UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Petitioner, the U.S. Department of the Treasury (Treasury), hereby renews its motion to quash respondents' subpoena to Treasury dated January 4, 2012, and further moves to quash respondents' subpoena to Treasury dated August 20, 2013. The grounds for this motion are set forth in the memorandum submitted herewith. Counsel for respondents advises that he opposes the relief that Treasury hereby seeks.

Respectfully submitted,

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Dated: September 16, 2013

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U.S. DEPARTMENT OF THE TREASURY, **Petitioner,** **v.** **PENSION BENEFIT GUARANTY CORPORATION,** **Interested Party,** **v.** **DENNIS BLACK, *et al.*,** **Respondents.**	**No. 1:12-mc-00100-EGS** **MEMORANDUM IN SUPPORT OF PETITIONER'S RENEWED MOTION TO QUASH AND IN OPPOSITION TO RESPONDENTS' MOTION TO LIFT STAY**

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PRELIMINARY STATEMENT

By subpoena of this Court dated January 4, 2012 (Document Subpoena), respondents Dennis Black, Charles Cunningham, Kenneth Hollis, and Delphi Salaried Retirees Association have asked petitioner United States Department of the Treasury (Treasury) to produce certain documents allegedly relevant to Counts 1-4 of *Black v. Pension Benefit Guaranty Corporation,* No. 2:09-cv-13616-AJT-MKM (E.D. Mich.) (*Black I*). Respondents are the plaintiffs in *Black I*. By subpoena of this Court dated August 20, 2013 (Deposition Subpoena), respondents have also asked Treasury to produce one or more witnesses to testify at deposition about matters allegedly relevant to Counts 1-4 of *Black I*.

Both of respondents' subpoenas should be quashed.[1] Although not raised in *Black I*, respondents do not have standing to litigate Counts 1-4 of *Black I* because the injury they allege in those counts is not fairly traceable to the defendant, interested party Pension Benefit Guaranty Corporation (PBGC), and because the injury they allege in those counts cannot be redressed judicially. Because respondents do not have standing to litigate Counts 1-4, they may not conduct discovery as to those counts. Their subpoenas to Treasury should therefore be quashed.

Respondents' subpoenas should also be quashed even assuming, *arguendo*, that respondents have standing to litigate Counts 1-4 of *Black I*. The quashing of respondents' subpoenas may be based on any of three grounds. First, the discovery that the respondents seek by means of their subpoenas is irrelevant to Counts 1-4. Second, compliance with respondents' subpoenas could place an undue burden on Treasury. Third, respondents' subpoenas are

[1] Treasury's previous motion to quash, ECF No. 1, was denied without prejudice by minute order dated September 4, 2013. Treasury presumes that the denial of that motion terminates the stay of that motion imposed by the Court and renders moot the motion of respondents to lift that stay. Treasury does not oppose the reimposition of the stay if the Court deems it advisable.

unnecessary in view of the tremendous amount of information already available to respondents from sources other than Treasury.

THE STATUTORY SCHEME

PBGC is a government corporation established by the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, tit. IV, § 4002(a), 88 Stat. 1004. The "purposes" of PBGC are "to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants"; "to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter [Title IV of ERISA] applies"; and to maintain the insurance premiums established by PBGC "at the lowest level consistent with carrying out its obligations under this subchapter." 29 U.S.C. § 1302(a).

PBGC "may institute proceedings under [29 U.S.C. § 1342] to terminate a [pension] plan whenever it determines that [any of certain enumerated circumstances exist]." 29 U.S.C. § 1342(a). If PBGC determines after issuing notice to the plan administrator "that [a] plan should be terminated," it may,

> upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the [PBGC insurance] fund.

Id. § 1342(c)(1). If, however,

> [PBGC] and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in [29 U.S.C. § 1342(d)(1)] and, in addition to any other duties imposed on the trustee under law or by agreement between [PBGC] and the plan administrator, the trustee is subject to the duties described in [29 U.S.C. § 1342(d)(3)].

Id. The "'[t]ermination' of a [pension] plan does not end anyone's right to receive vested benefits; it just prevents an increase in those benefits, which will be paid from the [plan] and, to the extent [the plan] is insufficient, by [PBGC]." *In re UAL Corp*., 468 F.3d 444, 447 (7th Cir. 2006). "What the PBGC can pay is limited by 29 U.S.C. § 1322(b)(3), so vested benefits of well-paid retirees" are "not fully insured." *Id*.

STATEMENT OF FACTS

A. The Delphi Retirement Program for Salaried Employees (Delphi Salaried Plan)

The Delphi Salaried Plan was a defined-benefit pension plan maintained by Delphi Corporation (Delphi) for certain of its salaried employees. *See* Ex. E ¶ 14.[2] Delphi also maintained a defined-benefit pension plan (Delphi Hourly Plan) for certain of its hourly employees. *See id*. ¶ 16. Delphi was part of General Motors until 1999, when it was spun off as an independent corporation. *Id*. In October 2005, Delphi filed for bankruptcy. Ex. A at 4. In October 2009, Delphi sold most of its assets and, except for the winding of its affairs, ceased operations. *Id*. at 5.

By notice of determination dated July 20, 2009, PBGC advised Delphi of its having made certain determinations under 29 U.S.C. § 1342(a) with respect to the Delphi Salaried Plan.[3] Ex. S. By the same notice, PBGC advised Delphi of its having determined under 29 U.S.C. § 1342(c) "that the Plan must be terminated in order to avoid any unreasonable increase in the liability of the PBGC insurance fund." *Id*. By agreement dated as of August 10, 2009, Delphi

[2] References to exhibits are to Treasury's exhibits in this action. A table of exhibits cited in this memorandum appears at p. iii, *supra*.

