IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

METLIFE, INC., Plaintiff, v. FINANCIAL STABILITY OVERSIGHT COUNCIL, Defendant.	Civil Action No. 1:15-cv-45 (RMC)

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCLOSURE OF WITHHELD AND REDACTED RECORD MATERIALS

INTRODUCTION

Plaintiff MetLife, Inc. ("MetLife") challenges the decision by the Financial Stability Oversight Council ("Council") to designate it for supervision by the Board of Governors of the Federal Reserve System and enhanced prudential standards under Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), 12 U.S.C. § 5323. On May 8, 2015, the Council provided MetLife with a certified administrative record of more than 80,000 pages, the index to which noted that "certain documents or portions of documents have been redacted or withheld." ECF 17-1, ¶ 4. As relevant here, the redacted or withheld documents were provided to the Council by state insurance regulators (in particular, New York and Connecticut). These regulators informed the Council that they considered these documents to be sensitive and confidential and requested that they not be disclosed to MetLife. With the consent of the state insurance regulators, the Council subsequently produced the majority of the redacted and withheld documents under the Protective Order entered by the Court on June 12, 2015. The New York and Connecticut insurance regulators, however, have requested that the Council continue to withhold in full or redact in part a set of 32 documents (involving a total of fewer than 900 pages), due to the particularly sensitive, privileged nature of that material, which

primarily pertains to confidential deliberations among MetLife's regulators. MetLife has filed the instant Motion to Compel ("Motion") asking the Court to order the Council to disclose these documents.

The Court should deny the Motion because the Council is precluded by statute from disclosing the documents sought by MetLife. The Council has withheld these documents pursuant to its obligations under Section 112 of the Dodd-Frank Act, 12 U.S.C. § 5322(d)(5)(A), which provides that the Council "shall maintain the confidentiality of any data, information, and reports submitted under this subchapter."

Furthermore, and as set forth in the attached declarations, the state insurance regulators, to whom these materials belong, have informed the Council that the materials are protected by state law privileges that preclude their disclosure. The Dodd-Frank Act provides that the submission to the Council of these materials "shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject." 12 U.S.C. § 5322(d)(5)(B). Under D.C. Circuit case law, when such protections attach to information in an administrative record, the information is appropriately redacted or withheld, as was the case here.

To be sure, the Council acknowledges that in some cases the protections described above must yield to a party's need for information — or, in a record review case such as this one, to the Court's need for an administrative record sufficient for the Court to adjudicate a challenge to a federal agency decision — but that is simply not the case here in light of the robustness of the existing record, and the, at best, marginally additive nature of the information sought relative to the record that the Council has produced. Among other things, in addition to

a large volume of confidential materials that Connecticut and New York agreed to disclose under the Protective Order, MetLife may also rely upon the Connecticut and New York insurance regulators' letters to the Council, which were produced to MetLife in the administrative record and which include the regulators' information and arguments weighing against the designation of MetLife.

In light of the foregoing, the Motion should be denied.

LEGAL BACKGROUND

In considering whether to designate a nonbank financial company under Section 113 of the Dodd-Frank Act, the Council gathers a variety of information from the company's existing regulators. For example, the Council must consult with the "primary financial regulatory agency, if any," of a nonbank financial company before making a final designation, 12 U.S.C. § 5323(g).

Regulators share information with the Council, and the statute expressly protects any information submitted to the Council in connection with its Section 113 authorities. The statute provides that the Council "shall maintain the confidentiality of any data, information, and reports submitted under this subchapter." 12 U.S.C. § 5322(d)(5)(A). As a result, the Council has a statutory obligation to maintain the confidentiality of the materials submitted in connection with nonbank financial company designations, such as the records that are the subject of the Motion.

The statute also provides that "[t]he submission of any nonpublicly available data or information under this subsection and part B of this subchapter shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject." 12 U.S.C.

§ 5322(d)(5)(B). Thus, when information submitted to the Council is protected by a state law privilege, the material retains its privileged nature, regardless of its transmission to the Council.

