

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

Dennis Black, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 2:09-cv-13616
)	Hon. Arthur J. Tarnow
v.)	Magistrate Judge Mona K. Majzoub
)	
Pension Benefit Guaranty Corporation,)	
)	
Defendant.)	
)	

**JOINT STATEMENT OF RESOLVED AND UNRESOLVED ISSUES RELATING TO
PLAINTIFFS’ SECOND MOTION TO COMPEL DISCOVERY FROM DEFENDANT
PENSION BENEFIT GUARANTY CORPORATION**

In accordance with the Court’s Order of December 20, 2011, the Parties hereby submit the following Joint Statement of Resolved and Unresolved Issues, as follows:

1. Certification

Counsel for the Parties have conferred in good faith in an effort to narrow the areas of disagreement.

2. Resolved Issues

There is no dispute as to Document Request No. 1.

3. Unresolved Issues

A. Scope and focus of discovery

Plaintiffs and Defendant do not agree about the scope of discovery applicable to this Case.

Plaintiffs’ position: In its September 1, 2011 Order, the Court stated that “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.” Docket No. 193 at 3 (quoting *Conti v. Am. Axle & Mfg., Inc.* 326 Fed. App’x 900, 904 (6th Cir. 2009) (unpublished)). Further, the Court held that the scope of discovery in this case would include, and indeed *should “focus” on:*

Count 4 and whether termination of the Salaried Plan would have been appropriate in July 2009 if, as Plaintiffs contend, Defendants were required under 29 U.S.C. § 1342(c) to file before this 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 fund.”

Docket No. 193 at 3-4. Plaintiffs thus maintain that any discovery that is reasonably calculated to lead to discovery on this question is *de facto* relevant.

Defendant’s position: In 2000, Rule 26(b)(1) of the Federal Rules of Civil Procedure was amended to limit the scope of discovery to “nonprivileged matter that is relevant to any party’s claim or defense.” The opinion in *Conti v. Am. Axle & Mfg., Inc.*, 326 Fed. App’x 900, 904 (6th Cir. 2009), does not address or even cite Rule 26(b), much less interpret it. Moreover, the quote that plaintiffs highlight comes not from *Conti* itself, but rather from a Supreme Court case decided in 1978, some 22 years prior to the adoption of the current version of Rule 26(b)(1).

As PBGC stated in its opposition to plaintiffs’ motion to compel, the claims that plaintiffs have actually pled in this case are very narrow. The first three claims are limited to purely legal issues challenging the legality and constitutionality of the termination agreement entered into by PBGC and Delphi Corp. There are no factual disputes with respect to those three claims whatsoever, and to the extent that count 2 might have raised any factual issues about why Delphi decided to sign the termination agreement, those issues were put to rest by the final and nonappealable order of the U.S. Bankruptcy Court that authorized Delphi to sign that agreement.

Count 4 of the complaint claims that the termination of the Salaried Plan was illegal under 29 U.S.C. § 1342(c) because PBGC did not satisfy the standards for obtaining a court decree under that statute. There are no relevant, unresolved factual issues with respect to this count of the complaint either, because PBGC has admitted that the Salaried Plan was not terminated by court decree, but rather by agreement. The statute explicitly provides that if PBGC and the plan administrator reach such an agreement, they may proceed “without proceeding in accordance with the requirements of this subsection” – in other words, without the necessity of obtaining a court decree. Therefore, whether or not PBGC could have obtained a court decree of termination is entirely irrelevant to this case, and discovery directed to that issue is irrelevant as well.

Plaintiffs assert that in this court’s September 1, 2011 Order, Judge Tarnow authorized extensive discovery of PBGC by assuming that the termination agreement was ineffective and that PBGC was required to prove its case for termination as if, hypothetically, a court decree were required. In making this argument, plaintiffs ignore the court’s October 3, 2011 Order, in which Judge Tarnow expressly clarified that he had not ruled the termination agreement between PBGC and Delphi was ineffective or illegal.

B. Disputed Discovery Requests

The following sixteen (16) Document Requests are at issue between Plaintiffs and Defendant.

Document Request No. 2

This Request asked for “All documents and things received, produced or reviewed by the PBGC between January 1, 2006 and December 31, 2009 (including, but not limited to, documents received from Delphi) related to Delphi or the Delphi Pension Plans.”