[3] These determinations were a determination under 29 U.S.C. § 1342(a)(1) that the plan "has not met the minimum funding standards required under section 412 of the Internal Revenue Code"; a determination under § 1342(a)(2) that the plan "will be unable to pay benefits when due"; and a determination under § 1342(a)(4) that "the possible long-run loss of the PBGC with respect to the Plan may reasonably be expected to increase unreasonably if the Plan is not terminated." Ex. S.

and PBGC terminated the plan effective July 31, 2009, and named PBGC trustee of the terminated plan. Ex. B ¶¶ 1-3. The agreement terminating the plan recited the provisions of the notice of determination dated July 20, 2009, and stated that the termination of the plan was taking place "under 29 U.S.C. § 1342(c)." *Id.* ¶¶ H, 1

B. Respondents' Claims in *Black I*

Black I, an action in the U.S. District Court for the Eastern District of Michigan, was commenced by respondents on September 14, 2009. Hon. Arthur J. Tarnow is the district judge assigned to *Black I*. Hon. Mona K. Majzoub is the magistrate judge assigned to *Black I*.

At one time, *Black I* consisted of five counts, Counts 1-4 and, separately, Former Count 5. Former Count 5 was brought against Treasury, the Presidential Task Force on the Auto Industry (Auto Task Force), three former Treasury officials (Timothy F. Geithner, Steven L. Rattner, and Ron A. Bloom), and 50 John Does. Ex. E, heading preceding ¶ 57. Former Count 5 dealt with certain commitments of General Motors to pay supplemental pension benefits to certain participants in the Delphi Hourly Plan following the emergence of General Motors from bankruptcy. Respondents alleged in Former Count 5 that the commitments of General Motors violated the First Amendment and the equal protection component of the Fifth Amendment because of their having been entered into for "political reasons – on the basis of affiliation with a particular union or unions – and not on the basis of any relevant extenuating circumstances." *Id.* ¶ 59.

By order dated September 1, 2010 – more than three years ago – Judge Tarnow dismissed Former Count 5. Ex. R at 16. The grounds for his dismissal of Former Count 5 included respondents' lack of standing to litigate their equal protection claim and their failure to state a claim under the First Amendment because of their failure to "adequately plead [under *Ashcroft v.*

Iqbal, 556 U.S. 662 (2009)] that the Defendants' decisions to provide top-ups to only certain retirees was made on the basis of associational choices." *Id*. at 12.

In contrast to Former Count 5, Counts 1-4 are brought solely against PBGC and deal with the termination of the Delphi Salaried Plan. Ex. E, headings preceding ¶¶ 38, 42, 51, 54. In Count 1, respondents allege that the termination of the Delphi Salaried Plan was wrongful because PBGC may not terminate a pension plan except by court order.[4] *Id*. ¶ 39. In Count 2, respondents allege that the termination of the plan was wrongful because Delphi did not execute the agreement terminating the plan in its capacity as a fiduciary. *Id*. ¶ 44. In Count 3, respondents allege that termination of the plan was wrongful because the participants in the plan were not given notice of the termination or an opportunity for a pre-termination hearing and thus were denied due process.[5] *Id*. ¶ 52. In Count 4, respondents allege that termination of the plan was wrongful because "PBGC cannot satisfy the standards for the termination of the [plan] under 29 U.S.C. § 1342(a) and (c)." *Id*. ¶ 56.

By motion dated November 24, 2009, PBGC moved to dismiss Counts 1-3 of *Black I*. *Black I* ECF No. 23.[6] By motion dated January 8, 2010, PBGC moved for summary judgment as

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[4] In *In re Jones & Laughlin Hourly Pension Plan*, 824 F.2d 197 (2d Cir. 1987), the court said:

> The fourth sentence of subsection 1342(c) provides that where, as here, PBGC and the plan administrator agree to terminate a plan, PBGC need not comply with the other requirements of "this subsection." These requirements include a court adjudication. *See* 29 U.S.C.A. § 1342(c) (first sentence). *Congress, therefore, expressly dispensed with the necessity of a court adjudication in these cases*.

824 F.2d at 200 (emphasis added). Respondents continue to argue that PBGC may not terminate a pension plan except by court order. ECF No. 11 at 9, 13-14. However, respondents continue to make no mention of *Jones & Laughlin*, much less to demonstrate its inapplicability. *See id*.

[5] As is the case with Count 1, *see* n.4, *supra*, Count 3 is refuted by *In re Jones & Laughlin Hourly Pension Plan*, 824 F.2d 197 (2d Cir. 1987). In *Jones & Laughlin*, the court held that due process does not require "prior notice and hearings" where, as here, a pension plan is terminated by agreement between PBGC and the plan administrator. 824 F.2d at 201, 202.

[6] Document entries in this action (*Black II*) are referred to in this memorandum as "ECF." Docket entries in *Black I* are referred to in this memorandum as "*Black I* ECF." A table of all docket entries cited in this memorandum appears at p. v, *supra*.

to Count 4. *Black I* ECF No. 45. In support of its motion for summary judgment, PBGC filed an administrative record totaling 5,037 pages. *Black I* ECF Nos. 52-91. PBGC has characterized the administrative record as containing "all documents related to the termination decision." Ex. F at 8.

At a hearing conducted on September 24, 2010, Judge Tarnow held that both of PBGC's motions were "premature" because respondents "ha[d] not had a chance to do discovery." ECF No. 6-13 at 15:9-12. Based on that holding, Judge Tarnow denied both motions without prejudice. *Id*. at 32:1-4, 38:8-11, 43:19-20, 58:14-21.

C. The Discovery Orders in *Black I*

By motion in *Black I* dated October 28, 2010, respondents asked that a certain discovery schedule be adopted for Counts 1-4 of *Black I*. *Black I* ECF No. 152. Denying that motion by order dated March 28, 2011, Magistrate Judge Majzoub held that the termination of the Delphi Salaried Plan was subject to review on the administrative record under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq*.; that no discovery was warranted as to Counts 1-3; and that the sole discovery warranted as to Count 4 was "discovery relative to determining the completeness of the administrative record." Ex. T at 2-5.

