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Strengthening the Multiemployer Pension System:

How Will Proposed Reforms Affect Employers, Workers, and Retirees

Testimony of

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Chairman Roe, Ranking Member Andrews and members of the Subcommittee it is a privilege to appear before you today on this important topic. I am pleased to hear that this Subcommittee has been united in trying to find a solution to the complex issues facing multiemployer plans. Thank you for your persistence and for your bipartisan efforts.

<u>Introduction:</u>

My name is Carol Duncan. I am the owner and CEO of General Sheet Metal (GSM) out of Clackamas, Oregon. We are a small business employing between 60 to 100 craftspeople. We perform both public and private construction services in several divisions, including Mechanical, Siding, Roofing and Metal Fabrication. I have deep and strong personal and professional connections to the construction industry.

- My company was founded in 1932, purchased in 1972 by my father and uncle to provide sheet metal to two roofing companies they operated. I began working for the company when I was 21 and just recently completed the buyout of my father.
- My brothers own the roofing company that my father and uncle started in 1950. Their firm also contributes to two defined benefit pension plans.
- My husband retired after 47 years in the industry and draws his retirement benefits from construction industry plans.
- My daughter, who just finished college, worked for me during the summers while she was growing up and has consistently expressed an interest in being the third generation family business owner. But without some structural changes to pension law, I'm not sure I should encourage her to do that. We run a successful business but the defined benefit plans GSM contributes to have unfunded plan liabilities that creates an uncertainty that I am unwilling to pass on.

I am here today also representing the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA). SMACNA was founded in 1943 and is supported by more than 4,500 construction firms engaged in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning construction in public and private markets throughout the United States. SMACNA contractors specialize in heating, ventilating and air conditioning; architectural sheet metal; industrial sheet metal; kitchen equipment; specialty stainless steel work; manufacturing; siding and decking; testing and balancing; service; and energy management and maintenance. SMACNA has 103 national and international chapters.

On the pension issue, SMACNA has worked with two coalitions. SMACNA is pleased to have worked closely with the Retirement Security Review Commission (the Commission) created by the National Coordinating Committee for Multiemployer Plans (NCCMP). The group is comprised of representatives from over 40 labor and management groups from the industries within the multiemployer community and spent 18 months in study and discussions before developing a comprehensive set of recommendations for reforms to strengthen the system. SMACNA stands in full support of the recommendations outlined in the Commission's final report titled, "Solutions Not Bailouts."

According to the 2011 PBGC Data Table, Construction industry plans comprise 55% of all multiemployer plans (MEPPs), approximately 816 out of 1475 plans nationwide. Thirty-seven percent of MEPP participants, approximately 3.9 million, are in construction industry plans. Construction industry plans vary by asset value, number of participants, number of employers, and funding status. For the 2011 plan year, an NCCMP survey showed approximately 56% were in so-called the green zone status, 26% were in endangered status, and 18% were in critical status.

The numbers speak for themselves; construction industry employers are big stakeholders in multiemployer plans. SMACNA helped form and participated in a construction employer coalition, "Construction Employers for Responsible Pension Reform." CERPR is comprised of eight construction employer associations representing the interests of approximately 34,000 construction employers. Those employer groups include the Associated General Contractors of America, Association of the Wall and Ceiling Industry, the Finishing Contractors Association, the International Council of Employers of Bricklayers and Allied Craftworkers, the Mechanical Contractors Association of America, the National Electrical Contractors Association, and the Sheet Metal and Air Conditioning Contractors' National Association, and the Association of Union Constructors. These associations represent the country's most responsible employers, the vast majority of which are small family-owned businesses. However, the real and growing issue of pension plan insolvency affects large and small employers alike.

Background:

Multiemployer pension plans are mature plans. They depend on income from two main sources to pay benefits, investment returns and employer contributions.

Pension funding contribution rates are based on information from plan trustees. Collective bargaining parties negotiate over plan contributions or on a total compensation package, but not over plan design. Once the bargaining agreement takes effect, employers are legally bound to make the payments as long as they are obligated to that collective bargaining agreement.

Employers contributing to multiemployer plans are not allowed under any circumstances, to legally defer payments to their respective pension trust funds. Construction employers cannot withhold payments to funds for capital improvements, for stock dividends, for executive pay, or wage increases, nor can funds go to any company or any union general treasury. Further, the Pension Protection Act, PPA, includes strict funding rules with adverse consequences for employers for noncompliance.

