IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARTIN J. WALSH, Secretary of Labor, United States Department of Labor, Petitioner, v. METLIFE, INC., Respondent.	Misc. Civ. Action No. 21-mc-381

MEMORANDUM OF LAW IN SUPPORT OF THE SECRETARY OF LABOR'S PETITION TO ENFORCE ADMINISTRATIVE SUBPOENA

Petitioner Martin J. Walsh, Secretary of Labor, United States Department of Labor (the "Secretary"), respectfully petitions this Court to compel MetLife, Inc. ("MetLife"), to comply with the administrative subpoena issued on January 4, 2021, by the Employee Benefits Security Administration ("EBSA"), an agency under the jurisdiction of the Secretary. Pursuant to section 504(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), this Court has authority to enforce the administrative subpoena that EBSA served on MetLife in connection with the agency's investigation of the Plan. See 29 U.S.C. § 1134(a).

MetLife has admitted to decades of failures to find and pay thousands of individuals it owes benefits, and the Secretary is seeking documents and information critical to determining whether MetLife has violated Title I of ERISA. However, despite the issuance of an administrative subpoena, MetLife has repeatedly indicated that it will not comply absent a court order. Accordingly, the Secretary asks this Court to enforce the subpoena by ordering MetLife to produce all documents and information requested no later than ten days from the date of the Court's order,

to cease disobedience to the subpoena or suffer contempt, and any other relief as may be necessary and appropriate.

STATEMENT OF FACTS

MetLife, through its subsidiary Metropolitan Life Insurance Company and other affiliated entities, is one of the world's largest providers of insurance, annuities, and employee benefit programs. MetLife's pension risk transfer business converts the pension obligations of employee benefit plans into group annuity contracts. Declaration of Senior Investigator Todd Hassler ("Hassler Decl.") ¶ 4. Such transactions ostensibly turn the participants and beneficiaries of employer-sponsored pension plans into annuitants and beneficiaries of contracts held by MetLife. Id. In a series of announcements between December 2017 and March 2018, MetLife disclosed major errors in the way it handled annuitant information, including failures in adequately searching for annuitants to whom it owed benefits. Hassler Decl. ¶ 5. As a result of investigations by the New York State Department of Financial Services and the U.S. Securities and Exchange Commission, MetLife admitted to violations of New York Insurance Law and the Securities Exchange Act in consent orders dated January 28, 2019 and December 18, 2019. Id.

On April 16, 2019, EBSA initiated an investigation of MetLife to determine, among other issues, whether MetLife's actions constituted violations of Title I of ERISA, whether MetLife's subsequent actions adequately remedied any such violations, and whether information about MetLife's risk transfer business indicates violations by other actors, such as the employee benefit plans who purchased MetLife's products. Hassler Decl. ¶ 6. EBSA issued a first document subpoena on July 22, 2019. In response, MetLife produced, among other things, a document entitled "Project Chestnut" that purports to describe the MetLife's new "expedited outreach process," intended to remedy its prior failures to adequately search for annuitants. Hassler Decl. ¶

7. EBSA thereafter sought additional information about Project Chestnut because the details regarding MetLife's new outreach process will be directly relevant to key questions in EBSA's investigation. Hassler Decl. ¶ 8. However, MetLife has refused to provide any further meaningful information. Id. MetLife has permitted EBSA to take only five interviews with MetLife employees, and none had significant personal knowledge of Project Chestnut. Hassler Decl. ¶ 9. Counsel for MetLife provided a very general description of Project Chestnut, but did not have knowledge of basic programmatic details EBSA is seeking, such as the scope of the individuals and employee benefit plans affected, the MetLife employees involved in running it, and how it has operated in practice. Hassler Decl. ¶ 10. And despite initially promising to produce additional documents about Project Chestnut, MetLife subsequently indicated that it would not provide any further documents or information. Hassler Decl. ¶ 11.

Therefore, EBSA needed to issue a second document subpoena on January 5, 2021, including ten requests for documents and communications related to Project Chestnut. Hassler Decl. ¶ 12. On January 15, 2021, MetLife responded with a letter refusing to comply with the subpoena "absent a court order." Hassler Decl. ¶ 18. On January 19, 2021, MetLife sent EBSA a second letter, further detailing MetLife's objections to EBSA's subpoena. Hassler Decl. ¶ 19.

On February 24, 2021, counsel for the Secretary sent a letter to MetLife, responding to the objections in its January 15 and 19, 2021 letters, and further clarifying the purpose of EBSA's subpoena. Hassler Decl. ¶ 20. MetLife sent an additional letter affirming some of its legal objections on March 4, 2021. Hassler Decl. ¶ 21.

