IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS BLACK, *et al.*,

Plaintiffs,

v.

PENSION BENEFIT GUARANTY CORPORATION, *et al.*,

Defendants.

Case No. 2:09-cv-13616
Hon. Arthur J. Tarnow
Magistrate Judge Mona K. Majzoub

PENSION BENEFIT GUARANTY CORPORATION'S RESPONSE TO PLAINTIFFS' SECOND MOTION TO COMPEL DISCOVERY

Issue Presented

Under the Federal Rules of Civil Procedure, plaintiffs may request only documents that are relevant to the claims actually pled in their complaint. In deciding what to assert in this lawsuit they filed, plaintiffs limited the counts of their complaint to challenging PBGC's termination of their pension plan by agreement with Delphi Corporation, its former sponsor. Ignoring their own narrowly drawn counts, plaintiffs now demand that PBGC produce every single document related to Delphi Corporation and its pension plans that PBGC has or has ever seen, as required by First and Second Requests for Production of Documents to Defendant PBGC. Do the Federal Rules of Civil Procedure allow plaintiffs to seek unfettered discovery unrelated and irrelevant to the counts of their complaint or must their requests be limited to documents relevant to Counts 1 through 4?

Authority PBGC Chiefly Relies Upon

United States Circuit Court Cases

In re Cooper Tire & Rubber Co., 568 F.3d 1180, 1188-1190 (10th Cir. 2009)

In re Subpoena to Witzel, 531 F.3d 113, 118 (1st Cir. 2008)

In re Sealed Case, 381 F.3d 1205, 1215 n.11 (D.C. Cir. 2004)

United States District Court Cases

Hill v. Motel 6, 205 F.R.D. 490, 492 (S.D. Ohio 2001)

Grace v. City of Xenia, 2006 U.S. Dist. LEXIS 80350, at *2-3 (S.D. Ohio 2006)

Bricker v. R & A Pizza, Inc., 2011 U.S. Dist. LEXIS 55324, at *6 (S.D. Ohio 2011)

Hennigan v. GE Co., 2010 U.S. Dist. LEXIS 115508, at *9-11 (E.D. Mich. 2010)

Anderson v. Dillard's Inc., 251 F.R.D. 307, 309-310 (W.D. Tenn. 2008)

Gibson v. Servicemaster Co., 2009 U.S. Dist. LEXIS 49083, at *2-3 (E.D. Tenn. 2009)

Watson v. State Farm Mut. Auto. Ins. Co., 2010 U.S. Dist. LEXIS 56042 (E.D. Mich. 2010)

Stratienko v. Chattanooga-Hamilton County Hosp. Auth., 2008 U.S. Dist. LEXIS 37917, at *35-36 (E.D. Tenn. 2008)

E.E.O.C. v. Woodmen of the World Life Ins. Society, 2007 U.S. Dist. LEXIS 18497 at *4, 2007 WL 1217919 at *1 (D. Neb. 2007)

Factual and Procedural Background

In this action, plaintiffs challenge the termination of the Delphi Salaried Plan based upon only one issue: whether PBGC could legally terminate the Delphi Salaried Plan under 29 U.S.C. § 1342 by agreement with Delphi. Despite having chosen this narrow legal ground by virtue of the allegations in their complaint, plaintiffs have launched massive and unreasonable discovery demands upon PBGC that bear no relation to the actual claims that plaintiffs chose to plead. In their First and Second Requests for Production of Documents (seventeen requests in total), plaintiffs seek all documents and information in PBGC's possession that in any way relate to Delphi Corp. and all of Delphi's defined benefit pension plans, from 2006 to the present. PBGC responded to their request by objecting to this impermissible fishing expedition into PBGC's records as being utterly irrelevant, among other grounds, and plaintiffs' Motion to Compel followed.

