

## IMPORTANT NEW DEVELOPMENTS

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On June 20, 2007, the United States District Court for the Eastern District of Pennsylvania issued an order reversing its earlier ruling of March 30, 2004, in which it had concluded the Release and Waiver Agreement that Allstate required employee agents to sign as part of the "Preparing for the Future" Group Reorganization Program was retaliatory and in violation of applicable federal law and could be voided at the option of each employee agent who signed the Release. In addition to vacating its ruling concerning the validity of the Release, the District Court adopted the "tentative conclusions" set forth in its order dated March 21, 2007 (which is discussed below) and, as a result, granted summary judgment in favor of Allstate as to the discrimination and retaliation claims asserted by the plaintiff employee agents under the Age Discrimination in Employment Act and Employee Retirement Income Security Act. Finally, the District Court indicated its intention to close the case files.

Plaintiffs, together with the United States Equal Employment Opportunity Commission, have taken an appeal from the District Court's ruling and, in accordance with the scheduling order issued by the United States Court of Appeals for the Third Circuit will be filing briefs with the Court of Appeals by June 2, 2008. Allstate will have to file responsive briefs within 30 days. Copies of the parties' briefs will be posted after they are filed.

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April 2, 2007

The proposed class action lawsuit brought by 29 plaintiffs, known as Romero I, seeks to recover pension, medical and other benefits estimated in the hundreds of millions of dollars, as well as compensatory and punitive damages and other relief, on behalf of about 6,200 current and former Allstate agents. The plaintiffs have alleged that the company betrayed its long-time "captive" employee agents by wrongfully terminating their employment contracts in order to deny them pension and other employee benefits and to rid itself of thousands of older employees. The suit claims that Allstate's actions taken as part of the "Preparing for the Future" Group Reorganization Program violated the Employee Retirement Income Security Act ("ERISA"), the Age Discrimination in Employment Act ("ADEA"), and Allstate's contractual and fiduciary duties. The plaintiffs also allege that Allstate wrongfully refused to rehire any of the terminated employee agents for a period of one year to reduce retirement benefits that former agents could earn in the future.

The U.S. Equal Employment Opportunity Commission has filed two lawsuits against Allstate on behalf of affected agents. The first, filed in December 2001, alleges that Allstate violated the anti-retaliation provisions of the ADEA, Title VII of the Civil Rights Act and the Americans with Disabilities Act by forcing its employee agents to sign a release and waiver that the EEOC previously determined to be unlawful. The EEOC's lawsuit has been consolidated with Romero I. The second lawsuit, filed in October 2004, alleges that the one-year "rehiring moratorium"

adopted by Allstate constituted a pattern and practice of unlawful age discrimination. According to the EEOC, the refusal to rehire employee agents had the intended effect of depriving individuals of the ability to continue to accrue the substantial pension and other benefits to which they had been entitled without a "break in service."

On March 30, 2004, Senior District Judge John Fullam granted partial summary judgment in favor of plaintiffs in Romero I, holding that the release violated the ADEA because it barred the filing of "charges," including challenges to the validity of the release. As Judge Fullam observed, "we have no way of knowing how many other employee-agents failed to pursue charges before the EEOC simply because they accepted the release language at face value." The Court held further that Allstate had engaged in unlawful retaliation under the ADEA, Title VII and other laws in order to prevent agents from exercising their federally-protected rights. As part of its ruling, however, the Court concluded, based on the limited record before it, that there was "no basis" for plaintiffs' age discrimination claims. Although the Court did not actually dismiss the ADEA claims, it held that agents who desire to have the release invalidated and pursue claims for damages or other relief would first have to repay or "tender back" to Allstate "any and all benefits received by the signer in exchange for the release."

Plaintiffs filed a motion in April 2004 asking the Court to reconsider the "tender back" requirement. The EEOC also filed its own motion asking that the Court clarify its ruling.

