

[ORAL ARGUMENT SCHEDULED OCTOBER 27, 2017]
Nos. 17-5142, 17-5164

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES DEPARTMENT OF THE TREASURY,

Petitioner-Appellant,

v.

DENNIS BLACK; CHARLES CUNNINGHAM; KENNETH HOLLIS; DELPHI
SALARIED RETIREES ASSOCIATION,

Respondents-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX, VOLUME 1 of 3

CHAD A. READLER

Acting Assistant Attorney General

CHANNING D. PHILLIPS

United States Attorney

MARK B. STERN

SAMANTHA L. CHAIFETZ

ABBY C. WRIGHT

Attorneys, Appellate Staff

Civil Division, Room 7252

U.S. Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

(202) 514-0664

Counsel for Appellant

ANTHONY F. SHELLEY
TIMOTHY P. O'TOOLE
MICHAEL N. KHALIL
Miller & Chevalier Chartered
900 Sixteenth St., N.W.
Washington, DC 20006
(202) 626-5800

Counsel for Appellees

TABLE OF CONTENTS

	<u>Page</u>
Volume 1:	
Docket Entries, U.S. Dep't of the Treasury v. Black, No. 12-100 (D.D.C.)	1
Notice of Appeal (July 13, 2017), Dkt. No. 63.....	12
Transcript of the Motion Hearing Proceedings before the Honorable Emmet G. Sullivan, United States Court Judge (D.D.C. July 12, 2017)	14
Notice of Appeal (June 12, 2017), Dkt. No. 55.....	32
Order of June 7, 2017, Granting Treasury's Motion for Reconsideration and Modifying the Court's Order Compelling Production of Documents, Dkt. No. 53.....	34
Transcript of the Motion Hearing Proceedings before the Honorable Emmet G. Sullivan, United States Court Judge (D.D.C. May 16, 2017)	37
U.S. Dept. of the Treasury Revised Privilege Log (Relevant Excerpts), Dkt. No. 51-2.....	59
Memorandum and Opinion of April 13, 2017, Dkt. No.45.....	145
Order of April 13, 2017, Granting in Part and Denying in Part the Unresolved Portion of Respondents' Motion to Compel Withheld and Redacted Documents, Dkt. No. 44.....	165
Notice of Compliance, Dkt. No. 43.....	167

Memorandum and Opinion of December 20, 2016, Dkt. No. 42.....	169
Order of December 20, 2016, Granting in Part Motion to Compel Withheld and Redacted Documents, or For In Camera Review, Dkt. No. 41.....	183
Notice of Production, Dkt. No. 40.....	185
July 23, 2016 Stipulated Order, <i>Black v. PBGC</i> , Case No. 9-13616 (E.D. Mich. ECF No. 274), Dkt. No. 38-2.....	187
Declaration of Jennifer M. O'Connor (Aug. 6, 2015), Dkt. No. 35-3.....	195
U.S. Dept. of the Treasury Privilege Log (Relevant Excerpts), Dkt. No. 35-5.....	199
Signed Stipulation and Protective Order Concerning Respondents Subpoenas to Treasury (Nov. 6, 2014), Dkt. No. 29.....	232
Memorandum Opinion of June 19, 2014, Dkt. No. 27.....	239
Order of June 19, 2014, Denying Motion to Quash, Dkt. No. 26.....	263
Volume 2:	
Watson Wyatt Certification of the Adjusted Funding Target Attainment Percentage (AFTAP) for the Delphi Salaried Plan (June 30, 2009), Dkt. No. 19-5.....	265

Internal PBGC Email Chain Regarding Treasury Counter-Proposal (July 14 - 15, 2009), Dkt. No. 19-4	269
Email to Matthew Feldman re: Delphi-PBGC Settlement (May 28, 2009), Dkt. No. 19-3	270
Delphi Mediation Submission (May 22, 2009), Dkt. No. 19-2	272
GM – Delphi Email Chain (Jan. 25-26, 2009), Dkt. No. 19-1	282
Report of the Special Inspector General for the Troubled Asset Relief Program, <i>Treasury’s Role in the Decision for GM to Provide Pension Payments to Delphi Employees</i> (August 15, 2013), Dkt. No. 13-2	283
Joe House Email Chain re: Treasury Meeting on Delphi (June 30, 2009), Dkt. No. 11-14	340
Vince Snowbarger Email to Judith Starr (June 30, 2009), Dkt. No. 11-13	342
Email Chain between GM and the Treasury’s Auto Team re: PBGC – Delphi Plans (June 2, 2009), Dkt. No. 11-12	343
Email Chain re: Proposal for Resolving Issues Surrounding Delphi’s Pension Plans (May 29, 2009), Dkt. No. 11-11	346
Email from Matthew Feldman to Joe House re: Delphi (May 22, 2009), Dkt. No. 11-10	348
Email Chain re: Meetings with Delphi and Treasury (May 13, 2009), Dkt. No. 11-9 (Dec)	349

Deposition Transcript of J. House (May 29, 2013), Dkt. No. 11-8 Order	352
Deposition Transcript of Vince Snowbarger (March 12, 2013), Dkt. No. 11-7	430
Deposition Transcript of Dana Cann (March 25, 2013), Dkt. No. 11-6	499
Volume 3:	
Memo from Compass Advisers to PBGC (Feb. 13, 2009), Dkt. No. 11-5	584
PBGC Trusteeship Working Group Memorandum Recommending that the PBGC Initiate Termination Proceedings in Connection With the Delphi Pension Plans (April 17, 2009), Dkt. No. 6-11	592
September 1, 2011 Discovery Order in <i>Black v. PBGC</i> , Case No. 09-13616 (E.D. Mich. ECF No. 193), Dkt. No. 6-9	672
Emails between Rick Westenberg and Matthew Feldman (June 2, 2009), Dkt. No. 6-8	680
Declaration of John D. Sheehan (S.D.N.Y. Bankr. June 25, 2009), Dkt. No. 6-7	683
Deposition Transcript of Matthew Feldman (S.D.N.Y. Bankr. July 21, 2009), Dkt. No. 6-6	708
Delphi Presentation to DIP Steering Committee on Key Emergence Issues (March 20, 2009), Dkt. No. 6-5	810
Declaration of Rick Westenberg (S.D.N.Y. Bankr. July 8, 2009), Dkt. No. 6-3	821
Declaration of Randall L. Pappal (S.D.N.Y. Bankr. July 8, 2009), Dkt. No. 6-2	831

This case was appealed to

D.C. Circuit: [17-5142](#), [17-5164](#)

US District Court Civil Docket

U.S. District - District of Columbia
(Washington, DC)

1:12mc100

U.S. Department of Treasury v. Black et al

This case was retrieved from the court on Wednesday, August 23, 2017

Date Filed: 02/17/2012

Assigned

To: Judge Emmet G. Sullivan

Referred

To:

Class Code: **OPEN**

Closed:

Nature of

suit: **Other Statutory Actions (890)**

Statute:

Cause: **Motion to Quash Subpoenas**

Jury Demand: **None**

Lead

Demand Amount: **\$0**

Docket: **None**

NOS Description: **Other Statutory Actions**

Other **USCA, 17-05164**

Docket: **USDC for the Eastern District of
Michigan, 2:09-cv-13616**

Jurisdiction: **U.S. Government Plaintiff**

Litigants	Attorneys
U.S. Department of Treasury Petitioner	David Michael Glass ATTORNEY TO BE NOTICED U.S. DEPARTMENT OF JUSTICE Civil Division 20 Massachusetts Avenue, Nw Room 7200 Washington, DC 20530 USA (202) 514-4469 Fax: (202) 616-8470 Email: David.Glass@usdoj.Gov
Pension Benefit Guaranty Corporation Interested Party	John A. Menke LEAD ATTORNEY; ATTORNEY TO BE NOTICED PENSION BENEFIT GUARANTY CORPORATION Office Of The Chief Counsel 1200 K Street, Nw Washington, DC 20005-4026 USA (202) 326-4020 Fax: (202) 326-4112 Email: Menke.John@pbgc.Gov
Dennis Black	Anthony F. Shelley

LEAD ATTORNEY; ATTORNEY TO BE NOTICED
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, Nw
Washington , DC 20006
USA
(202) 626-5924
Fax: (202) 626-5801
Email: Ashelley@milchev.Com

Michael N. Khalil
ATTORNEY TO BE NOTICED
MILLER & CHEVALIER, CHARTERED
655 15th Street, Nw Suite 900
Washington , DC 20005-5701
USA
(202) 626-5937
Fax: (202) 626-5801
Email: Mkhilil@milchev.Com

Timothy Patrick O'Toole
ATTORNEY TO BE NOTICED
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, Nw
Washington , DC 20006
USA
(202) 626-5552
Fax: (202) 626-5801
Email: Totoole@milchev.Com

Charles Cunningham
Respondent

Anthony F. Shelley
LEAD ATTORNEY; ATTORNEY TO BE NOTICED
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, Nw
Washington , DC 20006
USA
(202) 626-5924
Fax: (202) 626-5801
Email: Ashelley@milchev.Com

Michael N. Khalil
ATTORNEY TO BE NOTICED
MILLER & CHEVALIER, CHARTERED
655 15th Street, Nw Suite 900
Washington , DC 20005-5701
USA
(202) 626-5937
Fax: (202) 626-5801
Email: Mkhilil@milchev.Com

Timothy Patrick O'Toole
ATTORNEY TO BE NOTICED
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, Nw
Washington , DC 20006
USA
(202) 626-5552
Fax: (202) 626-5801
Email: Totoole@milchev.Com

Kenneth Hollis
Respondent

Anthony F. Shelley
LEAD ATTORNEY; ATTORNEY TO BE NOTICED
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, Nw
Washington , DC 20006
USA
(202) 626-5924
Fax: (202) 626-5801

Michael N. Khalil
 ATTORNEY TO BE NOTICED
 MILLER & CHEVALIER, CHARTERED
 655 15th Street, Nw Suite 900
 Washington , DC 20005-5701
 USA
 (202) 626-5937
 Fax: (202) 626-5801
 Email: Mkhaliil@milchev.Com

Timothy Patrick O'Toole
 ATTORNEY TO BE NOTICED
 MILLER & CHEVALIER, CHARTERED
 900 Sixteenth Street, Nw
 Washington , DC 20006
 USA
 (202) 626-5552
 Fax: (202) 626-5801
 Email: Totoole@milchev.Com

Delta Salaried Retirees Association
 Respondent

Anthony F. Shelley
 LEAD ATTORNEY; ATTORNEY TO BE NOTICED
 MILLER & CHEVALIER, CHARTERED
 900 Sixteenth Street, Nw
 Washington , DC 20006
 USA
 (202) 626-5924
 Fax: (202) 626-5801
 Email: Ashelley@milchev.Com

Michael N. Khalil
 ATTORNEY TO BE NOTICED
 MILLER & CHEVALIER, CHARTERED
 655 15th Street, Nw Suite 900
 Washington , DC 20005-5701
 USA
 (202) 626-5937
 Fax: (202) 626-5801
 Email: Mkhaliil@milchev.Com

Timothy Patrick O'Toole
 ATTORNEY TO BE NOTICED
 MILLER & CHEVALIER, CHARTERED
 900 Sixteenth Street, Nw
 Washington , DC 20006
 USA
 (202) 626-5552
 Fax: (202) 626-5801
 Email: Totoole@milchev.Com

Date	#	Proceeding Text	Source
02/17/2012	1	MOTION to Quash by U.S. DEPARTMENT OF TREASURY. (kb) (Entered: 02/21/2012)	
02/17/2012	2	NOTICE OF RELATED CASE by U.S. DEPARTMENT OF TREASURY. Case related to Case No. 1:09-cv-13616, US District Court for the Eastern District of Michigan. (kb) (Entered: 02/21/2012)	
02/24/2012	3	NOTICE of Appearance by Anthony F. Shelley on behalf of DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (Shelley, Anthony) (Entered: 02/24/2012)	
02/24/2012	4	NOTICE of Appearance by Timothy Patrick O'Toole on behalf of DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (O'Toole, Timothy) (Entered: 02/24/2012)	
02/24/2012	5	NOTICE of Appearance by Michael N. Khalil on behalf of DENNIS BLACK, CHARLES	

- 03/05/2012 6 Memorandum in opposition to re 1 MOTION to Quash filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Attachments: # 1 List of Exhibts, # 2 Exhibit A - Pappal Declaration, # 3 Exhibit B - Westenberg Declaration, # 4 Exhibit C - PBGC Press Release, # 5 Exhibit D - Mar. 20, 2009 Presentation, # 6 Exhibit E - M. Feldman Depo Transcript, # 7 Exhibit F - Sheehan Declaration, # 8 Exhibit G - Westenberg/Feldman Emails, # 9 Exhibit H - Discovery Ruling, # 10 Exhibit I - Second Mot. to Compel, # 11 Exhibit J - Apr. 2009 Termination Memo, # 12 Exhibit K - AR Cover Letter and TOC, # 13 Exhibit L - Sept. 2010 Hearing Transcript, # 14 Exhibit M - Three FOIA Transmittal Letters, # 15 Exhibit N - Part 1 Apr. 2010 FOIA Response, # 16 Exhibit N - Part 2 Apr. 2010 FOIA Response, # 17 Exhibit N - Part 3 Apr. 2010 FOIA Response, # 18 Text of Proposed Order)(Shelley, Anthony) (Entered: 03/05/2012)
- 03/08/2012 7 NOTICE of Appearance by John A. Menke on behalf of PENSION BENEFIT GUARANTY CORPORATION (Menke, John) (Entered: 03/08/2012)
- 03/09/2012 8 Unopposed MOTION for Extension of Time to File Response/Reply as to 1 MOTION to Quash by U.S. DEPARTMENT OF TREASURY (Glass, David) (Entered: 03/09/2012)
- 03/14/2012 MINUTE ORDER granting 8 the U.S. Department of Treasury's unopposed motion for an extension of time to file a reply in support of its Motion to Quash. Treasury shall file its reply by no later than March 26, 2012. Signed by Judge Emmet G. Sullivan on March 14, 2012. (lcegs4) (Entered: 03/14/2012)
- 03/15/2012 Set/Reset Deadlines: Replies due by 3/26/2012. (clv,) (Entered: 03/15/2012)
- 03/23/2012 9 Unopposed MOTION for Extension of Time to File Response/Reply as to 1 MOTION to Quash by U.S. DEPARTMENT OF TREASURY (Glass, David) (Entered: 03/23/2012)
- 03/28/2012 MINUTE ORDER granting 9 unopposed motion by U.S. Department of the Treasury ("Treasury") for extension of time to file reply in support of motion to quash. The Treasury shall file its reply in support of motion to quash by no later than April 2, 2012. Signed by Judge Emmet G. Sullivan on March 28, 2012. (lcegs4) (Entered: 03/28/2012)
- 03/28/2012 Set/Reset Deadlines: U.S. Department of Treasury reply due by 4/2/2012. (clv,) (Entered: 03/28/2012)
- 04/02/2012 10 REPLY to opposition to motion re 1 MOTION to Quash filed by U.S. DEPARTMENT OF TREASURY. (Attachments: # 1 Ex. List, # 2 Ex. M, # 3 Ex. N, # 4 Ex. O, # 5 Ex. P, # 6 Ex. Q, # 7 Ex. R)(Glass, David) (Entered: 04/02/2012)
- 05/17/2012 MINUTE ORDER. Upon review of the motion to quash, the response, and the reply thereto, it appears to the Court that a threshold issue in this matter is whether the court in the underlying action has permitted discovery regarding the factors enunciated in 29 U.S.C. 1342(c). In light of the fact that this precise issue is ripe for resolution before Judge Tarnow, the judge in the underlying action, the Court hereby STAYS this matter pending Judge Tarnow's resolution of PBGC's Objections to Magistrate Judge's Order of March 9, 2012 Granting Plaintiffs' Motion to Compel Discovery, Case 09-13616 (E.D. Mich), Doc. No. 209. Plaintiffs are directed to notify this Court of Judge Tarnow's decision within five calendar days after it issues. This Order is subject to reconsideration for good cause shown. Any motion for reconsideration shall be filed by no later than May 31, 2012. Signed by Judge Emmet G. Sullivan on May 17, 2012. (lcegs4) (Entered: 05/17/2012)
- 05/18/2012 Set/Reset Deadlines: Motions for reconsideration due by 5/31/2012. (clv,) (Entered: 05/18/2012)
- 08/13/2013 11 MOTION to Lift Stay and Memorandum of Points and Authorities in Support by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (Attachments: # 1 Exhibit A - PBGC Response to Rule 37 Mot. E.D. Mich., # 2 Exhibit B - SIGTARP Testimony, # 3 Exhibit C - Pls Opp'n to Mot. to Dismiss E.D. Mich., # 4 Exhibit D - Sept. 2010 Hr'g Tr., # 5 Exhibit E - Ex. 12 to Cann Depo, # 6 Exhibit F - Cann Depo Tr., # 7 Exhibit G - Snowbarger Depo Tr., # 8 Exhibit H - J. House Depo Tr., # 9 Exhibit I - Ex. 16 to House Depo, # 10 Exhibit J - Ex. 18 to House Depo, # 11 Exhibit K - Ex. 21 to House Depo, # 12 Exhibit L - Ex. 22 to House Depo, # 13 Exhibit M - Ex. 23 to Snowbarger Depo, # 14 Exhibit N - Ex. 27 to House Depo, # 15 Exhibit O - 8/9/13 Press Release, # 16 Text of Proposed Order)(Shelley, Anthony) (Entered: 08/13/2013)
- 08/23/2013 12 ERRATA by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS 11 MOTION to Lift Stay and Memorandum of Points and Authorities in Support filed by KENNETH HOLLIS, DENNIS BLACK, DELTA SALARIED RETIREES ASSOCIATION, CHARLES CUNNINGHAM. (Attachments: # 1 Errata Corrected Page 5 to Memo in Support of Mot. to Lift Stay)(Shelley, Anthony) (Entered: 08/23/2013)

USCA Case # 13-1142 Document # 1690342 Filed 08/28/13 Page 11 of 271

08/23/2013 13 SUPPLEMENTAL MEMORANDUM to 11 MOTION to Lift Stay and Memorandum of Points and Authorities in Support filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Attachments: # 1 Exhibit List, # 2 Exhibit A - SIGTARP Report, # 3 Exhibit B - E.D. Mich. Order, # 4 Exhibit C - Subpoena on Dep't of Treasury)(Shelley, Anthony) (Entered: 08/23/2013)

08/30/2013 14 Unopposed MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Lift Stay and Memorandum of Points and Authorities in Support by U.S. DEPARTMENT OF TREASURY (Glass, David) (Entered: 08/30/2013)

09/04/2013 MINUTE ORDER granting 14 the U.S. Dept of the Treasury's unopposed motion for extension of time. Treasury shall file a renewed motion to quash by no later than September 16, 2013. Treasury shall also file its response to 11 respondents' motion to lift the stay by no later than that same date. In view of the foregoing, Treasury's initial 1 Motion to Quash is hereby denied without prejudice to refile. Signed by Judge Emmet G. Sullivan on September 4, 2013. (lcegs4) (Entered: 09/04/2013)

09/04/2013 Set/Reset Deadlines: Plaintiff's Motion to Quash due by 9/16/2013. Plaintiff's Response to 1 due by 9/16/2013. (mac) (Entered: 09/04/2013)

09/16/2013 15 Second MOTION to Quash Subpoenas by U.S. DEPARTMENT OF TREASURY (Attachments: # 1 Ex. List, # 2 Ex. S, # 3 Ex. T, # 4 Ex. U, # 5 Ex. V, # 6 Ex. W, # 7 Ex. X, # 8 Ex. Y, # 9 Ex. Z, # 10 Ex. 2A, # 11 Ex. 2B, # 12 Ex. 2C)(Glass, David) (Entered: 09/16/2013)

09/30/2013 16 Joint MOTION for Extension of Time to File Opposition and Reply Briefs regarding Renewed Motion to Quash by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS, U.S. DEPARTMENT OF TREASURY (Attachments: # 1 Text of Proposed Order)(Shelley, Anthony) (Entered: 09/30/2013)

10/01/2013 MINUTE ORDER granting 16 joint motion for extension of time. The respondents shall file their opposition to the renewed motion to quash by no later than October 10, 2013; petitioner shall file its reply by no later than October 28, 2013. Signed by Judge Emmet G. Sullivan on October 1, 2013. (lcegs4) (Entered: 10/01/2013)

10/01/2013 Set/Reset Deadlines: Respondents opposition to renewed motion to quash due by 10/10/2013. Petitioner Reply due by 10/28/2013. (mac) (Entered: 10/01/2013)

10/09/2013 17 Unopposed MOTION for Extension of Time to File Response/Reply as to 15 Second MOTION to Quash Subpoenas by U.S. DEPARTMENT OF TREASURY (Glass, David) (Entered: 10/09/2013)

10/11/2013 MINUTE ORDER granting 17 unopposed motion for extension of time to complete briefing on renewed motion to quash due to the government shutdown. The parties shall file a joint status report with proposed deadlines for the remainder of the briefing schedule within two business days after Congress appropriates funds to the Department of Justice. SO ORDERED. Signed by Judge Emmet G. Sullivan on October 11, 2013. (lcegs4) (Entered: 10/11/2013)

10/17/2013 18 STATUS REPORT (Joint) Proposing Remainder of Briefing Schedule for Petitioner's Renewed Motion to Quash by U.S. DEPARTMENT OF TREASURY. (Glass, David) (Entered: 10/17/2013)

10/18/2013 MINUTE ORDER adopting the proposed dates for completion of briefing set forth in the parties 18 joint status report. Respondents shall file their opposition to the renewed motion to quash by no later than October 25, 2013, and Treasury shall file its reply by no later than November 12, 2013. Signed by Judge Emmet G. Sullivan on October 18, 2013. (lcegs4) (Entered: 10/18/2013)

10/18/2013 Set/Reset Deadlines: Respondent's opposition to motion to quash due by 10/25/2013. Plaintiff Reply due by 11/12/2013. (mac) (Entered: 10/18/2013)

10/25/2013 19 Memorandum in opposition to re 15 Second MOTION to Quash Subpoenas filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Attachments: # 1 Exhibit A - Jan. 26, 2009 email chain, # 2 Exhibit B - Delphi Mediation Statement, # 3 Exhibit C - May 28, 2009 email chain, # 4 Exhibit D - July 15, 2009 email chain, # 5 Exhibit E - June 30, 2009 AFTAP Cert., # 6 Exhibit F - Declaration of Jim DeGrandis, # 7 Text of Proposed Order)(Shelley, Anthony) (Entered: 10/25/2013)

11/06/2013 20 Unopposed MOTION for Extension of Time to File Response/Reply as to 15 Second MOTION to Quash Subpoenas by U.S. DEPARTMENT OF TREASURY (Glass, David) (Entered: 11/06/2013)

11/08/2013 MINUTE ORDER granting 20 unopposed motion by the Treasury for extension of time. Treasury shall file its reply in support of its renewed motion to quash by no later than November 19, 2013. Signed by Judge Emmet G. Sullivan on November 8, 2013. (lcegs4) (Entered: 11/08/2013)

- 11/08/2013 Set/Reset Deadlines. Reply due by 11/19/2013. (gdf) (Entered: 11/08/2013)
- 11/19/2013 21 REPLY to opposition to motion re 15 Second MOTION to Quash Subpoenas filed by U.S. DEPARTMENT OF TREASURY. (Attachments: # 1 Ex. List, # 2 Ex. 2D, # 3 Ex. 2E, # 4 Ex. 2F)(Glass, David) (Entered: 11/19/2013)
- 12/09/2013 22 Unopposed MOTION for Hearing on Petitioner's Motion to Quash by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (Attachments: # 1 Text of Proposed Order)(Shelley, Anthony) (Entered: 12/09/2013)
- 01/29/2014 MINUTE ORDER. The Court has received 22 respondents' unopposed motion to schedule a motions hearing, in order to address, in part, "new arguments" the Treasury raised in its reply brief. The Court, sua sponte, directs respondents to file a surreply, not to exceed 10 pages, by no later than February 10, 2014. The surreply is permitted for the limited purpose of addressing new arguments raised by Treasury in its reply brief, and no response to the surreply will be allowed. A hearing on Treasury's Renewed Motion to Quash will be held on March 5, 2014 at 11:00 AM in Courtroom 24A. SO ORDERED. Signed by Judge Emmet G. Sullivan on January 29, 2014. (lcegs4) (Entered: 01/29/2014)
- 01/29/2014 Set/Reset Hearings: Motion Hearing set for 3/5/2014 at 11:00 AM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 01/29/2014)
- 02/06/2014 23 Unopposed MOTION to Reschedule Hearing Date on Petitioner's Renewed Motion to Quash by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (Khalil, Michael) Modified on 2/6/2014 (jf,). (Entered: 02/06/2014)
- 02/10/2014 24 SURREPLY to re 15 Second MOTION to Quash Subpoenas filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Attachments: # 1 Exhibit G - Emails re AFTAP Cert., # 2 Exhibit H - March 8, 2010 Letter, # 3 Exhibit I - March 22, 2010 Letter)(Shelley, Anthony) Modified on 2/11/2014 (jf,). (Entered: 02/10/2014)
- 02/12/2014 MINUTE ORDER granting 23 unopposed motion to reschedule hearing. The hearing previously scheduled for March 5, 2014 is hereby rescheduled for April 7, 2014 at 2:30 PM in Courtroom 24A. Signed by Judge Emmet G. Sullivan on February 12, 2014. (lcegs4) (Entered: 02/12/2014)
- 02/14/2014 Set/Reset Hearings: Motion Hearing set for 4/7/2014 at 2:30 PM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 02/14/2014)
- 04/02/2014 MINUTE ORDER. The Court, sua sponte, cancels the motions hearing scheduled for April 7, 2014. In the event the Court is unable to resolve the pending motion to quash without a hearing, the Court will advise the parties and reschedule the hearing for a mutually agreeable date and time. Signed by Judge Emmet G. Sullivan on April 2, 2014. (lcegs4) (Entered: 04/02/2014)
- 05/29/2014 25 NOTICE of Development in Underlying Case by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS re Order,,, (Attachments: # 1 Exhibit A - E.D. Mich. Docket Nos. 253 and 255)(Shelley, Anthony) (Entered: 05/29/2014)
- 06/19/2014 26 ORDER denying 15 Motion to Quash. Signed by Judge Emmet G. Sullivan on June 19, 2014. (lcegs7) (Entered: 06/19/2014)
- 06/19/2014 27 MEMORANDUM OPINION. Signed by Judge Emmet G. Sullivan on June 19, 2014. (lcegs7) (Entered: 06/19/2014)
- 11/03/2014 28 STIPULATION and Protective Order Concerning Respondents' Subpoenas to Petitioner by U.S. DEPARTMENT OF TREASURY. (Glass, David) (Entered: 11/03/2014)
- 11/06/2014 29 STIPULATION AND PROTECTIVE ORDER CONCERNING RESPONDENTS SUBPOENAS TO PETITIONER. Signed by Judge Emmet G. Sullivan on 11/04/14. (mac) (Entered: 11/06/2014)
- 07/09/2015 30 MOTION to Compel Withheld and Redacted Documents, or for In Camera Review by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (Attachments: # 1 Exhibit 1 - List of Documents That Should Be Produced, # 2 Exhibit 2 - Dep't of Treasury Priv Log, # 3 Exhibit 3 - Hearing - Administration's Auto Bailouts and Delphi Pension Decisions, # 4 Exhibit 4 - Deposition Transcript of M. Feldman, # 5 Exhibit 5 - Hearing - Lasting Implications of GM Bailout, # 6 Exhibit 6 - Hearing - Oversight of SIGTARP Report on Treasury's Role in Delphi Pension Bailout, # 7 Exhibit 7 - SICO v. US Discovery Order No. 6, # 8 Exhibit 8 - GAO Report - Delphi Pensions, Key Events Leading to Plan Terminations, # 9 Text of Proposed Order) (Shelley, Anthony) (Entered: 07/09/2015)
- 07/10/2015 31 MOTION to Expedite Briefing Schedule on Their Motion to Compel Withheld and Redacted Documents, or for In Camera Review by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA

- 07/12/2015 32 Cross MOTION for Extension of Time to File Response/Reply as to 30 MOTION to Compel Withheld and Redacted Documents, or for In Camera Review by U.S. DEPARTMENT OF TREASURY (Attachments: # 1 Mem. Supp., # 2 Ex. List, # 3 Ex. A, # 4 Ex. B, # 5 Ex. C, # 6 Ex. D, # 7 Ex. E, # 8 Ex. F, # 9 Ex. G, # 10 Ex. H, # 11 Ex. I, # 12 Ex. J, # 13 Ex. K, # 14 Ex. L, # 15 Ex. M, # 16 Ex. N, # 17 Ex. O, # 18 Ex. P, # 19 Ex. Q, # 20 Prop. Order)(Glass, David) (Entered: 07/12/2015)
- 07/14/2015 33 Memorandum in opposition to re 32 Cross MOTION for Extension of Time to File Response/Reply as to 30 MOTION to Compel Withheld and Redacted Documents, or for In Camera Review filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Attachments: # 1 Exhibit A - June 12 Letter, # 2 Exhibit B - June 16 Email, # 3 Exhibit C - June 22 Email, # 4 Exhibit D - June 23 Letter, # 5 Exhibit E - June 3 Email, # 6 Text of Proposed Order)(Shelley, Anthony) (Entered: 07/14/2015)
- 07/15/2015 MINUTE ORDER denying 31 plaintiff's motion to expedite briefing schedule on their motion to compel withheld and redacted documents, or for in camera review. In view of the numerous consent and unopposed motions to extend the discovery deadlines in the underlying case (Case 09-13616 (E.D. Mich.)), the 32 petitioner's cross motion for extension of time is granted. The U.S. Department of Treasury shall file its response to the 30 motion to compel by August 14, 2015. Signed by Judge Emmet G. Sullivan on July 15, 2015.(lcegs1) (Entered: 07/15/2015)
- 07/16/2015 Set/Reset Deadlines: Plaintiff Response to 30 Motion to Compel due by 8/14/2015. (mac) (Entered: 07/16/2015)
- 08/05/2015 34 Joint MOTION for Briefing Schedule for Adjustment to Current Briefing Schedule by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (Shelley, Anthony) (Entered: 08/05/2015)
- 08/12/2015 MINUTE ORDER granting the 34 Parties' Joint Motion for Adjustment to Current Briefing Schedule. The Treasury Department shall file its Memorandum in Opposition to the Motion to Compel no later than August 21, 2015. Plaintiffs' shall file their Reply Memorandum no later than August 31, 2015. Signed by Judge Emmet G. Sullivan on August 12, 2015. (lcegs4) (Entered: 08/12/2015)
- 08/21/2015 35 RESPONSE re 30 MOTION to Compel Withheld and Redacted Documents, or for In Camera Review filed by U.S. DEPARTMENT OF TREASURY. (Attachments: # 1 Ex. A, # 2 Ex. B, # 3 Ex. C, # 4 Ex. D, # 5 Ex. E)(Glass, David) (Entered: 08/21/2015)
- 08/31/2015 36 REPLY re Response to 30 Motion to Compel Withheld and Redacted Documents or for In Camera Review filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Shelley, Anthony) Modified on 9/1/2015 to correct linkage (jf). (Entered: 08/31/2015)
- 03/15/2016 37 NOTICE of Change of Address by Anthony F. Shelley (Shelley, Anthony) (Entered: 03/15/2016)
- 03/21/2016 38 NOTICE of Opinion and Order in Underlying Case by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS (Attachments: # 1 Exhibit A - March 11, 2016 Opinion & Order, # 2 Exhibit B - July 2015 Stipulated Order)(Shelley, Anthony) (Entered: 03/21/2016)
- 06/13/2016 MINUTE ORDER. A hearing on 30 MOTION to Compel Withheld and Redacted Documents, or for In Camera Review filed by KENNETH HOLLIS, DENNIS BLACK, DELTA SALARIED RETIREES ASSOCIATION, CHARLES CUNNINGHAM shall take place on July 29, 2016 at 10:00 a.m. in Courtroom 24A. Signed by Judge Emmet G. Sullivan on June 13, 2016. (lcegs3) (Entered: 06/13/2016)
- 06/13/2016 Set/Reset Hearings: Motion Hearing set for 7/29/2016 at 10:00 AM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 06/13/2016)
- 06/17/2016 39 Unopposed MOTION to Continue (Reschedule) Hearing by U.S. DEPARTMENT OF TREASURY (Glass, David) (Entered: 06/17/2016)
- 06/17/2016 MINUTE ORDER granting 39 motion to continue motions hearing. The hearing previously scheduled for July 29, 2016 will now take place on July 20, 2016 at 10:00 a.m. in Courtroom 24A. Signed by Judge Emmet G. Sullivan on June 17, 2016. (lcegs3) (Entered: 06/17/2016)
- 06/17/2016 Set/Reset Hearings: Motion Hearing set for 7/20/2016 at 10:00 AM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 06/17/2016)
- 06/17/2016 MINUTE ORDER re 30 Respondent's motion to compel. In order to better evaluate the

claims of privilege asserted by Petitioner Department of Treasury. The Court will review in camera a random selection of the withheld and redacted documents at issue. See *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1475, 1490 (D.C. Cir. 1984) ("sampling procedure is appropriately employed, where... the number of documents is excessive and it would not realistically be possible to review each and every one."). By no later than June 20, 2016 at 12:00 p.m., Petitioner Department of Treasury shall submit to chambers for in camera review two hard copies of every tenth document listed in its Privilege Log, ECF No. 35-5. Documents shall be clearly labeled and placed in three-ring binders. For those documents that have been partially redacted, Petitioner shall indicate, through use of gray or yellow highlighter, the portions of the document that have been redacted. Based on the Court's conclusions following in camera review of this random sampling of documents, the Court may order a supplemental production of documents for in camera review. Signed by Judge Emmet G. Sullivan on June 17, 2016. (lcegs3) (Entered: 06/17/2016)

- 07/15/2016 MINUTE ORDER re 30 Respondent's motion to compel. Upon review of the random sampling of documents submitted to chambers on June 20, 2016, the Court concludes that it has insufficient information to rule on many of Petitioner's claims of privilege and that all documents at issue must be examined in camera. Petitioner shall, by no later than 12:00 p.m. on July 25, 2016, submit to the Court for in camera review two sets of all documents at issue in Respondent's motion to compel. Petitioner need not submit for in camera review those documents which Respondent does not seek production. Documents shall be clearly labeled and placed in three-ring binders. For those documents that have been partially redacted, Petitioner shall indicate, through use of gray or yellow highlighter, the portions of the document that have been redacted. The binders shall be tabbed with each tab corresponding to the document number in Petitioner's privilege log and each binder shall include a table of contents. Along with these documents, Petitioner shall submit an ex parte submission clearly articulating why each document, or document portion, is protected by the privilege asserted. The explanation for each document shall not exceed one paragraph. For documents over which Petitioner has claimed the deliberative process privilege, Petitioner shall inform the Court "what deliberative process is involved, and the role played by the documents in issue in the course of that process." See *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). The Petitioner is forewarned that should the Court determine that claims of privilege are frivolous, the Court shall impose significant sanctions, monetary and otherwise! A hint to the wise should be sufficient. Any motions for reconsideration or for an extension of time based on an argument that Petitioner has insufficient resources to comply with this Order shall be denied. Accordingly, the hearing scheduled for July 20, 2016 is CANCELLED and will be rescheduled upon completion of the Court's in camera review, if necessary. Signed by Judge Emmet G. Sullivan on July 15, 2016. (lcegs3) (Entered: 07/15/2016)
- 07/25/2016 40 NOTICE of Production by U.S. DEPARTMENT OF TREASURY re Order,,,,,,,, (Glass, David) (Entered: 07/25/2016)
- 12/20/2016 41 ORDER granting in part 30 motion to compel withheld and redacted documents, or for in camera review. Signed by Judge Emmet G. Sullivan on 12/20/2016. (lcegs4) (Entered: 12/20/2016)
- 12/20/2016 42 MEMORANDUM AND OPINION. Signed by Judge Emmet G. Sullivan on 12/20/2016. (lcegs4) (Entered: 12/20/2016)
- 01/10/2017 43 NOTICE of Compliance by U.S. DEPARTMENT OF TREASURY (Glass, David) (Entered: 01/10/2017)
- 04/13/2017 44 ORDER granting in part and denying in part the unresolved portion of Respondents' 30 motion to compel withheld and redacted documents. Signed by Judge Emmet G. Sullivan on 4/13/2017. (lcegs4) (Entered: 04/13/2017)
- 04/13/2017 45 MEMORANDUM AND OPINION. Signed by Judge Emmet G. Sullivan on 4/13/2017. (lcegs4) (Entered: 04/13/2017)
- 04/28/2017 46 MOTION to Stay re 44 Order by U.S. DEPARTMENT OF TREASURY (Attachments: # 1 Mem. Supp., # 2 Prop. Order)(Glass, David) (Entered: 04/28/2017)
- 05/01/2017 MINUTE ORDER directing respondents to file a response to 44 U.S. Department of Treasury's motion to stay by no later than May 8, 2017. The U.S. Department of Treasury is directed to file a reply by no later than May 11, 2017. Signed by Judge Emmet G. Sullivan on 5/1/2017. (lcegs2) (Entered: 05/01/2017)
- 05/01/2017 Set/Reset Deadlines: Respondents Response To 44 U.S. Department Of Treasury's Motion To Stay due by 5/8/2017. U.S, Department Of Treasury Reply due by 5/11/2017. (mac) (Entered: 05/01/2017)
- 05/08/2017 47 Memorandum in opposition to re 46 MOTION to Stay re 44 Order filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS.