The attached declarations show that the New York and Connecticut state regulators consider the information subject to the Motion to be so protected. *See* Declaration of Mark McLeod, New York Department of Financial Services ("NYDFS"), ¶ 12 and Declaration of Kathryn Belfi, Connecticut Insurance Department ("CID")¶ 12. In particular, under Connecticut insurance law, information shared by insurance regulators in a supervisory college is privileged and is therefore not subject to disclosure under the Connecticut Freedom of Information Act, not subject to subpoena, and not subject to discovery or admissible in evidence in any civil action. *See* Belfi Decl. ¶ 12 (citing Conn. Gen. Stat. § 38a-137).

The New York declaration similarly articulates the basis for the New York insurance regulator's assertion that the documents sought are privileged, and therefore protected from disclosure under New York rules of civil procedure. *See* McLeod Decl. ¶ 12 (citing New York Civil Practice Law and Rules §3101(b), as well as New York Public Officers' Law § 87(2)(g)). New York state law recognizes a "public interest privilege" that protects "confidential communications between public officers, and to public officers, in the performance of their duties, where the public interest requires that such confidential communications or the sources should not be divulged." *See Cirale v. 80 Pine Street Corporation*, 35 N.Y.2d 113, 117 (N.Y. Ct. App. 1974). Included within this privilege are sensitive, deliberative materials such as those at issue here, the release of which, the New York regulator explains, could lead to a potential "chilling [of] future candid evaluations of governmental decisions." *See Ren Zheng Zheng v. Bermeo*, 114 A.D.3d 743, 744-745 (N.Y. App. Div. 2d Dep't 2014); McLeod Decl. ¶ 12. Where the public interest privilege applies, "the documents simply need not be produced" and a

"confidentiality agreement" (*i.e.* a protective order) does not mitigate the concerns about disclosure. *In re World Trade Center Bombing Litigation*, 93 N.Y.2d 1, *12 (N.Y. Ct. App. 1999). Indeed, "[a] confidentiality agreement [*i.e.*, a protective order] is not a legally cognizable substitute for a legitimately asserted public interest privilege." *Id.* The New York declaration explains why that state's insurance regulator considers the documents to be properly classified as "privileged" and protected from disclosure under applicable New York law. McLeod Decl. ¶ 12.

FACTUAL BACKGROUND

The Council sought extensive information from MetLife's regulators before making a final designation regarding the company. In evaluating MetLife under Section 113, the Council consulted with, and gathered information from, among others, the New York Department of Financial Services ("NYDFS") and the Connecticut Insurance Department ("CID").

The Council has entered into information-sharing memoranda of understanding ("MOUs") with certain state insurance regulators, including the NYDFS and CID, to protect information shared regarding companies under review for potential designation by the Council. These MOUs generally provide that the Council must maintain the confidentiality of any non-public information provided to it by the state regulator and may not disclose such information to a third party without the express written consent of the state regulator.[1] When the Council asked the NYDFS and CID to submit materials relevant to the potential designation of MetLife under Section 113, the states provided this information to the Council subject to these MOUs.

[1] *See, e.g.,* MOU Concerning the Provision of Information Between the Financial Stability Oversight Council, the Office of Financial Research, each Signatory Member, and the New York State Dep't of Financial Services ("NYDFS MOU") (Layton Decl., Ex. A), and MOU Concerning the Provision of Information Between the Financial Stability Oversight Council, the Office of Financial Research, each Signatory Member, and the Connecticut Insurance Dep't) ("CID MOU") (Layton Decl., Ex., B).

The MOUs require that "[s]ubject to applicable state and federal law and the terms and conditions specified herein, the Parties shall take all steps necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to Non-Public Information that is subject to this Memorandum," CID MOU II.C.3(a); NYDFS MOU II.C.3(a), and that when a third-party request is made for "Non-Public Information" provided pursuant to these agreements, the Council must "cooperate fully" with the state insurance department that provided such information, to "preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges." CID MOU II.C.4(c); NY DFS MOU II.C.4(c). Even faced with a subpoena or court order, the Council may only provide "Non-Public Information" provided pursuant to the MOU if it:

> (i) [r]easonably determines that efforts to quash, appeal, or resist compliance with the subpoena or order would be unsuccessful or against its interest; (ii) attempts, to the extent practicable, to secure a protective order to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associate therewith; and (iii) immediately notifies the applicable Providing Party of its intent to comply with the subpoena or order.