Respondents filed objections to the order of Magistrate Judge Majzoub. *Black I* ECF No. 172. Overruling her order by order dated September 1, 2011, Judge Tarnow held that he would focus his attention on Count 4 in the hope that he could avoid the due process issue presented by Count 3; that he would adjudicate Count 4 as if PBGC had applied for a court order authorizing the termination of the Delphi Salaried Plan instead of terminating the plan by agreement with Delphi; and that his doing so would make *de novo* review rather than review on the

administrative record the appropriate method for adjudicating Count 4.[7] Ex. U at 3-5. Declaring that he had "previously concluded on September 24, 2010, that this case may proceed to discovery" but had not "address[ed] the full scope of discovery that would be permitted," Judge Tarnow authorized discovery as to Counts 1, 2, 3, and 4; quoted the scope of permissible discovery as set forth in Fed. R. Civ. P. 26(b)(1); and said:

> Since "'discovery itself is designed to help define and clarify the issue,' the limits set forth in Rule 26 must be 'construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.'"

Id. at 2, 3 (quoting *Conti v. Am. Axle & Mfg*., 326 F. App'x 900, 904 (6th Cir. 2009)) (emphasis omitted).

D. The Requests for Production (RFPs) in *Black I*

By RFPs dated September 23 and October 14, 2011, respondents asked PBGC to produce 17 categories of documents in *Black I*. Ex. G at 8; Ex. H at 8-11. One of those categories, RFP Category 8, asked PBGC to produce the following:

> All documents and things you received from the Federal Executive Branch [the Treasury Department, the Auto Task Force, the Labor Department, and the Executive Office of the President] or produced to the Federal Executive Branch, since January 1, 2009, related to Delphi or the Delphi Pension Plans, including, but not limited to, documents related to the termination of the Delphi Pension Plans, the assumption of any liability associated with the Delphi Pension Plans by GM, PBGC liens on Delphi assets, recoveries related to the Delphi Pension Plans, the Waiver and Release Agreement, and the Delphi-PBGC Settlement Agreement.

Ex. H at 8, 9. PBGC has characterized the RFPs as "demanding every document possessed by PBGC that refer[s], in any way, to Delphi." Ex. V at 5.

[7] Judge Tarnow based his holding that *de novo* review was the appropriate method for adjudicating Count 4 on *In re UAL Corp*., 468 F.3d 444 (7th Cir. 2006). Ex. U at 5 & n.5. In *UAL Corp*., the court held that review on the administrative record is inappropriate in cases where PBGC brings an action under 29 U.S.C. § 1342(c) to terminate a pension plan because PBGC, "like any other litigant," must "demonstrate a preponderance of the evidence in order to prevail" in such cases. 468 F.3d at 450.

By order dated March 9, 2012, Magistrate Judge Majzoub directed PBGC to "produce full and complete responses" to RFP Categories 2-17.[8] Ex. M at 2. On March 23, 2012, PBGC filed objections to the order of Magistrate Judge Majzoub. *Black I* ECF No. 209. To date, Judge Tarnow has not ruled on those objections. Despite the pendency of those objections, PBGC began in June 2012, to collect, review, and produce documents responsive to RFP Categories 2-17. Ex. W ¶ 6. As of July 29, 2013, PBGC had produced 1,097,309 pages of documents responsive to those categories, *id*. & Ex. V at 7-8, including thousands of pages responsive to RFP Category 8. Ex. X ¶ 6. To date, PBGC has spent "hundreds of hours of attorney time and nearly $2 million in contractor costs to comply with [respondents'] discovery requests."[9] Ex. W ¶ 7

E. The Depositions in *Black I*

On March 12, 14, and 25 and May 29, 2013, respondents took the depositions in *Black I* of four present or former officials 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

[8] By responses dated October 20 and November 14, 2011, PBGC had advised respondents that the sole documents relevant to RFP Categories 1-14 were documents contained in the administrative record or in the public record of the court overseeing the Delphi bankruptcy and otherwise objected to RFP Categories 2-17. *Black I* ECF Nos. 197-3, 197-4. By motion dated December 6, 2011, respondents had sought an order compelling PBGC to respond to RFP Categories 1-17. *Black I* ECF No. 197.

[9] The documents produced by PBGC in response to the RFPs did not include certain documents withheld pursuant to claim of privilege and certain documents and information alleged by respondents to be responsive to RFP Categories 12 and 13. ECF No. 13-3 at 4-5. On February 20, 2013, respondents moved to compel production of all of the documents and information that PBGC had withheld. *Black I* ECF No. 218. Granting that motion by order dated August 21, 2013, Magistrate Judge Majzoub disallowed the withholdings of PBGC based on claim of privilege because of the failure of PBGC to substantiate its claims of privilege adequately. ECF No. 13-3 at 7. On August 30, 2013, PBGC moved for reconsideration of the disallowance of its claims of privilege and for an emergency stay. *Black I* ECF Nos. 232, 233. On September 4, 2013, PBGC filed objections to the disallowance of its claims of privilege and a second motion for an emergency stay. *Black I* ECF Nos. 234, 235. By order dated September 5, 2013, Judge Tarnow referred the motion for reconsideration and the first motion for emergency stay to Magistrate Judge Majzoub. ECF No. 236. By order dated September 5, 2013, Magistrate Judge Majzoub denied the motion for reconsideration but stayed the disallowance of PBGC's claims of privilege until Judge Tarnow could rule on PBGC's objections to the disallowance. *Black I* ECF No. 237.