In December 2005, Allstate filed a summary judgment motion asking the Court not only to reconsider its March 2004 decision and reverse itself by upholding the release. Allstate also is asking the Court to dismiss the claims the Romero plaintiffs are prosecuting under the ADEA and ERISA, including the claim that the release constitutes unlawful retaliation. CEO Liddy has joined in the request for summary judgment. Plaintiffs and the EEOC have opposed the motion on numerous grounds. In a 48-page brief filed with the Court under seal, plaintiffs lay out the reasons that Allstate is not entitled to seek reconsideration of the March 2004 ruling at this late date and, in any event, is not entitled to dismissal of the ADEA and ERISA claims or, indeed, any of their claims as a matter of law. In further support of their arguments, plaintiffs note, among other things, that they have not been able to undertake "merits" discovery because of Allstate's unjustified refusal to produce documents responsive to their discovery requests. Plaintiffs therefore have requested that the Court deny the motions for summary judgment and that it instead grant the relief requested with respect to the "tender back" requirement in the motions that have been pending since April 2004.

Judge Fullam has denied plaintiffs' motion for reconsideration and, in a ruling dated March 21, 2007, advised the parties that he has reached a number of tentative conclusions in this case, the EEOC case and Romero II. As set forth in the memorandum opinion issued by the Court, Judge Fullam stated that he had concluded that his March 2004 ruling was "in error" insofar as he found that the Release was voidable and, in light of other tentative conclusions set forth in his ruling, that "the validity of the release has become moot." With respect to the other tentative conclusions, Judge Fullam stated that a 2005 decision issued by a United States Court of Appeals in *Isbell v. Allstate Ins. Co.* "warrants the conclusion that plaintiffs' claims of ERISA violations, age discrimination and retaliation must fail." It therefore appears that it is Judge Fullam's intention to uphold the Release and, in addition, dismiss the federal law claims brought under the

ADEA and ERISA. Judge Fullam nevertheless has invited the parties to submit additional briefs that bring to the Court's attention any issues that he may have overlooked, as well as any argument or "other factor" that impugns the decision in Isbell. Plaintiffs believe that the tentative conclusions reached by Judge Fullam are not correct and will file a brief that attempts to explain why he is in error. We will keep you advised of any further rulings from the Court.

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January 6, 2006

The proposed class action lawsuit brought by 29 plaintiffs, known as Romero I, seeks to recover pension, medical and other benefits estimated in the hundreds of millions of dollars, as well as compensatory and punitive damages and other relief, on behalf of about 6,200 current and former Allstate agents. The plaintiffs have alleged that the company betrayed its long-time "captive" employee agents by wrongfully terminating their employment contracts in order to deny them pension and other employee benefits and to rid itself of thousands of older employees. The suit claims that Allstate's actions taken as part of the "Preparing for the Future" Group Reorganization Program violated the Employee Retirement Income Security Act ("ERISA"), the Age Discrimination in Employment Act ("ADEA"), and Allstate's contractual and fiduciary duties. The plaintiffs also allege that Allstate wrongfully refused to rehire any of the terminated employee agents for a period of one year to reduce retirement benefits that former agents could earn in the future.

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April 12, 2005

The proposed national class action lawsuit brought by 29 plaintiffs, known as Romero I, seeks to recover benefits estimated in the hundreds of millions of dollars, as well as compensatory and punitive damages and other relief, on behalf of about 6,200 current and former Allstate agents. The plaintiffs have alleged that the company betrayed its long-time "captive" employee agents by wrongfully terminating their employment contracts in order to deny them pension and other employee benefits and to rid itself of thousands of older employees. The suit claims that Allstate's actions taken as part of the "Preparing for the Future" Group Reorganization Program violated the Employee Retirement Income Security Act ("ERISA"), the Age Discrimination in Employment Act ("ADEA"), and Allstate's contractual and fiduciary duties. The plaintiffs also allege that Allstate wrongfully refused to rehire any of the terminated employee agents for a period of one year to reduce retirement benefits that former agents could earn in the future.

