

**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
)	Magistrate Judge Mona K. Majzoub
)	
v.)	
)	
PENSION BENEFIT GUARANTY)	
CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	

**PENSION BENEFIT GUARANTY CORPORATION’S OBJECTIONS TO
MAGISTRATE JUDGE’S ORDER OF MARCH 9, 2012,
GRANTING PLAINTIFFS’ MOTION TO COMPEL DISCOVERY**

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(a), and Local Rule 72.1(d), Defendant PBGC hereby submits its objections to Magistrate Judge Majzoub’s Order Granting Plaintiffs’ Second Motion to Compel Discovery from Defendant Pension Benefit Guaranty Corporation, dated March 9, 2012 (“Order”).

PBGC objects to the Order on two bases. First, the Magistrate Judge failed to follow the law of the case, specifically the District Court’s October 3, 2011 Order (“October 2011 Order”). The October 2011 Order made clear that the Court had not invalidated the protections afforded PBGC by 29 U.S.C. § 1342(c) – specifically the ability of PBGC to terminate a pension plan by agreement with the plan sponsor and without proceeding to hearing. Second, the Magistrate Judge failed to follow the applicable rules limiting discovery to actual claims pled in the complaint.

PBGC respectfully requests that the Order be vacated and that the Motion compelling the discovery requests sought by plaintiffs be denied. Alternatively, PBGC requests that the Court remand to the Magistrate Judge with specific instructions to evaluate the relevance of each discovery demand in the context of the claims pled.

A brief in support of this objection is attached in accordance with L.R. 7.1.

Dated: March 23, 2012

Respectfully submitted,

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PENSION BENEFIT GUARANTY)	
CORPORATION, <i>et al.</i> ,)	
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Defendants.)	
_____)	

**BRIEF IN SUPPORT OF PENSION BENEFIT GUARANTY CORPORATION'S
OBJECTIONS TO MAGISTRATE JUDGE'S ORDER OF MARCH 9, 2012,
GRANTING PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

Statement of Issues

1. In its October 2011 Order, this Court stated that it had not, in fact, ruled that 29 U.S.C. § 1342(c) prohibits PBGC from terminating a pension plan by agreement with the plan sponsor. In granting plaintiffs' Motion to Compel, Magistrate Judge Majzoub has allowed plaintiffs to conduct discovery as if the agreement between PBGC and Delphi did not result in termination of the Delphi Salaried Plan. Did the Magistrate Judge err in granting plaintiffs' motion to compel by failing to apply the law of the case as set forth in the October 2011 Order?

2. Under the relevancy standards prescribed in Federal Rules of Civil Procedure 26(b)(1), discovery requests must be relevant to specific claims actually pled. In granting plaintiffs' Motion to Compel, Magistrate Judge Majzoub refused to consider whether the plaintiffs' discovery requests were relevant to their actual claims pled. Did the Magistrate Judge err in granting plaintiffs' motion to compel discovery by failing to apply the relevancy standards of Federal Rules of Civil Procedure 26(b)(1)?

Controlling Authority

Statutes

29 U.S.C. § 1342(c)

28 U.S.C. §§ 631-39

Fed. R. Civ. P. 26(b)(1)

United States Circuit Court Cases

United States v. Curtis, 237 F.3d 598 (6th Cir. 2001)

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

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

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

In re Jones & Laughlin Hourly Pension Plan, 824 F.2d 197 (2d Cir. 1987).

