

*U.S. Dep't of the Treas. v. Pension Benefit  
Guar. Corp.*

No. 1:12-mc-00100-EGS

Pet. Opp'n Resp. Mot. Compel

Ex. A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF LORENZO RASETTI

1. I am the Chief Financial Officer at the Department of the Treasury's (Treasury) Office of Financial Stability (OFS), where I have been employed since February 22, 2010. OFS is the office within Treasury with the authority to establish any investments or programs under the Troubled Asset Relief Program, which included the Automotive Industry Financing Program (AIFP). Under the AIFP, Treasury made emergency loans to General Motors Corporation (GM) and Chrysler LLC (Chrysler) to provide a path for these companies to go through orderly restructurings. In my capacity as Chief Financial Officer, I have responsibility for the financial and operational aspects of programs established under TARP, including AIFP. None of the individuals with primary responsibility for the auto restructurings in 2009 are currently employed at Treasury.

2. I submit this declaration in opposition to the motion of respondents to compel the production of documents withheld pursuant to the deliberative process privilege, the attorney-client privilege, and the work product doctrine.<sup>1</sup> I make the following statements to the best of my understanding, information, and belief, based on knowledge that I have acquired in the performance of my official duties, and based on information Treasury personnel have provided to me.

**Respondents' Request and Treasury's Production of Documents**

3. This action relates to a document subpoena issued to third-party Treasury by the respondents (the Document Subpoena). I am informed by counsel that the Document Subpoena requests documents from Treasury, which respondents assert that they need for their claim against interested party Pension Benefit Guaranty Corporation (PBGC) in the litigation *Black v. PBGC*, No. 2:09-cv-13616-AJT-MKM (E.D. Mich.). Treasury moved to quash the Document Subpoena, and that motion was denied by this Court on June 19, 2014. ECF No. 27 at 1. On November 4, 2014, the Court approved a stipulation negotiated between Treasury and the respondents that included the following terms:

- 1) Treasury would be considered to have complied in full with the Document Subpoena if it conducted searches for records containing negotiated search terms relating to Delphi and "produced to Counsel all non-privileged portions of all documents responsive to the Document Subpoena located as a result of those searches";

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<sup>1</sup> In an effort to narrow the scope of disputed documents and upon further review, Treasury has withdrawn its privilege claims from the following documents on the privilege log and released them to the respondents: Items 53, 71, 74, 235, 259, 260, 274, 276, 307, 320, 340, 341, 384, 395, 452, 459, 506, 563, 620, 715, 717, 725, 727, 773, 774, 834, 835, 877, 894, 899, 901, 902, 903, 952, 965, 967, 1025, 1028, 1031, 1032, 1039, 1051, 1088, 1090, 1093, 1103, 1111, 1117, 1131, 1132 and 1134.

- 2) Treasury would use its “best efforts” to make its final production of documents under the stipulation within 135 days of the date by which the stipulation was approved by the Court; and
- 3) Treasury would have 60 days from the date of its final production of documents under the stipulation “to provide counsel with a privilege log covering all documents or portions of documents encompassed by this stipulation . . . but withheld pursuant to claim of privilege.”

4. In accordance with standard Treasury procedures, attorneys for Treasury initially reviewed the documents collected in response to the Document Subpoena. I understand that Treasury produced responsive documents on a rolling basis and completed its production of documents on March 31, 2015, producing more than 3500 documents in full. Twelve hundred seventy-three documents or portions of documents were withheld pursuant to claim of privilege under one or more of the following privileges: the presidential communications privilege, the deliberative process privilege, the attorney-client privilege, or the work product doctrine.

5. On June 1, 2015, Treasury produced to respondents a privilege log covering 768 of the documents withheld in full or part pursuant to claim of privilege. On June 10, 2015, Treasury produced a privilege log covering the additional 505 documents withheld in full or part pursuant to claim of privilege (together, the Privilege Log).

6. On July 9, 2015, respondents filed their “Motion to Compel Withheld and Redacted Documents or For *In Camera* Review,” challenging the privilege designations of 866 of the 1273 documents on the privilege log.