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 "Treasury, that is the auto task force." ECF No. 11-6 at 14:11-19; ECF No. 11-7 at 12:5-8; ECF No. 11-8 at 9:13-12:11; Ex. Y at 23:12-20. The witnesses testified at length about the interactions concerning the Delphi pension plans that took place in 2008-2009 between PBGC and Treasury and between PBGC and the small group of Treasury officials (Auto Team) to whom responsibility for restructuring General Motors had been delegated by the Auto Task Force.[10]

F. The Subpoenas in This Action (*Black II*)

Dated January 4, 2012, the Document Subpoena bears the caption in *Black I* but was issued under authority of this Court. Ex. J at 1. The Deposition Subpoena asks Treasury to produce:

> 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 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.

[10] *E.g.*, ECF No. 11-6 at 27:15-28:2, 32:16-33:13, 39:8-17, 79:11-85:14, 87:16-88:12, 108:21-110:8, 114:10-115:1, 124:14-125:2, 126:15-129:15, 163:13-166:19, 171:5-7, 178:12-179:16, 180:18-181:3, 183:12-21, 187:3-5, 197:6-199:22, 200:14-201:17; ECF No. 11-7 at 13:12-25:2, 33:17-47:12, 49:3-51:1, 52:8-57:13, 59:12-67:1, 73:13-18, 76:7-78:15, 79:5-12, 80:7-88:21, 93:8-100:6, 103:1-108:8, 110:20-112:5, 117:16-118:6, 119:11-123:20, 124:17-126:15, 134:16-149:17, 154:7-157:10, 160:3-6, 164:11-165:15; ECF No. 11-8 at 10:7-16:11, 41:21-42:14, 44:6-45:8, 79:16-80:7, 82:11-83:10, 84:22-87:15, 92:7-99:12, 101:21-102:1, 103:9-104:17, 111:1-121:9, 128:12-129:15, 136:17-142:10, 148:1-160:5, 163:21-165:6, 168:5-169:4, 170:11-171:17, 172:14-173:22, 174:18-181:10, 186:12-190:4, 192:21-194:21; Ex. Y at 66:6-67:20.

Respondents criticize Mr. House because they count "approximately 60 instances in [his] deposition transcript where he states an inability to recall events related to the Delphi plans." ECF No. 11 at 20 n.10. However, Mr. House was being asked in 2013 about events that occurred in 2009. He can be excused if his "recollection [was] a little bit fuzzy." ECF No. 11-8 at 47:7:10.

Id., att. A at 5-6. Messrs. Rattner, Feldman, and Wilson were key members of the Auto Team. ECF No. 13-2 at 5. They left the Auto Team, and returned to the private sector, in the summer of 2009. Ex. X ¶ 4.

By motion dated February 17, 2012, Treasury asked this Court to quash the Document Subpoena. ECF No.1. On March 5, 2012, respondents filed an opposition to Treasury's motion. ECF No. 6. On April 2, 2012, Treasury filed a reply in support of its motion. ECF No. 10.

By minute order dated May 17, 2012, this Court stayed *sua sponte* all proceedings with respect to Treasury's motion to quash pending Judge Tarnow's adjudication of PBGC's objections to the order of Magistrate Judge Majzoub dated March 9, 2012. By notices dated May 29, 2012, and April 23, 2013, respondents and PBGC advised Judge Tarnow notice of this Court's order. *Black I* ECF Nos. 213, 228. By motion dated August 13, 2013, respondents asked this Court to lift the stay of Treasury's motion to quash and further asked this Court to compel Treasury to respond to the Document Subpoena. ECF No. 11.

Respondents then issued the Deposition Subpoena. Like the Document Subpoena, the Deposition Subpoena bears the caption in *Black I* but was issued under authority of this Court. ECF No. 13-4 at 1. Dated August 20, 2013, the Deposition Subpoena asks Treasury to produce one or more witnesses pursuant to Fed. R. Civ. P. 30(b)(6) to testify at deposition about the following:

> [Matthew A. Feldman's and Harry J. Wilson's] communications in 2009 relating to the GM-Delphi Relationship; the Delphi Pension Plans; and the release, waiver or discharge by the PBGC of liens and claims relating to the Delphi Pension Plans. These communications include, but are not limited to, communications with the PBGC, Delphi, GM, the Delphi DIP Lenders, Federal Mogul, Platinum Equity, the National Economic Council, and the Executive Office of the President.

Id., att. A at 1, 3.

On August 30, 2013, Treasury moved for leave to file a renewed motion to quash and for an extension of time until September 16, 2013, to file an opposition to respondents' motion to lift the stay. ECF No. 14. By minute order dated September 4, 2013, the Court granted the relief requested by Treasury and denied without prejudice *sua sponte* the pending motion of Treasury to quash the Document Subpoena. Treasury thus files this motion.

G. Other Pertinent Materials

In addition to the administrative record and the materials that respondents have obtained from PBGC through discovery, other materials concerning the Delphi Salaried Plan and its termination are available to respondents. These materials include the following:

1. *The Depositions of Matthew A. Feldman and Harry J. Wilson*

Matthew A. Feldman was deposed in the Delphi bankruptcy on July 21, 2009. Ex. Z at 1. Harry J. Wilson was deposed in the General Motors bankruptcy on June 29, 2009. Ex. 2A at 1. The transcripts of both depositions were filed in *Black I* on March 1, 2010. *Black I* ECF Nos. 124-2 to 6.

2. *Steven L. Rattner's Book*

In 2010, Steven L. Rattner published a 336-page book entitled *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry*. In that book, Mr. Rattner gives his account of the activities of the Auto Team, including those involving Delphi. Ex. 2B.

