

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

UNITED STATES DEPARTMENT)
OF TREASURY)
Petitioner,)
))
v.)
))
PENSION BENEFIT)
GUARANTY CORPORATION,)
Interested Party,)
))
v.)
))
DENNIS BLACK, *et al.*,)
Respondents.)

No. 1:12-mc-00100-EGS

**RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR
RECONSIDERATION**

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Respondents respectfully submit this opposition to the motion for reconsideration, filed by Petitioner U.S. Department of the Treasury (the “Treasury”).

Introduction

On April 13, 2017, the Court ordered the Treasury to produce to Respondents the 63 documents over which the Treasury had asserted the presidential communications privilege, *see* ECF No. 44 at 1, on the grounds that Respondents had “made at least a preliminary showing of necessity for [the] information” in that the information “is not merely demonstrably relevant but indeed substantially material to their case.” ECF No. 45 at 11 (internal quotation marks omitted). The Treasury then moved for a stay to allow it further time to “consider[] whether to appeal that order.” ECF No. 46-1 at 1. Respondents opposed the Treasury’s stay motion, on the grounds that the Treasury had failed entirely to demonstrate entitlement to the “extraordinary remedy” of a stay. ECF No. 47 at 1.

During a hearing on the Treasury’s stay motion, counsel for Treasury stated that, rather than ask for a stay “what we should have asked for was reconsideration so Your Honor could have gone through the documents” and be assured of their relevancy before ordering their release.” *See* Hr’g Tr. at 10:4-8 (May 16, 2017) (Ex. A). While the Court noted that it believed both its “analysis” and “conclusion” were correct, and that it was unclear “what merit there would be for a motion for reconsideration,” *id.* at 14:1-2, the Court set a briefing schedule to allow the Treasury an opportunity to present, “within a very short period of time – that there’s a basis for reconsideration.” *Id.* at 14:5-6. By Minute Order dated May 17, 2017, the Court held that the parties’ reconsideration briefing should address, among other things, “(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.” May 17, 2017, Minute Order.

The Treasury’s motion for reconsideration should be denied. Not only does the reconsideration motion inappropriately rely on belated arguments that either were “previously raised and rejected by the court,” or “should have been raised previously with the court,” *Said v. AMTRAK*, 191 F. Supp. 3d 55, 57 (D.D.C. 2016) (internal quotation marks omitted), the Treasury’s motion never identifies any error, legal or otherwise, that would justify reconsideration. Moreover, the Court’s initial ruling was sound, as Respondents have made the focused showing of need described under cases like *In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997), and *Dellums v. Powell*, 561 F.2d 242 (D.C. Cir. 1977), to justify the *in camera* review undertaken. Regarding the standard that should govern production after the Court’s *in camera* inspection, the standard is much less demanding than the needs analysis previously employed by the Court in granting *in camera* review. The Court should release “any evidence that might reasonably be relevant” to the issues in the underlying litigation. *In re Sealed Case*, 121 F.3d at 759.

Background

A. *Black v. PBGC*

Respondents, current and former salaried employees of the Delphi Corporation (“Delphi”), are also plaintiffs in a lawsuit filed in the Eastern District of Michigan (the “Michigan Court”), *Black v. PBGC*, Case No. 2:09-cv-13616, which challenges the 2009 termination of their pension plan (the “Salaried Plan” or the “Plan”) by the Pension Benefit

Guaranty Corporation (“PBGC”).¹ The PBGC purported to accomplish that termination via an agreement with the Plan’s administrator, Delphi, in connection with a broad settlement reached among Delphi, General Motors (“GM”), and the PBGC. Respondents allege in Count One of *Black* that this agreement itself was unlawful because ERISA requires the PBGC to apply for a termination decree from a United States district court, and that such a decree may issue only upon a finding by the court that a 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 [PBGC insurance] fund.” 29 U.S.C. § 1342(c)(1). Counts Two and Three of Respondents’ complaint allege additional procedural infirmities with the PBGC’s termination-by-agreement.² Respondents further allege in Count Four of *Black* that the PBGC could not have satisfied ERISA’s statutory requirements for termination had it actually sought court approval because the PBGC could not have carried its burden to show that the Salaried Plan needed to be terminated for any of the statutorily permissible reasons. *See Black v. PBGC*, ECF No. 145 ¶ 56.

At the time the Salaried Plan was terminated in 2009 it was, compared to other large pension plans at that time, a relatively well-funded pension plan, *see, e.g.*, ECF No. 19-5 (Watson Wyatt June 30, 2009 AFTAP Certification, noting 85.62% AFTAP funding), and there

¹ References to the underlying litigation, *Black v. PBGC*, Case No. 2:09-cv-13616 (E.D. Mich.), are cited herein as *Black*, and references to filings in that court are styled as *Black v. PBGC*, ECF No. ____.

² In Count Two, Respondents allege that, even if ERISA allows a termination-by-agreement with a plan administrator, the law is well-settled that any actions undertaken by a plan administrator in connection with a plan termination are fiduciary in nature, and therefore may only be valid if done in accordance with ERISA’s duties of loyalty and prudence. *See Black v. PBGC*, ECF No. 145, ¶ 43, citing 29 U.S.C. §§ 1002(21)(A), 1104(a). In Count Three, Respondents allege that even if ERISA allows for a termination-by-agreement with a conflicted fiduciary, the Constitution does not. *See id.* ¶ 52.

were a number of viable alternatives to termination that a court might have considered in lieu of termination, the most likely (though not only) option being a reassumption of the Salaried Plan by GM.³ Because the PBGC had significant liens and claims over Delphi assets essential to GM's supply-chain, the PBGC had substantial leverage to negotiate a GM reassumption, and in fact the PBGC had, prior to the active engagement of the Treasury and its related Auto Task Force, been actively advocating for this result.⁴ Respondents allege that the PBGC relented in its efforts to ensure the Plan's continued viability, and acquiesced in the Plan's termination, not because of anything related to its statutory role under ERISA, but as a result of pressure imposed by the Treasury and the related Auto Task Force to support their efforts to restructure the auto industry in general and GM in particular.⁵ The Treasury and the Auto Task Force, Respondents contend, sought the then politically-expedient course of limiting disbursements from the

³ "Delphi consisted of divisions and subsidiaries of GM until GM's divestiture of Delphi in 1999." See ECF No. 6-2 (Decl. of R. Pappal) ¶ 5. GM was the original sponsor of what became the Delphi Salaried Plan, and most of the Plan's participants had spent the majority of their careers as GM employees. From the time of the spin-off in 1999, through the time of the Salaried Plan's termination, Delphi was GM's largest component parts supplier. *Id.* "Consequently, if Delphi ever cease[d] shipping even a small fraction of production parts to GM, the GM plants relying on such shipments may run out of inventory of such parts and have to shut down within a matter of days." *Id.* ¶ 7. "In short, a prolonged cessation in the supply of parts from Delphi to GM would have [had] a devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts suppliers." *Id.* ¶ 11.

⁴ See, e.g., ECF No. 11-6 (D. Cann Dep. Tr.) at 67:6-14 (the PBGC was in favor of a GM reassumption and was in fact "cheerleading for the transfer, . . . utilizing [the PBGC's] liens overseas as potential leverage to get it done").

⁵ For example, President Obama appointed the Auto Task Force to oversee the administration's efforts to support and stabilize the domestic automotive industry on February 15, 2009, and in a memo dated a few days prior to the Auto Task Force's creation, Compass Advisors, one of the PBGC's bankruptcy advisors, noted that the PBGC was still engaged in a "full court press to convince GM and Government officials that the 414(L) transfer [of Delphi pensions back to GM] is in everyone's best interest [as] GM doesn't need two classes of employees and should provide pensions to all retirees." ECF No. 11-5 (Feb. 13, 2009 Memo from Compass Advisers to PBGC) at 8 (PBGC-BL-0184878).

Troubled Asset Relief Program (which would have increased if GM reassumed the Salaried Plan) and instead pressed to transfer the Salaried Plan's liabilities to the PBGC's ledger.

Black was filed over seven years ago in the Michigan Court. In that time, the Michigan Court has denied two dispositive motions filed by the PBGC, expressly on the grounds that discovery was necessary for the resolution of Respondents' claims against the PBGC. Nonetheless, the PBGC (and the Treasury) resisted any discovery for approximately one year.⁶ Respondents accordingly moved to compel, which was effectively granted by order of the Michigan Court on September 1, 2011 (the "September 1, 2011 Order"). *Black v. PBGC*, ECF No. 193. In the September 1, 2011 Order, Judge Tarnow defined the scope of discovery in *Black v. PBGC*, stating that:

In terms of addressing the scope of discovery for purposes of entering a scheduling order – the Court's initial focus, keeping the above case law in mind, is on Count 4 and whether 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."

Id. at 3-4.

In entering this Order, the Michigan Court determined that the most efficient way to proceed was to permit Respondents to take discovery on their substantive claim (Count Four) alleging that the PBGC could not meet the statutory criteria for termination (the "Termination Inquiry"), and then to address the remaining statutory and constitutional questions posed by Counts One through Three, if necessary, after discovery.

⁶ As the Treasury notes in its reconsideration motion, it was for a time a party to *Black v. PBGC*. See ECF No. 50-1 at 10-11. While a party to *Black v. PBGC*, the Treasury argued to the Michigan Court that Respondents should not be allowed *any* discovery in the case, even from the PBGC. See, e.g., *Black v. PBGC*, ECF No. 188.

B. Treasury v. Black

More than five years ago, in January 2012, Respondents served the Treasury with a “narrow” subpoena *duces tecum*, seeking “documents created, received or reviewed by three Treasury officials, over a single calendar year, relating only to Delphi.” ECF No. 27 at 17. In February 2012, the Treasury moved to quash the subpoena on three grounds: relevance, undue burden, and cumulative/duplicative information. *See* ECF No. 1. Because the Treasury’s relevance objection had also been raised by the PBGC in a separate discovery dispute and was “ripe for resolution” before the Michigan Court, this Court stayed proceedings on the Treasury’s motion to quash pending the Michigan Court’s resolution of the PBGC’s relevance objection.⁷ May 17, 2012, Minute Order.⁸

This Court denied the Treasury’s motion to quash the subpoena *duces tecum* in June 2014, issuing a 24 page memorandum opinion in which the Court directed the parties “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.” ECF No. 27 at 23 n.7. Regarding the Treasury’s relevance objection, the Court noted that “two judges in the underlying action evaluated the question of relevance for very similar materials, sought for very similar

⁷ Despite the fact that the Michigan Court first ordered *Black v. PBGC* into discovery in the fall of 2010, the PBGC fought to avoid producing a single document in discovery for another two years by asserting meritless objections in the Michigan Court as to the scope and relevance of Respondents’ discovery requests – objections that are very similar to the relevance objection being reasserted by the Treasury here in its motion for reconsideration. Time and again the Michigan Court rejected those objections, with the end result that the PBGC was ultimately forced to abandon its objections and comply with discovery, though it did so only slowly and reluctantly, and only after forcing Respondents to litigate three Rule 37 motions to compel, three Rule 72 objections, and two motions for reconsideration.