When contractors are delinquent in their contributions, plan trustees have a legal, fiduciary responsibility to take all reasonable steps to collect the delinquent amount.

Once retirement benefits are promised and there is not enough money in the plan to cover them, a plan has unfunded liabilities. It is normal for a plan to have a certain amount of unfunded vested benefits because the plan can accumulate the funds needed over time to pay future benefits. However, too many plans face funding and demographic issues that worry the employers contributing to them. The committee has reviewed the causes of the challenges faced by multiemployer pension plans in previous hearings but I want to re-emphasize that funding issues are beyond the control of contributing employers and, significantly, employers ultimately hold all the risk for plan funding. The majority of issues cannot be solved without structural changes to the defined benefit system.

Law prevented plans from accumulating reserves: In our local plan, in the 1990s when stock market returns were exceptional and work was good, plan funding approached 120%. I watched as our trustees increased benefits for participants. The plan increased the accrual rate and offered an early retirement benefit. To be clear, federal tax policy prevented plans from building reserves. Employers were legally bound by their collective bargaining agreements to make their contributions, even at a time when their contributions would have caused plans to exceed the "maximum deductible" limit. Suspension of contributions was not allowed and employers ran the risk of incurring penalties and the assessment of an excise tax on the contributions. <u>Although tax laws were changed, those benefit improvements cannot be changed and now they are part of the plan's unfunded vested benefits.</u>

Two historic market events within a decade: The market contraction between 2000 and 2002 resulted in a decline in both the local plan and the national plan and contribution rates increased. Many multiemployer plans that had been well-funded were looking at the possibility of reaching a funding deficiency. If a plan were to reach to funding deficiency, employers faced additional minimum funding obligations and related excise taxes. This funding crisis was mitigated by The Pension Protection Act (PPA) of 2006. PPA was designed to give plans more tools and time to address their funding problems.

The PPA was a good piece of legislation but in 2008, the stock market plummeted before plans were able to take advantage of the provisions to get the plans on track to better funding. In addition, it proved inflexible in this unexpected, additional crisis so soon after enactment. The national plan sustained losses of approximately 28 percent. In the best market environment, it would take 10 years or more to recover from the losses of 2008. Employer contributions have gone up. Since 2008, market gains have been uneven and any employer contributing to these plans worry about the stability of the equity markets in the future.

Economic downturn/Employer contributions: During any economic downturn, the construction industry is one of the first segments of the economy to feel the hit and it is one of the last segments to recover. Plans count on income from contributing employers that is based on hours worked. When work is not available or when a contractor cannot win a job in head to head bidding, plans take a hit. As employer pension contributions increase to make up funding shortfalls in a plan, winning a contract award becomes more difficult. Still reeling from the most recent recession, construction still has the highest industry unemployment of any industry and competition is stiff.

Unfavorable demographics: The number of retired participants drawing benefits is growing. Association data in a report SMACNA helped prepare in 2011 for the Department of Labor, the

IRS and PBGC, shows a loss of contributing contractors in several major construction industry associations. Plans are losing contributing employers, no new employers are coming into plans and many construction industry plans have a progressively unfavorable active participant/retired participant ratio.

Increasing and uncontrollable employer withdrawal liability a cause for concern

GSM currently pays into two defined benefit pension plans. We contribute to a national plan in critical status that is approximately 57% funded with scheduled contribution rate increases of 7% a year until at least 2017. That plan suffered an investment loss of approximately 28% in 2008. We also contribute to a local plan that is in the green zone but has $178 million in unfunded vested liabilities.

In recent years, GSM has contributed $1.5 million to our local plan and over $500,000 to the national plan. Yet, we're liable for amounts far beyond those contributions.

In the last year alone, GSM's contributions to the national pension plan were $149,000 but my withdrawal liability for the year increased by $280,000 – almost double my contributions. I'm making higher contributions but getting in a deeper hole with no idea or control over how much more my exposure will grow. As withdrawal liability grows, it can outpace the value of a company, especially in the case of a small family-owned business. GSM's withdrawal liability for its share of unfunded pension liabilities in both plans is almost $3 million even though GSM has made all its substantial required pension contributions.

The hard truth is, a series of factors over which I have no control have the potential to create even more plan underfunding: another downturn in the construction economy, another stock market event, increasing retirements, and withdrawal of contractors. While some construction businesses fail, others decide they need an exit strategy and I am forced to worry about the potential of a plan collapse or mass withdrawal even though I have grown GSM into a very successful business.