**The Auto Task Force**

7. The Auto Task Force was established by President Obama on or about February 15, 2009, to assume responsibility for reviewing viability plans submitted by GM and Chrysler. Co-chaired by the Secretary of the Treasury, Timothy Geithner, and by the Director of the National Economic Council (NEC), Larry Summers, the Auto Task Force consisted of ten senior officials of the federal government. Staffing for the Auto Task Force was provided by a team of Treasury and NEC personnel (Auto Team). Steven Rattner and Ron Bloom were named by the President to lead the Auto Team. Harry Wilson and Matthew Feldman were senior members of the Auto Team.

**Deliberative Process Privileged Documents**

8. I hereby assert a claim of the deliberative process privilege over the documents identified as deliberative on the Privilege Log and as modified by this declaration. I base this assertion on my personal review of each of the entries on the Privilege Log and a review of a sampling of the documents described on the Privilege Log. I have also relied on the description and evaluation of the documents provided by Treasury attorneys in making this declaration to assert the deliberative process privilege.

9. In asserting a claim of privilege with respect to pre-decisional deliberative documents, I have considered whether the document was created before the final adoption of an agency policy or position and whether the document reflects the consultative process leading up to the formulation of an agency policy or position. I have claimed the privilege only to protect those intra-governmental documents reflecting advisory opinions, recommendations, and deliberations that are part of the process by which agency decisions and policies are formulated. Treasury does not seek to protect documents containing factual matters unless those factual matters are so

intertwined with advisory opinions, recommendations, conclusions, or reasoning by government officials that the factual material cannot be excised from the privileged materials or unless the factual matter itself, through its selection and distillation by the author, would reveal the author's mental processes or the agency's deliberations. Documents are withheld in full where there is not a reasonably segregable portion that was not privileged. The privilege is not claimed to protect all opinions, conclusions, mental impressions and thought processes of government officials, but only those whose disclosure would interfere with vital government functions or would cause injury to the quality of agency decisions. Other documents are withheld in part, and reasonably segregable non-privileged portions are produced.

10. Based on my review of the documents over which Treasury asserts the deliberative process privilege, I have determined that the production of the withheld documents or redacted portions thereof would inhibit the frank and honest discussion of policy matters, and would adversely affect the quality of Treasury's decisions and policies. The documents relate to sensitive discussions regarding Treasury's policies with respect to the administration of taxpayer money, including the funds used to support GM and Chrysler, as well as Treasury's broader role in preserving financial stability and protecting the U.S. economy. These include deliberations over, among other things, potential restructuring of the auto industry, evaluation and consideration of internal restructuring proposals from GM and Chrysler and external restructuring and investment proposals from other companies, and advising GM on broad strategic issues affecting its restructuring.

11. The documents referenced on the Privilege Log were created during internal deliberations regarding various aspects of the GM and Chrysler bankruptcies.<sup>2</sup> We have identified four categories of deliberative process privileged documents reflected in the Privilege Log: A. Draft slides and presentations and related deliberations on Chrysler and GM bankruptcy considerations; B. Deliberations regarding substantive responses to congressional or press inquiries and prepared public statements; C. Deliberations and materials shared with or relating to PBGC discussions; and D. Internal deliberations regarding financing, cash flows, or other restructuring considerations related to GM's key supplier Delphi Corporation (Delphi). Examples of control numbers of challenged deliberative process privileged documents associated with each category are listed in paragraphs 12 through 15 below.

12. *Category A: Draft slides and presentations and related deliberations on Chrysler and GM bankruptcy considerations.* The slides, presentations, and related correspondence in this category relate to various aspects of Treasury's decisions to provide taxpayer funding to both GM and Chrysler in 2009 in connection with the restructuring of those two companies. In December 2008, the chief executives of Chrysler and GM appeared before Congress and appealed for emergency Government assistance to keep them afloat. Shortly thereafter, President Bush announced that Treasury would make loans available to Chrysler and GM from