- 05/08/2017 48 ERRATA Attaching Exhibit 1 by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS 47 Memorandum in Opposition, filed by KENNETH HOLLIS, DENNIS BLACK, DELTA SALARIED RETIREES ASSOCIATION, CHARLES CUNNINGHAM. (Attachments: # 1 Exhibit)(Shelley, Anthony) (Entered: 05/08/2017)
- 05/11/2017 49 REPLY to opposition to motion re 46 MOTION to Stay re 44 Order filed by U.S. DEPARTMENT OF TREASURY. (Attachments: # 1 Ex. A)(Glass, David) (Entered: 05/11/2017)
- 05/12/2017 MINUTE ORDER. A hearing on Treasury's motion for a stay is scheduled for Tuesday, May 16 at 1:00 PM in Courtroom 24A. The Court directs that counsel with decision-making authority be present at the hearing. Signed by Judge Emmet G. Sullivan on 5/12/2017. (lcegs2) (Entered: 05/12/2017)
- 05/12/2017 Set/Reset Hearings: Motion Hearing set for 5/16/2017 at 1:00 PM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 05/12/2017)
- 05/16/2017 Minute Entry for proceedings held before Judge Emmet G. Sullivan: Motion Hearing held on 5/16/2017. Filings Of Motions For Reconsideration due by 5/22/2017. Responses due by 5/31/2017. (Court Reporter SCOTT WALLACE.) (mac) (Entered: 05/16/2017)
- 05/17/2017 MINUTE ORDER. In light of the parties' arguments and for reasons stated on the record at the hearing, the Court enters the following briefing schedule for Treasury's motion to reconsider the Court's 44 April 13, 2017 Order: Treasury's motion for reconsideration shall be filed no later than May 22, 2017; respondents' response shall be filed no later than May 31, 2017; and Treasury's reply shall be filed no later than June 5, 2017. The parties' briefing should address, inter alia, (1) whether respondents have adequately made a "showing of need" for documents otherwise protected under the presidential-communications privilege; and (2) the standard by which the Court should determine, during an in camera inspection, whether the documents at issue are "relevant" to respondents' case. The portion of the Court's 44 April 13, 2017 Order directing that documents over which Treasury has asserted the presidential-communications privilege be "forthwith produced" is hereby vacated. Signed by Judge Emmet G. Sullivan on May 17, 2017. (lcegs2) (Entered: 05/17/2017)
- 05/22/2017 50 MOTION for Reconsideration re 44 Order by U.S. DEPARTMENT OF TREASURY (Attachments: # 1 Mem. Supp., # 2 Prop. Order, # 3 Ex. A, # 4 Ex. B)(Glass, David) (Entered: 05/22/2017)
- 05/31/2017 51 Memorandum in opposition to re 50 MOTION for Reconsideration re 44 Order filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Attachments: # 1 Exhibit A- Hr'g Transcript, # 2 Exhibit B - Revised Priv Log, # 3 Text of Proposed Order)(Shelley, Anthony) (Entered: 05/31/2017)
- 06/05/2017 52 REPLY to opposition to motion re 50 MOTION for Reconsideration re 44 Order filed by U.S. DEPARTMENT OF TREASURY. (Attachments: # 1 Ex. A)(Glass, David) (Entered: 06/05/2017)
- 06/07/2017 53 ORDER GRANTING 50 Treasury's motion for reconsideration and MODIFYING 44 the Court's Order compelling production of documents. Signed by Judge Emmet G. Sullivan on June 7, 2017.....VACATED IN PART PURSUANT TO MINUTE ORDER FILED 6/23/2017. (lcegs2) Modified on 6/26/2017 (znmw). (Entered: 06/07/2017)
- 06/12/2017 54 ENTERED IN ERROR.....NOTICE of Appeal by U.S. DEPARTMENT OF TREASURY (Glass, David) Modified on 6/13/2017 (znmw). (Entered: 06/12/2017)
- 06/12/2017 55 NOTICE OF APPEAL as to 44 Order, 6/17/16 Minute Order, 41 Order on Motion to Compel, 7/15/16 Minute Order, 53 Order on Motion for Reconsideration by U.S. DEPARTMENT OF TREASURY. Filing fee \$0. Fee Status: No Fee Paid. Parties have been notified. (znmw) (Entered: 06/13/2017)
- 06/13/2017 NOTICE OF CORRECTED DOCKET ENTRY: Docket Entry 54 Notice (Other) was entered in error and was refiled as Docket Entry 55 Notice of Appeal.(znmw) (Entered: 06/13/2017)
- 06/13/2017 56 Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals docketing fee was not paid because the fee was an Appeal by the Government re 55 Notice of Appeal. (znmw) (Entered: 06/13/2017)
- 06/14/2017 57 Supplemental Record on Appeal transmitted to US Court of Appeals re 55 Notice of Appeal. (znmw) (Entered: 06/14/2017)
- 06/16/2017 USCA Case Number 17-5142 for 55 Notice of Appeal, filed by U.S. DEPARTMENT OF TREASURY. (zrdj) (Entered: 06/20/2017)
- 06/19/2017 58 MOTION to Stay re 53 Order on Motion for Reconsideration by U.S. DEPARTMENT OF

- 06/20/2017 MINUTE ORDER directing respondents to file a response to 58 Treasury's motion to stay by no later than June 21, 2017 at 12:00 pm. Treasury is directed to file a reply by no later than June 22, 2017 at 12:00 pm. Signed by Judge Emmet G. Sullivan on June 20, 2017. (lcegs2) (Entered: 06/20/2017)
- 06/20/2017 Set/Reset Deadlines: Respondents Response To 58 Treasury's Motion To Stay due on 6/21/2017 by 12:00PM. Treasury Reply due on 6/22/2017 by 12:00PM. (mac) (Entered: 06/20/2017)
- 06/21/2017 59 Memorandum in opposition to re 58 MOTION to Stay re 53 Order on Motion for Reconsideration filed by DENNIS BLACK, CHARLES CUNNINGHAM, DELTA SALARIED RETIREES ASSOCIATION, KENNETH HOLLIS. (Attachments: # 1 Text of Proposed Order) (Shelley, Anthony) (Entered: 06/21/2017)
- 06/22/2017 60 REPLY to opposition to motion re 58 MOTION to Stay re 53 Order on Motion for Reconsideration filed by U.S. DEPARTMENT OF TREASURY. (Glass, David) (Entered: 06/22/2017)
- 06/23/2017 MINUTE ORDER vacating the portion of the Court's June 7, 2017 Order requiring Treasury to produce documents that it asserts are protected from disclosure by the presidential-communication privilege until further order of the Court. Signed by Judge Emmet G. Sullivan on June 23, 2017. (lcegs2) (Entered: 06/23/2017)
- 06/26/2017 MINUTE ORDER. The Court sua sponte schedules a hearing on 54 Treasury's motion to stay pending appeal for July 12, 2017 at 11:30 AM in Courtroom 24A. Signed by Judge Emmet G. Sullivan on June 26, 2017. (lcegs2) (Entered: 06/26/2017)
- 06/27/2017 Set/Reset Hearings: Motion Hearing set for 7/12/2017 at 11:30 AM in Courtroom 24A before Judge Emmet G. Sullivan. (mac) (Entered: 06/27/2017)
- 07/11/2017 61 TRANSCRIPT OF PROCEEDINGS before Judge Emmet G. Sullivan held on 5-16-17; Page Numbers: (1-22). Date of Issuance: 7-11-17. Court Reporter/Transcriber Scott Wallace, Telephone number 202-354-3196, Transcripts may be ordered by submitting the Transcript Order Form<P></P><P></P>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.<P>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.<P></P> Redaction Request due 8/1/2017. Redacted Transcript Deadline set for 8/11/2017. Release of Transcript Restriction set for 10/9/2017.(Wallace, Scott) (Entered: 07/11/2017)
- 07/12/2017 Minute Entry for proceedings held before Judge Emmet G. Sullivan: Motion Hearing held on 7/12/2017 re 58 MOTION to Stay re 53 Order on Motion for Reconsideration. The Court Will Issue An Order Forthcoming. (Court Reporter SCOTT WALLACE.) (mac) (Entered: 07/12/2017)
- 07/12/2017 MINUTE ORDER. On June 23, 2017, the Court vacated the portion of its June 7, 2017 Order requiring production of documents that Treasury asserts are protected from disclosure by the presidential-communications privilege to enable the Court to give further consideration to the issues raised by the parties. Having heard from the parties at a hearing on July 12, 2017, and upon careful consideration of [46, 58] Treasury's motions, the responses and replies thereto, the relevant case law, the representations of the parties in open court, and the entire record, 58 Treasury's motion to stay is HEREBY DENIED. See *Nken v. Holder*, 556 U.S. 418, 427 (2009) (a stay pending appeal "is not a matter of right, even if irreparable injury might otherwise result to the appellant"). Accordingly, Treasury is ORDERED to produce the portions of the documents at issue that relate to (1) General Motors, (2) Delphi Corporation, or (3) the Pension Benefit Guaranty Corporation by no later than July 21, 2017 pursuant to a protective order agreed to by the parties. The Court is persuaded by respondents' arguments that further delay could cause substantial harm to respondents, who are pensioners in varying stages of retirement and who claim that production of these documents will trigger new discovery and dispositive motion deadlines in the underlying litigation, which has been pending for over eight years. Should Treasury succeed in its appeal, any alleged harm to Treasury from compliance with this Order may be remedied through exclusion of the protected material and its fruits from evidence. See *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 109, 112 (2009). Signed by Judge Emmet G. Sullivan on July 12, 2017. (lcegs2)

- 07/13/2017 (Entered: 07/12/2017) MINUTE ORDER. Earlier today, the Court received a voice mail message from Judith Fooks. The Court will send a copy of the message to counsel of record at the email address provided to the Court. Signed by Judge Emmet G. Sullivan on July 13, 2017. (lcegs2) (Entered: 07/13/2017)
- 07/13/2017 62 ENTERED IN ERROR.....NOTICE of Appeal by U.S. DEPARTMENT OF TREASURY re Order on Motion to Stay,,,,,, (Glass, David) Modified on 7/14/2017 (znmw). (Entered: 07/13/2017)
- 07/13/2017 63 NOTICE OF APPEAL as to Minute Order on Motion to Stay by U.S. DEPARTMENT OF TREASURY. Filing fee \$ 0. Fee Status: No Fee Paid. Parties have been notified. (znmw) (Entered: 07/14/2017)
- 07/14/2017 NOTICE OF CORRECTED DOCKET ENTRY: Docket Entry 62 Notice (Other) was entered in error (incorrect event) and was refiled as Docket Entry 63 Notice of Appeal. (znmw) (Entered: 07/14/2017)
- 07/14/2017 64 Transmission of the Notice of Appeal, Order Appealed, and Docket Sheet to US Court of Appeals. The Court of Appeals docketing fee was not paid because the fee was an Appeal by the Government re 63 Notice of Appeal. (znmw) (Entered: 07/14/2017)
- 07/18/2017 USCA Case Number 17-5164 for 55 Notice of Appeal, filed by U.S. DEPARTMENT OF TREASURY. (td) (Entered: 07/19/2017)
- 07/26/2017 65 ORDER of USCA ORDERED, on the courts own motion, that appellant inform the court by letter, within seven days of this order, on what basis the Department of the Treasury is asserting the presidential communications privilege and that consideration of the emergency motion for stay pending appellate review be deferred, and the administrative stay entered on July 18, 2017 be continued, pending further order of the court USCA Case Number 17-5142. (zrdj) (Entered: 07/31/2017)

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

U.S. DEPARTMENT OF THE TREASURY,)	
)	
Petitioner,)	
)	
v.	)	No. 1:12-mc-00100-EGS
)	
PENSION BENEFIT GUARANTY CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, CHARLES CUNNINGHAM, KENNETH HOLLIS, and the DELPHI SALARIED RETIREE ASSOCIATION,)	
)	
Respondents.)	

PETITIONER'S NOTICE OF APPEAL

Petitioner U.S. Department of the Treasury hereby appeals to the U.S. Court of Appeals for the District of Columbia Circuit from the minute order dated July 12, 2017.

Respectfully Submitted,

CHAD A. READLER
Acting Assistant Attorney General
CHANNING D. PHILIPS
United States Attorney
JACQUELINE COLEMAN SNEAD
Assistant Branch Director

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Senior Trial Counsel
Department of Justice, Civil Division
20 Massachusetts Ave., N.W., Room 7200
Washington, D.C. 20529
Tel: (202) 514-4469/Fax: (202) 616-8470
Email: david.glass@usdoj.gov
Attorneys for Petitioner

Dated: July 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2017, I served the within notice on all counsel of record by filing it 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 TREASURY,)	
)	
Plaintiff,	)	Miscellaneous Action
	)	No. 12-100
v.)	
	)	July 12, 2017
DENNIS BLACK,	)	11:30 a.m.
et al.,)	
	)	Washington, D.C.
Defendant.)	
)	

**TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE EMMET G. SULLIVAN,
UNITED STATES DISTRICT COURT JUDGE**

APPEARANCES:

For the Plaintiff:	David Michael Glass, Trial Attorney
	U.S. DEPARTMENT OF JUSTICE
	Civil Division
	20 Massachusetts Avenue, NW
	Room 7200
	Washington, DC 20530
	(202) 514-4469
	Fax: (202) 616-8470
	Email: David.glass@usdoj.gov

For the Defendants:	Michael N. Khalil, Esq.
	MILLER & CHEVALIER, CHARTERED
	655 15th Street, NW
	Suite 900
	Washington, DC 20005-5701
	(202) 626-5937
	Fax: (202) 626-5801
	Email: Mkhalil@milchev.com

APPEARANCES: Cont.

For the Defendants:

Anthony F. Shelley, Esq.
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, NW
Washington, DC 20006
(202) 626-5924
Fax: (202) 626-5801
Email: Ashelley@milchev.com

Timothy Patrick O'Toole, Esq.
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, NW
Washington, DC 20006
(202) 626-5552
Fax: (202) 626-5801
Email: TOTOOLE@milchev.com

Court Reporter:

Scott L. Wallace, RDR, CRR
Official Court Reporter
Room 6503, U.S. Courthouse
Washington, D.C. 20001
202.354.3196
scottlyn01@aol.com

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MORNING SESSION, JULY 12, 2017

(11:42 a.m.)

THE COURTROOM CLERK: Your Honor, this is Miscellaneous Case 12-00, *U.S. Department of Treasury versus Dennis Black, et al.*

Will all parties please come forward to this lectern and identify yourselves for the record.

MR. GLASS: Your Honor, I'm David Glass from the Civil Division of the Justice Department for the Department of the Treasury, and with me at counsel table is Ms. Jacqueline Snead.

THE COURT: All right. Good morning to you both.

MS. SNEAD: Good morning.

MR. KHALIL: Good morning, Your Honor, Michael Khalil for respondents, and with me is Anthony Shelley and Tim O'Toole.

THE COURT: Good morning. This is the case that keeps on giving. I've spent more time on this case, and so has everyone else in the well of the court over the past few years, than I care to remember, but, you know, these cases are important and they're important to the Court to make sure the Court correctly decides the issues, and it's definitely important to the parties, and this is about pension plans, so this has a special sensitivity to it.

So here's the reason why we're here. I'm still extremely sensitive to the order issued by the Michigan federal judge that essentially says discovery cannot go forward in that case until

1 everything has been completed here. I'm not sure what that
2 means, and I don't need to reach out to him to find out, but
3 there's an appeal, and that's fine, that's how our process works.
4 There's no harm here. That's how our system of justice works,
5 and that's how it should work but a couple of things. There's
6 probably going to be a delay. Has the government sought
7 expedited consideration?

8 MR. GLASS: We have not yet, Your Honor. We're willing to
9 do that.

10 THE COURT: You know, with all due respect to the Circuit,
11 sometimes the Circuit grants expedited consideration; sometimes
12 it doesn't. I haven't looked at the Cheney pleadings recently,
13 the case I had years ago, and I think that case was expedited
14 also, a case in which I ordered Cheney, essentially, to submit to
15 discovery, and if appropriate invoke the privilege or whatever,
16 and that case -- it's been a while in the Circuit. I was
17 affirmed. I think it went *en banc*. I was affirmed. It took on
18 a life of its own after that, went to the Supreme Court. And the
19 Supreme Court, with all due respect, took a hard look at the
20 cases that I had relied upon, Circuit precedents, in ordering
21 that Cheney submit to discovery and said, Nah, the Circuit
22 probably didn't get those cases right years ago and vacated those
23 opinions and sent the case back, and I don't know how many years
24 it took. It took years, and I'm sensitive to that. These
25 Michigan litigants want to get on with their lives. It's about

1 pension plans. It's about people who are going to retire, people
2 who are probably retired, I assume, right, and so that dovetails
3 into other issues, too. The *Keepseagle* case is one case that
4 comes to mind. It's the Indian farmers case that I had assigned
5 to me randomly when I first joined this Court, and it's still
6 with me. And it's a case where the government fought the Indian
7 farmers tooth and nail over the claims of unfair treatment with
8 respect to requests for loans to farm, and the government fought
9 the plaintiffs tooth and nail, fought the Court, which is fine, I
10 can handle myself, and appealed to everything, and the case went
11 on and on and on, and then very interestingly there was an
12 election and President Obama was elected president and the case
13 settled -- a complete change in attitude -- for \$680 million or
14 so. You would think that would be the end of it. It's still
15 going on. And in a two to one decision two weeks ago, the last
16 thing I did was affirmed. It's going to come back. For whatever
17 reason, I have no idea. I don't know what else is required of me
18 to do, but the thing that's telling, the thing that really brings
19 tears to your eyes is that the Indian farmers have died, and
20 that's one of the reasons offered for the excess money available
21 for cy-près distribution, that people who were not treated fairly
22 by the government, filed claims, have since died, and that's sad.
23 That's not the way justice is supposed to operate. So, you
24 know -- but it is what it is, and that case -- I'm not sure what
25 the case number is, but it's been around, I don't know, 15 years

1 or so, Mark, hasn't it? It's been around a long time, and it
2 will come back for whatever reason, or maybe it will take on a
3 life of its own, too, because there's a very interesting cy-près
4 issue there.

5 So, I don't know. And another case that comes to mind is
6 the case involving African-American police officers on Capitol
7 Hill who filed claims for discrimination against the government
8 years ago, very complicated case, and I had to enlist the aid of
9 one of my magistrate judges to help me wade through a lot of
10 issues, and we did. And, you know, you issue the order, there's
11 an appeal -- and again, that's fine, affirmed on most, sent back,
12 and then you hear, you know, some police officers come to court,
13 tell you that, you know, Judge, we really need some finality
14 because our colleagues are dying.

15 So, you know, under these black robes we don't have black
16 hearts, we have big hearts, and I just see delay, I see more
17 delay here, and with all due respect to the judge in Michigan, he
18 has every reason to say, look, we're not going to start a round
19 of discovery until everything is finished in D.C., when will that
20 be finished?

21 So I thought about all of that, and I said, you know what,
22 maybe it makes more sense for the Court to send the 27 documents
23 back to that federal judge who issued the first opinion
24 addressing the need for discovery, et cetera, et cetera, and let
25 him read the documents, take a look at the documents -- he's in

1 control of his docket -- and make the final call with respect to
2 release of those 27 documents. I don't know. I mean, I didn't
3 think of that earlier, and no one asked me to do it. I've
4 invested a lot of time in this case, and I think that the
5 decisions I've made were correct, but I always think that, and I
6 think they're correct, and I don't want to add any more time.

7 Let me stop for a second and just ask the government one
8 question. You're not contesting the relevancy of these
9 documents, are you? You're contesting the need for these
10 documents, correct?

11 MR. GLASS: We're -- as far as we're concerned, there is
12 not a valid claim that the respondents have in this case --

13 THE COURT: -- all right --

14 MR. GLASS: -- anyway.

15 THE COURT: So, the answer is no.

16 MR. GLASS: No, they're not relevant to anything, and
17 they're privileged.

18 THE COURT: So you're going back to the original claim
19 before the Michigan judge then, correct?

20 MR. GLASS: Right. We, the Treasury, at one time were a
21 defendant in the Michigan action. We were dismissed out. The
22 Pension Benefit Guaranty Corporation remains a party.

23 THE COURT: Does that counsel in favor of my asking the
24 federal judge to look at those 27 documents, then?

25 MR. GLASS: I don't think, Your Honor, that it's going to

1 speed things up.

2 THE COURT: I'm concerned about that, too. I can bite the
3 bullet. I may be wrong on this. I don't think I'm wrong. It's
4 discovery. I mean, we all agree, do we not -- if someone
5 disagrees with what I'm about to say, tell me -- the documents,
6 if arguably relevant, could otherwise lead to the discovery of
7 indeed more documents, correct, that are relevant?

8 MR. GLASS: No. I think we're done with that. There's
9 been -- the first round of discovery was against the Pension
10 Benefit Guaranty Corporation, which is the only remaining
11 defendant.

12 THE COURT: So you don't think there's anything out there
13 that hasn't been produced.

14 MR. GLASS: Well, there never was anything relevant
15 because there isn't a valid claim here of any kind. The
16 government didn't do anything to these -- to these particular
17 pensioners.

18 THE COURT: Let me stop you, though. That's not for this
19 Court to determine.

20 MR. GLASS: No, I understand.

21 THE COURT: No, no, I just want to make sure. That's not
22 for this Court --

23 MR. GLASS: Not for -- not for Your Honor to determine. I
24 just wanted to make a point that what happened to these
25 pensioners is what happened to lots of pensioners who worked for

1 industrial companies that in this country have mainly gone under,
2 and when they've gone under, they've tended to take their pension
3 plans with them, and that's exactly what happened here.

4 THE COURT: Which is so unfortunate.

5 MR. GLASS: It's extremely unfortunate because --

6 THE COURT: You work for 30 years and have nothing?

7 MR. GLASS: Well, no. No, no. Congress addressed that.
8 That's ERISA. That's the Employee Retirement Income Security
9 Act, and what Congress created in 1974 was an insurance scheme
10 like the deposit insurance for pension plans. And so if your
11 pension plan becomes financially embarrassed, what happens is the
12 plan gets terminated, the pension -- the insurance scheme is
13 managed by -- the insurance fund is managed by the Pension
14 Benefit Guaranty Corporation and you receive a statutory amount
15 of your benefits. It's not a hundred cents on the dollar, just
16 as deposit insurance has --

17 THE COURT: What percentage is it, \$0.20 on the dollar?

18 MR. GLASS: I think it's more than that, and I think it
19 depends -- it varies from individual to individual. And there
20 was a -- there was a period when the Delphi plan got terminated.
21 It took them a while to figure out who was to get what, but the
22 Delphi pensioners, the Delphi salaried pensioners are getting
23 their benefits under ERISA. They're getting their insurance
24 benefits. And the number that PBGC talked about in the Michigan
25 case was two and a half billion dollars. So these people are not

1 getting a hundred cents on the dollar. You don't get that under
2 this scheme. But they're getting statutory benefits to which
3 they're entitled. And so the issue is whether PBGC was
4 entitled -- or had a right to terminate the pension plan. Its
5 determination was that if it didn't terminate the pension plans,
6 the amount of liabilities would continue to increase which would
7 strain the insurance fund. And if that happened, then nobody
8 gets their insurance benefits.

9 THE COURT: All right. So you think that would tend to
10 add -- you may be right there. I mean, the judge has moved on to
11 doing other things, and, you know, you have to -- you'd have to
12 go back, I guess, and -- Actually, he enlisted the aid of a
13 magistrate judge also.

14 MR. GLASS: He had a magistrate -- there were discovery
15 disputes between the respondents and PBGC.

16 THE COURT: Shocker.

17 MR. GLASS: Exactly. And those would get sent to the
18 magistrate judge.

19 THE COURT: All right. So you think that would add delay,
20 though?

21 MR. GLASS: I think it probably --

22 THE COURT: Otherwise, do you object? Otherwise, do you
23 object?

24 MR. GLASS: No. I mean, the case is teed up to be decided
25 by the Court of Appeals. I would recommend that. I think there

1 would be less delay that way.

2 THE COURT: All right. All right. So I could bite the
3 bullet and -- what I'll probably do, if I'm persuaded -- I want
4 to hear from respondents' attorney -- I would keep the stay in
5 place, let you ask the Court of Appeals for a stay, probably
6 order production. I may be right, but I just -- you know, and
7 again, respectfully to the Court of Appeals, they have other
8 matters on their docket as well, so I don't know how long it will
9 take to -- even if requests for expedited consideration is
10 granted to consider this.

11 So that's -- you know, we struggle with these issues, and
12 I'm sorry that I start thinking about what else can I do to bring
13 some finality to this case. Probably nothing. All right. Thank
14 you, Mr. Glass.

15 MR. GLASS: I suppose the one solution is that Mr. Khalil
16 for respondents could accept my representation that there's
17 nothing in these documents that could help him, but I don't
18 suspect that --

19 THE COURT: I'll tell you what. I'll tell you what. Let
20 me add something to that. Suppose we were to seal the courtroom
21 and let them take a look at the documents, 278 documents? Do you
22 have any problem with that?

23 MR. GLASS: No, we -- in our view, that would moot the
24 case. I mean, the privilege is gone once the documents are
25 disclosed, so we can't do that, and that's why we moved for a

1 stay pending appeal.

2 THE COURT: Right. Nothing there. But that's a difficult
3 issue. I mean, hypothetically -- Let me just say one thing.
4 Hypothetically, nothing there. Suppose something as innocuous as
5 saying, Well, let's proceed with this meeting but let's not
6 invite A, let's leave A out of this thing, I don't know what that
7 means. You know what I'm talking about, right?

8 MR. GLASS: Yeah, but that's not what we're talking about
9 here. What we're talking about here is documents that had to do
10 with the restructuring of the auto industry, and, you know, there
11 are references to Delphi that come up in these documents because
12 those were the search terms that we used, but it has nothing to
13 do with the termination of the Delphi pension plan, which is what
14 this lawsuit is ostensibly about.

15 THE COURT: It's difficult. All right. Thank you. Thank
16 you, Counsel.

17 MR. KHALIL: Your Honor.

18 THE COURT: I mean, how would I know a smoking gun if I
19 saw it? I don't think I need to see what the smoking gun is.
20 I'm not in a position to determine what was permissible, what was
21 not permissible. I can talk about -- I can read and see, ah,
22 this was discussed and that was discussed, and maybe that in
23 conjunction with something else means something.

24 MR. KHALIL: That's absolutely right, Your Honor, and
25 we -- we went over this. We went over this -- you graciously

1 allowed the Treasury to file a motion for reconsideration where
2 they made these arguments again --

3 THE COURT: It's called beating a dead horseback to life.
4 I'm sorry, but I look at the past and I say, Gee, you know, so
5 much time has gone on; how much more time will be invested before
6 these folks even get to court. All you're going to do is file
7 your motion for summary judgment, right?

8 MR. KHALIL: Yes, my clients are desperate to. I do want
9 to point something out. Counsel for PBGC is in the back of the
10 room, so to the extent you want to pick his brain, that's
11 Mr. Menkey, I'm sure he would be glad to come up.

12 THE COURT: How are you? Come on up here. Come on up
13 here. Good to see you, Counsel.

14 MR. KHALIL: But if you wanted to send it to Michigan, we
15 would have no objection. We do think that the most fastest route
16 is to order the production of these documents, to do it pursuant
17 to protective order whereby counsel, the three of us, would be
18 able to look at them, we would be able to use them in litigation.
19 If we used them in litigation, we'd file them under seal. If we
20 showed them to witnesses, that would be the only witnesses we'd
21 show them to, Mr. Feldman and Mr. Wilson, who have already seen
22 the documents, who are the authors of these documents in many
23 cases.

24 THE COURT: I may be wrong. I may be wrong about this
25 decision. I don't think I am, but I may be wrong. Is the

1 Michigan judge in a better position to determine?

2 MR. KHALIL: Your Honor, the Michigan court is probably in
3 a better position to ascertain the relevancy, but they have not
4 had the merits in front of them. Neither the District Court
5 judge or the magistrate judges had anything in front of them on
6 the merits for a number of years.

7 On the issue of the presidential communications privilege,
8 you've had it in front of you for a number of years. You've had
9 extensive briefing. You've had a motion for reconsideration in
10 front of you.

11 The point about -- I just want to address something and
12 Mr. Glass's point about, well, the respondents could take my word
13 for it that there's nothing in there. The judgment is that -- is
14 based upon an entire misunderstanding of ERISA of what is
15 relevant or not. The entire point of this case is that -- and I
16 know you don't want to get into the merits, that's not what
17 you're here for, there's a Rule 45 subpoena, but this -- the
18 entire point is this plan didn't need to be terminated, or at
19 least that's our contention, and that's what we want to be able
20 to prove.

21 This plan was among plans at that time in 2009 relatively
22 well funded, and we've submitted evidence of that. There are --
23 in addition to all the voluminous evidence we provided this
24 Court, there are thousands of documents that have been produced
25 to us under protective orders, under confidentiality orders

1 either by the Treasury or by the PBGC, that if we were to share
2 them with this Court, we would have to do so under seal, we would
3 have to explain the relevance of them, we would have to explain
4 our theory of the case, which we shouldn't have to do. It's not
5 our burden here at this point. On this stay motion, it's the
6 Treasury's burden, and it's a heavy burden that they have, in our
7 view, come nowhere close to meeting.

8 And just to again veer back to the stay motion, the bottom
9 line is that they have -- their position is, if accepted, is that
10 any time the presidential communications privilege is asserted,
11 litigants should be entitled to an automatic stay pending appeal,
12 an interlocutory appeal. That's not the law. No court has ever
13 so held that that I'm aware of, and certainly none that they've
14 shown us. And the controlling precedence that we've cited in
15 here, whether it's the Supreme Court's case in *Mohawk*, which
16 talks about privilege -- yes, it's in the context of the
17 attorney-client privilege, but that is a steeper privilege than
18 the presidential communications privilege, it's an absolute
19 privilege.

20 The Supreme Court's made clear that the presidential
21 communications privilege is not absolute. There is never a
22 guaranty of confidentiality when it comes to executive privilege,
23 and -- but here with little authority, they ask this Court to
24 enter a far reaching decision that would change the scope and
25 extend the scope of that privilege, and that's unfair.

1 And then we get back to the merits of this case. These
2 pensioners, they're entire point is that this plan did not need
3 to be terminated. And Mr. Glass said, well, they're in the same
4 position as everyone else, lots of people are in this position.
5 Well, that's simply not true. There were lots of similarly
6 situated retirees of Delphi who were in a different plan, who
7 were in the hourly plan who were not treated the same way, who
8 got their government's -- topped up by TARP-funded benefits. And
9 the question is, the question we want to submit to the Michigan
10 court is why, why were they treated differently? Was it
11 reasonable? Was it a -- was it a natural consequence that a
12 district court judge, if he'd been given the opportunity to view
13 the facts, would have said, no, this plan does not need to be
14 terminated as the statute requires. The plan does not need to be
15 terminated. There are other alternatives that need to be
16 reviewed, and we don't -- we just won't accept the words of, you
17 know, the representations of the PBGC who, even if they are -- it
18 is undisputed that the PBGC is in a subsidiary position to the
19 Department of Treasury, to the administration at that time, and
20 all of the negotiations that took place or facilitations, to use
21 the Treasury's term, were conducted behind -- back behind closed
22 doors. They were not done in the light of day. The discovery
23 that we got so far has revealed a great deal of support for our
24 position that this plan didn't need to be terminated, and we
25 think that the remaining documents would fit in potentially very

1 powerfully with our case, but, of course, we don't know; we
2 haven't seen them yet, but everything we've seen says -- tells us
3 yes, this would be important, and we've told you -- we offered
4 during the reconsideration motion to give you an ex parte
5 showing, and we're still happy to do that. But we don't think
6 it's necessary at this point. You've gone through --
7 respectfully, we believe you've gone through everything that --

8 THE COURT: You didn't hold back on your written
9 submissions, so I didn't think there was anything else to be
10 learned from an ex parte submission. You're not going to hold
11 back your best arguments, so I was -- I thought about that for a
12 while. But -- okay. Thank you. Anything else, Counsel?

13 MR. GLASS: Just one other point, Your Honor. It occurs
14 to us that since there is an appeal pending, it's not clear that
15 Your Honor has the jurisdiction to send the case to --

16 THE COURT: I know, I know.

17 MR. GLASS: -- to send the documents to Michigan.

18 THE COURT: Right.

19 MR. GLASS: That's the only thing. The only other thing,
20 of course, is I disagree with Mr. Khalil, but I'm not going to go
21 down that road. We would be here very late in the afternoon.

22 THE COURT: Right. All right. I thought about that, too.
23 You don't have anything to lose; there's nothing to lose, right?
24 Is that the way the song goes? All right. I'll issue one final
25 order, all right --

1 MR. GLASS: -- okay --

2 THE COURT: -- assuming I have jurisdiction. If not, I'll
3 get him to send it back so I can issue an order. Great to see
4 everyone. Enjoy your summer. Thank you.

5 (Proceedings adjourned at 12:03 p.m.)

6

C E R T I F I C A T E

7

8 I, Scott L. Wallace, RDR-CRR, certify that
9 the foregoing is a correct transcript from the record of
proceedings in the above-entitled matter.

