

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

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

**PENSION BENEFIT GUARANTY CORPORATION’S
EMERGENCY MOTION UNDER FEDERAL RULE OF CIVIL
PROCEDURE 6(b)(1)(A) FOR AN EXTENSION OF TIME TO COMPLY
WITH MAGISTRATE JUDGE MAJZOUB’S
MARCH 11, 2016 ORDER**

On March 11, 2016, Magistrate Judge Majzoub ordered Defendant Pension Benefit Guaranty Corporation (“PBGC”) to produce documents to plaintiffs within thirty (30) days. Due to the quantity of responsive electronic and hard copy documents, and the number of custodians of those documents, PBGC cannot collect, process, and produce all of the documents in just thirty days. PBGC believes it can produce all documents within 120 days, through periodic productions on a rolling basis starting on or before April 11, 2016. Because

discovery in this case is not complete, plaintiffs will not be prejudiced by the requested extension. Thus, there is good cause to extend the deadline.

Pursuant to Fed. R. Civ. P. 6(b)(1)(A), Defendant hereby moves this Court for an extension of time to July 11, 2016, to produce the documents. Further, because of the exigent nature of this Motion given the imminence of the date set in the Court's March 11 Order, Defendant requests that the Court exercise its authority under Fed. R. Civ. P. 6(b)(1)(A) to grant this Motion on an emergency basis.¹

A brief in support of this Motion is attached in accordance with L.R. 7.1.

Dated: March 30, 2016

Washington, D.C.

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¹ See *Amadasu v. Rosenberg*, 2004 WL 946842 (S.D.N.Y. May 3, 2004) (affirming magistrate judge's granting of request for extension of time to defendant without affording plaintiff opportunity to respond because not required); see also *Carson v. Roper*, 1994 WL 62100, at *5 (N.D. Cal. Feb. 11, 1994) ("Courts routinely grant *ex parte* motions for extensions of time.").

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PENSION BENEFIT GUARANTY)	
CORPORATION, <i>et al.</i> ,)	
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Defendants.)	
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**PENSION BENEFIT GUARANTY CORPORATION'S
BRIEF IN SUPPORT OF ITS EMERGENCY MOTION UNDER FEDERAL
RULE OF CIVIL PROCEDURE 6(b)(1)(A) FOR AN EXTENSION OF TIME
TO COMPLY WITH MAGISTRATE JUDGE MAJZOUB'S
MARCH 11, 2016 ORDER**

Statement of Concurrence

Pursuant to L.R. 7.1, PBGC counsel conferred with plaintiff's counsel to discuss the nature of this Motion and its legal bases and relief requested, but did not obtain concurrence in the relief sought.

Issue Presented

On March 11, 2016, the Court ordered PBGC to produce all of the documents related to PBGC's valuation of the assets of the terminated Delphi Salaried Plan within 30 days. In the course of collecting the documents responsive to the Court's order, PBGC has learned it will collect between 300,000 and 700,000 pages of potentially responsive documents from scores of potential document custodians. Although PBGC will be able to produce a very large quantity of those documents within the Court's 30-day deadline, it is not physically possible for PBGC to collect, review, process and produce all the responsive materials in 30 days. Because plaintiffs are continuing to await an order from the D.C. District Court regarding potential additional discovery from the U.S. Department of the Treasury, plaintiffs will not be prejudiced if PBGC is given a reasonable amount of additional time needed to complete the Court-ordered production. Therefore, good cause exists for the Court to extend the time for PBGC to produce the documents.

Controlling Authorities

Cases

Kernisant v. City of New York, 225 F.R.D. 422, 431 (E.D.N.Y. 2005)

Kovacik v. Tyco Valves & Controls, L.P., 2009 WL 3857344, at *6 (N.D. Ohio Nov. 17, 2009)

Federal Rules of Civil Procedure

Fed. R. Civ. P. 6(b)(1)(A)

(b) Extending Time.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires

.....

Argument

Pursuant to Fed. R. Civ. P. 6(b)(1)(A), and for good cause, the Court may extend the time by which an act must be done, if a request is made before the original time expires.

By Order and Opinion dated March 11, 2016 (“2016 Order”), this Court ordered PBGC to produce within thirty (30) days: (a) “documents that it had previously withheld on the basis of privilege” and (b) “documents in its possession related to an audit of the [Delphi Salaried] Plan’s assets.”¹ PBGC expects to be able to produce the documents referenced in paragraph (a) of the 2016 Order on or before April 11, 2016. However, PBGC expects that it will take much longer to collect, process, and produce all documents responsive to paragraph (b) of the 2016 Order, which represent a vast universe of data from numerous document custodians.² These responsive documents include:

¹ Dkt. No. 282 at 9-10.

² PBGC has already spent significant funds in responding to plaintiffs’ voluminous and far-reaching discovery requests, plus thousands of hours of staff time. Because not expressly identified in plaintiffs’ original request and because they have no relevance to the legality of PBGC’s termination of the Delphi plans in 2009, PBGC believed it was reasonable to await a court order before it expended even more staff time and funds to collect and process those documents.

- (i) documents prepared and/or reviewed by Thompson, Cobb, Bazilio and Associates³ (“TCBA”) under a terminated contract for TCBA to perform Plan asset valuation services;
- (ii) KPMG and PBGC work papers supporting the Final Asset Evaluation package,⁴ including the underlying data, deliberative analyses, and drafts;
- (iii) asset valuations for four additional Delphi pension plans;⁵ and
- (iv) individual PBGC staff case files (including email communications) and working files, in electronic and/or hard copy format.

