

**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
v.)	Magistrate Judge Mona K. Majzoub
)	
Pension Benefit Guaranty Corporation,)	
)	
Defendant.)	
)	

STIPULATED ORDER

Plaintiffs Dennis Black, Charles Cunningham, Ken Hollis, and the Delphi Salaried Retirees Association (collectively “Plaintiffs”) and Defendant Pension Benefit Guaranty Corporation (“PBGC”) (together with Plaintiffs, the “Parties”) do hereby present the Court with this Stipulated Order.

On September 1, 2011, this Court entered a Scheduling Order setting forth certain deadlines to govern discovery and the filing of dispositive motions in this case. Dkt. No. 193. Those deadlines have been modified numerous times. *See, e.g.*, Dkt. Nos. 212, 217, 222, 225, 229, 241, 244, 249, 270 and 273. On June 10, 2015, the Court entered the most recent modification to the discovery schedule, holding that:

- 1) All discovery related to claims 1-4 shall be served in time to be completed by August 14, 2015;
- 2) The Parties shall provide an updated list of all witnesses, lay and expert, by June 30, 2015;
- 3) All discovery motions related to claims 1-4 shall be served by August 14, 2015; and
- 4) All dispositive motions related to claims 1-4 must be filed no later than September 22, 2015.

Dkt. No. 273.

The Parties have conferred and believe that there is good cause for another modification of the discovery schedule, such that new discovery deadlines will be triggered upon: (a) the resolution of Plaintiffs' recently-filed motion in the in the United States District Court for the District of Columbia (the "D.C. Court") to compel the United States Department of the Treasury (the "Treasury") to produce withheld and redacted documents, or for in camera review (*see* D.D.C. ECF No. 30, hereafter, the "Motion to Compel"), and (b) the completion of depositions of two former Treasury officials, Matthew Feldman and Harry Wilson (hereafter, the

“Feldman and Wilson Depositions”), which are to occur after the Motion to Compel is resolved.¹

As such, it is hereby stipulated and agreed as follows by and among the undersigned:

Fact Discovery

1. Except as described in paragraphs (2), (3), (4) and (7) below, all fact discovery related to claims 1-4 shall be served in time to be completed by August 14, 2015.

¹ In January 2012, and August 2013, Plaintiffs served the Treasury with subpoenas to produce information relevant to the case. The Treasury moved to quash those subpoenas in the D.C. Court. *See U.S. Dep’t of the Treasury v. Black*, Case 1:12-mc-00100 (D.D.C.). The D.C. Court denied the Treasury’s motion to quash in June 2014, *see* Dkt. No. 256, and the Plaintiffs and the Treasury subsequently conferred regarding the manner and timing of the Treasury’s response to the Subpoenas. On November 3, 2014, Plaintiffs, the Treasury, and the Defendant PBGC entered into a stipulation and protective order in the D.C. Court stating, *inter alia*, that the Treasury would have until March, 19, 2015 to complete the production of documents in response to the 2012 subpoena *duces tecum*, and another sixty days from that point (*i.e.*, until May 18, 2015) to provide a privilege log. D.D.C. ECF No. 28 (the “Treasury Stipulated Order”) at 2-3. On March 31, 2015, the Treasury completed its document production, and by June 10, 2015, the Treasury had provided Plaintiffs with a privilege log covering approximately 1,273 documents that the Treasury withheld or redacted. On July 9, 2015, Plaintiffs filed the Motion to Compel, seeking the production of roughly 900 documents that the Treasury had withheld in whole or part pursuant to claims of privilege. While Plaintiffs requested that the D.C. Court enter an expedited briefing schedule to resolve the Motion to Compel, the Treasury asked the D.C. Court to extend its time to respond until August 14, 2015 (the date that discovery is to close). The D.C. Court denied Plaintiffs’ motion, and granted the Treasury’s cross-motion, such that the Treasury’s opposition to the Motion to Compel is not due until August 14, 2015.