Argument

I. Parties Are Not Entitled to Broad Discovery Unrelated to Actual Claims and Defenses Filed.

A. Relevancy Requirements under Fed. R. Civ. P. 26(b)(1) Limit the Scope of Discovery.

Fed. R. Civ. P. 26(b)(1) was amended in 2000 to limit the scope of discovery available.[1] The new language provides as follows: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . ." In implementing the 2000 amendments, the Advisory Committee stated:

[1] Note, however, even before the 2000 amendments, the Supreme Court acknowledged that discovery has "ultimate and necessary boundaries." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

> [T]he amendment is designed to involve the court more actively in regulating the breadth of sweeping or contentious discovery. The Committee has been informed repeatedly by lawyers that involvement of the court in managing discovery is an important method of controlling problems of inappropriately broad discovery. The Committee intends that the parties and the court focus on the actual claims and defenses involved in the action. . . . The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings.[2]

The relevancy requirement in Fed. R. Civ. P. 26(b)(1) implements a two-tiered discovery process; the first tier being attorney-managed discovery of information relevant to any claim or defense of a party, and the second being court-managed discovery of information relevant to the subject matter of the action.[3] Thus, a party seeking discovery is entitled to request only non-privileged information that is "relevant to any party's claim or defense."[4] If court intervention in the discovery process is required, "[a] court resolving a discovery dispute on the ground of relevance must, under the 2000 amendments, focus on the specific claim or defense alleged in the pleadings."[5]

Before the 2000 amendments, relevance for discovery purposes was broadly and liberally construed and a request for discovery was considered relevant if there was any possibility that the information sought may be relevant to the subject matter of the action.[6] The historic breadth

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[2] Fed. R. Civ. P. 26 Advisory Committee's Note (2000).

[3] *Id.*; *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1188-1190 (10th Cir. 2009); *In re Subpoena to Witzel*, 531 F.3d 113, 118 (1st Cir. 2008); *In re Sealed Case*, 381 F.3d 1205, 1215 n. 11 (D.C. Cir. 2004); 6 James Wm. Moore et al., Moore's Federal Practice § 26.41 (3d ed. 2007).

[4] Fed. R. Civ. P. 26(b)(1).

[5] Moore et al., *supra*, § 26.41[2][a].

[6] *Hill v. Motel 6*, 205 F.R.D. 490, 492 (S.D. Ohio 2001); *Grace v. City of Xenia*, 2006 U.S. Dist. LEXIS 80350, at *2-3 (S.D. Ohio 2006); Moore et al., *supra*, § 26.41.

of discovery is reflected in the cases that plaintiffs here cite in their motion to compel, many of which were decided before the discovery rules were changed or which rely on older and out-dated cases.[7] Despite the impression given by the plaintiffs, the current, narrower discovery standard under Fed. R. Civ. P. 26(b) is applicable to this case, and requires that determination of relevancy must focus on the claims and defenses the parties have actually asserted in their pleadings, rather than the more general subject matter of the pending action.[8]

B. The Burden is on the Party Seeking Discovery to Show Relevance.

Because Fed. R. Civ. P. 26(b)(1) limits the scope of party-controlled discovery to information relevant to the claim or defense pled, once a party objects that discovery goes beyond what is relevant to the claims or defenses, the party seeking discovery must demonstrate that the requests are in fact relevant to the claims they have asserted.[9] In this case, PBGC objected to the plaintiff's discovery requests based on relevancy grounds, among others.[10]

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[7] *See* Plaintiffs' Second Motion to Compel at 8-10. The Sixth Circuit's decision in *Conti v. Am. Axle & Mfg.*, 326 F. Appx. 900, 904, 2009 WL 1424371 at *3 (6th Cir. 2009), upon which plaintiffs chiefly rely, is entirely irrelevant. It addresses the question of when the deposition of a high corporate official is appropriate, and it never touches on, much less discusses, the new relevancy limitation in Fed. R. Civ. P. 26(b). The other cases plaintiffs cite were decided before 2000, when the new relevancy limitation was added to Rule 26. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (allowing discovery on "any issue that is or may be in the case" rather than limiting discovery to matters relevant to the claims actually pled); *Lewis v. ACB Bus. Servs.*, 135 F.3d 389, 402 (6th Cir. 1998); *Mellon Copper-Jarrett, Inc*. 424 F.2d 499, 501 (6th Cir. 1970)).