CID MOU II.C.5(a); NY DFS MOU II.C.5(a).[2]

With respect to the documents sought by the Motion, the NYDFS and CID have represented to the Council that the information remains confidential due to confidentiality agreements pursuant to which the state regulators themselves obtained such information, under their own state law, and as a result of the importance these state insurance regulators generally place on maintaining the confidentiality of frank discussions among state and foreign regulators

[2] The MOUs provide that any submitted information remains the property of the entity that submitted it to the Council. *See* CID MOU II.C.3(b); NY DFS MOU II.C.3(b).

of each insurance group in order to regulate the insurance industry effectively. *See* McLeod Decl. ¶¶ 7–18; Belfi Decl. ¶¶ 10-15.

As explained in more detail in the attached declarations from the state regulators, the withheld information consists primarily of confidential information pertaining to conferences concerning MetLife held by state insurance regulators and referred to as "supervisory colleges. " These "supervisory colleges" are meetings at which state insurance regulators from two or more states or foreign jurisdictions confer with representatives of the company and otherwise engage in regulator-only discussions. *See* McLeod Decl. ¶¶ 3-5.[3] Officials of the NYDFS and CID state that these sessions permit regulators to have confidential discussions about the company, to discuss concerns about the company, and to discuss any contemplated regulatory action. *See id.* ¶¶ 6-7. NYDFS and CID officials further state that maintaining the confidentiality of these discussions is "of paramount importance" to state insurance regulators, *id.* ¶ 8, because it enables the regulator participants to speak candidly, without fear of discussing any concerns about a particular insurance company or discussing any contemplated regulatory actions that may not ultimately be taken. *Id.* 7-8.[4] Finally, the NYDFS and CID have informed the Council that the withheld materials may not be disclosed —even subject to the terms of the Protective Order— because these materials are privileged and confidential, and the state regulators are concerned

[3] The NYDFS served as the "lead regulator" for the supervisory colleges concerning MetLife that were held in 2013 and 2014. Id. ¶ 11. In that role, the NYDFS made sure that all participating regulators entered into agreements to protect the confidentiality of the regulator-only portions of the supervisory college. *Id.* The CID also participated in the MetLife supervisory college held in March 2014. *See* Belfi Decl. ¶ 9.

[4] A small number of additional documents being withheld at the NYDFS's request are materials that the NYDFS has obtained from other state insurance regulators pursuant to an information-sharing and confidentiality agreement that requires the NYDFS to use its best efforts to resist production of these confidential materials. McLeod Decl. ¶ 17. The NYDFS believes that it is important to withhold these bilaterally exchanged materials in order to maintain the willingness of other state regulators to engage in a robust dialogue with the NYDFS about a particular insurer. *Id.*

that disclosure of those materials would have a chilling effect that might limit their future ability to have frank and candid participation in supervisory colleges. *See* McLeod Decl. ¶¶ 11, 14-15; Belfi Decl. ¶¶ 12-15.

As explained above, the Council's withholding of the material at issue is based upon the express requests of the NYDFS and CID, with which the Council is bound to comply pursuant to the Dodd-Frank Act and the terms of its information-sharing agreements with the two state regulators.[5] Ultimately, absent the Court's determination that the material must be provided, the Council is obliged to continue to withhold the material whose disclosure MetLife now seeks to compel.

ARGUMENT

I. The Dodd-Frank Act Requires That the Council Not Disclose the Withheld Documents.

Section 112 of the Dodd-Frank Act expressly requires the Council to maintain the confidentiality of the materials sought by MetLife. 12 U.S.C. § 5322(d)(5)(A). The statute requires that the Council "maintain the confidentiality of any data, information, and reports submitted under this subchapter." *Id.* The documents at issue were "submitted under this subchapter," because the Council obtained them to evaluate MetLife for potential designation

[5] MetLife incorrectly asserts that the certification of the record means that the New York and Connecticut information is not privileged. The certification noted that the index for the administrative record reflected "non-privileged documents considered, directly or indirectly, in the Council's determination [as to whether] to designate MetLife for supervision by the Board of Governors of the Federal Reserve System and enhanced prudential standards, pursuant to Section 113 of the Dodd-Frank Act, 12 U.S.C. § 5323." Patrick Pinschmidt Certification ¶ 3, ECF 17-1. That certification also went onto to explain, however, that certain documents had been redacted or withheld from the record on the basis of the Council's information-sharing agreements with regulators; the certification noted that "[p]ursuant to these agreements, and at the express request of the [regulators], certain documents or portions of documents have been redacted or withheld. My understanding, based upon those requests, is that these materials contain confidential business information of entities other than MetLife or are internal, pre-decisional, and deliberative in nature." Pinschmidt Certification ¶ 4.

under Section 113, which is codified in the same subchapter as Section 112. Accordingly, the Council is required by law to maintain the material's confidentiality, and on that basis, the Motion should be denied.