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<sup>2</sup> Respondents have challenged five documents for which no privilege was asserted on the privilege log. This was an oversight and Treasury regrets the error. We are withdrawing the claim of privilege for Item 1090, and this document has been released to the respondents. The correct privilege assertions for the remaining four documents are as follows. Item 205 is a redacted email that was produced to respondents at UST-BL-035568 and contains deliberative process privileged material regarding Delphi planning. Item 443 is an email attachment to a cover email (produced in full to the respondents at UST-BL-051556) withheld for the deliberative process privilege as it contains internal Treasury edits to a draft GM statement regarding Delphi restructuring proceedings. Item 662 is an email withheld for the deliberative process privilege containing pre-decisional information regarding Stable Value Funds developments in connection with the GM bankruptcy. Item 1151 is an email thread that has been withheld based on the deliberative process privilege and contains pre-decisional information about a draft memorandum regarding auto industry issues.

TARP. On December 31, 2008, Chrysler and GM voluntarily entered into separate loan and security agreements with Treasury setting forth the terms and conditions of the Government's short-term assistance. As a condition of the Government's agreements to provide financing, Chrysler and GM were required to demonstrate that the assistance would allow them to achieve long-term viability. In early January 2009, Treasury made emergency loans to the automakers to keep them afloat while they developed restructuring plans for long-term viability. On February 17, 2009, Chrysler and GM submitted their restructuring plans. On March 30, 2009, President Obama announced the results of the Auto Team's review of Chrysler's and GM's restructuring plans. The Auto Team concluded that the automakers' plans were not viable as currently structured. The Auto Team informed Chrysler that it would provide additional financing to Chrysler only if Chrysler formed a partnership with another company, such as Fiat. Subject to Chrysler meeting certain other aspects of its viability plan, Treasury agreed to provide Chrysler with working capital for 30 days while it sought a definitive agreement with Fiat. The Auto Team agreed to provide GM with working capital for 60 days to develop a more aggressive restructuring plan. Throughout this process, which culminated in GM's declaring bankruptcy under Section 363 of Chapter 11 of the Bankruptcy Code on June 1, 2009 and exiting from bankruptcy as a reorganized entity on July 10, 2009, Treasury reviewed broad strategic decisions presented by GM in order to determine whether GM's restructuring was conducted on commercially reasonable terms. The documents in this category contain pre-decisional deliberations regarding numerous aspects of the Chrysler and GM restructurings. Furthermore, the preliminary opinions, recommendations, and deliberations in these documents may have been taken into account in, or formed the bases for, developing Treasury's policies with respect to its efforts to restructure the auto industry. Release of such documents would have a chilling effect



on the free exchange of opinions and ideas among Treasury personnel involved in efforts to respond to future economic crises. Documents in this category include Items 4, 37, 54, 72, 77, 104, 144, 165, 234, 240, 525, 594, 615, 634, 670, 742, 775, 813, 826, 939, and 1220.

13. *Category B: Deliberations regarding substantive responses to congressional or press inquiries and prepared public statements.* The documents in this category reflect Treasury discussions regarding possible public statements and responses to congressional or press inquiries concerning issues related to the GM, Chrysler, and Delphi reorganizations. These documents were used to develop articulations of Treasury policies regarding the GM, Chrysler and Delphi restructurings at a time when such policies were still being developed. The preliminary opinions, recommendations, and deliberations in these documents may have been considered in developing any of the policy positions that Treasury may have adopted. These documents neither represent a complete and accurate record of all of the information considered nor reflect any statement of agency policy or final decision. The documents are pre-decisional and constitute part of the deliberative process regarding Treasury support for the GM and Chrysler restructurings. Release of such documents would have a chilling effect on the free exchange of opinions and ideas among Treasury personnel involved in efforts to respond to future economic crises. Documents in this category include Items 75, 78, 81, 126, 131, 409, 436, 488, 489, 913, 1041, 1188, and 1269.