Plaintiffs' position: During the time frame specified in the Request, Defendant was collecting information about Delphi and its pension plans in connection with the PBGC's statutory role as guarantor of Delphi's pension plans. Such information should have included information directly relevant to the 1342(c) termination criteria, and should include actuarial reports and correspondence, liability forecasts, and documentation of negotiations with Delphi and GM over the funding and maintenance of Delphi's pension plans. Because this Request is reasonably calculated to lead to the discovery of admissible evidence on the ability of the PBGC to satisfy the termination criteria of § 1342(c), it is relevant to Plaintiffs' claims in Count Four. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs' claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC's termination of the Salaried Plan, it is relevant to Plaintiffs' claims in Count Three. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not provided the requisite specificity required to make these objections. For example, the PBGC has not stated (by affidavit or otherwise) how this Request would constitute a burden (reasonable or otherwise), and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. Under Fed. R. Civ. P. 26(b)(1), plaintiffs may seek discovery only of "nonprivileged matter that is relevant to

any party's claim or defense." Plaintiffs have made no effort to tailor this request to actual claims pled in their complaint, which are very narrow and attack only the propriety of PBGC's agreement with Delphi to terminate the Salaried Plan. Plaintiffs assert entitlement to the vast array of documents they request based solely on PBGC's statutory role as a pension guarantor. But the test for relevance of a discovery request does not turn on the defendant's status or role; rather discovery sought must be relevant to the claims actually pled by plaintiff. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 3

This Request asked for “All documents and things (including, but not limited to, communications, spreadsheets, funding assumptions, snapshots, memoranda, as well as all other documents and things) received, produced or reviewed by the PBGC since January 1, 2006 related to financial involvement by GM with the Delphi Pension Plans, including, but not limited to, GM’s assumption of some or all of the liability for any of the Delphi Pension Plans (and the cost of such an assumption), potential funding of any of the Delphi Pension Plans by GM, or the payment of supplemental pension benefits to Delphi Pension Plan participants by GM.”

Plaintiffs’ position: This Request is reasonably calculated to lead to the discovery of admissible evidence as to the ability of the PBGC to satisfy the termination criteria of § 1342(c) in that any financial assistance that GM considered providing to the Delphi Pension Plans would have affected the liability, funding and viability of those plans and consequently the termination criteria of § 1342(c); thus the Request is relevant to Plaintiff’s count Four. Similarly, because such information is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Two. The PBGC’s objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court’s September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC’s objection that this request is “overbroad, vague, ambiguous, and unduly burdensome,” the PBGC has not provided the requisite specificity required to make these objections. For example, the PBGC has not stated (by affidavit or otherwise) how this Request is vague or ambiguous (especially in light of the detailed definitions and instructions included in the Request), and has consequently

waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. The financial involvement of GM has nothing to do with the actual claims pled in plaintiffs' complaint. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" claim in count 2 their complaint; this is a purely legal question for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 4

This Request asked for "All documents and things received, produced or reviewed by the PBGC since January 1, 2006 and December 31, 2009 related to the potential assumption of liability for any of the Delphi Pension Plans by an entity other than Delphi."

Plaintiffs' position: This Request is relevant for the same reasons outlined in connection with Document Request No. 3, in that the assumption of liability related to the Delphi pension plans would have had a direct effect on the liability, funding and viability of those plans and consequently the termination criteria of § 1342(c); thus the Request is relevant to Plaintiff' count Four. Similarly, because such information is also reasonably calculated to lead to the discovery

of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs' claims in Count Two. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. The potential assumption of liability by other parties for Delphi's plans has nothing to do with the actual claims pled in plaintiffs' complaint. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" claim in count 2 their complaint; this is a purely legal question for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 5

This Request asked for “All documents and things received, produced or reviewed by the PBGC between January 1, 2006 and December 31, 2009 related to the ability of Delphi to maintain the Delphi Pension Plans.”

Plaintiffs’ position: This Request is reasonably calculated to lead to the discovery of admissible evidence as to the ability of the PBGC to satisfy the termination criteria of § 1342(c) in that Delphi’s ability to maintain its pension plans is one of the key factors under the § 1342(c) analysis; thus the Request is relevant to Plaintiff’s count Four. Similarly, because such information is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC’s termination of the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Three. The PBGC’s objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court’s September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC’s objection that this request is “overbroad, vague, ambiguous, and unduly burdensome,” the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC’s other “general” objections fail for the same reason.