On March 8, 2021, EBSA and MetLife held a meeting in which counsel for MetLife indicated that they would discuss the issue of the subpoena with relevant decision makers at MetLife and might follow up shortly with an updated position. Hassler Decl. ¶ 22. On March 29,

2021, counsel for MetLife proposed to counsel for the Secretary that the company provide EBSA a presentation in lieu of complying with the subpoena. The Secretary has rejected MetLife's offer because EBSA needs the materials sought in the subpoena in order to continue its investigation. MetLife has not indicated any intent to comply with the subpoena. Hassler Decl. ¶ 23.

ARGUMENT

The Secretary's administrative subpoena was properly issued and served, is relevant to a legitimate investigation, and would not create an undue burden on MetLife. Accordingly, under the Second Circuit's highly deferential review of administrative subpoenas, this Court must enforce the subpoena and compel MetLife to immediately comply with it.

I. The Secretary Is Authorized by Statute to Issue Subpoenas in Order to Investigate Violations of ERISA, and He May Enforce Such Subpoenas in This Court.

Federal agencies have broad powers to issue subpoenas in support of their enforcement mandates. See Okla. Press Publ'g Co. v. Walling, 327 U.S. 186, 201 (1946). This includes the power to issue subpoenas in order to determine whether they have jurisdiction over a particular activity in the first place. Sec. & Exch. Comm'n. v. Brigadoon Scotch Distrib. Co., 480 F.2d 1047, 1053 (2d Cir. 1973) ("it is for the agency rather than the district courts to determine in the first instance the question of coverage in the course of the preliminary investigation into possible violations") (citing Okla. Press Publ'g Co., 327 U.S. at 201-02).

In particular, the Secretary has broad authority to conduct investigations "to determine whether any person has violated or is about to violate any provision of" Title I of ERISA or any regulation or order issued under that Title. 29 USC § 1134(a). Thus, as part of such investigations, the Secretary may issue subpoenas calling for the appearance of witnesses and the production of relevant documents. See 29 U.S.C. § 1134(c) (incorporating 15 U.S.C. § 49). Where a party refuses

to comply with a subpoena, the Secretary "may invoke the aid of any court of the United States." Id.

II. The Secretary Has Met All Requirements for Enforcement of the Subpoena

Once invoked, this Court's role in reviewing the subpoena is "extremely limited." E.E.O.C. v. United Parcel Serv., Inc., 587 F.3d 136, 139 (2d Cir. 2009).

> To obtain enforcement of an administrative subpoena, an agency need show only (1) that the investigation will be conducted pursuant to a legitimate purpose, (2) that the inquiry may be relevant to the purpose, (3) that the information sought is not already within the agency's possession, and (4) that the administrative steps required . . . have been followed.

Id. (internal citation omitted). An agency's burden to prove these criteria "is minimal." United States v. White, 853 F.2d 107, 111 (2d Cir. 1988) (holding that "the affidavit of an agent involved in the investigation" will suffice). Accordingly, a district court must enforce an administrative subpoena that satisfies these criteria "unless the party opposing enforcement demonstrates that the subpoena is unreasonable or that compliance would be 'unnecessarily burdensome.'" United States Parcel Serv., 587 F.3d at 139; see United States v. Powell, 379 U.S. 48, 57-58 (noting that contrary standard "might seriously hamper" a federal agency "in carrying out investigations"). Here, the Secretary's administrative subpoena satisfies all four requirements for this Court's enforcement.

a. EBSA's Investigation is for a Legitimate Purpose.

ERISA is a comprehensive remedial statute enacted to promote the interests of participants and beneficiaries in employee benefit plans. 29 U.S.C. § 1001; Halo v. Yale Health Plan, 819 F. 3d 42, 47-48 (2d Cir. 2016). Title I of ERISA establishes, among other things, the duty of plan fiduciaries to act solely in the interests of the plan participants and beneficiaries, to act prudently and with the requisite amount of care and skill, to avoid self-dealing or engaging in prohibited transactions with parties in interest to the plan, and that all assets of the plan are to be held in trust.

29 U.S.C. §§ 1103, 1104, and 1106. The Secretary has primary responsibility for enforcing and administering Title I of ERISA, and he can institute civil actions to obtain all relief necessary to restrain violations. 29 U.S.C. § 1132(a). Congress specifically identified that the type of transactions at issue in EBSA's current investigation fall within the scope of ERISA by enabling the Secretary to bring civil actions

> in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a [breach of fiduciary responsibilities] or the terms of the plan . . . to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity . . .

29 U.S.C. § 1132(a)(9).[1]

EBSA opened its investigation of MetLife pursuant to section 504 of ERISA, which gives the Secretary broad authority to conduct investigations "to determine whether any person has violated or is about to violate any provision of" Title I of ERISA or any regulation or order issued under that Title. 29 U.S.C. § 1134. The Secretary does not need probable cause of violations to show that the information sought is relevant to the investigation or within the Secretary's subpoena power. United States v. Morton Salt Co., 338 U.S. 632, 642-43 (1950) (finding that an agency "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that is not"); Brigadoon Scotch Distrib. Co., 480 F.2d at 1055 (2d Cir. 1973). Nor is the Secretary's subpoena authority limited to the people and entities suspected of violations. *See, e.g.*, In re McVane, 44 F.3d 1127, 1137–38 (2d Cir. 1995) (discussing cases involving subpoenas to third parties who are not the target of the government's inspection).

[1] In previous correspondence, MetLife has argued that this section does not apply because, once an individual's participant status is properly terminated, there can be no further fiduciary liability. However, the section is plainly intended to address situations in which a transaction *purports* to terminate a participant or beneficiary's status, but a fiduciary breach prevents the proper provision of benefits. See infra, Section II(b). MetLife's reading would render the section meaningless.

The purpose of EBSA's investigation—to determine whether MetLife or any other person has violated ERISA with regard to MetLife's risk transfer business—is plainly a legitimate use of EBSA's authority.

b. The Information Sought Is Relevant to the Investigation

The documents and information that EBSA has subpoenaed are plainly relevant to the investigation of the Plan because EBSA will use them to determine whether MetLife or any other person violated Title I of ERISA. The Second Circuit has long held that a district court must accept an "agency's appraisal of relevancy" unless it is "obviously wrong." See NLRB v. Am. Med. Response, Inc., 438 F.3d 188, 192-93 (2d Cir. 2006); see also United Parcel Serv., Inc., 587 F.3d at 139 (explaining that the relevancy requirement is "not especially constraining"); In re Gimbel, 77 F.3d 593, 601 (2d Cir. 1996) ("The initial determination of what information is reasonably relevant is left to the investigating agency"). Federal agencies are empowered to issue subpoenas in order to determine whether they have jurisdiction over a particular activity in the first place. Brigadoon Scotch Distrib. Co., 480 F.2d at 1053 (2d Cir. 1973) ("it is for the agency rather than the district courts to determine in the first instance the question of coverage in the course of the preliminary investigation into possible violations") (citing Okla. Press Publ'g Co., 327 U.S. at 201-02).

EBSA is investigating whether MetLife's failure to sufficiently search for annuitants and related failures indicates that MetLife or any other person violated ERISA. The subpoena requires MetLife to produce documents and communications related to Project Chestnut, the effort by MetLife to remedy the very failures at issue in the investigation. *See* Ex. B, attached to Hassler Decl. Nevertheless, in its January 15, 2021 letter, MetLife refused to produce any responsive documents because it believes that the U.S. Department of Labor does not have jurisdiction. MetLife argues that the risk-transfer transactions at issue extinguish the status of ERISA plan

participants and converts them into annuitants, and EBSA does not have investigative authority relating to former ERISA plan participants. MetLife misses the point in two critical ways.

First, one of the open questions in EBSA's investigation is whether the transactions at issue did in fact extinguish the status of ERISA plan participants as MetLife presumes. ERISA contains specific requirements for the termination of an ERISA plan, and EBSA regulations further state specific requirements for the termination of an individual's status as an ERISA plan participant. 29 U.S.C. 1341; 29 C.F.R. § 2510.3-3(d)(ii). For example, an individual's status as a participant or beneficiary is not extinguished unless an insurance company "fully guaranteed" the "entire benefit rights of the individual." 29 C.F.R. § 2510.3-3(d)(ii). Therefore, MetLife has fiduciary responsibilities to the extent that it has not actually provided benefits owed to individuals under their original employee benefit plan. The subpoena seeks documents directly related to MetLife's effort to search for individuals in order to provide benefits owed, and the success of that effort will inform, among other things, EBSA's determination of the extent of its jurisdiction. MetLife also has fiduciary responsibilities if it did not provide sufficient notice to the participants and beneficiaries. See 29 U.S.C. 1341(b)(2)(B), 29 C.F.R. § 2510.3-3(d)(ii)(A)(2). The documents EBSA seeks with the subpoena may shed light on these issues as well. MetLife's belief that it is not subject to the requirements of ERISA does not justify it refusing to comply with a subpoena that will help EBSA make that determination.

