top-up of pensions of UAW hourly retirees at Delphi.” RE 308-4, PageID# 12648. But because the Petitioners were not at the bargaining table with a self-interested Treasury department, and they were not represented by a powerful union, they lost out on their vested pension benefits. Here, the Sixth Circuit failed to evaluate Petitioners’ property interest compared to other retirees, unlike this Court in *Phillips* comparing different types of funded accounts and the IOLTA accounts of other States.

Finally, the Sixth Circuit failed to examine the Government’s purpose for refusing to fund Petitioners’ vested pension benefits, unlike this Court in *Phillips* and *Webb’s Fabulous Pharmacies*. “With their leverage as the purchaser of GM’s assets in bankruptcy, Treasury’s Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury’s preferences.” RE 308-4, PageID# 12657. Apparently, Treasury’s preference was to cater to one specific type of GM employee (hourly, unionized) over another (salaried, non-unionized). This is important to the analysis of whether Petitioners’ have a property interest in their vested – but unfunded – pension benefits because the Government elevated the importance of unfunded benefits for one type of retiree over another, suggesting an identifiable purpose and that the Government recognized the significance of these vested benefits. Here, contrary to the evaluation in *Phillips* and *Webb’s Fabulous Pharmacies*, the Sixth Circuit ignored the Government’s purpose for taking the Petitioners’ property in determining whether Petitioners have a protected interest in their vested benefits. The Government’s purpose matters because it also informs the greater public about the stability of

the Government's pension insurance guarantee and whether the Government can effectively govern during a crisis.

**II. THE PRECEDENT SET BY THE PBGC AND TREASURY'S AUTO TEAM IN REFUSING TO FULLY FUND PETITIONERS' PENSIONS UNDERMINES PUBLIC CONFIDENCE IN GOVERNMENT SPONSORED PENSION INSURANCE AND EXECUTIVE AGENCY ACTION DURING A FINANCIAL CRISIS.**

A central purpose in enacting ERISA “was to prevent the ‘great personal tragedy’ suffered by employees whose vested benefits are not paid when pension plans are terminated.” *Nachman*, 446 U.S. 374 (quoting Senator Bentsen, the member of the Senate Committee on Finance most active in sponsoring ERISA, 120 Cong. Rec. 29,950 (Aug. 22 1974)). Congress was concerned about employers failing to fulfil their obligations under various pension plans due to plan mismanagement and instability. *Id.* “Congress wanted to correct this condition by making sure that if a worker has been promised a defined pension benefit upon retirement – and if he has fulfilled whatever conditions are required to obtain a vested benefit – he actually will receive it.” *Id.*, at 375. To this end, Congress included in ERISA a fiduciary duty benefiting plan participants and beneficiaries for the exclusive purpose of “providing benefits to participants and their beneficiaries [and] defraying reasonable expenses of administering the plan[.]” 29 U.S.C. § 1104(a)(1)(A)(i) – (ii) *see also* 29 U.S.C. § 1342(d)(3).

Since 2009, Petitioners have merely asked for the full amount of the vested benefits promised to them upon their retirement from Delphi. Instead of



receiving the full value of their pensions, the Government, through the PBGC and Treasury's Auto Team, has deprived Petitioners of this benefit. This undermines public confidence in ERISA and Executive Agency action because the Government's behavior raises the specter of self-interest and partisanship. Additionally, and more importantly, it establishes a concerning precedence for the next financial crisis: winners and losers are hand-selected by whatever party happens to be in power instead of according to established law, regulation, and equity.

The Government's self-interest and partisanship during GM's bailout undermines public confidence in ERISA. "The auto bailout was the only [Troubled Asset Relief Program] with a President's Designee responsible for the restructuring of the TARP recipient." RE 308-4, PageID# 12622. The Auto Team's role in GM's restructuring was more than advisory – Treasury controlled the funds which meant that the "Auto Team used their financial leverage as GM's only lender to significantly influence the decisions GM made during the time period leading up to and through GM's bankruptcy." *Id.*, at PageID# 12629. Auto Team leader Rattner requested GM's original CEO to resign and asked GM's Chief Operations Officer, who was more amenable to initiating bankruptcy proceedings, to serve as CEO. *Id.*, at PageID# 12630. The Auto Team rejected GM's original restructuring plan. *Id.* And, of course, the Auto Team wanted to cut the costs of Delphi's pensions. *Id.* Through Treasury's Auto Team, the Government maintained nearly unfettered discretion over GM's restructuring, negotiations with various unions, and negotiations with the PBGC (who is overseen by Treasury), without concurrent accountability into how the Auto Team allocated nearly \$50 billion in taxpayer

funds. This self-interested dealing meant that Petitioners lost the unfunded portion of their pensions.