United States District Court Cases

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

Grace v. City of Xenia, No. 05-cv-038, 2006 U.S. Dist. LEXIS 80350 (S.D. Ohio Nov. 2, 2006)

Bricker v. R & A Pizza, Inc., No. 10-cv-278, 2011 U.S. Dist. LEXIS 55324 (S.D. Ohio May 23, 2011)

Preliminary Statement

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 discovery demands of astounding breadth 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 demand 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 through December 2009. PBGC responded to their request by objecting to this impermissible fishing expedition into PBGC's records as being utterly irrelevant, among other grounds. Plaintiffs filed a Motion to Compel which was fully briefed and argued before the Magistrate Judge. The Magistrate Judge, purporting to follow the law of the case as set forth in a September 1, 2011 Order of this Court, granted plaintiffs' Motion and ordered PBGC to respond fully to each of plaintiffs requests. The Magistrate Judge declined to address the specific discovery requests, which have absolutely nothing to do with the termination of the Salaried Plan, stating that she "wouldn't know where to start."

Because the Magistrate Judge's ruling is contrary both to the law of this case and to applicable rules regarding discovery and relevance, PBGC now appeals.

Standard of Review

The Federal Magistrate's Act, 28 U.S.C. §§ 631-39, sets forth the standards by which a district court reviews the findings of a magistrate judge. With respect to appeals of nondispositive matters, a district judge must "modify or set aside any portion of the order that is

clearly erroneous or contrary to law.”¹ A decision by a magistrate judge is clearly erroneous if the district court, after reviewing the entirety of the evidence, “is left with the definite and firm conviction that a mistake has been committed.”² A court’s review under the “contrary to law” standard is plenary, and the court “may overturn any conclusions of law which contradict or ignore applicable precepts of law, as found in the Constitution, statutes, or case precedent.”³

Argument

I. The Magistrate Judge Erred by Failing to Follow the Law of the Case as Set Forth in the District Court’s October 3, 2011 Order.

Magistrate Judge Majzoub erred in granting plaintiffs’ Motion to Compel by failing to follow the law of the case as set forth in this Court’s October 3, 2011 Order, which modified and clarified the Court’s earlier September Order. The Magistrate Judge has allowed plaintiffs to conduct broad discovery as if the Court had invalidated PBGC’s agreement with Delphi terminating the Delphi Salaried Plan and required PBGC to obtain a court decree of termination. In granting plaintiff’s motion, the Magistrate appears to have relied upon language in the September Order: “In addressing termination in Count 4 under [29] U.S.C. § 1342 and assuming that a hearing was required before termination, this Court, pursuant to *In re UAL Corp.*, 468 F.3d

¹ § 636(b)(1)(A); Fed. R. Civ. P. 72(a). *See also United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001) (citing *United States v. Raddatz*, 447 U.S. 667, 673 (1980)).

² *Sandles v. U.S. Marshal’s Serv.*, No. 04-cv-7246, 2007 WL 4374077, at *1 (E.D. Mich. Dec. 10, 2007) (citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

³ *Itskin v. Gibson*, No. 10-cv-689, 2012 WL 787400, at *1 (S.D. Ohio Mar. 9, 2012) (citing *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), *aff’d without op.*, 19 F.3d 1432 (6th Cir. 1994)). *See also Hood v. Midwest Sav. Bank*, No. C2-97-218, 2001 WL 327723, at *2 (S.D. Ohio Mar. 22, 2001) (A decision is contrary to law “if the magistrate has misinterpreted or misapplied applicable law.”).

444 (7th Cir. 2006), will conduct a *de novo* review of the PBGC's decision to terminate the Plan.”

Because this ruling would effect a dramatic change in PBGC's long-standing practice of terminating defined benefit pension plans by agreement with plan administrators, PBGC filed a Motion for Reconsideration and Interlocutory Appeal. But in denying PBGC's motion, the Court stated:

[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).⁴

Thus, by this Court's October 2011 Order, plaintiffs are not entitled to discovery based on the erroneous assumption that the legal issue of PBGC's termination of the Delphi Salaried Plan by agreement has been decided in their favor. The plain language of § 1342(c) enables PBGC to terminate a pension plan by agreement with the pension plan administrator and *expressly* eliminates the requirement that PBGC seek a court decree upon reaching such an agreement:

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).⁵

As the Second Circuit noted in its *Jones & Laughlin* decision, through 29 U.S.C. § 1342(c), “Congress . . . expressly dispensed with the necessity of a court adjudication in these cases.”⁶

⁴ See October 3, 2011 Order of Judge Tarnow (emphasis in original).