Furthermore, the NYDFS and CID have requested that the Council maintain the confidentiality of the 32 documents at issue, and the Council has done so, as required by statute and the applicable MOUs. *See* 12 U.S.C. § 5322(d)(5)(A). The NYDFS and CID have provided declarations explaining that the disclosure of materials reflecting confidential communications among insurance regulators within supervisory colleges for MetLife would severely hamper their future ability to effectively regulate the insurance industry. *See* McLeod Decl. ¶¶ 14-17; Belfi Decl. ¶¶ 12-15.[6] The state regulators have also explained why, in their view, disclosure of this information would be inappropriate and harmful, even under the existing Protective Order.[7]

Nor is there any basis for MetLife's suggestion that the Council is attempting to "withhold evidence unfavorable to its case," *Walter O. Boswell Mem'l Hosp. v. Heckler*, 749 F.2d 788,792 (D.C. Cir. 1984). The Council is entitled to a strong presumption of regularity, *see Shieldalloy Metallurgical Corp. v. Nuclear Reg. Comm'n*, 707 F.3d 371, 387 (D.C. Cir. 2014), which encompasses a strong presumption that it properly compiled its administrative record. A party can overcome that presumption only by "clear evidence" to the contrary. *Bar MK Ranches*

[6] Even authority relied upon by MetLife, *Washington Post Co. v. HHS*, 690 F.2d 252, 263 (D.C. Cir. 1982), provides that, while the government's assurance that information will be treated as confidential is not "dispositive," nevertheless "a government pledge of confidentiality, made in good faith and consistently honored, should generally be given weight on the [nondisclosure] side of the scale in accord with its effect on expectations . . ." *Id*. at 263. As explicitly contemplated by the Dodd-Frank Act and the relevant MOUs, the Council has, in good faith, pledged to maintain the confidentiality of information submitted by state regulators.

[7] The New York and Connecticut regulators do not think the existing Protective Order is sufficiently protective and, as an additional matter, MetLife has signaled that it may seek additional disclosure authority in the future, providing access to in-house counsel. *See* McLeod Decl. ¶¶ 13-17; Belfi Decl. ¶¶13-15.

v. Yeutter, 994 F.2d 735, 740 (10th Cir. 1993)*; see also, e.g.*, *Pac. Shores Subdivision, Cal. Water Dist. v. U.S. Army Corps of Eng'rs*, 448 F. Supp. 2d 1, 5 (D.D.C. 2006). Moreover, the NYDFS and CID have already allowed the majority of their submitted materials to be produced to MetLife or its representatives, either as part of the initial record production, or pursuant to the Protective Order. What remains is a small subset of those documents, which, in the view of the NYDFS and CID, must be kept confidential as a result of ongoing regulator relationships and as a matter of state law.

None of the cases cited by MetLife support the proposition that the Council cannot protect confidential or privileged documents from disclosure in the administrative record. For example, in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), the Supreme Court held that litigation affidavits containing *post hoc* rationalizations were an inadequate basis for reviewing administrative action, and that the district court's review should be based on the full administrative record available at the time the decision was made. However, here the Council has compiled an extensive record and has not impermissibly attempted to include affidavits that post-date the decision being challenged. *See also IMS, P.C. v. Alvarez*, 129 F.3d 618, 623 (D.C. Cir. 1997). Similarly inapposite is *Boswell Mem'l Hosp*, 749 F.2d at 792, in which the court found there to be an inadequate basis for judicial review because the agency never submitted anything purporting to be a complete administrative record. Finally, the Council is not attempting to construct a new record that was not in existence at the time it made the decision that MetLife challenges. *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (appellate court erred in ordering a de novo hearing when the focal point should be the administrative record already in existence, "not some new record made initially in the reviewing court.").