2. Notwithstanding paragraph (1), Plaintiffs may conduct depositions of Matthew Feldman (the “Feldman Deposition”) and Harry Wilson (the “Wilson Deposition”) within 30 days following the resolution of the Motion to Compel, or as soon thereafter as the schedules of the witnesses and all interested counsel permit.²
3. Notwithstanding paragraph (1), Plaintiffs may conduct additional discovery after the resolution of the Motion to Compel, if the discovery arises from information disclosed either: (i) in response to the Motion to Compel; or (ii) during either the Feldman or Wilson Depositions.
 - a. Discovery under this paragraph will not extend to the PGGC, except that Plaintiffs may conduct additional depositions of the PBGC or persons affiliated with the PBGC, if those depositions arise from information disclosed either: (i) in response to the Motion to Compel; or (ii) during either the Feldman or Wilson Depositions.
 - b. Discovery under this paragraph must be served in time to be completed by the later of: (a) 60 days following the resolution of

² The Parties agree that for purposes of this Order, a resolution of the Motion to Compel means either the date that a denial of the Motion to Compel by the D.C. Court becomes final, or if the Motion to Compel is granted, the date on which the Treasury produces all the documents required by the D.C. Court.

the Motion to Compel, or (b) 30 days after both the Feldman and Wilson Depositions have been completed.

c. The PBGC reserves the right to object to any discovery Plaintiffs seek to conduct under this paragraph as not arising from information disclosed either: (i) in response to the Motion to Compel; or (ii) during either the Feldman or Wilson Depositions, or otherwise as provided in the Federal Rules of Civil Procedure.

4. Plaintiffs' responses to the PBGC's First Set of Requests for Admission, dated July 15, 2015, shall be due 60 days following the resolution of the Motion to Compel. PBGC may amend or supplement its First Set of Requests for Admission, as a result of information disclosed either: (i) in response to the Motion to Compel or (ii) during either the Feldman or Wilson Depositions, with any such amendment or supplement to be served no later than 7 days following the Feldman or Wilson Depositions. Similarly, Plaintiffs may serve the PBGC with Requests for Admission as a result of information disclosed either: (i) in response to the Motion to Compel or (ii) during either the Feldman or Wilson Depositions, with such Requests to be served no later than 7 days following the Feldman or Wilson Depositions, and the PBGC's responses to such Requests due 60 days following the resolution of the Motion to Compel. The Parties

reserve their right to object to any Request for Admission served under this paragraph as not arising from information disclosed either: (i) in response to the Motion to Compel; or (ii) during either the Feldman or Wilson Depositions. The Parties similarly reserve their rights to object to any Request for Admission as otherwise provided in the Federal Rules of Civil Procedure.

Discovery Motions

5. Except as described in paragraph (6) below, all discovery motions related to claims 1-4 must be filed no later than August 14, 2015.
6. Notwithstanding paragraph (5) above, any discovery motion related to discovery authorized by paragraphs (2), (3), (4) or (7) must be filed by the later of: (a) 60 days following the resolution of the Motion to Compel, or (b) 30 days after both the Feldman and Wilson Depositions have been completed.

Expert Discovery

7. Defendant may serve any rebuttal expert report on or before September 28, 2015, and each party may depose the other party's expert within 30 days following the resolution of the Motion to Compel.³

Dispositive Motions

8. All dispositive motions related to claims 1-4 must be filed by the later of (a) 90 days following the resolution of the Motion to Compel, or (b) 60 days following the completion of the Feldman and Wilson Depositions.

IT IS SO ORDERED.

s/Arthur J. Tarnow
Hon. Arthur J. Tarnow
Senior United States District Judge

Dated: July 23, 2015

³ If the Motion to Compel is resolved prior to September 28, 2015, then Plaintiffs shall have 30 days from the date they receive any rebuttal expert report to depose the PBGC's rebuttal expert.

/s/ John A. Menke (per email consent)

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