10

/s/ Scott L. Wallace

7/25/17

11

Scott L. Wallace, RDR, CRR
Official Court Reporter

Date

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

_____)	
U.S. DEPARTMENT OF THE)	
TREASURY,)	
)	
Petitioner,)	
		)	No. 1:12-mc-00100-EGS
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, CHARLES)	
CUNNINGHAM, KENNETH HOLLIS,)	
and the DELPHI SALARIED RETIREE)	
ASSOCIATION,)	
)	
Respondents.)	
_____)	

PETITIONER’S NOTICE OF APPEAL

Petitioner U.S. Department of the Treasury hereby appeals to the U.S. Court of Appeals for the District of Columbia Circuit from the minute order re respondents’ motion to compel dated June 17, 2016, the minute order dated July 15, 2016, the order dated December 20, 2016, ECF No. 41, the order dated April 13, 2017, ECF No. 44, and the order dated June 7, 2017, ECF No. 53.

Respectfully Submitted,

CHAD A. READLER
Acting Assistant Attorney General
CHANNING D. PHILIPS
United States Attorney

JACQUELINE COLEMAN SNEAD
Assistant Branch Director

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Senior Trial Counsel
Department of Justice, Civil Division
20 Massachusetts Ave., N.W., Room 7200
Washington, D.C. 20529
Tel: (202) 514-4469/Fax: (202) 616-8470
Email: david.glass@usdoj.gov
Attorneys for Petitioner

Dated: June 12, 2017

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2017, I served the within notice on all counsel of record by filing it 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)	
)	
Petitioner,)	
)	
v.	)	Case No. 12-mc-100 (EGS)
)	
PENSION BENEFIT GUARANTY)	
CORPORATION)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, <i>et al.</i> ,)	
)	
Respondents)	

ORDER

This ancillary proceeding was initiated over five years ago when the U.S. Department of Treasury ("Treasury") moved to quash respondents' subpoena requesting the production of certain documents. Since that time, this Court has expended considerable judicial resources in evaluating Treasury's various claims of privilege over those documents, conducting an *in camera* review of hundreds of documents across multiple rounds of briefing.

On April 13, 2017, the Court resolved the last of those privilege claims and, *inter alia*, ordered Treasury to produce 63 documents that it had asserted were protected under the

presidential-communications privilege. See *U.S. Dep't of Treasury v. Pension Benefit Guar. Corp.*, No. 12-MC-100 (EGS), 2017 WL 1373234 (D.D.C. Apr. 13, 2017) ("April 13 Order"). In so doing, the Court held that, although the documents at issue were covered by the presidential-communications privilege, respondents had made an adequate showing of need to overcome the privilege and require disclosure. *Id.* at *2-3.

On April 28, 2017, Treasury filed a motion to stay the Court's April 13 Order on the ground that it was considering whether to appeal that order. See *Mot. to Stay*, ECF No. 46. The Court subsequently held a hearing on that motion, during which Treasury requested an opportunity to file a motion for reconsideration of the April 13 Order. The Court granted Treasury's request, and that motion is now ripe for resolution.

Upon careful consideration of Treasury's motion for reconsideration, the response and the reply thereto, the parties' previous submissions, a supplemental *in camera* review of the 63 documents at issue,¹ and the entire record, it is hereby

ORDERED that Treasury's motion for reconsideration is **GRANTED**; and it is

¹ Through its *in camera* review, the Court has determined that only 21 of the 63 documents are "unique" - the remaining 42 documents are either duplicate copies or drafts of those 21 documents.

FURTHER ORDERED that the Court's April 13 Order requiring production of the 63 documents over which Treasury has asserted the presidential-communications privilege shall be modified to require production only of those portions of the documents that relate to General Motors, Delphi Corporation, or the Pension Benefit Guaranty Corporation; and it is

FURTHER ORDERED that Treasury shall produce the redacted versions of those 63 documents to respondents by no later than June 30, 2017; and it is

FURTHER ORDERED that, until the time for seeking appellate review passes - and during the pendency of any appeal should one be taken - the 63 documents shall remain under seal in Chambers.

SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
June 7, 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DEPARTMENT OF TREASURY,)
)
et al.,	) MC Action
	) No. 12-100
Petitioner,)
	) May 16, 2017
v.	) 1:00 p.m.
)
DENNIS BLACK,	) Washington, D.C.
)
Respondent.)

**TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE EMMET G. SULLIVAN,
UNITED STATES DISTRICT COURT JUDGE**

APPEARANCES:

For the Petitioner:	David Michael Glass, Trial Attorney
	U.S. DEPARTMENT OF JUSTICE
	Civil Division
	20 Massachusetts Avenue, NW
	Room 7200
	Washington, DC 20530
	(202) 514-4469
	Fax: (202) 616-8470
	Email: David.glass@usdoj.gov

	Jacqueline Snead, Trial Attorney
	U.S. DEPARTMENT OF JUSTICE
	Civil Division
	20 Massachusetts Avenue, NW
	Room 7200
	Washington, DC 20530
	(202) 514-4469
	Fax: (202) 616-8470
	Email: Jacqueline.snead@usdoj.gov

APPEARANCES: Cont.

For the Respondent:

Michael N. Khalil, Esq.
MILLER & CHEVALIER, CHARTERED
655 15th Street, NW
Suite 900
Washington, DC 20005-5701
(202) 626-5937
Fax: (202) 626-5801
Email: Mkhalil@milchev.com

Anthony F. Shelley, Esq.
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, NW
Washington, DC 20006
(202) 626-5924
Fax: (202) 626-5801
Email: Ashelley@milchev.com

Timothy Patrick O'Toole, Esq.
MILLER & CHEVALIER, CHARTERED
900 Sixteenth Street, NW
Washington, DC 20006
(202) 626-5552
Fax: (202) 626-5801
Email: TOTOOLE@milchev.com

Court Reporter:

Scott L. Wallace, RDR, CRR
Official Court Reporter
Room 6503, U.S. Courthouse
Washington, D.C. 20001
202.354.3196
scottlyn01@aol.com

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFTERNOON SESSION, MAY 16, 2017

(1:05 p.m.)

THE COURTROOM CLERK: Your Honor, this is Miscellaneous Case 12-100, U.S. Department of Treasury versus Dennis Black, et al.

Will all parties please come forward to this lectern and introduce yourselves for the record.

MR. GLASS: Good afternoon, Your Honor. I'm David Glass from the civil division of the Justice Department, and with me at counsel table is Jacqueline Snead, who is an Assistant Branch Director in our branch, and Alexander Haas, who is the Chief of Staff to the Acting Assistant Attorney General for civil and the Acting Deputy Assistant Attorney General.

THE COURT: All right. Good afternoon to everyone. Welcome.

MR. KHALIL: Good afternoon, Your Honor. Michael Khalil with respondent, and with me is Michael Shelley and Tim O'Toole.

THE COURT: All right. Good afternoon, Counsel. Let me say this. I think in my haste to what I thought would finally conclude this matter after three substantive opinions, I probably overreacted when I said produce the documents forthwith.

I think in fairness, the government should have its -- I think any party should have the full allotment of time to consider any -- to consider seeking any appellate review, so -- and I can't think of a compelling reason to deprive the

1 government of that 60 days. I mean, I know that the respondent,
2 Mr. Black, has said, well, they haven't really said they want to
3 appeal, but so what. Why shouldn't a litigant have the full
4 complement of 60 days in which to determine whether or not they
5 want to file an appeal or not? Let me just pose that question to
6 counsel.

7 MR. KHALIL: Thank you, Your Honor. We are --

8 THE COURT: I would like to bring some finality to this
9 case. This case has drained this Court's time and resources, and
10 the Court has had some very serious concerns about whether the
11 government's proceeding in good faith or not, and I've
12 articulated those concerns, actually warned the government to be
13 very careful, but in fairness, even though they wasted the
14 Court's time on three prior occasions, why shouldn't they be
15 entitled to their 60-day allotment of time under the rules? Why
16 should I treat them unfairly?

17 MR. KHALIL: Well, Your Honor, respectfully, we don't
18 think that the immediate production of the documents would be
19 unfair. There are protective orders that can be issued. There's
20 already a protective order in this case in place that could be
21 modified very easily to allow the petitioner a chance to protect
22 whatever confidentiality concerns either the Treasury has or the
23 Office of the President has in these documents. *Mohawk*, we
24 think, made pretty clear that those sorts of protective orders
25 are appropriate and sufficient to eliminate any confidentiality

1 concerns referred to the Court, referred to as spillover
2 concerns.

3 THE COURT: Wouldn't the government have to consent to
4 that order?

5 MR. KHALIL: I don't know that it would. I don't see why
6 it would have to consent to the order at all.

7 It seems to me this Court has full authority to govern the
8 production of the documents and respondent's use of those
9 documents. The protective order that's in place currently with
10 the other documents that the Treasury has produced allow only for
11 counsel to view the documents and one of the respondents, who has
12 also been given permission in the underlying litigation to view
13 documents under the protective order. He's completely
14 trustworthy.

15 THE COURT: You know what, I just don't recall whether the
16 government consented to the other protective order or not. I
17 just don't recall. Did they?

18 MR. KHALIL: They did.

19 THE COURT: The government indicated in this case they
20 have no interest in consenting to the protective order, which I
21 don't really understand, but --

22 MR. KHALIL: To be -- and I'll let Mr. Glass speak --

23 THE COURT: Can I throw out a suggestion? The reason
24 why -- you're probably wondering, why did the Court say "people
25 with decision-making authority." I have a suggestion, and I

1 don't know whether it's going to be persuasive to anyone right
2 now, but I want to raise it right now, a time out for a second.
3 Here's my suggestion. Would the government consent to, either
4 today or some other day, in this court showing the documents to
5 opposing counsel; not giving them, just showing the documents to
6 them? It's not a trick question. I'm just trying -- you know
7 what, once they see the documents, arguments may change. I don't
8 know.

9 MR. GLASS: Well, we have represented to the Court, and
10 I'll repeat that representation today, that there is nothing in
11 these documents.

12 THE COURT: All right. Let me stop you. I know that, and
13 I haven't lost sight of that, but here's the problem the Court
14 has, and I may be wrong, and maybe, you know, maybe counsel --
15 maybe opposing counsel will tell me I'm wrong in thinking about
16 this, but I have a limited view about issues in this case. I
17 don't know what other information they have. I query whether --
18 and what concerns me is -- I query whether the other information
19 that opposing counsel may have, coupled with these documents, may
20 shine a different light on relevance. Do you follow me?

21 MR. GLASS: I do follow you.

22 THE COURT: And that's what's troubling to the Court,
23 because I don't know the full universe because this case has gone
24 on before two courts for years, and it has required a lot of time
25 and attention, and that's fine. You know, that's what we're here

1 for, but three opinions in one case. And I was trying to think,
2 is there some way I can bring about finality in this case,
3 because the other thing that concerns me is this: The government
4 says, well, we can file for expedited appeal. That happened in
5 the *Cheney* case that was before me some years ago. On October
6 21st, 2002, the defendants moved for a stay pending appeal of my
7 October 17th, 2002 order, and the case -- the issue was decided
8 July 8th, 2003, and that case took on a life of its own and ended
9 up before the Supreme Court, and to this day I still don't
10 recognize what the issues were that brought it before the Supreme
11 Court, but the case took on a life of its own. And it was
12 expedited consideration. So, with all due respect to the
13 circuit, I'm not taking a shot at the circuit, but, you know, I
14 was on the D.C. Court of Appeals for a couple of years, and it
15 used to drive me nuts when we would grant expedited consideration
16 in cases that warranted it, like termination of parental rights
17 and other cases, and essentially just dropped the ball.

18 So, I said, what can I do -- I said, maybe, maybe, maybe
19 everyone would just be curious about what the documents say.
20 They could conceivably look at the documents and say. You know
21 what, we want to move on to Michigan, Judge. That's the other
22 thing, because they can't move on to Michigan until there's a
23 final decision with respect to discovery here, which may be in
24 another year or so, which is so unfair.

25 MR. GLASS: They could, Your Honor.

1 THE COURT: They could?

2 MR. GLASS: Sure.

3 THE COURT: I thought the judge there said you have to
4 exhaust discovery here.

5 MR. GLASS: Oh, they could go back to Judge Turnaugh in
6 Detroit at any time. They have a million --

7 THE COURT: Oh really?

8 MR. GLASS: They have a million pages of documents from
9 the Pension Benefit Guaranty Corporation.

10 THE COURT: So, in other words, there's no harm in asking
11 the Court to proceed, but I think the judge made pretty clear,
12 finish what you're doing in D.C. here first before we start that
13 million mile journey?

14 MR. GLASS: Yeah. I'm not going to cast aspersions on any
15 federal district judge.

16 THE COURT: I'm not casting aspersions. I want to be
17 clear. I'm not casting aspersions. I thought it was clear that
18 he said we have to finish here. If I'm wrong, then I'm wrong.

19 MR. GLASS: That's a way of not addressing the underlying
20 case, frankly.

21 THE COURT: Okay.

22 MR. GLASS: The position that we're in here is that this
23 is a --

24 THE COURT: I want to be clear. I wasn't taking a whack
25 at the judge there at all.

1 MR. GLASS: No, I would not think that.

2 THE COURT: Okay.

3 MR. GLASS: No. The position we're in here is that this
4 is a special privilege. This is a Constitutional privilege. And
5 as I told Mr. Khalil back before we submitted our last
6 submission, you know, it is my experience with different
7 administrations, republicans and democrats, that they all take
8 the presidential communications privilege very seriously, and
9 that's why we couldn't show these documents to plaintiffs and --

10 THE COURT: But essentially your position here is under no
11 circumstances should these documents ever see the light of day to
12 opposing counsel. That --

13 MR. GLASS: We disagree that they have established a
14 showing of need that justified -- it's a qualified privilege, but
15 our position is that they haven't --

16 THE COURT: Is there something else the Court should have
17 addressed in its opinion to demonstrate need? The judge said
18 it's a privilege here, but under, I think it was *Dellums* {sp},
19 I'm, you know, persuaded that you can't get these documents, this
20 information from any other source. And basically you're saying,
21 well, the information they get, Judge, doesn't really shed any
22 light on the issue. And I guess the bottom line is, if it
23 doesn't shed any light, then what's the harm?

24 MR. GLASS: Well, there's that. I mean, it's our position
25 that there wouldn't be any need anyway because if the -- even if

1 there had been all kinds of pressure put on the Pension Benefit
2 Guaranty Corporation to terminate this pension plan, that would
3 not invalidate the termination. But putting that all to one
4 side, nothing goes out -- nothing is supposed to go out under the
5 presidential communications privilege anyway unless it's
6 determined to be relevant to that particular case, and so,
7 frankly, what we should have asked for was reconsideration so
8 Your Honor could have gone through the documents.

9 THE COURT: I was wondering the same thing. Do you want
10 to file a motion? I'll give you time to do that?

11 MR. GLASS: Sure. We could do that.

12 THE COURT: Because I think, in fairness, you're entitled.
13 I'm not going to squeeze you out of 60 days. I think, in
14 fairness, I think it was my exuberance seeing a light at the end
15 of the tunnel, give up those documents, and I probably shouldn't
16 have done that. In fairness, I probably shouldn't have. In all
17 these other cases there are interlocutory -- I don't know if you
18 made a final decision, and I'm not going to inquire about that.
19 That's within the, you know -- that's your prerogative. I
20 understand it has to go up the ladder, if you're seeking that
21 consideration, and I can't really quarrel with that. Sure, I
22 want finality, but it doesn't seem like I'm going to get finality
23 here. I think it's fair. I want to hear from the other side,
24 but I think it's fair on a quick basis to give you a chance to
25 persuade me to reconsider. I mean, if there's something else I

1 should have done -- they can't argue, they can't argue, so it's
2 me and you here.

3 MR. GLASS: Sure. Exactly.

4 THE COURT: I think my analysis is correct. I think my
5 conclusion is correct, but if I'm missing something there, then I
6 want you to tell me what I'm missing.

7 MR. GLASS: Okay. Well, the only thing that's missing is
8 the fact that there isn't anything in these documents that shows
9 any kind of improper pressure, putting aside the fact that we
10 don't think it makes any difference if there is, but there simply
11 isn't anything in there.

12 THE COURT: In those documents, but what about in those
13 documents viewed in connection with whatever other discoverable
14 material they have, which -- and that leaves me at a disadvantage
15 because I don't know what else is out there in the universe.

16 MR. GLASS: Sure, but they've got the universe and they
17 have never come in with a single piece of paper -- In view of the
18 fact that they have a million pages from the Pension Benefit
19 Guaranty Corporation dealing with the Delphi Corporation, they
20 have never come in with a single piece of paper indicating that
21 there was any kind of improper pressure put on PBGC.

22 I mean, there was an earlier claim in the underlying
23 lawsuit against the Treasury --

24 THE COURT: -- right --

25 MR. GLASS: -- and that claim was that, for political

1 reasons, certain decisions were made. Those were dismissed for
2 failure to state a claim because they couldn't make the IQBAL
3 threshold. They were simply saying, Well, you know, there has to
4 have been all kinds of pressure. They have no evidence of any
5 kind that they've shown us that there was any kind of pressure,
6 and, as I say, they have a million pages from PBGC. They have
7 documents from us. There have been no fewer than seven
8 congressional hearings on the termination of this pension plan.
9 They've got the transcripts of those.

10 One of the fellows who was on the group at Treasury that
11 worked on the restructuring of GM wrote a book about it. There's
12 nothing in there. There's nothing that they have cited that
13 there was any kind of improper pressure, and if Your Honor looks
14 at these 63 documents --

15 THE COURT: Wait a minute. He worked at Treasury and he
16 wrote a book on it?

17 MR. GLASS: His name was Rafner {sp}. What happened was
18 when the decision was made to rescue General Motors in 2009,
19 Treasury put together a team of about 14 or 15 people who
20 basically over a 60-day period came up with the restructuring.
21 What happened in the restructuring was that the assets of what
22 was then GM was sold to a new company called GM. Delphi, the
23 pension -- the pension sponsor here, started out as a division of
24 the old GM. It was called Delco. Your Honor may remember
25 genuine Delco parts.

1 THE COURT: Absolutely. Sure.

2 MR. GLASS: It was spun off as a separate company in
3 2009 -- I'm sorry, 1999. The new GM thought that it would need
4 Delphi parts, so the resolution of the Delphi bankruptcy in the
5 minds of General Motors was necessary to its continued success.
6 It was not Treasury's view.

7 Treasury didn't think that the new GM would need Delphi
8 parts.

9 As part of the Delphi bankruptcy, the new GM bought four
10 Delphi factories -- I think they made axles -- and shortly
11 thereafter sold them, so they didn't need them. So, this is kind
12 of marginally tied in with the General Motors bankruptcy, but the
13 fact of the matter is, -- and, you know, the million pages that
14 have been produced will show that, that the team at Treasury that
15 worked on the restructuring were aware of the Delphi pensioners.
16 They talked to lots and lots of people, but they were, you know,
17 just a very minor player when it came to the considerations of
18 restructuring General Motors so that it could be a functioning
19 company. But we would be happy to move for reconsideration and
20 asking for Your Honor to take a look at the documents and confirm
21 that there is no --

22 THE COURT: No, I have the documents, and I've gone back
23 and looked at them again, and I'm just troubled. Thank you,
24 Counsel. Let me hear from opposing counsel. I think it was
25 probably -- I misspoke when I said "forthwith." They're entitled

1 to their 60 days. And actually, I'm not sure what merit there
2 would be for a motion for reconsideration, but after all this
3 time, effort and work, I'm not going to shortchange myself
4 either. So, I think I'll probably give them an opportunity to
5 persuade me that -- within a very short period of time -- that
6 there's a basis for reconsideration.

7 But what about the Michigan litigation? I thought it was
8 clear that you couldn't do anything with respect to further
9 discovery until you had concluded discovery here. Am I wrong in
10 that regard?

11 MR. KHALIL: You're not wrong, Your Honor. That's the way
12 the current discovery order --

13 THE COURT: Right, and I'm very sensitive to that, and I
14 understand what the government said about seeking an expedited
15 appeal. But I know what happened in *Cheney*, and I know what
16 happens to these big cases, with all due respect to the circuit.
17 They have a lot on their plate, too. So, you know, another year?
18 That doesn't have a lot of appeal to me.

19 I don't know. I guess that was a no to my question, can
20 you just see the documents in the courtroom, I guess, and that's
21 fine. Is that a no, a resounding no? One, two, three.

22 MR. GLASS: Yes.

23 THE COURT: Okay. That's fine. I understand. There's no
24 harm in asking, as my mom used to tell me. That's fine. I'm
25 sorry. Go ahead. It is frustrating, because I would like to get

1 done with this case and get on to some other FOIA cases.

2 MR. KHALIL: Your Honor, I would just like to address a
3 couple of points.

4 THE COURT: Sure.

5 MR. KHALIL: And I should express, on behalf of
6 respondents, we appreciate that you have invested -- this Court
7 has invested a great deal of time and issued three opinions. The
8 respondents do not believe or understand -- my clients are
9 retirees. They're not sophisticated business people. They have
10 a little bit of trouble understanding how a subpoena could take
11 this long to negotiate.

12 THE COURT: Well, they should understand that it's unusual
13 for three substantive opinions to be issued in one case, too. I
14 know that's difficult for litigants to understand. They think we
15 don't do anything, and I understand that. It's difficult -- good
16 luck there. It's difficult.

17 MR. KHALIL: I don't think their frustration is with the
18 Court, Your Honor, I think the frustration is with the -- we
19 cited in our brief that there have been -- you know, it would be
20 asserting deliberative process privilege over nearly 900
21 documents, and then when calling for an in-camera review,
22 withdrawing those assertions at the last minute for 75 percent of
23 them.

24 THE COURT: That didn't please me either when I saw that.
25 No explanation given.

1 MR. KHALIL: None. None, Your Honor. So, behavior like
2 that, we think, my clients think has extended these proceedings.
3 And, you know, again, sure, every litigant should have an
4 opportunity to pursue it's appeal rights, and we're not saying
5 that -- we're not suggesting that denying a stay would deny the
6 Treasury those appeal rights. We think that that's exactly what
7 the Supreme Court made clear in *Mohawk*, that post-appeal review
8 would be more than sufficient to validate those.

9 And, of course, if you feel like you want to -- if this
10 Court feels like it wants to reconsider and give the Treasury an
11 opportunity to present reconsideration arguments --

12 THE COURT: I was actually surprised they didn't file a
13 motion, but they -- I'm not going to reach out and tell people to
14 file a motion, why don't you file a motion for reconsideration?
15 They didn't raise it. But I think it was an error, probably, for
16 me to say "forthwith."

17 You know, again, it was probably my exuberance because I
18 could see the light at the end of the tunnel, but --

19 MR. KHALIL: I would note that it sounds to me like the
20 basis of that reconsideration motion is a relevance
21 determination, and that relevance determination basically is the
22 one that this Court made in 2014.

23 THE COURT: Right, in the first opinion.

24 MR. KHALIL: So we're going to ask -- it just seems odd
25 that we would in 2017 be litigating a reconsideration motion of a

1 determination made in 2014, but with that said --

2 THE COURT: That was before the Court had an opportunity
3 to review the documents in question.

4 MR. KHALIL: That is true.

5 THE COURT: So the relevance determination would be, Here
6 it is, Judge? How do I -- is it farfetched for the Court to be
7 concerned about reviewing these documents on the one hand and
8 just wondering how they fit in with everything else with the
9 universe with everything else? Is that farfetched for the Court
10 to be -- because it's very difficult sometimes. So how does the
11 Court do that?

12 MR. KHALIL: I don't think the case law requires the Court
13 to do that. I think that the case law says that it's the Court's
14 determination -- responsibility in the initial decision when
15 determining whether to have an in-camera review to undertake a
16 stringent relevance determination like the one this Court
17 undertook. Then the in-camera review is just supposed to weed
18 out purely irrelevant documents that might embarrass the
19 executive or are plainly irrelevant, but it's not the stringent
20 determination -- that's supposed to occur before the in-camera
21 review occurs. And once you determine that, well, okay, I've
22 done the in-camera review and now I can go forth and award or
23 disclose documents that are on the basis of need. That is purely
24 within the Court's discretion and I do not believe is subject to
25 a heightened review.

1 THE COURT: Right.

2 MR. KHALIL: Any other questions?

3 THE COURT: But then you're at a loss, though, too.

4 Because they filed a motion for reconsideration, there's not a
5 lot you can say, really, is there, other than what you just very
6 eloquently just told me?

7 MR. KHALIL: That is true.

8 THE COURT: Through no fault of yours. That's the way the
9 system is. So thank you, Counsel.

10 Let me do this. Let me take a five-minute recess. Do you
11 want to say anything else, Mr. Glass?

12 MR. GLASS: No, Your Honor. What we are here for is
13 simply to get a stay of this order so that we can -- pending any
14 appeal that we may take.

15 THE COURT: No, I understand. I think you're entitled to
16 that. You're entitled to the 60 days. Believe me, it was not
17 the Court's -- I wasn't focused on that aspect. Again, I could
18 see the light and I was focusing on this case being over, and I
19 wasn't trying to deprive the government of a meaningful
20 opportunity to consider an appeal. I wasn't trying to do that.
21 Look, after all these years, I recognize how arduous that process
22 is for the government to get approval to appeal. So, at the very
23 least, you walk out of here with that. I'll grant you that. And
24 I think there may be some merit to a motion for reconsideration
25 on a fast track, I think, although that's the reason why I'm

1 going to take a very short recess, about a ten-minute recess. No
2 need to stand. Thank you.

3 (Thereupon, a recess in the proceedings occurred from
4 1:29 p.m. until 1:47 p.m.)

5 THE COURT: All right, Counsel. I'm going to let you file
6 a motion for reconsideration. I'm not going to talk about the
7 parameters and what I need in that motion now, and we'll issue it
8 today or tomorrow. I don't want to put it on the fast track. I
9 don't want to get into -- I don't want to have to resolve another
10 issue about when the notices of appeal divest the Court. I don't
11 want to do that.

12 So I recognize that the filing of a motion will probably
13 impact the date, the drop dead date for the filing of a notice of
14 appeal, but I don't even want to get into that. But I'm going to
15 put things on a fast track. Today is the -- what is today, the
16 18th?

17 MR. GLASS: 16th, Your Honor.

18 THE COURT: 16th. So, a week from today will be the 23rd.
19 The week of the 22nd. Memorial Day is the following Monday. I
20 don't want to interfere with that. Is that the following Monday,
21 the 29th? So, the 22nd for the filing of any motion for
22 reconsideration. The 31st is two days after the Memorial Day for
23 the filing of a response. I'm not going to rule out the
24 possibility of bringing in counsel for the government ex parte in
25 the event I have other questions. I haven't finally concluded

1 just what I'm going to put in the order providing for the filing
2 of a motion for reconsideration, but I need more information that
3 addresses the issue of need and relevance. And believe me, I'm
4 going to decide these issues as soon as I possibly can. I may
5 not write another opinion, but at least I want to be in a
6 position to say I've reconsidered what I did, the reasons why I
7 did it, and then finally conclude, whatever the decision is.

8 But I just want to be clear, though. Again, and I think
9 you've said this earlier, Mr. Glass, but essentially, even if the
10 documents showed themselves an independent basis for need by the
11 movant, by opposing counsel, your argument would be that in view
12 of the presidential privilege, they still should not be produced,
13 right?

14 MR. GLASS: Right. That's correct, Your Honor.

15 THE COURT: So, under no circumstances should they ever be
16 produced because it's the presidential privilege?

17 MR. GLASS: Well, what the cases hold is that the
18 privilege can be overcome by a showing of need, and Your Honor
19 has held that they have made a showing of need. Once that is
20 made, what the cases say is that the District Court should go
21 through the documents and excise anything that is not pertinent
22 to that showing of need, and so that's what we would be moving to
23 reconsider.

24 THE COURT: Fair enough. Fair enough. And I think, in
25 fairness -- I don't think this -- I don't think I'm precluded

1 from saying this, but indeed I doubt if we're even talking about
2 63 documents. There's some duplication, so I think that's a fair
3 statement.

4 MR. GLASS: I'm starting to forget. I think there is. I
5 think there is.

6 THE COURT: There's some duplication.

7 MR. GLASS: Copies.

8 THE COURT: Sure. So we'll post a minute order later
9 today or tomorrow. Tell me what's in store -- once these issues
10 are resolved here, you receive documents pursuant to the other
11 court orders, correct, Counsel?

12 MR. KHALIL: (Nodded head affirmatively.)

13 THE COURT: What awaits you in Michigan?

14 MR. KHALIL: Me?

15 THE COURT: Yes, please. What's the next journey?

16 MR. KHALIL: Once we get the documents from the Treasury
17 or the Court of Appeals tells us we are not entitled to any
18 documents or you tell us we're not entitled to anymore documents,
19 we have a 30 day clock with the PBGC in which we need to resolve
20 expert discovery. Then we have a 60-day clock subject to
21 everyone's best efforts to try to depose the two Treasury --
22 former Treasury officials, Mr. Feldman and Mr. Wilson. And then
23 a 90-day clock to resolve summary judgment, and those are the
24 highlights.

25 THE COURT: So if this case goes to trial, how long a

1 trial are you looking at?

2 MR. KHALIL: A week.

3 THE COURT: Is that all? Okay. All right. Thank you.

4 Good to see everyone. Thank you.

5 (Proceedings adjourned at 1:53 p.m.)

6

7

C E R T I F I C A T E

8

9

I, Scott L. Wallace, RDR-CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

10

11

/s/ Scott L. Wallace

5/24/17

12

Scott L. Wallace, RDR, CRR
Official Court Reporter

Date

13

14

15

16

17

18

19

20

21

22

23

24

25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DEPARTMENT OF THE TREASURY,)	
)	
Petitioner,)	
	)	No. 1:12-mc-00100-EGS
v.)	
)	
PENSION BENEFIT GUARANTY CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, et al.,)	
)	
Respondents.)	

PETITIONER'S REVISED PRIVILEGE LOG

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2017, I served the within document on the following
counsel by email:

Michael N. Khalil, Esq.
Miller & Chevalier Chartered
900 16th Street, N.W.
Washington, D.C. 20006
mkhalil@milchev.com

John A. Menke, Esq.
Assistant Chief Counsel
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, D.C. 20005-4026
menke.john@pbgc.gov

s/ David M. Glass

DOCUMENT INDEX

Doc. No.	Basis for Withholding					Extent of Withholding	
	Attorney-Client	Presidential Communications	Work Product	Deliberative Process	Relevance	In Part	In Full
30	X					X	
67		X					X
72		X					X
84		X					X
94		X					X
203			X				X
207	X						X
210	X					X	
275		X					X
358		X					X
446	X					X	
499	X					X	
558	X			X		X	
560		X					X
570	X					X	
593		X					X
596		X					X
599		X					X
601		X					X
603		X					X
605		X					X
610		X					X
611		X					X
612		X					X
619					X	X	
621		X					X
623		X					X
627		X					X
629		X					X
631		X					X
633		X					X
638		X					X
668		X					X
670		X					X
672		X					X
674		X					X
676		X					X
679		X					X
685	X					X	

Doc. No.	Basis for Withholding					Extent of Withholding	
	Attorney-Client	Presidential Communications	Work Product	Deliberative Process	Relevance	In Part	In Full
692		X					X
720	X					X	
758		X					X
759		X					X
760		X					X
761		X					X
762		X					X
763		X					X
764		X					X
765		X					X
766		X					X
767		X					X
770		X					X
776		X					X
777		X					X
778		X					X
789	X					X	
792	X		X				X
849		X					X
856		X					X
859		X					X
860		X					X
863		X					X
944		X					X
948		X					X
950		X					X
956		X					X
983			X				X
985			X				X
987			X				X
989			X				X
1006		X					X
1071	X					X	
1089		X					X
1091		X					X
1094		X					X
1113	X					X	
1152		X					X
1166		X					X
1168		X					X
1204	X					X	

Doc. No.	Basis for Withholding					Extent of Withholding	
	Attorney-Client	Presidential Communications	Work Product	Deliberative Process	Relevance	In Part	In Full
1217		X					X
1219		X					X
1221		X					X
1223		X					X
1259			X				X

Document No.: 67
Type of Document: Memorandum
No. of Pages: 4
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

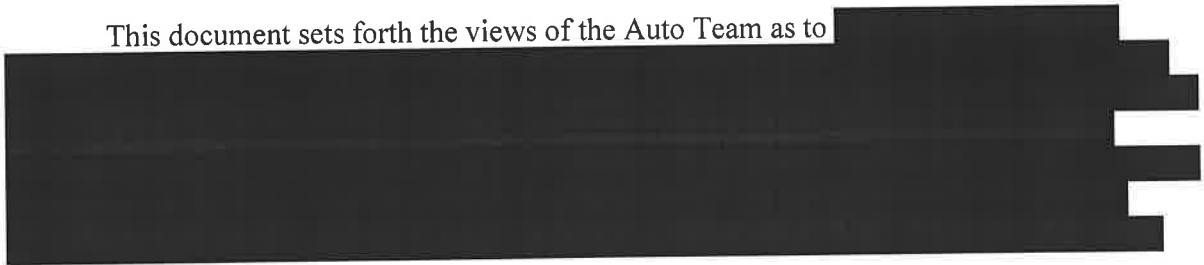
Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury (Treasury) and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). Under the plan developed by the Auto Team and approved by the bankruptcy court on July 5, 2009, Treasury became the owner of 60% of the stock of New GM but did not have any seats on New GM's board.

Dated July 7, 2009, this document is a memorandum from the Auto Team to Timothy F. Geithner, Secretary of the Treasury, and to Lawrence H. Summers. At the time of this document, Dr. Summers was "the Director of the [NEC]," "the chief White House advisor to the President on the development and implementation of economic policy," the person who "led the President's daily economic briefing," and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O'Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. "As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States' actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation." *Id.* ¶ 9.

This document sets forth the views of the Auto Team as to



This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); *see also Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 72
Type of Document: Memorandum
No. of Pages: 2
Subject: General Motors
Date: June 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

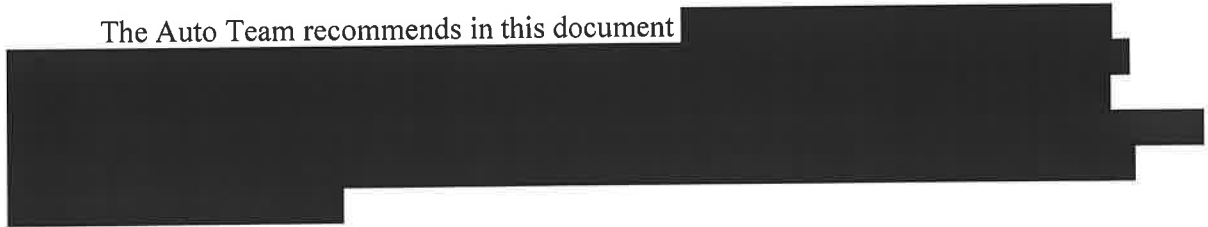
Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury (Treasury) and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). This plan was presented to the bankruptcy court when Old GM filed for bankruptcy on June 1, 2009, and was approved by the bankruptcy court on July 5, 2009.

Dated June 24, 2009, this document is a memorandum from the Auto Team to Timothy F. Geithner, Secretary of the Treasury, and to Lawrence H. Summers. At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

The Auto Team recommends in this document



This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that

informed the President's determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies." *Id.* ¶ 10. See *Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that "the [presidential communications] privilege protects documents 'solicited and received' by the President or his 'immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President'" (quoting *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects "email exchanges between White House counsel and [agency] employees" where "the withheld communications were either to or from important, senior members of the President's staff . . . who were involved in advising the President"). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because "[t]he privilege covers documents reflecting 'presidential decisionmaking and deliberations,' regardless of whether the documents are predecisional or not, and it covers the documents in their entirety." *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 84
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: Delphi Corporation
Date: April 2009
Author: Auto Team
Recipient: Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 860. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 860 is entitled to withholding under the privilege.

