

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

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U.S. DEPARTMENT OF THE)	
TREASURY,)	
)	
Petitioner,)	
)	No. 1:12-mc-00100-EGS
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, et al.,)	
)	
Respondents.)	
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PETITIONER'S MOTION FOR RECONSIDERATION

Petitioner U.S. Department of the Treasury (Treasury) hereby moves for reconsideration and vacation of the provision of the order dated April 13, 2017, ECF No. 44, requiring Treasury to produce to respondents Dennis Black, Charles Cunningham, Kenneth Hollis, and the Delphi Salaried Retiree Association the 63 documents covered by the presidential communications privilege. The grounds for this motion are set forth in the accompanying memorandum. Respondents have expressed their opposition to the motion.

Respectfully Submitted,

CHAD A. READLER
Acting Assistant Attorney General
CHANNING D. PHILIPS
United States Attorney
JACQUELINE COLEMAN SNEAD
Assistant Branch Director

s/ David M. Glass

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Attorneys for Petitioner

Dated: May 22, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2017, I served the within motion, the memorandum in support of the motion, the exhibits to the motion, and the proposed order on all counsel of record by filing them with the Court by means of its ECF system.

s/ David M. Glass

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**MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR
RECONSIDERATION**

PRELIMINARY STATEMENT

This Court found by memorandum opinion dated April 13, 2017, that the 63 documents over which petitioner U.S. Department of the Treasury (Treasury) had asserted the presidential communications privilege were covered by the privilege but that respondents Dennis Black, Charles Cunningham, Kenneth Hollis, and the Delphi Salaried Retiree Association had demonstrated a need for the documents sufficient to overcome the privilege. ECF No. 45 at 10-11. The demonstration of need to which the Court referred consisted of respondents' assertion that the 63 documents might show that Treasury or the White House had exerted pressure on interested party Pension Benefit Guaranty Corporation (PBGC) to terminate respondents' pension plan, the Delphi Retirement Program for Salaried Employees (Delphi Salaried Plan), for

“impermissible or political reasons” and that any such showing might help respondents prove their case against PBGC in *Black v. PBGC*, No. 2:09-cv-13616-AJT-MKM (E.D. Mich.). *Id.* By accompanying order dated April 13, 2017, the Court directed Treasury to produce the 63 documents to respondents. ECF No. 45 at 1.

The provision of the order dated April 13, 2017, directing Treasury to produce the 63 documents to respondents should be vacated upon reconsideration because respondents have not made a showing of need sufficient to overcome the applicability to those documents of the presidential communications privilege. The provision of the order directing Treasury to produce those documents should be modified rather than vacated if respondents are found to have made a showing of need sufficient to overcome the privilege. The order as modified should limit the obligation of Treasury with respect to the documents to the production of any portions showing that Treasury or the White House exerted pressure on PBGC to terminate the Delphi Salaried Plan for impermissible or political reasons.

STATEMENT OF FACTS

A. The Record Dealing with the Delphi Salaried Plan

The Delphi Salaried Plan was terminated in 2009 by agreement between PBGC and Delphi Corporation (Delphi), the company that had maintained the plan for the previous ten years. ECF No. 1, Ex. B at 1, 2. Respondents Black, Cunningham, and Hollis are beneficiaries of the Delphi Salaried Plan. *Id.*, Ex. E ¶ 5. Respondent Delphi Salaried Retirement Association is an association of beneficiaries of the plan. *Id.* ¶ 6. Respondents allege in *Black* that the termination of the Delphi Salaried Plan was wrongful because the termination was “politically motivated,” *id.* ¶ 56, and suffered from other alleged defects. *Id.* ¶¶ 39-40, 49, 52. Respondents therefore ask that the termination be set aside. *Id.*, Prayer ¶ D.

