

**JUDGE TARNOW'S RESPONSE 10/3/2011 TO THE PBGC'S FILING 9/15/2011
MOTION AND BRIEF FOR RECONSIDERATION OF THE COURT'S ORDER OF
SEPTEMBER 1, 2011, OR, ALTERNATIVELY, TO CERTIFY THE ORDER FOR
APPEAL**

The motion for reconsideration or for certification for interlocutory appeal is denied. The following is text of the interlocutory appeal.

Interlocutory Appeal

Defendant asks in the alternative that this Court permit an interlocutory appeal pursuant to 28 U.S.C. §1292(b). A district court judge may certify an issue for interlocutory appeal if the case “involves a controlling question of law as to which there is substantial ground for difference of opinion and... an immediate appeal from the order may materially advance the ultimate termination of the litigation” 28 U.S.C. § 1292(b).

The Court declines to certify an interlocutory appeal in this matter. The plain language of 28 U.S.C. §1292(b) makes the district court’s decision whether to certify an appeal discretionary. Certification should be ordered “sparingly and only in exceptional cases.”

In re City of Memphis, 293 F.3d 345, 350 (6th Cir. 2002); *see also Kraus v. Board of County Comm’rs*, 364 F.2d 919, 922 (6th Cir. 1966).

Defendant’s request for interlocutory appeal relies upon a mischaracterization of this Court’s Order Sustaining Plaintiffs Objections to the Magistrate Judge’s Scheduling Order. A district court may permit such an appeal when the court is of “the opinion that such an order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.”

Swint v. Chambers Cnty. Comm’n, 514 U.S. 35, 47 (1995).

Defendant characterizes its appeal as necessary to resolve the controlling question of “[w]hether Title IV of ERISA allows PBGC to terminate pension plans by agreement with plan administrators without obtaining a court decree.”

This Court has not issued any decision on the merits with regard to whether Title IV of ERISA permits PBGC to terminate a pension plan by agreement with the plan administrator. This Court’s Order therefore did not involve the controlling question of law for which Defendant seeks certification.

Accordingly, **IT IS ORDERED** that Defendant’s Motion for Reconsideration or Certification for Interlocutory Appeal [194] is **DENIED**.

SO ORDERED.