14. *Category C: Deliberations and materials shared with or relating to PBGC discussions.* In its role as an advisor and lender of last resort to GM, Treasury interacted with GM, Delphi, and the PBGC. The documents in this category consist of inter-agency draft statements, emails, and spreadsheets reflecting Treasury and PBGC deliberation on issues related to GM and Delphi pension obligations. These documents neither represent a complete and accurate record of all of

the information considered nor reflect any statement of agency policy or final decision. The documents are pre-decisional and constitute part of the deliberative process regarding Treasury facilitation of GM's restructuring, which included the need to stabilize the financial condition of Delphi, which was a key supplier to GM. Release of such documents would have a chilling effect on the free exchange of opinions and ideas among Treasury personnel involved in future discussions over pension-related issues. Documents in this category include Items 31, 39, 185, 212, 523, 880, and 1195.

15. *Category D: Internal deliberations regarding financing, cash flows, or other restructuring considerations related to Delphi.* The documents in this category reflect internal communications, drafts, slides and other documents that may have been considered by members of the Auto Team as Treasury provided high-level, strategic advice to GM about Delphi. Delphi, a one-time subsidiary of GM, became independent in 1999 and then filed for bankruptcy in October 2005, long before any government involvement in the GM and Chrysler restructurings. As Delphi worked through its restructuring, pension issues were one of several issues that Delphi and its creditors and strategic customers, including GM, had to address. Prior to its own financial distress, GM attempted to assist in Delphi's restructuring because Delphi was a key supplier. As GM's primary lender in 2009, Treasury was concerned about GM's overall exposure to risks related to distressed suppliers, including Delphi. Treasury facilitated GM's consideration of several issues related to the Delphi restructuring, and Treasury personnel communicated internally regarding such facilitation. These documents are pre-decisional and constitute part of the deliberative process regarding Treasury support for GM's restructuring. Release of such documents would have a chilling effect on the free exchange of opinions and ideas among Treasury personnel involved in efforts to respond to future economic crises.

Documents in this category include Items 26, 27, 33, 36, 48, 96, 164, 237, 249, 302, 318, 723, 828, 1034, and 1209.

16. I understand that respondents have claimed that Treasury is inappropriately withholding documents authored by Silver Point Capital and GM. ECF No. 30 at 24 and n.6. These documents had "Silver Point Capital" or "General Motors" inserted in the author field because of metadata indicating that those entities may have been the original source of the documents. However, the documents themselves are either drafts being circulated internally at Treasury or are drafts circulated between Treasury, its advisors, and/or the PBGC featuring substantive edits from Auto Team members, Treasury's advisors (including Cadwalader, Wickersham & Taft LLP (Cadwalader) and Rothschild, Inc. (Rothschild)) or PBGC officials.<sup>3</sup> Treasury did not withhold drafts between Treasury and Silver Point Capital, or between Treasury and GM.

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<sup>3</sup> See Item 65 (attachment to email released to respondents at UST-BL-014883 from Joseph House of the PBGC to Matt Feldman providing PBGC edits to a draft GM statement regarding Delphi-PBGC settlement); Item 89 (attachment to email released to respondents at UST-BL-017580 from Harry Wilson to himself attaching files to work on over the weekend, including chart comparing a proposal received from Platinum with information received on a related phone call); Item 95 (same cover email as Item 89, attachment is an internal draft memorandum discussing GM's human capital requirements); Item 112 (attachment to email released to respondents at UST-BL-017767 from Harry Wilson to Steve Rattner, Ron Bloom and Haley Stevens from Treasury, Diana Farrell and Brian Deese from the White House, Todd Snyder and Ira Wolfson from Rothschild, John Rapisardi from Cadwalader, and cc'ing himself attaching a proposed workplan identifying key questions for the GM restructuring); Item 113 (attachment to email released to respondents at UST-BL-017770, which is a response from Haley Stevens to Harry Wilson's email at UST-BL-017767 adding Matt Feldman and Sally Wrennall-Montes of Treasury and Avra Siegel of the White House to the thread and attaching the same document as Item 112, a proposed workplan identifying key questions for the GM restructuring); Item 115 (attachment to email released to respondents at UST-BL-017799 from Harry Wilson to Steve Rattner, Ron Bloom, Matt Feldman, Clay Calhoon, and Haley Stevens from Treasury, Diana Farrell and Brian Deese from the White House, Todd Snyder, Ira Wolfson and Dustin Mondell from Rothschild, and John Rapisardi from Cadwalader attaching a proposed workplan for numerous restructuring tasks for GM and Chrysler); Item 394 (attachment to email released to respondents at UST-BL-048756 of Harry Wilson sending files to himself, attachment is an internal draft memorandum discussing GM's human capital requirements); Item 471 (attachment to email released to respondents at UST-BL-053344 of Harry Wilson sending files to himself, attachment is an internal draft memorandum discussing GM's human capital requirements); Item 830 (attachment to email released to respondents at UST-BL-067362 of Harry Wilson sending files to himself, attachment is a draft outline of issues and factors regarding long-term demand for vehicles); Item 875 (attachment to email released to respondents at UST-BL-067471 of Harry Wilson sending files to himself, attachment is