⁸ In 2013, the Treasury filed in this Court a renewed motion to quash the subpoena *duces tecum*, asserting, in addition to the three objections previously raised, a “standing” objection. *See* ECF No. 27 at 7.

reasons, and found them relevant.” *Id.* at 16. Accordingly, the Court held that the “law of the case” doctrine supported “this Court’s decision to rely on the relevance analysis performed by the Eastern District of Michigan.” *Id.*

Mindful of the Court’s direction, Respondents agreed to enter into a stipulation and protective order with the Treasury, *see* ECF No. 28, that among other things, allowed the Treasury until March 2015 to complete a rolling production of responsive non-privileged documents, an additional sixty days to document its privileges in a privilege log, and the opportunity to designate documents as “confidential” under the terms of the protective order. *Id.* ¶¶ 4, 7, 8. Further, in the stipulation and protective order, Respondents agreed to shrink the scope of the already-narrow subpoena duces tecum, such that the Treasury could utilize a narrow set of search terms to determine responsiveness for electronic records. *Id.* ¶ 2. Additionally, the Treasury would be deemed to have satisfied its obligations under the subpoena if it conducted a manual search of documents it had previously produced to the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”), and identified as responsive “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.” *Id.*

In June 2015, the Treasury produced two privilege logs to Respondents stating that the Treasury was withholding roughly 1,270 responsive documents on the basis of various privileges, the bulk of which were assertions of the deliberative process privilege, along with assertion of the presidential communications privilege, the attorney-client privilege, and the work-product doctrine. Respondents believed the vast majority of the privilege assertions were both procedurally and substantively deficient. After the Treasury refused to address those deficiencies, Respondents moved for an order compelling their production, or in the alternative

for an *in camera* review. ECF No. 30. In that motion, Respondents argued that, with regard to the documents over which the Treasury had asserted the presidential communications privilege, not only was the privilege inapplicable, but also that Respondents had a “specific need for a narrow universe of highly relevant admissible documents that cannot be obtained elsewhere.”

Id. at 28.

In July 2016, the Court determined, after reviewing of a random sampling of documents submitted to chambers for *in camera* review, that the Treasury had failed to provide sufficient information to support many of its privilege claims, and allowed the Treasury the opportunity to further supplement its privilege assertions through an *ex parte* submission clearly articulating why each document, or document portion, was protected by the privilege asserted. July 15, 2016, Minute Order.

In December 2016, after reviewing the withheld documents *in camera*, the Court concluded that, despite having “had ample opportunities to provide sufficient detail to enable the Court to assess its deliberative process privilege claims,” the Treasury had “miserably failed to do so,” and had “essentially wasted this Court’s precious and limited time, notwithstanding the Court’s stern warning in its Minute Order dated July 15, 2016.” ECF No. 42 at 12. The Court accordingly ordered the Treasury “to produce to Respondents all of the documents over which it asserted the deliberative process in isolation.” ECF No. 45 at 2-3. “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.” *Id.* at 3.

On January 10, 2017, the Treasury provided to Respondents a revised privilege log consist[ing] of redacted versions of the justification sheets provided to the Court for inspection *in camera*. See ECF No. 43 at 1. A copy of the redacted privilege log provided to Respondents is attached here as Exhibit B.

On April 13, 2017, the Court granted in part and denied in part the remaining portion of Respondents' motion. ECF No. 44. While finding that the presidential communications privilege applied to the 63 documents at issue here, the Court applied the "needs analysis" outlined in *In re Sealed Case*, 121 F.3d 729, 754 (D.C. Cir. 1997), to the 63 documents at issue. ECF No. 45 at 10-11. Noting that the Treasury failed to "substantively engage" in that analysis and did not "attempt to distinguish the cases upon which Respondents rely," the Court found that, "for substantially the same reasons advanced by Respondents," Respondents had made "a 'preliminary showing of necessity for information that is not merely demonstrably relevant but indeed substantially material to their case.'" *Id.* at 11 (quoting *Dellums v. Powell*, 561 F.2d 242, 249 (D.C. Cir. 1977)).

On April 28, 2017, the Treasury moved for a stay pending appeal, in order to allow the Treasury additional time "to consider[] whether to appeal" the Court's April 13, 2017 Order. ECF No. 46-1 at 1. The Court held a hearing on Treasury's motion to stay on May 16, 2017, during which the Court noted that it "has had some very serious concerns about whether the government [has been] proceeding in good faith or not." Ex. A at 4:10-11. The Treasury thereafter indicated a desire to file a motion for reconsideration, and on May 17, 2017, the Court issued a Minute Order establishing a briefing schedule for the Treasury's motion for reconsideration, noting that the parties 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.” May 17, 2017, Minute Order. The Minute Order also vacated the portion of its April 13, 2017 Order requiring the documents at issue to be “forthwith produced.” *Id.*

Argument

I. THE TREASURY MUST SATISFY A HIGH THRESHOLD TO OBTAIN RECONSIDERATION

“The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied.” *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012) (citing *Husayn v. Gates*, 588 F. Supp. 2d 7, 10 (D.D.C. 2008)). Nonetheless, the Treasury does not identify the procedural vehicle it believes authorizes its motion for reconsideration, nor the grounds that would justify such relief. However, given that the Treasury’s motion for reconsideration was filed more than 28 days after the April 13, 2017 Order, the reconsideration motion should be deemed as one filed pursuant to Fed. R. Civ. P. 60(b). *See, e.g., United States v. Pollard*, 290 F. Supp. 2d 153, 156 (D.D.C. 2003) (noting that a motion to reconsider filed after the time specified in Fed. R. Civ. P. 59(e) should be treated as a Rule 60(b) motion).⁹ “A motion for reconsideration under Rule 60(b) ‘[is] generally granted only upon the showing of exceptional circumstances.’” *Salamon v. Our Lady of Victory Hosp.*, 867 F. Supp. 2d 344, 360 (W.D.N.Y.

⁹ While the Treasury’s motion does not clearly articulate why it believes it is entitled to relief under Rule 60(b), its argument appears to be that the Court committed some kind of error in its April 13, 2017, Order (though the exact nature of the purported error remains unclear to Respondents). *See* ECF No. 50-1 at 2. If the Treasury is asserting that the Court’s Order had a legal error, the error must be “an obvious error of law, apparent on the record.” *Benson v. St Joseph Reg’l Health Ctr.*, 575 F.3d 542, 547 (5th Cir. 2009) (quoting *Hill v. McDermott, Inc.*, 827 F.2d 1040, 1043 (5th Cir. 1987)); *see also Smalls v. United States*, 471 F.3d 186, 191 (D.C. Cir. 2006) (“the legal error warranting reversal of a denial of reconsideration under Rule 60(b) review must be clear”) (citing *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996)).

2012) (quoting *Mendell v. Gollust*, 909 F.2d 724, 731 (2d Cir. 1990), *aff'd*, 501 U.S. 115, (1991)).

Regardless of the procedural vehicle employed, “in order to promote finality, predictability and economy of judicial resources, ‘as a rule [a] court should be loathe to [revisit its own prior decisions] in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice.’” *Pueschel v. Nat’l Air Traffic Controllers’ Ass’n*, 606 F. Supp. 2d 82, 85 (D.D.C. 2009) (quoting *Lederman v. United States*, 539 F. Supp. 2d 1, 2 (D.D.C. 2008) (citation omitted)). “[A] motion for reconsideration is discretionary,” *Cuban v. SEC*, 795 F. Supp. 2d 43, 48 (D.D.C. 2011) (internal citation omitted), though such discretion “is ‘limited by the law of the case doctrine and subject to the caveat that where litigants have once battled for the court’s decision, they should neither be required, nor without good reason permitted, to battle for it again.’” *Paeteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. de C.V.*, 79 F. Supp. 3d 60, 66 (D.D.C. 2015) (quoting *Singh v. George Wash. Univ.*, 383 F. Supp. 2d 99, 101 (D.D.C. 2005)). Finally, and of particular importance here, it is well settled that “motions for reconsideration are vehicles for neither reasserting arguments previously raised and rejected by the court nor presenting arguments that should have been raised previously with the court.” *Said v. AMTRAK*, 191 F. Supp. 3d 55, 57 (D.D.C. 2016) (citing *Estate of Gaither ex rel. Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 10 & n.4 (D.D.C. 2011)).

II. THE TREASURY’S MOTION DOES NOT CONTAIN ADEQUATE GROUNDS FOR RECONSIDERATION OF THE COURT’S DETERMINATION THAT RESPONDENTS HAVE ADEQUATELY MADE A “SHOWING OF NEED” FOR DOCUMENTS OTHERWISE PROTECTED UNDER THE PRESIDENTIAL COMMUNICATIONS PRIVILEGE

A. The Treasury’s Arguments for Reconsideration Are Untimely and Unpersuasive

The Treasury concedes that the presidential communications privilege can be overcome by an adequate showing of need. *See* ECF No. 50-1 at 6 (citing *In re Sealed Case*, 121 F.3d at 745). It likewise concedes that, in civil cases, where a litigant has “made ‘at least a preliminary showing of necessity for information,’” to the effect that the information is “not merely demonstrably relevant but indeed substantially material to their case,” the need showing is satisfied. ECF No. 50-1 at 8 (quoting *Dellums*, 561 F.2d at 249). And the Treasury does not seek to reverse its earlier concession, noted by the Court in the April 13, 2017 Order, that the information Respondents seek in the 63 documents in question is unavailable through any other means. *See* ECF No. 45 at 11 (noting that the Treasury does not challenge Respondents’ assertion that the materials are unavailable through any other means, and citing ECF No. 35 at 24).

Instead, Treasury’s principal argument for reconsideration of Respondents’ showing of need is a belated attempt to distinguish *Dellums v. Powell*, 561 F.2d 242 (D.C. Cir. 1977). *See* ECF. No. 50-1 at 7-9. The Treasury also repeats its argument – previously rejected by the Court – that information that would show the Treasury or the White House exerted pressure on the PBGC in connection with the termination of the Delphi Salaried Plan would be irrelevant to the § 1342(c) termination decision at issue in *Black*. *Id.* at 9-11. Finally, the Treasury cursorily says that Respondents have not made the requisite showing that the documents are likely to contain

such information. *Id.* at 9-10. As discussed below, these arguments are unpersuasive and come far too late to constitute grounds for reconsideration.