Defendant’s position: PBGC objects to this request on relevance grounds. See generally PBGC’s position with respect to Document Request No. 2 above. Plaintiffs make no effort to

tailor this request to actual claims pled in their complaint. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, documents pertaining to Delphi's liquidation and resulting inability to maintain its Salaried Plan are contained in the Administrative Record, which PBGC has produced to plaintiffs. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 6

This Request asked for "All documents and things received, produced or reviewed by the PBGC since January 1, 2006 related to liens involving the Delphi Pension Plans, both asserted and assertable by the PBGC, including, but not limited to, valuation of those liens, communications related to the release or waiver of those liens, and the identity of assets subject to those liens."

Plaintiffs' position: This Request is reasonably calculated to lead to the discovery of admissible evidence as to the ability of the PBGC to satisfy the termination criteria of § 1342(c) in that the PBGC's liens were directly related to the liability of the PBGC's insurance fund because they existed to protect the liability of the fund. They are additionally relevant to the termination criteria in that the PBGC used those liens, and the threat of those liens, in its negotiations with the Delphi, GM and the Auto Task Force to secure recoveries in connection with the Delphi pension plans; thus the Request is relevant to Plaintiff' count Four. Similarly,

because such information is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs' claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC's termination of the Salaried Plan, it is relevant to Plaintiffs' claims in Count Three. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. Liens asserted or that could have been asserted by PBGC have nothing to do with the actual claims pled in plaintiffs' complaint. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's

relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 7

This Request asked for “All documents and things received, produced or reviewed by the PBGC since January 1, 2006 related to the value of Delphi or the value of Delphi’s assets.”

Plaintiffs’ position: This Request is reasonably calculated to lead to the discovery of admissible evidence as to the ability of the PBGC to satisfy the termination criteria of § 1342(c) in that the value of Delphi and its assets was directly relevant to the ability of Delphi to fund its plans, the value of the liens to GM and the Auto Task force, the potential recoveries available to the PBGC (which is directly relevant to the liability of the PBGC’s insurance fund) and the question of whether termination of the Plan was in the best interest’s of the Plan’s participants; thus the Request is relevant to Plaintiff’ count Four. Similarly, because such information is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC’s termination of the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Three. The PBGC’s objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court’s September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC’s objection that this request is “overbroad, vague, ambiguous, and unduly burdensome,” the PBGC has not stated (by

affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. Plaintiffs make no effort to tailor this request to actual claims pled in their complaint. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 8.

This Request asked for "All documents and things you received from the Federal Executive Branch 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."

Plaintiffs' position: Representatives of the Federal Executive Branch, including the Auto Task Force, took a direct role in negotiating with the PBGC over the future of Delphi and its pension plans. The government's interest in Delphi's pension plans derived from the interests of GM, which had a vested interest in the Delphi pension plans and especially in the PBGC's liens on Delphi's pension plans; indeed, up to the time of the Plan's termination Delphi continuously asserted that GM's assumption of the Salaried Plan was a likely outcome. Moreover, GM provided the PBGC with a large settlement in exchange for the release of the liens the PBGC had (both asserted and assertable) on Delphi assets on the Salaried Plan's behalf. This Request is reasonably calculated to lead to the discovery of admissible evidence related to count Four as it would go directly to the ability of the PBGC to satisfy the termination criteria of § 1342(c). By definition, information sent or received by the PBGC on these subjects would be relevant (and certainly calculated to lead to discoverable evidence) on the propriety of the Plans termination under § 1342(c). Similarly, because such information is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs' claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC's termination of the Salaried Plan, it is relevant to Plaintiffs' claims in Count Three. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions

and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. Plaintiffs make no effort to tailor this request to actual claims pled in their complaint. The categories of documents requested in this Request, relating to PBGC's liens, recoveries, and settlements, have nothing to do with the termination agreement. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 9

This Request asked for "All documents and things you received from GM or produced to GM, since January 1, 2006, related to Delphi or the Delphi Pension Plans, including, but not limited to, documents related to the termination of the Delphi Pension Plans, PBGC liens on Delphi assets, recoveries related to the Delphi Pension Plans, the Waiver and Release Agreement, and the Delphi-PBGC Settlement Agreement."

