The New York Times
nytimes.com

August 15, 2008

U.S. Is Pressuring Delphi Over Pension Obligations

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The government is trying to force Delphi to transfer more than $1.5 billion of unfunded pension obligations to General Motors by Sept. 30. It is warning Delphi, the big auto parts maker, that if it misses the deadline, it will have to contribute more than $2 billion to the fund, a burden that could dash any hopes of Delphi emerging from bankruptcy with its pension plan intact.

Delphi's efforts to put together a strategic plan to come out of bankruptcy fell apart in April. Since then, it has struggled to arrange financing in a worsening economy with a deteriorating outlook for the auto industry. If a deal is not reached, the company may have to terminate its pension fund.

The Pension Benefit Guaranty Corporation, the federal agency that takes over pension funds terminated in distress, is warning that it would then lay immediate claim to $8 billion, diluting the claims of Delphi's other unsecured creditors, who are owed about $3.5 billion. Already, the pension agency has been placing liens on a number of Delphi's foreign plants and other assets, girding itself to fight for a share of the money.

"The negative consequences will be severe for all of Delphi's stakeholders," Charles E. F. Millard, the director of the pension agency, wrote in a letter to top executives of G.M. and Delphi on Thursday.

As long as Delphi keeps its pension plan intact, the pension agency has no claims on the unsecured creditors' money.

When G.M. spun off Delphi as an independent auto parts company, it spun off part of its pension fund to cover the workers shifted to Delphi. G.M. also agreed to take back part of that fund if Delphi were ever in severe financial distress.

G.M.'s pension fund is now strong because of the company's decision to sell $13 billion of bonds in 2003 and put the proceeds into its pension fund. Most parties to Delphi's bankruptcy proceedings say that as a result, G.M.'s pension fund could safely absorb $1.5 billion of unfunded pension obligations from Delphi. But the longer the negotiations continue, the more the cost to G.M. could grow — and G.M. wants to get the best possible return for its support.

This year, G.M. had been preparing to take back a portion of the pension fund as part of Delphi's reorganization plan. Delphi has been allowed to skip its pension contributions while in bankruptcy, and it also received waivers from the Internal Revenue Service that pushed the due dates into the future.

But this spring, with its reorganization seemingly on track, Delphi allowed the I.R.S. pension waivers to expire. And then oil prices soared, the auto sector's prospects took a sharp turn for the worse, Delphi lost a crucial part of its financing and its reorganization plan unraveled, scuttling the pension transfer to G.M.

In the months since, Delphi has been locked in a legal dispute with its departed bankruptcy-exit financier, Appaloosa Management, and uncertainty has mounted about the American auto industry's overall future. Delphi has not been able to find new exit financing.

Meanwhile, because the pension waivers were allowed to expire, Delphi's pension contribution schedule is speeding up again. On Sept. 30, about $2.4 billion in contributions will come due.

Delphi does not have $2.4 billion to spend on its pension fund. It does not have to produce that much cash on Sept. 30, because of an eight-month grace period, but as it falls behind schedule, the I.R.S. has the authority to impose excise taxes. Delphi disclosed in a filing with the Securities and Exchange Commission that it could be liable for as much as $3.4 billion in excise taxes on top of the $2.4 billion contribution.

Given Delphi's difficulties finding exit financing, its situation would become untenable if it were suddenly liable for $5.8 billion in overdue pension contributions and penalties.

As Delphi has been dealing with these setbacks, G.M. has been rethinking its willingness to take over a share of Delphi's pension plan and provide other help. In addition to taking over part of Delphi's pension obligations, G.M. has committed itself to helping Delphi close manufacturing sites, financing buyouts, buying some of Delphi's output and taking over some of Delphi's retiree health obligations.

In its S.E.C. filings, G.M. has estimated the cost of all this support at $11 billion. The amount would grow significantly if Delphi had to terminate its pension fund, according to people close to the bankruptcy negotiations.

Last spring's strategic plan had called for G.M. to receive compensation in the form of cash, notes and stock in the new Delphi after it came out of bankruptcy. But as Delphi's problems have deepened, G.M. wants to make sure its compensation will still be adequate, given its crucial role.

People close to the negotiations said they feared G.M. was engaging in brinksmanship by prolonging negotiations. A G.M. spokeswoman did not respond to a call seeking comment.

Meanwhile, Delphi's unsecured creditors seemed concerned that G.M.'s efforts to get better compensation would worsen their own chances of a recovery on their claims, now almost three years old.

Despite the plea by Mr. Millard, the pension agency director, that the pension transfer to G.M. go forward before the Sept. 30 deadline, Delphi's creditors expressed little interest in speeding up that transaction if it meant a delay in their bigger chess game over how Delphi would operate in the future and how its resources would be divided among creditors.

Delphi's pension plans for hourly and salaried workers cover more than 75,000 people. If Delphi manages to emerge from bankruptcy with the funds intact, the plans would be frozen, meaning that participants would no longer build up the value of their benefits, but would be guaranteed the amount they had earned by the time of the freeze.

If the plans were to terminate, the workers would still get the benefits they had earned until then, with part being paid by the government guarantor and the rest being paid by G.M. They would probably be exposed to a wrenching dispute between G.M. and the pension agency over who would pay how much, though, because of ambiguity in G.M.'s old agreement.

"The hit to the P.B.G.C. would be well in excess of $2.5 billion," said Mr. Millard, adding that he was unable to say how much in excess. "I want everyone to realize how high the stakes are."