In their motion to compel, ECF No. 30, Respondents argued that, under cases like *Dellums, In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997), *Sun Oil Co. v. United States*, 514 F.2d 1020 (Ct. Cl. 1975), and *Dairyland Power Cooperative, v. United States*, 79 Fed. Cl. 659 (2007), Respondents had a sufficient need for the 63 documents at issue to overcome the Treasury's assertion of the presidential communications privilege. ECF No. 30 at 28-32. As the Court noted, “[r]ather than substantively engage in the needs analysis or attempt to distinguish the cases upon which Respondents rely, Treasury argue[d] unconvincingly that Respondents’ rationale for the material is ‘nothing but rank speculation.’” ECF No. 45 at 11 (quoting ECF No. 35 at 24). Now, nearly *two years later*, and after the Court has already undertaken an *in camera* review, the Treasury wishes to present, for the first time, an argument as to why *Dellums* is distinguishable, and why, under the *Dellums* standard, Respondents supposedly have failed to demonstrate a sufficient need for the 63 documents at issue. This is plainly inappropriate.

“[I]t is well-established that ‘motions for reconsideration,’ whatever their procedural basis, cannot be used as ‘an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier.’” *Estate of Gaither ex rel. Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 9 (D.D.C. 2011) (quoting *SEC v. Bilzerian*, 729 F. Supp. 2d 9, 14 (D.D.C. 2010) (internal citations omitted)); *see also United States v. Pollard*, 290 F. Supp. 2d 153, 156-58 (D.D.C. 2003) (holding that Rule 60(b)(1) is not a vehicle to correct supposed substantive legal errors where there has been no change in the law of the circuit, and that Rule 60(b)(6) is unavailable except in cases where “‘a party [] timely presents a previously undisclosed fact so central to the litigation

that it shows the initial judgment to have been manifestly unjust”). In short, because these arguments are ones “that should have been raised previously with the court,” the Treasury has failed to identify a valid ground for reconsideration. *Said*, 191 F. Supp. 3d at 57 (internal citation omitted).

Furthermore, the Treasury’s arguments are not only untimely, but also unpersuasive. With regard to its attempts to distinguish *Dellums*, the Treasury first argues the case is inapposite because here, President Obama was in office when the presidential communications privilege was first asserted, while in *Dellums*, President Nixon had already left office by the time the privilege had been asserted. ECF No. 50-1 at 8. Though the Treasury does not articulate the import of this distinction, the implication seems to be that the confidentiality concerns of the Office of the President are thus supposedly greater here than they were in *Dellums*. However, the *Dellums* court specifically held that it was “of cardinal significance, in the controversy *now before this court*, that the claim of privilege is being urged solely by a former president, and there has been no assertion of privilege by an incumbent president.” *Dellums*, 561 F.2d at 247 (emphasis added). The Court went on to emphasize the primacy of the views of the incumbent president in the analysis:

Absence of support from the incumbent at least indicates that the risk of impairing necessary confidentiality is attenuated. . . . [I]t is the new President who has the information and attendant duty of executing the laws in light of current facts and circumstances, and who has the primary, if not the exclusive, responsibility of deciding when presidential privilege must be claimed, when in his opinion the need of maintaining confidentiality in communications, in which of course it is he who has the on-going interest, outweighs whatever public interest or need may reside in disclosure. . . . Assuming [the privilege] may be asserted by someone other than the sitting president . . . the *significance* of the assertion by a former president is diminished when the succeeding president does not assert that the document is of the kind whose nondisclosure is necessary to the protection of the presidential office and its ongoing operation. The former president’s assertion has a cast of history – at first recent history, and ultimately mere history – and his claim has less significance as an assertion of the current needs of the office. Such

lesser significance does not open the door to public disclosure, but only to consideration whether the claim is overcome by a showing of other need, here litigating need.

Id. at 247-48 (quotations omitted and emphasis in original).

This passage makes clear that courts are to look to the *incumbent President*, rather than a former president, in assessing the significance of assertions of presidential privilege. The Supreme Court made the same point in *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), holding that “it must be presumed that the incumbent President is vitally concerned with and in the best position to assess the present and future needs of the Executive Branch, and to support invocation of the privilege accordingly.” *Id.* at 449. Here of course, there has been no suggestion from the incumbent President of the United States that he believes maintaining the confidentiality of these 63 documents is necessary to the needs of the Executive Branch.

The Treasury’s other attempt at distinguishing *Dellums* is that Respondents’ right to relief here is supposedly less clear than that of the plaintiffs in *Dellums*. *See* ECF No. 50-1 at 8-10. The Treasury makes two arguments on this point: first, that evidence demonstrating influence by the Treasury or the Executive on the PBGC in connection with the Delphi Salaried Plan would supposedly be irrelevant to the § 1342(c) termination decision in *Black*, *see id.* at 9, and second, that respondents have not made a sufficient showing that the 63 documents are likely to contain such evidence. *Id.* at 9-10. Not only is this relevance argument without merit, but it is completely improper as a grounds for reconsideration.

The Treasury’s argument that evidence demonstrating influence by the Treasury or the Executive on the PBGC in connection with the Delphi Salaried Plan would supposedly be irrelevant to the § 1342(c) termination decision in *Black* was explicitly rejected by this Court, not only in the Court’s April 13, 2017 Order, but also in the Court’s June 19, 2014 opinion. *See* ECF No. 27 at 14-16 (noting and rejecting the Treasury’s argument that “it is irrelevant whether

Treasury encouraged PBGC to do anything”). Again, motions for reconsideration “cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier,” *Estate of Gaither*, 771 F. Supp. 2d at 10 (internal quotation marks and citations omitted), and moreover, the time for seeking reconsideration or appeal of the Court’s 2014 Order has long since passed. *See* Fed. R. Civ. P. 60(c)(1) (motions must be made within a “reasonable time” and “no more than a year after entry of the judgment or order or the date of the proceeding”).

As for the Treasury’s argument that Respondents have failed to make the requisite showing that the 63 documents contain information relevant to the § 1342(c) inquiry in *Black*, *see* ECF No. 50-1 at 9-10, these arguments should have been made in the Treasury’s August 2015 brief. However, instead of presenting its arguments (such as they are) in its opposition brief, the Treasury made the choice to not “substantively engage in the needs analysis,” and to dismiss “unconvincingly . . . Respondents’ rationale for the material.” ECF No. 45 at 11 (citing ECF No. 35 at 24). The Treasury has offered no justification for not presenting these arguments prior to the Court’s ruling, and these belated arguments therefore are not valid grounds for reconsideration.

B. Respondents Have Made an Ample Showing of Need for the 63 Documents in Question

Even if the Treasury’s arguments were not procedurally barred, they would be unavailing, as Respondents have made an ample showing “that each discrete group of the subpoenaed materials likely contains important evidence . . . that . . . is not available with due diligence elsewhere.” *In re Sealed Case*, 121 F.3d 729, 754 (1997). Respondents summarize again why they believe the 63 documents in question are likely to contain important evidence to the § 1342(c) inquiry at issue in *Black*.

In the spring of 2009, the Treasury hired three individuals, Matthew Feldman, Steve Rattner, and Harry Wilson, to serve on the “Auto Team,” at Treasury, which provided staff level support for the Auto Task Force. *See* ECF No. 15-7 (Dec. of R. Desai) ¶ 4. Mr. Ratner was appointed to lead the Auto Team, with Mr. Wilson and Mr. Feldman reporting to him. “What followed was the Auto Team’s direct involvement in the decisions affecting GM. Treasury’s Auto Team used their financial leverage as GM’s only lender to significantly influence the decisions GM made during the time period leading up to and through GM’s bankruptcy.” ECF No. 13-2 (SIGTARP Report) at 8. Indeed, “the Auto Team used their leverage as GM’s largest lender to influence and set the parameters for GM to make decisions.” *Id.* at 11. According to SIGTARP, “[t]he Auto Team specifically pressed GM to be *less generous* in relation to Delphi and pensions.” *Id.* at 13 (emphasis added).

The Treasury informed both Delphi and GM that there would be no additional financial support to Delphi, in any form, absent a “global solution.” *See* ECF No. 6-6 (M. Feldman Dep. Tr.) at 135:4-8 (“I think our position has always been the same, which is if Delphi wanted funding from General Motors, there needed to be a signed deal that could lead to emergence from Chapter 11.”). In order to achieve its global solution, the Treasury took the lead in vetting offers from Delphi, Delphi’s DIP Lenders, Platinum Equity, and Federal Mogul (*i.e.*, the latter being potential acquirers of Delphi) in deciding what form a new or reorganized Delphi would ultimately take. *See generally* ECF No. 6-7 (Decl. of J. Sheehan).

Both GM and the Treasury concluded that there could be no global solution that would secure GM’s supply while Delphi assets were subject to the threat of PBGC liens and claims. *See* ECF No. 6-3 (Decl. of R. Westenberg) ¶ 15 (“neither GM nor Parnassus (nor presumably any other potential purchaser) is willing to purchase the assets (or shares in the non-debtor

affiliates that own the assets) while they are subject to the threat of the PBGC liens.”); *see also* ECF No. 6-6 (M. Feldman Dep. Tr.) at 204:24-205:7 (“If I understand, if there could not have been a consensual resolution with the PBGC, and it would have taken 3 months to terminate the pension plan, would have had – you would have had to weigh that delay in Delphi emergence against whatever economic benefits you had against – in not taking the liability.”). Accordingly, the Treasury’s desire to arrive at a global solution necessarily required that it deal with Delphi’s pension plans and the PBGC’s associated liens and claims.

The Auto Team then took over (from GM) negotiations with the PBGC on GM’s behalf. One of Treasury’s perceived objectives in these negotiations was “induc[ing] PBGC to waive alleged ‘rest of world’ liens against Delphi’s non-debtor affiliates” ECF No. 19-2 at 3. The shift in negotiating partner was problematic for the PBGC, as the Treasury was wearing “at least” three conflicting hats: (1) through its Auto Team, it was the agency charged with restructuring the auto industry; (2) as a PBGC board member, it was one of three agencies charged with providing oversight and direction to the PBGC; and (3) as a major competing creditor in the Delphi bankruptcies, it would, as the chief lender to GM, ultimately decide whether GM would be permitted to fund a reassumption of the Delphi pension plans. *See, e.g.*, ECF No. 11-7 (V. Snowbarger Dep. Tr.) at 39:6-12, 62:13-63:2. GM perceived a benefit to the Treasury taking the lead on dealing with the PBGC “because it was ‘Government agency to Government agency’ and *Treasury would get a better deal for GM.*” ECF No. 13-2 (SIGTARP Report) at 14 (emphasis added).

