

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Columbia

Dennis Black, et al.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 2:09-cv-13616
Pension Benefit Guaranty Corp.)	
<i>Defendant</i>)	(If the action is pending in another district, state where: Eastern District of Michigan)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: United States Department of Treasury, Attn: General Counsel
1500 Pennsylvania Avenue, NW, Washington, DC 20220

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A.

Place: Miller & Chevalier Chartered 655 Fifteenth Street, NW, Suite 900 Washington, DC 20005	Date and Time: 02/03/2012 5:00 pm
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 01/04/2012

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) _____
the Delphi Salaried Employee Association, who issues or requests this subpoena, are:

Michael N. Khalil
Miller & Chevalier Chartered, 655 Fifteenth Street, NW, Suite 900, Washington, DC 20005
Telephone: (202) 626-5937; Email: mkhalil@milchev.com

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

AO 88B (Rev 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 2:09-cv-13616

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc:

ATTACHMENT A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, the United States

Department of the Treasury is required to produce for inspection and copying the documents set forth below at the place and time specified in the subpoena, or at such other time and place as may be agreed upon by counsel.

INSTRUCTIONS AND DEFINITIONS

General Instructions

1. This subpoena calls for you to produce all documents identified below under the heading "DOCUMENTS AND THINGS TO BE PRODUCED," that are within your possession, custody, or control, or are otherwise available to you.

2. All documents that respond, in whole or in part, to any portion of this subpoena are to be produced in their entirety, without abbreviation or expurgation, including all attachments or other matter affixed thereto.

3. If you object to any of these document requests, then you shall state the reasons for your objections. If you object to any part of a document request, then you shall further specify the part. Similarly, if you do not object to a particular document request, but are unable to comply fully with that request, then you shall comply to the fullest extent possible and provide an explanation for your lack of full compliance.

4. If any requested document is unavailable because it has been lost, discarded, or destroyed, please summarize for each such document: its date, author, addressee, signatory, type, content, and length; the date and circumstances under which it was lost, discarded, or destroyed; the identity of any persons who ordered or directed it to be discarded or destroyed, or the identity of any person who has knowledge of the circumstances under which the document was lost, discarded, or destroyed.

5. All of these document requests are directed not only to those documents in the possession, custody, or control of you or your directors, officers, agents, employees, consultants, representatives and attorneys, but also to those documents in the possession, custody, or control of any "person" (as defined herein) whom you control. For any documents whose location is unknown, state the names and addresses of any persons who might possess, or know the location of, such documents.

6. When information is withheld from discovery on a claim that it is privileged, subject to protection as trial preparation materials, or otherwise privileged or protected from disclosure, the claim shall be made expressly and shall be supported by a description of the nature of the document, communications, or things not produced that is sufficient to enable the propounding party to contest the claim of privilege, as provided in Fed. R. Civ. P. 26(b)(5).

7. You shall produce all documents in a form which renders the documents susceptible of copying. Further, you shall either identify all documents according to the specific requests to which the documents are responsive or produce the documents as they are kept in the usual or ordinary course of business.

8. Where originals of documents are not available, authentic copies of such documents may be produced; but, if a document has been prepared in separate copies, or additional copies have been made and the copies are not identical (whether by reason of subsequent modification, addition of notations or otherwise), each non-identical copy is a separate document and should be identified or produced.

9. If no documents are responsive to a particular request, you are to state that no responsive documents exist.

10. If you know of the existence, past or present, of any documents requested below, but are unable to produce such documents because they are not presently in your possession, custody, or control, you shall so state and shall identify such documents or things, and the person who has possession, custody, or control of the documents or things.

11. Electronically-stored documents must be produced either in their native format with all associated metadata, or as .tiff or .pdf image files along with a load file containing all associated metadata. Notwithstanding the foregoing, Excel spreadsheets must be produced in their native format with all associated metadata. Additionally, all other file types must also be produced in their native format with all associated metadata when reasonably necessary to enable the records to be reviewed. Electronically-stored documents must be produced in a manner that indicates the original filename, location (*e.g.*, pathname), and custodian of the document.

General Definitions

1. "Document" and "documents" shall have the same meaning as used in Fed. R. Civ. P. 34 and shall include "writings" and "recordings" as those terms are defined in Fed. R. Evid. 1001. "Documents" shall also mean all data compilations and information which can be recorded by any sound, visual or electronic means and from which information can be obtained or translated through detection devices into reasonably usable form. For example, and without limiting the definition of the terms in any way, "document" and "documents" shall include the following: electronic mail ("e-mail") (in both electronic and printed form), text messages (in both electronic and printed form), instant messages (in both electronic and printed form), facsimiles (in both electronic and printed form), letters, correspondence, notes (in electronic, printed or handwritten form), telegrams, lists, memoranda, diaries, journals, records, contracts, agreements, records, notations of communications, communications, desk pads, desk calendars,

electronic calendars, note pads, scratch pads, voicemail recordings in any media, telephone call slips, call logs, telephone memos, telephone bills, microfilm, articles, pamphlets, brochures, studies, notices, summaries, reports, books, teletype messages, accounting entries, accounting records, financial statements, purchasing orders, invoices, tapes, worksheets, video tapes, computer disks, digitized material, computer data, computer-generated compilations and computerized data printouts.

2. "All documents" shall mean and include each and every document that refers, reflects or relates, directly or indirectly, in whole or in part, to the subject matters described in a particular document request.

3. "Things" shall mean and include "tangible things" (as that term is used in Fed. R. Civ. P. 34, including videotapes, audiotapes, CDs, DVDs, and external hard drives).

4. "Person" shall mean and include any natural person, corporation, limited liability company, partnership, firm, association, joint venture, sole proprietorship, trust, department, division, agency and any other legal, business, or governmental entity.

5. "Communication" means any meeting, statement, document, conversation, transmittal of information or request for information, whether by written, oral, electronic, non-verbal or other means. "Communication" shall include, but is not limited to, electronic mail or "E-mail," text and instant messages.

6. "Relate to" or "relating to" shall mean and include constituting, discussing, mentioning, containing, embodying, reflecting, identifying, incorporating, referring to, dealing with, or pertaining to in any way.

7. Any request for documents or things “produced” from a person shall include documents and things created, produced, generated, and developed by that person during the specified time period.

8. Any request for documents or things “reviewed” by a person shall mean anything considered, modified, altered, edited, read, or considered by that person during the specified time period.

Specific Definitions

1. The “Treasury Department,” “you” and “your” shall mean and refer to the United States Department of Treasury, as well as any directors, officers, employees, trustees, agents, administrators, actuaries, attorneys, accountants, consultants, predecessors in interest, successors in interest, assigns and any other person acting (or purporting to act) on their behalf.

2. “Delphi” shall mean and refer to Delphi Corporation, DPH Holdings, and Delphi Automotive LLP, as well as any directors, officers, employees, trustees, agents, administrators, actuaries, attorneys, accountants, consultants, representatives, subsidiaries, predecessors in interest, successors in interest, assigns and any other person acting (or purporting to act) on behalf of them.

3. The “Delphi Pension Plans” shall mean and refer to any defined benefit pension plan sponsored by Delphi.

DOCUMENTS AND THINGS TO BE PRODUCED

1. All documents and things (including e-mails or other correspondence, spreadsheets, reports, analyses, snapshots, funding estimates, proposals or offers) received, produced, or reviewed by Matthew Feldman between January 1, 2009 and December 31, 2009 related to: (1) Delphi;

(2) the Delphi Pension Plans; or (3) the release and discharge by the Pension Benefit

Guaranty Corporation of liens and claims relating to the Delphi Pension Plans.

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

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