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Plaintiffs filed a motion in April 2004 asking the Court to reconsider the "tender back" requirement. The EEOC also filed its own motion asking that the Court clarify its ruling.

On March 30, 2005, the United States Supreme Court issued its ruling in *Smith v. City of Jackson, Miss.*, - U.S. -, 125 S.Ct. 1536 (2005), which confirms that claims based on a facially-neutral employment policy or practice that applies to all employees, regardless of age, are cognizable under the ADEA if the policy or practice has a "disparate impact" on older workers. Plaintiffs therefore have asked Judge Fullam to reconsider the "tender back" requirement in light of the fact that the Supreme Court now has made clear not only that they have asserted viable claims under the ADEA, but also that no "tender back" requirement can be imposed with regard to their claims for age discrimination. Plaintiffs believe that the Court should certify a collective action for the ADEA for the reasons set forth in their motion for class certification and also have renewed their request that an "opt out" class be certified with respect to the ERISA and common law claims that they have brought.

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October 8, 2004 As reported this morning by The New York Times, the United States Equal Employment Opportunity Commission has filed a second lawsuit against Allstate Insurance Company alleging that actions the company took in connection with the "Preparing for the Future" Group Reorganization Program violate the Age Discrimination in Employment Act of 1967 ("ADEA"). This lawsuit, filed in federal district court in St. Louis, Missouri, alleges that Allstate unlawfully discriminated against its employee agents, more than 90 percent of whom were over the age of 40, by refusing to rehire them to fill other positions at the company.

Based on its own investigation of Allstate's actions, which had revealed that approximately 84 percent of the individuals Allstate hired to fill positions at newly-created regional "call centers" were under the age of 40, the EEOC determined in August 2003 that the companywide "rehiring moratorium" constituted a pattern and practice of unlawful age discrimination. According to the EEOC, the refusal to rehire employee agents had the intended effect of depriving individuals of

the ability to continue to accrue the substantial pension and other benefits to which they had been entitled without a "break in service."

The EEOC lawsuit follows a March 2004 ruling in which a federal district court held that the release which Allstate forced its employee agents to sign as part of the "Preparing for the Future" Program constituted unlawful retaliation and otherwise violated the ADEA and two other federal anti-discrimination statutes. The Romero plaintiffs and EEOC have filed motions asking the court to reconsider certain aspects of this ruling, including requiring agents to "repay" certain benefits allegedly received from Allstate after signing the unlawful release. There has been no ruling on the pending motions.

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On April 14, 2004, the Romero plaintiffs filed a motion asking U.S. District Judge John P. Fullam to reconsider a portion of his landmark March 30 ruling. The plaintiffs are asking the Court to eliminate the requirement that former employee agents repay certain "benefits" in order to participate in the lawsuit. The EEOC also has filed its own motion asking Judge Fullam to clarify that there is no "tender back" requirement applicable to the federal government's efforts to recover punitive damages and other monetary relief under the anti-retaliation provisions of the ADEA Title VII and Americans with Disabilities Act. The EEOC also has asked the Court for a status conference to set a discovery schedule on damages issues.

As has been widely-reported, Judge Fullam ruled the General Release and Waiver Agreement that Allstate forced more than 6,200 employee agents to sign as part of the "Preparing for the Future" Program violated federal law. In agreeing with the EEOC, Judge Fullam also ruled that it is illegal to retaliate, or threaten to retaliate, against an employee to prevent the exercise of federally-protected rights. The Court then went on to find that the Release was voidable, but not void, and ordered that any former employee agent who desires to invalidate the Release first must provide written notice to Allstate and then "tender to Allstate . . . repayment of any and all benefits received in exchange for the release." Plaintiffs are hopeful that Judge Fullam will clarify his March 30 ruling when deciding to grant the relief requested in their motion for reconsideration. Plaintiffs believe that the portion of Judge Fullam's decision requiring repayment of so-called "benefits" as a prerequisite to participation in the lawsuit was inconsistent with established legal precedents, thus prompting the motion for reconsideration.