A. Disclosure Is Precluded Based Upon Applicable State Law Privilege.

Because the state insurance regulators have informed the Council that the documents at issue are privileged under state law, they may not be disclosed as MetLife requests. The Dodd-Frank Act expressly preserves any state law privileges applicable to the NYDFS and CID documents sought by MetLife, providing that the submission of "nonpublicly available data or information" to the Council does nothing to waive "any privilege arising under Federal or State law. . ." 12 U.S.C. § 5322(d)(5)(B). The attached declarations state that the NYDFS and CID consider these 32 documents privileged under New York and Connecticut state law. *See* Belfi Decl. ¶ 12; McLeod Decl. ¶¶ 13-14. Moreover, the submission of these materials to the Council by the NYDFS and CID did not alter the confidential or privileged nature of these documents. *See* 12 U.S.C. § 5322(d)(5)(A), (B); *see also* N.Y. Ins. Law § 110 (McKinney 2003).

As a general matter, privileged material, such as deliberative material, is not disclosed with an administrative record. *See, e.g.*, *San Luis Obispo Mothers for Peace v. NRC*, 789 F.2d 26, 44-45 (D.C. Cir. 1986) (*en banc*); *Ad Hoc Metals Coal v. Whitman*, 227 F. Supp. 2d 134, 143 (D.D.C. 2012); *Blue Ocean Inst. v. Gutierrez*, 503 F. Supp. 2d 366, 372-73 (D.D.C. 2007); *Amfac Resorts, LLC v. U.S. Dep't of Interior*, 143 F. Supp. 2d 7, 13 (D.D.C. 2001). In addition, information may be withheld or redacted from an administrative record when it implicates specific protections, such as protection of information reflecting confidential business information or trade secrets. For example, in *Nat'l Wildlife Federation v. EPA*, 286 F.3d 554 (D.C. Cir. 2002), the D.C. Circuit rejected the National Wildlife Federation's request that EPA be required to disclose confidential information in the administrative record that was collected from industry during the course of a rulemaking, explaining that the confidential business information at issue was "the type of sensitive information and confidential or trade secret

information that EPA can properly withhold from public view." *Id.* at 574. *See also MD Pharmaceutical, Inc. v. DEA*, 133 F.3d 8, 13 (D.C. Cir. 1998) (allowing the DEA to exclude from its administrative record trade secrets that it used to evaluate an application to produce a drug in bulk, and noting that "[w]e find nothing in the statute or the regulations that gives third parties such sweeping access to sensitive agency materials"*)*; *Serono Labs, Inc. v. Shalala*, 35 F. Supp. 2d 1, 3 (D.D.C. 1999) (noting that in *MD Pharmaceutical*, the D.C. Circuit recognized "an absolute agency right to delete [trade secrets] from the administrative record . . . [and] expressly held that the statutory protection afforded trade secrets trumps the interest in a complete administrative record."). These cases stand for the proposition that when there is a competing need for administrative record materials to be kept confidential, protection can trump disclosure.

Case law also makes clear that protection can trump disclosure where, as here, the claim of confidentiality is made not by the federal agency defendant but by a third party from whom the federal agency obtained the relevant information. Where a plaintiff challenged the adequacy of the Army Corps of Engineers' administrative record because the Corps had withheld from the record certain raw data underlying an environmental impact statement, the challenge was rejected because the data at issue was confidential business information and disclosure would likely harm the firms from which it was obtained. *Atchison, Topeka and Santa Fe Ry. Co. v. Alexander et al.*, 480 F. Supp. 980, 994-95 (D.D.C. 1979), *aff'd in part, rev'd in part on other grounds sub nom. Izaak Walton League of America v. Marsh*, 655 F.2d 346 (D.C. Cir. 1981). It did not matter that the basis for withholding the information at issue was third parties' interest in the confidentiality of the information. *Id.* In *Atchison*, as here, the material sought by the plaintiff was provided only pursuant to a guarantee that its confidentiality would be maintained. *Id*. at 995; *see* McLeod Decl. ¶¶ 9-10, 18; Belfi Decl.¶¶ 12-15. The court held that the agency

properly withheld the confidential material from the administrative record, notwithstanding the plaintiff's claim that it was "vital" to an evaluation of the challenged decision, and that the administrative record was adequate for judicial review. *Id.* at 994-95.[8]

B. The Existing Record in This Case is Sufficient For Judicial Review, and, if Necessary, *In Camera* Review Would Confirm that Maintaining the Confidentiality of this Information Would Not Cause Undue Prejudice.

