

E-Filed 2/24/09

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

REGINALD BRONNER,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY OF
AMERICA ET AL.,

Defendant.

Case Number C 03-5742 JF (RS)

ORDER¹ OVERRULING OBJECTION
TO ORDER OF MAGISTRATE
JUDGE

[re: doc. no. 129]

I. BACKGROUND

Plaintiff Reginald Bronner (“Bronner”) objects to Magistrate Judge Seeborg’s order of January 30, 2009 (the “Discovery Order”), which granted in part and denied in part Bronner’s motion to compel the production of documents by Defendant Unum Life Insurance Company of America (“Unum”). The Discovery Order followed this Court’s order of July 1, 2008, which granted Bronner permission to take “focused discovery” with respect to the following:

1. The circumstances under which Unum denied Bronner’s appeal;
2. The circumstances surrounding Unum’s response to Bronner’s request for reassessment following the settlement agreement; and

¹ This disposition is not designated for publication in the official reports.

1
2 3. The findings, if any, of the Multistate Investigation with respect
to Unum’s alleged structural conflicts of interest.

3 Order at 7, July 1, 2008. On July 21, 2008, Bronner propounded the discovery requests at issue.
4 Unum refused to produce documents in response to any request seeking information about any
5 individual other than Bronner or on any topic not specifically identified in the order of July 1,
6 2008. Bronner filed a motion to compel on December 4, 2008.

7 The Magistrate Judge granted Bronner’s motion to compel with respect to certain claim
8 reassessment statistics and Unum’s claim reassessment procedure, as these categories of
9 documents relate to the first two categories of focused discovery permitted by this Court and also
10 relate directly to Bronner’s appeal of Unum’s denial of his claim. The Magistrate Judge also
11 granted those discovery requests that sought statistical analysis of claims submitted by similarly
12 situated individuals. However, Bronner’s requests for the actual records of other individual
13 claimants were denied on the ground that such requests were not narrowly tailored to Bronner’s
14 purpose of showing a conflict of interest within Unum’s claim appeal process.

15 **II. DISCUSSION**

16 Under Fed. R. Civ. P. 72(a), the Court “must consider timely objections and modify or set
17 aside any part of the [magistrate judge’s] order that is clearly erroneous or is contrary to law.”
18 Bronner asserts that the Discovery Order runs contrary to the recent decision by the Supreme
19 Court in *Metropolitan Life Ins. Co. v. Glenn*, 128 S. Ct. 2343 (2008). Specifically, Bronner
20 contends that *Glenn* expanded the scope of discovery allowable to ascertain structural conflicts in
21 insurance appeals, beyond that allowable under the relevant law in place at the time Bronner’s
22 discovery requests were propounded—namely, the analytical framework set forth by the Ninth
23 Circuit in *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006) (en banc).
24 However, both this Court and the Ninth Circuit have stated that the relevant differences, if any, in
25 the conflict of interest analysis post-*Glenn* are negligible. *See Burke v. Pitney Bowes Inc.*
26 *Long-Term Disability Plan*, 544 F.3d 1016, 1024 (9th Cir. 2008) (in *Glenn*, “the Supreme Court
27 set forth a framework, similar to the one provided in *Abatie*, in considering whether the dual role
28 of administering and funding an ERISA plan creates a conflict of interest.”); Hr’g Tr. at 13, Oct.

1 31, 2008 (“Both [*Glenn* and *Abatie*], essentially, are saying that you can look at structural
2 conflicts in evaluating whether there was an abuse of discretion, that’s nothing new.”).

3 The Magistrate Judge properly considered Bronner’s discovery requests and granted those
4 requests to the extent that they comported with this Court’s order of July 1, 2008. The
5 Magistrate Judge did not err in denying Bronner’s requests seeking records of other individuals
6 because such requests are overly broad and would run counter to the statutory intent of ERISA
7 “to resolve disputes over benefits inexpensively and expeditiously.” *Boyd v. Bert Bell/Pete*
8 *Rozelle NFL Players Retirement Plan*, 410 F.3d 1173, 1178 (9th Cir. 2005). Moreover, the
9 Magistrate Judge recognized the relevance of the claim histories of other individuals by granting
10 Bronner’s discovery requests nine and ten, as well as discovery pursuant to requests twelve,
11 fourteen, thirty-two, and thirty-four to the extent that those requests seek information related to
12 the third category of focused discovery allowed by this Court, *i.e.*, the “findings, if any, of the
13 Multistate Investigation with respect to Unum’s alleged structural conflicts of interest.” Such
14 findings presumably would include a statistical analysis of the claim histories of other individuals
15 similarly situated to Bronner. The Magistrate Judge noted that such discovery may include the
16 final results of the Multistate Investigation as well as any documents that led to those results that
17 also are responsive to Bronner’s discovery requests. The Magistrate Judge also held that Unum
18 must produce any evidence upon which it intends to rely in showing that no structural conflict
19 exists. Such documents would include the relevant records of third parties, if any.

20 Accordingly, the objection will be overruled because the Magistrate Judge’s order is not
21 “clearly erroneous or contrary to law.” *See* Fed. R. Civ. P. 72(a). *See also* *Burke*, 544 F.3d at
22 1028 n.15 (“Whether to permit discovery into the nature, extent, and effect of the Plan’s
23 structural conflict of interest is...a matter within the district court’s discretion.”).²

24
25
26 ² Bronner also contends that the Discovery Order is clearly erroneous because it states
27 that Bronner “may take” discovery while at the same time denying his request for leave to
28 propound additional interrogatories and a document request. However, the Magistrate Judge
simply was reiterating that Bronner is permitted to conduct discovery to the extent permitted in
the Discovery Order and this Court’s order of July 1, 2008.

1 IT IS SO ORDERED.

2
3
4 DATED: February 24, 2009

5 
6 JEREMY FOGEL
United States District Judge

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This Order was served on the following persons:

2 Jeremy A Burns jburns@carr-mcclellan.com, lstumpf@carr-mcclellan.com

3 Laura E. Fannon laura.fannon@wilsonelser.com

4 W. George Wailes gwailes@carr-mcclellan.com, glewellyn@carr-mcclellan.com,
5 jburns@carr-mcclellan.com

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28