[8] Fed. R. Civ. P. 26; Fed. R. Civ. P. 26 Advisory Committee's Note (2000) ("The Committee intends that the parties and the court focus on the actual claims and defenses involved in the action"); *Bricker v. R & A Pizza, Inc.*, 2011 U.S. Dist. LEXIS 55324, at *6 (S.D. Ohio 2011).

[9] *Hennigan v. GE Co.*, 2010 U.S. Dist. LEXIS 115508, at *9-11 (E.D. Mich. 2010); *Anderson v. Dillard's Inc.*, 251 F.R.D. 307, 309-310 (W.D. Tenn. 2008).

[10] *See* PBGC Response to First Request at 1-4.

Therefore, the burden is on the plaintiffs to show that their discovery requests are relevant to the claims and defenses asserted in this case.[11]

If, after the plaintiffs attempt to show that their discovery requests are relevant to their actual claims, plaintiffs' requests are found to "stray outside of an area relevant to a claim or defense," plaintiffs may try under Fed. R. Civ. P. 26(b)(1) to show good cause to expand the scope of discovery.[12] Plaintiffs have made no such attempt here. Regardless, the good cause standard[13] does not obviate the plaintiff's obligation to make a threshold showing of relevance.[14] Here, as discussed further below, plaintiffs' requests do not bear upon the issues in their case.

II. The Narrow Claims Alleged by Plaintiffs Do Not Warrant the Sweeping Discovery Demands They Make.

A. The District Court Has Never Ruled on the Propriety of Plaintiffs' Specific Discovery Requests

In the first instance, plaintiffs make the surprising assertion that the Court has already ruled on the questions raised by their motion to compel and in fact, by Order dated September 1, 2011, required PBGC to give the plaintiffs the massive and intrusive document discovery that they demand. In fact, this Court has imposed no such requirement. Plaintiffs' discovery

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[11] *Hennigan*, 2010 U.S. Dist. LEXIS 115508 at *9-11; *Anderson*, 251 F.R.D. at 309-310.

[12] *Gibson v. Servicemaster Co.*, 2009 U.S. Dist. LEXIS 49083, at *2-3 (E.D. Tenn. 2009); *see also Hill*, 205 F.R.D. at 492; *Watson v. State Farm Mut. Auto. Ins. Co.*, 2010 U.S. Dist. LEXIS 56042, at *11, *21-22 (E.D. Mich. 2010).

[13] Moore et al., *supra*, § 26.41.

[14] *Stratienko v. Chattanooga-Hamilton County Hosp. Auth.*, 2008 U.S. Dist. LEXIS 37917, at *35-36 (E.D. Tenn. 2008); *E.E.O.C. v. Woodmen of the World Life Ins. Society*, 2007 U.S. Dist. LEXIS 18497 at *4, 2007 WL 1217919 at *1 (D. Neb. 2007); Moore et al., *supra*, § 26.41[3][c] ("Indeed, the primary focus of the court and the parties, in view of the purpose of the 2000 amendments to Rule 26(b)(1), should be on the actual claims and defenses as the parties assert them in their pleadings.").

demands were not served on PBGC until September 23, 2011 and October 14, 2011, after the date of the Court's Order that plaintiffs cite. The Court cannot have ruled on the question presented by plaintiffs' motion to compel before plaintiffs served such requests upon PBGC. Thus, plaintiffs' statement that "this Court's September 1, 2011 Order explicitly stated that the type of documents that plaintiffs have requested are within the scope of discovery" is false. The District Court's September 1, 2011 Order simply directed that "this case will proceed to discovery."[15] And even to the extent that the Court's Order may have been interpreted to contain broad language about the issues that may be outstanding in this case, on October 3, 2011, the Court clarified the language in its September 1, 2011 order as discussed more fully below.