The Government's behavior during GM's bailout further undermines public confidence in ERISA and Bankruptcy proceedings, generally, because the Auto Team and the PBGC thwarted pre-denial, due-process judicial review *twice*, and therefore cannot be held accountable to a fiduciary duty. The PBGC's refusal to fully fund Petitioners' pension defies ERISA's fiduciary requirements for plan trustees to behave with the "care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting" in a similar capacity would behave. 29 U.S.C. § 1104(a)(1)(B). And, the Auto Team's self-dealing skirted the fiduciary obligations under Chapter 11 as they related to Petitioners' pensions. In other words, the Government avoided the fiduciary duties that Congress legislated into existence through Title 11 and Title 29, all without *any* pre-denial judicial review. Despite clear Congressional intent otherwise, the Auto Team and the PBGC circumvented statutory checks intended to protect Petitioners and the rest of the U.S. economy.

Petitioners' plight sends the wrong message to the public. The next time a financial crisis occurs, and a major U.S. industry needs government funding and restructuring, it should occur with adequate supervision and oversight. Here, the Auto Team and its staff of 15 people had an oversized influence on key decisions about employing \$50 billion in taxpayer money, ultimately to the detriment of Petitioners. What's especially frustrating about Petitioners' decade-long odyssey to restore their pensions is the level of intransigence shown to them by the PBGC and members of the Auto Team. The District Court alludes

to a “seven-year discovery battle between [Petitioners] and . . . PBGC.” RE 282, PageID# 11176.<sup>4</sup> To put this in perspective, at this point, the PBGC is a trustee of Petitioners’ pension plan; however, it refused to adequately respond to Petitioners’ discovery requests about that exact plan. Although the District Court declined to do so, “one could reasonably construe [the PBGC’s argument to avoid document production] as a frivolous last-ditch effort to delay or ultimately avoid the production of those documents.” *Id.*

In addition to PBGC’s unnecessary discovery delays, leaders of the Auto Team initially refused to submit to interviews for the Special Inspector General. RE 308-4. In fact, it was not until a Congressional hearing in July of 2012 regarding this refusal that the Special Inspector General finally learned that they would submit to an interview. *Id.* And, the PBGC has still apparently refused to respond to a *Presidential Directive* to review options to restore Petitioners’ pensions despite there being no evidence that it has been rescinded by the current administration. The PBGC also chooses to ignore 29 U.S.C. §1347, which authorizes the PBGC to “take such action as may be necessary to restore [a terminated plan] to its pretermination status” when the PBGC determines such action “to be appropriate and consistent with its duties” under ERISA. *Id.*

In the fallout after GM’s quick rinse bankruptcy, Auto Team leader Steven Rattner even admitted that it may have *overpaid* for the post-bankruptcy GM. RE 308-4, PageID# 12648. Of the nearly \$50 billion in

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<sup>4</sup> RE 282 is the Opinion and Order Granting [Petitioner’s] Rule 37 Motion to Enforce Court Order [275] and Denying [the PBGC’s] Motion for Leave to File a Supplemental Reply Brief [280] from the United States District Court for the Eastern District of Michigan, Southern Division.

TARP loans that the Government provided to GM, how is it possible that Treasury's Auto Team would refuse to fund \$521 million in unfunded benefits for the Petitioners, when it agrees to top-up the pension benefits for everyone else? The Auto Team's hand-selection of winners and losers undermines public confidence in Government action, especially when paired with the Auto Team's admission that it overpaid for post-bankruptcy GM. This court should grant certiorari to review the Sixth Circuit's decision and to restore confidence in the system of checks and balances that hold our Government accountable to the Constitution, the People, and Petitioners.