PBGC already has identified sixty (60) PBGC staff who may have had a role in the asset valuations, and PBGC has begun the process of collecting electronic and hard copy documents from those custodians. The electronic documents are in a variety of formats, including Excel, Outlook, Adobe, Word, and compressed Zip

³ TCBA changed its name to Bazilio Cobb Associates in 2011. Jeffrey Thompson stepped down from the firm’s management after federal agents raided its offices. (See DeBonis, Mike, *Thompson’s Name Comes Off the Accounting Firm He Founded*, The Washington Post, July 12, 2012, https://www.washingtonpost.com/blogs/mike-debonis/post/jeffrey-thompson-leaves-accounting-firm-he-founded/2012/07/12/gJQAXfBTfW_blog.html.)

⁴ Plaintiffs admit that they have copies of the Final Asset Evaluation package, including: (a) the Plan Asset Evaluation Report for the Delphi Retirement Program for Salaried Employees and the Delphi Hourly Rate Employees Pension Plan, dated January 30, 2015 (the “Plan Asset Evaluation Report”); (b) a supplement to the Plan Asset Evaluation Report, dated May 19, 2015; (c) a second supplement to the Plan Asset Evaluation Report, dated December 4, 2015; and (d) the Actuarial Case Memo for the Delphi Retirement Program for Salaried Employees, dated September 30, 2015. (See Dkt. No. 280-2, Pg ID 10973.)

⁵ Although the Order refers to the Plan’s assets, in the singular, plaintiffs have advised PBGC that the underlying request encompasses the four small Delphi pension plans as well.

files. And the hard copy documents must be scanned into a producible format. As the documents are collected, PBGC will compile and process the documents for production with assistance from an outside contractor. PBGC estimates that the documents will total between 300,000 and 700,000 pages, depending upon how the contractor's document production system paginates PBGC's massive production.

PBGC cannot complete the production within the allotted thirty (30) days, as it must review the collected documents for responsiveness. At a minimum, PBGC believes it must have time to confirm that all documents it intends to produce are responsive to the 2016 Order. Failing such a review, there is a risk that some collected documents may be nonresponsive, thus wasting the time plaintiffs will spend reviewing them, and the unreviewed documents may contain sensitive material regarding unrelated cases, and thus should not be disclosed to plaintiffs.

Further, in accordance with the Stipulated Protective Order entered on October 20, 2014, PBGC must identify any documents it believes are "Protected Documents" subject to the Court's August 21, 2013 Order by making appropriate designations on those documents prior to producing them.⁶ Without sufficient time to make selective designations, PBGC would risk waiving its rights because the Stipulated Protective Order provides that a designation "constitutes a

⁶ See Dkt. No. 267, Stipulated Protective Order Regarding Documents Produced Pursuant to the Court's August 21, 2013 Order, entered October 20, 2014.

representation by the PBGC that the Discovery Material has been reviewed by an attorney and that he or she believes there is a valid basis for such designation.”⁷

PBGC expects to be able to produce documents covered by paragraph (b) of the 2016 Order on a rolling basis and complete its production within one hundred twenty (120) days of the March 11, 2016 Order.

The extension of time will not prejudice the plaintiffs. Other discovery in this case has not been completed due to pending litigation involving the U.S. Department of the Treasury in the D.C. District Court.⁸ Because all discovery has not been completed, and because the deadline for filing motions for summary judgment has been delayed until certain discovery is completed, a delay in producing all of the subject documents will not prejudice plaintiffs. In circumstances such as this, where there is no indication of bad faith by the movant or of prejudice to the other side, courts routinely grant requests for extension of

⁷ *Id.* at 4.

⁸ The deadline for the parties to file dispositive motions is the *later* of (a) 90 days following the resolution of a Motion to Compel pending in the D.C. District Court (*see U.S. Dep’t of the Treasury v. Black*, Case 1:12-mc-00100 (D.D.C.) or (b) 60 days after the completion of two particular depositions. *See* Dkt. No. 274. Because the Motion to Compel still is pending and the depositions have not been scheduled, it appears that the dispositive motion deadline will be after the extension requested herein.

time.⁹ Thus, there is good cause to extend the time for PBGC to produce the responsive documents.¹⁰ Accordingly, PBGC respectfully requests an extension of time until July 11, 2016, to produce all documents responsive to paragraph (b) of the 2016 Order.

Conclusion

For the reasons stated above, there is good cause under Federal Rule 6(b)(1)(A) to extend the time for PBGC to comply with the Court's March 11, 2016 Order.

⁹ See *Lujan v. National Wildlife Federation*, 497 U.S. 871, 895 (1990) ("any extension of a time limitation must be 'for cause shown'"); see also *Kernisant v. City of New York*, 225 F.R.D. 422, 431 (E.D.N.Y. 2005) ("[A]n application for the enlargement of time under Rule 6(b)(1) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.") (quoting 4B Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 1165 (2d ed.1986)); *Henry v. Allstate Property and Cas. Co.*, 2010 WL 3059208, at *5 (W.D. Tenn. July 30, 2010) (extending discovery deadline and noting that showing of good cause is only requirement if request for extension is filed in advance); *Kovacic v. Tyco Valves & Controls, L.P.*, 2009 WL 3857344, at *6 (N.D. Ohio Nov. 17, 2009) ("Court routinely grants reasonable motions for extensions of time to file, and did so on numerous occasions in this case").

¹⁰ Fed. R. Civ. P. 6(b)(1)(A). See *Amadasu v. Rosenberg*, 2004 WL 946842 (S.D.N.Y. May 3, 2004) (affirming a magistrate judge's granting of request for extension of time to defendant without affording plaintiff opportunity to respond); see also *Carson v. Roper*, 1994 WL 62100, at *5 (N.D. Cal. Feb. 11, 1994) ("Courts routinely grant *ex parte* motions for extensions of time.").

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Certificate of Service

I hereby certify that on March 30, 2016 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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