Document No.: 94
Type of Document: Memorandum
No. of Pages: 2
Subject: General Motors
Date: June 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 72. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 72 is entitled to withholding under the privilege.

Document No.: 275
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: Delphi Corporation
Date: April 2009
Author: Auto Team
Recipient: Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 84. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 84 is entitled to withholding under the privilege.

Document No.: 358
Document Type: Email String (approximately 15 emails)
No. of Pages: 6
Subject: Automotive Labor Rates
Date: May 26-28, 2009
Participants: Various
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Email string among members of the Auto Team and, in the case of certain of the earlier emails, employees of General Motors

Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury and two employees of the National Economic Council, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). This plan was presented to the bankruptcy court when Old GM filed for bankruptcy on June 1, 2009, and was approved by the bankruptcy court on July 5, 2009.

Dated May 26-28, 2009, this document is an email string among members of the Auto Team [REDACTED] Certain employees of General Motors participate in certain of the earlier emails in the string. One of the members of the Auto Team says the following to other members of the Auto Team in the course of the string:

[REDACTED]

[REDACTED]

This document is entitled to withholding under the presidential communications privilege because [REDACTED]

[REDACTED]

All portions of the document are entitled to withholding under the privilege

because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Id.* at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 560
Type of Document: Memorandum
No. of Pages: 4
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 67. It is entitled to withholding in its entirety under the presidential communications privilege for the same reason that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 593
Type of Document: Draft Memorandum
No. of Pages: 2
Subject: Chrysler, General Motors, Delphi Corporation, Congress
Date: March 8, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Brian Deese (all Auto Team members)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 601. It is entitled to withholding in its entirety under the presidential communications for the same reasons that Doc. No. 601 is entitled to withholding under the privilege.

Document No.: 596
Type of Document: Draft Memorandum
No. of Pages: 2
Subject: Chrysler, General Motors, Delphi Corporation, Congress
Date: March 8, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Brian Deese (all Auto Team members)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 593. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 593 is entitled to withholding under the privilege.

Document No.: 599
Type of Document: Draft Memorandum
No. of Pages: 2
Subject: Chrysler, General Motors, Delphi Corporation, Congress
Date: March 8, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Brian Deese (all Auto Team members)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 601, but a different draft from Doc. No. 593. It is entitled to withholding in its entirety under the presidential communications for the same reasons that Doc. No. 601 is entitled to withholding under the privilege.

Document No.: 601
Type of Document: Memorandum
No. of Pages: 2
Subject: Chrysler, General Motors, Delphi Corporation, Congress
Date: March 8, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Brian Deese (all Auto Team members)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

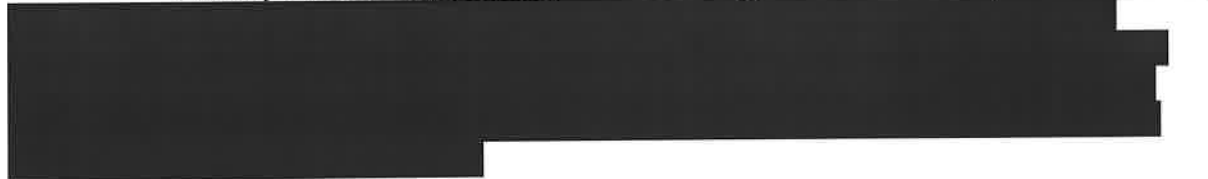
Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from the Department of the Treasury (Treasury). The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and 2 NEC employees.

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

Dated March 8, 2009, this document is a memorandum in which members of the Auto Team advise Timothy F. Geithner, Secretary of the Treasury, and Dr. Summers



This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with

respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. See *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 603
Type of Document: Memorandum
No. of Pages: 2
Subject: Chrysler, General Motors, Delphi Corporation, Congress
Date: March 8, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Brian Deese (all Auto Team members)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege

This document is identical to Doc. No. 601. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 601 is entitled to withholding under the privilege.

Document No.: 605
Type of Document: Draft Memorandum
No. of Pages: 2
Subject: Chrysler, General Motors, Delphi Corporation, Congress
Date: March 8, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Brian Deese (all Auto Team members)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 601, but a different draft from Doc. No. 593 and Doc. No. 599. It is entitled to withholding in its entirety under the presidential communications for the same reasons that Doc. No. 601 is entitled to withholding under the privilege.

Document No.: 610
Type of Document: Email String (2 emails)
No. of Pages: 2
Subject: Presidential Announcement
Date: March 28, 2009
Participants: Various
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Email from a member of the Auto Team to five individuals, including the Director of the National Economic Council (NEC), and email circulating the earlier email within the Department of the Treasury (Treasury)

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from Treasury. The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and 2 NEC employees.

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

On March 30, 2009, the President announced that the Auto Team had completed its evaluation of the viability plans that Chrysler and General Motors had been required to submit but that neither plan went far enough to warrant the additional investments of government funds that both companies were requesting. This document is an email string dated March 28, 2009. The earlier email in the string is an email from a member of the Auto Team to Dr. Summers and to others. The earlier email



[REDACTED]

[REDACTED]

The later email [REDACTED]

[REDACTED]

This document is entitled to withholding under the presidential communications privilege because the earlier email was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and because both emails were “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); *see also Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege, including the later email, because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 611
Document Type: Memorandum
No. of Pages: 1
Subject: Presidential Announcement
Date: March 28, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Harry Wilson, Brian Deese (all members of the Auto Team)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from Treasury. The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and 2 NEC employees.

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

On March 30, 2009, the President announced that the Auto Team had completed its evaluation of the viability plans that Chrysler and General Motors had been required to submit but that neither plan went far enough to warrant the additional investments of government funds that both companies were requesting. Dated March 28, 2009, this document is a memorandum from certain members of the Auto Team to Timothy F. Geithner, Secretary of the Treasury, and to Dr. Summers. The memorandum [REDACTED]

This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors

and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. See *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 612
Document Type: Draft Remarks
No. of Pages: 5
Subject: Presidential Announcement
Date: March 28, 2009
Author: None set forth in document
Recipient: None set forth in document
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft speech of President Obama to be delivered March 30, 2009

Rationale for Privilege Claim:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from Treasury. The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and 2 NEC employees.

On March 30, 2009, the President announced that the Auto Team had completed its evaluation of the viability plans that Chrysler and General Motors had been required to submit but that neither plan went far enough to warrant the additional investments of government funds that both companies were requesting. Dated March 28, 2009, at 6:30 p.m. this document is a track-changes draft of the remarks the President was going to be making on March 30.

This document is entitled to withholding under the presidential communications privilege because it is the draft of remarks that the President is going to be making to the public. *See Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) holding that "the [presidential communications] privilege protects 'communications directly involving and documents actually viewed by the President,' as well as 'documents solicited and received' by the President" (quoting *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004)); *see also N.Y. Times Co. v. Dep't of Def.*, 499 F. Supp. 2d 501, 516 (S.D.N.Y. 2007) (holding that the privilege protects "an e-mail from an attorney in the White House Counsel's Office seeking the Attorney General's comments on, and forwarding a draft of, the President's December radio address"). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because "[t]he privilege covers documents reflecting 'presidential decisionmaking and deliberations,' regardless of whether the documents are predecisional or not, and it covers the documents in their entirety." *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 621
Type of Document: Email String (2 emails)
No. of Pages: 1
Subject: General Motors, Delphi Corporation
Date: April 22, 2009
Participants: Steven Rattner, Brian Deese (both Auto Team members); Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Email exchange between Auto Team member and the Director of the National Economic Council (NEC) with copy to second Auto Team member

Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). This plan was presented to the bankruptcy court when Old GM filed for bankruptcy on June 1, 2009, and was approved by the bankruptcy court on July 5, 2009.

Dated April 4, 2009, this document is an exchange of emails between a member of the Auto Team and Lawrence H. Summers, with a copy to another member of the Auto Team. At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

The earlier of the emails in this document is one in which a member of the Auto Team advises Dr. Summers of the following:

[REDACTED]

[REDACTED] The email then asks Dr. Summers [REDACTED] The later email is Dr. Summers’ response.

This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); *see also Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 623
Type of Document: Memorandum
No. of Pages: 7
Subject: Chrysler, General Motors
Date: April 25, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

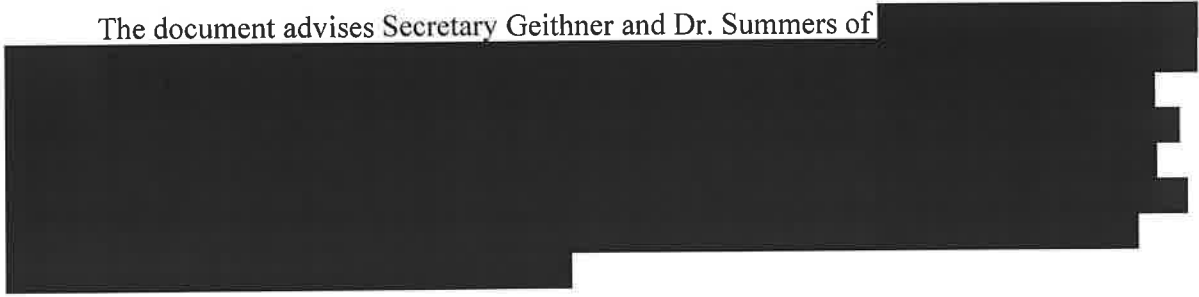
Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). It also worked to maintain Chrysler as a going concern.

Dated April 25, 2009, this document is a memorandum from the Auto Team to Timothy F. Geithner, Secretary of the Treasury, and to Lawrence H. Summers. At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

The document advises Secretary Geithner and Dr. Summers of



This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. See *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 627
Type of Document: Draft Memorandum
No. of Pages: 15
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 633. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 629
Type of Document: Draft Memorandum
No. of Pages: 16
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 633, but a different draft from Doc. No. 627. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 631
Type of Document: Draft Memorandum
No. of Pages: 17
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 633, but a different draft from Doc. No. 627 and Doc. No. 629. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 633
Type of Document: Memorandum
No. of Pages: 17
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury (Treasury) and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). It also worked to maintain Chrysler as a going concern.

Dated May 10, 2009, this document is a memorandum from the Auto Team to Timothy F. Geithner, Secretary of the Treasury, and to Lawrence H. Summers. At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

The purpose of this document is to provide Secretary Geithner and Dr. Summers with “



This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors

and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); *see also Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 638
Type of Document: Draft Memorandum
No. of Pages: 6
Subject: Meeting
Date: May 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council.

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 761. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 761 is entitled to withholding under the privilege.

Document No.: 668
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 67. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 670
Type of Document: Draft Memorandum
No. of Pages: 6
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 67, but a different draft from Doc. No. 668. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 672
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 67, but a different draft from Doc. No. 668 and Doc. No. 670. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 674
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 672. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 672 is entitled to withholding under the privilege.

Document No.: 676
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 67, but a different draft from Doc. No. 668, Doc. No. 670, and Doc. No. 672. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 692
Type of Document: Memorandum
No. of Pages: 2
Subject: Auto Parts Suppliers
Date: March 6, 2009
Author: Alan B. Krueger
Recipient: National Economic Council
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

This document is a revised information memorandum from the Counselor to the Secretary of the Treasury, Office of Economic Policy, to the National Economic Council (NEC)

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from the Department of the Treasury (Treasury). The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and 2 NEC employees.

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

The NEC was established in 1993 to advise the President on U.S. global and economic policy. *National Economic Council (NEC)*, <https://www.whitehouse.gov/administration/eop/nec> (accessed Jan. 7, 2017). The NEC resides within the Office of Policy Development and is part of the Executive Office of the President. *Id.*

Dated March 6, 2009, this document is a memorandum by which a senior Treasury official provides the NEC with [REDACTED]

This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that

informed the President's determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies." *Id.* ¶ 10. See *Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that "the [presidential communications] privilege protects documents 'solicited and received' by the President or his 'immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President'" (quoting *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects "email exchanges between White House counsel and [agency] employees" where "the withheld communications were either to or from important, senior members of the President's staff . . . who were involved in advising the President"). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because "[t]he privilege covers documents reflecting 'presidential decisionmaking and deliberations,' regardless of whether the documents are predecisional or not, and it covers the documents in their entirety." *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 758
Type of Document: Draft Memorandum
No. of Pages: 11
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 633, but a different draft from Doc. No. 627, Doc. No. 629, and Doc. No. 631. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 759
Type of Document: Draft Memorandum
No. of Pages: 14
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 633, but a different draft from Doc. No. 627, Doc. No. 629, Doc. No. 631, and Doc No. 758. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 760
Type of Document: Draft Memorandum
No. of Pages: 6
Subject: Meeting
Date: May 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document identical to Doc. No. 638. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 638 is entitled to withholding under the privilege.

Document No.: 761
Type of Document: Memorandum
No. of Pages: 6
Subject: Meeting
Date: May 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury (Treasury) and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). It also worked to maintain Chrysler as a going concern.

Dated May 24, 2009, this document is a memorandum from the Auto Team to Timothy F. Geithner, Secretary of the Treasury, and to Lawrence H. Summers. At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

This document is one in which the Auto Team provides Secretary Geithner and Dr. Summers with



This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with

respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. See *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 762
Type of Document: Memorandum
No. of Pages: 6
Subject: Meeting
Date: May 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

This document is identical to Doc. No. 761. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 761 is entitled to withholding under the privilege.

Document No.: 763
Type of Document: Email String (3 emails)
No. of Pages: 1
Subject: Letter
Date: August 4, 2009
Participants: Various
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Email string among members of the Auto Team and others

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from the Department of the Treasury (Treasury). The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and 2 NEC employees.

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

Dated August 4, 2009, this document is an email string consisting of three emails. [REDACTED]

[REDACTED]

The second email is an email among members of the Auto Team discussing [REDACTED]

[REDACTED]

The last email in the string is an email by which a member of the Auto Team copies the other emails in the string to his personal email account.

This document is entitled to withholding under the presidential communications privilege because it deals with a document to be provided to the President for his personal review. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects ‘communications directly involving and documents actually

viewed by the President,’ as well as ‘documents solicited and received’ by the President”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004)). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of the document are entitled to withholding under the privilege, including the first and third emails in the string, because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Id.* at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 764
Type of Document: Letter
No. of Pages: 2
Subject: Delphi Salaried Pension Plan
Date: July 16, 2009
Author: Member of the Public
Recipients: President Obama, Auto Team, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Letter with notation

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from the Department of the Treasury (Treasury). The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and 2 NEC employees.

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

Dated July 16, 2009, this document is a letter from a member of the public to the President. [REDACTED]

This document is covered in its entirety by the presidential communications privilege because it is a document received and read by the President [REDACTED]. See *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects ‘communications directly involving and documents actually viewed by the President,’ as well as ‘documents solicited and received’ by the President”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004)). [REDACTED]



Document No.: 765
Type of Document: Email String (2 emails)
No. of Pages: 1
Subject: Letter
Date: August 4, 2009
Participants: Brian Deese, Matthew Feldman, Harry Wilson, Ron Bloom (all Auto Team members)
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Email string among members of the Auto Team

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from the Department of the Treasury (Treasury). The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury employees and two employees of the National Economic Council.

Dated August 4, 2009, this document is an email string consisting of two emails. The earlier email is an email forwarding for review among members of the Auto Team [REDACTED]

[REDACTED] The later email is an email by which a member of the Auto Team copies the earlier email to his personal email account.

This document is entitled to withholding under the presidential communications privilege because it deals with a document to be provided to the President for his personal review. *See Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects ‘communications directly involving and documents actually viewed by the President,’ as well as ‘documents solicited and received’ by the President”) (quoting *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004)). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of the document are entitled to withholding under the privilege, including the second email in the string, because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Id.* at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 766
Type of Document: Memorandum
No. of Pages: 2
Subject: Letter
Date: August 4, 2009
Author: Auto Team
Recipient: None set forth in document
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum prepared by Auto Team

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from the Department of the Treasury (Treasury). The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury employees and two employees of the National Economic Council.

Dated August 4, 2009, this document is a memorandum by which the Auto Team

[REDACTED]

This document is entitled to withholding under the presidential communications privilege because it is a document to be provided to the President for his personal review [REDACTED]. See *Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that "the [presidential communications] privilege protects 'communications directly involving and documents actually viewed by the President,' as well as 'documents solicited and received' by the President") (quoting *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004)). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of the document are entitled to withholding under the privilege because "[t]he privilege covers documents reflecting 'presidential decisionmaking and deliberations,' regardless of whether the documents are predecisional or not, and it covers the documents in their entirety." *Id.* at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 767
Type of Document: Email String (2 emails)
No. of Pages: 1
Subject: Doc. No. 764
Date: August 4, 2009
Participants: Brian Deese, Matthew Feldman, Harry Wilson, Ron Bloom (all Auto Team members)
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Email string among members of the Auto Team

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 765. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 765 is entitled to withholding under the privilege.

Document No.: 770
Document Type: Memorandum
No. of Pages: 3
Subject: General Motors, Chrysler
Date: February 17, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council (NEC)

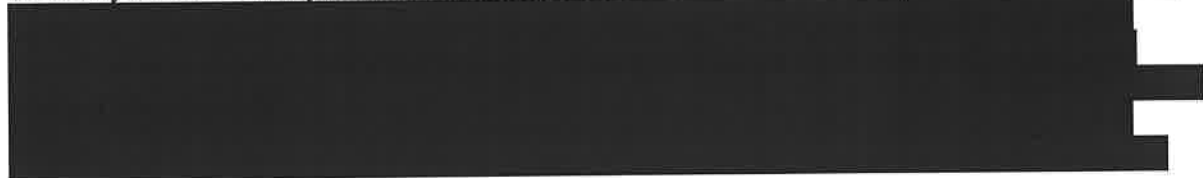
Rationale for Privilege Claim:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from the Department of the Treasury (Treasury). The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury and two NEC employees.

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

Dated February 17, 2009, this document is a memorandum to Timothy F. Geithner, Secretary of the Treasury, and to Dr. Summers in which the Auto Team



This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.*

¶ 10. See *Loving v. Dep't of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 776
Type of Document: Email String (2 emails)
No. of Pages: 2
Subject: Presidential Announcement
Date: March 28, 2009
Participants: Brian Deese, Steven Rattner, Diana Farrell, Ron Bloom, Harry Wilson, Brian Osias, Clay Calhoon, Haley Stevens, Matthew Feldman (all Auto Team members)
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Email string among members of the Auto Team

Rationale for Privilege Claims:

Presidential Communications Privilege:

On February 15, 2009, the President announced the creation of the Presidential Task Force on the Auto Industry (Auto Task Force) and gave it the initial task of reviewing the viability plans that Chrysler and General Motors Corporation had been required to submit as a condition of the loans they had received from Treasury. The Auto Task Force consisted of 10 cabinet-level officials. Staffing for the Auto Task Force was provided by the Auto Team, a group of 12 Treasury employees and two employees of the National Economic Council (NEC).

The Auto Task Force was co-chaired by Lawrence H. Summers, who also served as “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” and the person who “led the President’s daily economic briefing.” Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

On March 30, 2009, the President announced that the Auto Team had completed its evaluation of the viability plans that Chrysler and General Motors had been required to submit but that neither plan went far enough to warrant the additional investments of government funds that both companies were requesting. Dated March 28, 2009, this document is an email string among members of the Auto Team. The earlier email contains a draft memorandum to Timothy F. Geithner, Secretary of the Treasury, and to Dr. Summers. The draft memorandum forwards certain documents pertinent to the President’s announcement to Secretary Geithner and Dr. Summer to permit Secretary Geithner and Dr. Summers to review the documents prior to that announcement. The email also forwards those documents to the recipients of the email and says:

[REDACTED]

The later email forwards the earlier email to a member of the Auto Team who was not included on the earlier email and also forwards certain of the documents to which the earlier email pertains. [REDACTED]

This document is entitled to withholding under the presidential communications privilege because it contains a draft memorandum “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8; because it discusses documents pertinent to the President’s upcoming announcement that are to be forwarded to Dr. Summers for his review; and because it therefore was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); *see also Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 777
Document Type: Memorandum
No. of Pages: 1
Subject: Presidential Announcement
Date: March 28, 2009
Author: Steven Rattner, Ron Bloom, Diana Farrell, Harry Wilson, Brian Deese (all members of the Auto Team)
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from members of the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 611. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 611 is entitled to withholding under the privilege.

Document No.: 778
Document Type: Draft Remarks
No. of Pages: 5
Subject: Presidential Announcement
Date: March 28, 2009
Author: None set forth in document
Recipient: None set forth in document
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft speech of President Obama to be delivered March 30, 2009

Rationale for Privilege Claim:

Presidential Communications Privilege:

This document is identical to Doc. No. 612. It is entitled to withholding in its entirety under the presidential communications privilege for the same reason that Doc. No. 612 is entitled to withholding under the privilege.

Document No.: 849
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: Delphi Corporation
Date: April 2009
Author: Auto Team
Recipient: Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 860, but a different draft from Doc. 84. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 860 is entitled to withholding under the privilege.

Document No.: 856
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: Delphi Corporation
Date: April 2009
Author: Auto Team
Recipient: Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 84. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 84 is entitled to withholding under the privilege.

Document No.: 859
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: Delphi Corporation
Date: April 2009
Author: Auto Team
Recipient: Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 849 except for certain vertical lines in the margin indicating track-change edits. This document is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 860 is entitled to withholding under the privilege.

Document No.: 860
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: Delphi Corporation
Date: April 2009
Author: Auto Team
Recipient: Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Director of the National Economic Council (NEC)

Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury (Treasury) and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). This plan was presented to the bankruptcy court when Old GM filed for bankruptcy on June 1, 2009, and was approved by the bankruptcy court on July 5, 2009.

Dated “April [], 2009,” this document is a draft memorandum from the Auto Team to Lawrence H. Summers. At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

This document is one in which the Auto Team



This document is entitled to withholding under the presidential communications privilege because it is a draft of a document “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States

should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. See *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 863
Type of Document: Draft Memorandum
No. of Pages: 4
Subject: Delphi Corporation
Date: April 2009
Author: Auto Team
Recipient: Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 860. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 860 is entitled to withholding under the privilege.

Document No.: 944
Document Type: Agenda
No. of Pages: 1
Subject: Meeting
Date: May 11, 2009
Author: None set forth in document
Recipients: None set forth in document
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Agenda for meeting

Rationale for Privilege Claims:

Consisting of 12 employees of the Department of the Treasury (Treasury) and two employees of the National Economic Council (NEC), the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). It also worked to maintain Chrysler as a going concern.

Dated May 10, 2009, this document is [REDACTED]

[REDACTED] At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.

This document is entitled to withholding under the presidential communications privilege because it was “authored or solicited and received by the President or senior presidential advisors and staff, including [Dr.] Summers,” O’Connor Decl. ¶ 8, and was “part of the process that informed the President’s determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.” *Id.* ¶ 10. See *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential communications] privilege protects documents ‘solicited and received’ by the President or his ‘immediate White House advisers [with] . . . broad and significant responsibility for investigating and formulating the advice to be given the President’”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1102 (D.C. Cir. 2004)); see also *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau*, 60 F. Supp. 3d 1, 12-13 (D.D.C. 2014) (Sullivan, J.) (holding that the privilege protects “email exchanges between White House counsel and [agency] employees” where “the withheld communications were either to or from important, senior members of the President’s staff . . . who were involved in advising the President”). The application of the

privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of this document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Loving*, 550 F.3d at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 948
Type of Document: Draft Memorandum
No. of Pages: 14
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 633, but a different draft from Doc. No. 627, Doc. No. 629, Doc. No. 631, Doc. No. 758, and Doc. No. 759. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 950
Type of Document: Draft Memorandum
No. of Pages: 17
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 631. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 631 is entitled to withholding under the privilege.

Document No.: 956
Type of Document: Memorandum
No. of Pages: 17
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council.

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 633. It is entitled to withholding in its entirety under the presidential communications privilege for the same reason that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 1006
Type of Document: Draft Memorandum
No. of Pages: 6
Subject: General Motors
Date: May 26, 2009
Author: Secretary Geithner, Lawrence Summers
Recipients: The President
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum to the President from the Secretary of the Treasury and the Director of the National Economic Council (NEC)

Rationale for Privilege Claims:

Presidential Communications Privilege:

Consisting of 12 employees of the Department of the Treasury and two employees of the NEC, the Auto Team worked in April and May 2009 to develop a plan under which General Motors Corporation (Old GM) would declare bankruptcy and sell the bulk of its assets and certain of its liabilities to General Motors Company (New GM). This plan was presented to the bankruptcy court when Old GM filed for bankruptcy on June 1, 2009, and was approved by the bankruptcy court on July 5, 2009.

Dated May 26, 2009, this document is a draft memorandum to the President from Timothy F. Geithner, Secretary of the Treasury, and Lawrence H. Summers. At the time of this document, Dr. Summers was “the Director of the [NEC],” “the chief White House advisor to the President on the development and implementation of economic policy,” the person who “led the President’s daily economic briefing,” and the co-chair of the Presidential Task Force on the Auto Industry (Auto Task Force), the group of 10 cabinet-level officials for which the Auto Team provided staffing. Decl. of Jennifer M. O’Connor (Aug. 6, 2015), ECF No. 35-3, ¶¶ 8-9. “As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States’ actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.” *Id.* ¶ 9.



This document is entitled to withholding under the presidential communications privilege because it is a draft of a document to be provided to the President for his personal review. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008) (holding that “the [presidential

communications] privilege protects ‘communications directly involving and documents actually viewed by the President,’ as well as ‘documents solicited and received’ by the President”) (quoting *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004)). The application of the privilege to this document is necessary to preserve the ability of the President to obtain candid and informative opinions from his advisors and to make decisions confidentially. All portions of the document are entitled to withholding under the privilege because “[t]he privilege covers documents reflecting ‘presidential decisionmaking and deliberations,’ regardless of whether the documents are predecisional or not, and it covers the documents in their entirety.” *Id.* at 37-38 (quoting *In re Sealed Case*, 121 F.3d 729, 744 (1997)).

Document No.: 1089
Type of Document: Memorandum
No. of Pages: 2
Subject: General Motors
Date: June 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 72. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 72 is entitled to withholding under the privilege.

Document No.: 1091
Type of Document: Memorandum
No. of Pages: 2
Subject: General Motors
Date: June 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 72. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 72 is entitled to withholding under the privilege.

Document No.: 1094
Type of Document: Memorandum
No. of Pages: 2
Subject: General Motors
Date: June 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is identical to Doc. No. 72. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 72 is entitled to withholding under the privilege.

Document No.: 1152
Type of Document: Draft Memorandum
No. of Pages: 5
Subject: Meeting
Date: May 10, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a draft of Doc. No. 633, but a different draft from Doc. No. 627, Doc. No. 629, Doc. No. 631, Doc No. 758, and Doc. No. 759. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 633 is entitled to withholding under the privilege.

Document No.: 1166
Type of Document: Draft Memorandum
No. of Pages: 7
Subject: Meeting
Date: May 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council.

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 761, but a different draft from Doc. No. 638. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 761 is entitled to withholding under the privilege.

Document No.: 1168
Type of Document: Draft Memorandum
No. of Pages: 7
Subject: Meeting
Date: May 24, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Memorandum from the Auto Team to the Secretary of the Treasury and the Director of the National Economic Council.

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 761, but a different draft from Doc. No. 638 and Doc. No. 1166. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 761 is entitled to withholding under the privilege.

Document No.: 1217
Type of Document: Draft Memorandum
No. of Pages: 5
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 67, but a different draft from Doc. No. 668, Doc. No. 670, Doc. No. 672, and Doc. No. 676. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 1219
Type of Document: Draft Memorandum
No. of Pages: 5
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 67, but a different draft from Doc. No. 668, Doc. No. 670, Doc. No. 672, Doc. No. 676, and Doc. No. 1217. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 1221
Type of Document: Draft Memorandum
No. of Pages: 5
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 67, but a different draft from Doc. No. 668, Doc. No. 670, Doc. No. 672, Doc. No. 676, Doc. No. 1217, and Doc. No. 1219. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

Document No.: 1223
Type of Document: Draft Memorandum
No. of Pages: 5
Subject: General Motors
Date: July 7, 2009
Author: Auto Team
Recipients: Secretary Geithner, Lawrence Summers
Privileges Claimed: Presidential Communications Privilege (withheld in full)

Description of Document:

Draft memorandum from Team Auto to the Secretary of the Treasury and the Director of the National Economic Council

Rationale for Privilege Claims:

Presidential Communications Privilege:

This document is a track-changes draft of Doc. No. 67, but a different draft from Doc. No. 668, Doc. No. 670, Doc. No. 672, Doc. No. 676, Doc. No. 1217, Doc. No. 1219, and Doc. No. 1221. It is entitled to withholding in its entirety under the presidential communications privilege for the same reasons that Doc. No. 67 is entitled to withholding under the privilege.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DEPARTMENT OF THE)
TREASURY,)
)
Petitioner,)
)
v.) Case No. 12-mc-100 (EGS)
)
PENSION BENEFIT GUARANTY)
CORPORATION,)
)
Interested Party,)
)
v.)
)
DENNIS BLACK, *et al.*,)
)
Respondents.)

MEMORANDUM OPINION

Pending before the Court are the U.S. Department of Treasury's contested privilege assertions that were not resolved by the Court's December 20, 2016 Opinion ordering Treasury to: (1) produce all documents over which it asserted the deliberative process privilege in isolation; and (2) submit a revised privilege log and *in camera* production. Upon consideration of Respondents' motion to compel, response and reply thereto, the relevant caselaw, the *in camera* production and the entire record, and for the reasons set forth below, the

unresolved portion of the motion is **GRANTED in part** and **DENIED in part**.

I. BACKGROUND

Respondents in this miscellaneous action are plaintiffs in *Black v. PBGC*, Case No. 09-13616, a civil action pending in the United States District Court for the Eastern District of Michigan. Respondents are current and former salaried workers at Delphi Corporation ("Delphi"), an automotive supply company. In the civil action, Respondents allege that in July 2009, the Pension Benefit Guaranty Corporation ("PBGC") improperly terminated Delphi's pension plan for its salaried workers ("Plan") via an agreement with Delphi and General Motors. Treasury is not a party to the civil action.

On July 9, 2015, Respondents filed a motion to compel the production, or alternatively *in camera* review, of the documents Treasury withheld or redacted under four separate claims of privilege: (1) the deliberative process privilege; (2) the presidential communications privilege; (3) the attorney-client privilege; and (4) the work product doctrine. See generally Mot. Compel, ECF No. 30. After reviewing the withheld documents *in camera*, the Court concluded that Treasury failed to provide a specific articulation of the rationale supporting the deliberative process privilege and ordered Treasury to produce to Respondents all of the documents over which it asserted the

deliberative process in isolation. See Op., ECF No. 42. Noting that Treasury had withdrawn nearly 75% of its privilege assertions when first ordered to make an *in camera* submission, the Court ordered Treasury to revise its privilege log and submit an updated *in camera* production containing only the documents withheld under the presidential communications privilege, the attorney-client privilege, or the work product doctrine. The 85 documents over which Treasury asserts one of these privileges are now at issue before the Court.

II. THE PRESIDENTIAL COMMUNICATIONS PRIVILEGE

The purpose of the presidential communications privilege is to "guarantee the candor of presidential advisers and to provide '[a] President and those who assist him ... [with] freedom to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.'" *In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997) (quoting *U.S. v. Nixon*, 418 U.S. 683, 708 (1974)). This privilege extends not only to communications directly involving the President, but also "to communications authored or received in response to a solicitation by members of a presidential adviser's staff, since in many instances advisers must rely on their staff to investigate and issue and formulate the advice to be given to the President." *ACLU v. Dep't of Justice*, Case No. 10-123, 2011 U.S. Dist. LEXIS 156267, *30

(D.D.C. Feb. 14, 2011) (citing *In re Sealed Case*, 121 F.3d at 752). "Unlike the deliberative process privilege, the presidential communications privilege covers documents in their entirety." *Loving v. Dep't of Def.*, 496 F. Supp. 2d 101, 107 (D.D.C. 2007), *aff'd sub nom. Loving v. Dep't of Def.*, 550 F.3d 32 (D.C. Cir. 2008).

Treasury has raised the presidential communications privilege as the basis for withholding 63 documents from production. The documents can be grouped into four categories: (1) drafts of presidential speeches;¹ (2) personal requests for information by President Obama;² (3) draft memoranda from staffers to Dr. Lawrence Summers, the Director of the National Economic Council, Assistant to the President for Economic Policy, and co-chair of the Presidential Task Force on the Auto Industry ("Auto Task Force");³ and (4) electronic mail conversations among Auto Team members concerning advice to be provided to the President.⁴ O'Connor Decl., ECF No. 35-3 ¶ 7. For the following reasons, the Court concludes that while these documents are covered by the presidential communications

¹ See Document Nos. 612 and 778.

² See Document No. 764.

³ See Document Nos. 67, 72, 84, 94, 275, 560, 593, 596, 599, 601, 603, 605, 611, 623, 627, 629, 631, 633, 638, 668, 670, 672, 674, 676, 692, 758, 759, 760, 761, 762, 766, 770, 777, 849, 856, 859, 860, 863, 944, 948, 950, 956, 1006, 1089, 1091, 1094, 1152, 1166, 1168, 1217, 1219, 1221, and 1223.

⁴ See Document Nos. 358, 610, 621, 763, 765, 767, and 776.

privilege, Respondents have demonstrated a need sufficient to overcome the privilege.

The Court can swiftly resolve the first two categories of documents. With regard to the draft presidential speeches, Respondents, in their reply brief, "concede that these two documents are covered by the privilege" because they "would have been seen by the President[.]" Reply, ECF No. 36 at 18. By the same token, the draft letter containing a handwritten request from President Obama to consult Dr. Summers regarding the Delphi salaried pension plan is also covered by the presidential communications privilege.⁵ See *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1114 (D.C. Cir. 2004) (recognizing that "communications directly involving and documents actually viewed by the President" are privileged).

The vast bulk of the documents withheld from production under the presidential communications privilege – *i.e.*, 53 of the remaining 60 documents – fall into the third category. To justify withholding these draft memoranda from production, Treasury submitted a declaration from Jennifer M. O'Connor, the Deputy Counsel to the President. See O'Connor Decl., ECF No. 35-3. Ms. O'Connor's responsibilities in the White House Counsel's Office include providing legal advice to White House staff,

⁵ See Document No. 764.

including on matters involving the invocation of the presidential communications privilege. *Id.* ¶ 1. Ms. O'Connor represents that all of the withheld documents "relate to the President's decisions as to how the United States should address the financial distress of several of its large automobile corporations and protect the country from the potential consequences of their bankruptcy." *Id.* ¶ 7. Ms. O'Connor also sheds light on the relationship between the Auto Task Force, Dr. Lawrence Summers, and the President. During the time of the challenged communications, Dr. Summers served as co-chair of the Auto Task Force, the Director of the National Economic Council, and Assistant to the President for Economic Policy. *Id.* ¶ 8. In this role, Dr. Summers led the President's daily economic briefing and advised the President on decisions relating to the United States' actions in response to the bankruptcy and restructuring of major automotive companies, including General Motors. *Id.* ¶ 9. A team of federal employees (the "Auto Team") supported Dr. Summers and the Auto Task Force. *Id.* ¶ 8.

