

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	No.
DENNIS BLACK, CHARLES)	
CUNNINGHAM, KENNETH HOLLIS)	
and DELTA SALARIED RETIREES)	
ASSOCIATION,)	
)	
Plaintiffs,)	
)	
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION,)	
)	
Defendant.)	
_____)	

DECLARATION OF RACHANA A. DESAI

I, Rachana A. Desai, declare as follows:

(1) I am currently an Attorney Advisor with the Office of Financial Stability (OFS) in the United States Department of the Treasury (Treasury). I have held this position 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 coordinating the gathering, searching and reviewing of documents related to the above-captioned matter.

(3) I have reviewed plaintiffs' 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.

(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). Mr. Feldman served as the principal restructuring attorney for the Auto Team.

(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) In order to search for documents responsive to plaintiffs' subpoena, Treasury would 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. Some records are archived and would require time-consuming individual retrieval by a member of Treasury's technology team who must perform this process using the one available computer that is equipped with the retrieval software.
- 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 plaintiffs' 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 documents 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 any of plaintiffs' 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.

(7) Based upon previous search experiences, the universe of documents we will need to review for potential responsiveness is likely to exceed 25,000 documents, with a page count many multiples of this number. A great many of these documents likely will be protected by the attorney-client privilege, the deliberative process privilege or other applicable privileges.

(8) Many of the documents covered by plaintiffs' requests may be communications between Treasury and PBGC officials, which likely will be protected by the deliberative process privilege, which covers predecisional and deliberative communications among Federal agencies. If there exist Treasury-PBGC communications that are not otherwise protected by a privilege, these communications can be obtained from the PBGC, which is still a party to the instant case

(9) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: 2-16-12


RACHANA A. DESAI