**Attorney-Client Privileged Documents**

17. I am aware that respondents seek information that Treasury has deemed privileged under the attorney-client privilege. I understand that the attorney-client privilege protects confidential communications between clients and their attorneys made for the purpose of securing legal advice or services.<sup>4</sup> With respect to this matter, I understand that Cadwalader and Sonnenschein Nath & Rosenthal LLP (Sonnenschein) served as outside counsel to Treasury's Auto Team and that the Department of Justice also represented Treasury with respect to GM, Chrysler, and Delphi bankruptcy litigation proceedings in 2009. In addition, internal Treasury attorneys including Paul Nathanson, Bernard Knight, Jr., Joseph Samarias, Mara McNeill, Julia Yoo, Darius Kingsley, Duane Morse, and Shira Minton provided legal advice to members of the Auto Team.<sup>5</sup>

18. I have reviewed a sample of the documents over which Treasury asserts the attorney-client privilege. All of the withheld records involve confidential communications between a lawyer from Cadwalader, Sonnenschein, the Department of Justice, or a Treasury internal attorney and Auto Team personnel in the performance of the lawyer's official duties. Moreover, all of the withheld records either feature an attorney providing legal advice or include a request

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a draft GM letter discussing purchase terms for Delphi corporate assets and foreign subsidiaries); Item 951 (attachment to email released to respondents at UST-BL-067978 of Harry Wilson sending files to himself, attachment is a predecisional spreadsheet of GM and Chrysler funding needs during restructuring periods); and Item 1040 (attachment to email released to respondents at UST-BL-068591 of Harry Wilson sending files to himself, attachment is an internal draft memorandum discussing GM's human capital requirements).

<sup>4</sup> Item 242 was incorrectly withheld based on the attorney-client privilege, while it should have been withheld based on the deliberative process privilege. It is an email attachment consisting of draft slides containing pre-decisional information related to Delphi contingency planning and possible effects of Delphi's restructuring on GM. Its cover email was released to respondents at UST-BL-036260.

<sup>5</sup> See, e.g., Item 1067 (email from Treasury attorney Paul Nathanson to Matt Feldman and Harry Wilson discussing legal issues relevant to Delphi's reorganization) and Item 1198 (email from Treasury attorney Mara McNeill to Matt Feldman discussing legal issues relevant to property considerations in connection with GM bankruptcy proceedings).

from a Treasury employee or from the agency to inside or outside counsel seeking to protect the interests of the agency, by, for example, asking for an opinion on the law, seeking legal services, or requesting assistance in a legal proceeding. The withheld communications neither involve Treasury correspondence with a third party nor convey information solely obtained from a third party. Should this withheld information be disclosed, it would inhibit open communication between Treasury and its lawyers, thereby depriving Treasury of the full and candid counsel of its attorneys.