### CONCLUSION

For the reasons stated above, the Petitioner's Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL R. TURNER  
*Counsel of Record*  
UNITED STATES REPRESENTATIVE  
OHIO'S 10TH CONGRESSIONAL DISTRICT  
2082 Rayburn House Office Building  
Washington, DC 20515  
(202) 225-6465  
michael.turner@mail.house.gov

October 28, 2021

## **APPENDIX**

**APPENDIX A**

**THOSE *PRO SE* MEMBERS OF CONGRESS  
SUPPORTING U.S. REPRESENTATIVE  
MICHAEL R. TURNER'S BRIEF *AMICUS CURIAE***

The following Members of Congress join in support of this brief in a *pro se* status:

Senator Rob Portman (OH, R)

Representative Steve Chabot (OH-1, R)

Representative Bill Johnson (OH-6, R)

Representative Warren Davidson (OH-8, R)

Representative Tim Ryan (OH-13, D)

Representative Bill Huizenga (MI-2, R)

Representative John R. Moolenaar (MI-4, R)

Representative Daniel T. Kildee (MI-5, D)

Representative James R. Baird (IN-4, R)

Representative Mo Brooks (AL-5, R)

Representative Austin Scott (GA-8, R)

Representative Vicente Gonzalez (TX-15, D)

Representative Debbie Lesko (AZ-8, R)

Representative Joseph D. Morelle (NY-25, D)

Representative Chris Jacobs (NY-27, R)

Representative Ralph Norman (SC-5, R)

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**APPENDIX B**

CONGRESS OF THE UNITED STATES  
WASHINGTON, DC 20515

June 3, 2009

Mr. Ron Bloom  
Senior Advisor on the Auto Industry  
U.S. Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Mr. Bloom:

We are writing to urge the Treasury Department and the Automotive Task Force to support the assumption of Delphi Corporation's hourly and salaried pension obligations by General Motors. As you know, the Dayton area was the birthplace of the Delco Corporation. It was through the hard work of Ohioans in the Miami Valley that led to Delphi's growth to several facilities in the Dayton region and all of Ohio.

Delphi's retirees in the Dayton region have encountered significant challenges as a result of Delphi's bankruptcy and the subsequent closure of Delphi's facilities. Retiree benefits have already been significantly cut. We are now learning that pension benefits could be reduced as well.

Our constituents who are salaried Delphi retirees have contacted us to let us know that it is their position that General Motors assume Delphi's salaried and hourly pension obligations. According to their data, Delphi's pension fund is significantly underfunded, while GM's plan is more solvent, currently funded at 95%. As it stands, Delphi's pension plan could default to the Pension Benefit Guarantee Corporation, which will likely result in drastic cuts to retirees' pensions.

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Shifting the obligation to GM ultimately could save taxpayer dollars, as assumption by PBGC of another underfunded plan would require an estimated \$2 billion federal subsidy to cover the shortfall.

We understand that Delphi must make difficult decisions to ensure its future viability. However further cuts to salaried retiree benefits should not be a cost-savings option. It is our hope that you will work with General Motors and Delphi Corporations to shift Delphi's pension obligations to GM. Your staff may contact Joe Heaton (joseph.heaton@mail.house.gov) with Congressman Turner's office or Stephanie Milburn (stephanie.milburn@mail.house.gov) with Congressman Boehner's office if we can be of any assistance.

Sincerely,

/s/ Michael R. Turner

Michael R. Turner  
Member of Congress

/s/ John Boehner

John Boehner  
Member of Congress



4a

ONE HUNDRED ELEVENTH CONGRESS  
CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND  
GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143  
MAJORITY (202) 225-5051  
FACSIMILE (202) 225-4784  
MINORITY (202) 225-5074  
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January 13, 2010

The Honorable Timothy Geithner  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Secretary Geithner:

On October 6, 2009, four years after filing for Chapter 11 bankruptcy, Delphi Corporation exited bankruptcy as Delphi Holdings. Under the modified restructuring plan, facilitated by the Obama Administration and approved by the U.S. District Bankruptcy Court for the Southern District of New York, the Pension Benefit Guaranty Corporation (PBGC) took over the Delphi pensions and GM agreed to supplement hourly retiree pension payments. PBGC assumed \$6.2 billion in liabilities for six Delphi pension plans covering 70,000 employees and retirees. In addition to acquiring four U.S. steering component plants under the modified restructuring, GM agreed to use money from its own pension funds to supplement the 46,000 Delphi hourly unionized employees' pension payments to make up

for the 30 to 70 percent cut in benefits resulting from the PBGC's takeover of the Delphi pension plans. This unprecedented agreement was not extended to the 21,000 salaried workers and retirees.

