

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

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

RESPONDENTS' SUPPLEMENT TO THEIR MOTION TO LIFT STAY

On August 13, 2013, Respondents filed a motion to lift the stay of these proceedings entered on May 17, 2012 (the “Motion to Lift Stay”). DE 11. Respondents file this supplement to note three subsequent developments relevant to the Motion to Lift Stay.

I. The SIGTARP Report Has Been Completed

In their Motion to Lift Stay, Respondents have noted that the Treasury may have already compiled some documents responsive to the Subpoena in connection with an ongoing investigation of the Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”). *See* DE 11 at 6-7. Respondents now can apprise the Court that, on August 15, 2013, SIGTARP in fact released its final report on that investigation, a copy of which is attached. *See Ex. A, Treasury’s Role in the Decision for GM to Provide Pension Payments to Delphi Employees.* The report is relevant to the proceedings before this Court in two ways. First, the interviews it conducted with Treasury, PBGC, GM, and Delphi officials, and conclusions it drew

from those interviews, support Respondents' assertions as to the overwhelming role that Auto Task Force officials played in the decisions regarding GM's position on Delphi's pension issues. *See, e.g.*, Ex. A at 13 ("[t]he Auto Team specifically pressed GM to be less generous in relation to Delphi and pensions."); *see also, e.g., id.* at 14 ("at least one GM official told SIGTARP that GM thought there was some benefit to 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.*" (emphasis added); *id.* at 8 ("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."); *id.* at 11 ("[T]he Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions."); *id.* at 12 (noting that an Auto Team Official said that "'GM realized that there was no other available source of money'"); *id.* (noting that a GM official stated that "[t]hey [the Auto Team] were pushing us to be tougher and take more significant actions other than what we would have done on our own volition."); *id.* at 15 (noting that a PBGC official stated that a decision on re-assumption of the Delphi's pensions would be made by the Auto Task Force, not GM; "It didn't have anything to do with GM. If there was any possibility that it was going to happen, it was going to come from Treasury. It would be Treasury folks because they had the right of refusal and could dictate what was going to happen."); *id.* (noting former Delphi CFO John Sheehan's statement about the Auto Task Force's control of the situation; "'GM wasn't in a position to dictate. Harry [Wilson] and Matt [Feldman] were the decision makers and the drivers on how this would all occur - in my view.'").

Second, the SIGTARP report is relevant also in that it sheds light on a question raised in Respondents' Motion to Lift Stay – namely, has the Treasury already compiled and produced to SIGTARP documents that would be relevant and responsive to Respondents' Subpoena? The report indicates that that Treasury has indeed produced such documents, but suggests that the Treasury's responses may not have been complete. The report specifically cautions that "SIGTARP generally relied upon Treasury to identify and provide relevant documentation, including email communications and other Treasury records. To the extent that the documentation provided to SIGTARP by Treasury did not reflect a comprehensive response to SIGTARP's documentation requests, SIGTARP's review may have been limited." *Id.* at 44. Given that Respondents have no way of knowing the scope of information requested or, apparently, whether the Treasury fully responded to those requests, Respondents wish to emphasize that, while the Treasury's SIGTARP responses represent a burden-less way for the Treasury at this time to produce responsive documents to Respondents, such a production should be viewed as the floor and not the ceiling on what Respondents are entitled to receive. Respondents may need to seek, and emphatically wish to reserve their rights to seek, fuller disclosures from Treasury consistent with the actual scope of Respondents' subpoena, if the documents produced to SIGTARP prove to be incomplete, selective, or otherwise inadequate. Respondents offered the compromise to obtain initially the SIGTARP documents in order to deal with the supposed burden Treasury claims, to speed along discovery while deadlines loom on discovery in the Michigan Court, and only under the understanding that the materials produced to SIGTARP were not one-sided, which now it appears could have been the case.

II. Magistrate Judge Majzoub Has Granted Respondent's Rule 37 Motion

Respondents also note that earlier this week, on August 21, 2013, Magistrate Judge Majzoub (of the Michigan Court) granted Respondents' Rule 37 Motion to Enforce her March 9, 2012 Order. *See* Ex. B. In this week's order, Judge Majzoub required the PBGC to produce every remaining disputed document, including all documents the PBGC has sought to shield from discovery on the basis of alleged privileges. Respondents believe this ruling is significant to the Motion to Lift Stay because it demonstrates that the Michigan Court continues to proceed with facilitating necessary discovery, notwithstanding the continued pendency of the PBGC's objections to Judge Majzoub's March 9, 2012 Order. Further, the fact that the Michigan Court is proceeding with discovery under the standards enunciated in Judge Tarnow's September 1, 2011 Order supports Respondents' argument that the September 1, 2011 Order is the law of the case. *See* DE 11 at 8-9. Under the terms of this week's order from Judge Majzoub, the PBGC must produce the remaining responsive documents by September 30, 2013. Once the PBGC produces these documents, the only substantial document discovery remaining in this case will be discovery from the US Treasury. Discovery is currently scheduled to close in this case by October 31, 2013.

III. Respondents Have Served the Treasury with a Deposition Subpoena

Finally, Respondents note that, also on August 21, 2103, they served the Treasury with a deposition subpoena pursuant to Fed. R. Civ. P. 30(b)(6) and 45. A copy of the subpoena is attached as Exhibit C.

Date: August 23, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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