The communication between the Auto Task Force and the PBGC on Delphi issues took place almost exclusively through two individuals, Joe House at the PBGC, and the Auto Team’s Matt Feldman. *See, e.g.*, ECF No. 11-7 (V. Snowbarger Dep. Tr.) at 47:16-19; ECF No. 11-8 (J.

House Dep. Tr.) at 118:4-19. Mr. Feldman has stated that he began these discussions with a clear agenda – “to reach an agreement where the salaried Delphi plans would be terminated and General Motors would assume the hourly pension plans.” ECF No. 6-6 (M. Feldman Dep. Tr.) at 158:24-159:4.

While the PBGC had previously been engaged in a “full court press” to have GM assume the Salaried Plan, once the Treasury took over negotiating for GM, the PBGC took on a much more submissive role in those negotiations, eventually abandoning its advocacy of a GM reassumption of the Salaried Plan altogether. And notwithstanding the PBGC’s earlier enthusiasm for GM reassumption, its statutory mandate to try to preserve pension plans, the significant leverage it wielded over GM via its liens and claims, and its realization that Treasury held the key to securing financing for the Salaried Plan, the PBGC, apparently, stopped treating its interactions with Treasury as a negotiation. As the PBGC’s negotiator admitted, “the word ‘negotiation’ doesn’t really describe the nature of the liasing. It was much more of a – a coordination exercise.” ECF No. 11-8 (J. House Dep. Tr.) at 12:4-7. When asked specifically about the PBGC’s efforts to persuade the Treasury to fund the Delphi plans, Mr. House was clear that such advocacy was not a part of his mandate. *See id.* at 45:6-8 (“I don’t have a recollection of trying to persuade Treasury of anything.”).

On May 26-27, 2009, the Delphi bankruptcy court ordered certain key stakeholders in the Delphi bankruptcy to participate in mediation; Delphi, the PBGC, GM, the Auto Task Force, and Delphi’s DIP lenders were among the attendees. A few days after the mediation concluded, Delphi announced its belief that the PBGC would terminate the Salaried Plan. Respondents allege that the Treasury played the determinative role in shaping this outcome. Indeed, shortly before the mediation took place, Delphi officials stated their understanding that the PBGC and

Treasury had reached an agreement in principle about how Delphi's pensions should be handled. *See* ECF No. 11-9 (May 13, 2009 PBGC email chain). When asked about this email, Mr. House admitted his memory of these events was poor, and also acknowledged that he and Mr. Feldman were engaged in conversations at the same time frame (May 12-13), the substance of which he could not recall. ECF No. 11-8 (J. House Dep. Tr.) at 139:18-140:20. Moreover, on May 22, 2009 (the Friday just prior to the start of the mediation), Mr. Feldman emailed Mr. House to request another one of their off-the-record phone conversations, this time to discuss the upcoming mediation in light of a conversation that Mr. Feldman had just had with the Delphi mediator. *See* ECF No. 11-10 (May 22, 2009 email). Mr. House could not recall the substance of this conversation either. *See* ECF No. 11-8 (J. House Dep. Tr.) at 141:17-19.

Emails produced in the days after the mediation suggest that the Treasury's Auto Team put forward a detailed proposal at the mediation that would involve the PBGC initiating termination of the Delphi Salaried Plan, the reassumption by GM of the Delphi Hourly Plan, and a settlement by the PBGC of all its liens and claims. *See, e.g.*, ECF No. 19-3 at 2 (May 28, 2009 email chain from Delphi to the Treasury's Matt Feldman stating that the PBGC "needs to hear from you on what GM/UST plan to do with the HRP [*i.e.*, the Hourly Plan] and SRP [*i.e.*, the Salaried Plan]. . . in the event that GM takes the HRP and leaves behind the SRP, the PBGC will terminate the SRP and will waive ROW liens on the SRP if they can receive some reasonable settlement on the termination liabilities."); *see also* ECF No. 11-8 (J. House Dep. Tr.) at 147:6-165:6; ECF No. 11-11 (May 29, 2009 email chain).

Emails from GM officials to the Auto Task Force demonstrate that the Treasury arrived at this solution unilaterally, without GM's involvement. *See* ECF No. 11-12 (June 2, 2009 email chain) (GM's Rick Westenberg asks Mr. Feldman whether the settlement with the PBGC has

been finalized, and whether Mr. Feldman could provide GM with an “overview for how the hourly and salaried plans will be treated/addressed? Would it be appropriate/helpful to have GM involved in any discussions?”; GM’s Walter Borst then noted to the Auto Task Force’s Harry Wilson that, prior to having any direct contact with the PBGC, he wanted to understand where the Treasury has left it with the PBGC and what, from the Treasury’s perspective “is expected from GM . . . and what isn’t.”). When asked about this settlement proposal, the PBGC’s Mr. House could not remember how the proposal originated, or whether it was entirely a creation of Matt Feldman’s. ECF No. 11-8 (J. House Dep. Tr.) at 159:12-160:5.

Around this time, “GM came to the Auto Team because ‘GM wanted to do something for the [Delphi] Salaried retirees.’” ECF No. 13-2 (SIGTARP Report) at 28 (quoting Mr. Rattner) (alteration in original). Mr. Rattner informed GM’s CEO, Fritz Henderson, that GM would not be permitted to do anything for the Salaried Plan participants because Mr. Rattner “thought there was nothing defensible from a commercial standpoint that could be done for the Delphi salaried retirees.” *Id.* This “commercially-reasonable standard doesn’t exist other than through the auto team and through TARP. It’s the marching orders that the Auto Task Force, who Mr. Summers and Mr. Geithner give to the auto team as to how they should be making decisions.” ECF No. 15-12 (Testimony before House Oversight Committee) at 44.

On June 30, 2009, Mr. House and his supervisor at the PBGC, Terry Deneen, were summoned to a meeting at the Treasury with Mr. Feldman and Mr. Wilson to be informed that the Treasury had decided not to fund a GM reassumption of either Delphi pension plan, leading the PBGC’s acting director to note to others at the PBGC that “[d]ecisions have been made re Delphi.” ECF No. 11-13 (June 30, 2009 PBGC email chain). Mr. House described the significance of the Treasury’s pronouncement in more detail, noting that they had “just returned

from a meeting over at [Treasury]. It is now clear that the Delphi Hourly Plan will not be assumed by GM, *and thus we will be terminating/trusteering that pension plan along with the Salaried and the four small plans.*” ECF No. 11-14 (June 30, 2009 PBGC email chain) at 2 (PBGC-BL-0170326) (emphasis added). The email makes clear that the decision was one made by the Treasury, with Mr. House noting that up until that point the Treasury’s auto team had “consulted/deliberated exclusively amongst itself and [the White House/National Economic Council].” *Id.* at 1 (PBGC-BL-0170325). According to the email, Mr. Feldman would only inform GM of the Treasury’s decision the next day. *Id.* at 1-2.

Over the next month, Mr. Feldman, Mr. Wilson and Mr. House proceeded to negotiate the details regarding the termination of the Delphi pension plans, and the recoveries that GM would provide to the PBGC in exchange for releasing its liens and claims associated with those plans. *See, e.g.*, ECF No. 19-4 (July 15, 2009 PBGC email chain discussing “Treasury/GM” Settlement offers). The Auto Team ultimately determined that a settlement involving the release of those liens and claims was of sufficient “commercial necessity” that it agreed to provide the PBGC over \$660 million from GM. *See e.g.*, ECF No. 11-6 (D. Cann Dep. Tr.) at 208:7-29:12.

On August 10, 2009, the PBGC and Delphi entered into a “termination and trusteeship agreement,” purporting to authorize the PBGC to terminate the Plan and serve as statutory trustee as of as of July 31, 2009.

The 63 documents at issue consist of four groups of documents: (1) draft memoranda from staffers to Dr. Summers; (2) electronic mail conversations among auto team members concerning advice to be provided to the President; (3) drafts of a presidential speech; and (4) personal requests for information by President Obama. The Treasury has relied upon a revised privilege log and an *in camera* submission to the Court to justify its assertion of the presidential

communications privilege over these documents. The Treasury has provided a highly redacted copy of its revised privilege log to Respondents. *See* Ex. B. Nonetheless, the information available to Respondents regarding the nature of these document groups, combined with the central role that the Treasury played in addressing Delphi's pension issues, makes it highly likely that each of these document groups contain information substantially material to the § 1342(c) termination question.

Had the PBGC gone to a court in July 2009 seeking a decree that the Salaried Plan must be terminated in order to avoid an unreasonable increase to the liability of the PBGC's insurance fund, one of the first questions that the court would have asked is whether a GM reassumption of the Salaried Plan was a viable possibility? Thus, as Respondents have previously noted, the § 1342(c) relevance analysis includes not only evidence of "misconduct" by the Treasury to place pressure on the PBGC to terminate the Plan, but also evidence related to whether a GM reassumption of the Salaried Plan was a viable possibility, and evidence of the Treasury influencing the PBGC to relent on its advocacy of GM reassumption of the Salaried Plan. As described above, the PBGC and Delphi both believed GM reassumption was a viable possibility, and the PBGC possessed significant leverage, in the form of its liens and claims, to make such reassumption commercially reasonable. Further, the SIGTARP Report reveals that GM management was in favor of making financial arrangements on the Salaried Plan's behalf, and the only impediment to GM reassumption (or some other action by GM on the Salaried Plan's behalf) was the Auto Team's insistence that such action would not satisfy its ad-hoc definition of what was "commercially-reasonable." *See, e.g.*, ECF No. 13-2 at 28.

As described below, it is likely that each of the four groups of information contains information of substantial relevance to the § 1342(c) inquiry at issue in *Black*. *See In re Sealed*

Case, 121 F.3d 729, 754 (D.C.Cir. 1997) (noting that a party must show “that each discrete group of the subpoenaed materials likely contains important evidence . . . that . . . is not available with due diligence elsewhere”).

1. **It Is Likely that the 13 Withheld Draft Memoranda from Staffers to Dr. Summers Contain Information of Substantial Relevance to the § 1342(c) Termination Question**

Fifty-three of the 63 withheld documents are iterations of 13 memoranda from Auto Team staffers to Dr. Summers. ECF No. 45 at 5. The Treasury’s revised privilege log reveals that these 13 memoranda were written between Feb. 17, 2009 and August 4, 2009. *See* Ex. B (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). A review of the information provided in the Treasury’s privilege logs supports the belief that each of these memoranda will contain highly relevant evidence to the § 1342(c) inquiry.

