

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

U.S. DEPARTMENT OF THE TREASURY,)	No. 1:12-mc-00100-EGS
)	
Petitioner,)	PETITIONER’S CROSS MOTION FOR EXTENSION OF TIME
)	
v.)	
)	
PENSION BENEFIT GUARANTY CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, <i>et al.</i>,)	
)	
Respondents.)	

Petitioner U.S. Department of the Treasury hereby moves for an order extending through August 14, 2015, its time to file its response to respondents’ motion to compel (ECF No. 30) and denying respondents’ motion to expedite (ECF No. 31). The grounds for Treasury’s motion are set forth in the memorandum submitted herewith. Counsel for respondents advises that he opposes any extension of Treasury’s time to respond to respondents’ motion to compel.

Respectfully Submitted,

BENJAMIN C. MIZER
 Principal Deputy Assistant Attorney General
VINCENT H. COHEN, JR.
 Acting United States Attorney
JACQUELINE COLEMAN SNEAD
 Ass’t Branch Dir., Dep’t of Justice, Civ. Div.

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Sr. Trial Counsel, Dep't of Justice, Civ. Div.
20 Massachusetts Ave., N.W., Room 7200
Washington, D.C. 20530-0001
Tel: (202) 514-4469/Fax: (202) 616-8470
Email: david.glass@usdoj.gov
Attorneys for Petitioner

Dated: July 12, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2015, I served the within motion, the memorandum in support of the motion, the exhibits to the motion, and the proposed order on all counsel of record by filing them with the Court by means of its ECF system.

s/ David M. Glass

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

U.S. DEPARTMENT OF THE TREASURY,)	No. 1:12-mc-00100-EGS
)	
Petitioner,)	MEMORANDUM IN SUPPORT OF
)	PETITIONER’S CROSS MOTION FOR
v.)	EXTENSION OF TIME AND IN
)	OPPOSITION TO RESPONDENTS’
PENSION BENEFIT GUARANTY CORPORATION,)	MOTION TO EXPEDITE
)	
Interested Party,)	
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DENNIS BLACK, <i>et al.</i>,)	
)	
Respondents.)	
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PRELIMINARY STATEMENT

Respondents Dennis Black, Charles Cunningham, Kenneth Hollis, and Delphi Salaried Retiree Association have filed a motion to compel petitioner U.S. Department of the Treasury (Treasury) to produce all material that Treasury has withheld pursuant to claim of privilege from more than 900 documents. Respondents have also filed a motion to expedite by which they seek to limit to eight calendar days the time of Treasury to respond to respondents’ motion to compel. No reason exists, however, why Treasury should not be given the opportunity to defend its privilege claims with the clarity and detail that those claims require. Respondents’ motion to expedite should therefore be denied and Treasury should be given through August 14, 2015, to file its response to respondents’ motion to compel.

STATEMENT OF FACTS

This action involves two subpoenas of this Court issued to Treasury by respondents. One of the subpoenas (Document Subpoena) asks Treasury to produce documents allegedly relevant to the claim against interested party Pension Benefit Guaranty Corporation (PBGC) that respondents assert in *Black v. PBGC*, No. 2:09-cv-13616-AJT-MKM (E.D. Mich.) (*Black I*), ECF No. 1 at 230-31. The other subpoena (Deposition Subpoena) asks Treasury to produce one or more deposition witnesses pursuant to Fed. Civ. P. 30(b)(6) to testify about matters allegedly relevant to respondents' claim against PBGC. ECF No. 13-4 at 7. Respondents' claim against PBGC involves the agreement into which PBGC entered in 2009 with Delphi Corporation (Delphi) to terminate the defined-benefit pension plan maintained at one time by Delphi for certain of its salaried employees. ECF No. 1 at 109-14.

By memorandum opinion dated June 19, 2014, this Court denied Treasury's renewed motion to quash the two subpoenas. ECF No. 27 at 1. On November 4, 2014, the Court approved a stipulation and order providing as follows:

(1) Treasury would be considered to have complied in full with the Document Subpoena if it conducted certain specific searches for records and "produced to Counsel all non-privileged portions of all documents responsive to the Document Subpoena located as a result of those searches";

(2) Treasury would use its best efforts to make its final production of documents under the stipulation and order within 135 days of the date upon which the stipulation and order was approved by the Court;

(3) Treasury would have 60 days from the date of its final production of documents under the stipulation and order "to provide counsel with a privilege log covering all documents or

portions of documents encompassed by this stipulation and order but withheld pursuant to claim of privilege”; and

(4) the Deposition Subpoena would be “withdrawn with prejudice contingent upon the appearance of Matthew A. Feldman and Harry J. Wilson for deposition by respondents in connection with their prosecution of *Black I*.” ECF No. 29 ¶¶ 2, 4, 7, 19. Messrs. Feldman and Wilson worked on the restructuring of General Motors in 2009 as employees of Treasury but now work in the private sector.