3. *The Reports of the Government Accountability Office (GAO) and the Special Inspector General for the Troubled Asset Relief Program (SIGTARP)*

In 2011, GAO issued two separate reports dealing with the Delphi pension plans: GAO-11-373R, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans* (Mar. 30,

2011) and GAO-12-168, *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Pension Benefits* (Dec. 15, 2011). See Ex.A at 1 & n.3. On August 15, 2013, SIGTARP issued a report of its own dealing with the Delphi pension plans: SIGTARP 13-003, *Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees*. *See* ECF No. 13-2 at i. The SIGTARP report was the culmination of an audit announced by SIGTARP in November 2010 and conducted by SIGTARP from December 2010 through August 2013. *Id*. at 43.

4. *The Congressional Hearings*

Seven congressional hearings have been held since the termination of the Delphi Salaried Plan at which the plan and its termination have been discussed. These hearings are the following:

a. 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);

b. 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);

c. 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);

d. 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);

e. 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);

f. 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

g. 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* (Sept. 11, 2013) (Ex. 2C).

The witnesses at the hearing held on July 10, 2012, included Matthew A. Feldman and Harry J. Wilson. H. Serial No. 112-178 at iii. The witnesses at the hearing held on September 11, 2013, included Steven L. Rattner, Matthew A. Feldman, and Harry J. Wilson. Ex. 2C at 9.

ARGUMENT

I. RESPONDENTS DO NOT HAVE STANDING TO LITIGATE COUNTS 1-4 OF *BLACK I* AND, THUS, MAY NOT CONDUCT DISCOVERY AS TO THOSE COUNTS.

"[T]he requirement that a litigant have standing to invoke the authority of a federal court 'is an essential and unchanging part of the case-or-controversy requirement of Article III.'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (quoting *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992)). Discovery is one of the "legal process's appurtenant procedures." *Angostura Int'l Ltd. v. Melemed*, 25 F. Supp. 2d 1008, 1010 (D. Minn. 1998). For that reason, a plaintiff who does not have standing to litigate a claim is not entitled to conduct discovery with respect to the claim. *E.g., Cady v. Anthem Blue Cross Life & Health Ins. Co.*, 583 F. Supp. 2d 1102, 1107 (N.D. Cal. 2008) (holding that a court "cannot assume 'hypothetical jurisdiction' to order discovery when [the plaintiff's] lack of standing is apparent from the face of the complaint").

Judge Tarnow has never addressed, or been asked to address, whether respondents have standing to litigate Counts 1-4 of *Black I*. However, it is "apparent from the face of the

complaint" that respondents lack standing to do so. *See Cady*, 583 F. Supp. 2d at 1107. For that reason, respondents are not entitled to conduct discovery with respect to Counts 1-4. Their subpoenas to Treasury should therefore be quashed.[11]

To demonstrate standing, "'[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *DaimlerChrysler*, 547 U.S. at 342 (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)). In this case, respondents allege that they are "living on reduced pensions" because they are not receiving the full amount of the pension benefits to which they were entitled under the Delphi Salaried Plan. ECF No. 11 at 6. However, the fact that respondents are not receiving the full amount of their pension benefits is attributable to the fact that "Delphi did not have enough money to fund its pensions" before or after it filed for bankruptcy in 2005, ECF No. 13-2 at 33, not to the fact PBGC terminated the Delphi Salaried Plan by agreement with Delphi "to avoid any unreasonable increase in the liability of the PBGC insurance fund." Ex. S. Accordingly, respondents do not allege "'personal injury [in Counts 1-4] fairly traceable to [PBGC's] allegedly unlawful conduct'" and, for that reason, do not have standing to litigate those counts. S*ee DaimlerChrysler*, 547 U.S. at 342 (quoting *Allen*, 468 U.S. at 751). Because respondents do

[11] Certain objections may be anticipated. First, standing is "a jurisdictional issue that can be raised at any time." *Whelan v. Abell*, 953 F.2d 663, 671 (D.C. Cir. 1992). For that reason, it makes no difference that the standing of respondents to litigate Counts 1-4 has not been challenged previously. Second, "[a] court has an independent obligation to assure that standing exists regardless of whether it is challenged by any of the parties." *Summers v. Earth Island Inst.*, 555 U.S. 448, 499 (2009). For that reason, it makes no difference that Treasury rather than PBGC is challenging the standing of respondents to litigate Counts 1-4.

Third, "'[s]ubpoenas are process of the issuing court.'" *Watts v. SEC*, 482 F.3d 501, 506 (D.C. Cir. 2007) (quoting *In re Sealed Case*, 141 F.3d 337, 341 (D.C. Cir. 1998)). This Court is the "issuing court" for respondents' subpoenas. *See* Ex. J at 1; ECF No. 13-4 at 1. Because third-party discovery may be permitted only to the extent it relates to viable claims, this Court is a proper forum in which to challenge the standing of respondents to litigate Counts 1-4. Finally, "'[t]he requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.'" *Worth v. Jackson*, 451 F.3d 854, 857 (D.C. Cir. 2006) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998)). For that reason, the standing of respondents to litigate Counts 1-4 must be addressed before the Court turns to the other grounds upon which Treasury asks that respondents' subpoenas be quashed.

not have standing to litigate Counts 1-4, they are not entitled to conduct discovery with respect to those counts. *See Cady*, 583 F. Supp. 2d at 1107. Their subpoenas to Treasury should therefore be quashed.

In addition, the injury that respondents allege is "[not] likely to be redressed by the requested relief.'" *See DaimlerChrysler*, 547 U.S. at 342 (quoting *Allen*, 468 U.S. at 751). To redress the fact that they are not receiving the full amount of their pension benefits, respondents pray in the complaint that the termination of the Delphi Salaried Plan be "set[] aside." Ex. E, Prayer ¶ D. However, the setting aside of the termination of the plan would exacerbate respondents' injury, not redress it. PBGC anticipates spending "$2.1 billion from its own assets" to pay as much of the shortfall in respondents' pension benefits as it is permitted statutorily to pay. Ex. G, att. C, encl. ¶ 10. If the termination of the Delphi Salaried Plan is "set[] aisde," PBGC will be required to return the plan to Delphi as an "ongoing pension plan" and to cease paying "guaranteed benefits [to respondents] as provided by Title [IV] of ERISA." ECF No. 6-13 at 67:10-12, 70:12-17. Because Delphi is defunct, Ex. A at 5, the return of the Delphi Salaried Plan to Delphi will cause respondents to receive less in benefits, not more, and thus cause them even greater injury.

