

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENNIS BLACK, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 2:09-cv-13616
)	Hon. Arthur J. Tarnow
)	Magistrate Judge Mona K. Majzoub
)	
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	

**STIPULATED PROTECTIVE ORDER REGARDING DOCUMENTS
PRODUCED PURSUANT TO THE COURT’S AUGUST 21, 2013 ORDER**

On August 21, 2013, Magistrate Judge Majzoub ordered the Defendant Pension Benefit Guaranty Corporation (“PBGC”) to produce to the plaintiffs in this action all documents responsive to Plaintiffs’ First and Second Requests for Production of Documents that the PBGC had previously withheld on the basis of attorney-client, work product, or deliberative process privileges (as defined below, “the Protected Documents”). *See* Dkt. No. 231 (the “Waiver Order”).

For the reasons discussed in the Sixth Circuit’s Order denying the PBGC’s petition for a writ of mandamus, *see In re Pension Benefit Guaranty Corporation*, Case No. 14-2072, Dkt. No. 10-1 (6th Cir. Sept. 23, 2014), the parties are entering

into this Stipulated Protective Order, and have agreed that the following terms are appropriate with regard to the handling of the Protected Documents:

It is hereby stipulated and agreed among the parties, and **IT IS HEREBY ORDERED** by the Court, that the following procedures shall govern the production of the Protected Documents in the action captioned above:

Definitions

1. The following definitions apply to this Protective Order ("Protective Order"):
 - a. "Action" refers to the above-captioned case pending in the United States District Court for the Eastern District of Michigan.
 - b. "Discovery Material" encompasses, but it is not limited to, any type of document, transcript of testimony, taped, recorded, filmed, electronic, written or typed matter, including the originals and all marked copies, whether different from the originals by reasons of any notation made on such copies or otherwise; all deposition testimony; all interrogatories, document requests, and requests for admission, including all responses thereto; any physical objects or other items or any other information gained by inspection of any tangible thing, including data or code stored in electronic form.

c. “Protected Documents” means those documents that the PBGC is required to produce pursuant to the Waiver Order that have been marked by PBGC as “Protected Documents – subject to protective order.”

Designation of Discovery Material

2. PBGC will designate any Protected Documents at the time of its disclosure, production, or tender to plaintiffs’ counsel, or at any other such time as may be permitted by this Protective Order. In the case of data stored in electronic form, the label "Protected Documents" shall be printed on the cover or container of the disk, tape, or other medium in which the electronic form data is stored.

3. With respect to transcripts of any deposition in which one or more Protected Documents are referred to or introduced as exhibits, PBGC shall have thirty (30) days from the date upon which the testimony is given to designate said testimony or any portion thereof as Protected Documents within the meaning of this Protective Order. In the event that a party intends to use portions or excerpts of transcripts prior to the expiration of the 30-day period, such party shall give the Designating Party at least three business days’ notice to designate said testimony or any portion thereof as Protected Documents within the meaning of this Protective Order.

4. The designation of Discovery Material as Protected Documents constitutes a representation by the PBGC that the Discovery Material has been reviewed by an attorney and that he or she believes there is a valid basis for such designation.

Disclosure and Use of Confidential Information

5. Nothing herein shall impose any restriction on the use or disclosure by PBGC of its own documents, information, Protected Documents, or Discovery Material provided such use or disclosure does not violate any person's or entity's confidentiality rights or obligations.

6. Protected Documents shall not be used by any person, other than the PBGC, for any purpose other than for prosecuting, defending, settling, appealing, or enforcing any judgment in the above-captioned Action.