For example, according to the Treasury’s revised privilege log, 7 of the documents in this category are iterations of an “April Memo” regarding “the Delphi Corporation.” *See* Ex. B (Nos. 860, 863, 84, 856, 275, 849, 859). The Treasury’s original privilege log describes some of these documents as being draft memoranda “on Delphi’s liquidity issues and potential consequences of Delphi shutdown.” ECF No. 35-5 at 151-53. A memo from April 2009 that addresses the Treasury’s views on the “potential consequences of Delphi shutdown” is highly relevant to the § 1342(c) inquiry, as it necessarily relates to the value and leverage the PBGC had vis-à-vis GM reassumption given its liens and claims on Delphi assets, which could result in a Delphi shutdown. Similarly, the memorandum might also provide insight into whether the Treasury (or some other component of the Executive Branch) was able to persuade the PBGC to abandon its advocacy of a GM reassumption.

Similarly, according to the Treasury's revised privilege log, the February 17, 2009 memorandum (No. 770) is a 3-page memorandum from the Auto Team to Secretary Geithner and Larry Summers regarding General Motors and Chrysler. Ex. B. The Special Inspector General for TARP described this memo in her audit, stating that "[o]n February 17, 2009, the day they received GM's restructuring plan, the Auto Team sent a memo to Auto Task Force chairs Dr. Summers and Secretary Geithner with 'first-blush impressions' of the auto companies' restructuring plans." ECF No. 13-2 (SIGTARP Report) at 7. The SIGTARP Report goes on to note that "[a]s for GM, the memo listed four risks," including Delphi and its pension liabilities. *Id.* This fact alone makes the memo highly relevant to § 1342(c) inquiry, for many of the same reasons as the "April" memo.

Indeed, all of Treasury's 13 withheld memoranda are likely to contain highly relevant information for exactly the same reasons, as they are all from the narrow period of time when the Treasury was considering GM and Delphi related issues, and they all explicitly state that they are designed to address topics specifically covering GM or the auto industry more generally.

As further demonstration of the importance of these memoranda to the relevance inquiry, in his book *Overhaul*, Steve Rattner describes a meeting that the Auto Team had in Larry Summers's office on the afternoon of March 2, 2009, in which he notes, among other things, that "[w]e quickly agreed that the administration's goal should be not to save supplier per se but to save only those that were of critical importance to the automakers." Steven Rattner, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* 90-91 (2010). The March 6, 2009 memo to the National Economic Council (No. 692), and the March 8, 2009 Auto Team Memo (No. 601) both created the same week as the March 2 meeting recounted in Mr. Rattner's book, likely contain evidence directly relevant to the question of

whether Delphi was of “critical importance to the automakers,” or at least to the analysis the NEC and the Auto Team believed should govern such an inquiry as the Auto Team was beginning its work on Delphi pension issues. This would be directly relevant to the § 1342(c) inquiry. Because of the PBGC’s liens on Delphi assets, the PBGC, at least in theory, should have enjoyed tremendous leverage over GM in its efforts to advocate for a GM reassumption of the Delphi Salaried Plan.

In addition, in light of the stipulation and protective order that the parties entered into, some portion of each of these memoranda must either contain the agreed-upon search terms for relevance, or were determined to be relevant to “Delphi, the Delphi Pension Plans, or the release and discharge by PBGC of liens and claims relating to the Delphi Pension Plans,” based upon a manual review by Treasury. *See* ECF No. 28 ¶ 2. Accordingly, despite the dearth of information the Treasury has provided about most of these documents in its privilege logs, the Court can be confident of their relevance based on the fact that that the Treasury itself employed a relevance standard in determining the responsiveness of these memoranda.

2. It Is Likely that the 4 Withheld Email Chains Contain Information of Substantial Relevance to the § 1342(c) Termination Question

According to the Treasury’s revised privilege log, seven of the documents at issue are email chains. *See* Ex. B, Nos. 610, 776, 621, 358, 763, 765, and 767. For largely the same reasons as discussed above in connection with the withheld memoranda, these email chains likely contain information of substantial relevance to the § 1342(c) termination question. First, as with the memoranda, the email chains occur in the relative time period (March 28, 2009, April 22, 2009, May 26-28, 2009, and August 4, 2009). Second, as with the memoranda, by virtue of the search criteria the Treasury utilized to determine responsiveness, these documents must deal with topics that are plainly relevant to the termination inquiry. *See* ECF No. 28 ¶ 2. Third, the

limited information provided by the Treasury's revised privilege log further substantiates the relevance of these email chains. For example, the April 22, 2009 email chain is identified as one covering "General Motors [and] Delphi Corporation." *See* Ex. B (No. 621). Similarly, the March 28, 2009, email chain purports to cover the upcoming presidential announcement, scheduled for March 30, 2009, regarding GM's restructuring. *Id.* (Nos. 610 and 621). The May 26-28, 2009 email chain is described in the Treasury's revised privilege log as dealing with "automotive labor rates," *id.* (No. 358), and in the Treasury's original privilege log as "communications regarding internal questions about the cost gap between GM and Toyota labor rates and discussion of presidential memo re: same." ECF No. 35-5 at 56. Finally, the August 4, 2009 email chain appears to address the July 16, 2009 Letter to President Obama regarding the fate of the Delphi Salaried Plan. *See* Ex. B (Nos. 763, 765, and 767).

Given all of the above considerations, all of the withheld email chains are likely to contain evidence relating to the Treasury's internal assessment of the value of Delphi to GM, the corresponding value of the PBGC's liens and claims on Delphi assets, the leverage that the PBGC could (and should) have potentially exercised with GM in advocating for a GM reassumption of the Salaried Plan, any influence by the Treasury relating to the Delphi Salaried Plan, or whether or not, ultimately, the Delphi Salaried Plan needed to be terminated under § 1342(c)'s criteria as opposed to there being other alternatives that would have been unearthed at a termination hearing before the Michigan Court.

3. **It Is Likely that the March 28, 2009 Draft of President Obama's March 30, 2009 Speech Contains Information of Substantial Relevance to the § 1342(c) Termination Question**

Document Nos. 612 and 779 are, according to the Treasury's revised privilege log, identical 5-page drafts, dated March 28, 2009, of a speech President Obama would deliver on March 30, 2009. The text of the March 30, 2009 speech is available here:

<http://www.presidency.ucsb.edu/ws/index.php?pid=85927>. The text of the speech President Obama delivered on March 30, 2009 does not appear to contain any references to Delphi, its pension plans, or the PBGC. However, given that the speech drafts do not appear to have come from the Outlook mailboxes of Messrs. Feldman, Wilson or Rattner, the Treasury must have determined, after a manual review, that the draft related to Delphi, the Delphi Pension Plans or the release and discharge by PBGC of liens and claims relating to the Delphi Pension Plans. *See* ECF No. 28 ¶ 2 (describing searches Treasury was required to undertake). Accordingly, it appears likely that the draft remarks are sufficiently relevant to the claims at issue in *Black* to overcome the Treasury's assertion of the presidential communications privilege.

4. **It Is Likely that the Handwritten Request From President Obama to Consult Dr. Summers Regarding the Delphi Salaried Pension Plan, Written on a Letter dated July 16, 2009, Contains Information of Substantial Relevance to the § 1342(c) Termination Question**

According to the Treasury's revised privilege log provide to Respondents, the last of the 63 documents is a 2 page letter from a member of the public to the President, dated July 16, 2009. Ex. B (No. 764). The Treasury has redacted additional substantive information about the document in the revised privilege log provided to Respondents. However the Court's April 13, 2017 Order indicates that the letter "contain[s] a handwritten request from President Obama to consult Dr. Summers regarding the Delphi salaried pension plan." ECF No. 45 at 5.

The document likely contains direct evidence of President Obama's thinking regarding the Delphi Salaried Plan as of July 16, 2009, which would in turn be relevant to the question of whether the Salaried Plan needed to be terminated, or whether other options, such as a reassumption by GM, were viable alternatives that should have been explored.

C. Respondents Are Willing to Make an Additional *Ex Parte* Showing of Need and Relevance to the Court, Upon its Request

Respondents note that, in addition to the information already in the record, they have through the course of discovery obtained additional documents from both the Treasury and the PBGC, from time periods contemporaneous with the 63 documents in question, that demonstrate further why and how the 63 documents in question are likely to contain information highly relevant to their case. These documents are subject to protective orders, *see* ECF No. 28 (stipulation and protective order governing documents produced by the Treasury) and ECF No. 48-1 (stipulated protective order regarding documents the PBGC produced to Respondents under the Michigan Court's privilege waiver order), and were Respondents to refer to them now, the material, along with the relevant portions of this motion, would need to be filed under seal. Additionally, Respondents are concerned that discussing the relevance of these documents now might needlessly prejudice their case against the PBGC by providing the Treasury and the PBGC with a roadmap to Respondents' litigation strategy prior to the close of discovery and the filing of summary judgment motions.

Given that the Court has previously allowed the Treasury to make *ex parte* submissions to the Court in connection with these 63 documents, Respondents note that they too would be willing to make an *ex parte* submission to the Court, in which they would provide the Court with "other information" in Respondents' possession that might "shine a different light on [the] relevance" of the 63 documents in question. *See* Ex. A at 6:18-20. While Respondents do not believe that any additional showing on their part is necessary given the governing law, in light of the concerns the Court expressed regarding how it could identify documents relevant to Respondents' case, as well as Respondents' concerns about revealing their litigation strategy, such an *ex parte* showing would be appropriate if the Court desires further guidance on the

relevance question. *See, e.g., United States v. Poindexter*, 727 F. Supp. 1470, 1479 n.16 (D.D.C. 1989) (authorizing use of an *ex parte* submission in support of a motion to compel discovery in order to avoid forcing the defendant to “reveal to the prosecution the theories of his defense as a prerequisite to attempting to secure the discovery to which he may be entitled”).