In *In re Sealed Case*, the Court of Appeals, determined that "communications made by presidential advisers in the course of preparing advice for the President come under the presidential communications privilege, even when these communications are not made directly to the President." *In re Sealed Case*, 121 F.3d at 752. In defining the scope of the privilege, the Court reasoned

that "[g]iven the need to provide sufficient elbow room for advisers to obtain information from all knowledgeable sources, the privilege must apply both to communications which these advisers solicited and received from others as well as those they authored themselves." *Id.*

Here, the draft memoranda from Auto Team members to Dr. Summers concerning the Auto Task Force's duties are clearly protected by the presidential communications privilege. Respondents do not seem to dispute that Dr. Summers, the co-Chair of the Auto Task Force and Assistant to the President for Economic Policy, qualifies as a presidential adviser for purposes of the privilege. See Reply, ECF No. 36 at 18-19. Not only did President Obama select Dr. Summers to helm the Auto Task Force, a group formed to review viability plans submitted by major automotive manufacturers, but Dr. Summers also advised the President on economic issues on a daily basis.⁶ O'Connor Decl., ECF No. 35-3 ¶ 9. The privilege that would attach to communications between Dr. Summers and the President also extends to communications between Dr. Summers and his staff members who have responsibility for formulating the advice to be given the President concerning the government's bankruptcy and

⁶ To the extent that Dr. Summers' title leaves any room for doubt as to his position as a presidential advisor, President Obama, in a handwritten note on a letter regarding the Delphi pension plan, specifically requested that Dr. Summers be consulted on the matter at issue. See Document No. 764.

restructuring efforts. See *In re Sealed Case*, 121 F.3d at 752. Each draft memoranda that Treasury has withheld from production is authored by the Auto Team, addressed specifically to Dr. Summers, and concerns the Auto Team's efforts to provide the Auto Task Force and the President with sufficient information to achieve the government's automotive restructuring objectives.

Respondents contend that the presidential communications privilege should not apply because Treasury has not shown that the challenged documents were *solicited* by Dr. Summers, rather than merely received by him. See Reply, ECF No. 36 at 19. According to Respondents, "if everything a presidential advisor or his staff received was automatically covered by the privilege, vast swaths of government communications could be hidden from public view merely by regularly copying such people on emails." *Id.* While Respondents are correct that the presidential communications privilege applies only to documents that are "solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President[,]" *In re Sealed Case*, 121 F.3d at 752, Respondents' argument is unpersuasive for two reasons. First, the White House Counsel's Office expressly represented that the disputed materials "were authored by or solicited and received by the President or senior presidential advisors and

staff, including Lawrence H. Summers." O'Connor Decl., ECF No. 35-3 ¶ 8. Second, upon examination of the challenged documents *in camera*, it is apparent from the faces of the memoranda that they were in fact solicited by Dr. Summers. For instance, the Auto Team prefaced many draft memoranda with a note that the included information was being provided "as requested" or "as discussed" in a recent meeting with Dr. Summers. The content of the withheld material also suggests that the drafters of the memoranda met frequently with Dr. Summers to inform him of research results, discuss strategy, and formulate advice to the President. As a result, the Court is satisfied that the draft memoranda were solicited rather than merely received by Dr. Summers. *See also In re Sealed Case*, 121 F.3d at 758 (remarking that a "review of the [challenged] documents themselves demonstrates that from the nature of their contents and the persons to whom they were directed there can be little question that they had been solicited").

For the same reasons, the seven documents in the fourth category – *i.e.*, emails among Auto Team members regarding the formulation of advice to the President – are covered by the presidential communications privilege. Although, Dr. Summers may not be present on some of these communications, it is apparent from the documents' content that the Auto Team members were responding to requests for information by Dr. Summers or the

President. In these communications, Auto Team members discussed the preparation of memoranda to the President and harmonized edits to be presented to Dr. Summers. Because the presidential communications privilege extends "to communications authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate[,] " these documents are privileged. *Id.* at 752.

Although the Court has established that the documents in all four categories are covered by the presidential communications privilege, the Court's inquiry is not complete. The presidential communications privilege "is qualified, not absolute, and can be overcome by an adequate showing of need." *Id.* at 745. To overcome the privilege, Respondents must demonstrate two elements: (1) that the subpoenaed material likely contains evidence "directly relevant to issues that are expected to be central to the trial[;]" and (2) that the evidence "is not available with due diligence elsewhere." *Id.* at 754. Here, Respondents have satisfied both prongs. First, Respondents assert that they need the withheld material because it may show pressure exerted by Treasury or the White House to terminate the Delphi Plan for impermissible or political

reasons, an issue at the core of the parties' dispute in the Michigan case. Mot. Compel, ECF No. 30 at 32. In that case, Respondents allege that the PBGC's termination of the Delphi Plan was not justified by the applicable statute but instead the result of undue pressure imposed by Treasury and the Auto Task Force. *Id.* at 4. Rather than substantively engage in the needs analysis or attempt to distinguish the cases upon which Respondents rely, Treasury argues unconvincingly that Respondents' rationale for the material is "nothing but rank speculation." Opp'n, ECF No. 35 at 24. Nonetheless, for substantially the same reasons advanced by Respondents, the Court is persuaded that Respondents have made "at least a preliminary showing of necessity for information that is not merely demonstrably relevant but indeed substantially material to their case." *Dellums v. Powell*, 561 F.2d 242, 249 (D.C. Cir. 1977). Second, Respondents represent that the materials are unavailable through any other means, see Mot. Compel, ECF No. 30 at 32, and Treasury does not challenge this assertion in its opposition motion. See Opp'n, ECF No. 35 at 24. Accordingly, the Court finds that Respondents have demonstrated a need sufficient to overcome the presidential communications privilege.

III. THE ATTORNEY-CLIENT PRIVILEGE

Treasury has withheld or redacted 15 documents under the attorney-client privilege.⁷ "The attorney-client privilege protects confidential communications made between clients and their attorneys when the communications are for the purpose of securing legal advice or services." *In re Lindsey*, 158 F.3d 1263, 1267 (D.C. Cir. 1998). The purpose of the privilege is to protect a client's confidences to his or her attorney, thereby encouraging an open and honest relationship between the client and the attorney. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980). The privilege is "narrowly construed and is limited to those situations in which its purposes will be served." *Id.* Hence, the privilege "protects only those disclosures necessary to obtain informed legal advice which may not have been made absent the privilege." *Id.* (quoting *Fisher v. United States*, 425 U.S. 391, 403 (1976)). The privilege protects communications between the attorney and the client, but does not shield the underlying facts contained in those conversations from disclosure. *Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981).

As a threshold matter, six of the challenged documents concern communications between Auto Team members and attorneys

⁷ See Document Nos. 30, 207, 210, 446, 499, 558, 570, 679, 685, 720, 789, 792, 1071, 1113, and 1204.

at Cadwalader, Wickersham, and Taft LLP ("Cadwalader"), one of the law firms that served as outside counsel to the Auto Team.⁸ Because Respondents have indicated that they "do not dispute the Treasury's invocation of attorney-client privilege for those communications [with Cadwalader attorneys]," Mot. Compel, ECF No. 30 at 33, the Court will not order the production of these documents.

With regard to the remaining nine documents, each one concerns a communication between Auto Team members and Matthew Feldman, an Auto Team member who is also an attorney.⁹ Respondents argue that these communications are not privileged because Mr. Feldman, while an attorney, provided both legal and non-legal advice to the Auto Team. *Id.* at 35. Respondents admit, however, that "Treasury can invoke the attorney-client privilege only for those communications of Mr. Feldman which were primarily legal in nature[.]" *Id.* at 35-36. After reviewing these documents *in camera*, the Court is satisfied that Mr. Feldman acted in his legal capacity in each communication. In some cases, Auto Team members asked Mr. Feldman a legal question - e.g., the potential liability surrounding specific Auto Team proposals - and Mr. Feldman provided his legal opinion. In other instances, Mr. Feldman requested information from Treasury

⁸ See Document Nos. 685, 720, 792, 1071, 1113, and 1204.

⁹ See Document Nos. 30, 207, 210, 446, 499, 558, 570, 679, and 789.

employees to aid the preparation of Treasury's response to congressional inquiries. Nothing in these communications suggests that their confidential nature was compromised or that the privilege was waived. As a result, the Court concludes that Treasury correctly withheld these 15 documents from production under the attorney-client privilege.

IV. ATTORNEY WORK PRODUCT DOCTRINE

Treasury has raised the attorney work product doctrine over seven documents.¹⁰ The work product doctrine "protects written materials lawyers prepare 'in anticipation of litigation.'" *In re Sealed Case*, 146 F.3d 881, 884 (D.C. Cir. 1998) (quoting Fed. R. Civ. P. 26(b)(3)). In assessing whether the proponent has carried its burden to show a document is protected as work product, the relevant inquiry is "whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared ... because of the prospect of litigation." *EEOC v. Lutheran Soc. Servs.*, 186 F.3d 959, 968 (D.C. Cir. 1999). Although an agency need not have a specific claim in mind when preparing the documents, there must exist some articulable claim that is likely to lead to litigation in order to qualify the documents as attorney work product. *Coastal States Gas Corp.*,

¹⁰ See Document Nos. 203, 792, 983, 985, 987, 989, and 1259.

617 F.2d at 865; *Am. Immigration Council v. Dep't of Homeland Security*, 905 F. Supp. 2d 206, 221 (D.D.C. 2012) (work product encompasses documents prepared for litigation that is "foreseeable," if not necessarily imminent; "documents that ... advise the agency of the types of legal challenges likely to be mounted to a proposed program, potential defenses available to the agency, and the likely outcome," are covered).

Here, there can be little doubt that the material Treasury has withheld under the work product doctrine is protected from disclosure. Four of the seven documents at issue are draft memoranda authored by Cadwalader attorneys.¹¹ The remaining three documents are draft letters prepared by Department of Justice attorneys.¹² It is apparent from the face of each of the challenged documents that they were prepared by counsel in anticipation of the Chrysler and General Motors bankruptcy proceedings - *i.e.*, in anticipation of litigation. Among other things, the documents outline potential legal approaches to disposing of corporate assets, discuss proposed amendments to loan agreements, and detail objectives for pending mediation proceedings. Further, these materials constitute opinion work product, rather than fact work product, because they reveal "the mental impressions, conclusions, opinions, or legal theories of

¹¹ See Document Nos. 203, 792, 983, and 1259.

¹² See Document Nos. 985, 987, and 989.

a party's attorney" concerning potential litigation. *F.T.C. v. Boehringer Ingelheim Pharm., Inc.*, 778 F.3d 142, 151 (D.C. Cir. 2015).

Nonetheless, as with the presidential communications privilege, the work product doctrine is not an absolute privilege. Disclosure may be warranted if the party seeking the privileged material can make a showing of substantial need and an inability to obtain the equivalent without undue hardship. *See Upjohn*, 449 U.S. at 400. Respondents, however, have not articulated a specific need for these documents. Whereas Respondents claim that they need the materials protected under the presidential communications privilege because those documents may reveal undue pressure exerted by the White House or Treasury over the decision to cancel the Delphi Plan, Respondents make no similar claim as to these seven documents. Respondents simply have not made "the extraordinary showing of necessity" required to obtain access to opinion work product. *In re Sealed Case*, 676 F.2d 793, 811 (D.C. Cir. 1982). Accordingly, the Court will not order the production of the documents withheld under the work product doctrine.

V. RELEVANCE

Treasury has withheld one document from production on grounds of relevance.¹³ The document consists of a weekly report from Treasury to the White House and an email circulating the report among Treasury personnel. Because Respondents have not challenged Treasury's relevance assertion, the Court will not order the production of this document.

VI. CONCLUSION

For the foregoing reasons, the unresolved portion of Respondents' motion to compel the production, or alternatively *in camera* review, of the documents withheld and redacted by Treasury is **GRANTED in part** and **DENIED in part**. The 63 documents over which Treasury has asserted the presidential communications privilege shall be **FORTHWITH PRODUCED** to Respondents. The documents over which Treasury has asserted a claim of relevance, attorney-client privilege or work product are protected from production. An appropriate Order accompanies this Memorandum Opinion, filed this same day.

SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
April 13, 2017

¹³ See Document No. 619.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
U.S. DEPARTMENT OF THE))
TREASURY,))
))
Petitioner,))
))
v.	)	Case No. 12-mc-100 (EGS)
))
PENSION BENEFIT GUARANTY))
CORPORATION,))
))
Interested Party,))
))
v.))
))
DENNIS BLACK, <i>et al.</i> ,))
))
Respondents.))
_____)

ORDER

For the reasons stated in the accompanying Memorandum Opinion issued this same day, it is hereby

ORDERED that the unresolved portion of Respondents' motion to compel the production, or alternatively *in camera* review, of the documents withheld and redacted by Treasury is **GRANTED in part** and **DENIED in part**. It is further

ORDERED that the 63 documents over which Treasury has asserted the presidential communications privilege shall be **FORTHWITH PRODUCED** to Respondents. It is further

ORDERED that the documents over which Treasury has asserted a claim of relevance, attorney-client privilege or work product are protected from production.

SO ORDERED.

**Signed: Emmet G. Sullivan
United States District Judge
April 13, 2017**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DEPARTMENT OF THE)
TREASURY,)
)
Petitioner,)
)
v.) Case No. 12-mc-100 (EGS)
)
PENSION BENEFIT GUARANTY)
CORPORATION,)
)
Interested Party,)
)
v.)
)
DENNIS BLACK, *et al.*,)
)
Respondents.)

ORDER

For the reasons stated in the accompanying Memorandum Opinion issued this same day, it is hereby

ORDERED that the unresolved portion of Respondents' motion to compel the production, or alternatively *in camera* review, of the documents withheld and redacted by Treasury is **GRANTED in part** and **DENIED in part**. It is further

ORDERED that the 63 documents over which Treasury has asserted the presidential communications privilege shall be **FORTHWITH PRODUCED** to Respondents. It is further

ORDERED that the documents over which Treasury has asserted a claim of relevance, attorney-client privilege or work product are protected from production.

SO ORDERED.

Signed: **Emmet G. Sullivan**
United States District Judge
April 13, 2017

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

DEPARTMENT OF THE TREASURY,)	
)	
Petitioner,)	
)	
v.)	
)	
PENSION BENEFIT GUARANTY CORPORATION,	)	No. 1:12-mc-00100-EGS
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, <i>et al.</i> ,)	
)	
Respondents.)	
)	

PETITIONER’S NOTICE OF COMPLIANCE

Petitioner, the Department of the Treasury, hereby gives notice that it complied on January 10, 2017, with the order dated December 20, 2016, ECF No. 41, by producing to the Court for inspection *in camera* two copies of every document responsive to respondents’ subpoena to Treasury dated January 4, 2012, ECF No. 1, Ex. J, from which material continues to be withheld. Each document was accompanied by a justification sheet providing information about the document to which it pertained and giving the rationale or rationales for Treasury’s withholdings.

Treasury further gives notice that it complied with the above order on January 10, 2017, by submitting a revised privilege log to the Court and by emailing a copy of the revised privilege log to counsel for respondents and to counsel for interested party Pension Benefit Guaranty Corporation (PBGC). The revised privilege log consists of redacted versions of the justification sheets provided to the Court for inspection *in camera*.

Treasury has determined in preparing these submissions that it will no longer withhold certain documents. Those documents are no longer in contention and are not addressed by Treasury's submissions. Treasury will produce those documents to respondents and to the PBGC shortly.

Respectfully Submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
CHANNING D. PHILIPS
United States Attorney
JACQUELINE COLEMAN SNEAD
Assistant Branch Director

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Senior Trial Counsel
Department of Justice, Civil Division
20 Massachusetts Ave., N.W., Room 7200
Washington, D.C. 20529
Tel: (202) 514-4469/Fax: (202) 616-8470
Email: david.glass@usdoj.gov
Attorneys for Petitioner

Dated: January 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2017, I served the within notice on all counsel of record by filing it 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,)
)
Petitioner,)
)
v.) Case No. 12-mc-100 (EGS)
)
PENSION BENEFIT GUARANTY)
CORPORATION,)
)
Interested Party,)
)
v.)
)
DENNIS BLACK, *et al.*,)
)
Respondents.)

MEMORANDUM OPINION

Pending before the Court is Dennis Black, Charles Cunningham, Ken Hollis, and the Delphi Salaried Retirees Association's (collectively, "Respondents") motion to compel the production, or alternatively *in camera* review, of documents withheld and redacted by the U.S. Department of Treasury (the "Treasury") for privilege. Upon consideration of the motion, response and reply thereto, the relevant caselaw, and the entire record, and for the reasons set forth below, the motion is **GRANTED in part.**

I. BACKGROUND

Respondents in this miscellaneous action are plaintiffs in *Black v. PBGC*, Case No. 09-13616, a civil action pending in the United States District Court for the Eastern District of Michigan. Respondents are current and former salaried workers at Delphi Corporation ("Delphi"), an automotive supply company. In the civil action, Respondents allege that in July 2009, the Pension Benefit Guaranty Corporation ("PBGC") improperly terminated Delphi's pension plan for its salaried workers ("Plan") via an agreement with Delphi and General Motors. Treasury is not a party to the civil action.

On July 9, 2015, Respondents filed a motion to compel the production, or alternatively *in camera* review, of the documents Treasury withheld or redacted under four separate claims of privilege: (1) the deliberative process privilege; (2) the presidential communications privilege; (3) the attorney-client privilege; and (4) the work product doctrine. *See generally* Mot. Compel, ECF No. 30. Although Treasury asserted a privilege over 1,273 documents, Respondents only challenged 866 documents. *Opp.*, ECF No. 35 at 1.

In order to better evaluate Treasury's claims of privilege, the Court ordered an *in camera* review of a random selection of the withheld and redacted documents. Minute Entry of June 17, 2016. The Court directed Treasury to submit hard copies of every

tenth document listed in its privilege log and to clearly identify the redacted material. *Id.*

Upon review of the random sampling of documents that Treasury submitted, the Court concluded that it lacked sufficient information to rule on many of Treasury's privilege claims and ordered that Treasury submit *all* of the documents at issue for *in camera* inspection. Minute Entry of July 15, 2016. As part of this exercise, the Court ordered Treasury to submit an *ex parte* submission clearly articulating why each document, or document portion, was protected by the privilege asserted. *Id.* For documents over which Treasury claimed the deliberative process privilege, the Court specifically directed Treasury to inform the Court "what deliberative process is involved, and the role played by the documents in issue in the course of that process." *Id.* The Court warned that "should [it] determine that [Treasury's] claims of privilege are frivolous, the Court shall impose significant sanctions, monetary and otherwise." *Id.*

On July 25, 2016, Treasury produced, *in camera*, hard copies of the contested documents, noting that "[i]n preparing its production, Treasury decided not to continue withholding certain documents." See Notice of Production, ECF No. 40. Of the original 866 contested documents, Treasury revoked its claims of privilege over nearly 640 documents in light of the Court's order to produce the contested documents *in camera*. Treasury

provided no explanation as to why it suddenly withdrew its privilege assertions over nearly 75% of the documents it had previously claimed were privileged. *Id.* The 221 documents over which Treasury continues to assert a claim of privilege are now at issue before the Court.

II. THE DELIBERATIVE PROCESS PRIVILEGE

Treasury has raised the deliberative process privilege as the sole basis for withholding 120 documents from production. For 63 documents, Treasury has asserted the deliberative process privilege in conjunction with another privilege.¹ According to Treasury, these 183 communications are protected from disclosure because they involve government deliberations regarding the 2009 bankruptcy and restructuring of Chrysler and General Motors. See *Opp.*, ECF No. 35 at 11-12. For the following reasons, the Court will order the production of all of the documents over which Treasury has asserted the deliberative process privilege in isolation.

a. The Legal Standard.

The deliberative process privilege serves to preserve the "open and frank discussion" necessary for effective agency decisionmaking by protecting from disclosure "documents reflecting advisory opinions, recommendations, and deliberations

¹Because Treasury has not provided a revised privilege log reflecting only the 222 contested entries, the Court derives these figures from the cover pages to Treasury's July 25, 2016 *in camera* production.

that are part of a process by which Government decisions and policies are formulated." *Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8-9 (2001). The privilege "rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news." *Abteu v. U.S. Dep't of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (quoting *Klamath Water*, 532 U.S. at 8-9.). As the U.S. Court of Appeals for the D.C. Circuit has noted, agency officials "should be judged by what they decided, not for matters they considered before making up their minds." *Russell v. Dep't Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982).

To fall within the scope of the deliberative-process privilege, withheld materials must be both "predecisional" and "deliberative." *Mapother v. Dep't of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993). A communication is predecisional if "it was generated before the adoption of an agency policy" and deliberative if it "reflects the give-and-take of the consultative process." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). "Even if the document is predecisional at the time it is prepared, it can lose that status if it is adopted formally or informally, as the agency position on an issue[.]" *Id.* The deliberative process privilege is to be construed "as narrowly as consistent with

efficient Government operation." *United States v. Phillip Morris*, 218 F.R.D. 312, 315 (D.D.C. 2003) (quoting *Taxation with Representation Fund v. IRS*, 646 F.2d 666, 667 (D.C. Cir. 1981)). To properly invoke the privilege, the agency must "make a detailed argument...in support of the privilege" because "without a specific articulation of the rationale supporting the privilege, a court cannot rule on whether the privilege applies." *Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.*, 267 F.R.D. 1, 4 (D.D.C. 2010) (internal quotation marks omitted).

b. Treasury Has Not Properly Invoked the Deliberative Process Privilege.

Respondents contend that they are entitled to the documents that Treasury has withheld under the deliberative process privilege because: (1) the material does not fall within the scope of the privilege; (2) the privilege has been waived; (3) Respondents' need for the material overcomes the privilege; and (4) Treasury's alleged misconduct nullifies the privilege. See *Mot. Compel*, ECF No. 30 at 6-18. As a threshold matter, the Court need not analyze Respondents' myriad arguments as to why the deliberative process privilege should not apply because Treasury has failed to comply with its basic obligation to provide the Court with "a specific articulation of the rationale supporting the privilege" to enable the Court to assess the

appropriateness of the privilege. See *Ascom Hasler*, 267 F.R.D. at 4; *Landry v. F.D.I.C.*, 204 F.3d 1125, 1135 (D.C. Cir. 2000).

A "common practice of agencies seeking to invoke the deliberative process privilege is to establish the privilege through a combination of privilege logs, which identify specific documents, and declarations from agency officials explaining what the documents are and how they relate to the agency decision." *Ascom Hasler*, 267 F.R.D. at 4 (citing *N.L.R.B. v. Jackson Hosp. Corp.*, 257 F.R.D. 302, 308 (D.D.C. 2009)). The Court finds both Treasury's privilege log and accompanying declaration to be woefully inadequate.

First, for the Treasury's assertions to be adequate, the Court "must be able to determine, from the privilege log, that the documents withheld are (1) predecisional; (2) deliberative; (3) do not 'memorialize or evidence' the agency's final policy; (4) were not shared with the public; and (5) cannot be produced in a redacted form." *Id.* Treasury's privilege log does not enable the Court to assess at least three of these factors. For context, Treasury's log provides fields for the documents' date, type, author, and recipients. See generally Treasury Privilege Log, ECF No. 35-5. The log also provides a brief description of each document, lists the privilege asserted, and indicates whether the document was redacted or entirely withheld from production. Noticeably absent from the entries in which Treasury

asserts the deliberative process privilege, however, is any indication that the documents do not "memorialize or evidence the agency's final policy" and "were not shared with the public." *Ascom Hasler*, 267 F.R.D. at 4. Further, the purported predecisional nature of each entry cannot readily be discerned from the privilege log. Treasury states that these communications were sent before the implementation of the auto-restructuring policies, see Opp., ECF No. 35 at 12-13, but the mere fact that a communication is dated prior to the agency's adoption of a policy is insufficient to establish that it is predecisional. Rather, the party invoking the privilege must also demonstrate that the content was not later adopted. See *Coastal States*, 617 F.2d at 866 (reasoning that a document that "is predecisional at the time it is prepared...can lose that status if it is adopted formally or informally, as the agency position on an issue[.]"). Although Treasury has designated on the privilege log which documents are drafts, the fact that a document is in draft form does not automatically cloak it with the deliberative process privilege. "[D]rafts are not presumptively privileged, and the designation of documents as 'drafts' does not end the inquiry into whether a document is predecisional." *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 260 (D.D.C. 2004) (internal quotation marks omitted). Treasury has not shown that these drafts do not

reflect final agency policy. For these reasons, the Court finds Treasury's privilege log inadequate in so far as it relates to the assertion of the deliberative process privilege.

Moreover, Treasury's declaration from Lorenzo Rasetti, the Chief Financial Officer at Treasury's Office of Financial Stability, does not change the result. To be adequate, an agency declaration supporting a deliberative process privilege claim must contain:

- 1) a formal claim of privilege by the head of the department having control over the requested information;
- 2) assertion of the privilege based on actual personal consideration by that official; and
- 3) a detailed specification of the information for which the privilege is claimed, with an explanation why it properly falls within the scope of the privilege.

Landry, 204 F.3d at 1135 (internal quotation marks omitted). The Court does not question whether Mr. Rasetti is of sufficient rank to assert the privilege —see *id.* (reasoning that it “would be counterproductive to read ‘head of the department’ in the narrowest possible way”)— and recognizes that Mr. Rasetti's statement is based on his “personal review of each of the entries on the Privilege Log and a review of a sampling of the documents described on the [log].” Rasetti Decl., ECF No. 35-1 at 4. The Court, however, finds that Treasury has failed to present “a detailed specification of the information for which the [deliberative process] privilege is

claimed" along with an explanation sufficient to show why the content "properly falls within the scope of the privilege."

Landry, 204 F.3d at 1135.

In his declaration, Mr. Rasetti divides the documents over which Treasury asserts the deliberative process privilege into four categories: (A) Draft slides and presentations and related deliberations on Chrysler and GM bankruptcy considerations; (B) Deliberations regarding substantive responses to congressional or press inquiries and prepared public statements; (C) Deliberations and materials shared with or relating to PBGC discussions; and (D) Internal deliberations regarding financing, cash flows, or other restructuring considerations related to Delphi. See Rasetti Decl., ECF No. 35-1 at 6-10. Nonetheless, the rationale provided to withhold the documents under these categories is inadequate.

As an initial matter, Categories A and D do not establish that Treasury "has never implemented the opinions or analyses contained in the document, incorporated them into final agency policy or programs, referred to them in a precedential fashion, or otherwise treated them as if they constitute agency protocol." *Gen. Elec. Co. v. Johnson*, No. 00-2855, 2006 WL 2616187, at *5 (D.D.C. Sept. 12, 2006). To the contrary, in many instances Mr. Rasetti notes that the documents "may have been considered in developing...the policy positions that Treasury

may have adopted." Rasetti Decl., ECF No. 35-1 at 7, 8. If Treasury implemented the opinions or analyses contained in these communications into its final policies, the documents would not be protected from disclosure under the deliberative process privilege. *Coastal States*, 617 F.2d at 866. The Court simply lacks sufficient information to know whether or not that is the case. Additionally, Mr. Rasetti summarily states that the documents in Categories B, C, and D "are pre-decisional and constitute part of the deliberative process" without offering any support for his assessment. See Rasetti Decl., ECF No. 35-1 at 8-10. It is well-established that such conclusory assertions made in an agency's declaration are insufficient to establish a deliberative-process privilege claim. See *Ascom Hasler*, 267 F.R.D. at 6 (finding privilege log and declaration deficient "because the assertions in the declaration [were] conclusory" and recognizing the court's right "to deny the claim of privilege on that ground").

Finally, the rationale Treasury offers in its *ex parte* submission in support of its privilege assertions is also deficient. Analogous to the Rasetti declaration, Treasury summarily declares that many documents are predecisional and deliberative without demonstrating that the guidance contained therein hasn't been adopted, in whole or in part, by subsequent policies. In other instances, Treasury attaches *ex parte* cover

sheets concerning the same document but asserting different privileges. For example, a cover page for Document No. 30 asserts the attorney-client and deliberative process privilege but is immediately preceded by a separate cover page, also for Document No. 30, that invokes only the attorney-client privilege. Such inconsistent treatment cannot be understood to constitute "a specific articulation of the rationale supporting the privilege." See *Ascom Hasler*, 267 F.R.D. at 4.

Treasury has had ample opportunities to provide sufficient detail to enable the Court to assess its deliberative process privilege claims, including in: (1) its privilege log, (2) the Rasetti declaration, and (3) its *ex parte* submission justifying its privilege assertions on a per-document basis. Despite receiving explicit instructions from the Court to explain "what deliberative process is involved, and the role played by the documents in issue in the course of that process," Treasury has miserably failed to do so. See Minute Entry of July 15, 2016. Indeed, Treasury has essentially wasted this Court's precious and limited time, notwithstanding the Court's stern warning in its Minute Order dated July 15, 2016. *Id.* ("A hint to the wise should be sufficient."). Accordingly, the Court **ORDERS** the forthwith production of all documents withheld or redacted solely under the deliberative process privilege. The documents over which Treasury has raised a deliberative process claim

along with another privilege will be analyzed after Treasury produces a revised privilege log.

III. THE REMAINING PRIVILEGE CLAIMS

Treasury has also raised three other privileges to rationalize withholding responsive material from Respondents: the presidential communications privilege, the attorney-client privilege, and the work product doctrine. See generally Opp., ECF No. 35. Noting that Treasury withdrew nearly 75% of its previous privilege assertions once ordered to make an *in camera* submission, the Court is of the opinion that it will be better positioned to assess the merits of the remaining claims after Treasury has produced a revised privilege log and *in camera* submission containing only the remaining contested documents.

IV. CONCLUSION

For the foregoing reasons, Respondents' motion to compel the production, or alternatively *in camera* review, of the documents withheld and redacted by Treasury is **GRANTED in part**. The documents over which Treasury has asserted the deliberative process privilege in isolation shall be **FORTHWITH PRODUCED** to Respondents. Treasury shall also produce a revised privilege log to both the Court and Respondents by no later than January 10, 2017. Treasury shall submit for *in camera* review two copies of an updated binder containing only the documents in the revised privilege log by January 10, 2017. The revised submission shall

follow the same production specifications as the July 25, 2016 submission. The Court will not extend the time to comply with this order. The Court will analyze the merits of Treasury's remaining privilege assertions upon receipt of the revised submission. Treasury is again reminded of the Court's Minute Order dated July 15, 2016.

SO ORDERED.

**Signed: Emmet G. Sullivan
United States District Judge
December 20, 2016**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DEPARTMENT OF THE)
TREASURY,)
)
Petitioner,)
)
v.) Case No. 12-mc-100 (EGS)
)
PENSION BENEFIT GUARANTY)
CORPORATION,)
)
Interested Party,)
)
v.)
)
DENNIS BLACK, *et al.*,)
)
Respondents.)

ORDER

For the reasons stated in the accompanying Memorandum Opinion issued this same day, it is hereby

ORDERED that Respondents' motion to compel the production, or alternatively *in camera* review, of the documents withheld and redacted by Treasury is **GRANTED in part**. It is further

ORDERED that the documents over which Treasury has asserted the deliberative process privilege in isolation shall be **FORTHWITH PRODUCED** to Respondents. It is further

ORDERED that Treasury shall produce a revised privilege log to both the Court and Respondents by no later than **January 10, 2017**. It is further

ORDERED that Treasury shall submit to the Court for *in camera* review two copies of an updated binder containing the documents in the revised privilege log by no later than **January 10, 2017 at 12:00 p.m.** The documents in the revised submission shall be clearly labeled and placed in three-ring binders. For those documents that have been partially redacted, Treasury shall indicate, through the use of gray or yellow highlighter, the portions of the document that have been redacted. The binders shall be tabbed with each tab corresponding to the document number in Treasury's privilege log and each binder shall include a table of contents. Along with these documents, Treasury shall submit an *ex parte* submission clearly articulating why each document, or document portion, is protected by the privilege asserted.

SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
December 20, 2016

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

_____)	
DEPARTMENT OF THE TREASURY,)	
)	
Petitioner,)	
)	
v.)	
)	
PENSION BENEFIT GUARANTY	)	No. 1:12-mc-00100-EGS
CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, et al.,)	
)	
Respondents.)	
_____)	

PETITIONER’S NOTICE OF PRODUCTION

Petitioner, the Department of the Treasury (Treasury), hereby gives notice that it complied on July 25, 2016, with the minute order dated July 15, 2016, by producing to the Court for inspection *in camera* two copies of every document responsive to respondents’ subpoena to Treasury dated January 4, 2012, ECF No. 1, Ex. J, from which material continues to be withheld and the withholding is challenged by respondents. Each document was accompanied by a justification sheet providing information about the document to which it pertained and giving the rationale or rationales for the withholdings. In preparing its production, Treasury decided not to continue withholding certain documents. Those documents will be produced to respondents and therefore are not in contention. Accordingly, those documents were not included in the *in camera* production to the Court.

Respectfully Submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
CHANNING D. PHILIPS
United States Attorney
JACQUELINE COLEMAN SNEAD
Assistant Branch Director

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Senior Trial Counsel
Department of Justice, Civil Division
20 Massachusetts Ave., N.W., Room 7200
Washington, D.C. 20529
Tel: (202) 514-4469/Fax: (202) 616-8470
Email: david.glass@usdoj.gov
Attorneys for Petitioner

Dated: July 25, 2016

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2016, I served the within notice on all counsel of record by filing it with the Court by means of its ECF system.

s/ David M. Glass

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

_____)	
Dennis Black, <i>et al.</i> ,)	
)	Case No. 2:09-cv-13616
Plaintiffs,)	Hon. Arthur J. Tarnow
)	Magistrate Judge Mona K. Majzoub
v.)	
)	
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)

Israel Goldowitz, Chief Counsel
James J. Armbruster, Acting Deputy
Chief Counsel
John A. Menke
C. Wayne Owen, Jr.
Assistant Chief Counsels
Craig T. Fessenden
Erin C. Kim
Elisabeth Fry
Cassandra B. Caverly
Attorneys
PENSION BENEFIT GUARANTY
CORP.

Office of Chief Counsel
1200 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 326-4020, ext. 3204
Fax: (202) 326-4112
E-Mail: owen.wayne@pbgc.gov

BARBARA L. McQUADE
United States Attorney
Peter A. Caplan
Assistant United States Attorney
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, MI 48226
Phone: (313) 226-9784
Email: peter.caplan@usdoj.gov

Attorneys for Defendant

/s/ Anthony F. Shelley

Anthony F. Shelley
Timothy P. O'Toole
Michael N. Khalil
MILLER & CHEVALIER
CHARTERED
655 15th St. NW, Suite 900
Washington, DC 20005
Telephone: 202-626-5800
Facsimile: 202-626-5801
E-mail: ashelley@milchev.com
totoole@milchev.com
mkhalil@milchev.com

Alan J. Schwartz (P38144)
JACOB & WEINGARTEN, P.C.
777 Somerset Place
2301 Big Beaver Road
Troy, Michigan 48084
Telephone: 248-649-1900
Facsimile: 248-649-2920
E-mail: alan@jacobweingarten.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF JENNIFER M. O’CONNOR

Jennifer M. O’Connor says:

1. I currently hold the position of Deputy Counsel to the President. In this capacity, I am responsible for, *inter alia*, providing legal advice to White House staff, including advice on matters involving the invocation of the presidential communications privilege.
2. I submit this declaration in opposition to the motion of respondents to compel the production of documents withheld pursuant to the presidential communications privilege. I base this declaration on my personal knowledge and on information made available to me in the performance of my duties.
3. I am aware that, upon consultation with the Office of the Counsel to the President, the U.S. Department of the Treasury (Treasury) has withheld certain documents in whole or in

part on the basis of the presidential communications privilege. I understand that descriptions of these documents have been provided to respondents in a privilege log submitted by Treasury.

