

U.S. Dep't of the Treas. v. Black
No. 1:12-mc-00100-EGS

Pet. Renewed Mot. Quash

Ex. X

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

)	No. 1:12-mc-00100-EGS
U.S. DEPARTMENT OF THE)	
TREASURY,)	DECLARATION OF RACHANA A.
)	DESAI
Petitioner,)	
)	
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION,)	
)	
Interested Party,)	
)	
v.)	
)	
DENNIS BLACK, et al.,)	
)	
Respondents.)	
)	

DECLARATION OF RACHANA A. DESAI

I, Rachana A. Desai, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am currently the Acting Chief Counsel of the Office of Financial Stability (OFS) in the United States Department of the Treasury (Treasury). I have held this position since June 2013, and have served as an attorney with OFS since January 2011.

2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith. In my current capacity, I am responsible for overseeing the gathering, searching and reviewing of documents related to the above-captioned matter.

3. I have reviewed respondents' document subpoena propounded on Treasury (dated January 4, 2012). It seeks all documents "received, produced, or reviewed" by three former Treasury officials, Matthew Feldman, Harry Wilson and Steven Rattner between January 1, 2009 and December 31, 2009 that relate in any way to the Delphi Corporation (Delphi), any of Delphi's pension plans, or the Pension Benefit Guaranty Corporation's (PBGC) release and discharge of any liens and claims relating to Delphi's pension plans." The subpoena calls upon Treasury to produce large numbers of documents.

4. During their time at Treasury, Mr. Feldman, Mr. Rattner, and Mr. Wilson served on the "Auto Team," which provided staff level support for the Presidential Task Force on the Auto Industry (Auto Task Force). Messrs. Rattner and Wilson worked on the auto restructurings, while Mr. Feldman served as the principal restructuring attorney for the Auto Team. Mr. Rattner left Treasury and returned to the private sector in July 2009, and Messrs. Wilson and Feldman left Treasury and returned to the private sector in August 2009.

5. The Auto Team worked on a variety of auto industry related issues. As Delphi was a major auto supplier, the Auto Team worked on many matters that directly and indirectly involved Delphi, but did not otherwise involve pensions or the facts underlying the instant case.

6. By requests for production (RFPs) dated September 23 and October 14, 2011, respondents asked interested party PBGC to produce 17 categories of documents in *Black v. PBGC*, No.2:09-cv-13616-AJT-MKM (E.D. Mich.). PBGC has provided me with a set of the documents it has produced in response to the RFPs. The documents as produced by PBGC are not identified by responsive category. However, I conclude from my review of the documents that thousands of pages are responsive to Category 8 of that set of RFPs, which requests all

documents PBGC received from, or produced to, the “Federal Executive Branch” since January 1, 2009, related to “Delphi or the Delphi Pension Plans.”

7. In order to search for documents responsive to respondents’ subpoena, Treasury could be required to engage in at least the following time-consuming and unduly burdensome steps:

- a. Identify and segregate all emails, which Mr. Feldman, Mr. Rattner and Mr. Wilson received, produced or reviewed. This process would require searches of the relevant Outlook email mailboxes.
- b. Identify and segregate the electronic and hardcopy documents that Mr. Feldman, Mr. Rattner or Mr. Wilson received, produced or reviewed. Treasury maintains over 15,000 electronic Auto Team related documents on its computer system and over 28 boxes of Auto Team hard copy files. Once identified, these documents would have to be searched one by one for those related to any of respondents’ broad requests. Adding further burden to this review, the “properties” of each electronic document would have to be individually reviewed to determine whether Mr. Feldman, Mr. Rattner, or Mr. Wilson authored the document. Unless an electronic document internally lists its reviewers, we are unable to determine who, other than the author, has reviewed a document. For hard copy documents, unless listed on the document or folder, we are unable to determine who authored or reviewed the document.
- c. Once the universe of possibly relevant document is identified and segregated, a Treasury attorney familiar with the subject matter would need to review each document page by page to determine if the contained information is responsive to any of respondents’ broad requests.
- d. Thereafter, Treasury attorneys would need to review each document line by line to determine whether the document contains any material protected by the attorney-client privilege, the deliberative process privilege or other applicable privileges.

8. Throughout 2011 and 2012 Treasury produced thousands of pages of documents to the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) pursuant to its audit entitled, “Treasury’s Role in the Decision for GM To Provide Pension Payments to

Delphi Employees.” Many of those documents are not responsive to respondents’ document subpoena.

9. Treasury did not assert attorney-client or deliberative process privilege with respect to any document provided by Treasury to SIGTARP because Treasury provided these documents to SIGTARP on an intra-agency basis, and pursuant to Section 6 of the Inspector General Act of 1978, Pub. L. 112-239. Accordingly, in addition to an initial review for responsiveness, Treasury attorneys also would need to review each responsive document provided to SIGTARP for the possible assertion of claims of privilege before providing that document to respondents. Both of these steps would entail a substantial burden, both in terms of the number of hours required by Treasury attorneys and staff, as well as the strain on resources necessitated by a large scale review and document production.

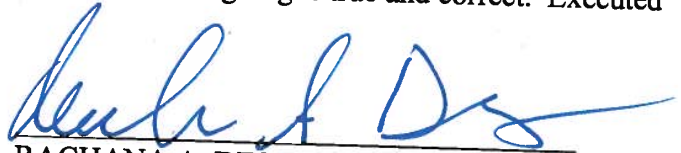
10. On August 9, 2013, Treasury received a subpoena from the House Committee on Oversight and Government Reform for documents referring or relating to retirement or pension benefits for General Motors Company and/or Delphi Corporation employees. Treasury provided an initial production on September 6, 2013.

11. Documents responsive to the Committee’s request may not be responsive to respondents’ document subpoena. Treasury would have to review documents produced to the Committee before providing them to respondents. This would impose a significant burden on Treasury.

12. No one currently working at Treasury has knowledge of the communications referenced in respondents’ deposition subpoena to Treasury except insofar as he or she has reviewed the record or read emails to or from Mr. Feldman or Mr. Wilson since the time that Mr. Feldman and Mr. Wilson left the Auto Team. In addition, the members of the Auto Team have

left Treasury. For that reason, any witness designated to testify in response to the respondent's deposition subpoena would need a substantial amount of time to prepare.

13. I declare under penalty of perjury that the foregoing is true and correct. Executed September 16, 2013.



RACHANA A. DESAI