The government and the taxpayer share this risk. The PBGC already faces financial challenges that would be exacerbated by additional plan failures.

Members of the committee might think the only time a company would worry about the amount of withdrawal liability is when a company plans to withdraw and has to pay it. That may have been true when the Multiemployer Pension Plan Amendments were enacted in 1980, but it is certainly not true today.

Securing bank loans and bonding is more difficult: Withdrawal liability makes negotiating bank loans and securing bonding, both of which are necessary to operate a construction business, much harder to secure. This is a huge issue for small employers. The Financial Accounting Standards Board (FASB) requires detailed information on company pension plan contributions on financial statements. Even for a successful business with no intention of withdrawing from any of the plans to which they contribute, the information is sometimes misleading, raises questions and is difficult to properly explain.

Family transitions and selling a business hindered: When it is time for a business owner to retire, selling the business becomes problematic because a firm's share of pension plan unfunded liabilities (withdrawal liability) can exceed the value of the company. Successful business owners hesitate to transition their business to their children for the same reason. New employers don't want to become party to a collective bargaining agreement where they would become responsible for unfunded pension liabilities, therefore the plan cannot benefit from new employers and participants and man hours paying into the plan.

Structure of current DB plans: Members of Congress outside of the committee may not be aware that as the number of businesses in a plan dwindles, the liability for the remaining employers goes up. Every time an employer goes bankrupt or closes its doors, the remaining employers assume a proportional share of that employer's liability. When there are too few employers left standing, the fund and the remaining employers are no longer viable.

Higher contribution rates don't work for anyone: As unfunded liabilities go up more money has to go into the plan. Employers are no longer able to absorb increased contribution rates if they want to remain competitive and win bids. The result has been active employees have also been hurt. In addition to having reductions in accruals rates, they have lost wage increases and some have even taken a reduction in their paychecks as well. They do this to help to pay for the increased contributions required by remedial plans, in order to help the employer stay competitive in the marketplace.

Under the current structure, contributing employers hold all the risk for underfunded plans. This system is no longer sustainable.

Solutions:

I want you to know that Oregon Business Magazine rated GSM as one of Oregon's top companies to work for in 2010 and 2012. I feel good about taking care of our employees by paying them a living/saving wage, as well as providing good healthcare benefits and I want to continue to be able to do that.

The purpose of this hearing is to find ways to strengthen multiemployer plans and I am here today to advocate for some reasonable solutions. My hope is that the system can be reformed so that my business will be viable for the long-term and that pension benefits already earned can be saved without any bailout from the federal government. Multiemployer plans must remain solvent to keep their liabilities from going to the PBGC. For plans to remain solvent, contributing employers must continue to thrive.

I am very interested in new plan designs going forward that would offer new, more stable models for the future. I mentioned SMACNA participated in the Retirement Security Review Commission and supports the recommendations in *Solutions Not Bailouts*. The proposal outlines plan designs that maintain the best characteristics of a defined benefit model but that would not put my business at risk.

It is no longer feasible for employers to be the backup for stock market performance and my business cannot continue to be dependent on the viability of other construction employers in the plan.

GSM and SMACNA support the *Solutions Not Bailouts* proposal developed over 18 months with both labor and management around the table. I want to highlight

- It does not depend on a taxpayer bailout
- It is self-help for plans, providing them with a range of options
- It tackles all aspects of multiemployer funding issues – from plans that simply need adjustments to the PPA, to plans that need dramatic action ahead of insolvency to save precious benefits
- It would also relieve stress on the PBGC

We hope you find Solutions Not Bailouts a valuable roadmap for bipartisan solutions.

Conclusion:

Let me finish by saying, you know something is wrong when pension liabilities overtake the actual value of a company and when a mother has second thoughts about turning over a successful business to her daughter. My hope is that the committee will move expeditiously, before more construction industry firms go out of business or simply close their doors. Contributing employers and their union partners know how to make the bargaining process work. Negotiating is familiar territory for labor and management representatives who serve as Plan Trustees, but we need the structural changes recommended in *Solutions Not Bailouts*.

The PPA expires in December of 2014. That is a critical date but I would hope the Congress could act sooner. Plans are unstable and companies are at risk. Plans have taken action to improve their funding status as allowed under the PPA. New tools are needed to change the current system to match today's economic realities.

Thank you and I would be happy to answer any questions.