[Click here for Judge Fullam's ruling.](#) [Click here for plaintiffs' motion for reconsideration.](#) [Click here for the EEOC's motion for clarification.](#)

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April 1, 2004

(Washington, DC) - In response to U.S. District Judge John P. Fullam's decision to allow former Allstate agents to proceed with their class action lawsuit against the insurance giant, lawyers for the agents said that they are pleased to have the opportunity to continue fighting for the

thousands of agents who were denied employee benefits under the law. Click here for a copy of Judge Fullam's ruling. For a copy of the Press Release, click here. To view the EEOC's Press Release, COURT RULES ALLSTATE'S THREATS OF RETALIATION ARE ILLEGAL, click here.

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On, August 21, 2003, the St. Louis Regional Office of the United States Equal Employment Opportunity Commission determined that Allstate Insurance Company violated the Age Discrimination in Employment Act ("ADEA") by implementing a company-wide policy of refusing to rehire R830 and R1500 agents whose employment contracts purportedly were terminated in 2000 as part of the "Preparing for the Future" Group Reorganization Program.

According to the EEOC, this policy discriminated against persons age 40 and over as a class and that Allstate had failed to show that there was any legitimate business purpose for the policy and that the policy was not applied to other non-agent employees who were terminated.

The EEOC's investigation established that 94 percent of the terminated employee agents were over age forty and 84 percent of the individuals hired to fill newly-created customer service positions were under age 40. The investigation also established that Allstate adopted the policy to avoid rehiring the 6,200 employee agents purportedly terminated "under circumstances where they could retain their original service date from their earlier period of employment." This had the intended effect of depriving these individuals of their ability to continue to accrue pension and other benefits to which they had been entitled as employees without a break in service.

The EEOC has encouraged Allstate to enter into conciliation talks as a means of resolving the company's unlawful conduct. If such talks are unsuccessful, the EEOC has the right pursue further legal action against Allstate.

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The New York Times author, Joseph B. Treaster, published an article Wednesday, August 27, 2003 entitled "Bias Agency Faults Allstate in Agent's Case".

"Allstate has experienced a setback in the long-running dispute over its efforts to convert its career agents into independent contractors to streamline its business and cut costs. The insurer is already facing separate federal lawsuits by the agents and the Equal Employment Opportunity Commission." To read the entire article, please click here.

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As reported by the New York Times on May 20, 2003, Senior Judge Fullam has issued a Memorandum and Order stating that he has "tentatively decided that class certification is appropriate" and that he requires "further information before entering an order to that effect." The Court indicated that it was "concerned about the fact there are 29 named plaintiffs, proposed as representatives of the main class, 18 of whom are also proposed as representatives of one of the subclasses." According to the Court, "[u]nless those numbers can be substantially reduced,

much of the benefit of class action treatment would not be realized." Plaintiffs therefore have been ordered to submit a form of order which "sharply reduces" the number of proposed representatives for class and subclasses by designating "three or fewer persons as representatives of each class and subclass, or which proposes a procedure for this Court to make such designations." Allstate has five days to object to the proposed order.

As should be apparent, the Court has yet to certify the class or subclasses. Generally speaking, a class certification determination also is not a decision with respect to the merits of any claims for which certification has been sought. Plaintiffs have submitted a proposed form of order complying with the Court's memorandum and order. We do not know when Judge Fullam will issue his final ruling.