⁵ 29 U.S.C. § 1342(c) (emphasis added).

⁶ *In re Jones & Laughlin Hourly Pension Plan*, 824 F.2d 197, 200 (2d Cir. 1987).

Despite PBGC's efforts to clarify this Court's position as stated in the October 2011 Order,⁷ Magistrate Judge Majzoub based her decision on the erroneous belief that the September 2011 Order had granted plaintiffs "wide open discovery." Even if the language of the September Order could be so interpreted, the Court's subsequent October Order reversed that interpretation and confirmed that the only issue in the case is the validity of the termination agreement between Delphi and PBGC. Accordingly, Magistrate Judge Majzoub's Order is contrary to the law of this case.

II. The Magistrate Judge Erred by Failing to Limit Discovery to the Actual Claims Pled by Plaintiffs.

PBGC has given plaintiffs all documents supporting its decision to terminate the Delphi Salaried Plan. Magistrate Judge Majzoub erred in granting plaintiffs' Motion to Compel its massive discovery requests by failing to conduct any analysis of relevance to the plaintiffs' actual claims. In fact, the Magistrate Judge went on record stating that she would not know where to begin. This misapplication of the law requires the Court to vacate the Magistrate Judge's Order compelling PBGC's response to the plaintiffs' discovery requests. Alternatively, the Court should remand to the Magistrate Judge with specific instructions to evaluate the relevance of each discovery demand in the context of the claims pled.

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

Fed. R. Civ. P. 26(b)(1) was amended in 2000 to limit the scope of discovery available.⁸

The new language provides as follows: "Parties may obtain discovery regarding any

⁷ Transcript of Oral Argument, March 6, 2012, at 10:22-11:18.

⁸ 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).

nonprivileged matter that is relevant to any party's claim or defense" In implementing the 2000 amendments, the Advisory Committee stated:

[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.⁹

The relevancy requirement of Fed. R. Civ. P. 26(b)(1) contains a two-tiered discovery process -- the first tier is attorney-managed discovery of information relevant to any claim or defense of a party, and the second is court-managed discovery of information relevant to the subject matter of the action.¹⁰ Thus, a party seeking discovery is entitled to request only non-privileged information that is "relevant to any party's claim or defense."¹¹ 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."¹²

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

⁹ Fed. R. Civ. P. 26 Advisory Committee's Note (2000).

¹⁰ *Id.*; *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1188-90 (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).

¹¹ Fed. R. Civ. P. 26(b)(1).

¹² Moore et al., *supra*, § 26.41[2][a].

the information sought may be relevant to the subject matter of the action.¹³ The historic breadth of discovery is reflected in the cases that plaintiffs cited 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.¹⁴ But it is the current, narrower discovery standard of amended Fed. R. Civ. P. 26(b) that applies to plaintiffs' case, and requires that a determination of relevancy focus on claims and defenses plaintiffs actually asserted in their pleadings, rather than the more general subject matter of the pending action.¹⁵ The Magistrate Judge's failure to evaluate the plaintiffs' requests in light of this standard warrants reversal.

B. The Magistrate Judge Failed to Consider How Plaintiffs' Discovery Requests Relate to Their Actual Claims.

1. Plaintiffs' Narrow Claims Do Not Warrant the Discovery Sought.

The plaintiffs stated plainly in their Motion to Compel Discovery that "this lawsuit concerns the propriety of the PBGC's termination of plaintiffs' defined benefit pension plan [the

¹³ *Hill v. Motel 6*, 205 F.R.D. 490, 492 (S.D. Ohio 2001); *Grace v. City of Xenia*, No. 05-cv-038, 2006 U.S. Dist. LEXIS 80350, at *2-3 (S.D. Ohio Nov. 2, 2006); Moore et al., *supra*, § 26.41.