Recently, when questioned on the disparate treatment of Delphi employees and retirees, GM explained that it agreed to supplement Delphi union employees and retirees because it had promised to do so in 1999. It did not supplement Delphi non-union employees and retirees because it "isn't something that GM has any control over" and "GM doesn't have the legal obligation nor does it have the money to re-fund those pensions."<sup>1</sup>

The explanations offered by GM are insufficient. After receiving over \$53 billion in assistance from the Treasury, the American people became the single largest GM stockholder. They deserve a complete explanation for the disparate treatment of Delphi employees and GM's use of taxpayer dollars. To better understand how these decisions were made, we are writing to request the following documents:

All records and communications between the U.S. Department of the Treasury and the President's Automotive Task Force, the United Auto Workers, the Pension Benefit Guaranty Corporation, GM, Delphi Corporation and Holding, any Member of Congress or other public official, referring or relating to retirement or pension benefits for GM or Delphi Corporation employees, between November 1, 2008 and November 1, 2009.

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<sup>1</sup> Walsh, Mary Williams, For Delphi Pensioners, the Union Label Helps, The New York Times, October 27, 2009. Available at <http://www.nytimes.com/2009/10/27/business/27delphi.html?pagewanted=print>.

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The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, it has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. This broad jurisdiction includes the oversight of Executive Branch operations and administrative functions.

We request that you provide these documents to the Committee as soon as possible, but in no case later than 5:00 p.m., Wednesday, January 27, 2009. You can submit the documents to Room B-350A, Rayburn House Office Building.

If you have any questions or comments please contact Marvin Kaplan, Counsel, at (202) 225-5074.

Sincerely,

/s/ Darrell Issa  
Darrell Issa  
Ranking Member

/s/ Dan Burton  
Dan Burton  
Member of Congress

/s/ Michael R. Turner  
Michael R. Turner  
Member of Congress

/s/ Jim Jordan  
Jim Jordan  
Member of Congress

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CONGRESS OF THE UNITED STATES  
WASHINGTON, DC 20515

September 30, 2013

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

Dear Mr. President:

We are writing to request that you review the ongoing situation involving the receipt of reduced pension benefits by salaried retirees of Delphi Corporation.

As you may know, the House Committee on Oversight and Government Reform's Subcommittee on Government Operations held a hearing on September 11, 2013 to review the findings of the audit issued by the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) entitled, "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees."

The SIGTARP audit indicates that representatives from General Motors approached former Auto Team leader Steven Rattner with their desire to provide assistance to the Delphi salaried retirees during the bankruptcy to preserve their pensions. Mr. Rattner was opposed to the idea and advocated against GM taking any such action. Following the decision to not provide these retirees with assistance, Dr. Lawrence Summers, former Director of the National Economic Council, prepared a briefing memorandum for you describing the loss of Delphi salaried retirees' pensions.

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In light of the fact that Congress and the American public now have more information available to them regarding the involvement of the Treasury Department and the hardship faced by these retirees, we request that you take the opportunity to review their situation again. It is our hope that the information that has been made public through Congressional hearings, document requests, and several investigations will afford you the opportunity to reconsider the impact of this Administration's decision to withhold assistance.

Thank you for your attention to this matter.

Sincerely,

/s/ Michael R. Turner  
Michael R. Turner  
Member of Congress

/s/ Thad Cochran  
Thad Cochran  
U.S. Senator

/s/ Tim Ryan  
Tim Ryan  
Member of Congress

/s/ Sherrod Brown  
Sherrod Brown  
U.S. Senator

/s/ Roger F. Wicker  
Roger F. Wicker  
U.S. Senator

/s/ David P. Joyce  
David P. Joyce  
Member of Congress

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/s/ Pat Tiberi

Pat Tiberi  
Member of Congress

/s/ Beto O'Rourke

Beto O'Rourke  
Member of Congress

/s/ Steve Chabot

Steve Chabot  
Member of Congress

/s/ Bill Johnson

Bill Johnson  
Member of Congress

/s/ Kerry Bentivolio

Kerry Bentivolio  
Member of Congress

/s/ Luke Messer

Luke Messer  
Member of Congress

/s/ Rob Portman

Rob Portman  
U.S. Senator

/s/ Susan W. Brooks

Susan W. Brooks  
Member of Congress

/s/ Gregg Harper

Gregg Harper  
Member of Congress

/s/ Dan Kildee

Dan Kildee  
Member of Congress

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/s/ Steve Stivers

Steve Stivers  
Member of Congress

/s/ Mike Kelly

Mike Kelly  
Member of Congress

/s/ Chris Collins

Chris Collins  
Member of Congress

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CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515

September 30, 2020

The Hon. Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Mr. President,

We strongly encourage you to intervene on behalf of the Delphi Salaried Retirees to ensure that the Pension Benefit Guaranty Corporation (PBGC) restores the retirees' pensions to the greatest extent possible and makes the retirees whole. Your intervention will provide a just and equitable resolution to a difficult and harmful situation.