Plaintiffs' position: GM had a vested interest in the Delphi pension plans and especially in the PBGC's liens on Delphi's pension plans; indeed, up to the time of the Plan's termination Delphi continuously asserted that GM's assumption of the Salaried Plan was a likely outcome. Moreover, GM provided the PBGC with a large settlement in exchange for the release of the liens the PBGC had (both asserted and assertable) on Delphi assets on the Salaried Plan's behalf. Thus, this Request is reasonably calculated to lead to the discovery of admissible evidence as to the ability of the PBGC to satisfy the termination criteria of § 1342(c) and is therefore relevant to count Four. Similarly, because such information is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs' claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC's termination of the Salaried Plan, it is relevant to Plaintiffs' claims in Count Three. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. Plaintiffs make no effort to

tailor this request to actual claims pled in their complaint. As with Document Request No. 8, the categories of documents requested in this Request, relating to PBGC's liens, recoveries, and settlements, have nothing to do with the termination agreement. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 10

This Request asked for "All documents and things related to the Waiver and Release Agreement."

Plaintiffs' position: The Waiver and Release Agreement outlined the recoveries that the PBGC would receive from GM in connection with its release of its liens on Delphi assets, and is relevant to Count Four in that it is likely to lead to the discovery of admissible evidence as to, inter alia, the value of the PBGC's liens to GM and the Auto Task force, the possibility of GM or the Auto Task Force eliminating the need for plan termination through financial assistance, the potential recoveries available to the PBGC (which is directly relevant to the liability of the PBGC's insurance fund) and the question of whether termination of the Plan was in the best interest's of the Plan's participants. Similarly, because such information is also reasonably

calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs' claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC's termination of the Salaried Plan, it is relevant to Plaintiffs' claims in Count Three. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. The Waiver and Release Agreement has nothing to do with the actual claims pled in plaintiffs' complaint. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require

PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 11

This Request asked for “All documents and things related to the Delphi-PBGC Settlement Agreement.”

Plaintiffs’ position: This Request is relevant to Count Four in that a request for documents and things related to this agreement, which settled, among other things, the PBGC’s recoveries from Delphi in connection with its decision to terminate by agreement Delphi’s pension plans and release its liens against Delphi assets, is likely to lead to the discovery of admissible evidence as to the termination criteria of § 1342(c). Similarly, because such information is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Two. Likewise, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC’s termination of the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Three. The PBGC’s objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court’s September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC’s objection that this request is “overbroad, vague, ambiguous, and unduly burdensome,” the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC’s other “general” objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. The Delphi-PBGC Settlement Agreement has nothing to do with the actual claims pled in plaintiffs' complaint. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 12

This Request asked for "All documents and things received, produced or reviewed by the PBGC since January 1, 2006 related to the PBGC's potential or actual liability for any benefit payments under Delphi's Pension Plans."

Plaintiffs' position: This Request is likely to lead to the discovery of admissible evidence on the question of increases (unreasonable or otherwise) to the liability of the PBGC's insurance fund, making it directly relevant to Count Four. Additionally, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC's termination of the Salaried Plan, it is relevant to Plaintiffs' claims in Count Three. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1,

2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. Plaintiffs make no effort to tailor this request to actual claims pled in their complaint. Plaintiffs' discovery demands are not relevant to their "property deprivation" claim in count 3 of their complaint; this is a purely legal question for which plaintiffs already have all relevant documents. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 13

This Request asked for "All documents and things received, produced or reviewed by you since January 1, 2009 related to potential PBGC recoveries in connection with the Delphi Pension Plans, including, but not limited to, the estimates of the potential recovery for each claim and the value the PBGC assigned to such claims in the valuation of the Salaried Plan's assets."

Plaintiffs' position: This Request is likely to lead to the discovery of admissible evidence on the question of increases (unreasonable or otherwise) to the liability of the PBGC's insurance

fund, making it directly relevant to Count Four. Additionally, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC's termination of the Salaried Plan, it is relevant to Plaintiffs' claims in Count Three. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC's other "general" objections fail for the same reason.

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. PBGC's recoveries have nothing to do with the actual claims pled in plaintiffs' complaint. Plaintiffs' discovery demands are not relevant to their "property deprivation" claim in count 3 of their complaint; this is a purely legal question for which plaintiffs already have all relevant documents. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 14

This Request asked for “All documents and things received, produced or reviewed by the PBGC related to the Waterfall Right or the Waterfall Participation as those terms are defined in the Waiver and Release Agreement.”