19. Matthew Feldman provided both legal and non-legal advice while employed by the Auto Team. Treasury has only withheld documents to or from Mr. Feldman based on the attorney-client privilege where the content and context make clear that he was providing legal advice. For example, Item 206 on the privilege log is a redacted email thread from Treasury employee Erik Weeks to Matthew Feldman seeking legal review and input regarding the sale of Delphi assets during its bankruptcy and whether taxpayer dollars were used in support in Delphi. Because this email contains a request for legal advice from counsel, it is properly redacted pursuant to the attorney-client privilege.<sup>6</sup>

20. I understand that Treasury's privilege log contains the author, recipient, and cc information for the latest-in-time email on redacted or withheld email threads. This occasionally means that the attorney-client privileged information on a redacted thread occurred earlier in that email conversation and is therefore not immediately evident from the author-recipient

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<sup>6</sup> See also Item 208 (redacted email featuring Matt Feldman's response to the legal question posed by Treasury employee Erik Weeks in Item 206); Item 209 (redacted later thread of Item 208 regarding potential follow-up legal questions from Treasury employee Erik Weeks to Matt Feldman); Item 210 (redacted email from Treasury attorney Julia Yoo to Matt Feldman cc'ing Treasury employee Vikram Mehta following up on the same the issue of whether taxpayer dollars were used in the sale of Delphi assets during its bankruptcy); and Item 658 (withheld email from Matt Feldman to Harry Wilson, Steven Rattner, and Ron Bloom providing his legal impressions and analysis of Delphi bankruptcy proceedings).

information on the privilege log. For example, respondents have challenged Item 222, which Treasury withheld based on the attorney-client privilege. This is a redacted email thread produced to the respondents at UST-BL-035882—UST-BL-035883. The redaction is in an earlier thread of the email, from Matt Feldman to outside counsel Josh Brant and John Rapisardi of Cadwalader and to Todd Snyder of Treasury's advisors Rothschild, cc'ing Harry Wilson and discussing legal advice regarding the plan for Delphi's bankruptcy.<sup>7</sup>

21. Respondents have also challenged certain email attachments withheld for the attorney-client privilege on the basis that the author and addressee are not listed. This information can generally be found by looking at the entry for the immediately preceding email. For example, respondents challenged the attorney-client privilege and attorney work product privilege asserted for Item 985. Item 984 is the cover email to this attachment, and the privilege log makes clear

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<sup>7</sup> See also Item 430 (redacted email thread produced to respondents at UST-BL-050391—UST-BL-050396 in which the redacted portion is an email from attorney Oren Haker of Cadwalader to Harry Wilson, Matt Feldman, DOJ attorneys Matthew Schwartz and Joseph Cordaro, and Cadwalader attorney John Rapisardi providing legal advice regarding bankruptcy litigation materials received from another party); Item 454 (redacted email thread produced to respondents at UST-BL-052168 where redacted portion is an email from attorney James Langston of Cadwalader to Auto Team members Harry Wilson, Sadiq Malik, Matt Feldman, and David Markowitz, and to Treasury attorneys Paul Nathanson and Darius Kingsley cc'ing Cadwalader attorneys Ron Hopkinson, Greg Patti and Jonathan Karas providing legal advice regarding proposed amendments to an agreement circulated by opposing counsel); Item 493 (redacted email thread produced to respondents at UST-BL-055268—UST-BL-055275 where redacted portion is an email from attorney Oren Haker of Cadwalader to Harry Wilson and Matt Feldman, DOJ attorneys Matthew Schwartz and Joseph Cordaro, and Joseph Rapisardi and Joseph Zujkowski of Cadwalader providing legal advice on a supplemental modification procedures order as submitted by opposing counsel); Item 720 (redacted email thread in which lower threads feature an email from Aimee Cummo of Sonnenschein to Treasury attorneys Duane Morse and Mara McNeill providing legal advice regarding potential Treasury consent to GM's proposed amendment with its term loan lenders, as well as an email from Treasury attorney Duane Morse forwarding Ms. Cummo's email to additional Treasury recipients Ron Bloom, Steven Rattner, Brian Deese, Diana Farrell, James Lambright, Michael Tae, Aaron Bartley, Alan Fu, and Haley Stevens, Todd Snyder of Rothschild, and John Rapisardi of Cadwalader and providing his own legal advice on the situation, then forwarded from Aaron Bartley to Harry Wilson); Item 840 (withheld email thread where earlier email is from Oren Haker of Cadwalader to Matt Feldman and Harry Wilson, cc'ing John Rapisardi of Cadwalader providing legal advice on various issues relating to Delphi's bankruptcy proceedings); and Item 936 (withheld email thread where Matt Feldman is forwarding Harry Wilson legal advice from John Rapisardi of Cadwalader regarding Delphi credit agreements).