III. HAVING FOUND THAT RESPONDENTS HAVE A SPECIFIC NEED FOR THESE 63 DOCUMENTS SUFFICIENT TO OVERCOME THE TREASURY’S ASSERTION OF THE PRESIDENTIAL COMMUNICATIONS PRIVILEGE, THE COURT SHOULD, IN ITS *IN CAMERA* REVIEW, EXCISE ONLY DOCUMENTS THAT ARE NOT REASONABLY RELEVANT TO THE ISSUES BEING LITIGATED IN *BLACK*

“If a court believes that an adequate showing of need has been demonstrated, it should then proceed to review the documents *in camera* to excise non-relevant material. The remaining relevant material should be released.” *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

“The district court’s *in camera* review also aims to ensure that presidential confidentiality is not unnecessarily breached, but it operates on the presumption that some privileged materials will probably be released. The court’s task during its *in camera* review is simply to ensure that privileged materials that would not be of use to the subpoena proponent are not released.” *Id.* at 759. The relevance standard to be employed after *in camera* review has been granted is much less difficult to satisfy than the standard the Court initially employed to determine whether *in camera* review was justified in the first instance, and having found the needs showing satisfied, the Court should release “any evidence that might reasonably be relevant” to the issues in the underlying litigation, regardless of whether they were part of the needs’ showing or not. *Id.*

Under this standard, subjects that are related to the Auto Task Force’s efforts to restructure the automobile industry generally, or its efforts regarding GM, Delphi, and the PBGC specifically, are plainly relevant to the claims in *Black*, and thus properly disclosed to Respondents, regardless of whether they demonstrate undue influence by the Treasury on the

PBGC. While Respondents have not seen the documents in question, in light of the narrowness of Respondents' subpoena, ECF No. 27 at 17, and the further narrowing that took place as a result of the stipulation and protective order, ECF No. 28 ¶ 2, it is highly likely that the 13 memoranda, 4 email chains, 2 draft speeches, and 1 handwritten note that the Treasury has withheld are, in their entirety, likely to consist of "evidence that might reasonably be relevant" to Respondents' claims in *Black. In re Sealed Case*, 121 F.3d at 759.

Conclusion

For the foregoing reasons, the Treasury's motion for reconsideration should be denied.

Date: May 31, 2017

Respectfully submitted,

/s/ Anthony F. Shelley

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Attorneys for Respondents

Exhibit A

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**

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

1 AFTERNOON SESSION, MAY 16, 2017

2 (1:05 p.m.)

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

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

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

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

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

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

22 I think in fairness, the government should have its -- I
23 think any party should have the full allotment of time to
24 consider any -- to consider seeking any appellate review, so --
25 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

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Exhibit B

**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, <i>et al.</i>,)	
)	
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.: 30
Type of Document: Email String (2 emails)
No. of Pages: 1
Subject: "Delphi pension"
Date: April 15, 2009
Participants: Matthew Feldman, Harry Wilson (both Auto Team members)
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email exchange between members of the Auto Team

Rationale for Privilege Claims:

Attorney-Client Privilege:

Consisting of 12 employees of the Department of the Treasury (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.

The material withheld from this document consists of an email in which Harry Wilson, a member of the Auto Team, asks Matthew Feldman, the member of the Auto Team who was an attorney, the following legal question: [REDACTED]

[REDACTED] The withheld material also includes an email in which Attorney Feldman answers the above question and provides his legal analysis. The withheld material is protected by the attorney-client privilege because the material is "[a] communication . . . made [to] . . . 'a member of the bar of a court' who 'in connection with th[e] communication [was] acting as a lawyer' and the communication was made 'for the purpose of securing . . . an opinion on law.'" *In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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)

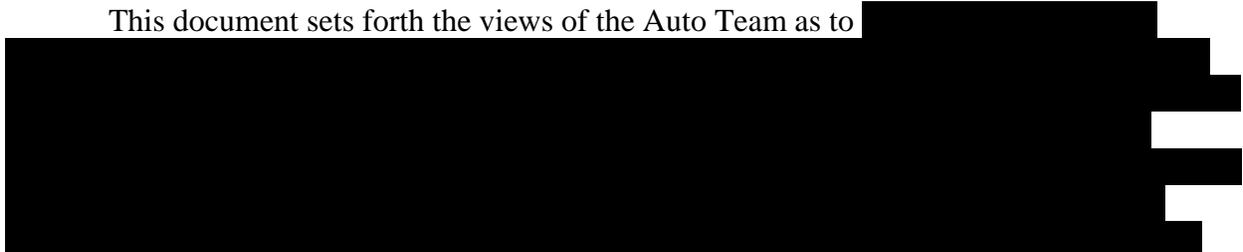
Rationale for Privilege Claims:

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)

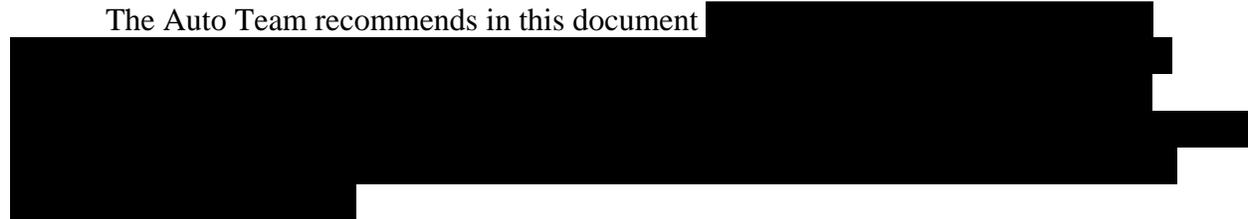
Rationale for Privilege Claims:

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.: 203
Type of Document: Email Attachment
No. of Pages: 19
Subject: “GM Restructuring: Outline of Approach for Disposition of Environmentally Contaminated Properties”
Date: July 30, 2009
Author: Cadwalader, Wickersham & Taft LLP
Recipients: None set forth in document
Privilege Claimed: Work Product Doctrine (withheld in full)

Description of Document:

Email attachment consisting of draft memorandum prepared by Cadwalader, Wickersham & Taft LLP and sent to members of the Auto Team and to certain Cadwalader attorneys

Rationale for Privilege Claims:

Work Product Doctrine:

This document was prepared in anticipation of litigation, and thus is protected by the work product doctrine, because it was prepared by Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, [REDACTED]

[REDACTED] The draft memo consists of opinion work product, not fact work product, because it “reveals ‘the mental impressions, conclusions, opinions, or legal theories of a party’s attorney . . . concerning [potential] litigation.’” *FTC v. Boehringer Ingelheim Pharms.*, 778 F.3d 142, 151 (D.C. Cir. 2015) (quoting Fed. R. Civ. P. 26(b)(3)(B)). “A party generally must make an ‘extraordinary showing of necessity’ to obtain opinion work product.” *Id.* at 153 (quoting *In re Sealed Case*, 676 F.2d 793, 811 (D.C. Cir. 1982)). None is made here.

Document No.: 207
Type of Document: Email Attachment
No. of Pages: 2
Subject: "Response notes to Neal Orringer's Monday, August 10, 2009 email"
Date: August 11, 2009
Author: None set forth in document
Recipients: None set forth in document
Privileges Claimed: Attorney-Client Privilege (withheld in full)

Description of Document:

Attachment to email dated August 12, 2009, from Erik Weeks of the Department of the Treasury (Treasury) to Matthew Feldman of the Auto Team with copies to Mark Jaskowiak and Vikram Mehta of Treasury

Rationale for Privilege Claim:

Attorney-Client Privilege:

This document consists of draft responses [REDACTED]
[REDACTED] The Treasury employee who prepared the responses sent them to Matthew Feldman, the member of the Auto Team who was an attorney, with a request for legal advice and legal review. The attorney-client privilege applies to this document because it is "[a] communication . . . made [to] . . . 'a member of the bar of a court' who 'in connection with th[e] communication [was] acting as a lawyer' and the communication was made 'for the purpose of securing . . . an opinion on law.'" *In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to this document.

Document No.: 210
Type of Document: Email String
No. of Pages: 1
Subject: “BeijingWest”
Date: August 14, 2009
Participants: Treasury attorneys Julia Yoo, Vikram Mehta, Himamauli Das, Rupa Bhattacharyya, and Stephen Albrecht; Auto Team member Matthew Feldman
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from Department of the Treasury (Treasury) attorney Julia Yoo

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email in which Treasury attorney Julia Yoo asks other Treasury attorneys [REDACTED]

[REDACTED] Attorney Yoo explains in her email that she is asking this question [REDACTED]

[REDACTED] The withheld material also includes an email in which Attorney Yoo “reach[es] out” to Matthew Feldman, the member of the Auto Team who was an attorney, [REDACTED] All of the above material is protected by the attorney-client privilege because the material memorializes the efforts of Attorney Yoo to obtain the information she needs to provide legal advice [REDACTED]

[REDACTED] *See Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (holding that the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice”) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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.: 446
Type of Document: Email String (7 emails)
No. of Pages: 2
Subject: RE: Delphi
Date: June 16, 2009
Participants: Matthew Feldman, Harry Wilson, Steven Rattner, Ron Bloom, Brian Deese (all Auto Team members)
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from Matthew Feldman

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email in which Matthew Feldman, the member of the Auto Team who was an attorney, advises other members of the Auto Team of his having spoken to Oren Haker of Cadwalader, Wickersham, & Taft LLP, outside counsel to the Auto Team, about certain bankruptcy orders being entered in court. The email also contains the views of Mr. Feldman about the orders. The attorney-client privilege applies to the withheld material because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

Document No.: 499
Type of Document: Email String (4 emails)
No. of Pages: 4
Subject: “GM’s Michigan Workers’ Compensation Self-Insured Employer Status”
Date: June 27, 2009
Participants: Brian Deese, Matthew Feldman (both members of the Auto Team) and others
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from Susan Przekop-Shaw, Assistant Attorney General, State of Michigan, to Matthew Feldman of the Auto Team and others

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email in which Brian Deese of the Auto Team asks Matthew Feldman, the member of the Auto Team who was an attorney, the following legal question: [REDACTED]

The withheld material is protected by the attorney-client privilege because the material is “[a] communication . . . made [to] . . . ‘a member of the bar of a court’ who ‘in connection with th[e] communication [was] acting as a lawyer’ and the communication was made ‘for the purpose of securing . . . an opinion on law.’” *In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

Document No.: 558
Type of Document: Email String (multiple emails)
No. of Pages: 3
Subject: "Auto questions"
Date: July 8, 2009
Participants: Steven Rattner, Brian Deese, Ron Bloom, Harry Wilson, Matthew Feldman (all Auto Team members); Treasury attorney Mara McNeill; Treasury employee Meg Reilly; Reuters News employee David Lawder
Privileges Claimed: Attorney-Client Privilege & Deliberative Process Privilege (withheld in part)

Description of Document:

Email string beginning with email from David Lawder of Reuters News to Meg Reilly of Treasury

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of emails among Meg Reilly, an employee of the Department of the Treasury (Treasury); Mara McNeill, a Treasury attorney; and Auto Team members Brian Deese, Ron Bloom, Harry Wilson, Steven Rattner and Matthew Feldman. [REDACTED]

[REDACTED] The withheld material is protected by the attorney client privilege because it includes an email by which Attorney McNeill responds to the question posed by Ms. Reilly and also includes emails by which Mr. Deese, Ms. Reilly, and Mr. Rattner respond to the email of Attorney McNeill. *See In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (holding that the privilege applies to a communication made to "a member of the bar of a court" who "in connection with th[e] communication [was] acting as a lawyer" and the communication was made "for the purpose of securing . . . an opinion on law") (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984)).