Plaintiffs’ position: This Request is likely to lead to the discovery of admissible evidence on the question of increases (unreasonable or otherwise) to the liability of the PBGC’s insurance fund, making it directly relevant to Count Four. Additionally, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC’s termination of the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Three. The PBGC’s objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court’s September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC’s objection that this request is “overbroad, vague, ambiguous, and unduly burdensome,” the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. Similarly, the PBGC’s other “general” objections fail for the same reason.

Defendant’s position: PBGC objects to this request on relevance grounds. See generally PBGC’s position with respect to Document Request No. 2 above. PBGC’s participation in the Waterfall arrangement has nothing to do with the actual claims pled in plaintiffs’ complaint. Plaintiffs’ discovery demands are not relevant to their “property deprivation” claim in count 3 of their complaint; this is a purely legal question for which plaintiffs already have all relevant documents. Notwithstanding this objection, PBGC has already produced to plaintiffs an

Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 15

This Request asked for "All documents and things the PBGC deemed non-disclosable relating to Miller and Chevalier's September 25, 2009 Freedom of Information Request to the PBGC." The September 25, 2009 request, in turn asked for "Any and all information that the Plan's sponsor and/or the Plan's administrator has provided to the PBGC in connection with the Plan's termination, to the extent that information is not included in the Administrative Record."

Plaintiffs' position: By its very terms, this request covers information reasonably calculated to lead to the discovery of admissible evidence on the ability of the PBGC to satisfy the § 1342(c) termination criteria in that it asks for information that the PBGC received from Delphi *in connection with the Plan's termination*; thus it is directly relevant to Count Four. Similarly, because the Request is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs' claims in Count Two. Because exemptions recognized by FOIA do not create privileges outside the normal rules of civil discovery, the Request for relevant documents withheld under FOIA is entirely appropriate. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the

PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. These assertions are especially frivolous in light of the fact that these documents have already been assembled (in connection with the FOIA request) so that there could not be any burden associated with production. For the same reasons, the PBGC's assertions as to vagueness and ambiguity are likewise incomprehensible. Similarly, the PBGC's other "general" objections fail for the reasons outlined above (*i.e.*, their lack of specificity).

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. Plaintiffs make no effort to tailor this request to actual claims pled in their complaint. To the extent that plaintiffs are using this discovery request as a substitute for complying with the FOIA appeal procedures, their request is inappropriate in this venue. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" claim in count 2 of their complaint; this is a purely legal question for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 16

This Request asked for “All documents and things the PBGC redacted, withheld, censored, and otherwise deemed non-disclosable relating to Miller and Chevalier’s October 19, 2009 Freedom of Information Request to the PBGC.” The October 19, 2009 request, in turn asked for (1) “All agendas, meeting minutes, and correspondence relating to the General Motors/PBGC Waiver and Release Agreement;” (2) “All agendas, meeting minutes, and correspondence covering the Delphi/PBGC settlement agreement;” and (3) “A list of all meetings (date, location, subject, participants) concerning the Delphi pensions with the following parties: Delphi, General Motors (New and Old), Auto Task Force, US Treasury Department, Bankruptcy Court SDNY, White House Staff, Department of Labor, Labor Unions.”

Plaintiffs’ position: By its terms, this request asks for information reasonably calculated to lead to the discovery of admissible evidence on the ability of the PBGC to satisfy the § 1342(c) termination criteria in that it seeks information related to, inter alia, the PBGC’s recoveries from Delphi and GM in connection with its decision to terminate by agreement Delphi’s pension plans and release its liens against Delphi assets. Similarly, because the Request is also reasonably calculated to lead to the discovery of admissible evidence as to whether a prudent fiduciary would have agreed to sign the termination and trusteeship agreement relied upon by the PBGC in terminating the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Two. Additionally, because the Request is reasonably calculated to lead to the discovery of admissible evidence on the question of whether Plaintiffs suffered a deprivation of property as a consequence of the PBGC’s termination of the Salaried Plan, it is relevant to Plaintiffs’ claims in Count Three. Because exemptions recognized by FOIA do not create privileges outside the normal rules of civil discovery, the Request for relevant documents withheld under FOIA is

entirely appropriate. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. These assertions are especially frivolous in light of the fact that these documents have already been assembled (in connection with the FOIA request) so that there could not be any burden associated with production. For the same reasons, the PBGC's assertions as to vagueness and ambiguity are likewise incomprehensible. Similarly, the PBGC's other "general" objections fail for the reasons outlined above (*i.e.*, their lack of specificity).