that this email and attachment were sent from DOJ attorney Joseph Cordaro to Matt Feldman and Harry Wilson, cc'ing John Rapisardi and Oren Haker of Cadwalader, Treasury attorney Paul Nathanson, and DOJ attorney Matthew Schwartz providing legal advice regarding draft communications with the Court about Delphi's bankruptcy mediation.<sup>8</sup>

**Attorney Work Product Privileged Documents**

22. I am aware that respondents seek information that Treasury has deemed protected under the work-product protection. The work-product protection shields from disclosure records created in anticipation of litigation. Accordingly, I understand that the doctrine does not extend to materials created in the ordinary course of business or for non-litigation purposes.

23. I have reviewed a sample of the documents over which Treasury asserts the work-product protection. All of the withheld documents were created or reviewed by Cadwalader, Department of Justice, or internal Treasury attorneys in anticipation of the following litigation. Treasury was involved in litigation regarding the GM restructuring from June 1, 2009 until July 10, 2009, when the United States Bankruptcy Court for the Southern District of New York approved the proposed Section 363 restructuring of GM. Chrysler filed for bankruptcy on April 30, 2009, and completed the sale of most Chrysler assets to Chrysler Group LLC on June 10, 2009. The GM and Chrysler bankruptcy litigations were anticipated months prior to their bankruptcy filing dates.<sup>9</sup> Withholding these records will ensure that Treasury attorneys along with their outside

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<sup>8</sup> See also Item 987 (email attachment to a later thread of the same email described at Item 984); and Item 989 (same).

<sup>9</sup> See, e.g., Remarks by the President on the American Automotive Industry, March 30, 2009, *available at* <https://www.whitehouse.gov/the-press-office/remarks-president-american-automotive-industry-33009> ("[M]y administration will offer GM and Chrysler a limited additional period of time to work with creditors, unions, and other stakeholders to fundamentally restructure in a way that would justify an investment of additional taxpayer dollars.").

counsel can prepare for litigation in the future without having to fear that their personal correspondence, notes, and memoranda will be subject to discovery.

24. Respondents claim that for most of the work-product protected documents that they challenge, “the identity of the author and recipient(s) has not been disclosed.” This is incorrect. Email attachments generally follow their underlying email on the privilege log, which provides the sender and recipient information for both the email and the email attachments. For example, items 201, 202 and 203 on the privilege log are email attachments to the redacted email thread described at item 200, which is an email from attorney Jonathan Stone at Cadwalader to members of the Auto Team at Treasury cc’ing other Cadwalader attorneys and attaching several documents relevant to Cadwalader’s legal analysis of options for GM brownfield properties created for the purpose of GM’s Section 363 bankruptcy litigation (attached at Item 203).<sup>10</sup>