In 2009, the PBGC terminated the pensions of the salaried employees of Delphi. The salaried retirees suffered significant losses to their benefits, with some losing as much as 70 percent of their benefits.

After over a decade of lawsuits, the PBGC still refuses to work in good faith with the salaried retirees. Conservative projections estimate that the salaried retirees' pension fund has now accrued enough assets and liabilities to be significantly restored to the salaried retirees. However, the PBGC refuses to release evidence and data to the salaried retirees about the fate of their pension fund.

Fortunately, your Administration can take the actions necessary to reverse this injustice. According to 29 U.S. Code § 1347, the PBGC, at its discretion, can restore a previously terminated pension to its beneficiaries. Additionally, the PBGC Board of Directors



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includes Secretary of Labor Eugene Scalia, Secretary of Treasury Steven Mnuchin, and Secretary of the Department of Commerce Wilbur Ross. We encourage you to direct these three members of your Cabinet to have the PBGC release the fund's monthly assets and liabilities, negotiate in good faith with the salaried retirees, and settle this matter by restoring to the greatest extent possible the full pension benefits of the Delphi Salaried Retirees.

Thank you for your consideration of this matter. We hope you will act to reverse the harm this injustice has inflicted on tens of thousands of lives.

Sincerely,

/s/ Michael Turner

MICHAEL TURNER

Member of Congress

DANIEL T. KILDEE

Member of Congress

MARCY KAPTUR

Member of Congress

JOYCE BEATTY

Member of Congress

TIM RYAN

Member of Congress

JOSEPH D. MORELLE

Member of Congress

MO BROOKS

Member of Congress

RALPH NORMAN

Member of Congress

**JOHN MOOLENAAR**  
Member of Congress

**STEVE STIVERS**  
Member of Congress

**BILL JOHNSON**  
Member of Congress

**BILL HUIZENGA**  
Member of Congress

**STEVE CHABOT**  
Member of Congress

**WARREN DAVIDSON**  
Member of Congress

**JAMES R. BAIRD**  
Member of Congress

**AUSTIN SCOTT**  
Member of Congress

**SUSAN W. BROOKS**  
Member of Congress

**BRYAN STEIL**  
Member of Congress

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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

August 23, 2021

The Honorable Tim Ryan  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Ryan:

I write in reply to your July 20, 2021, letter to the Secretaries of the Treasury, Labor, and Commerce inquiring about the status of the information requested by the Presidential Memorandum issued by President Donald J. Trump on October 22, 2020. I am responding on behalf of all three Secretaries.

The Presidential Memorandum calls for the Secretaries of Treasury, Labor, and Commerce to conduct a review of issues related to the termination of the pension plans sponsored by the Delphi Corporation. The Pension Benefit Guaranty Corporation reviewed the potential to restore the lost pension benefits for the approximately 6,000 salaried, non-unionized Delphi employees who incurred benefit reductions when their single-employer plans were terminated by the Pension Benefit Guaranty Corporation in 2009. The Departments of Treasury, Labor, and Commerce concluded that Congressional action would be required to restore these lost pension benefits. Therefore, we have not taken further steps on this issue.

We appreciate your commitment to these issues and share the goal of ensuring a safe and secure retirement for American workers and their families.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs.

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Sincerely,

/s/ Craig Radcliffe

Craig Radcliffe

Deputy Assistant Secretary  
for Banking and Finance

Office of Legislative Affairs

cc:

The Honorable Michael R. Turner

The Honorable Dan Kildee

The Honorable Joyce Beatty

The Honorable Ralph Norman

The Honorable Vincente Gonzalez

The Honorable Austin Scott

The Honorable Brian Higgins

The Honorable Steve Chabot

The Honorable Chris Jacobs

The Honorable Bill Johnson

The Honorable Elissa Slotkin

The Honorable Joseph D. Morelle

The Honorable Bryan Steil

The Honorable Warren Davidson

The Honorable Bill Huizenga

The Honorable Lisa C. McClain

The Honorable John R. Moolenaar

The Honorable John Katko

The Honorable Mary Kaptur

The Honorable Victoria Spartz

The Honorable Debbie Lesko

The Honorable Jack Bergman

The Honorable Debbie Dingell

The Honorable Salud Carbajal

The Honorable Andy Levin

The Honorable James R. Baird

The Honorable David P. Joyce

The Honorable Martin J. Walsh

The Honorable Gina M. Raimondo