B. Plaintiffs' Claims in Counts 1, 2, and 3 are Narrow and Specific.

Turning to plaintiffs' actual claims, they state plainly and clearly in their Motion, "this lawsuit concerns the propriety of the PBGC's termination of plaintiffs' defined benefit pension plan [the Delphi Salaried Plan] in August 2009."[16] The four counts against PBGC in plaintiffs' complaint challenge only PBGC's termination of the Delphi Salaried Plan by agreement with its administrator, then known as Delphi Corporation.[17]

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[15] *See* September 1, 2011 Order of Judge Tarnow.

[16] Plaintiffs' Brief in Support of Second Motion to Compel, at 4-5.

[17] Throughout this brief, references to "Delphi" shall refer to Delphi Corp. prior to its actual liquidation in bankruptcy. On October 6, 2009, the transactions described in Delphi's modified plan of reorganization closed. Delphi sold most of it remaining domestic assets, which consisted of four still-operating plants, and its international steering parts business to General Motors. The bulk of Delphi's foreign assets were sold to a new United Kingdom limited partnership, DIP Holdco LLP, which was then re-named Delphi Automotive LLP. Delphi Corp. then changed its name to DPH Holdings Corp., and it has been in the process of liquidating the few remaining assets that neither GM nor DIP Holdco wished to purchase, such as closed manufacturing facilities with environmental issues. *See* U.S. Gov't Accountability Office, GAO-11-373R, Delphi Pension Plans, at 18 (2011). PBGC is informed that DPH Holdings currently has only one employee, who is charged with completing the asset liquidation process.

Counts 1, 2, and 3 of plaintiffs' complaint explicitly challenge only the legality of the agreement executed between PBGC and Delphi that effectuated termination of the Plan. Ignoring the clear operative language of 29 U.S.C. § 1342(c), Count 1 alleges that PBGC was required to obtain a court decree terminating the Plan, and thus, PBGC's agreement with Delphi to terminate the Plan is inadequate. As this count is purely a question of law, there is no relevant documentation. But because PBGC, and every court to have reviewed the same statutory language, interprets it to mean that the agency may terminate a pension plan by agreement with the plan administrator, the only document that is conceivably relevant to this very specific legal question is the signed termination agreement. PBGC has produced that document to plaintiffs.

Count 2 alleges that Delphi had a fiduciary conflict in signing the termination agreement, and for that reason the agreement is illegal. As with count 1, this is a legal question, and the only document not already available to plaintiffs that could be relevant to this specific claim is the signed termination agreement. As PBGC noted in its responses to plaintiffs' requests, Delphi's decision to enter into an agreement with PBGC, rather than forcing PBGC to seek termination through a court decree, was reviewed at length by the U.S. Bankruptcy Court for the Southern District of New York, which oversaw Delphi's bankruptcy case. Plaintiffs here fully participated in the proceedings at which Delphi sought the Bankruptcy Court's authority to sign the termination agreement, filing briefs and arguing at length before the bankruptcy court that Delphi did not have the legal right to enter into an agreement with PBGC that would result in termination of Delphi's pension plans. Those proceedings culminated in a final bankruptcy order authorizing Delphi to sign the agreement with PBGC. Plaintiffs did not appeal that order. Though PBGC does not believe that plaintiffs may attack that now final and nonappealable order in this forum, the documents describing the basis and legal underpinning of Delphi's decision are

publicly available on the bankruptcy court's docket. There are no other documents in PBGC's possession or control that have any relevance to plaintiffs' questions of Delphi's capacity to agree to the Plan's termination.

