

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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IN RE
METLIFE DEMUTUALIZATION
LITIGATION,

**MEMORANDUM
AND ORDER**

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This document relates to all actions
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CV 00-2258 (TCP) (AKT)

A. KATHLEEN TOMLINSON, Magistrate Judge:

Plaintiffs have filed a motion to compel MetLife, Inc. (“MetLife” or “Defendant”) to produce documents by relating to a transaction involving the reinsurance of a portion of the Metropolitan Life Insurance Company “closed block” by MetLife Reinsurance Company of Charleston (“MRC”) in an amount up to \$5.5 billion (the “Reinsurance Transaction”) as well as a transaction involving the issuance of surplus notes by MRC to fund the required reinsurance trust [DE 339].¹ This Reinsurance Transaction was consummated in late 2007, seven years after the transaction underlying this litigation. Plaintiffs originally moved by order to show cause seeking the production of the documents relating to these transactions [DE 326]. Defendant opposed that motion as premature in light of Defendant’s willingness to make certain of the requested documents available to Plaintiffs [DE 330]. The parties were able to reach an agreement and the order to show cause was withdrawn following the document production [DE 333]. Defendant opposes the instant motion on the grounds that the documents are not relevant. [DE 340].

Presently before me is Plaintiffs’ renewed motion for the production of documents

¹ A thorough recitation of the facts may be found by reading Judge Platt’s previous decisions in this matter: *In re MetLife Demutualization Litig.*, 229 F.R.D. 369 (E.D.N.Y. 2005); *In re MetLife Demutualization Litig.*, 322 F. Supp. 2d 267 (E.D.N.Y. 2004); *In re MetLife Demutualization Litig.*, 156 F. Supp. 2d 254 (E.D.N.Y. 2001). Familiarity with these facts is therefore presumed.

relating to the Reinsurance Transaction and MRC's issuance of surplus notes to fund the Reinsurance Transaction. Specifically, Plaintiffs seek the production of the reinsurance agreement, the surplus notes, the fiscal agency agreement, the Trust B agreement, executive-level presentations, summaries or explanations about the transaction (such as those provided to the board of directors, board committees or executives), any fairness opinions issued in connection with the surplus notes or reinsurance, any actuarial appraisals or estimates performed in connection with the surplus notes or reinsurance, and any material, including cash flow models, submitted to any rating agency, including but not limited to Standard & Poor's Ratings Service and A.M. Best, in connection with the surplus notes or reinsurance. According to Plaintiffs these documents should be produced because they are relevant to valuation and damages.

Defendant objects to the production of these documents on the grounds that the documents relating to the Reinsurance Transaction and MRC's issuance of surplus notes are not relevant to any of the issues in this action.

_____ Fed. R. Civ. P. 26(b)(1) describes the scope of, and limitations on, discovery in civil litigation:

In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.... For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

Fed. R. Civ. P. 26(b)(1). "Relevance" under Rule 26 "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351

(1978); *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 882 F.2d 682, 687 (2d Cir. 1989) (holding that “the broad scope of discovery delimited by the Federal Rules of Civil Procedure is designed to achieve disclosure of all the evidence relevant to the merits of a controversy”). This Court has held that the “right of litigants to discover and present relevant evidence in civil litigations is given great weight in federal courts.” *Apicella v. McNeil Labs.*, 66 F.R.D. 78, 82 (E.D.N.Y. 1975). In *Apicella*, this Court further noted that the “liberal” discovery rules tend “toward admitting as much evidence as possible so that the facts may be more accurately determined.” *Id.*

As in every discovery context, a motion to compel is entrusted to the sound discretion of the district court. *Am. Sav. Bank, FSB v. UBS Paine Webber, Inc., (In re Fitch, Inc.)*, 330 F.3d 104, 108 (2d Cir. 2003); *United States v. Sanders*, 211 F.3d 711, 720 (2d Cir. 2000). The Second Circuit has noted that a “trial court enjoys wide discretion in its handling of pre-trial discovery, and its rulings with regard to discovery are reversed only upon a clear showing of an abuse of discretion.” *DG Creditor Corp. v. Dabah, (In re DG Acquisition Corp.)*, 151 F.3d 75, 79 (2d Cir. 1998) (citing *Cruden v. Bank of N.Y.*, 957 F.2d 961, 972 (2d Cir. 1992)). A district court is considered to have abused its discretion “if it bases its ruling on a mistaken application of the law or a clearly erroneous finding of fact.” *Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001).

“The party seeking the discovery must make a prima facie showing, that the discovery sought is more than merely a fishing expedition.” *Evans v. Calise*, No. 92-cv-8430, 1994 WL 185696 at *1 (S.D.N.Y. May 12, 1994); *United States v. International Bus. Mach. Corp.*, 66 F.R.D. 215, 218 (S.D.N.Y. 1974) (burden is on moving party to establish relevance).

“Disclosure should not be directed simply to permit a fishing expedition.” *United States v. Berrios*, 501 F.2d 1207, 1211 (2d Cir.1974). It is incumbent upon Plaintiff to provide a

connection between the events leading up to the filing of this lawsuit and a transaction taken by Defendant in the ordinary course of its business seven years later. *Collens v. City of New York*, 222 F.R.D. 249, 253 (S.D.N.Y. 2004) (“courts should not grant discovery requests based on pure speculation that amount to nothing more than a ‘fishing expedition’ into actions or past wrongdoing not related to the alleged claims”).

Plaintiffs originally argued that the documents in question were relevant to the claims and defenses in this litigation because Plaintiffs believed that the Reinsurance Transaction could impair the Court’s ability to grant equitable relief were Plaintiffs to prevail at trial. Plaintiffs have conceded, however, that it is unlikely that the transaction will impact any recovery in this action. Nonetheless, they now seek the production of these documents (1) to confirm that the Court’s ability to grant relief will not be impaired and (2) to allow their experts to “complete their analysis.” Plaintiffs Feb. 14, 2008 Letter at 2 [DE 339].

Defendant, on the other hand, argues that Plaintiffs offer no explanation of how the Reinsurance Transaction might restrict available relief. Indeed, Plaintiffs are not seeking to recover from the assets of the closed block, but rather are seeking disgorgement from Metropolitan Life Insurance Company of profits Plaintiffs say were improperly recognized by Metropolitan Life Insurance Company from the closed block. Additionally, according to Defendant, Plaintiffs’ experts have already completed their analysis and one of them – Mr. Harris – testified at his deposition that the “only significance of the [Reinsurance Transaction] to this case, from his and Mr. Wilcox’s perspective, is to provide additional validation of certain numbers relating to the closed block.” Defendant’s Feb. 20, 2008 Letter at 1-2 [DE 340]. Defendant asserts that “the only numbers to be validated, according to plaintiffs’ experts, are the figures MetLife reported in 2000 as the present value of expected future contributions of the

closed block to income.” *Id.* Mr. Harris testified as follows:

Q: And the significance of the entire transaction is only as – in your view, as validation of the numbers you have already arrived at in your initial report?

A: Yes.

Defendant maintains that those numbers are not in dispute and thus require no additional validation.

I agree with Defendant’s position here. Further, Plaintiffs have provided no cases for the Court to review which support their position here. In light of the testimony of Plaintiffs’ expert, the seven years between the Reinsurance Transaction and the transaction underlying this litigation, and Plaintiffs failure to provide any specific explanation as to the relevance of the numerous documents requested, I am denying Plaintiffs’ motion to compel and ordering discovery closed. This case shall be certified to Judge Platt as ready for trial.

SO ORDERED.

Dated: Central Islip, New York
September 18, 2008

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge