

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

GENE R. ROMERO, et al.	:	
Plaintiffs	:	No. 01-3894
	:	
v.	:	
	:	
ALLSTATE INSURANCE COMPANY, et. al.	:	
Defendants.	:	
	:	

**MOTION TO DISMISS OF DEFENDANT EDWARD M. LIDDY  
PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6)**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Edward M. Liddy (“Liddy”), by and through his undersigned counsel, hereby moves this Court for an Order dismissing Counts II and III of Plaintiffs’ Amended Complaint with respect to Mr. Liddy. In support of his Motion, Mr. Liddy hereby incorporates by reference the accompanying memorandum of law.

Respectfully submitted,

Dated: August 27, 2010

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Edward M. Liddy*

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Plaintiffs	:	No. 01-3894
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**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO DISMISS OF DEFENDANT EDWARD M. LIDDY  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

Defendant Edward M. Liddy hereby submits this Memorandum of Law in support of his Motion to Dismiss the Second and Third Causes of Action of Plaintiffs' Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

**I. INTRODUCTION**

On July 28, 2010, Plaintiffs filed a Second Amended Complaint against Allstate Insurance Company, The Allstate Corporation (collectively referred to as "Allstate") and one individual defendant, Edward M. Liddy ("Mr. Liddy"), who Plaintiffs "sued in his capacity as the former President, Chief Executive Office and Chairman of Allstate." Second Amended Complaint at ¶ 51. Plaintiffs' claims arise out of what they label a "group reorganization program" announced in November 1999. *Id.* at ¶ 3.

Of the seven counts alleged in the Second Amended Complaint, two name Mr. Liddy: Count II (Interference with Employment and Retaliation in Violation of Section 510 of ERISA (29 U.S.C. § 1140)) and Count III (Retaliation in Violation of Section 510 of ERISA (29

U.S.C. § 1140)).<sup>1</sup> Most simply stated, neither count against Mr. Liddy states a cognizable claim because the Third Circuit does not recognize a Section 510 ERISA claim against an individual in his or her capacity as a corporate officer. Accordingly, this Court should dismiss Counts II and III of Plaintiffs' Second Amended Complaint against Mr. Liddy with prejudice.<sup>2</sup>

## II. LEGAL ARGUMENT

### A. **Standard for Motion to Dismiss under Fed. R. Civ. P. 12(b)(6)**

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a court to dismiss all or part of an action "for failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The Third Circuit has held that a district court shall grant a motion to dismiss when "accept[ing] all well-pleaded allegations in the complaint as true and draw[ing] all reasonable inferences in [plaintiff's] favor," the plaintiff is not entitled to relief under any reasonable reading of the complaint as a matter of law. Capogrosso v. Supreme Court of N.J., 588 F.3d 180, 184 (3d Cir. 2009) (quoting McGovern v. City of Philadelphia, 554 F.3d 114, 115 (3d Cir. 2009)). With this principle in mind, this Court should dismiss the claims against Mr.

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<sup>1</sup> Since initially filing this action against Allstate and Mr. Liddy in 2001, plaintiffs have filed two other actions arising out of the group reorganization program. The Equal Employment Opportunity Commission also has filed a claim against Allstate arising out of this same controversy. Mr. Liddy is not a defendant in any of these other actions.

<sup>2</sup> In a previous motion in this case, Mr. Liddy argued that, due to the impossibility of suing an individual in his capacity as a corporate officer under ERISA, the Court lacked personal jurisdiction over him. See Motion to Dismiss Defendant Edward M. Liddy Pursuant to Federal Rule of Civil Procedure 12(B)(2), Romero v. Allstate Ins. Co., No. 01-3894 (E.D. Pa. Nov. 7, 2001) (Docket # 12); Reply to Plaintiff's Opposition to Defendant Edward M. Liddy's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(B)(2), Romero v. Allstate Ins. Co., No. 01-3894 (E.D. Pa. Jan. 4, 2002) (Docket # 31). This motion was rendered moot by the Court when it ruled upon defendant Allstate's motion for summary judgment. (Docket # 48).

Liddy because, as a matter of law, a plaintiff cannot maintain an ERISA 510 claim against an individual in his capacity as a corporate officer.