Count 3 alleges that termination of the Plan by agreement rather than by court decree violates the plaintiffs' right to due process. Once again, as with counts 1 and 2, the only document in any way relevant to this legal claim is the termination agreement. No other documents in PBGC's possession or control have any bearing whatsoever on this constitutional question.

C. The Only Documents Relevant to Count 4 are PBGC's Administrative Record and the Termination Agreement.

Count 4 alleges that PBGC did not satisfy the legal standards for termination under § 1342. Plaintiffs have stated that the only issue in Count 4 is whether PBGC has complied with the requirements for termination set forth in § 1342(c).[18]

The plain language of section 1342(c) of ERISA grants PBGC the ability to terminate a pension plan by agreement with the administrator of that pension plan. Upon reaching such an agreement, the statute *expressly* eliminates the requirement that PBGC seek a court decree:

> If the corporation 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 subsection (d)(1) and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3).[19]

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[18] *See* Plaintiffs' Response to the PBGC's "Supplemental" Brief at 7 (filed January 19, 2010); Brief in Support of Plaintiffs' Objections to Magistrate Judge's Scheduling Order and Order Denying Plaintiffs' Motion for Adoption of Scheduling Order at 10-14 (filed April 11, 2011).

[19] 29 U.S.C. § 1342(c) (emphasis added).

In providing for PBGC and a plan's administrator to terminate a pension plan by agreement, Congress obviated the requirement that PBGC burden a court's docket when the plan administrator agrees with PBGC's decision to terminate. A fully-executed termination agreement, together with the administrative record of PBGC's decision, are the only documents relevant to a plan termination challenge. Ignoring the existence and effect of a signed termination agreement and allowing unbridled discovery on every facet of PBGC's monitoring and investigation of a particular plan sponsor as if the Court were required to enter a termination decree would render meaningless the statutory language quoted above by which Congress gave PBGC express authority to terminate pension plans by agreement with their administrators. Such a ruling would call into question every one of the thousands of plan terminations PBGC has completed by agreement with each plan's administrator.

In their Motion to Compel, plaintiffs make two arguments about why Count 4 is actually a broad allegation that justifies their sweeping requests. First, they argue that Count 4 contains a claim that PBGC terminated the Delphi Salaried Plan for improper and unstated reasons different from those set forth in PBGC's administrative record. Therefore, plaintiffs argue, they are entitled to broad discovery to find evidence to support their claim. There are, however, no such allegations in Count 4 of plaintiffs' complaint. The amended federal rules are clear – plaintiffs are entitled to discovery only on the claims that they actually pled. And plaintiffs are certainly not entitled to discovery to find out whether claims exist beyond those that they have pled.[20] Allowing discovery based on that argument here would disregard the new discovery limitations.

[20] *See Stratienko*, 2008 U.S. Dist. LEXIS 37917, at *35-36 ("Rule 26 is clear that a party, including the plaintiff herein, may not obtain the documents at issue to determine whether they are relevant."); *Woodmen of the World Life Ins. Society*, 2007 U.S. Dist. LEXIS 18497 at *4, 2007 WL 1217919 at *1.

Plaintiffs next argue they are entitled to broad and expansive discovery based on the September 1, 2011 Order. The Court overturned the Magistrate Judge's ruling that no discovery was to be allowed absent plaintiffs' showing that PBGC's Administrative Record was inadequate, because Count 4 challenges an agency decision based on an administrative record. Plaintiffs argue that in the September 1 ruling, the Court ordered PBGC to submit to discovery *as if* the agreement with Delphi terminating the Salaried Plan were legally invalid and PBGC were obliged to prove its grounds for termination of the plan *de novo* under § 1342(c). The Court, however, has made no such ruling. In fact, PBGC filed a Motion for Reconsideration of the September 1, 2011 Order because it appeared to PBGC that the Court had effectively held that PBGC was required to prove its case for termination as if the termination agreement had not been executed or was impermissible. In denying PBGC's Motion for Reconsideration on October 3, 2011, the Court clarified its earlier Order:

> [T]his Court has not ruled on the meaning of the statutory language of 29 U.S.C. § 1342(c), or on Congress's intent in enacting said statute, or on whether Defendant's practices are in accordance with section 1342(c).[21]

As the Court held that it has not ruled on plaintiffs' claim that PBGC must seek a court order terminating a plan, plaintiff's claim that ERISA did not permit PBGC to terminate the Salaried Plan by agreement remains outstanding and the only document discovery relevant to that issue is the signed termination agreement between PBGC and Delphi.