4. On behalf of the Office of the President, I hereby assert the presidential communications privilege with respect to all portions of the documents identified in the Treasury privilege log as Doc. Nos. 67, 72, 84, 94, 275, 560, 593, 596, 599, 601, 603, 605, 610-12, 619, 621, 623, 627, 629, 631, 633, 638, 668, 670, 672, 674, 676, 692, 758-68, 770, 776-78, 849, 856, 859-60, 863, 944, 948, 950, 956, 1006, 1089, 1091, 1094, 1152, 1166, 1168, 1217, 1219, 1221, 1223 and the portion of Doc. No. 358 redacted from page no. UST-BL-044502. This assertion of privilege is based on my review of each of those documents. In making this declaration, I have also relied on the description of the documents provided by my staff and on the description of the documents contained in the Treasury privilege log.

5. The presidential communications privilege is no longer being invoked with respect to the documents identified in the Treasury privilege log as Doc. Nos. 634, 771, and 779.

6. I understand that Treasury is also asserting other privileges, such as the deliberative process privilege, with respect to the documents or portions of documents as to which the presidential communications privilege is being asserted. The fact that my assertion is limited to the presidential communications privilege is in no way intended to suggest that those documents or portions of documents are not protected in whole or in part by other privileges.

7. The documents or portions of documents as to which the presidential communications privilege is being asserted consist of memoranda, drafts of presidential speeches, and electronic mail conversations, including, in some cases, attachments, that relate to the President's decisions as to how the United States should address the financial distress of

several of its large automobile corporations and protect the country from the potential consequences of their bankruptcy.

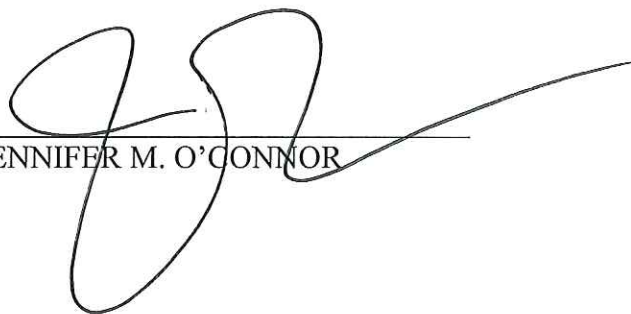
8. In particular, the documents or portions of documents as to which the presidential communications privilege is being asserted consist of communications among the Presidential Task Force on the Auto Industry (Auto Task Force) or the team of federal employees that staffed it (Auto Team) and the White House that were authored by or solicited and received by the President or senior presidential advisors and staff, including Lawrence H. Summers, the Director of the National Economic Council and Assistant to the President for Economic Policy and the co-chair of the Auto Task Force. The documents or portions of documents as to which the presidential communications privilege is being asserted also consist of communications that summarize or otherwise reflect communications with the President or that contain information provided to White House officials.

9. At the time of these communications, Dr. Summers was the chief White House advisor to the President on the development and implementation of economic policy. In that capacity, he led the President's daily economic briefing. As co-chair of the Auto Task Force, Dr. Summers advised the President on decisions relating to the United States' actions in response to the bankruptcy and restructuring of, among other companies, General Motors Corporation.

10. The communications as to which the presidential communications privilege is being asserted thus reflect or disclose information, views, and advice exchanged among the President, his senior advisors, and the Auto Task Force or Auto Team and were part of the process that informed the President's determinations as to what actions the United States should take with respect to the financial collapse of General Motors and other U.S. automobile companies.

11. I believe that without the protection of the presidential communications privilege over the communications described above, presidential advisors and their staffs would be chilled from gathering relevant information, exploring alternatives, and providing fully informed recommendations regarding the performance of the President's duties.

12. I declare under penalty of perjury that the foregoing is true and correct. Executed this 6 day of August 2015



JENNIFER M. O'CONNOR

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
66		UST-BL-014885	Jul 20, 2009	E-MAIL ATTACHMENT				DPP	PBGC redline edits to draft press release regarding Delphi-PBGC settlement sent to Treasury.	Withheld
67		UST-BL-016284	Jul 07, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP/PCP	Internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
68		UST-BL-016285	Jul 08, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
69		UST-BL-016286	Jul 08, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Internal outline regarding plan and talking points in preparation for meeting with Fritz Henderson.	Withheld
70		UST-BL-016289	Jul 14, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft task list/work plan regarding important dates for GM planning.	Withheld
71		UST-BL-016290	Mar 10, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft task list/work plan regarding daily schedule and action items.	Withheld
72		UST-BL-016291	Jul 06, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP; PCP	Internal memorandum regarding recommendation, timeline, and rationale for strategy to position GM for success.	Withheld
73		UST-BL-017581	Jul 14, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft task list/work plan regarding important dates for GM planning.	Withheld
74		UST-BL-017582	Mar 10, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft task list/work plan regarding daily schedule and action items.	Withheld
75		UST-BL-017583	Mar 29, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Outline of potential responses to press inquiries -regarding GM and Chrysler bankruptcy.	Withheld

Black v. PBCC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
76		UST-BL-017584	Mar 29, 2009	E-MAIL ATTACHMENT				DPP	Draft document with redline edits summarizing Chrysler bankruptcy plan and determination of viability.	Withheld
77		UST-BL-017585	Mar 29, 2009	E-MAIL ATTACHMENT				DPP	Draft document summarizing Chrysler bankruptcy plan and discussing the determination of viability.	Withheld
78		UST-BL-017586	Mar 29, 2009	E-MAIL ATTACHMENT				DPP	Outline of potential responses to press inquiries regarding GM and Chrysler bankruptcy.	Withheld
79		UST-BL-017587	Mar 29, 2009	E-MAIL ATTACHMENT				DPP	Draft memorandum regarding impressions on GM and Chrysler restructuring plans.	Withheld
80		UST-BL-017588	Mar 29, 2009	E-MAIL ATTACHMENT				DPP	Draft memorandum summarizing GM bankruptcy plan and discussing the determination of viability.	Withheld
81		UST-BL-017589	Jun 08, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft memorandum regarding impressions and responses to press inquiries on GM and Chrysler restructuring plans.	Withheld
82		UST-BL-017590	Mar 09, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Internal notes from due diligence meeting with Rothschild and BCG regarding GM and Chrysler market challenges.	Withheld
83		UST-BL-017591	Mar 10, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Communications regarding plan for GM; Task list/Work plan discussing thoughts on potential next steps in GM bankruptcy.	Withheld
84		UST-BL-017597	Apr 16, 2009	E-MAIL ATTACHMENT	Team Auto	Lawrence Summers		DPP/PCP	Communications regarding plan for Delphi bankruptcy.	Withheld
85		UST-BL-017598	May 14, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Internal communications regarding discussion topics for upcoming meeting with Fritz Henderson.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Rates	Document Date	Document Type	Author	Addressee(s)	CC	Prv(s)	Reason	Redacted or Withheld
86		UST-BL-017599	May 19, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Document summarizing potential inflows and outflows to plans in future years.	Withheld
87		UST-BL-017600	May 20, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Document listing draft internal financial analysis.	Withheld
88		UST-BL-017601	May 22, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft document listing potential sources of funds into the estate.	Withheld
89		UST-BL-017602	May 17, 2009	E-MAIL ATTACHMENT	Silver Point Capital			DPP	Chart comparing May 22nd Platinum Proposal and information from May 22nd call.	Withheld
90		UST-BL-017603	May 31, 2009	E-MAIL ATTACHMENT				DPP	Communications regarding strategy on public comments regarding GM bankruptcy.	Withheld
91		UST-BL-017604	May 31, 2009	E-MAIL ATTACHMENT				DPP	Draft statement regarding strategy on public comments for GM reorganization.	Withheld
92		UST-BL-017605	Jun 02, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft editorial commentary on GM and Chrysler restructuring plans.	Withheld
93		UST-BL-017606	Jun 03, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Task list/Work plan discussing thoughts on potential next steps in Chrysler, GM, and Delphi bankruptcy.	Withheld
94		UST-BL-017608	Jun 24, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP/PCP	Internal memorandum regarding recommendation, timeline, and rationale for strategy to position GM for success.	Withheld
95		UST-BL-017609	Jun 09, 2009	E-MAIL ATTACHMENT	Silver Point Capital			DPP	Internal draft memorandum discussing GM's human capital requirements.	Withheld
96		UST-BL-017610	Jun 10, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Internal draft memorandum regarding key issues in Delphi bankruptcy.	Withheld
97		UST-BL-017611	Jun 10, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Draft timeline and principles for Delphi bankruptcy.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Bates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
270		UST-BL-038348	Apr 15, 2009	E-MAIL	Stearns, Brian <Stearns.Brian@bcg.com>	Wilson, Harry <Harry.Wilson@do.treas.gov>	Malik, Sadiq <Sadiq.Malik@do.treas.gov> Mosquet, Xavier <mosquet.xavier@bcg.com>	DPP	Communications regarding plan for Delphi reorganization.	Redacted
271		UST-BL-038410	Apr 16, 2009	E-MAIL	Markowitz, David <David.Markowitz@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>		DPP	Communications regarding plan for Delphi bankruptcy.	Redacted
272		UST-BL-038411	Apr 16, 2009	E-MAIL	Wilson, Harry <Harry.Wilson@do.treas.gov>	Feldman, Mathew <Mathew.Feldman@do.treas.gov>		DPP	Communications regarding plan for Delphi bankruptcy.	Redacted
273		UST-BL-038437	Apr 03, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Task list/Work plan discussing timeline and thoughts on potential next steps in GM bankruptcy.	Withheld
274		UST-BL-038438	Apr 03, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Task list/Work plan discussing overview of potential next steps in GM bankruptcy.	Withheld
275		UST-BL-038439	Apr 16, 2009	E-MAIL ATTACHMENT				DPP/PCP	Internal draft memorandum regarding status of Delphi bankruptcy.	Withheld
276		UST-BL-038440	Mar 10, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Task list/Work plan regarding next steps in Delphi bankruptcy.	Withheld
277		UST-BL-038441	Apr 16, 2009	E-MAIL	Stearns, Brian <Stearns.Brian@bcg.com>	Wilson, Harry <Harry.Wilson@do.treas.gov>	Malik, Sadiq <Sadiq.Malik@do.treas.gov> Mosquet, Xavier <mosquet.xavier@bcg.com>	DPP	Communications regarding the involvement of GM advisors.	Redacted
278		UST-BL-038445	Apr 17, 2009	E-MAIL	Wilson, Harry <Harry.Wilson@do.treas.gov>	Feldman, Mathew <Mathew.Feldman@do.treas.gov>		DPP	Internal communications regarding upcoming meetings regarding Delphi bankruptcy.	Redacted
279		UST-BL-038449	Apr 18, 2009	E-MAIL	Wilson, Harry <Harry.Wilson@do.treas.gov>	Feldman, Mathew <Mathew.Feldman@do.treas.gov>		DPP	Communications regarding upcoming meetings regarding Delphi bankruptcy.	Redacted

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Prv(s)	Reason	Redacted or Withheld
355		UST-BL-044209	May 27, 2009	E-MAIL	Feldman, Matthew <Matthew.Feldman@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>		DPP	Internal communications regarding potential Federal Mogul transaction.	Redacted
356		UST-BL-044210	May 27, 2009	E-MAIL	Wilson, Harry <Harry.Wilson@do.treas.gov>	Markowitz, David <David.Markowitz@do.treas.gov>		DPP	Internal communications regarding strategy for negotiating with GM regarding legal documents.	Redacted
357		UST-BL-044306	May 28, 2009	E-MAIL	Haker, Oren <Oren.Haker@cwt.com>	Wilson, Harry <harrywilson@gmail.com>	Rapisardi, John <John.Rapisardi@cwt.com>	ACP	Attorney-client communications regarding plan for filing plan modifications in the Delphi bankruptcy.	Redacted
358		UST-BL-044500	May 28, 2009	E-MAIL	Fraser, Rob <Rob.Fraser@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>		DPP/ PCP	Communications regarding internal questions about the "cost gap" between GM and Toyota labor rates and discussion of presidential memo re: same.	Redacted
359		UST-BL-044513	May 28, 2009	E-MAIL	Jones, David (USANYS) <David.Jones6@usdoj.gov>	Smith, Zachary <Zachary.Smith@cwt.com>	Lane, Sean (USANYS) <Sean.Lane@usdoj.gov>	ACP	Communications with outside counsel regarding plan for GM reorganization and related meetings.	Redacted
360		UST-BL-044529	May 28, 2009	E-MAIL	Wilson, Harry <harrywilson@gmail.com>	Rattner, Steven <Steven.Rattner@do.treas.gov>		DPP	Internal communications regarding draft GM - Delphi Loan Agreements.	Redacted
361		UST-BL-044533	May 28, 2009	E-MAIL	Rattner, Steven <Steven.Rattner@do.treas.gov>	Wilson, Harry <harrywilson@gmail.com>		DPP	Internal communications regarding draft GM - Delphi Loan Agreements.	Redacted

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
558		UST-BL-064584	Jul 08, 2009	E-MAIL	Rattner, Steven <Steven.Rattner@do.treas.gov>	Reilly, Meg <Meg.Reilly@do.treas.gov> Deese, Brian <Brian_C_Deese@who.eop.gov> McNeill, Mara <Mara.McNeill@do.treas.gov> Bloom, Ron <Ron.Bloom@do.treas.gov> Wilson, Harry <Harry.Wilson@do.treas.gov> Feldman, Matthew <Matthew.Feldman@do.treas.gov>		ACP/ DPP Internal communications regarding strategy for responding to press inquiries, including attorney advice re: same.	Redacted	
559		UST-BL-064656	Jul 08, 2009	E-MAIL	Knight, Bernard Jr. <Bernard.Knight@do.treas.gov>	Feldman, Matthew <Matthew.Feldman@do.treas.gov>		ACP Attorney-client communications regarding external inquiry from Elliott Management to the Treasury team.	Redacted	
560		UST-BL-065203	Jul 07, 2009	E-MAIL ATTACHMENT	US Department of Treasury (TEAM AUTO)	Secretary Geithner Lawrence Summers		DPP/ PCP Internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld	
561		UST-BL-065204	Jul 08, 2009	E-MAIL ATTACHMENT	US Department of Treasury (TEAM AUTO)	Ed Whitacre		DPP Draft memorandum regarding Treasury views to senior GM management regarding plans for GM reorganization.	Withheld	
562		UST-BL-065205	Jul 08, 2009	E-MAIL ATTACHMENT				DPP Draft bullet points regarding plans for GM reorganization.	Withheld	
563		UST-BL-065206	Mar 10, 2009	E-MAIL ATTACHMENT				DPP Task list/Work plan discussing thoughts on potential next steps in GM bankruptcy in July 2009	Withheld	
564		UST-BL-065207	Jun 10, 2009	E-MAIL ATTACHMENT				DPP Draft memorandum regarding plan for Delphi reorganization and key open issues.	Withheld	

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
589		UST-BL-066280	Jul 21, 2009	E-MAIL	Bloom, Ron <Ron.Bloom@do.treas.gov>	Deese, Brian <Brian_C_Deese@who.eop.gov> Wilson, Harry <Harry.Wilson@do.treas.gov> Feldman, Matthew <Matthew.Feldman@do.treas.gov> Ratner, Steven <Steven.Ratner@do.treas.gov>		DPP	Communications regarding strategy for congressional communications regarding possible termination of Delphi pensions.	Redacted
590		UST-BL-066282	Jul 21, 2009	E-MAIL	Deese, Brian C. <Brian_C_Deese@who.eop.gov>	Feldman, Matthew <Matthew.Feldman@do.treas.gov>		DPP	Communications regarding strategy for congressional communications regarding possible termination of Delphi pensions.	Redacted
591		UST-BL-066794	Aug 10, 2009	E-MAIL	Bloom, Ron <Ron.Bloom@do.treas.gov>	Feldman, Matthew <Matthew.Feldman@do.treas.gov> Deese, Brian <Brian_C_Deese@who.eop.gov>		DPP	Internal communications regarding determining possible points of contact for Delphi Salaried Retiree groups.	Redacted
592	HHR-DOT2-00000625		Mar 08, 2009	E-MAIL	Deese, Brian <REDACTED>	Ratner, Steven <Steven.Ratner@do.treas.gov>; Deese, Brian C. <brian_c_deese@who.eop.gov>		DPP	Internal communications regarding draft memoranda updating re GM and Chrysler restructurings and viability determinations.	Withheld
593	HHR-DOT2-00000626		Mar 08, 2009	E-MAIL ATTACHMENT	Steven Ratner Ron Bloom Diana Farrell Brian Deese	Secretary Geithner Lawrence Summers		DPP/PCP	Draft memorandum regarding impressions and updating on GM and Chrysler restructuring plans.	Withheld
594	HHR-DOT2-00000627		Mar 08, 2009	E-MAIL ATTACHMENT				DPP	Draft memorandum regarding GM and Chrysler financial analysis/funding needs.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Prv(s)	Reason	Redacted or Withheld
595	HHR- DOT2- 00000629		Mar 08, 2009	E-MAIL	Brian Deese	Rattner, Steven Deese, Brian C.		DPP	Internal communications regarding draft memoranda updating re GM and Chrysler restructurings and viability determinations.	Withheld
596	HHR- DOT2- 00000630		Mar 08, 2009	E-MAIL ATTACHMENT	Steven Rattner Ron Bloom Diana Farrell Brian Deese	Secretary Geithner Lawrence Summers		DPP/ PCP	Draft memorandum regarding impressions and updating on GM and Chrysler restructuring plans.	Withheld
597	HHR- DOT2- 00000631		Mar 08, 2009	E-MAIL ATTACHMENT				DPP	Draft memorandum regarding GM and Chrysler financial analysis/funding needs.	Withheld
598	HHR- DOT2- 00000633		Mar 08, 2009	E-MAIL	Deese, Brian C. <Brian_C._Deese@who.eop.gov>	Rattner, Steven <Steven.Rattner@do.treas.gov>; Farrell, Diana <Diana_Farrell@who.eop.gov>; Snyder, Todd <todd.snyder@us.rothschild.com>; Bloom, Ron <Ron.Bloom@do.treas.gov>	Stevens, Haley <Haley.Stevens@do.treas.gov>	DPP	Internal communications regarding updated draft memorandum on the status of GM and Chrysler restructurings.	Withheld
599	HHR- DOT2- 00000634		Mar 08, 2009	E-MAIL ATTACHMENT	Steven Rattner Ron Bloom Diana Farrell Brian Deese	Secretary Geithner Lawrence Summers		DPP/ PCP	Draft memorandum regarding impressions and updating on GM and Chrysler restructuring plans.	Withheld
600	HHR- DOT2- 00000638		Mar 08, 2009	E-MAIL	Deese, Brian C. <Brian_C._Deese@who.eop.gov>	Snyder, Todd <todd.snyder@us.rothschild.com>; Bloom, Ron <Ron.Bloom@do.treas.gov>; Rattner, Steven <Steven.Rattner@do.treas.gov>; Farrell, Diana <Diana_Farrell@who.eop.gov>	Stevens, Haley <Haley.Stevens@do.treas.gov>	DPP	Internal communications regarding revised draft memorandum on the status of GM and Chrysler restructurings.	Withheld

Case 1:12-mc-00100-EGS Document 93-1 Filed 08/15/15 Page 108 of 220

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
601	HHR- DOT2- 00000639		Mar 08, 2009	E-MAIL ATTACHMENT	Steven Rathner Ron Bloom Diana Farrell Brian Deese	Secretary Geithner Lawrence Summers		DPP/ PCP	Revised internal memorandum regarding impressions and updating on GM and Chrysler restructuring plans.	Withheld
602	HHR- DOT2- 00000642		Mar 08, 2009	E-MAIL	Rathner, Steven	<steven.rathner@quadran glegroup.com>		DPP	Internal communications regarding Treasury edits to draft internal memorandum regarding impressions and updating on GM and Chrysler restructuring plans.	Withheld
603	HHR- DOT2- 00000643		Mar 08, 2009	E-MAIL ATTACHMENT	Steven Rathner Ron Bloom Diana Farrell Brian Deese	Secretary Geithner Lawrence Summers		DPP/ PCP	Internal memorandum regarding impressions and updating on GM and Chrysler restructuring plans.	Withheld
604	HHR- DOT2- 00000647		Mar 08, 2009	E-MAIL	Deese, Brian C. <Brian_C_Deese@who. eop.gov>	Summers, Lawrence <Lawrence_Summers@w ho.eop.gov>; Aviel, Sara <Sara.Aviel@do.treas.go v>; Mayock, Andrew <Andrew.Mayock@do.tr eas.gov>	Rathner, Steven <Steven.Rathner@do.trea s.gov>; Bloom, Ron <Ron.Bloom@do.treas.go v>; Farrell, Diana <Diana_Farrell@who.eo p.gov>; Patterson, Mark (DO) <Mark.Patterson@do.trea s.gov>; Levine, Marne L. <Marne_L_Levine@who .eop.gov>	DPP Internal communications regarding memorandum on next steps re: GM and Chrysler restructurings.	Withheld	
605	HHR- DOT2- 00000648		Mar 08, 2009	E-MAIL ATTACHMENT	Steve Rathner Ron Bloom Diana Farrell Brian Deese	Secretary Geithner Lawrence Summers		PCP/ DPP	Internal memorandum regarding impressions and updating of status of GM and Chrysler restructuring plans.	Withheld
606	HHR- DOT2- 00000654		Mar 08, 2009	E-MAIL	Deese, Brian C.	Rathner, Steven Brian Deese		DPP	Internal communications regarding draft talking points for public comments re: government lending to auto industry.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Prv(s)	Reason	Redacted or Withheld
610	HHR-DOT2-00004005		Mar 28, 2009	E-MAIL	Mayock, Andrew <Andrew.Mayock@do.treas.gov>	Sperling, Gene <Gene.Sperling@do.treas.gov>; Krueger, Alan <Alan.Krueger@do.treas.gov>; Sachs, Lee <Lee.Sachs@do.treas.gov>; Wallace, Kim <Kim.Wallace@do.treas.gov>; Patterson, Mark (DO) <Mark.Patterson@do.treas.gov>; Fitzpayne, Alastair <Alastair.Fitzpayne@do.treas.gov>; Brainard, Lael <Lael.Brainard@do.treas.gov>	Palomo, Victoria <Victoria.Palomo@do.treas.gov>; Adeyemo, Adewale (Wally) <Wally.Adeyemo@do.treas.gov>; EXECSECPROCESSUNIT <ExecSecProcessUnit@do.treas.gov>; Aviel, Sara <Sara.Aviel@do.treas.gov>	PCP/DPP	Internal communications outlining Geithner/Summers memorandum on upcoming restructuring announcement.	Withheld
611	HHR-DOT2-00004006		Mar 28, 2009	E-MAIL ATTACHMENT	Steve Ratner Ron Bloom Diana Farrell Brian Deese	Secretary Geithner Lawrence Summers		PCP/DPP	Internal memorandum regarding materials related to upcoming restructuring announcement.	Withheld
612	HHR-DOT2-00004007		Mar 28, 2009	E-MAIL ATTACHMENT	Adam P. Frankel			PCP/DPP	Redline draft of President's remarks regarding restructuring announcement.	Withheld
613	HHR-DOT2-00004008		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal document outlining findings regarding financial analysis/fundings re GM and Chrysler.	Withheld
614	HHR-DOT2-00004009		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal document regarding warrantee commitment program.	Withheld
615	HHR-DOT2-00004010		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal document summarizing viability determinations re GM.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Pr(s)	Reason	Redacted or Withheld
616	HHR- DOT2- 00004011		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal document summarizing viability determinations re Chrysler.	Withheld
617	HHR- DOT2- 00004012		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal Q&A on upcoming restructuring announcement.	Withheld
618	HHR- DOT2- 00004013		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal document discussing expedited bankruptcy process.	Withheld
619	HHR- DOT2- 00005028		Apr 02, 2009	E-MAIL	Mayock, Andrew <Andrew.Mayock@do.treas.gov>	Adams, Marti <Marti.Adams@do.treas.gov>; Apsel, Sarah <Sarah.Apsel@do.treas.gov>; Aviel, Sara <Sara.Aviel@do.treas.gov>; Cutter, Stephanie <Stephanie.Cutter@do.treas.gov>; Engelbreisen, Jenni <Jenni.Engelbreisen@do.treas.gov>; Fitzpayne, Alastair <Alastair.Fitzpayne@do.treas.gov>; Gebhardt, Paige <Paige.Gebhardt@do.treas.gov>	Additional "TO" Recipients: Rattner, Steven <Steven.Rattner@do.treas.gov>; Stevens, Haley <Haley.Stevens@do.treas.gov>; Krueger, Alan <Alan.Krueger@do.treas.gov>; Gosselin, Peter <Peter.Gosselin@do.treas.gov>; EXECSECPROCESSUNIT <ExecSecProcessUnit@do.treas.gov>; Levey, Stuart <Stuart.Levey@do.treas.gov>	PCP/ DPP	Weekly report to White House from Department of Treasury including update from Auto Task Force Group on Delphi Bankruptcy.	Withheld
620	HHR- DOT2- 00007415		Apr 19, 2009	E-MAIL	Hamond, Jeff (Schumer) <Jeff.Hamond@schumer.senate.gov>	Rattner, Steven <Steven.Rattner@do.treas.gov>		DPP	Communications regarding strategy for congressional communications re: lenders to Delphi.	Withheld
621	HHR- DOT2- 00008103		Apr 22, 2009	E-MAIL	Summers, Lawrence <Lawrence_Summers@who.eop.gov>	Rattner, Steven <Steven.Rattner@do.treas.gov>	Deese, Brian C. <Brian_C_Deese@who.eop.gov>	DPP/ PCP	Internal communications regarding strategy for public announcements on GM/Delphi restructuring.	Withheld

Black v. PBCC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Prv(s)	Reason	Redacted or Withheld
622	HHR- DOT2- 00008667		Apr 26, 2009	E-MAIL	Deese, Brian <REDACTED>	Rathner, Steven Deese, Brian C. <Brian_C_Deese@who.eop.gov>		DPP	Internal communications regarding draft memorandum discussing financial analysis/funding of GM and Chrysler.	Withheld
623	HHR- DOT2- 00008668		Apr 26, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		DPP/ PCP	Draft memorandum updating on plan negotiations re Chrysler/GM and settlement issues.	Withheld
624	HHR- DOT2- 00008684		Apr 26, 2009	E-MAIL	Wilson, Harry <harrywilson@gmail.com>	Rathner, Steven <Steven.Rathner@do.trea.gov>; Bloom, Ron <Ron.Bloom@do.treas.gov>		DPP	Internal communications regarding plan for GM reorganization and GM governance issues.	Withheld
625	HHR- DOT2- 00008705		Apr 26, 2009	E-MAIL	Wilson, Harry <harrywilson@gmail.com>	Rathner, Steven <Steven.Rathner@do.trea.gov>; Bloom, Ron <Ron.Bloom@do.treas.gov>; Deese, Brian C. <Brian_C_Deese@who.eop.gov>; Feldman, Matthew <mattthew.feldman@do.treas.gov>	Markowitz, David <David.Markowitz@do.treas.gov>; Malik, Sadiq <Sadiq.Malik@do.treas.gov>	DPP	Internal communications updating on business diligence and strategy re GM.	Withheld
626	HHR- DOT2- 00011825		May 10, 2009	E-MAIL	Wilson, Harry <harrywilson@gmail.com>	Rathner, Steven <Steven.Rathner@do.trea.gov>		DPP	Internal communications regarding draft memorandum discussing financial analysis/funding of GM.	Withheld
627	HHR- DOT2- 00011826		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		DPP/ PCP	Redline draft memorandum updating on GM restructuring, funding and other issues.	Withheld
628	HHR- DOT2- 00011836		May 10, 2009	E-MAIL	Deese, Brian <REDACTED>	Rathner, Steven <Steven.Rathner@do.trea.gov>		DPP	Internal communications regarding draft memorandum discussing financial analysis/funding of GM.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
629	HHR- DOT2- 00011837		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		DPP/ PCP	Draft memorandum updating on GM restructuring, funding and other issues.	Withheld
630	HHR- DOT2- 00011845		May 10, 2009	E-MAIL	Ratner, Steven	Deese, Brian <REDACTED>		DPP	Internal communications regarding draft memorandum discussing financial analysis/funding of GM.	Withheld
631	HHR- DOT2- 00011846		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		DPP/ PCP	Redefine draft memorandum updating on GM restructuring, funding and other issues.	Withheld
632	HHR- DOT2- 00011859		May 10, 2009	E-MAIL	Deese, Brian <REDACTED>	Adeyemo, Adewale Mayock, Andrew Aviel, Sara McNeill, Mara Kingsley, Darius Jung, Bryan <bryan_jung@who.eop.gov> Levine, Marne L. <Marne_L._Levine@who.eop.gov> Summers, Lawrence <lawrence_summers@who.eop.gov>	Farrell, Diana <Diana_Farrell@who.eop.gov> Sperting, Gene Ratner, Steven Bloom, Ron Feldman, Matthew Wilson, Harry Deese, Brian C. <brian_c._deese@who.eop.gov>	DPP	Internal communications regarding draft memorandum discussing financial analysis/funding of GM.	Withheld
633	HHR- DOT2- 00011860		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		DPP/ PCP	Draft memorandum updating on GM restructuring, funding and other issues.	Withheld
634	HHR- DOT2- 00011861		May 10, 2009	E-MAIL ATTACHMENT	Steven Ratner Michael Tae	Secretary Geithner		DPP/ PCP	Information memorandum discussing decisions relating to Treasury's potential ownership of GMAC.	Withheld

Case 1:12-mc-00100-EGD Document 127-5 Filed 08/21/15 Page 114 of 220

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Prv(s)	Reason	Redacted or Withheld
635	HHR- DOT- 00013365		May 15, 2009	E-MAIL	Nathanson, Paul	Rattner, Steven <Steven.Rattner@do.treas.gov>; Feldman, Mathew <Mathew.Feldman@do.treas.gov>; Wilson, Harry <Harry.Wilson@do.treas.gov>		DPP	Internal communications regarding financial analysis of GM compensation issues.	Withheld
636	HHR- DOT- 00013366		May 15, 2009	E-MAIL ATTACHMENT				DPP	Internal memorandum regarding GM executive compensation payments.	Withheld
637	HHR- DOT- 00015270		May 25, 2009	E-MAIL	Deese, Brian <REDACTED>	Rattner, Steven Bloom, Ron Feldman, Mathew	Wilson, Harry Deese, Brian	DPP	Communications regarding draft memorandum for meeting with Secretary Geithner and L. Summers re: GM capital structure negotiations and other issues.	Withheld
638	HHR- DOT- 00015271		May 25, 2009	E-MAIL ATTACHMENT				DPP/ PCP	Draft memorandum for meeting with Secretary Geithner and L. Summers re: GM capital structure negotiations and other issues.	Withheld
639	HHR- DOT- 00016056		May 29, 2009	E-MAIL	Ricks, Morgan <Morgan.Ricks@do.treas.gov>	Sachs, Lee <Lee.Sachs@do.treas.gov>; Rattner, Steven <Steven.Rattner@do.treas.gov>	Kabaker, Mathew <Mathew.Kabaker@do.treas.gov> Stern, Brian <Brian.Stern@do.treas.gov>	DPP	Communications regarding draft GM company funding projections.	Withheld
640	HHR- DOT- 00016057		May 29, 2009	E-MAIL ATTACHMENT	Lee Sachs Steve Rattner			DPP	Draft memorandum re: GM company funding projections.	Withheld

Case 1:12-mc-00109-EGS Document 150-1 Filed 08/15/15 Page 114 of 220

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Prvt(s)	Reason	Redacted or Withheld
667	HHR- DOT2- 00021077		July 7, 2009	E-MAIL	Wilson, Harry <Harry.Wilson@do.treas.gov>	Ratner, Steven <Steven.Ratner@do.treas.gov>; Bloom, Ron <Ron.Bloom@do.treas.gov>; Deese, Brian <Brian_C_Deese@who.eop.gov>; Feldman, Matthew <Matthew.Feldman@do.treas.gov>; Markowitz, David <David.Markowitz@do.treas.gov>		DPP Internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld	
668	HHR- DOT2- 00021078		July 7, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner NEC Chairman Summers		DPP/ PCP Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld	
669	HHR- DOT2- 00021097		July 7, 2009	E-MAIL	Deese, Brian C. <Brian_C_Deese@who.eop.gov>	Ratner, Steven <Steven.Ratner@do.treas.gov>; Bloom, Ron <Ron.Bloom@do.treas.gov>; Wilson, Harry <Harry.Wilson@do.treas.gov>; Feldman, Matthew <Matthew.Feldman@do.treas.gov>; Markowitz, David <David.Markowitz@do.treas.gov>		DPP Communications re: draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld	
670	HHR- DOT2- 00021098		July 7, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner NEC Chairman Summers		DPP/ PCP Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld	

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
671	HHR- DOT2- 00021117		July 7, 2009	E-MAIL	Deese, Brian C. <Brian_C_Deese@who.eop.gov>	Rattner, Steven <Steven.Rattner@do.treas.gov>		DPP	Communications re: draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
672	HHR- DOT2- 00021118		July 7, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner NEC Chairman Summers		DPP/ PCP	Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
673	HHR- DOT2- 00021132		July 7, 2009	E-MAIL	Deese, Brian C. <Brian_C_Deese@who.eop.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>; Rattner, Steven <Steven.Rattner@do.treas.gov>; Bloom, Ron <Ron.Bloom@do.treas.gov>; Feldman, Mathew <Mathew.Feldman@do.treas.gov>; Markowitz, David <David.Markowitz@do.treas.gov>	Wrennall-Montes, Sally <Sally.Wrennall-Montes@do.treas.gov>	DPP	Communications re: draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
674	HHR- DOT2- 00021133		July 7, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner NEC Chairman Summers		DPP/ PCP	Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
675	HHR- DOT2- 00021140		July 7, 2009	E-MAIL	Bloom, Ron <Ron.Bloom@do.treas.gov>	Deese, Brian C. <Brian_C_Deese@who.eop.gov>; Wilson, Harry <Harry.Wilson@do.treas.gov>; Rattner, Steven <Steven.Rattner@do.treas.gov>; Feldman, Matthew <Matthew.Feldman@do.treas.gov>; Markowitz, David <David.Markowitz@do.treas.gov>	Wrennall-Montes, Sally <Sally.Wrennall-Montes@do.treas.gov>	DPP	Communications re: draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
676	HHR- DOT2- 00021141		July 7, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner NEC Chairman Summers		DPP/ PCP	Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
677	HHR- DOT2- 00021153		July 7, 2009	E-MAIL	Feldman, Matthew <Matthew.Feldman@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>; Rattner, Steven <Steven.Rattner@do.treas.gov>; Bloom, Ron <Ron.Bloom@do.treas.gov>; Brian_C_Deese@who.eop.gov	Nathanson, Paul <Paul.Nathanson@do.treas.gov>	DPP	Communications regarding strategy on public comments regarding Delphi pension plans.	Withheld
678	HHR- DOT2- 00021154		July 7, 2009	E-MAIL ATTACHMENT	PBGC			DPP	Draft talking points regarding strategy on public comments by Treasury Department regarding Delphi pension plans.	Withheld