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On Sunday, March 2, 2003, the New York Times Magazine published a compelling article about age discrimination and the class action lawsuit that Gene Romero and the 28 other current and former insurance agents filed in connection with Allstate's "Preparing for the Future" Group Reorganization Program. This article, entitled "Too Old to Work?," was written by Adam Cohen, a member of the New York Times editorial board. [Click here for the article.](#)

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On February 25, 2003, plaintiffs filed and served a supplemental memorandum in support of their pending motion for class certification. The brief was filed under seal, together with three volumes of exhibits. Allstate also filed and served its supplemental brief opposing class certification. It too was filed under seal. On March 12, 2003, the United States Equal Employment Opportunity Commission filed its own brief in support of plaintiffs' motion for class certification, arguing that *Romero v. Allstate Insurance Co.*, is "tailor-made" for resolution by a class action. [Click here for a copy.](#)

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Allstate's termination of more than 6,000 of its long-time employee agents has spurred Representatives Carolyn McCarthy (N.Y.), Robert Andrews (N.J.) and Bernard Sanders (VT) to co-sponsor the Employee Benefits Protection Act of 2003. [Click here for a copy of the press release.](#) The Bill, which is known as HR 1397, would prohibit employers such as Allstate from forcing employees nearing retirement to become so-called "independent contractors" and thereby lose eligibility for pension and other benefits, including early retirement. It also would amend the Employee Retirement Income Security Act ("ERISA") to clarify that waiver agreements are invalid unless they are found to be knowing and voluntary. [Click here for a copy of HR 1397.](#) The Bill has been referred to the House Committee on Education and the Workforce. You can express your support for the passage of HR 1397 by contacting your elected representatives below (this link will leave our website).

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## EEOC DETERMINES ALLSTATE VIOLATED FEDERAL LAW BY COUNTERSUING THE ROMERO I PLAINTIFFS

Washington, D.C. (December 19, 2002) – The United States Equal Employment Opportunity Commission has issued a written determination that there is reason to believe that Allstate Insurance Company violated the Age Discrimination in Employment Act, as amended ("ADEA"), by countersuing 28 of the plaintiffs who filed the Romero I class action lawsuit against Allstate and its president, chairman and chief executive officer, Edward M. Liddy. According to the EEOC, Allstate has "failed to produce any convincing evidence" to support the allegations made in its counterclaims for fraud, negligent misrepresentation, unjust enrichment and breach of duty of good faith.

Central to the determination is the fact that Allstate's purported justification for bringing its counterclaims is belied by statements made to the Commission in May 2000 when responding to charges of discrimination concerning the lawfulness of the General Release and Waiver Agreement (the "Release") that was presented to more than 6,400 employee agents as part of the "Preparing for the Future" Group Reorganization Program. Specifically, Allstate, through its attorneys at Sonnenschein, Nath & Rosenthal, told the EEOC that even if an employee agent signed the Release, that individual would not be prevented from challenging its validity (that is, whether it was knowing and voluntary or otherwise lawful) and pursuing a claim of discrimination. As the EEOC states in its determination letter, "the conclusion is inescapable that [Allstate] filed its counterclaims to discourage other of its employees from pursuing employment discrimination claims against it and to punish [the Romero I plaintiffs] for filing an age discrimination lawsuit against it."

Having determined that there is reason to believe that Allstate has once again violated the anti-retaliation provisions of the ADEA, the EEOC is required to enter into a conciliation process in an attempt to remedy the practice determined to be unlawful. In the event the conciliation process does not result in a resolution acceptable to the EEOC, the Commission has the ability to pursue a legal remedy, including damages, in federal court.

The EEOC's determination comes some fourteen months after it first determined that the Release constituted unlawful retaliation, coercion, intimidation and interference in violation of the ADEA, Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. Following this determination, the EEOC filed a lawsuit against Allstate in the United States District Court for the Eastern District of Pennsylvania on December 27, 2001, seeking to invalidate the Release and recovery of compensatory and punitive damages. The EEOC since has determined that Allstate again violated federal law in requiring its so-called "life specialists" to sign a similar form of release.

Further questions regarding the determination or the conciliation process should be addressed to the Kansas City Area Office of the United States Equal Employment Opportunity Commission: (913) 551-5655. If you believe that Allstate's counterclaims discouraged you or anyone else from filing a charge of discrimination against Allstate, or otherwise pursuing a claim such as by filing an "opt-in" consent form, you are encouraged to contact the EEOC directly.

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