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<sup>10</sup> See also Item 207 (email attachment to the redacted email thread described on the privilege log as Item 206 from Treasury employee Erik Weeks to Matthew Feldman seeking legal review and input regarding what taxpayer dollars were used in the sale of Delphi assets during its bankruptcy); Item 792 (email attachment to the withheld email thread at Item 791 from Oren Haker of Cadwalader to Matt Feldman and Harry Wilson, cc’ing John Rapisardi of Cadwalader attaching attorney work product draft summary of key provisions of the court document the Second Amendment to the Accommodation Agreement); Item 983 (email attachment to withheld email thread described at Item 982 as Harry Wilson sending an email to his own gmail account, Cadwalader attorneys Oren Haker and John Rapisardi, DOJ attorneys Joseph Cordaro and Matthew Schwartz, and Matt Feldman and Treasury attorney Paul Nathanson attaching attorney work product from Cadwalader providing draft Auto Task Force responses to debtors’ submissions in Delphi reorganization proceedings); Item 985 (email attachment to withheld email thread described at Item 984 from DOJ attorney Joseph Cordaro to Matt Feldman and Harry Wilson cc’ing DOJ attorney Matthew Schwartz, Cadwalader attorneys John Rapisardi and Oren Haker, and Treasury attorney Paul Nathanson attaching draft attorney work product response to debtors’ submissions in Delphi reorganization proceedings); Item 987 (later draft of Item 985, as described in withheld cover email at Item 986); Item 989 (later draft of Item 985, as described in withheld cover email at Item 988); Item 1068 (email attachment to the withheld email thread described on the privilege log at Item 1067 from Treasury attorney Paul Nathanson to Matt Feldman and Harry Wilson attaching attorney work product material created by Mr. Nathanson in response to discovery requests in connection with the Delphi reorganization); Items 1199 and 1200 (email attachments to the withheld email thread described on the privilege log at Item 1198 from Treasury attorney Mara McNeill to Matt Feldman attaching attorney work product materials to be assessed in connection with GM bankruptcy); Item 1230 (email attachment to the withheld email thread described on the privilege log at Item 1229 from Erin Lewis at Cadwalader to Treasury attorney Joseph Samarias cc’ing DOJ attorneys Matthew Schwartz and Joseph Cordaro, Matt Feldman, and Cadwalader attorneys Peter Friedman, Oren Haker, and Jeannine D’Amico attaching



25. In the interest of releasing as much material as possible to the respondents, certain cover emails have been released in full to the respondents while their email attachments remain withheld or redacted on the privilege log. For example, item 215 on the privilege log is an email attachment that has been withheld in full based on the attorney work product and deliberative process privileges, while the cover email has been released at UST-BL-035750. The withheld email attachment consists of a slide deck put together by Treasury's investment bank advisor, Rothschild, which incorporates both deliberative material and information provided by counsel regarding the strategic implications on Delphi's bankruptcy court proceedings if GM did not acquire certain Delphi Steering assets.<sup>11</sup>

26. Respondents claim that emails withheld as DPP between Philip Quinn and Matthew Feldman are *ultra vires* and that DPP cannot apply to these emails. This is incorrect because Mr. Quinn works in Treasury's Office of Financial Institutions, which works on PBGC matters as they relate to PBGC's Board, of which the Treasury Secretary is one of three members. Although the PBGC's Board is advised of significant matters, it does not make individual case decisions relating to pension plan terminations. Such decisions lie solely with the PBGC

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attorney work product draft material created in response to discovery requests in connection with the Delphi reorganization); Item 1240 (email attachment to the withheld email described on the privilege log at Item 1239 from Treasury attorney Paul Nathanson to Matt Feldman attaching attorney work product analysis relevant to Delphi bankruptcy proceedings); Item 1242 (email attachment to the withheld email described on the privilege log at Item 1241 from Treasury attorney Paul Nathanson to Matt Feldman attaching attorney work product analysis relevant to Delphi bankruptcy proceedings); and Item 1259 (email attachment to the withheld email thread described on the privilege log at Item 1258 from Joseph Zujkowski of Cadwalader to Harry Wilson and Matt Feldman, cc'ing John Rapisardi and Oren Haker of Cadwalader and DOJ attorneys Matthew Schwartz and Joseph Cordaro attaching an attorney work product summary of objections received to Debtors' Modified Plan of Reorganization in the Delphi reorganization proceedings).

<sup>11</sup> We are withdrawing the attorney work product designation from Items 220, 238, 607, 1052, and 1211 as these documents are more appropriately considered deliberative process privileged materials, although there may have been attorney involvement in the creation of these documents. We note that the cover emails for Items 220 and 1052 have been produced in full to the respondents at UST-BL-035768 and UST-BL-068597, respectively.

Director.<sup>12</sup> Because PBGC's Board does not make individual case determinations for pension plan terminations, the communications at issue between Mr. Quinn and Mr. Feldman would not have been prohibited.

27. I note that many of the documents withheld as work product may also be protected under another privilege.

Based upon information and belief, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of August, 2015.

A handwritten signature in cursive script that reads "Lorenzo Rasetti".

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Lorenzo Rasetti

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<sup>12</sup> 29 C.F.R. § 4002.9(a).