

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GOVERNMENT DEVELOPMENT BANK FOR
PUERTO RICO, et al.
Plaintiffs

CIVIL ACTION

V.

HOLT MARINE TERMINAL, **INC.**, et al. :
Defendants

NO. 02-7825

MEMORANDUM AND ORDER

McLaughlin, J.

June 20, 2003

Government Development Bank for Puerto Rico and Puerto Rico Maritime Shipping Authority have sued several corporations to recover money paid by the plaintiffs in satisfaction of withdrawal liability incurred by NPR, Inc. under ERISA.

The plaintiffs have moved to compel the production **of** documents and answers to interrogatories, seeking access to information pertaining to the defendants' financial history, and the identification **of** outside accountants and consultants employed by the defendants.

The defendants have objected to these requests on two grounds: (1) that the information sought is not relevant to the claims or defenses of any party; and (2) that the plaintiffs' requests are unduly burdensome and overly broad. The defendants argue that the plaintiffs have pleaded only one theory of recovery - "controlled group" liability. Such liability, they contend, **is** founded **solely** on a showing that **the** defendants

belong to the same controlled group as NPR, Inc. and are jointly and severally liable for the latter's withdrawal liability under § 1381 of **ERISA**. The defendants further argue that establishing a controlled group under ERISA requires only a straightforward inquiry into stock ownership. They state that financial records and evidence of specific transactions would have no relevance to the claim, emphasizing that the plaintiffs have failed to plead "avoidance" liability under § 1392(c) of **ERISA**.

The plaintiffs respond that they have pleaded both controlled group liability and § 1392(c) avoidance liability. They contend that the two theories overlap and that § 1392(c) need not be explicitly invoked in a complaint. In any event, the plaintiffs maintain that the discovery requested does *go* directly to determining what entities are or were members *of* what controlled group or groups.

The Court concludes that the essence of the plaintiffs' **requests** seek evidence relevant to a showing of ownership, and thus controlled group status. Even if the defendants are correct that avoidance liability and controlled **group** liability are separate and distinct claims, that the plaintiffs only pleaded the latter, and that the sole relevant test for membership in a controlled group is a certain percentage of stock ownership, this discovery is still reasonably calculated to lead to admissible evidence.

ERISA does not provide an independent definition of controlled group. Instead, it explicitly incorporates the definition of that term found in § 414 of the Internal Revenue Code. 29 U.S.C. § 1301(a) (14)(A). That section, in turn, incorporates § 1563 of the Internal Revenue Code. 26 U.S.C. § 414(b). Section 1563 contemplates, among other things, relationships that may give rise to "constructive ownership." 26 U.S.C. § 1563(e). When assessing controlled group liability under ERISA, a court must look not just to actual ownership, but also to constructive ownership. See Bd. of Trs. v. Centra, 983 F.2d 495, 502 (3d Cir. 1992).

Some inquiry, therefore, into recent financial arrangements and transactions engaged in by the defendants is appropriate.

As to the burdensome argument, the plaintiffs' proposals to limit the discovery requests contained in pages four and five of the plaintiffs' reply brief appear reasonable. The Court, however, will consider any additional arguments of the defendants with respect to these proposals.

An appropriate order follows.

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AND NOW, this 20th day of June, 2003, upon consideration of the plaintiffs' Motion to Compel Responses to Discovery Requests (Docket No. 21), the defendants' opposition thereto, the plaintiffs' reply and following a telephone conference with the parties, IT IS HEREBY ORDERED that said motion is granted in part and denied in part in the manner and for the reasons stated in a memorandum of today's date.

BY THE COURT:


MARY A. McLAUGHLIN, J.

6/24/03cc A. Ceptella for
A. Swisher
M. MacDougall
J. Griffith
M. Puccio
P. Nothen