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. Plaintiffs make no effort to tailor this request to the actual claims pled in their complaint. To the extent that plaintiffs are using this discovery request as a substitute for complying with the FOIA appeal procedures, their request is inappropriate in this venue. Plaintiffs' discovery demands are not relevant to their "prudent fiduciary" and "property deprivation" claims in counts 2 and 3 of their complaint; these are purely legal questions for which plaintiffs already have all relevant documents. Moreover, the legal question posed in count 2 was already resolved by a final, non-appealable order in Delphi's bankruptcy proceedings. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of

documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

Document Request No. 17

This Request asked for “All documents and things the PBGC redacted, withheld, censored, and otherwise deemed non-disclosable relating to Miller and Chevalier’s June 28, 2010 Freedom of Information Request to the PBGC.” The June 28, 2010 FOIA Request, in turn, sought:

1. A copy of all actuarial reports concerning the Plan that the PBGC has received since January 1, 2005.
2. A copy of all correspondence the PBGC has received from Watson Wyatt concerning the Plan since January 1, 2005.
3. A copy of all data sources the PBGC relied upon in calculating that the Plan’s liabilities and assets as reported in the Administrative Record, pages, AR 19, AR26, AR34 and AR62. At a minimum, this should include a copy of the following data sources referenced on page AR26 of the Administrative Record: “10/01/07 AVR,” “12/31/08 PBO,” and “10/01/08 demographic information prepared by Watson Wyatt Worldwide.”
4. A description and explanation of any assumptions relied upon in arriving at the Plan’s liabilities and assets as reported in the Administrative Record, pages AR 19, AR26, AR34 and AR62, as well as an explanation of how those assumptions were used in calculating the Plan’s liabilities and assets.
5. All reports, correspondence, memorandum, spreadsheets or other documents concerning the value, estimated or otherwise, of the “Waterfall Participation” and “Waterfall Right” as those terms are used in the PBGC - GM Waiver and Release Agreement .
6. All reports, correspondence, memorandum or documents discussing whether the grounds for termination of the Plan should include “protection of the interests of participants.”
7. All documents, data sources, statements, worksheets, memorandum and assumptions relied upon in the “final statutory lien calculation done prior to the termination of the [] Plan, which showed a total lien amount of \$195.9 million.” See Exhibit A to this request, declaration of Neela Ranade.

8. All documents, data sources, statements, worksheets, memorandum, and assumptions relied upon by Ms. Ranade in her declaration in ¶ 10 of Exhibit A, that the PBGC estimates it will pay \$2.1 billion from its own resources to cover the unfunded guaranteed liability.”
9. All reports, memorandum, correspondence, worksheets, statements or documents concerning the Plan assets that the PBGC assumed when it became statutory trustee of the Plan. This information should include, at a minimum, a breakdown of the disposition of the assets, by asset allocation and worth, as of the date of trusteeship.
10. All reports, memorandum, correspondence, worksheets, statements, accountings or documents discussing the disposition of the Plan’s former assets as of May 1, 2010.
11. All memorandum, correspondence, worksheets, statements or documents concerning PBGC recoveries as to the Plan.
12. All memorandum, correspondence, or documents discussing the Plan, the Delphi Salaried Retiree Association, or the Delphi Bankruptcy proceedings, case No. 05-44481 (Bankr. S.D. N.Y.). For purposes of this request number 12, we are requesting information generated between October 1, 2009 and June 28, 2010.
13. All memorandum, correspondence, or other documents discussing whether the supplemental pension payments by General Motors LLC to participants in the Delphi Hourly-Rate Plan conflict with any PBGC policies or procedures, including the PBGC’s policy regarding follow-on plans.
14. All organizational charts identifying personnel, both permanent and contract, by name, title and reporting relationship for the time period January 1, 2009 to July 1, 2010.
15. All internal operating rules, procedures and policy statements related to:
 - a. plan terminations;
 - b. valuation of plans assets and liabilities;
 - c. asserting, releasing and executing liens; communications with pension plan sponsors.