Second, even if EBSA ultimately determines that MetLife is not subject to ERISA fiduciary responsibilities relating to the individuals at issue, documents related to Project Chestnut may still be highly relevant to assessing potential ERISA violations by other actors, such as the employee benefit plans who purchased MetLife's products. The Secretary's subpoena authority is not limited to the people and entities suspected of violations. See, e.g., In re McVane, 44 F.3d at 1137–38 (2d

Cir. 1995) (discussing cases involving subpoenas to third parties who are not the target of the government's inspection). The information sought in the subpoena is thoroughly relevant to EBSA's investigation.

c. The Information Sought is not in the Secretary's Possession

EBSA is in possession of a single document describing Project Chestnut that MetLife produced in response to the first subpoena. The subpoena at issue seeks other documents and communications related to Project Chestnut that are not in the Secretary's possession. To the extent that the one document that has been produced is responsive to the subpoena, it does not need to be re-produced.

d. The Secretary Followed the Required Administrative Steps

Finally, the Secretary followed with the administrative steps that ERISA requires in issuing and serving a subpoena. The subpoena was issued pursuant to statutory authority and was signed by EBSA's New York Regional Director, to whom the Secretary has delegated enforcement and subpoena authority. Hassler Decl., Ex. C.

EBSA properly served the subpoena on MetLife. On January 5, 2021, EBSA Senior Investigator Risso served the subpoena on MetLife's attorney by email. Hassler Decl. ¶ 15. MetLife's attorney consented in writing to service by email. Hassler Decl. ¶ 21, Ex. H. Therefore, service was proper. See Fed. R. Civ. P. 5(b)(2)(F)(permitting service by any means consented to in writing); see also F.T.C. v. Carter, 636 F. 2d 781, 791 (D.C. Cir. 1980) (holding that less formal service of process is permissible for administrative subpoenas than what is typically required under Rule 5).

III. The Demand Is Not Unreasonably Broad or Burdensome.

"A subpoena that satisfies [the four] criteria will be enforced unless the party opposing enforcement demonstrates that the subpoena is unreasonable or that compliance would be 'unnecessarily burdensome." United Parcel Serv., Inc., 587 F.3d at 139 (quoting N.L.R.B. v. Am. Med. Response, Inc., 438 F.3d 188, 193 (2d Cir. 2006)). "Whether enforcement of a subpoena poses an undue burden is typically a fact-intensive inquiry [which] requires the respondent to show that the actual costs of discovery are unreasonable in light of the particular size of the respondent's operations." N.L.R.B. v. AJD, Inc., No. 15-MISC-326, 2015 WL 7018351, at *5 (S.D.N.Y Nov. 12, 2015); see also E.E.O.C. v. Morgan Stanley & Co., 132 F. Supp. 2d 146, 161 (S.D.N.Y. 2000). MetLife cannot meet that burden here because the subpoena is plainly reasonable and not unduly burdensome, especially given the size of MetLife's business.

As described above, the subpoena seeks ten categories of documents and communications, each relating to Project Chestnut, MetLife's purported new "expedited outreach process" intended to remedy its prior failures to adequately search for annuitants. Obtaining these documents will be critical to EBSA's ability to determine whether MetLife or any other persons have violated Title I of ERISA, and whether any such violations have been remedied prospectively. The one Project Chestnut document in EBSA's possession suggests that it began in 2018, so EBSA's requests for related documents are by their nature temporally limited in scope. Furthermore, the very purpose of Project Chestnut is to remedy legal violations by MetLife and the related documents were created in the context of multiple federal and state investigations, so it should come as no surprise to MetLife that it is being called upon to produce them.

Moreover, the Secretary has repeatedly expressed openness to further limiting the scope of the subpoena if MetLife can explain why any particular request would be particularly burdensome

and the necessary information can be produced to the Secretary in a way the company finds less burdensome. However, MetLife has never provided any meaningful explanation why any particular request would be unduly burdensome for the company or any alternative format for providing the necessary information.[2]

EBSA has provided MetLife with ample opportunities to produce the documents at issue, but to date it has produced nothing in response to the subpoena at issue. MetLife will not comply absent an order from this Court.

CONCLUSION

For the foregoing reasons, the Secretary respectfully requests that the Court grant the Secretary's Petition to Enforce Administrative Subpoena and enter a conforming order.

[2] In previous correspondence, MetLife has argued that compliance with the subpoena would be unduly burdensome because Project Chestnut has been addressed by other government agencies. However, it cites no authority that suggests that EBSA's subpoena cannot be enforced because other agencies investigated overlapping issues. EBSA's authority is not coterminous with the jurisdictions of the U.S. Securities and Exchange Commission or the New York State Department of Financial Services, neither of which has authority to enforce Title I of ERISA.

Dated: March 31, 2021
New York, New York

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