Respondents have engaged in broad discovery in *Black*. They have submitted a request to PBGC as part of their discovery for “every document in PBGC’s possession mentioning Delphi and created over a 4-year period from January 1, 2006, to December 31, 2009.” ECF No. 49-1 at 6. PBGC has responded to that request by producing “more than a million pages of responsive, non-privileged documents,” *id.* at 8, and by producing more than 20,000 additional documents that would have been subject to claims of privilege under the attorney-client, work product, or deliberative process privileges if PBGC had not been ordered to produce the documents under a protective order. Ex. A hereto ¶ 2.

Respondents have also addressed discovery demands to Treasury. By third-party subpoena in *Black* dated January 4, 2012, respondents asked Treasury to produce:

[a]ll documents and things . . . received, produced, or reviewed by [Steven L. Rattner, Matthew A. Feldman, or Harry J. 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 [PBGC] of liens and claims relating to the Delphi Pension Plans.

ECF No. 1, Ex. J, Att. A at 5-6. Messrs. Rattner, Feldman, and Wilson were key members of the Auto Team, the team of 14 federal employees who worked in the spring of 2009 to develop a plan to restructure General Motors, the company from which Delphi had been spun off in 1999. *See* ECF No. 45 at 6 (discussing the Auto Team).

Treasury has complied with respondents’ subpoena by producing more than 6,000 documents comprising more than 70,000 pages. Ex. B hereto ¶ 2. The sole documents responsive to the subpoena that Treasury has not produced are the 63 documents found by the Court to be covered by the presidential communications privilege and 23 other documents held by the Court to be exempt from production under the attorney-client privilege, the work product doctrine, and principles of relevance. ECF No. 45 at 12-17.

Respondents have also taken the depositions of four present or former employees of PBGC: Vincent K. Snowbarger, the Acting Director of PBGC during the period January 2009-July 2010; Cynthia Rene Travia, an actuary in the PBGC Department of Insurance Supervision and Compliance (DISC); C. Dana Cann, a financial analyst in DISC during the period June 2008-August 2009; and Joseph R. House, the Director of DISC in 2008-2009 and the official at PBGC who was “primarily responsibl[e]” in 2008-2009 for “coordinat[ing]” and “collaborat[ing]” with the Auto Team. *See* ECF No. 15, Mem. at 8-9. Those individuals have testified at length at their depositions about the interactions concerning the Delphi pension plans that took place between PBGC and Treasury and PBGC and the Auto Team in 2008-2009. *Id.* at 9 n.10 (citing the relevant portions of the deposition transcripts).

Additional materials concerning the treatment that the beneficiaries of the Delphi Salaried Plan received from Treasury and PBGC have also become available to respondents and to the public since the commencement of *Black*. These materials include three investigative reports, one issued by the Special Inspector General for the Troubled Asset Relief Program (SIGTARP)¹ and two issued by the Government Accountability Office (GAO),² and the records

¹ SIGTARP 13-003, *Treasury’s Role in the Decision for GM to Provide Pension Payments to Delphi Employees* (Aug. 15, 2013).

² (1) GAO-11-373-R, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans* (Mar. 30, 2011); and (2) GAO-12-168, *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Difference in Pension Benefits* (Dec. 15, 2011).

of seven congressional hearings, one a Senate hearing³ and the other six House hearings.⁴ The witnesses at one of the House hearings included two of the three individuals whose records were the subject of respondents' subpoena to Treasury. *See* ECF No. 15, Mem. at 13. The witnesses at one of the other House hearings included all three of those individuals. *See id.*

B. The Minute Order

Treasury was directed by the order dated April 13, 2017, to produce “forthwith” to respondents the 63 documents covered by the presidential communications privilege. The Court vacated that provision of the order by minute order dated May 17, 2017, in contemplation of Treasury's filing a motion for reconsideration “address[ing], *inter alia*, (1) whether respondents have adequately made a ‘showing of need’ for [the 63 documents]; and (2) the standards by

³ Senate Committee on Health, Education, Labor, and Pensions, *Pensions in Peril: Helping Workers Preserve Retirement Security Through a Recession, Focusing on the Pension Benefit Guaranty Corporation's Process for Determining the Amount of Benefits to Be Paid, and PBGC's Recoupment Process When the Estimated Benefit Provided Is Too High and a Retiree Receives an Overpayment That Must Be Repaid*, S. Hrg. No. 111-1078 (Oct. 29, 2009).

⁴ (1) House Committee on Education and Labor, Subcommittee on Health, Employment, Labor and Pensions, *Examining the Delphi Bankruptcy's Impact on Workers and Retirees*, H. Serial No. 111-42 (Dec. 2, 2009); (2) House Committee on Financial Services, Subcommittee on Oversight and Investigations, *After the Financial Crisis: Ongoing Challenges Facing Delphi Retirees*, H. Serial No. 111-143 (July 13, 2010) (field hearing in Canfield, Ohio); (3) House Committee on Oversight and Government Reform, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, *Lasting Implications of the General Motors Bailout*, H. Serial No. 112-69 (June 22, 2011); (4) House Committee On Oversight and Government Reform, *Delphi Pension Fallout: Federal Government Picked Winners & Losers, So Who Won and Who Lost?*, H. Serial No. 112-106 (Nov. 14, 2011) (field hearing in Dayton, Ohio); (5) House Committee on Oversight and Government Reform, Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs, *The Administration's Auto Bailouts and Delphi Pension Decisions: Who Picked the Winners and Losers?*, H. Serial No. 112-178 (July 10, 2012); and (6) House Committee on Oversight and Government Reform, Subcommittee on Government Operations, *Oversight of the SIGTARP Report on Treasury's Role in the Delphi Pension Bailout*, H. Serial No. 113-60 (Sept. 11, 2013).

which the Court should determine, during an *in camera* inspection, whether [the 63 documents] are ‘relevant’ to respondents’ case.” This motion is filed in response to the minute order.

The minute order can be read in two ways. It can be read as relieving Treasury of any obligation to produce the 63 documents or merely as relieving it of its obligation to produce the documents immediately. Treasury does not wish to waive its right to appeal the order dated April 13, 2017, if the minute order relieves it merely of its obligation to produce the documents immediately. Treasury therefore asks the Court to clarify how the minute order should be read before June 12, 2017, the deadline for any notice of appeal of the order dated April 13, 2017.

ARGUMENT

I. RESPONDENTS HAVE NOT MADE A SHOWING OF NEED SUFFICIENT TO OVERCOME THE APPLICABILITY OF THE PRESIDENTIAL COMMUNICATIONS PRIVILEGE TO THE 63 DOCUMENTS.

The presidential communications privilege “is qualified, not absolute, and can be overcome by an adequate showing of need,” *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997), but overcoming the privilege is “more difficult” than overcoming the deliberative process privilege, *id.* at 746, another privilege that “can be overcome by a sufficient showing of need.” *Id.* at 737. Even in a criminal action, where “the interest in assuring fair trials and enforcing the law” is at stake, *id.* at 753, a party looking to overcome the presidential communications privilege must demonstrate “that each discrete group of the subpoenaed materials likely contains important evidence,” i.e., evidence “directly relevant to issues that are expected to be central to the trial,” and “that this evidence is not available with due diligence elsewhere.” *Id.* at 754. *Black*, of course, is not a criminal action. Respondents’ burden is therefore higher than if it were. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 384 (2004) (holding that “[t]he distinction *Nixon* drew between criminal and civil proceedings is not just a matter of formalism” and that

“[t]he need for information for use in civil cases, while far from negligible, does not share the urgency or significance of the criminal subpoena requests in *Nixon*”) (referring to *United States v. Nixon*, 418 U.S. 683 (1974)); *Sealed Case*, 121 F.3d at 754 (declining to read *Nixon* as requiring that information covered by the presidential communications privilege “be shown to be critical to an accurate judicial determination” because that would be “incompatible with the [*Nixon*] Court’s repeated emphasis on the importance of access to relevant evidence in a criminal proceeding”); *Senate Select Comm. on Pres. Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (holding that a congressional committee must show that material is “demonstrably critical” to the functions of the committee to overcome the presidential communications privilege).

The determination of this Court that respondents had made a showing of need for the 63 documents sufficient to overcome the presidential communications privilege relied on *Dellums v. Powell*, 561 F.2d 242 (D.C. Cir. 1977), ECF No. 44 at 11, but *Dellums* is inapposite. *Dellums* arose from “the arrest of [the] plaintiffs and their class on the grounds of the Capitol on May 5, 1971, and their subsequent detention during the ‘May Day’ demonstrations held to protest American military involvement in Southeast Asia.” 561 F.2d at 244. Damages were sought under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), from former Attorney General John Mitchell. Former President Nixon invoked the presidential communications privilege when a subpoena issued to him by the plaintiffs in *Dellums* asked him to produce “all tapes and transcripts of White House conversations during the period of April 16 through May 10, 1971, at which [the] ‘May Day’ demonstrations . . . were discussed.” *Id.* President Ford did not support the invocation of the privilege. *See id.* at 245. Cautioning that “a basis for counsel to seek reconsideration” would exist if the invocation of the privilege was supported by the

newly-inaugurated President Carter, *id.*, the court held that the plaintiffs had made “at least a ‘preliminary showing of necessity’ for information [in the tapes and transcripts] that [was] not merely ‘demonstrably relevant’ but indeed substantially material to their case.” *Id.* at 249 (footnotes omitted). The court therefore ordered that any “conversations relating to the May Day activities” be produced from the tapes and transcripts. *Id.* at 250.

This case is different from *Dellums* because *Dellums* involved an invocation of the presidential communications privilege by a former president and not, at any stage, by a president who was still in office. This case is also different from *Dellums* because the right of the plaintiffs to relief in *Dellums* was reasonably clear. Not only had a “lengthy trial . . . established [in *Dellums*] that the Department of Justice played a leading role in the executive’s efforts to cope with the May Day demonstrations, and that there had ensued substantial violations of fundamental constitutional rights on May 5, 1971,” 561 F.2d at 249, but “[o]ther discovery” had established that “high-level meetings were held at the Justice Department to plan for the May Day demonstrations”; that former Attorney General Mitchell “was briefed on these meetings”; and that “[a]t least one top-level White House aide was present at each of these meetings after April 16, the initial date with which the subpoena was concerned.” *Id.* at 248. Because the sole issue remaining in *Dellums* was “whether, or to what extent, former Attorney General Mitchell was involved in the particular constitutional violations of May 5, 1971,” the plaintiffs were held to have made “a showing of substantial need, in their attempt to establish Mr. Mitchell’s responsibility for the violations, for overcoming the presumption of the privilege assumed to exist for former Presidents.” *Id.*

Respondents cannot make a comparable showing of need in this case because the termination of the Delphi Salaried Plan would not be subject to rescission even if respondents

could show that Treasury or the White House exerted pressure on PBGC to terminate the plan for impermissible or political reasons. The termination of the Delphi Salaried Plan implemented the determination of PBGC under 29 U.S.C. § 1342(c), a provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, “that the Plan must be terminated in order to avoid any unreasonable increase in the liability of the PBGC insurance fund.” ECF No. 15-2; *see* ECF No. 1, Ex. B, ¶ H (provision of the termination agreement referencing the determination). Any exertion of pressure on PBGC to terminate the plan for impermissible or political reasons would provide no ground for the rescission of the plan’s termination so long as that determination was justified.

Respondents have made no showing, moreover, that the 63 documents are likely to contain any evidence that Treasury or the White House exerted pressure on PBGC to terminate the plan for impermissible or political reasons. Respondents, as stated above, have obtained more than a million pages of privileged and unprivileged documents from PBGC and more than 70,000 pages of documents from Treasury. They have also taken the depositions of four present or former employees of PBGC, including the Acting Director of PBGC at the time that the Delphi Salaried Plan was terminated and the official of PBGC who was primarily responsible for coordinating and collaborating with the Auto Team at the time of the termination. Also available to respondents are the SIGTARP and GAO reports on the way in which the beneficiaries of the Delphi Salaried Plan were treated by Treasury and PBGC and the records of the seven congressional hearings on the same subject. Respondents have pointed to nothing in those materials suggesting that Treasury or the White House exerted pressure on PBGC to terminate the Delphi Salaried Plan for impermissible or political reasons. Respondents have merely pointed instead to certain passages from the SIGTARP report purportedly showing that Treasury

played an “active and determinative role . . . in the resolution of Delphi pension issues,” ECF No. 36 at 14, and to the following descriptions of the following documents in Treasury’s June 2015 privilege log:

Document No.	Description in Privilege Log
84	Communications regarding plan for Delphi bankruptcy
619	Weekly report to White House from Department of the Treasury including update from Auto Task Force Group on Delphi Bankruptcy
621	Internal communications regarding strategy for public announcements on GM/Delphi restructuring
766	Draft memorandum regarding PBGC’s decision to take over the salaried and hourly pension plans of Delphi

ECF No. 30 at 32. Nothing in the SIGTARP report and nothing in the descriptions of these documents suggests that the White House or Treasury exerted any pressure on PBGC to terminate the Delphi Salaried Plan for impermissible or political reasons. Unlike the plaintiffs in *Dellums*, therefore, respondents have not made “at least a ‘preliminary showing of necessity for information [in the 63 documents] that is not merely ‘demonstrably relevant’ but indeed substantially material to their case.”⁵ See 561 F.2d at 249.

The inability of respondents to point to evidence showing that Treasury or the White House exerted pressure on PBGC to terminate the Delphi Salaried Plan for impermissible or political reasons should come as no surprise. Respondents alleged at one time in *Black* that

⁵ The reliance placed by respondents on the description of Doc. No. 619 in the privilege log is also misplaced because Doc. No. 619 is not one of the 63 documents found by the Court to be covered by the presidential communications privilege. Doc. No. 619 is Treasury’s weekly report to the White House for the week of April 6, 2009, and an email circulating the report within Treasury. The weekly report consists of 11 bullet points summarizing Treasury’s activities for the week. None of the bullet points has any conceivable relevance to the claims that are being litigated in *Black* except the bullet point captioned “Auto Task Force.” That bullet point and the email circulating the weekly report have been produced to respondents. The remainder of the report has not been produced to respondents because of its alleged irrelevance to *Black*. This Court has declined to order the production of the withheld portions of Doc. No. 619 because “[r]espondents have not challenged Treasury’s relevance assertion.” ECF No. 45 at 17.

certain actions favorable to beneficiaries of a Delphi pension plan other than the Delphi Salaried Plan resulted from “significant pressure by the United States, carried out in connection with governmental policies that were politically motivated.” ECF No. 1, Ex. E ¶ 37. The claim against Treasury and others that respondents based on that allegation was dismissed for failure to state a claim because the claim was held to be based on “‘naked assertion[s] devoid of further factual enhancement’” and therefore was held insufficient under the “‘plausibility’ standard” of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). ECF No. 10-7 at 13. Respondents’ assertion in this case that they should be given access to the contents of the 63 documents because the contents of those documents may show that Treasury or the White House exerted pressure on PBGC to terminate the Delphi Salaried Plan for impermissible or political reasons is likewise a “naked assertion.” The provision of the order dated April 13, 2017, requiring Treasury to produce the 63 documents to respondents should therefore be vacated.

II. ANY PRODUCTION ORDER DEALING WITH THE 63 DOCUMENTS SHOULD LIMIT THE OBLIGATION OF TREASURY TO THE PRODUCTION OF ANY PORTIONS OF THOSE DOCUMENTS SHOWING THAT TREASURY OR THE WHITE HOUSE EXERTED PRESSURE ON PBGC TO TERMINATE THE DELPHI SALARIED PLAN FOR IMPERMISSIBLE OR POLITICAL REASONS.

“If a court believes that an adequate showing of need has been demonstrated [for documents covered by the presidential communications privilege], it should then proceed to review the documents *in camera* to excise non-relevant material.” *Sealed Case*, 121 F.3d at 745. “The court’s task during the *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 remaining relevant material should be released,” *id.* at 745, although any finding of relevance should be stronger in a civil case, like this one, than in a criminal case, like *Sealed Case*.