Plaintiffs’ position: Each of these requests asks for information reasonably calculated to lead to the discovery of admissible evidence on issues in this case. Nos. 1 - 4 and 6-11 seek basic actuarial data reasonably calculated to lead to the discovery of admissible evidence on the

§ 1342(c) termination criteria. No. 5 seeks the same information discussed in Document Request No. 14, and is relevant for the reasons discussed in connection with that Request. Request No. 12, in seeking documents discussing the Plan, the DSRA, or the Delphi Bankruptcy proceedings between October 1, 2009 and June 28, 2010, is reasonably calculated to lead to the discovery of admissible evidence on issues in this case. Request no. 13, seeking information related to financial contributions by GM in connection to Delphi's pension plans, and PBGC policies and procedures in connection thereto, is directly relevant to the Counts Three and Four, including whether the PBGC terminated the Plan for improper reasons, and whether the PBGC could have met the termination criteria of § 1342(c). Request Nos. 14 and 15 are reasonably calculated to lead to the discovery of admissible evidence on issues in this case in that they will help determine the identities of individuals likely to have discoverable information in the case, as well as understanding the policies and procedures relevant to this case. Because exemptions recognized by FOIA do not create privileges outside the normal rules of civil discovery, the Request for relevant documents withheld under FOIA is entirely appropriate. The PBGC's objection that this Request exceeds the scope of the litigation is nonsensical, especially in light of the Court's September 1, 2011 Order specifying that discovery in this case should focus on the § 1342(c) criteria. As to the PBGC's objection that this request is "overbroad, vague, ambiguous, and unduly burdensome," the PBGC has not stated (by affidavit or otherwise) the basis for these assertions and has consequently waived these objections by failing to state them with the specificity required by Fed. R. Civ. P. 34. These assertions are especially frivolous in light of the fact that these documents have already been assembled (in connection with the FOIA request) so that there could not be any burden associated with production. For the same reasons, the PBGC's assertions as to vagueness and ambiguity are likewise incomprehensible. Similarly,

the PBGC's other "general" objections fail for the reasons outlined above (*i.e.*, their lack of specificity).

Defendant's position: PBGC objects to this request on relevance grounds. See generally PBGC's position with respect to Document Request No. 2 above. In their position summary, plaintiffs, for the first time, purport to give reasons why each of the fifteen individual FOIA requests are relevant to their claims. But they obviously are not, as none of the requests relate to termination agreement between Delphi and PBGC. Indeed, many of the requests, which seek information about events that occur well after the termination or that seek information about documents filed in this litigation, PBGC liens, pension plan assets, and the like, have nothing to do even with the broader topic of the termination of the Salaried Plan. To the extent that plaintiffs are using this discovery request as a substitute for complying with the FOIA appeal procedures, their request is inappropriate in this venue. Notwithstanding this objection, PBGC has already produced to plaintiffs an Administrative Record containing all documents related to the termination decision, as well as the termination agreement signed by PBGC and Delphi. Should the Court disagree with PBGC's relevance argument and require PBGC to produce additional categories of documents, PBGC reserves its right to object based on any other applicable grounds including burden and privilege grounds.

C. Plaintiffs' Claim for Expenses Pursuant to Fed. R. Civ. P. 37(a)

Plaintiffs' position: The imposition of fees under Fed. R. Civ. P. 37 is entirely appropriate. Again, the Court authorized this case to proceed to discovery in September of 2010, yet the PBGC has repeatedly refused to cooperate with those orders (such that a whole year has come and gone with the PBGC having produced one document); moreover, the PBGC makes no secret of the fact that it intends to continue to engage in the same sort of dilatory tactics (*e.g.*,

requesting the right to assert additional specific objections piecemeal if the Court overrules its current relevance objections).

Defendant's position: PBGC believes in good faith that plaintiffs have in their possession all documents relevant to the actual claims pled in their amended complaint. This motion will be the first time the Court has considered the relevance of plaintiffs' specific discovery requests. PBGC is not in violation of any order of this Court for objecting to plaintiffs' massive discovery demands on relevance and other grounds. Therefore, an award of fees and expenses against PBGC is not justified in this case.

Respectfully submitted,

Dated: January 13, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2012, I caused the foregoing electronically to be filed 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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