Ms. Reilly states in her 3:39 pm email [REDACTED]

[REDACTED] Treasury is thus unaware of any subject-matter waiver that would render the attorney-client privilege inapplicable to the withheld material.

Deliberative Process Privilege:

The material withheld from this document is deliberative and predecisional, and thus protected by the deliberative process privilege, *see In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997), because the material consists of a discussion among Treasury and Auto Team

personnel as to how to respond to press inquiries dealing with certain conflicts of interest. This information was not incorporated into final agency policy or otherwise treated as final agency protocol, nor were these internal, preliminary deliberations shared with the public.

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.: 570
Document Type: Email String (3 emails)
No. of Pages: 2
Subject: “Meeting w Potential Delphi Acquirors”
Date: July 9, 2009
Participants: Harry Wilson, Ron Bloom, Matt Feldman, Steven Rattner, Brian Deese (all Auto Team members); Josh Gotbaum of Blue Wolf
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from Josh Gottbaum of Blue Wolf to Ron Bloom of the Auto Team

Rationale for Privilege Claim:

Attorney-Client Privilege

The material withheld from this document consists of an email in which Auto Team member Harry Wilson advises other Auto Team members about legal advice provided by Bernie Knight, Treasury’s ethics counsel. Josh Gotbaum of outside entity Blue Wolf states at the beginning of this document that

[REDACTED]

The attorney-client privilege applies to the withheld material because the material is a communication from a client who has received legal advice from an attorney, Attorney Knight, and is conveying that advice to his colleagues. *See Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (holding that the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice”) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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

[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.: 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]

[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.: 619
No. of Pages: 3
Subject: Weekly Report
Date: April 2, 2009
Author: Andrew Maycock
Recipients: Various Treasury personnel
Privileges Claimed: Relevance (withheld in part)

Description of Document:

Weekly report of the Department of the Treasury (Treasury) to the White House for the week of April 6, 2009, and email circulating the report among Treasury personnel.

Rationale for Privilege Claims:

Relevance:

The weekly report contained in this document consists of 11 bullet points summarizing for the White House the activities of Treasury for the week of April 6, 2009. The sole bullet point having any conceivable relevance to the claim that respondents are litigating against the Pension Benefit Guaranty Corporation (PBGC) in *Black v. PBGC*, No. 2:09-cv-13616-AJT-MKM (E.D. Mich.), is the bullet point captioned “Auto Task Force.” That bullet point and the email circulating the weekly report among Treasury personnel have been produced to respondents.

The remainder of the weekly report contained in this document has been withheld on the ground of relevance. See *Ass’n for Women in Science v. Califano*, 566 F.2d 339, 343 (D.C. Cir. 1977) (holding that “the various discovery rules ‘are to be accorded a broad and liberal treatment’” but further holding that “‘limitations come into existence when the inquiry touches upon the irrelevant’”) (quoting *Hickman v. Taylor*, 329 U.S. 495, 508 (1947)).

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)

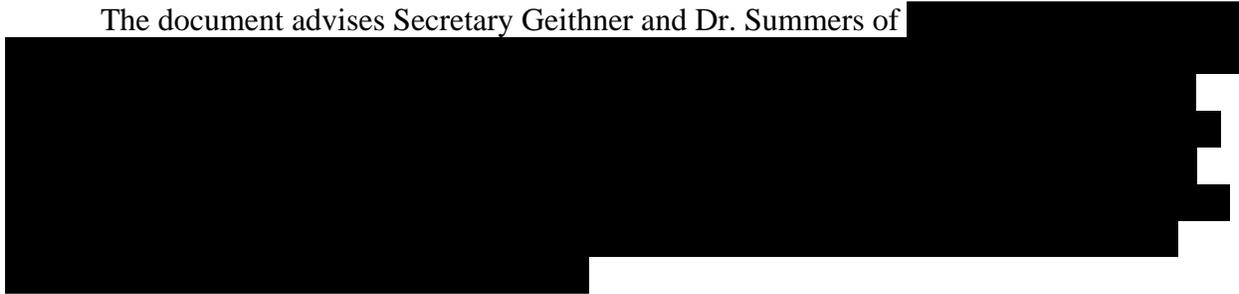
Rationale for Privilege Claims:

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)

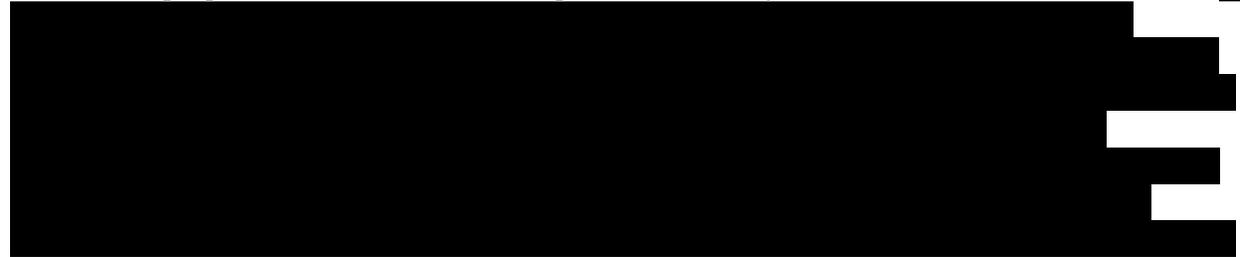
Rationale for Privilege Claims:

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.: 679
Type of Document: Email
No. of Pages: 1
Subject: “Delphi”
Date: July 10, 2009
Author: Matthew Feldman
Recipients: Ron Bloom, Harry Wilson, Steven Rattner, Paul Nathanson, Brian Deese, Brian Osias (all Auto Team members)
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email from Matthew Feldman to other members of the Auto Team

Rationale for Privilege Claims:

Attorney-Client Privilege

The material withheld from this document consists of legal advice about conflicts-of-interest issues obtained by Matthew Feldman, the member of the Auto Team who was an attorney, from Bernie Knight, Treasury’s ethics counsel. Conveying that advice to other member of the Auto Team, Attorney Feldman states that [REDACTED]

[REDACTED]. The withheld material is protected by the attorney-client privilege because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

Document No.: 685
Type of Document: Email String (2 emails)
No. of Pages: 2
Subject: “Update on PBGC settlement”
Date: July 18, 2009
Participants: Oren Haker and other attorneys from Cadwalader, Wickersham & Taft LLP; Members of the Auto Team; Assistant U.S. Attorneys Matthew Schwartz and Joseph Cordaro
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from Oren Haker of Cadwalder, Wickersham & Taft LLP

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email from Oren Haker of Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, to Matthew Feldman, the member of the Auto Team who was an attorney; to two Assistant U.S. Attorneys; and to other attorneys from his firm. The email deals with a potential settlement between Delphi and the Pension Benefit Guaranty Corporation in the Delphi bankruptcy litigation. The email describes

The email also discusses

The email further discusses legal considerations related to a potential press release concerning the potential settlement. The withheld material is protected by the attorney-client privilege because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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.: 720
Type of Document: Email String (5 emails)
No. of Pages: 2
Subject: “RE: GM/UST – M&E Term Loan – Time Sensitive”
Date: March 3, 2009
Participants: Aimee Cummo of Sonnenschein Nath & Rosenthal LLP and others
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from Aimee Cummo of Sonnenschein Nath & Rosenthal LLP

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email by which Aimee Cummo of Sonnenschein Nath & Rosenthal LLP, outside counsel to the Auto Team, sends a draft amendment to a General Motors loan agreement to attorneys at the Department of the Treasury (Treasury). The email contains Attorney Cummo’s legal analysis of the draft amendment [REDACTED]

[REDACTED] The withheld material also includes an email by which Treasury attorney Duane Morse forwards Attorney Cummo’s email to members of the Auto Team, to other Treasury employees, to an employee of a consultant to the Auto Team, and to an attorney with Cadwalader, Wickersham & Taft LLP, the Auto Team’s other outside counsel. The email discusses the draft amendment and says: [REDACTED] Also included in the withheld material is an email in which a Treasury employee makes the following comment in response to Attorney Morse’s email: [REDACTED]

[REDACTED] The attorney-client privilege applies to the withheld material because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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

[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.: 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]

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:

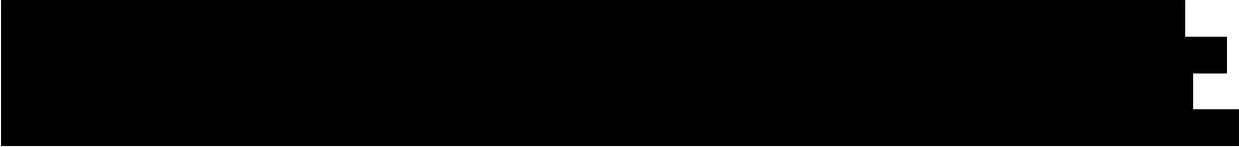
Presidential Communications Privilege:

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

[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.: 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.: 789
Type of Document: Email String (2 emails)
No. of Pages: 1
Subject: “Delphi Tools”
Date: March 31, 2009
Participants: Harry Wilson, Matthew Feldman (both members of the Auto Team)
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email thread among members of the Auto Team

Rationale for Privilege Claims:

Attorney-Client Privilege

The material withheld from this document consists of an email in which Harry Wilson, a member of the Auto Team, asks Matthew Feldman, the member of the Auto Team who was an attorney, the following legal question: [REDACTED]

[REDACTED] The withheld material also consists of an email in which Attorney Feldman responds to Mr. Wilson’s email by saying the following: [REDACTED]

[REDACTED]. The withheld material is protected by the attorney-client privilege because the material is “[a] communication . . . made [to] . . . ‘a member of the bar of a court’ who ‘in connection with th[e] communication [was] acting as a lawyer’ and the communication was made ‘for the purpose of securing . . . an opinion on law.’” *In re Lindsey*, 158 F.3d 1263, 1270 (D.C. Cir. 1998) (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

Document No.: 792
Type of Document: Memorandum
No. of Pages: 3
Subject: “Second Amendment to Accommodation Agreement”
Date: April 1, 2009
Author: Oren Haker
Recipients: Matt Feldman, Harry Wilson, John Rapisardi
Privileges Claimed: Attorney-Client Privilege; Work Product Doctrine (withheld in full)

