

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENNIS BLACK, et al.,

Plaintiffs,

CIVIL ACTION NO. 09-cv-13616

v.

DISTRICT JUDGE ARTHUR J. TARNOW

**PENSION BENEFIT GUARANTY
CORP., et al.,**

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

**OPINION AND ORDER GRANTING IN PART DEFENDANT'S
EMERGENCY MOTION FOR AN EXTENSION OF TIME [286]**

This matter comes before the Court on Defendant Pension Benefit Guaranty Corporation's (PBGC's) emergency motion for an extension of time to comply with this Court's March 11, 2016 Order. (Docket no. 286.) Plaintiffs have responded to Defendant's motion. (Docket no. 288.) The motion has been referred to the undersigned for consideration. (Docket no. 289.) The Court has reviewed the pleadings and dispenses with oral argument pursuant to Eastern District of Michigan Local Rule 7.1(f)(2). The Court is now ready to rule pursuant to 28 U.S.C. § 636(b)(1)(A).

On March 11, 2016, the Court ordered Defendant PBGC to produce (1) "all of the approximately 30,000 documents that it had previously withheld on the basis of privilege;" and (2) "all documents in its possession related to an audit of the Plan's assets as they are responsive to Plaintiffs' Request for Production no. 12" within thirty days. (Docket no. 282.) Asserting that it is unable to meet the production deadline set by the Court, Defendant PBGC filed the instant motion on March 30, 2016 pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), seeking to

extend the time for production to within 120 days of the Court's March 11, 2016 Order. (Docket no. 286.) Pursuant to Rule 6(b)(1)(A), "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . if a request is made, before the original time . . . expires." Fed. R. Civ. P. 6(b)(1)(A). Here, Defendant PBGC filed the instant motion before the time for compliance with the March 11, 2016 Order expired; thus, the Court must determine whether good cause exists for an extension of time.

Defendant PBGC advises that it will be able to produce the documents that it previously withheld on the basis of privilege in accordance with the March 11, 2016 Order. (Docket no. 286 at 8.) With regard to the documents related to an audit of the Plan's assets, however, Defendant cites the large quantity of documents and number of custodians of those documents as reasons for its request for an extension. (Docket no. 286 at 1.) Specifically, Defendant estimates that the number of documents will total between 300,000 and 700,000 hard copy and electronic documents, in a variety of formats, from sixty different custodians. (*Id.* at 9-10.) Defendant asserts that it must review those documents for responsiveness and make designations on those documents in accordance with the October 20, 2014 Protective Order before it can produce them to Plaintiffs. (*Id.* at 10-11.) Defendant claims that Plaintiffs will not be prejudiced by the proposed extension because discovery remains open in this matter pending the resolution of Plaintiffs' discovery dispute with the U.S. Treasury Department in the United States District Court for the District of Columbia. (*Id.* at 11.)

Plaintiffs respond that Defendant PBGC has not demonstrated good cause for the proposed extension and that Defendant's assertion that Plaintiffs will not be prejudiced by the extension is inaccurate. (Docket no. 288 at 2.) Plaintiffs assert that good cause does not exist here because Defendant has not acted diligently with regard to the documents at issue. (*Id.* at 6.)

Plaintiffs argue that Defendant has been on notice for years that Plaintiffs were seeking the documents related to Defendant's audit of their pension plan, so Defendant should have investigated the amount of responsive documents in its possession or control as well as the steps necessary to produce those documents before the March 11, 2016 Order was entered. (*Id.* at 6-8.) Plaintiffs continue that by failing to do so, Defendant's purported difficulty in meeting the production deadline is entirely self-inflicted. (*Id.*) Plaintiffs also seem to think that the documents have already been collected and identified, meaning that all Defendant should have to do is process and produce the documents under the guise of the Protective Order, with Plaintiffs assuming the task of determining responsiveness. (*Id.* at 9-11.) Finally, Plaintiffs argue that they would be prejudiced by the proposed extension because they are a group of retirees subsisting on reduced pensions, and every day that the litigation is prolonged delays their opportunity to have their pensions restored. (*Id.* at 11-12.) Plaintiff also points out that both Defendant and the U.S. Treasury Department, in seeking extensions in this matter, have disclaimed prejudice to Plaintiffs based on additional delays caused by the other. (*Id.* at 11.)

The Court has considered the parties' respective arguments in this matter, and based on the sheer volume of documents and the number of custodians involved, the Court reluctantly finds good cause to extend the production deadline with regard to the documents related to an audit of the Plan's assets only. Accordingly, the Court will order Defendant PBGC to produce the documents in its possession related to an audit of the Plan's assets to Plaintiff, without further objection, within ninety (90) days of the Court's March 11, 2016 Order. Failure to comply with this deadline may result in sanctions. The production deadline for the documents that Defendant had previously withheld on the basis of privilege will not be extended.

IT IS THEREFORE ORDERED that Defendant Pension Benefit Guaranty Corporation's emergency motion for an extension of time to comply with this Court's March 11, 2016 Order [286] is **GRANTED IN PART** as follows:

- a. Defendant will produce all documents in its possession related to an audit of the Plan's assets as they are responsive to Plaintiffs' Request for Production no. 12, without further objection, within ninety (90) days of the March 11, 2016 Order. Failure to comply with this deadline may result in sanctions; and
- b. Defendant will produce all of the approximately 30,000 documents that it had previously withheld on the basis of privilege, to the extent that it has not already done so, within thirty (30) days of the March 11, 2016 Order.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: April 6, 2016

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon counsel of record on this date.

Dated: April 6, 2016

s/ Lisa C. Bartlett
Case Manager