Disregarding the relief for which they pray in the complaint, respondents allege that what they really seek "is equitable relief against the PBGC" to "make [themselves] whole going forward." ECF No. 6-13 at 71:9-14. However, "Congress has always reserved to itself the power to address claims of the very type presented by respondent[s], those founded not on any statutory authority, but upon the claim that 'the equities and circumstances of a case create a moral obligation on the part of the Government to extend relief to an individual.'" *OPM v. Richmond*, 496 U.S. 414, 431 (1990) (quoting House Subcommittee on Administrative Law &

Governmental Relations, *Supplemental Rules of Procedure for Private Claims Bills* 2 (Comm. Print 1989)). Accordingly, "payments of money from the Federal Treasury are limited to those authorized by statute." *Id*. at 416. Respondents do not point to any statute that would authorize PBGC to pay them more in pension benefits than they now are receiving. For that reason, respondents do not allege an injury in Counts 1-4 that is "'likely to be redressed by the requested relief'" and, thus, lack standing to litigate those counts. *See DaimlerChrysler*, 547 U.S. at 342 (quoting *Allen*, 468 U.S. at 751). In view of that fact, respondents are not entitled to conduct discovery related to Counts 1-4. *See Cady*, 583 F. Supp. 2d at 1107. Their subpoenas to Treasury should therefore be quashed.

II. RESPONDENTS' SUBPOENAS SHOULD BE QUASHED EVEN ASSUMING, *ARGUENDO*, THAT RESPONDENTS HAVE STANDING TO LITIGATE COUNTS 1-4 OF *BLACK I*.

A court is required to "limit the frequency or extent of discovery" if it determines that "the burden or expense of the proposed discovery outweighs its likely benefit" or that "the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(C)(i), (iii). In this case, the discovery that respondents seek by means of their subpoenas is irrelevant to Counts 1-4; compliance with respondents' subpoenas could place an undue burden on Treasury; and respondents' subpoenas are unnecessary in view of the tremendous amount of information already available to respondents from sources other than Treasury. Respondents' subpoenas should therefore be quashed even assuming, *arguendo*, that respondents have standing to litigate Counts 1-4.

A. The Discovery That Respondents Seek by Means of Their Subpoenas Is Irrelevant to Counts 1-4 of *Black I*.

"Federal Rule of Civil Procedure 26(b)(1) provides in part that, '[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.'" *Food Lion, Inc. v. United Food & Comm'l Workers*, 103 F.3d 1007, 1012 (D.C. Cir. 1997). "Generally speaking, 'relevance' for discovery purposes is broadly construed." *Id.* However, "the relevance standard of Rule 26 is not without bite." *Id.* Although

> "[t]he boundaries defining information that is relevant to the subject matter involved in the action are necessarily vague and it is practically impossible to state a general rule by which they can be drawn," it is also true that "[n]o one would suggest that discovery should be allowed of information that has no conceivable bearing on the case."

Id. (quoting Charles A. Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice & Procedure* § 2008 (1994)). Thus, a party who "gives no sufficient reason to believe that discovery would aid her case" is not entitled to discovery. *Reshard v. Lahood*, 358 F. App'x 196, 197 (D.C. Cir. 2009). Nor is a party permitted to "'roam in the shadow zones of relevance and to explore matter which does not presently appear germane on the theory that it might conceivably become so.'" *Food Lion*, 103 F.3d at 1012-13 (quoting *In re Fontaine*, 402 F. Supp. 1219, 1221 (E.D.N.Y. 1975)) (internal quotation marks omitted). These limitations are especially relevant in cases where discovery is aimed at third parties, as is the case here. "When discovery is sought from a third-party the normal standard of *possible* relevance may not be enough and the third party can be entitled to somewhat greater protection." *Mintel Int'l Grp. v. Neerghen*, 2008 WL 4936745, at *2 (N.D. Ill. Nov. 17, 2008) (op. of mag. j.), *aff'd*, 2008 WL 5246682 (N.D. Ill. Dec. 16, 2008) (op. of dist. j.).

In this case, respondents allege that the discovery they seek from Treasury is "directly relevant to [their] claims in [*Black I*]." ECF No. 11 at 1 (discussing the Document Subpoena).

The hypothesis upon which respondents base that allegation is that Treasury was unwilling to endure the political criticism to which it would have been subjected if it had provided General Motors with enough additional money under the Troubled Asset Relief Program to save the Delphi Salaried Plan from termination; that PBGC had a "statutory mandate to advocate for the continuation of the [plan]"; that PBGC failed in violation of that mandate to compel Treasury to provide the additional money; and that the termination of the Delphi Salaried Plan is therefore invalid under 29 U.S.C. § 1342(c). *Id*. at 12-13. Central to respondent's hypothesis is the notion that PBGC is prohibited from terminating a pension plan unless termination is "unavoidable." *See id*. at 17.