The asserted need of respondents for the 63 documents is a need, as the Court has stated, solely for those portions of the documents showing that Treasury or the White House exerted pressure on PBGC to terminate the Delphi Salaried Plan for impermissible or political reasons. ECF No. 45 at 10-11. If the Court finds that respondents have made a showing of need sufficient to overcome the presidential communications privilege, it should review the 63 documents to identify any portions showing that Treasury or the White House exerted such pressure on PBGC and should limit the obligation of Treasury with respect to those documents to the production of any portions making such a showing. Such a review should demonstrate, as Treasury has remarked, ECF No. 46-1 at 6, that none of the documents bears upon, much less establishes, the exertion of any such pressure.

CONCLUSION

For the foregoing reasons, Treasury's motion for reconsideration should be granted and the provision of the order dated April 13, 2017, requiring Treasury to produce to respondents the 63 documents covered by the presidential communications privilege should be vacated.

Respectfully Submitted,

CHAD A. READLER
Acting Assistant Attorney General
CHANNING D. PHILIPS
United States Attorney
JACQUELINE COLEMAN SNEAD
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Dated: May 22, 2017

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 v.

PENSION BENEFIT GUARANTY
CORPORATION,

 Interested Party,

 v.

DENNIS BLACK, *et al.*,

 Respondents.

[PROPOSED] ORDER

Upon the motion of petitioner U.S. Department of the Treasury (Treasury) for reconsideration, the materials submitted in support of the motion and in opposition thereto, and good cause having been shown, it is hereby ordered as follows:

1. Treasury's motion is granted.
2. The provision of the order dated April 13, 2017, ECF No. 44, requiring Treasury to produce to respondents Dennis Black, Charles Cunningham, Kenneth Hollis, and the Delphi Salaried Retiree Association the 63 documents covered by the presidential communications privilege is vacated.

Dated:

UNITED STATES DISTRICT JUDGE

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

No. 1:12-mc-00100-EGS

Petitioner's Motion for Reconsideration

Ex. A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DEPARTMENT OF THE
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v.

DENNIS BLACK, *et al.*,

Respondents.

No. 1:12-mc-00100-EGS

DECLARATION OF JOHN A. MENKE

JOHN A. MENKE says:

1. I am an Assistant Chief Counsel of the Pension Benefit Guaranty Corporation (PBGC). I am one of PBGC's attorneys in *Black v. PBGC*, No. 2:09-cv-13616-AJT-MKM (E.D. Mich.).

2. In addition to the other documents that PBGC has produced in *Black* in response to the plaintiffs' discovery demands, it has produced 23,888 documents that would have been subject to claims of privilege under the attorney-client, work product, or deliberative process privileges if the District Court for the Eastern District of Michigan had not ordered PBGC to produce those documents under a protective order.

3. I declare under penalty of perjury that the foregoing is true and correct. Executed
May 22, 2017.



JOHN A. MENKE

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

No. 1:12-mc-00100-EGS

Petitioner's Motion for Reconsideration

Ex. B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DEPARTMENT OF THE
TREASURY,

Petitioner,

v.

PENSION BENEFIT GUARANTY
CORPORATION,

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v.

DENNIS BLACK, *et al.*,

Respondents.


No. 1:12-mc-00100-EGS

DECLARATION OF JASON E. MORROW

JASON E. MORROW says:

1. I am an Attorney Advisor for the United States Department of the Treasury (Treasury). I make this declaration in support of Petitioner's motion for reconsideration.
2. I am aware that Treasury has produced documents to the Respondents pursuant to the subpoena at issue in this case. I have reviewed records to confirm that Treasury has produced approximately 6,445 documents to Respondents, comprising approximately 73,131 pages. The page and document counts include some documents that were produced more than once in response to Respondents' motion to compel. The page count does not include approximately 100 Microsoft Excel spreadsheets that were produced in native format.

3. I declare under penalty of perjury that the foregoing is true and correct. Executed
May ²²__, 2017.



JASON E. MORROW