¹⁴ 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 (6th Cir. 2009), upon which plaintiffs chiefly relied in their Motion to Compel, 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 are not applicable to their case, as they were decided before the new relevancy limitation was added to Rule 26. See *Oppenheimer Fund*, 437 U.S. at 351 (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)).

¹⁵ 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.*, No. 10-cv-278, 2011 U.S. Dist. LEXIS 55324, at *6 (S.D. Ohio May 23, 2011).

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 Delphi.¹⁷

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 invalid. 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. This too is a question of law. 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

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

¹⁷ Plaintiffs’ Amended Complaint.

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 on this constitutional question.

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 As discussed above, 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. The documents relevant to that issue are contained in PBGC's administrative record, which PBGC long ago provided to the plaintiffs. The only other document of any relevance is the signed termination agreement, which PBGC has also given the plaintiffs.

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).

2. The Magistrate Judge Failed to Analyze the Plaintiffs' Discovery Requests In Light of Their Narrow Claims.

Despite the narrow claims they pled, plaintiffs sought vast and limitless categories of documents, and then argued for their entitlement in plaintiffs' Motion to Compel by simply stating relevance as a fact – not by providing justification.¹⁹ For example, with respect to their Document Request No. 2,²⁰ 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,”²¹ plaintiffs' Motion to Compel did not mention the claims in their complaint but rather referred to PBGC's statutory role to guarantee pension plans. Plaintiffs argued that any request directed to PBGC, so long as it was tangentially related to a pension plan, would be appropriate. But the federal rules dictate a 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.²²

Plaintiffs asserted 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 must be reviewed under the standards set forth in the Administrative Procedure Act, which limits

¹⁹ Plaintiffs' Brief in Support of Second Motion to Compel, at 14.

²⁰ PBGC has already responded fully to plaintiffs' Document Request No. 1, and it is not at issue in this Motion.

²¹ Plaintiffs' Document Request No. 2.

²² See Moore et al., *supra*, § 26.41[2][a].

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 asserted 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 about 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, plaintiffs' last three requests seek documents that plaintiffs' counsel requested from PBGC through the Freedom of Information Act ("FOIA") process, but which were withheld under the FOIA's exceptions to production.²³ Under FOIA, plaintiffs' attorneys were free to ask PBGC for whatever they wished, regardless of relevance, and PBGC produced the

²³ 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 the balance of the documents were properly withheld. Plaintiffs may challenge PBGC's FOIA decision by filing an action in federal district court in the District of Columbia. *See* 29 C.F.R. § 4901.15.

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 made 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 before this Court.²⁴

In granting plaintiffs' Motion to Compel, the Magistrate Judge did not analyze how these broad discovery requests relate to the actual narrow claims plaintiffs pled. The Magistrate Judge did not consider the nature and extent of each individual request, as reflected by the brevity of her Order and the lack of any such discussion at the March 6, 2012 hearing. As the Magistrate Judge stated at that hearing: "I am not limiting the discovery, because frankly, I wouldn't know where to start based on the law of this case."²⁵ Failure to apply the governing law constitutes error.

²⁴ 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.

²⁵ Transcript of Oral Argument, March 6, 2012, at 16:23-25.

Conclusion

For these reasons, PBGC respectfully requests that the Court vacate the Magistrate Judge's Order of March 9, 2012, and deny plaintiffs' Motion to Compel Discovery.

Alternatively, the Court should remand to the Magistrate Judge with specific instructions to evaluate the relevance of each discovery demand in the context of the claims pled.

Dated: March 23, 2012

Washington, D.C.

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2012, I electronically filed the foregoing **Pension Benefit Guaranty Corporation's Objections to Magistrate Judge's Order of March 9, 2012, Granting Plaintiffs' Motion to Compel Discovery** via the court's CM/ECF system which will send notification of such filing to all registered users, including the following:

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