Respondents' hypothesis is irrelevant to its case against PBGC. PBGC is authorized expressly by 29 U.S.C. § 1342(c) to seek the termination of a pension plan in order to avoid "any unreasonable increase in the liability of the [PBGC insurance] fund." PBGC relied on that authority, and solely that authority, in terminating the Delphi Pension Plan in 2009. *See* Ex. B ¶ H; Ex. S. Nothing in 29 U.S.C. § 1342(c) conditions the exercise of PBGC's authority on its compelling third parties to make payments that would obviate a plan's termination. Neither does anything in § 1342(c) bar PBGC from seeking the termination of a plan unless termination is "unavoidable." Nor do respondents identify the source of the alleged "statutory mandate" of PBGC to "advocate for the continuation of the [Delphi Salaried Plan]." Much less do respondents show that the alleged mandate places any limit on the discretion of PBGC to seek the termination of a plan. For all of these reasons, the discovery that respondents seek by means of their subpoenas "'has no conceivable bearing on [Counts 1-4 of *Black I*].'" *See Food Lion*, 103 F.3d at 1012 (quoting Wright, Miller & Marcus § 2008). Their subpoenas should therefore be quashed.

Invoking "the law of the case," respondents argue that they are authorized by the order of Judge Tarnow dated September 1, 2011, to conduct any discovery they deem appropriate. ECF No. 11 at 2. However, the order of Judge Tarnow does nothing more than quote the scope of permissible discovery as set forth in Fed. R. Civ. P. 26(b)(1) and state that "'the limits set forth in Rule 26 must be construed broadly.'" Ex. U at 3 (quoting *Conti*, 326 F. App'x at 904) (emphasis and internal quotation marks omitted). As a result, no "law of the case" exists in *Black I* that authorizes respondents to conduct discovery into irrelevancies, as they seek to do here. Neither does any "law of the case" exist in *Black I* that authorizes respondents to seek discovery from third parties, as they likewise seek to do here. For both of these reasons, their subpoenas to Treasury should be quashed.

B. Compliance with Respondents' Subpoenas Could Place an Undue Burden on Treasury.

Federal Rule of Civil Procedure 45(c)(1) provides that "[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" and further provides that "[t]he 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." In view of the "'undue burden' standard" enunciated in Rule 45(c)(1), "'concern for the unwanted burden thrust upon non-parties is a factor entitled to special weight'" in determining the enforceability of a subpoena. *Watts v. SEC*, 482 F.3d 501, 509 (D.C. Cir. 2007) (quoting *Cusamano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998)). This concern is at its zenith where, as here, a litigant seeks discovery from government agencies by means of third-party subpoenas. In such cases, the court "must properly accommodate 'the government's serious and legitimate concern that its employee resources not be commandeered into service by private litigants to the detriment of the

smooth functioning of government operations.'" *Id*. (quoting *Exxon Shipping Co. v. Dep't of the Interior*, 34 F.3d 774, 779 (9th Cir. 1994)).

In this case, compliance with both of respondents' subpoenas could place an undue burden on Treasury by "'commandeer[ing]'" the "'employee resources'" of Treasury "'into service by private litigants to the detriment of the smooth functioning of government operations.'" *See Watts*, 34 F.3d at 779 (quoting *Exxon*, 34 F.3d at 779). Both subpoenas should therefore be quashed.

1. ***Compliance with the Document Subpoena Could Place an Undue Burden on Treasury.***

In order to search for documents responsive to the Document 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. * * * *

c. Once the universe of possibly relevant document [was] 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.

Ex. X ¶ 7. Respondents contend that Treasury could reduce the burden that compliance with the Document Subpoena could place upon it by producing to respondents the documents that Treasury produced to SIGTARP in connection with the SIGTARP audit that culminated in the SIGTARP report of August 15, 2013. ECF No. 11 at 4. However, respondents qualify that contention by stating that any production of the documents that Treasury produced to SIGTARP "should be viewed as the floor and not the ceiling on what Respondents are entitled to receive" and by further stating that they "emphatically wish to reserve their rights to seek[] fuller disclosures from Treasury consistent with the actual scope of Respondents' subpoena if the documents produced to SIGTARP prove to be incomplete, selective, or otherwise inadequate." ECF No. 13 at 3. By so stating, respondents make it clear that their efforts to seek documents from Treasury will continue irrespective of whether Treasury produces the documents that Treasury produced to SIGTARP.

In addition, the mere fact that Treasury produced certain documents to SIGTARP does not mean that the documents are responsive to the Document Subpoena. To the contrary, many of those documents are not responsive. Ex. X ¶ 8. In addition, no claims of privilege were asserted with respect to any of the documents that Treasury produced to SIGTARP because the documents were produced to SIGTARP on an intra-agency basis, and pursuant to § 6 of the Inspector General Act of 1978, 5 U.S.C. app. 3.[12] *Id.* ¶ 9. Accordingly, each document produced to SIGTARP would first need to be reviewed by Treasury to determine its responsiveness to the Document Subpoena. *Id.* Any responsive documents would then need to be reviewed for the possible assertion of claims of privilege. *Id.* Both of these steps would entail a substantial

[12] Each Inspector General is authorized by § 6 of the Inspector General Act "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which the Inspector General has responsibilities under this Act." 5 U.S.C. app. 3, § 6(a)(1).

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.[13] *Id*.

As stated above, PBGG has already been required to "spen[d] hundreds of hours of attorney time and nearly $2 million in contractor costs to comply with [respondents'] discovery requests." Ex W ¶ 7. Because Treasury is not a party to Counts 1-4, respondents should not be permitted to do to Treasury what they have done to PBGC: to "'commandeer into [their] service'" the "'employee [and other] resources'" of Treasury to "'the detriment of the smooth functioning of [Treasury] operations.'" *See Watts*, 482 F.3d at 509 (quoting *Exxon*, 43 F.3d at 779). The Document Subpoena should therefore be quashed.

2. *Compliance with the Deposition Subpoena Could Place an Undue Burden on Treasury*

The Deposition Subpoena asks Treasury to produce one or more witnesses to testify at deposition about "[Matthew A. Feldman's and Harry J. Wilson's] communications in 2009 relating to the GM-Delphi Relationship; the Delphi Pension Plans; and the release, waiver or discharge by the PBGC of liens and claims relating to the Delphi Pension Plans." ECF No. 13-4, att. A at 1, 3. However, no one currently working at Treasury has any knowledge of any communications responsive to the Deposition Subpoena 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. Ex. X ¶ 12. In effect, therefore, the Deposition Subpoena calls for Treasury to produce one or more witnesses to testify about documents responsive to the Document Subpoena. As discussed above, however, the Document Subpoena should be

[13] Respondents also refer to a subpoena issued to the Secretary of the Treasury by the House Committee on Oversight and Government Reform on August 9, 2013. ECF No. 11 at 23. Documents responsive to that subpoena may not be responsive to the Document Subpoena. Ex. X ¶ 11. For that reason, Treasury would have to review documents produced to the Committee before providing them to respondents. *Id*. This would impose a significant burden on Treasury. *Id*.

quashed. For that reason, compliance with the Deposition Subpoena could place an undue burden on Treasury by requiring Treasury personnel to take time from their normal duties to testify about documents to which respondents are not otherwise entitled.[14] In addition, the members of the Auto Team have left Treasury. *Id*. For that reason, any witness designated to testify in response to the Deposition Subpoena would need a substantial amount of time to prepare. *Id*. To avoid such an unwarranted interruption to the "'smooth functioning of [Treasury] operations,'" the Deposition Subpoena should be quashed.[15] *See Watts*, 482 F.3d at 509 (quoting *Exxon*, 34 F.3d at 779).

C. Respondents' Subpoenas Are Unnecessary in View of the Tremendous Amount of Information Already Available to Respondents from Sources Other Than Treasury.

As stated above, RFP Category 8 asks PBGC to produce the following:

> All documents and things you received from the Federal Executive Branch [the Treasury Department, the Auto Task Force, the Labor Department, and the Executive Office of the President] or produced to the Federal Executive Branch, since January 1, 2009, related to Delphi or the Delphi Pension Plans, including, but not limited to, documents related to the termination of the Delphi Pension Plans, the assumption of any liability associated with the Delphi Pension Plans by GM, PBGC liens on Delphi assets, recoveries related to the Delphi Pension Plans, the Waiver and Release Agreement, and the Delphi-PBGC Settlement Agreement.

Ex. H at 8, 9. As also stated above, PBGC has produced more than a million pages responsive to the RFPs, Ex. V at 7-8, Ex. W ¶ 6, including thousands of pages responsive to RFP Category 8.

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[14] The Deposition Subpoena would be unwarranted even if the Document Subpoena were justified because any depositions conducted under the Deposition Subpoena would provide no insights beyond what is stated in the documents responsive to the Document Subpoena.

[15] As stated above, Mr. Feldman was deposed in the Delphi bankruptcy; Mr. Wilson was deposed in the General Motors bankruptcy; and both men have testified before Congress at two separate hearings at which the Delphi Salaried Plan and its termination have been discussed. *See* pp. 11, 13, *supra*. For that reason, and for the other reasons set forth in this memorandum, respondents have no need or justification to depose Mr. Feldman or Mr. Wilson. However Mr. Feldman and Mr. Wilson would surely know more than any witness that Treasury could produce about "[Matthew A. Feldman's and Harry J. Wilson's] communications in 2009 relating to the GM-Delphi Relationship; the Delphi Pension Plans; and the release, waiver or discharge by the PBGC of liens and claims relating to the Delphi Pension Plans." *See* ECF No. 13-4, att. A at 1, 3.

Ex. X ¶ 6. The immensity of PBGC's document production and the overlap between RFP Category 8 and respondents' subpoenas to Treasury leave little need for Treasury to respond to either of those subpoenas. Moreover, PBGC's document production is but a part of the material available to respondents to show that they are entitled to relief under Counts 1-4 of *Black I*. The rest of that material includes the depositions of Vincent K. Snowbarger, Cynthia Rene Travia, C. Dana Cann, Joseph R. House, Matthew A. Feldman, and Harry J. Wilson; the book published by Steven L. Rattner; the GAO and SIGTARP reports; and the numerous congressional hearings at which the Delphi Salaried Plan and its termination have been discussed, including those at which Messrs. Feldman, Wilson, and Rattner testified. *See* pp. 8-9, 11-13, *supra*.

"Discovery must have an end point." *Stevo v. Frasor*, 662 F.3d 880, 886 (7th Cir. 2011). "Where a party has had an 'adequate opportunity to investigate,'" the prolongation of discovery "requires something more than the absence of the smoking gun the party was looking for." *Id.* (quoting *Searls v. Glasser*, 64 F.3d 1061, 1068 (7th Cir. 1995)). In this case, respondents have had more than "an adequate opportunity to investigate." Not only have they obtained an extraordinary amount of material from PBGC but they possess an ancillary evidentiary record of exceptional breadth. "'The discovery process is not a fishing expedition, and [a party] is not entitled to discovery simply in hope that something will turn up.'" *Young v. CitiMortgage, Inc.*, 2013 WL 336750, at *12 (W.D. Va. July 2, 2013) (quoting *Riddick v. United States*, 2005 WL 1667757, at *7 (E.D. Va. July 6, 2005)) (internal quotation marks omitted). Respondents' subpoenas should therefore be quashed.

CONCLUSION

For the foregoing reasons, Treasury's renewed motion to quash should be granted.

Respectfully submitted,

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Dated: September 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2013, I served the within motion and memorandum, the exhibits submitted with the motion, and petitioner's proposed order on all counsel of record by filing them with the Court by means of its ECF system.

s/ *David M. Glass*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

1. Treasury's aforesaid motion is hereby granted.

2. Respondents' subpoenas to Treasury dated January 4, 2012, and August 20, 2013, are hereby quashed.

Dated: _____

_____
UNITED STATES DISTRICT JUDGE