Case 1:12-mc-00100-EGS Document 93-1 Filed 08/21/15 Page 125 of 220

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
686	HHR- DOT2- 00022368		July 20, 2009	E-MAIL	Feldman, Matthew <Matthew.Feldman@do.treas.gov>	Deese, Brian <Brian_C_Deese@who.eop.gov>; Ratner, Steven <Steven.Ratner@do.treas.gov>		DPP	Communications regarding PBGC comments to Delphi and GM press releases.	Withheld
687	HHR- DOT2- 00022369		July 20, 2009	E-MAIL ATTACHMENT				DPP	PBGC comments regarding draft GM press release.	Withheld
688	HHR- DOT2- 00022370		July 20, 2009	E-MAIL ATTACHMENT				DPP	PBGC comments regarding draft Delphi press release.	Withheld
689	HHR- DOT2- 00074621		March 9, 2009	E-MAIL	Mondell, Dustin <dustin.mondell@us.rothschild.com>	Wilson, Harry <Harry.Wilson@do.treas.gov>		DPP	Communications regarding discussions with Delphi's DIP lenders regarding funding concerns.	Withheld
690	HHR- DOT2- 00074632		March 9, 2009	E-MAIL ATTACHMENT				DPP	Draft slides regarding funding issues regarding Delphi reorganization.	Withheld
691	HHR- DOT2- 00074726		March 10, 2009	E-MAIL	Wilson, Harry <Harry.Wilson@do.treas.gov>;	Ratner, Steven <Steven.Ratner@do.treas.gov> Bloom, Ron <Ron.Bloom@do.treas.gov> Calhoon, Clay <clay.calhoon@gmail.com> Krueger, Alan		DPP	Communications regarding auto parts supplier analysis and internal division of labor concerns.	Withheld
692	HHR- DOT2- 00074727		March 10, 2009	E-MAIL ATTACHMENT				DPP/ PCP	NEC memo regarding auto parts supplier analysis	Withheld

Case 1:12-11-00100-1-GS Document 91-2 Filed 08/21/15 Page 127 of 220

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Bates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
756	HHR- DOT2- 00078460		March 25, 2009	E-MAIL ATTACHMENT	Clay Calhoun			DPP	Draft chart summarizing GM potential exit funding and financial numbers.	Withheld
757	HHR- DOT2- 00078753		March 26, 2009	E-MAIL	Feldman, Matthew	Wilson, Harry <Harry.Wilson@do.treas.gov>		ACP	Communications discussing communications with outside counsel regarding Amendment 5 to GM agreement.	Withheld
758	HHR- DOT2- 00092066		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner, Lawrence Summers		DPP/ PCP	Draft memorandum regarding GM restructuring update and issues.	Withheld
759	HHR- DOT2- 00092100		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner, Lawrence Summers		DPP/ PCP	Draft memorandum regarding GM restructuring update and issues.	Withheld
760	HHR- DOT2- 00096963		May 24, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner, Lawrence Summers		DPP/ PCP	Draft memorandum regarding GM capital structure negotiations and other issues.	Withheld
761	HHR- DOT2- 00096991		May 24, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner, Lawrence Summers		DPP/ PCP	Draft memorandum regarding GM capital structure negotiations and other issues.	Withheld
762	HHR- DOT2- 00097060		May 24, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner, Lawrence Summers		DPP/ PCP	Draft memorandum regarding GM capital structure negotiations and other issues.	Withheld
763	HHR- DOT2- 00116403		August 4, 2009	E-MAIL	Deese, Brian C. <Brian_C_Deese@who.eop.gov>	Bloom, Ron; Wilson, Harry; Feldman, Matthew		DPP/ PCP	Communications regarding constituent communication with the President on auto industry matters.	Withheld
764	HHR- DOT2- 00116404		July 16, 2009	E-MAIL ATTACHMENT				DPP/ PCP	Communications regarding constituent communication with the President on auto industry matters.	Withheld
765	HHR- DOT2- 00116409		August 4, 2009	E-MAIL	Feldman, Matthew	Deese, Brian C. Wilson, Harry <Harry.Wilson@do.treas.gov>; Bloom, Ron		DPP/ PCP	Communications regarding constituent communication with the President on auto industry matters.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Prv(s)	Reason	Redacted or Withheld
766	HHR- DOT2- 00116410		August 4, 2009	E-MAIL ATTACHMENT	Team Auto			DPP/ PCP	Draft memorandum regarding PGBC's decision to take over the salaried and hourly pension plans of Delphi.	Withheld
767	HHR- DOT2- 00116461		August 5, 2009	E-MAIL	Feldman, Matthew	Deese, Brian C.	Wilson, Harry <Harry.Wilson@do.treas.gov>; Bloom, Ron	DPP/ PCP	Communications regarding constituent communication with the President on auto industry matters.	Withheld
768	HHR- DOT2- 00116462		August 4, 2009	E-MAIL ATTACHMENT	Team Auto			DPP/ ACP	Draft memorandum regarding PGBC's decision to take over the salaried and hourly pension plans of Delphi.	Withheld
769	HHR- DOT2- 00078921	UST-BL- 067286	Mar 26, 2009	E-MAIL ATTACHMENT	Zak Tammy			DPP	Draft memorandum regarding impressions on GM restructuring plans and viability.	Withheld
770	HHR- DOT2- 00078922	UST-BL- 067287	Mar 26, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner Lawrence Summers		PCP/ DPP	Draft memorandum regarding impressions and updating on GM and Chrysler restructuring plans and viability determinations.	Withheld
771	HHR- DOT2- 00078923	UST-BL- 067288	Mar 26, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner		PCP/ DPP	Draft memorandum regarding responses to press inquiries to the Administration regarding potential auto industry bankruptcies.	Withheld
772	HHR- DOT2- 00078987	UST-BL- 067289	Mar 26, 2009	E-MAIL	Haker, Oren <Oren.Haker@cwt.com>	Wilson, Harry <Harry.Wilson@do.treas.gov>	Rapisardi, John <John.Rapisardi@cwt.com>; Ellenberg, Mark <Mark.Ellenberg@cwt.com>	ACP	Attorney-client communications regarding Delphi Accommodation agreement and DIP Agreement.	Withheld
773	HHR- DOT2- 00079154		Mar 27, 2009	E-MAIL	Feldman, Matthew	Wilson, Harry <Harry.Wilson@do.treas.gov>		ACP	Attorney-client communications regarding plan for Delphi bankruptcy.	Withheld
774	HHR- DOT2- 00079155		Mar 27, 2009	E-MAIL ATTACHMENT		Haker, Oren <Oren.Haker@cwt.com>		ACP	Draft communications regarding plan for Delphi bankruptcy.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Bates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
775	HHR- DOT2- 00079294		Mar 28, 2009	E-MAIL	Wilson, Harry	Wilson, Harry <harryjwilson@gmail.com> 'Mosquet Xavier' <mosquet.xavier@bocg.com>		DPP	Communications regarding recent GM model launches and plan for GM bankruptcy.	Withheld
776	HHR- DOT2- 00079623		Mar 28, 2009	E-MAIL	Wilson, Harry	Feldman, Matthew		PCP/ DPP	Internal communications outlining Gettner/Summers memorandum on upcoming restructuring announcement.	Withheld
777	HHR- DOT2- 00079624		Mar 28, 2009	E-MAIL ATTACHMENT		Secretary Geithner Lawrence Summers		PCP/ DPP	Internal memorandum regarding materials related to upcoming restructuring announcement.	Withheld
778	HHR- DOT2- 00079625		Mar 28, 2009	E-MAIL ATTACHMENT	Adam P. Frankel			PCP/ DPP	Redline draft of President's remarks regarding restructuring announcement.	Withheld
779	HHR- DOT2- 00079626		Mar 28, 2009	E-MAIL ATTACHMENT				PCP/ DPP	Internal document outlining findings regarding financial analysis/fundings re GM and Chrysler.	Withheld
780	HHR- DOT2- 00079627		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Draft memorandum regarding warrantee commitment program.	Withheld
781	HHR- DOT2- 00079628		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal document summarizing viability determinations re: GM.	Withheld
782	HHR- DOT2- 00079629		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal document summarizing viability determinations re: Chrysler.	Withheld
783	HHR- DOT2- 00079630		Mar 28, 2009	E-MAIL ATTACHMENT				DPP	Internal Q&A on upcoming restructuring announcement.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
845	HHR- DOT2- 00084810		Apr 14, 2009	E-MAIL	Nathanson, Paul <Paul.Nathanson@do.treas.gov>	Searns, Brian <Searns.Brian@bcg.com>	Wilson, Harry <Harry.Wilson@do.treas.gov>	DPP	Internal communications on draft briefing materials re Delphi.	Withheld
846	HHR- DOT2- 00084899		Apr 14, 2009	E-MAIL	Wilson, Harry	Wilson, Harry <harrywilson@gmail.com>; Feldman, Matthew; Markowitz, David; Malik, Sadiq <Sadiq.Malik@do.treas.gov>		DPP	Internal communications regarding revised slides re Delphi financial analysis/support materials for restructuring.	Withheld
847	HHR- DOT2- 00084900		Apr 14, 2009	E-MAIL ATTACHMENT				DPP	Revised Delphi slides re financial analysis/support materials for restructuring.	Withheld
848	HHR- DOT2- 00085027		Apr 15, 2009	E-MAIL	Nathanson, Paul <Paul.Nathanson@do.treas.gov>	Wilson, Harry	Feldman, Matthew	DPP	Internal communications regarding draft memorandum updating Summers on Delphi.	Withheld
849	HHR- DOT2- 00085028		Apr 15, 2009	E-MAIL ATTACHMENT	Team Auto	Lawrence Summers		DPP/ PCP	Draft memorandum on Delphi's liquidity issues and potential consequences of Delphi shutdown.	Withheld
850	HHR- DOT2- 00085065		Apr 15, 2009	E-MAIL	Searns, Brian <Searns.Brian@bcg.com>	Wilson, Harry		DPP	Internal communications regarding value of GM's share of Delphi sites/revenues.	Withheld
851	HHR- DOT2- 00085066		Apr 15, 2009	E-MAIL ATTACHMENT				DPP	Slide of GM's share of Delphi sites/revenues.	Withheld
852	HHR- DOT2- 00085138		Apr 15, 2009	E-MAIL	Searns, Brian <Searns.Brian@bcg.com>	Wilson, Harry	D'Anna, Andrew <DAnna.Andrew@bcg.com>	DPP	Internal communications providing an overview of Delphi financial metrics.	Withheld
853	HHR- DOT2- 00085139		Apr 15, 2009	E-MAIL ATTACHMENT				DPP	Slide comparison of financial metrics for Delphi sites.	Withheld

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
854	HHR- DOT2- 00085220		Apr 15, 2009	E-MAIL	D'Anna, Andrew <DAnna.Andrew@bcg.com>	Wilson, Harry	Mosquet, Xavier <mosquet.xavier@bcg.com>; Stearns, Brian <Stearns.Brian@bcg.com>; Andersen, Michelle <Andersen.Michelle@bcg.com>; Malik, Sadiq <Sadiq.Malik@do.treas.gov>	DPP	Internal communications reconciling financial analysis/data provided by BCG and Delphi.	Withheld
855	HHR- DOT2- 00085221		Apr 15, 2009	E-MAIL ATTACHMENT	Team Auto	Lawrence Summers		DPP	Draft slide reconciling financial analysis/data provided by BCG and Delphi.	Withheld
856	HHR- DOT2- 00085307		Apr 16, 2009	E-MAIL ATTACHMENT	Team Auto	Lawrence Summers		DPP; PCP	Draft memorandum on Delphi's liquidity issues and potential consequences of Delphi shutdown.	Withheld
857	HHR- DOT2- 00085316		Apr 16, 2009	E-MAIL	Stearns, Brian <Stearns.Brian@bcg.com>	Wilson, Harry <Harry.Wilson@do.treas.gov>	D'Anna, Andrew <DAnna.Andrew@bcg.com>	DPP	Internal communications providing an overview of Delphi financial metrics.	Withheld
858	HHR- DOT2- 00085334		Apr 16, 2009	E-MAIL	Feldman, Matthew	Wilson, Harry <Harry.Wilson@do.treas.gov>; Nathanson, Paul <Paul.Nathanson@do.treas.gov>		DPP	Internal communications on revising memorandum updating Summers on Delphi negotiations.	Withheld
859	HHR- DOT2- 00085391		Apr 16, 2009	E-MAIL ATTACHMENT	Team Auto	Lawrence Summers		DPP/ PCP	Revised draft memorandum on Delphi's liquidity issues and potential consequences of Delphi shutdown.	Withheld
860	HHR- DOT2- 00085403		Apr 16, 2009	E-MAIL ATTACHMENT	Team Auto	Lawrence Summers		DPP/ PCP	Revised draft memorandum on Delphi's liquidity issues and potential consequences of Delphi shutdown.	Withheld

**Black v. PBCC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Bates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
861	HHR- DOT- 00085404		Apr 16, 2009	E-MAIL	Feldman, Matthew	Nahanson, Paul <Paul.Nahanson@do.treas.gov>; Wilson, Harry <Harry.Wilson@do.treas.gov>		DPP/ ACP	Internal communications about confirming Delphi issues with CWT.	Withheld
862	HHR- DOT- 00085549		Apr 16, 2009	E-MAIL	Markowitz, David <David.Markowitz@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>; Mondell, Dustin <dustin.mondell@us.roh.schiff.com>		DPP	Internal communications providing update on GM's funding of foreign subsidiaries and Delphi cash needs.	Withheld
863	HHR- DOT- 00085611		Apr 17, 2009	E-MAIL ATTACHMENT	Team Auto	Lawrence Summers		DPP/ PCP	Revised draft memorandum on Delphi's liquidity issues and potential consequences of Delphi shutdown.	Withheld
864	HHR- DOT- 00085628		Apr 17, 2009	E-MAIL	Feldman, Matthew	Malik, Sadiq <Sadiq.Malik@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>; Markowitz, David <David.Markowitz@do.treas.gov>	DPP	Internal communications regarding GM and VEBA publicly disclosed language.	Withheld
865	HHR- DOT- 00085675		Apr 17, 2009	E-MAIL	Stearns, Brian <Stearns.Brian@bcg.com>	Mosquet, Xavier <mosquet.xavier@bcg.com>; Malik, Sadiq <Sadiq.Malik@do.treas.gov>; D'Anna, Andrew <DAnna.Andrew@bcg.com>	Wilson, Harry <Harry.Wilson@do.treas.gov>	DPP	Internal communications regarding discussions with GM on Delphi diligence materials.	Withheld

Case 1:12-11211-EP Document 66-395 Filed 08/21/15 Page 154 of 220

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Bates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
944	HHR- DOT2- 00091915		May 09, 2009	E-MAIL ATTACHMENT				DPP/ PCP	Draft agenda for meeting with presidential advisors in connection with GM and Chrysler restructuring plans.	Withheld
945	HHR- DOT2- 00092065		May 10, 2009	E-MAIL	Brian Deese <bdeese.wh@gmail.com>	Wilson, Harry <Harry.Wilson@do.treas.gov> Feldman, Matthew <Matthew.Feldman@do.treas.gov> Deese, Brian C. <brian_c_deese@who.eop.gov>		DPP	Communications regarding memorandum in connection with GM and Chrysler restructuring plans.	Withheld
946	HHR- DOT2- 00092099		May 10, 2009	E-MAIL	Brian Deese <bdeese.wh@gmail.com>	Wilson, Harry <harrywilson@gmail.com> Deese, Brian C. <brian_c_deese@who.eop.gov>		DPP	Communications regarding memorandum in connection with GM and Chrysler restructuring plans.	Withheld
947	HHR- DOT2- 00092104		May 10, 2009	E-MAIL	Deese, Brian C. <bdeese.wh@gmail.com>	Bloom, Ron <Ron.Bloom@do.treas.gov> Rattner, Steven <Steven.Rattner@do.treas.gov>	Feldman, Matthew <Matthew.Feldman@do.treas.gov> Wilson, Harry <Harry.Wilson@do.treas.gov> Markowitz, David <David.Markowitz@do.treas.gov> Malik, Sadiq <Sadiq.Malik@do.treas.gov> Stern, Brian <Brian.Stern@do.treas.gov> Fraser, Rob <Rob.Fraser@do.treas.gov> Farrell, Diana <diana_farrell@who.eop.gov>	DPP	E-mail discussing draft memorandum in connection with GM and Chrysler restructuring plans.	Withheld

Case 1:12-mc-00100-EGS Document 395-5 Filed 08/21/15 Page 167 of 220

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
948	HHR- DOT2- 00092105		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Geithner, Tim Summers, Lawrence		DPP/ PCP	Draft memorandum for presidential advisors regarding GM and Chrysler restructuring plans.	Withheld
949	HHR- DOT2- 00092165		May 10, 2009	E-MAIL	Wilson, Harry	Wilson, Harry <harrywilson@gmail.com>		DPP	E-mail discussing memorandum for presidential advisors in connection with GM and Chrysler restructuring plans.	Withheld
950	HHR- DOT2- 00092166		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Geithner, Tim Summers, Lawrence		DPP/ PCP	Draft memorandum for presidential advisors regarding GM and Chrysler restructuring plans.	Withheld
951	HHR- DOT2- 00092283	UST-BL- 067979	May 11, 2009	E-MAIL ATTACHMENT	Silver Point Capital			DPP	Spreadsheet of GM and Chrysler financial information.	Withheld
952	HHR- DOT2- 00092284	UST-BL- 067980	May 11, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Task list/work plan of open items for GM and Chrysler bankruptcies.	Withheld
953	HHR- DOT2- 00092289		May 11, 2009	E-MAIL	Markowitz, David <David.Markowitz@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>		DPP	E-mail discussing and forwarding privileged communications regarding presentation for UAW meeting in connection with GM financial analysis and projections.	Withheld
954	HHR- DOT2- 00092290		May 11, 2009	E-MAIL ATTACHMENT				DPP	Draft presentation slides for UAW meeting regarding GM financial analysis and projections.	Withheld
955	HHR- DOT2- 00092561		May 11, 2009	E-MAIL	Wilson, Harry	Stevens, Haley		DPP	E-mail discussing memorandum for presidential advisors regarding GM and Chrysler restructuring plans.	Withheld
956	HHR- DOT2- 00092562		May 11, 2009	E-MAIL ATTACHMENT	Team Auto	Geithner, Tim Summers, Lawrence		DPP/ PCP	Draft memorandum for presidential advisors regarding GM and Chrysler restructuring plans.	Withheld

**Black v. PBCC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(e)	Reason	Redacted or Withheld
998	HHR- DOT2- 00097039		May 26, 2009	E-MAIL	Malik, Sadiq <Sadiq.Malik@do.treas.gov>	Harry J. Wilson, Wilson, Harry	Markowitz, David; markowitz@gmail.com; Ostias, Brian; dustin.mondell@us.rothsch hild.com; Kunal.Bhalla@us.rothsch hild.com; Malik, Sadiq	DPP	Communications regarding analysis of DIP financing and liquidity analysis.	Withheld
999	HHR- DOT2- 00097040		May 26, 2009	E-MAIL ATTACHMENT				DPP	Communications regarding draft Delphi company funding projections.	Withheld
1000	HHR- DOT2- 00097059		May 26, 2009	E-MAIL	Bloom, Ron <Ron.Bloom@do.treas.gov>	Brian Deese <REDACT> Rather, Steven; Feldman, Matthew	Wilson, Harry; Deese, Brian C. <Brian_C._Deese@who. eop.gov>	DPP	Internal communications regarding plan for GM bankruptcy.	Withheld
1001	HHR- DOT2- 00097433		May 27, 2009	E-MAIL	Wilson, Harry	Wilson, Harry <harryjwilson@gmail.com>		DPP	Communications regarding draft GM company funding projections.	Withheld
1002	HHR- DOT2- 00097434		May 27, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Communications regarding draft GM company funding projections.	Withheld
1003	HHR- DOT2- 00097444		May 27, 2009	E-MAIL	Wilson, Harry	Wilson, Harry <harryjwilson@gmail.com>		DPP	Communications regarding draft GM company funding projections.	Withheld
1004	HHR- DOT2- 00097445		May 27, 2009	E-MAIL ATTACHMENT				DPP	Communications regarding draft GM company funding projections.	Withheld
1005	HHR- DOT2- 00097538		May 27, 2009	E-MAIL	Wilson, Harry	Wilson, Harry <harryjwilson@gmail.com>		DPP	Draft memorandum regarding plans for GM reorganization.	Withheld
1006	HHR- DOT2- 00097539		May 27, 2009	E-MAIL ATTACHMENT	Tim Geithner, Lawrence Summers			DPP/ PCP	Draft memorandum regarding plans for GM reorganization and update on GM negotiations.	Withheld

**Black v. PBCC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
1084	HHR- DOT2- 00107958		Jul 01, 2009	E-MAIL ATTACHMENT	SAA			DPP	Draft response to congressional communications re: auto industry issues.	Withheld
1085	HHR- DOT2- 00109679		Jul 05, 2009	E-MAIL	Malik, Sadiq <Sadiq.Malik@do.treas.gov>	Wilson, Harry <harrywilson@gmail.com>; Wilson, Harry	Markowitz, David	DPP	Communications regarding plan for funding escrow account within GM bankruptcy.	Withheld
1086	HHR- DOT2- 00109680		Jul 05, 2009	E-MAIL ATTACHMENT	Sadiq Ahsan Malik			DPP	Financial analysis regarding escrow account.	Withheld
1087	HHR- DOT2- 00109735		Jul 05, 2009	E-MAIL	Malik, Sadiq <Sadiq.Malik@do.treas.gov>	Wilson, Harry <harrywilson@gmail.com>; Wilson, Harry <Harry.Wilson@do.treas.gov>	Markowitz, David <David.Markowitz@do.treas.gov>	DPP	Communications regarding plan for funding escrow account within GM bankruptcy.	Withheld
1088	HHR- DOT2- 00109852		Jul 06, 2009	E-MAIL ATTACHMENT	US Department of Treasury			DPP	Task list/work plan of open items for GM and Chrysler bankruptcies.	Withheld
1089	HHR- DOT2- 00109893		Jun 24, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		PCP/ DPP	Internal memorandum regarding GM organizational change.	Withheld
1090	HHR- DOT2- 00109903		Jul 06, 2009	E-MAIL	harrywilson@gmail.com	Wilson, Harry Haley, Stevens@do.treas.gov <Sadiq.Malik@do.treas.gov>; <markowitz@gmail.com>		PCP/ DPP	Communications regarding Internal memorandum regarding GM organizational change and next steps.	Redacted
1091	HHR- DOT2- 00109904		Jul 06, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		PCP/ DPP	Internal memorandum regarding GM organizational change and next steps.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
1092	HHR- DOT2- 00110092	UST-BL- 068630	Jul 06, 2009	E-MAIL	Wilson, Harry	Feldman, Matthew <Matthew.Feldman@do.treas.gov>; Reilly, Meg <Meg.Reilly@do.treas.gov>; LeCompte, Jenni <Jenni.LeCompte@do.treas.gov>; Rattner, Steven <Steven.Rattner@do.treas.gov>; Deese, Brian <Brian_C_Deese@who.eop.gov>; Bloom, Ron <Ron.Bloom@do.treas.gov>	Wallace, Kim <Kim.Wallace@do.treas.gov>	DPP	Internal communications regarding strategy for responding to press inquiries.	Redacted
1093	HHR- DOT2- 00110774		Jul 08, 2009	E-MAIL	Wilson, Harry	Deese, Brian C. <Brian_C_Deese@who.eop.gov>		DPP	Communications regarding draft memorandum regarding GM investments.	Withheld
1094	HHR- DOT2- 00110775		Jul 08, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		PCP/ DPP	Internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
1095	HHR- DOT2- 00111035		Jul 08, 2009	E-MAIL	Nathanson, Paul <Paul.Nathanson@do.treas.gov>	Wilson, Harry <Harry.Wilson@do.treas.gov>		ACP	Attorney-client communications regarding depositions in Delphi bankruptcy mediations.	Withheld
1096	HHR- DOT2- 00111058		Jul 08, 2009	E-MAIL	Wilson, Harry	Feldman, Matthew <Matthew.Feldman@do.treas.gov>		ACP/ DPP	Internal communications regarding discovery in Delphi bankruptcy mediations.	Withheld
1097	HHR- DOT2- 00111137		Jul 08, 2009	E-MAIL	Wilson, Harry	Schwartz, Matthew <Matthew.Schwartz@usdoj.gov>		ACP	Attorney-client communications regarding Delphi bankruptcy mediations.	Withheld

Black v. PBCC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
1146	HHR- DOT2- 00165564		May 03, 2009	E-MAIL	Friedman, Peter <Friedman, Peter <peter.friedman@cwt.co m>>	Rapisardi, John <John.Rapisardi@cwt.co m>; Mintz, Douglas <Douglas.Mintz@cwt.co m>?		ACP	Attorney-client communications regarding plan for Chrysler bankruptcy.	Withheld
1147	HHR- DOT2- 00168224		May 07, 2009	E-MAIL	Haker, Oren <Oren.Haker@cwt.com>	Feldman, Matthew <Matthew.Feldman@do.t reas.gov>	Rapisardi, John <John.Rapisardi@cwt.co m>	ACP	Attorney-client communications regarding plan for Delphi bankruptcy.	Withheld
1148	HHR- DOT2- 00168724		May 09, 2009	E-MAIL	Rapisardi, John <John.Rapisardi@cwt.co m>	Feldman, Matthew <Matthew.Feldman@do.t reas.gov>	Haker, Oren <Oren.Haker@cwt.com>	ACP	Attorney-client communications regarding plan for Delphi bankruptcy.	Withheld
1149	HHR- DOT2- 00168901		May 10, 2009	E-MAIL	Rapisardi, John <John.Rapisardi@cwt.co m>	Feldman, Matthew <Matthew.Feldman@do.t reas.gov>		ACP	Attorney-client communications regarding bidding process in Delphi reorganization.	Withheld
1150	HHR- DOT2- 00168914		May 10, 2009	E-MAIL	Feldman, Matthew	Deese, Brian <bdeese.wh@gmail.com >		DPP	Internal communications regarding draft of memorandum re: auto industry issues.	Withheld
1151	HHR- DOT2- 00168915		May 10, 2009	E-MAIL	Feldman, Matthew	Feldman, Matthew <matthew.feldman.63@g mail.com> Deese, Brian <bdeese.wh@gmail.com >		DPP	Internal communications regarding draft of memorandum re: auto industry issues.	Withheld
1152	HHR- DOT2- 00168916		May 10, 2009	E-MAIL ATTACHMENT	Team Auto	Secretary Geithner Lawrence Summers		PCP/ DPP	Internal memorandum regarding auto industry update.	Withheld
1153	HHR- DOT2- 00168937		May 10, 2009	E-MAIL	Brian Deese <bdeese.wh@gmail.com >	Feldman, Matthew <Matthew.Feldman@do.t reas.gov>		DPP	Internal communications regarding draft of memorandum re: auto industry issues.	Withheld
1154	HHR- DOT2- 00169221		May 11, 2009	E-MAIL	Haker, Oren <Oren.Haker@cwt.com>	Feldman, Matthew <Matthew.Feldman@do.t reas.gov>	Rapisardi, John <John.Rapisardi@cwt.co m>	ACP	Attorney-client communications regarding plan for Delphi reorganization.	Withheld

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
1164	HHR- DOT2- 00178322		May 25, 2009	E-MAIL	Haker, Oren <Oren.Haker@cwr.com>	Feldman, Matthew <Matthew.Feldman@do.treas.gov>; Rapisardi, John <John.Rapisardi@cwr.com>; Matthew.Schwartz@usdo i.gov		ACP	Attorney-client communications regarding Delphi bankruptcy mediations and Delphi reorganization.	Withheld
1165	HHR- DOT2- 00178538		May 26, 2009	E-MAIL	Knight, Bernard Jr. <Bernard.Knight@do.treas.gov>	Feldman, Matthew <Matthew.Feldman@do.treas.gov>	Schaffer, Laurie	ACP/ DPP	Attorney-client communications regarding memorandum for presidential advisors in connection with GM and Chrysler restructuring plans.	Withheld
1166	HHR- DOT2- 00178539		May 26, 2009	E-MAIL ATTACHMENT	Team Auto	Geithner, Timothy Summers, Lawrence		DPP/ AWP /PCP	Draft memorandum for presidential advisors regarding GM and Chrysler restructuring plans.	Withheld
1167	HHR- DOT2- 00178608		May 26, 2009	E-MAIL	Schaffer, Laurie <Laurie.Schaffer@do.treas.gov>	Feldman, Matthew; Knight, Bernard Jr.; Kingsley, Darius; McNeill, Mara	Yoo, Julia	ACP/ DPP	Attorney-client communications regarding memorandum for presidential advisors in connection with GM and Chrysler restructuring plans.	Withheld
1168	HHR- DOT2- 00178609		May 26, 2009	E-MAIL ATTACHMENT	Team Auto	Geithner, Timothy Summers, Lawrence		DPP/ AWP /PCP	Draft memorandum for presidential advisors regarding GM and Chrysler restructuring plans.	Withheld
1169	HHR- DOT2- 00178853		May 26, 2009	E-MAIL	Rapisardi, John <John.Rapisardi@cwr.com>	Feldman, Matthew <Matthew.Feldman@do.treas.gov>		ACP/ DPP	Attorney-client communications regarding plan for Delphi reorganization.	Withheld
1170	HHR- DOT2- 00179778		May 28, 2009	E-MAIL	House, Joseph <House.Joseph@pbgc.gov>	Feldman, Matthew <Matthew.Feldman@do.treas.gov>		DPP	Communications regarding plan for Chrysler bankruptcy.	Withheld
1171	HHR- DOT2- 00179809		May 28, 2009	E-MAIL	Stern, Brian <Brian.Stern@do.treas.gov>	Ricks, Morgan; Kabaker, Matthew	Feldman, Matthew <Matthew.Feldman@do.treas.gov>	DPP	Communications regarding financial analysis memorandum for presidential advisor in connection with GM restructuring plans.	Withheld

Black v. PBGC
U.S. Department of the Treasury Privilege Log

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
1212	HHR- DOT2- 00189011		Jul 02, 2009	E-MAIL	Quinn, Philip <Philip.Quinn@do.treas.gov>	Barr, Michael	Sokolov, Dan; Raseman, Sophie; Yang, David; Ugoletti, Mario; Feldman, Matthew	DPP	Internal communications regarding draft memorandum in connection with Delphi pension plan update.	Withheld
1213	HHR- DOT2- 00189012		Jul 02, 2009	E-MAIL ATTACHMENT				DPP	Memorandum regarding PBGC and Delphi pension plan update.	Withheld
1214	HHR- DOT2- 00189185		Jul 03, 2009	E-MAIL	Barr, Michael <Michael.Barr@do.treas.gov>	Sokolov, Dan <Dan.Sokolov@do.treas.gov>; Quinn, Philip <Philip.Quinn@do.treas.gov>	Raseman, Sophie <Sophie.Raseman@do.treas.gov>; Yang, David <David.Yang@do.treas.gov>; Ugoletti, Mario <Mario.Ugoletti@do.treas.gov>; Feldman, Matthew <Matthew.Feldman@do.treas.gov>	DPP	Internal communications regarding draft memorandum in connection with Delphi pension plan update.	Withheld
1215	HHR- DOT2- 00190464		Jul 07, 2009	E-MAIL	Haker, Oren <Oren.Haker@owl.com>	Feldman, Matthew <Matthew.Feldman@do.treas.gov>		ACP	Attorney-client communications regarding PBGC and GM negotiations in connection with funding of Delphi pension plans.	Withheld
1216	HHR- DOT2- 00190496		Jul 07, 2009	E-MAIL	Rathner, Steven <Steven.Rathner@do.treas.gov>	Wilson, Harry; Bloom, Ron; Brian_C_Deese@who.eop.gov; Feldman, Matthew; Markowitz, David		DPP	Communications with respect to internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
1217	HHR- DOT2- 00190497		Jul 07, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner Lawrence Summers		PCP/ DPP	Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld

**Black v. PBGC
U.S. Department of the Treasury Privilege Log**

Item	DOCID	Beginning Dates	Document Date	Document Type	Author	Addressee(s)	CC	Priv(s)	Reason	Redacted or Withheld
1218	HHR- DOT2- 00190521		Jul 07, 2009	E-MAIL	Rattner, Steven <Steven.Rattner@do.trea s.gov>	Deese, Brian C. <Brian_C_Deese@who. eop.gov>; Bloom, Ron; Wilson, Harry; Feldman, Matthew; Markowitz, David		DPP	Communications with respect to internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
1219	HHR- DOT2- 00190522		Jul 07, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner Lawrence Summers		PCP/ DPP	Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
1220	HHR- DOT2- 00190592		Jul 07, 2009	E-MAIL	Wilson, Harry <Harry.Wilson@do.trea. gov>	Rattner, Steven; Bloom, Ron; Deese, Brian <Brian_C_Deese@who. eop.gov>; Feldman, Matthew; Markowitz, David	Wrennall-Montes, Sally	DPP	Communications with respect to internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
1221	HHR- DOT2- 00190593		Jul 07, 2009	E-MAIL ATTACHMENT	US Department of Treasury	Secretary Geithner Lawrence Summers		PCP/ DPP	Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
1222	HHR- DOT2- 00190636		Jul 07, 2009	E-MAIL	Rattner, Steven <Steven.Rattner@do.trea s.gov>	Bloom, Ron; Deese, Brian C. <Brian_C_Deese@who. eop.gov>; Wilson, Harry; Feldman, Matthew; Markowitz, David	Wrennall-Montes, Sally	DPP	Communications with respect to internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld
1223	HHR- DOT2- 00190637		Jul 07, 2009	E-MAIL ATTACHMENT	US Department of Treasury			PCP/ DPP	Draft internal memorandum regarding GM portfolio oversight and next steps analyzing value of investment in GM.	Withheld

Case 1:12-md-0100-EGS Document 315 Filed 05/21/15 Page 11 of 220

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

	)	No. 1:12-mc-00100-EGS
U.S. DEPARTMENT OF THE)	
TREASURY,	)	STIPULATION AND PROTECTIVE
	)	ORDER CONCERNING
Petitioner,	)	RESPONDENTS' SUBPOENAS TO
	)	PETITIONER
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, <i>et al.</i> ,)	
)	
Respondents.)	
)	

FILED

NOV - 6 2014

Clerk, U.S. District & Bankruptcy
 Courts for the District of Columbia

To clarify the duties and obligations of petitioner U.S. Department of the Treasury (Treasury), interested party Pension Benefit Guaranty Corporation (PBGC), and respondents Dennis Black, Charles Cunningham, Kenneth Hollis, and Delphi Salaried Retiree Association under the third-party subpoenas issued to Treasury by respondents, it is hereby stipulated and agreed as follows by and among the undersigned subject to the approval of the Court:

1. As used in this stipulation and order, the following terms shall have the following meanings: (a) "Treasury" and "PBGC" shall have the meanings ascribed to them in the preamble to this stipulation and order; (b) "Document Subpoena" shall mean respondents' subpoena to Treasury dated January 4, 2012; (c) "Deposition Subpoena" shall mean respondents' subpoena to Treasury dated August 20, 2013; (d) "Counsel" shall mean counsel for respondents and counsel for PBGC; (e) "SIGTARP" shall mean the Special Inspector General for the Troubled Asset Relief Program; (f) "Delphi" shall mean Delphi Corporation; (g) "Delphi Pension Plans" shall

mean the pension plans maintained by Delphi on June 30, 2009; and (h) “*Black P*” shall mean *Black v. PBGC*, No. 2:09-cv-13616-AJT-MKM (E.D. Mich.).