Treasury completed its production of documents under the stipulation and order on March 31, 2015. Ex. A at 1.¹ More than 3500 documents were produced without redaction. See ECF No. 31 at 5. Twelve hundred seventy-three documents or portions of documents were withheld pursuant to claim of privilege under one or more of the following privileges: the presidential communications privilege, the deliberative process privilege, the attorney-client privilege, or the work product doctrine. ECF No. 30-2 at 2-58.

By email dated June 1, 2015, Treasury produced a privilege log covering 768 of the documents withheld in whole or part pursuant to claim of privilege. Ex. B. By email dated June 10, 2015, Treasury produced a privilege log covering the additional 505 documents withheld in whole or part pursuant to claim of privilege. Ex. C.

On July 2, 2015, the parties agreed that the deposition of Mr. Feldman would take place in New York, New York, on July 27, 2015, and that the deposition of Mr. Wilson would take place in White Plains, New York, on August 7, 2015. On July 9, 2015, respondents moved to compel Treasury to produce 917 of the documents withheld in whole or part pursuant to claim of privilege. ECF No. 30 at 1; ECF No. 30-1 at 2-23. By motion to expedite filed on July 10, 2015, respondents moved to make July 17, 2015, the deadline for Treasury’s response to respondents’

¹ References to exhibits are to the exhibits to this motion.

motion to compel instead of July 27, 2015, the deadline under LCvR 7(b) and Fed. R. Civ. P. 6(a)(1)(C) and (d).

ARGUMENT

RESPONDENTS' MOTION TO EXPEDITE SHOULD BE DENIED AND TREASURY SHOULD BE GIVEN THROUGH AUGUST 14, 2015, TO FILE ITS RESPONSE TO RESPONDENTS' MOTION TO COMPEL.

Treasury should be given through August 14, 2015, to file its response to respondents' motion to compel. As is customary when challenges are made to claims of privilege asserted by the government, Treasury anticipates responding to respondents' motion to compel by filing a memorandum of law supported by declarations from those components of the Executive Branch having equities in the documents that are the subject of that motion. Those components are Treasury and, in the case of the documents as to which a claim of privilege has been asserted under the presidential communications privilege, the White House. Respondents' motion to compel seeks to invalidate claims of privilege asserted as to more than 900 documents. ECF No. 30-1 at 2-23. For that reason alone, the drafting, coordination, and review of the Treasury and White House declarations that Treasury anticipates filing is likely to take most, if not all, of the time available to Treasury under LCvR 7(b) and Fed. R. Civ. P. 6. A memorandum of law to which the declarations will be exhibits will also have to be prepared and all of these materials will have to be drafted and finalized at the same time that Treasury is preparing for and defending the Feldman and Wilson depositions. Treasury therefore asks that it be given through August 14, 2015, to file its response to respondents' motion to compel. August 14 is seven days after the end of the Feldman and Wilson depositions and 18 days after the deadline for the filing of Treasury's response to respondents' motion to compel that Treasury would have under LCvR 7(b) and Fed. R. Civ. P. 6.

Respondents ask that Treasury be given less than half of the time that it would have under LCvR 7(b) and Fed. R. Civ. P. 6 to file its response to respondents' motion to compel. ECF No. 31-1. That request should be denied. Respondents claim that they need to obtain immediately the material that Treasury has withheld pursuant to claim of privilege so that they can use that material to depose Messrs. Feldman and Wilson before the discovery deadline in *Black I* expires. ECF No. 31 at 7. Respondents, however, have already obtained multiple extensions of the discovery deadline in *Black I*. See Ex. D at 1, 9 (motion of respondents to establish July 1, 2011, as the discovery deadline in *Black I*); Ex. E at 6, 7 (granting respondents' aforesaid motion but establishing April 30, 2012, as the discovery deadline in *Black I*); Ex. F at 2, 3 (extending the discovery deadline in *Black I* through September 30, 2012); Ex. G at 2 (extending the discovery deadline through April 30, 2013); Ex. H at 2 (extension of the deadline through July 31, 2013); Ex. I at 2 (extension through October 31, 2013); Ex. J at 2 (extension through February 1, 2014); Ex. K at 2, 3 (extension through April 1, 2014); Ex. L at 1, 2 (extension through June 2, 2014); Ex. M at 2, 3 (extension for 90 days "following the resolution of the 2013 Rule 72 Objections"); Ex. N at 1, 2 (extension through July 31, 2015); Ex. O at 1-2 (extension through August 14, 2015).