[21] *See* October 3, 2011 Order of Judge Tarnow.

D. Plaintiffs' Arguments in Support of the Relevance of their Requests are Flawed Because Plaintiffs Fail to Address their Actual Claims.

Plaintiffs sweeping discovery requests are not at all relevant to the actual claims in their complaint. In asserting that "on their face, each of Plaintiffs' requests meets [the Rule 26] standard," plaintiffs neither address the actual standard under the Federal Rules of Civil Procedure, nor do they demonstrate how each of their requests meets that standard.[22]

With respect to their Document Request No. 2,[23] which asks for "all documents […] produced or reviewed by the PBGC between January 1, 2006 and December 31, 2009 […] related to Delphi or the Delphi Pension Plans,"[24] plaintiffs do not mention the claims in their complaint but rather refer to PBGC's statutory role to guarantee pension plans. Plaintiffs argue that any request directed to PBGC, so long as it was tangentially related to a pension plan, would be appropriate. But the federal rules create a different and narrower standard – the relevance of a discovery request does not depend upon the nature of the party against whom it is directed, but rather upon the contents of the claims made against that party.[25]

Plaintiffs assert that Document Request Nos. 3, 4, and 5 are relevant to an investigation of the factual basis for PBGC's finding under § 1342(a)(2) that the Salaried Plan faced abandonment due to Delphi's impending liquidation. Documents supporting PBGC's conclusion that Delphi was going to liquidate and therefore, the Salaried Plan would be abandoned, are contained in PBGC's administrative record. Such a challenge to one of the § 1342(a) grounds

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[22] Plaintiffs' Brief in Support of Second Motion to Compel, at 14.

[23] PBGC has already responded fully to plaintiffs' Document Request No. 1, and it is not at issue in this Motion.

[24] Plaintiffs' Document Request No. 2.

[25] *See* Moore et al., *supra*, § 26.41[2][a].

must be reviewed under the standards set forth in the Administrative Procedure Act, which limits the court's review to PBGC's administrative record. These additional documents sought by plaintiffs have no relevance to plaintiffs' actual allegation that termination of the Salaried Plan by agreement was illegal or unconstitutional.

Regarding Document Request Nos. 6-14, plaintiffs assert that the documents they seek are "relevant to the propriety of the Plan's termination under the § 1342(c) criteria." Their specific requests, however, belie that assertion. For example, they ask for documents concerning PBGC's liens for missed funding contributions to the plan under Internal Revenue Code §§ 412(n) and 430(k), negotiations about PBGC's recoveries on its claims under 29 U.S.C. § 1362, and the calculation of Salaried Plan participants guaranteed benefits under 29 U.S.C. § 1344. These topics have no bearing whatsoever on the only § 1342(c) question raised by plaintiffs in this case – whether PBGC and Delphi were permitted to terminate the Salaried Plan by agreement. Plaintiffs are not entitled to discovery on claims that they did not plead.