Description of Document:

Memorandum from Oren Haker of Cadwalader, Wickersham & Taft LLP to members of the Auto Team and to another attorney from his firm

Rationale for Privilege Claims:

Attorney-Client Privilege:

This document is a memorandum in which an attorney for Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, summarizes for members of the Auto Team and for another attorney from Cadwalader a recent amendment to a Delphi loan agreement. The withheld material is protected by the attorney-client privilege material because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

Work Product Doctrine:

This document was prepared in anticipation of litigation, and thus is protected by the work product doctrine, because it was prepared by Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, to address an issue relevant to any legal proceedings concerning the restructuring of General Motors that might be commenced. The draft memo consists of opinion work product, not fact work product, because it “reveals ‘the mental impressions, conclusions, opinions, or legal theories of a party’s attorney . . . concerning [potential] litigation.’” *FTC v. Boehringer Ingelheim Pharms.*, 778 F.3d 142, 151 (D.C. Cir. 2015) (quoting Fed. R. Civ. P. 26(b)(3)(B)). “A party generally must make an ‘extraordinary showing of necessity’ to obtain opinion work product.” *Id.* at 153 (quoting *In re Sealed Case*, 676 F.2d 793, 811 (D.C. Cir. 1982)). None is made here

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.: 983
Type of Document: Memorandum
No. of Pages: 4
Subject: “Auto Task Force Response to Debtors’ Objectives/Deal Elements”
Date: May 22, 2009
Author: None set forth in document
Recipients: None set forth in document
Privileges Claimed: Work Product Doctrine (withheld in full)

Description of Document:

Memorandum attached to email from Oren Haker of Cadwalader, Wickersham & Taft LLP, to Assistant U.S. Attorneys Matthew Schwartz and Joseph Cordaro, with copies to members of the Auto Team and another attorney from his firm

Rationale for Privilege Claims:

Work Product Doctrine:

The withheld document was prepared in anticipation of litigation, and thus is protected by the work product doctrine, because it was prepared by Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, to give Department of Justice attorneys talking points for the mediation proceedings pending in the Delphi bankruptcy litigation. The memorandum consists of opinion work product, not fact work product, because it “reveals ‘the mental impressions, conclusions, opinions, or legal theories of a party’s attorney . . . concerning [pending] litigation.’” *FTC v. Boehringer Ingelheim Pharms.*, 778 F.3d 142, 151 (D.C. Cir. 2015) (quoting Fed. R. Civ. P. 26(b)(3)(B)). “A party generally must make an ‘extraordinary showing of necessity’ to obtain opinion work product.” *Id.* at 153 (quoting *In re Sealed Case*, 676 F.2d 793, 811 (D.C. Cir. 1982)). None is made here.

Document No.: 985
Type of Document: Draft Letter
No. of Pages: 9
Subject: “*In re Delphi Corp., et al.*, No. 05-44481 (RDD) (Ch. 11)”
Date: May 23, 2009
Author: Assistant U.S. Attorneys Matthew L. Schwartz & Joseph N. Cordaro
Recipient: Hon. Cecelia G. Morris
Privileges Claimed: Work Product Doctrine (withheld in full)

Description of Document:

Draft letter from Department of Justice attorneys to bankruptcy judge

Rationale for Privilege Claims:

Work Product Doctrine:

This document is a draft of Doc. No. 989. It is entitled to withholding in its entirety under the work product doctrine for the same reasons that Doc. No. 989 is entitled to withholding under the doctrine.

Document No.: 987
Type of Document: Draft Letter
No. of Pages: 9
Subject: “*In re Delphi Corp., et al.*, No. 05-44481 (RDD) (Ch. 11)”
Date: May 23, 2009
Author: Assistant U.S. Attorneys Matthew L. Schwartz & Joseph N. Cordaro
Recipient: Hon. Cecelia G. Morris
Privileges Claimed: Work Product Doctrine (withheld in full)

Description of Document:

Draft letter from Department of Justice attorneys to bankruptcy judge

Rationale for Privilege Claims:

Work Product Doctrine:

This document is a draft of Doc. No. 989, but a different draft from Doc. No. 985. It is entitled to withholding in its entirety under the work product doctrine for the same reasons that Doc. No. 989 is entitled to withholding under the doctrine.

Document No.: 989
Type of Document: Draft Letter
No. of Pages: 9
Subject: “*In re Delphi Corp., et al.*, No. 05-44481 (RDD) (Ch. 11)”
Date: May 23, 2009
Author: Assistant U.S. Attorneys Matthew L. Schwartz & Joseph N. Cordaro
Recipient: Hon. Cecelia G. Morris
Privileges Claimed: Work Product Doctrine (withheld in full)

Description of Document:

Draft letter from Department of Justice attorneys to bankruptcy judge

Rationale for Privilege Claims:

Work Product Doctrine:

This document is a draft of a letter brief to be submitted on behalf of the federal government to the bankruptcy judge presiding over the mediation proceedings pending in the Delphi bankruptcy litigation. The document was thus prepared in anticipation of litigation and is thus protected by the work product doctrine. The document consists of opinion work product, not fact work product, because it “reveals ‘the mental impressions, conclusions, opinions, or legal theories of a party’s attorney . . . concerning [pending] litigation.’” *FTC v. Boehringer Ingelheim Pharms.*, 778 F.3d 142, 151 (D.C. Cir. 2015) (quoting Fed. R. Civ. P. 26(b)(3)(B)). “A party generally must make an ‘extraordinary showing of necessity’ to obtain opinion work product.” *Id.* at 153 (quoting *In re Sealed Case*, 676 F.2d 793, 811 (D.C. Cir. 1982)). None is made here.

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.

[REDACTED]

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.: 1071
Type of Document: Email String (3 emails)
No. of Pages: 3
Subject: “Summary of Delphi Chambers Conference”
Date: June 25, 2009
Participants: Attorneys from Cadwalader, Wickersham & Taft LLP, Department of Justice Attorneys, Members of the Auto Team
Privileges Claimed: Attorney-Client Privilege (withheld in part).

Description of Document:

Email string beginning with email from Oren Haker of Cadwalader, Wickersham & Taft LLP

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email in which Oren Haker of Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, describes an in-chambers conference in the Delphi bankruptcy litigation to two Assistant U.S. Attorneys and to two members of the Auto Team. The withheld material also includes an exchange of emails between Harry Wilson of the Auto Team and Attorney Haker. The withheld material is protected by the attorney-client privilege because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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.: 1113
Type of Document: Email String (4 emails)
No. of Pages: 4
Subject: “CWT Summary of Issues re DIP Lender/New GM Deal Docs”
Date: July 17, 2009
Participants: Attorneys from Cadwalader, Wickersham & Taft LLP; Department of Justice Attorneys; Members of the Auto Team
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from Oren Haker of Cadwalader, Wickersham & Taft LLP

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email from Oren Haker of Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, to two Assistant U.S. Attorneys, to certain members of the Auto Team, and to certain other attorneys from his firm. The email discusses a term sheet being circulated by Weil, Gotshal & Manges, counsel for General Motors, to creditors of Delphi Corporation. The withheld material also includes an email from Geoff Levin of Cadwalader, Wickersham & Taft responding to Attorney Haker’s email and an ensuing exchange of emails between Matthew Feldman, the member of the Auto Team who was an attorney, and Attorney Levin. The attorney-client privilege protects the withheld material because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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.: 1204
Type of Document: Email String (4 emails)
No. of Pages: 3
Subject: “Project GUM: First Amendment to the DIP Agreement – note for Herb Alison”
Date: June 24-25, 2009
Participants: Attorney from Cadwalader, Wickersham & Taft LLP, Members of the Auto Team, Treasury attorneys, and Others
Privileges Claimed: Attorney-Client Privilege (withheld in part)

Description of Document:

Email string beginning with email from E. Perry Hicks of Cadwalader, Wickersham & Taft LLP

Rationale for Privilege Claims:

Attorney-Client Privilege:

The material withheld from this document consists of an email by which E. Perry Hicks of Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, sends a draft agreement relating to Delphi to certain members of the Auto Team, to certain Department of the Treasury (Treasury) attorneys, and to certain other attorneys and consultants. The agreement, if acceptable to the recipients, is to be executed by Treasury. Mr. Hicks discusses the agreement in his email and makes certain recommendations with respect to it. The withheld material also includes emails from Mara McNeill, a Treasury attorney, and Sadiq Malik, a member of the Auto Team, dealing with the above agreement and its possible execution. The email from Mr. Malik says: “

_____ The attorney-client privilege protects the withheld material because the privilege “shelters confidential communications between an attorney and client . . . made with a primary purpose of seeking or providing legal advice.” *Baylor v. Mitchell Rubenstein & Assoc.*, 130 F. Supp.3d 326, 330 (D.D.C. 2015) (quoting *United States ex rel. Barko v. Halliburton Co.*, 74 F. Supp.3d 183, 187 (D.D.C. 2014)). Treasury is unaware of any subject-matter waiver that would render the privilege inapplicable to the withheld material.

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.

Document No.: 1259
Type of Document: Draft Memorandum
No. of Pages: 27
Subject: Delphi Bankruptcy
Date: July 16, 2009
Author: Cadwalader, Wickersham & Taft LLP
Recipients: None set forth in document
Privileges Claimed: Work Product Doctrine (withheld in full)

Description of Document:

Attachment to email dated July 16, 2009, from Joseph Zujkowski of Cadwalader, Wickersham & Taft LLP to Matthew Feldman and Harry Wilson of the Auto Team; to Assistant U.S. Attorneys Matthew Schwartz and Joseph Cordaro; and to John Rapisardi and Oren Haker of Cadwalader

Rationale for Privilege Claims:

Work Product Doctrine:

This document was prepared in anticipation of litigation, and thus is protected by the work product doctrine, because it was prepared by Cadwalader, Wickersham & Taft LLP, outside counsel to the Auto Team, [REDACTED]. This document contains opinion work product, not fact work product, because it “reveals ‘the mental impressions, conclusions, opinions, or legal theories of a party’s attorney . . . concerning [pending] litigation.’” *FTC v. Boehringer Ingelheim Pharms.*, 778 F.3d 142, 151 (D.C. Cir. 2015) (quoting Fed. R. Civ. P. 26(b)(3)(B)). “A party generally must make an ‘extraordinary showing of necessity’ to obtain opinion work product.” *Id.* at 153 (quoting *In re Sealed Case*, 676 F.2d 793, 811 (D.C. Cir. 1982)). None is made here.