2. Respondents will consider Treasury to have complied in full with the Document Subpoena if Treasury conducts the following searches and produces to Counsel all non-privileged portions of all documents responsive to the Document Subpoena located as a result of those searches: (a) an electronic search of the Outlook boxes of Matthew A. Feldman, Harry J. Wilson, and Steven L. Rattner using the following search string: (Delphi or PBGC or “Pension Benefit Guaranty Corporation” or SRP or HRP or Salaried) or ((pension or house or Joe) w/25 words of (Snowbarger or Menke or Sheehan or greentarget or “DIP” or Elliot or “Silver Point” or lien)); and (b) a manual search of the documents produced by Treasury to SIGTARP for documents relating to Delphi, the Delphi Pension Plans, or the release and discharge by PBGC of liens and claims relating to the Delphi Pension Plans.

3. Production of documents under this stipulation and order shall take place on a rolling basis.

4. Treasury shall use its best efforts to make its initial production of documents under this stipulation and order within 21 days of the date upon which the Court approves the stipulation and order and its final production within 135 days of that date.

5. Treasury shall update respondents on the status of production no less frequently than monthly.

6. Treasury shall not be required to produce the lesser included emails in an email chain if it produces the same emails (and any attachments to those emails) as part of another version of the chain.

7. Treasury shall have 60 days from the date of its final production under this 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.

8. Treasury may designate as “Confidential” any material contained in any document produced under this stipulation and order that consists of any of the following or is copied or extracted from any of the following:

- a. confidential financial information of any individual or entity, including information dealing with confidential business practices, plans, strategies, or projections;
- b. information submitted to Treasury by a third party under an express or implied assurance of confidentiality;
- c. information related to the employment of any individual;
- d. information the disclosure of which is likely to embarrass or harm the reputation of any individual; or
- e. information that Treasury is required by law to protect from disclosure.

9. Material designated as “Confidential” under this stipulation and order shall be so labelled at the time of its production.

10. If material ought to have been labeled as “Confidential” at the time of its production under this stipulation and order but is not so labeled, Treasury shall provide Counsel promptly with a substitute copy of the document in which the previously-unlabeled material is properly labeled.

11. Within 10 business days of the date upon which Treasury provides Counsel with a substitute copy of any document pursuant to the preceding paragraph, Counsel shall destroy all

copies of that document produced previously under this stipulation and order and shall certify to Treasury the destruction of those copies.

12. If Treasury determines that any material designated as “Confidential” under this stipulation and order should no longer bear that designation, it shall so notify Counsel promptly.

13. Nothing contained in this stipulation shall preclude respondents or PBGC from moving the Court to invalidate any designation as “Confidential” of any material produced under this stipulation and order.

14. Material that has been designated as “Confidential” under this stipulation and order shall be used exclusively for the prosecution or defense of this action or *Black I* and shall not be used for any other purpose.

15. Material that has been designated as “Confidential” under this stipulation and order shall not be re-disclosed by Counsel except to members of Counsel’s office actively involved in the prosecution or defense of this action or *Black I*; consultants or experts hired or retained by Counsel in connection with the prosecution or defense of this action or *Black I*; Charles Cunningham; employees of PBGC with a need to know; this Court or the court in *Black I*; qualified persons (including necessary clerical personnel) recording, taking or transcribing testimony or argument at any deposition, hearing, trial or appeal in this action or *Black I*; or witnesses (including their counsel) in connection with the prosecution or defense of this action or *Black I*.

16. Material designated as “Confidential” under this stipulation and order shall not be filed with this Court or the court in *Black I* except under seal.

17. Except in the case of disclosures to this Court or to the court in *Black I*, no individual shall review or be permitted to review any material designated as “Confidential” under this

stipulation and order unless and until the individual has executed the following acknowledgment and has returned the executed acknowledgment to Counsel for retention by Counsel during the pendency of *Black I*:

I, _____, hereby declare under penalty of perjury that I have read the stipulation and order in *U.S. Department of the Treasury v. Black*, No. 1:12-mc-00100-EGS (D.D.C.), dated [insert the date upon which this stipulation and order is approved by the Court]. I agree to refrain from using or disclosing any material designated as “Confidential” under that stipulation and order other than in strict compliance with the terms of the stipulation and order. I acknowledge that my duties under the stipulation and order shall survive the termination of the above action and that my failure to comply with the terms of the stipulation and order may result in the imposition of sanctions by the Court.

Dated: _____ Signed: _____

18. Within 120 days of the termination of *Black I* (including the final resolution of any appeals), Counsel shall destroy or delete all material designated as “Confidential” under this stipulation and order, except that Counsel may retain in unredacted form any document filed with the Court in this action or with the court in *Black I* by either of those courts or by Counsel.

19. The Deposition Subpoena is hereby 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*.

Dated: November 3, 2014

JOYCE R. BRANDA
Acting Assistant Attorney General
RONALD C. MACHEN
United States Attorney
ARTHUR R. GOLDBERG
Assistant Branch Director, Department of Justice,
Civil Division

s/ David M. Glass

DAVID M. GLASS, DC Bar 544549
Senior Trial Counsel, Department of Justice, Civil
Division
20 Massachusetts Avenue, 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: November 3, 2014

s/ John A. Menke (by email authorization)

ISRAEL GOLDOWITZ
Chief Counsel
KAREN L. MORRIS
Deputy Chief Counsel
JOHN A. MENKE
C. WAYNE OWEN, JR.
Assistant Chief Counsel
CRAIG T. FESSENDEN
ERIN C. KIM
JARED S. WIESNER
Attorneys
PENSION BENEFIT GUARANTY
CORPORATION
Office of Chief Counsel
1200 K. Street, N.W.
Washington, D.C. 20005
Tel: (202) 326-4020, ext. 3059/Fax: (202) 326-4112
Emails: menke.john@pbgc.gov & efile@pbgc.gov
Attorneys for Interested Party

Dated: November 3, 2014

s/ Michael N. Khalil (by email authorization)

MILLER & CHEVALIER CHARTERED
Anthony F. Shelley, DC Bar 420043
Timothy P. O'Toole, DC Bar 469800
Michael N. Khalil, DC Bar 497566
655 15th Street., N.W., Suite 900
Washington, D.C. 20005
Tel: (202) 626-5800/Fax: (202) 626-5801
Email: mkhalil@milchev.com
Attorneys for Respondents

APPROVED AND SO ORDERED.

Dated:

11/4/14



A handwritten signature in black ink, appearing to read 'Michael J. Kelly', written over a horizontal line.

UNITED STATES DISTRICT JUDGE

I. BACKGROUND

Respondents in this miscellaneous action are plaintiffs in *Black v. PBGC*, Case No. 09-13616, a civil action pending in the United States District Court for the Eastern District of Michigan (hereinafter "civil action" or "Michigan action"). Respondents are current and former salaried workers at Delphi Corporation ("Delphi"), an automotive supply company. In the civil action, Respondents allege that in July 2009, the Pension Benefit Guaranty Corporation ("PBGC") improperly terminated Delphi's pension plan for its salaried workers ("Plan") via an agreement with Delphi and General Motors ("GM"). Treasury is not a party to the civil action.

The civil action contains four counts. Count One alleges that the termination violated the Employee Retirement Income Security Act ("ERISA") because no court made findings that the Plan was unsustainable. Plaintiffs argue that such findings are a condition prerequisite to a valid termination under ERISA. *Black v. PBGC*, ECF #145 ¶ 39. Counts Two and Three allege additional procedural infirmities with the termination-by-agreement. *Id.* ¶¶ 44, 52. Finally, and most relevant to this miscellaneous action, Count Four alleges that the PBGC could not have satisfied ERISA's statutory requirements for termination had it actually sought court approval, pursuant to 29 U.S.C. §

1342(c). *Id.* ¶ 56. Essentially, plaintiffs' theory of the case in the civil action, and specifically Count Four, is that PBGC terminated the Plan "not because of anything related to its statutory role under ERISA, but as a result of pressure imposed by the Treasury and the related U.S. Auto Task Force to support their efforts to restructure the auto industry in general and GM in particular." Resp'ts Opp'n to Renewed Mot. to Quash, ECF #19 at 3-4.

In September 2011, Judge Tarnow, who is presiding over the civil action, ordered discovery to move forward. He instructed the parties to focus first on Count Four, specifically:

[W]hether termination of the Salaried Plan would have been appropriate in July 2009 if, as Plaintiffs contend, Defendants were required under 29 U.S.C. § 1342(c) to file before this Court "for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund."

Black v. PBGC, ECF #193 at 3-4. Judge Tarnow explained that he was proceeding in this fashion because:

A finding by the Court in PBGC's favor on Count 4 after [discovery under the Federal Rules] would render moot the remainder of the complaint pertaining to the PBGC. In the event that the Court finds that termination of the plan was not supported by the factors set forth in 28 U.S.C. § 1342(c), the Court will consider the remaining issues raised in the complaint.

Id. at 5-6.

The PBGC unsuccessfully moved for reconsideration of Judge Tarnow's order. Shortly thereafter, plaintiffs served the PBGC with discovery requests which, they argue, are highly relevant to § 1342(c). One of the requests directs PBGC to produce "all documents and things you received from . . . the Treasury Department, the Auto Task Force, the Labor Department, and the Executive Office of the President, or produced to the Federal Executive Branch, since January 1, 2009, related to Delphi . . . including but not limited to, documents related to the termination of the Delphi Pension Plans." Pet'r's Mot to Quash, ECF #1, Ex. H at 8-9. The PBGC refused to produce the documents, the plaintiffs moved to compel, and Magistrate Judge Majzoub ordered the PBGC to produce full and complete responses. *Black v. PBGC*, ECF #209 at 1. The PBGC filed objections to that order with Judge Tarnow.

Meanwhile, in January 2012, Respondents served Treasury with a subpoena seeking:

All documents and things (including e-mails or other correspondence, spreadsheets, reports, analyses, snapshots, funding estimates, proposals or offers) received, produced, or reviewed by Matthew Feldman, [Harry Wilson, or Steven Rattner] between January 1, 2009 and December 31, 2009 related to: (1) Delphi; (2) the Delphi Pension Plans; or (3) the release and discharge by the [PBGC] of liens and claims relating to the Delphi Pension Plans.

Pet'r's Mot. to Quash, ECF #1, Ex. J at 5-6. Respondents allege that Feldman, Wilson and Rattner were the three principal Treasury employees who negotiated with the PBGC to terminate the Delphi Plan. Resp'ts Opp'n to Mot. to Quash, ECF #6 at 4, 10.¹ The Treasury filed this miscellaneous action to quash the subpoena in February 2012. Treasury made the same argument to this Court that the PBGC asserted in unsuccessfully opposing the motion to compel before Judge Majzoub and in its objections which were then pending before Judge Tarnow: the requested discovery is irrelevant because it relates to § 1342(c), and § 1342(c) is irrelevant to the Michigan action. *See, e.g.,* Pet'r's Reply in Support of Mot. to Quash, ECF #10 at 4-12. Accordingly, in May 2012, this Court entered a minute order stating, in relevant part:

[I]t appears to the Court that a threshold issue in this matter is whether the court in the underlying action has permitted discovery regarding the factors enunciated in 29 U.S.C. § 1342(c). In light of the fact that this precise issue is ripe for resolution before Judge Tarnow, the judge in the underlying action, the Court hereby STAYS this matter pending Judge Tarnow's resolution of PBGC's Objections to Magistrate Judge's Order of March 9, 2012 Granting Plaintiffs' Motion to Compel Discovery, Case 09-13616 (E.D. Mich.), Doc. No. 209. Plaintiffs are directed to notify this Court of Judge Tarnow's decision within five calendar days after it issues. This Order is subject to reconsideration for good cause shown.

Minute Order, May 17, 2012.

¹ All three left Treasury and returned to the private sector at some point during the summer of 2009. Pet'r's Renewed Mot. to Quash, ECF #15 at 10.

On August 13, 2013, Respondents moved to lift the stay. They noted that although Judge Tarnow had not yet ruled on the objections, in the interim, the PBGC "produced all documents sought by plaintiffs" which were responsive to Judge Majzoub's order. Resp'ts Mot. to Lift Stay, ECF #11 at 2. Accordingly, "it seems likely that the PBGC's objections to Judge Tarnow are now moot, or waived, or both." *Id.* at 3.² Respondents also proposed a modification to their subpoena *duces tecum*. *Id.* at 6. Respondents believe that Treasury has already produced certain documents and email correspondence relevant to the Delphi Pension issues to the Special Inspector General for the Troubled Asset Relief Program (SIGTARP). *Id.* at 7. They suggest it would be "a reasonable compromise" to modify the subpoena to request only those documents. *Id.* In proposing the modification, Respondents tried to address Treasury's argument that the subpoena imposes an undue burden; "producing documents already assembled and produced to SIGTARP involves no burden." *Id.* at 6.

A week later, on August 20, 2013, Respondents issued a deposition subpoena, which asks Treasury to produce one or more witnesses pursuant to Federal Rule of Civil Procedure 30(b)(6) to testify at deposition about:

² Indeed, on May 27, 2014 Judge Tarnow denied as moot the PBGC's Objections to Judge Majzoub's March 9, 2014 order. See Resp'ts Notice of Development in Underlying Case, ECF #25 Ex. A.

[Matthew Feldman's and Harry Wilson's] communications in 2009 relating to the GM-Delphi relationship; the Delphi Pension Plans; and the release, waiver, or discharge by the PBGC of liens and claims relating to the Delphi Pension Plans. These communications include, but are not limited to, communications with the PBGC, Delphi, GM, the Delphi DIP leaders, Federal Mogul, Platinum Equity, the National Economic Council, and the Executive Office of the President.

Deposition Subpoena, ECF #13-4. Shortly thereafter, Treasury filed a combined Renewed Motion to Quash the 2012 subpoena *duces tecum* and Motion to Quash the 2013 deposition subpoena. ECF #15. In its renewed motion, Treasury makes the same three arguments as its initial motion - relevance, undue burden, and cumulative/duplicative information. *Id.* at 16-23. It also adds a new argument, claiming for the first time that the Respondents lack standing to litigate the Michigan action, and thus may not conduct any discovery, including discovery from Treasury. *Id.* at 13-16. The renewed motion is ripe for review by the Court.

II. STANDARD OF REVIEW

A. Standing

In a civil action, the plaintiff has the burden of establishing that it has Article III standing. *Sierra Club v. Jackson*, 813 F. Supp. 2d 149, 154 (D.D.C. 2011) (citations omitted). To establish standing, plaintiff must show "at an irreducible constitutional minimum": (1) that it has suffered an injury in fact; (2) that the injury is fairly traceable to defendant's conduct; and (3) that a favorable decision on the

merits likely will redress the injury. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "While the burden of production to establish standing is more relaxed at the pleading stage than at summary judgment, a plaintiff must nonetheless allege 'general factual allegations of injury resulting from the defendant's conduct.'" *Nat'l Ass'n of Home Builders v. E.P.A.*, 667 F.3d 6, 12 (D.C. Cir. 2011). See also *NB ex rel. Peacock v. Dist. of Columbia*, 682 F.3d 77, 82 (D.C. Cir. 2012) (noting that "at the pleadings stage, 'the burden imposed' on plaintiffs to establish standing 'is not 'onerous'").

B. Motion to Quash

A party "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . [or which] appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Limiting discovery and quashing subpoenas pursuant to Rule 26 and/or Rule 45 "goes against courts' general preference for a broad scope of discovery." *North Carolina Right to Life, Inc. v. Leake*, 231 F.R.D. 49, 51 (D.D.C. 2005). "Moreover, the general policy favoring broad discovery is particularly applicable where, as here, the court making the relevance determination has jurisdiction only over the discovery dispute, and hence has less familiarity with the intricacies of the governing substantive law than does the court overseeing the

underlying litigation." *Jewish War Veterans of the United States of Am., Inc. v. Gates*, 506 F. Supp. 2d 30, 42 (D.D.C. 2007) (citing *Flanagan v. Wyndham Int'l, Inc.*, 231 F.R.D. 98, 103 (D.D.C. 2005)).³

Discovery must be limited, however, if the "discovery sought is unreasonably cumulative or duplicative." Fed. R. Civ. P. 26(b)(2)(c). In addition, "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* at 26(c); see also Fed. R. Civ. P. 45(d).

"The individual or entity seeking relief from subpoena compliance bears the burden of demonstrating that a subpoena should be modified or quashed." *Sterne Kessler Goldstein & Fox, PLLC v. Eastman Kodak Co.*, 276 F.R.D. 376, 379 (D.D.C. 2011) (citations omitted). "The quashing of a subpoena is an extraordinary measure, and is usually inappropriate absent extraordinary circumstances. A court should be loath to quash a subpoena if other protection of less absolute character is possible. Consequently, the movant's burden is greater for a

³ Treasury suggests that a more restrictive test of relevancy applies when the subpoena is directed to a non-party, Pet'r's Renewed Mot. at 17, "but it seems that there is no basis for this distinction in the rule's language." 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2459 (3d ed.); see also *Flanagan*, 231 F.R.D. at 103 (applying relevance standards to non-party subpoena that is at least as broad as party subpoenas).

motion to quash than if she were seeking more limited protection." *Flanagan*, 231 F.R.D. at 102 (internal citations and quotation marks omitted).

III. DISCUSSION

A. Standing

For the first time in its renewed motion to quash, Treasury, a non-party to the underlying case, argues that respondents have no standing to litigate the Michigan action. Pet'r's Renewed Mot. to Quash at 13-16. Treasury concedes that the parties to the Michigan action have not raised standing issues in the Michigan court. *Id.* at 13-14. Nevertheless, it contends that "this Court is a proper forum in which to challenge the standing of respondents to litigate" the Michigan case, because "third party discovery may be permitted only to the extent it relates to viable claims." *Id.* at 14, n.11. It then makes cursory arguments, in just four pages of its brief, which purport to address standing issues in the highly complex ERISA litigation which has been pending in Michigan for five years.

This Court is deeply skeptical of Treasury's argument that the Court should address Article III standing in a case where the merits are not before it, and indeed, where it "*has jurisdiction only over the discovery dispute*, and hence has less familiarity with the intricacies of the governing substantive

law than does the court overseeing the underlying litigation.” *Jewish War Veterans*, 506 F. Supp. 2d at 42 (citations omitted) (emphasis added). It is true, of course, that an “ancillary discovery proceeding is, by its very terms, an extension of the underlying proceeding and the subject matter jurisdiction of the ancillary proceeding is derived from the jurisdiction of the underlying case.” *McCook Metals LLC v. Alcoa, Inc.*, 249 F.3d 330, 334 (4th Cir. 2001). However, this does not mean that in resolving the discrete, non-party discovery issue before it, the Court may reach into the merits of the underlying case, ongoing in another court halfway across the country, and determine that court’s jurisdiction over those claims. Indeed, Treasury has not provided a single authority where a court exercising ancillary jurisdiction over only a single discovery motion has addressed the subject matter jurisdiction of a sister court presiding over the underlying litigation. Asking this Court to review another court’s jurisdiction seems particularly inappropriate because the issue can never be waived: a standing challenge may be raised at any time during the Michigan litigation, either by the parties or *sua sponte* by that court.⁴

⁴ If the subpoenas had been issued after December 1, 2013, the Court would have seriously considered transferring the motion to quash to the Michigan court in light of the December 1, 2013 amendments to Rule 45. The Rule, as amended, now requires that subpoenas be issued “from the court where the action is pending,” Fed. R. Civ. P. 45(a)(2), and further provides that

Assuming *arguendo* it is appropriate for this court to undertake a standing analysis, and based on the limited record before it, the Court rejects Treasury's arguments. In order to demonstrate standing, a plaintiff must adequately establish an injury-in-fact, causation and redressability. *Lujan*, 504 U.S. at 560-61. At the pleading stage, where the underlying litigation remains, "'the burden imposed' on plaintiffs to establish standing 'is not onerous'." *NB ex. rel. Peacock*, 682 F.3d at 82. Treasury does not dispute that Respondents have been injured through the termination of their pension plan, but denies causation and redressability. Pet'r's Renewed Mot. at 14-16.

On the causation issue, Treasury argues that Respondents cannot show that their injury was fairly traceable to the PBGC.

[T]he fact that respondents are not receiving the full amount of their pension benefits is attributable to the fact that "Delphi did not have enough money to fund its pensions" not to the fact PBGC terminated the . . . Plan by agreement with Delphi "to avoid any unreasonable increase in the liability of the PBGC insurance fund."

Id. at 14 (citations omitted). This argument is nothing more than an assertion that the PBGC should win on the merits of the case. In their Second Amended Complaint, plaintiffs have alleged that their Plan was terminated by PBGC for political

"[w]hen the Court where compliance is required did not issue the subpoena, it may transfer a motion [to quash] to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances." *Id.* 45(f).

reasons and in violation of ERISA, *not* because the Plan was no longer financially viable or because PBGC had statutory authority to terminate. *See, e.g., Black v. PBGC*, Second Amended Complaint, ECF #145 ¶ 56. This is precisely the issue in discovery in the Michigan court. This Court takes no position whether Respondents will prevail on their claims. At the pleading stage, however, it appears that Respondents have alleged a causal link.

Treasury also argues that plaintiffs' injuries are not redressable by the Michigan Court. It claims that Respondents are not entitled to equitable relief from the PBGC because equitable "payments of money from the Federal Treasury are limited to those authorized by statute," *OPM v. Richmond*, 496 U.S. 414, 416 (1990), and "[r]espondents do not point to any statute that would authorize PBGC to pay them more in pension benefits than they now are receiving." Pet'r's Renewed Mot. at 16. This argument fares no better than Treasury's causation claims. Congress has authorized any plan participant "adversely affected by any action of the [PBGC] . . . [to] bring an action against the [PBGC] for appropriate equitable relief in the appropriate court." 29 U.S.C. § 1303(f)(1). Plaintiffs request a variety of forms of equitable relief in their Second Amended Complaint, not limited to an order forcing the PBGC paying higher pensions to the salaried workers and retirees. *See Black*

v. PBGC, Sec. Am. Compl. Prayer for Relief, ECF #145 at 22-23. Again, this Court takes no position on what relief, if any, Respondents will obtain from the PBGC or the other defendants in the case. However, at the pleading stage of the litigation, this Court agrees with Judge Tarnow, who "declin[ed] to accept [the PBGC's] position that Plaintiffs cannot obtain any relief in this lawsuit if the [Michigan] [c]ourt concludes that the PBGC acted improperly." *Black v. PBGC*, Order 2/17/10, ECF #122 at 3.

B. Relevance

Treasury argues that the information Plaintiffs seek is irrelevant because 29 U.S.C. § 1342(c) authorizes the PBGC to initiate a termination of a pension plan "in order to avoid 'any unreasonable increase in the liability of the [PBGC insurance] fund.'" Pet'r's Renewed Mot. at 18. Accordingly, Treasury claims, it is irrelevant whether Treasury encouraged PBGC to do anything; the PBGC acted in accordance with ERISA in seeking termination. *Id.* at 18-19. Respondents counter that § 1342(a) permits the PBGC to seek termination on this basis, but does not permit it to actually terminate a Plan without a court's determination that a Plan "must" be terminated under the § 1342(c) criteria: "[I]n order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in

the liability of the fund.” See Resp’ts Opp’n to Renewed Mot. at 21-22. Respondents argue that a reviewing court would not have made findings that these statutory criteria were met and that the Plan “must” terminate; rather, the PBGC violated the statute and improperly terminated the Plan because it was under political pressure from Treasury. *Id.* They argue that discovery from Treasury is therefore relevant. Respondents prevail.

In Judge Tarnow’s September 1, 2011 discovery order, the U.S. District Court for the Eastern District of Michigan made a determination that this information was relevant. Judge Tarnow allowed discovery to move forward on Count 4 of the Complaint, specifically:

[W]hether termination of the Salaried Plan would have been appropriate in July 2009 if, as Plaintiffs contend, Defendants were required under 29 U.S.C. § 1342(c) to file before this court “for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund.” In the event that the Court finds that termination of the plan was not supported by the factors set forth in 28 U.S.C. § 1342(c), the Court will consider the remaining issues raised in the complaint.

Black v. PBGC, ECF #193 at 3-6. Following Judge Tarnow’s order, Plaintiffs requested information from the PBGC very similar to that it now requests from Treasury: information designed to reveal whether the PBGC could have satisfied the § 1342(c) factors or whether, instead, it improperly yielded to pressure

from other federal entities, including Treasury. Pet'r's Mot to Quash, ECF #1, Ex. H at 8-9. Judge Majzoub granted Plaintiffs' motion to compel that information. *Black v. PBGC*, ECF #209. Accordingly, two judges in the underlying action evaluated the question of relevance for very similar materials, sought for very similar reasons, and found them relevant. Although the "law of the case" doctrine is not dispositive of Respondents' motion, it does support this Court's decision to rely on the relevance analysis performed by the Eastern District of Michigan. See *Flanagan*, 231 F.R.D. at 103, n.2 ("While the doctrine of the law of the case is no more than a guiding principle and does not diminish this Court's discretion to revisit prior decisions of a coordinate court, it 'expresses the practice of courts generally to refuse to reopen what has been decided.'") (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988)). In the context of Rules 26 and 45, the above considerations establish a sufficient showing of relevance needed to permit the Respondents to obtain documents and other items and to depose a Treasury official in this case.

C. Burden

A trial court may quash or modify a subpoena on the ground that the request is unreasonable or oppressive. Fed. R. Civ. P. 26(c). "What constitutes unreasonableness or oppression is, of

course, a matter to be decided in the light of all the circumstances of the case. . . ." *Northrop Corp. v. McDonnell Douglas Corp.*, 751 F.2d 395, 403 (D.C. Cir. 1984) (citation and internal quotation marks omitted). "[T]he burden of proving that a subpoena . . . is oppressive is on the party moving for relief on this ground. . . . The burden is particularly heavy to support a motion to quash as contrasted to some more limited protection," such as a request for modification. *Id.* at 404 (quoting *Westinghouse Elec. Corp. v. City of Burlington, Vt.*, 351 F.2d 762, 766 (D.C. Cir. 1965)). The moving party may not "simply allege a broad need for a protective order so as to avoid general harm, but must demonstrate specific facts which would justify such an order." *Flanagan*, 231 F.R.D. at 102 (citations omitted). There are two subpoenas at issue in this case. The Court examines them in turn.

1) *Subpoena Duces Tecum*

Respondents' subpoena duces tecum is narrow. It seeks documents created, received or reviewed by three Treasury officials, over a single calendar year, relating only to Delphi. Moreover, Respondents have expressed their willingness to modify the subpoena to encompass only those documents Treasury already produced to SIGTARP and to the House Oversight and Government Reform Committee. *See, e.g.,* Resp'ts Opp'n to Renewed Mot. at 29-30. Nevertheless, Treasury argues that the subpoena, even

with proposed modifications, is oppressive and must be quashed. Treasury provides a declaration from Rachana Desai, Acting Chief Counsel of the Treasury's Office of Financial Stability, which states that in responding to the subpoena *duces tecum*, Treasury "could be" required to search the three officials' email inboxes, review over 15,000 electronic documents and 28 boxes of files, and then review documents for responsiveness and privilege. Desai Decl. ¶ 7, ECF #15-7. Even the modifications offered are unacceptable, Desai asserts, because Treasury "would need to review each responsive document" provided to SIGTARP and the U.S. House Committee for "responsiveness" and "possible assertion of claims of privilege." *Id.* ¶¶ 9-11.

Treasury has not carried its heavy burden to show that the subpoena *duces tecum* is oppressive. Although Treasury claims it will have to search a significant number of documents to respond to the subpoena, "volume alone is not determinative." *Northrup Corp.*, 751 F.2d at 404 (citation omitted). Moreover, the number of documents could drop significantly if Treasury agreed to Respondents' proposed modifications.⁵

⁵ Treasury responded negatively to Respondents' offer to modify the subpoena *duces tecum*, arguing that the modifications would result in an equally heavy burden on the Treasury. See, e.g., Pet'r's Renewed Mot. at 21-22. Accordingly, the Court does not modify the subpoena. The parties are of course free to negotiate modifications to the subpoena without further litigation.

Treasury's remaining claim of burdensomeness is that it will have to make privilege determinations for the documents. This naked assertion is insufficient to quash the subpoena for two reasons. First, Treasury offers no support for its claim that a substantial number of the documents will be privileged. There is no basis for the Court to impose the "extraordinary measure" of quashing a subpoena, *Flanagan*, 231 F.R.D. at 102, based on a "purely speculative" privilege claim. *Northrup*, 751 F.2d at 405. Second, most subpoenas *duces tecum* require the recipient to conduct a privilege review. If the "good cause" requirement for quashing a subpoena could be met by a bare assertion that privilege review constitutes an undue burden, discovery under the Federal Rules would quickly grind to a halt.

2) *Deposition Subpoena*

Treasury argues that "[n]o one currently working at Treasury has knowledge of the communications referenced in respondents' deposition subpoena to Treasury except insofar as he or she has reviewed the record or read emails to or from Mr. Feldman or Mr. Wilson since the time that [they] left the Auto Team [A]ny witness designated to testify . . . would need a substantial amount of time to prepare." Desai Decl. ¶ 12, ECF #15-7; see also Pet'r's Reply in Support of Renewed Mot. at 19, ECF #21 (explaining that the Auto Team had twelve Treasury employees, none of whom still works for Treasury).

Respondents counter that Treasury likely has the ability to compel Feldman and Wilson to testify; "[n]evertheless, if it is the Treasury's position that it cannot produce [Mr. Feldman and Mr. Wilson], and further that it is otherwise incompetent to testify about the communications these individuals undertook with respect to the Delphi issues, then Respondents will withdraw the Deposition Subpoena and reissue Rule 45 subpoenas to Messrs. Feldman and Wilson directly." Resp'ts Opp'n to Renewed Mot. to Quash at 31, ECF #19. Treasury responds by insinuating that it would move to quash such subpoenas "if and when they are issued because such subpoenas will seek information belonging to Treasury." Pet'r's Reply in Support of Renewed Mot. at 20.⁶

It appears that Treasury's principal undue burden argument is that no one with institutional knowledge about Mr. Feldman's and Mr. Wilson's role in the termination of the Delphi Plans remains at Treasury; accordingly, someone would have to learn the material as new in order to testify. Respondents effectively concede that this would be burdensome by offering to withdraw their deposition subpoenas if and only if Treasury

⁶ Obviously, it would be premature to speculate as to the contents of a future, hypothetical motion to quash. Treasury is cautioned, however, to carefully consider this Opinion before filing any such motion.

cannot compel Mr. Feldman and Mr. Wilson to testify in response to the outstanding subpoena.

The Court agrees with Respondents. Treasury has made no showing that the deposition subpoena would be burdensome except in the event that no one at Treasury (or from whom it has authority to compel testimony) is competent to respond to it. Accordingly, the parties are directed to confer and determine, within 30 days of the date of this Order, whether Treasury can compel Mr. Feldman and Mr. Wilson to testify in response to the subpoena. In the event that it cannot, Respondents shall withdraw the deposition subpoena.

D. Duplicative/Cumulative Information

Finally, Treasury argues the subpoenas should be quashed because they are cumulative. Treasury contends that “[t]he immensity of PBGC’s document production and the overlap between” the document requests to PBGC “and respondents’ subpoenas to Treasury leave little need for Treasury to respond to [the] subpoena[.]” Pet’r’s Renewed Mot. at 24. Treasury also argues that Mr. Feldman and Mr. Wilson have testified at depositions in other actions, and at “numerous congressional hearings at which the Delphi Salaried Plan and its termination have been discussed.” *Id.* Respondents counter that “at the time the Plan was terminated, the Treasury was directly negotiating the future of Delphi with a number of players besides the PBGC, including

GM, Delphi, Delphi's DIP Lenders, Federal Mogul, Platinum Equity, and various unions. Moreover the Auto Team was deliberating amongst itself and various White House officials as to what to do in relation to the Delphi plans. . . . In short, while it is true that the PBGC has produced some (and hopefully most) of the email correspondence between it and the Treasury, such information is only a part of the relevant responsive documents in the Treasury's possession." Resp'ts Opp'n to Renewed Mot. at 34-35. Respondents also argue that Feldman and Wilson's testimony would not be cumulative because neither of them has been deposed in *Black v. PBGC*. *Id.* at 36.

For the reasons discussed throughout, the motion to quash must be denied. The subpoenas request information that has been adjudicated as relevant to, and discoverable in, the Michigan litigation. Although the documents requested may have some overlap with documents already produced by PBGC, Treasury has failed to show, as it must, that it would be "unreasonably cumulative or duplicative." Fed. R. Civ. P. 26(b)(2)(c)(i). Likewise, Feldman and Wilson have access to information about Treasury's role in the Plan's termination which Respondents are unable to obtain elsewhere. Again, although their depositions will likely overlap somewhat with Feldman and Wilson's testimony in other proceedings, some overlap does not justify foreclosing discovery in this case. As this Circuit has noted,

"[d]epositions . . . rank high in the hierarchy of pre-trial, truth-finding mechanisms." *Founding Church of Scientology v. Webster*, 802 F.2d 1448, 1451 (D.C. Cir. 1986). Without the opportunity to depose Mr. Feldman and Mr. Wilson in this case, Respondents' counsel is denied "the opportunity . . . to probe the veracity and contours of the[ir] statements . . . [and] is denied the opportunity to ask probative follow-up questions." *Alexander v. FBI*, 186 F.R.D. 113, 121 (D.D.C. 1998).

IV. CONCLUSION

For the foregoing reasons, the Court concludes that non-party Department of the Treasury has failed to meet its burden under Federal Rules of Civil Procedure 26 and 45 to quash the subpoena *duces tecum*. Accordingly, the Renewed Motion to Quash is **DENIED** insofar as it relates to the subpoena *duces tecum*.⁷

The Court further concludes that the Department of the Treasury has failed to meet its burden under Federal Rules of Civil Procedure 26 and 45 to quash the deposition subpoena unless Treasury is unable to compel its former employees, Mr. Feldman and Mr. Wilson, to testify in response to the subpoena. The record before the Court is unclear on this point.

⁷ Respondents ask that Treasury be given 30 days to comply fully with the subpoena, while Treasury states that it will take "far longer" to comply. Pet'r's Reply in Support of Renewed Mot. at 23. The parties are directed to work together in good faith to promptly comply with the Court's order, and avoid wasting the parties' and the Court's time and resources with unnecessary additional disputes.

Accordingly, it is hereby **ORDERED** that the parties confer and determine, within 30 days of the date of this Order, whether Treasury can compel Mr. Feldman and Mr. Wilson to testify in response to the subpoena. In the event that Treasury can compel their testimony, the Renewed Motion to Quash the Deposition Subpoena is **DENIED**. In the event that it cannot compel these two individuals to testify, it is **FURTHER ORDERED** that Respondents shall withdraw the deposition subpoena.

A separate order accompanies this Memorandum Opinion.

SIGNED: Emmet G. Sullivan
United States District Judge
June 19, 2014.

Deposition Subpoena is **DENIED**. In the event that it cannot compel these two individuals to testify, it is

FURTHER ORDERED that Respondents shall withdraw the deposition subpoena.

SO ORDERED.

SIGNED: Emmet G. Sullivan
United States District Judge
June 19, 2014.

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

/s/ Abby C. Wright

ABBY C. WRIGHT