Finally, the last three of plaintiffs' requests seek documents that plaintiffs' counsel requested from PBGC through the Freedom of Information Act ("FOIA") process, but which were withheld under the various exceptions to production under FOIA.[26] Under FOIA,

[26] Plaintiffs' counsel has sent three FOIA requests to PBGC, all of which have been satisfied. The first request was sent on September 25, 2009, and PBGC responded on November 10, 2009. Plaintiffs' counsel did not appeal this response. The second request was sent on October 19, 2009, and PBGC responded in several parts, the last on April 9, 2010. Plaintiffs' counsel appealed these responses on May 7, 2010, and PBGC's FOIA appeals officer issued a final determination on August 29, 2011. The third request was sent on June 28, 2010, and PBGC again responded in several parts, the last on November 4, 2010. Plaintiffs' counsel appealed these responses on December 3, 2010, and PBGC's FOIA appeals officer issued a final determination on October 17, 2011. In her decisions, PBGC's appeals officer found that some of the documents initially withheld by PBGC should have been produced, and they were, and some of the documents were properly withheld. If plaintiffs' counsel was unsatisfied with any of these final determinations and still believes that PBGC's decision to withhold certain documents is not

plaintiffs' attorneys were free to ask PBGC for whatever they wished, regardless of relevance, and PBGC produced the documents in accordance with the requirements of FOIA. By converting their FOIA requests into discovery requests, however, plaintiffs have subjected them to the Federal Rules of Civil Procedure, and in particular, the relevance limitation in Fed. R. Civ. P. 26(b). Plaintiffs make no attempt in their Motion to Compel to explain how any of their FOIA requests are relevant to the claims they have pled, and, in fact, they are not relevant. As with their document requests, plaintiffs' FOIA requests ask for materials unrelated to their actual claims. For example, among their FOIA requests, plaintiffs' counsel asked PBGC for all actuarial correspondence going back to 2005 and for all documents related to PBGC's lien calculations, PBGC's recoveries, and PBGC organizational charts. These requests have no relevance to plaintiffs' claims.[27]

III. Plaintiffs are Not Entitled to an Award of Fees and Expenses.

The plaintiffs have filed a complaint challenging the legality of the agreement between PBGC and Delphi that terminated the Delphi Salaried Plan, and PBGC, in good faith, believes the plaintiffs have received all of the documents relevant to the claims in their amended complaint. This is the first time this Court will have considered the relevance of these specific discovery demands of the plaintiffs in light of the narrow allegations in plaintiffs' complaint.

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correct, the appropriate manner for challenging the outcome is by filing an action in federal district court in the District of Columbia. *See* 29 C.F.R. § 4901.15.

[27] In their Motion to Compel, plaintiffs assert that PBGC should be held to have waived all objections to the document requests other than PBGC's relevance objection. *See* Plaintiff's Brief in Support at 10-13. This argument is meritless – PBGC cannot be said to have waived objections that it actually asserted. More importantly, as set forth above, PBGC has produced all relevant documents in response to plaintiffs' requests, and as an example, has not located any such relevant documents that may be privileged. To the extent that the Court disagrees with PBGC's position with respect to the relevance of plaintiffs' document requests and requires the production of additional documents, PBGC has not and does not waive any objection that it may have to that additional production, on the basis of any applicable privileges.

The fact that PBGC has objected on relevance grounds to the plaintiffs' massive requests that are entirely unrelated to the actual allegations in their complaint does not mean that PBGC is in violation of any Order of this Court. Thus, to the extent that fees and expenses may be obtained from PBGC, an award of fees and expenses is not justified in this context.

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Conclusion

Plaintiffs acknowledge that their claims concern only the propriety of PBGC's termination of the Delphi Salaried Plan, and the actual language of the claims speaks only of a challenge to PBGC's termination agreement with Delphi. The agreement executed by PBGC and Delphi, together with PBGC's Administrative Record of its decision to initiate termination and the public record of Delphi's bankruptcy proceeding, represent the universe of documents relevant to the action. Accordingly, PBGC respectfully requests that this Court overrule plaintiffs' Motion to Compel its First and Second Request for Production of Documents.

Dated: December 22, 2011

Washington, D.C.

Respectfully Submitted:

/s/ C. Wayne Owen, Jr.

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Certificate of Service

I hereby certify that on December 22, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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