7. Discovery Material designated as "Protected Documents" pursuant to this Order shall not be disclosed directly or indirectly to persons other than the following persons, as to whom disclosure shall be limited to the extent reasonably necessary for the prosecution, defense, settlement, enforcement, and/or appeal of the Action:

- a. The Court, persons employed by the Court, and the stenographers transcribing the testimony or argument at a hearing, trial, or deposition in the Action or any appeal therefrom;
- b. Counsel of record for the parties in the Action, including associates, legal assistants, paralegals, secretarial and clerical employees, and outside services (including copy services, litigation consulting services, and graphics services) who are assisting counsel in the prosecution, defense, and/or appeal of the Action;
- c. Plaintiff C. Cunningham, provided that the requirements of Paragraph 8 below have been met;
- d. Independent experts and consultants retained or employed by plaintiffs or their counsel in connection with the prosecution, defense, and/or appeal of the Action, provided that the requirements of Paragraph 8 below have been met;
- e. Any person who will testify as a witness either at a deposition or a court proceeding in the Action, as well as counsel for the witness, for the purpose of assisting in the preparation or examination of the witness, provided that the requirements of Paragraph 8 have been met;
- f. Any Court-appointed mediator or other individual appointed by the Court to perform duties with respect to the Action; and

g. Other persons upon further order of the Court or written consent of PBGC.

8. Other than disclosure of Protected Documents at a deposition, hearing, or trial, prior to being given access to any Protected Documents, persons described in subparagraphs 7c, 7d, 7e, and 7g above must be provided a copy of this Protective Order and sign the Acknowledgement attached as Exhibit A hereto agreeing to be bound by the terms of this Protective Order and agreeing to subject himself or herself to the jurisdiction of the Court for the purpose of enforcing the terms and conditions of this Protective Order. Plaintiffs' counsel shall retain copies of all executed Acknowledgements and shall provide copies of said Acknowledgements to PBGC upon PBGC's written request. Persons who receive Protected Documents at a deposition, hearing, or trial who are not otherwise authorized to receive such information pursuant to paragraph 7 above and who have not signed an Acknowledgement, may be shown and questioned about the Protected Documents during the deposition, hearing, or trial but will not be entitled to retain the Protected Documents that were disclosed.

9. If plaintiffs' counsel desires to file Protected Documents in Court, plaintiffs' counsel shall file the Protected Documents under seal, in a manner consistent with the local rules of the Court.

10. In the event that any person or entity subject to the terms of this Protective Order is served with a subpoena or request for production of the Protected Documents, then that person or entity shall:

a. provide written notice of the subpoena or request for production, as well as a copy of same, to PBGC within a reasonable time after receiving the subpoena or request for production; and

b. afford PBGC a reasonable opportunity to intervene to oppose or limit the subpoena or request for production before producing the Protected Documents.

11. The party or person receiving the subpoena shall also inform the person seeking the Protected Documents that such information is subject to this Protective Order. In no event shall the person or entity receiving the subpoena or request for production produce Protected Documents unless and until (i) such person or entity has received written authorization from counsel for PBGC to produce such information or (ii) the person or entity has been ordered to produce the Protected Documents by a court of competent jurisdiction and a copy of such order has been provided to PBGC. Except as provided in this paragraph, and paragraph 10 above, nothing contained herein shall obligate any party or person who receives a subpoena or other process seeking the production or disclosure of Protected Documents to resist such production or disclosure, or be construed as

encouraging any party or person not to comply with any court order, subpoena, or other process.

12. If any Protected Documents are disclosed to any person other than in the manner authorized by this Protective Order, plaintiffs' counsel or any other person or entity responsible for this disclosure shall immediately: (1) provide written notice to PBGC; (2) make every reasonable effort to retrieve such material; and (3) prevent further disclosure by the person who was the recipient of such Protected Documents. The written notice required by subparagraph (1) above shall include the names of all persons who improperly received Protected Documents and a description of the Protected Documents disclosed to such persons.

13. At any time, plaintiffs' counsel may challenge the classification of Discovery Material as Protected Documents. In the event of such a challenge, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, PBGC shall have the burden of proving that the Discovery Material at issue is entitled to the protection of this Protective Order. Pending a determination by the Court as to this issue, material designated by PBGC as Protected Documents shall be treated in accordance with that designation pursuant to this Protective Order.