There is more than sufficient information in the administrative record to enable the Court to understand the basis of the Council's decision and, on that basis, to adjudicate MetLife's claims. It is well-established that the administrative record may still be adequate, and the plaintiff not unduly prejudiced, even if the record is missing documents. *See, e.g., Occidental Petroleum Corp. v. SEC*, 873 F.2d 325, 338 (D.C. Cir. 1989) (a record "allow[s] for meaningful judicial review" if it "delineates the path by which [the agency] reached its decision"); *Fuentes v. INS*, 746 F.2d 94, 97 (1st Cir. 1984) (finding record sufficient for judicial review even where several documents were omitted). Indeed, an administrative record has recently been deemed sufficient for judicial review where the agency lost several binders of evidence submitted by the plaintiff. *Zevallos v. Obama*, -- F.3d. --, 2015 WL 4153882, * 9 (D.C. Cir. July 10, 2015) (upholding dismissal of APA challenge by Peruvian national designated as "Significant Foreign Narcotics Trafficker" under Foreign Narcotics Kingpin Designation Act, to decision not to "delist" him). Here, the documents at issue must be withheld based on a statutory confidentiality obligation and privilege, as well as agreements with state insurance regulators on which the

[8] In view of the authority supporting the withholding or redaction from an administrative record of confidential or privileged material provided to a federal agency by third-parties, as well as the other information that was made available to MetLife with the record, there would be little basis for the Council to conclude that resisting disclosure of the documents at issue here would be unsuccessful or against the Council's interest, within the meaning of the MOUs with the state insurance regulators. *See* CID MOU II.C.5(a); NY DFS MOU II.C.5(a).

Council relies for important information. Nevertheless, the record is more than adequate for judicial review without the additional materials MetLife seeks to have disclosed.[9]

To be sure, the Council acknowledges that in some cases the protections described above must yield to a party's need for the information, but that is simply not the case here in light of the robustness of the existing record. While the material at issue here, like the other state regulatory material that has been disclosed to MetLife, was reviewed by the staff of Council members and member agencies, these materials were not relied upon by the Council in support of its final determination, and are at best only marginally additive to the voluminous quantity of state regulator material already in the record. Given, among other things, the New York and Connecticut state insurance regulators' submissions to the Council detailing reasons why MetLife should not be designated, *see* AR 62843-62861; AR 66153-66157, it can reasonably be inferred that the state regulators' protection of the documents at issue here would not unduly prejudice MetLife's case.

Should the Court have concerns about whether judicial review is limited in any way by the Council's withholding and redaction of the materials at issue, or that MetLife would be unduly prejudiced by the denial of the Motion outright, *in camera* review would enable the Court to address those concerns while at the same time protecting the confidential materials from

[9] MetLife argues that being denied access to the records at issue in its Motion constitutes a denial of due process. As the cases cited above demonstrate, however, it is not uncommon for materials to be withheld from the administrative record when they are privileged or when statutory protections apply; such withholdings hardly undermine a meaningful ability to be heard. In any event, the materials at issue here are at best marginally additive to the large amount of information in the record. The Council will address MetLife's various due process claims (*e.g.*,, its claim that it is entitled to the Council's administrative record before the Council reached a final decision, and that the Council's designation somehow deprived it of a protected property interest and violated *Brady v. Maryland*, 373 U.S. 83, 87 (1963)) more fully in its brief in opposition to MetLife's motion for summary judgment and reply in support of its own dispositive motion, which is due on July 31, 2015. *See* Scheduling Order, ECF 14.

disclosure, at least in the first instance. By conducting *in camera* review, the Court could verify that the state regulators' interests in maintaining the confidentiality of these documents are legitimate, while making its own determination as to whether withholding them from MetLife inappropriately limits the ability of MetLife to litigate, or the Court to adjudicate, this case.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Compel should be denied.

Dated: July 20, 2015

Respectfully submitted,

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