The reason given by respondents for the most recent extension of the discovery deadline in *Black I* was to "allow time to resolve any privilege disputes arising from the Treasury's privilege log, and to account for the depositions of Matthew Feldman and Harry Wilson." Ex. P at 5. Respondents admit that no impediment exists to their seeking another extension of the deadline, saying merely that "they wish to avoid doing so if at all possible." ECF No. 31 at 7. Treasury has already expressed its willingness postpone the Feldman and Wilson depositions pending the resolution of respondents' motion to compel. Ex. Q at 1. No reason therefore exists

why respondents ought not to take whatever steps are required to obtain a further extension of the discovery deadline in *Black I* that will permit Treasury to respond to respondents' motion to compel with the care that that motion demands; permit this Court to resolve that motion and its earliest convenience; and permit respondents to depose Messrs. Feldman and Wilson after that motion is resolved, thereby ensuring that neither individual has to be deposed by respondents again.

CONCLUSION

For the foregoing reasons, Treasury's cross motion for extension of time should be granted and respondents' motion to expedite should be denied.

Respectfully Submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
VINCENT H. COHEN, JR.
Acting United States Attorney
JACQUELINE COLEMAN SNEAD
Ass't Branch Dir., Dep't of Justice, Civ. Div.

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Sr. Trial Counsel, Dep't of Justice, Civ. Div.
20 Massachusetts Ave., N.W., Room 7200
Washington, D.C. 20530-0001
Tel: (202) 514-4469/Fax: (202) 616-8470
Email: david.glass@usdoj.gov
Attorneys for Petitioner

Dated: July 12, 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	No. 1:12-mc-00100-EGS
U.S. DEPARTMENT OF THE)	
TREASURY,)	EXHIBITS TO PETITIONER’S
)	CROSS MOTION FOR
Petitioner,)	EXTENSION OF TIME
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v.)	
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PENSION BENEFIT GUARANTY)	
CORPORATION,)	
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Interested Party,)	
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v.)	
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DENNIS BLACK, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

- Ex. A Letter Kathleen Cochrane to Michael N. Khalil (Mar. 31, 2015)
- Ex. B Email David Glass to Michael N. Khalil (June 1, 2015)
- Ex. C Email Kathleen Cochrane to Michael N. Khalil (June 10, 2015)
- Ex. D *Black v. Pension Benefit Guaranty Corp.*, No., 2:09-cv-13616-AJT-MKM (E.D. Mich.) (*Black I*), Plaintiffs’ Motion for Adoption of Scheduling Order, with Exhibit List & Ex. A (Oct. 28, 2010)
- Ex. E *Black I*, Order Sustaining Plaintiffs’ Objections [172] to Magistrate Judge’s Scheduling Order, Granting Plaintiff’s [sic] Motion for Adoption of Scheduling Order [152], Administratively Terminating PBGC’s Motion for Protective Order [178], Administratively Terminating Plaintiffs’ Motion to Compel Discovery [179], and Entering Scheduling Order (Sept. 1, 2011) (also filed in this action as ECF No. 15-4)
- Ex. F *Black I*, Stipulated Order Amending September 1, 2011 Scheduling Order (Apr. 20, 2012)
- Ex. G *Black I*, Stipulated Order Regarding Discovery Deadlines (Oct. 5, 2012)
- Ex. H *Black I*, Stipulated Order Regarding Discovery Deadlines (Mar. 13, 2013)

- Ex. I *Black I*, Stipulated Order Regarding Discovery Deadlines (June 18, 2013)
- Ex. J *Black I*, Stipulated Order Regarding Discovery Deadlines (Oct. 10, 2013)
- Ex. K *Black I*, Stipulated Order Regarding Discovery Deadlines (Dec. 17, 2013)
- Ex. L *Black I*, Interim Scheduling Order (Mar. 19, 2014)
- Ex. M *Black I*, Stipulated Order (May 20, 2014)
- Ex. N *Black I*, Revised Scheduling Order (Feb. 10, 2015)
- Ex. O *Black I*, Revised Scheduling Order (June 10, 2015)
- Ex. P *Black I*, Plaintiffs' Unopposed Motion to Modify Discovery Deadlines (June 6, 2015)
- Ex. Q Email string ending with David Glass to Michael N. Khalil (July 9, 2015)

**UNITED STATES DISTRICT COURT
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)	No. 1:12-mc-00100-EGS
U.S. DEPARTMENT OF THE)	
TREASURY,)	[PROPOSED] ORDER
)	
Petitioner,)	
)	
v.)	
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PENSION BENEFIT GUARANTY)	
CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
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DENNIS BLACK, et al.,)	
)	
Respondents.)	
)	

Upon the cross motion of petitioner U.S. Department of Treasury (Treasury) for extension of time, the materials submitted in support thereof and in opposition thereto, and good cause having been shown, it is hereby ordered as follows:

1. The aforesaid motion of Treasury is granted.
2. The time of Treasury to file its response to respondents' motion to compel (ECF 30) is extended through August 14, 2015.
3. Respondents' motion to expedite (ECF No. 31) is denied.

Dated: _____

UNITED STATES DISTRICT JUDGE