Return of Protected Information and Termination of Action

14. Unless otherwise ordered by the Court, upon final termination of this Action (whether by judgment settlement, or otherwise), including all appeals and applications for discretionary review, PBGC may request in writing that plaintiffs' counsel return all Protected Documents by delivering a copy of such request to plaintiffs' counsel. Within thirty (30) days of receipt of the written request, plaintiffs' counsel must return all Protected Documents and all copies, extracts, and summaries of such Protected Documents to PBGC. The parties shall request that all attachments or exhibits designated under this Protective Order and filed under seal with the Court be returned within sixty (60) days to the party producing it, or that the Court destroy such material. For archival purposes, the attorneys representing the parties may retain copies of all pleadings, deposition and hearing transcripts, and exhibits, including portions designated pursuant to this Protective Order. The parties specifically reserve the right to seek to modify the terms of this Protective Order at the conclusion of the Action or such other time as may be appropriate to address how the Protected Documents should be treated.

Service of Notices to PBGC

15. All notices required to be given to PBGC shall be served by electronic mail, facsimile, overnight courier (*i.e.* Federal Express) or express, certified, or registered mail, return receipt requested, addressed as follows:

Attn.: C. Wayne Owen, Jr.
Office of the Chief Counsel
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, D.C. 20005-4026

Service of Notices to Plaintiffs

16. All notices required to be given to plaintiffs' counsel shall be served by electronic mail, facsimile, overnight courier (*i.e.* Federal Express) or express, certified, or registered mail, return receipt requested, addressed as follows:

Attn.: Anthony F. Shelley
MILLER & CHEVALIER CHARTERED
655 Fifteenth Street, N.W., Suite 900
Washington, D.C. 20005-5701

Termination of Action

17. The terms of this Protective Order shall survive the termination of the Action, and the Court shall retain jurisdiction of the Action after its final disposition for the purpose of enforcing this Protective Order.

Dated: October 17, 2014

/s/ Anthony F. Shelley
Anthony F. Shelley
Timothy P. O'Toole
Michael N. Khalil
MILLER & CHEVALIER
CHARTERED
655 Fifteenth Street, N.W., Suite 900
Washington, D.C. 20005-5701
Telephone: (202) 626-5800
Facsimile: (202) 628-5801

Attorneys for Plaintiffs

/s/ John Menke
Office of the Chief Counsel
ISRAEL GOLDOWITZ
Chief Counsel
KAREN L. MORRIS
Deputy Chief Counsel
JOHN A. MENKE
C. WAYNE OWEN, JR.
Assistant Chief Counsels
CRAIG T. FESSENDEN
ERIN C. KIM
JARED S. WIESNER
CASSANDRA B. CAVERLY
Attorneys

Attorneys for the Defendant
PENSION BENEFIT GUARANTY
CORPORATION
1200 K Street, N.W.
Washington, D.C. 20005-4026
Telephone: (202) 326-4020, ext.
3204
Facsimile: (202) 326-4112

SO ORDERED.

Dated: October 20, 2014

s/Arthur J. Tarnow

Arthur J. Tarnow

Senior United States District Judge

EXHIBIT A
**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENNIS BLACK, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 2:09-cv-13616
)	Hon. Arthur J. Tarnow
)	Magistrate Judge Mona K. Majzoub
)	
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	
)	

ACKNOWLEDGEMENT

The undersigned hereby acknowledges and agrees to be bound by the terms and conditions of the Pretrial Protective Order dated _____, 2014, made in *Dennis Black, et al. v. Pension Benefit Guaranty Corporation, et al.*, Case No. 2:09-cv-13616, in the United States District Court for the Eastern District of Michigan, a copy of which is attached hereto. The undersigned further agrees to be subject to the jurisdiction of the U.S. District Court for the Eastern District of Michigan for the purpose of enforcing the terms and conditions of the aforementioned Pretrial Protective Order.

Dated: _____

[name]