**B. The Court Should Dismiss Plaintiffs' ERISA 510 Claims Against Mr. Liddy Because He Is Not A "Person" Under ERISA.**

Section 510 prohibits "any person" from interfering with a participant or beneficiary's exercising his or her rights protected elsewhere in the statute. 29 U.S.C. § 1140 (2008). The statute defines "person" as "an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization." 29 U.S.C. § 1002(9). It does not, however, include corporate officers acting in their professional capacities. As the Third Circuit held in Solomon v. Klein, 770 F.2d 352 (3d Cir. 1985), corporate officers acting in their professional capacities are excluded from this definition of "person," and therefore are not liable to suit under ERISA. See Solomon, 770 F.2d at 354.

Specifically, in Solomon, the Third Circuit expressly considered "whether under the concepts of statutory construction of ERISA we should conclude that Congress intended that corporate officers or large stockholders could be held liable for a corporation's violation of ERISA." Solomon, 770 F.2d at 354. Looking to the legislative history and Third Circuit precedent regarding ERISA, the court determined that, "[t]here is no indication that Congress intended to expose corporate officers to liability for their employers' violations of ERISA; in fact, the exclusion of corporate officers from the extensive enumeration of persons points in the opposite direction." Id. at 354 (quoting Combs v. Indyk, 554 F. Supp. 574, 575 (W.D. Pa. 1982) (dismissing ERISA claims against corporate officers because Congress' definition of "person" in statute did not intend to expose officers to liability for their employers' ERISA violations)). The court further found "nothing in the legislative history to indicate that Congress

intended to impose a personal liability on a shareholder or high-ranking officer of a corporation for ERISA contributions owed by the corporation.” Solomon, 770 F.2d at 355. It, therefore, rejected the plaintiffs’ analogies to other statutes under which corporate officers may be held liable and determined that, under ERISA, plaintiffs could not maintain claims against corporate officers. Id.

Seven years after its decision in Solomon, the Third Circuit again held that corporate officers, in their capacity as such, are not liable to suit under ERISA. See Cent. Pa. Teamsters Pension Fund v. McCormick Dray Line, Inc., 85 F.3d 1098, 1109 (3d Cir. 1996) (dismissing ERISA claim against corporate president based only on his position as corporate officer). See also Laborers Combined Funds of W. Pa. v. Ruscitto, 848 F. Supp. 598, 600 n.1 (W.D. Pa. 1994) (noting that, in the Third Circuit and other federal circuits, “an individual is not liable for corporate ERISA obligations solely by virtue of his or her role as officer, shareholder or manager”); Connors v. Martinage, 41 Pa. D. & C. 3d 302, 306 (1986) (“definitions under ERISA patently fail to include corporate officers”).

Indeed, as stated by the Third Circuit in Trustees of the National Elevator Industry Pension, Solomon’s holding has achieved “nearly universal acceptance.” Tr. of the Nat’l Elevator Indus. Pension v. Lutyk, 332 F.3d 188,192 n.4 (3d Cir. 2003). Like the Third Circuit in Solomon, numerous courts of appeal have held that ERISA itself and the statute’s legislative history suggest that Congress did not intend that the statute be used to hold liable corporate officers for their companies’ alleged ERISA violations. See Int’l Bhd. of Painters and Allied Trades Union v. George A. Kracher, Inc., 856 F.2d 1546, 1550 (D.C. Cir. 1988) (“Limited liability is a hallmark of corporate law. Surely if Congress had decided to alter such a universal and time-honored concept, it would have signaled that resolve somehow in legislative history.”);

Rockney v. Blohorn, 877 F.2d 637, 641-42 (8th Cir. 1989) (“There is no indication in the legislative history that Congress intended to expose corporate officers to liability for the corporation’s violation of ERISA.”) (citing Solomon, 770 F.2d at 354); Operating Eng’r Pension Trust v. Reed, 726 F.2d 513, 515 (9th Cir.1984) (finding officer, shareholder and manager not liable for corporate ERISA obligations solely by virtue of role in company); Plumbers’ Pension Fund, Local 130 v. Niedrich, 891 F.2d 1297, 1299-1300 (7th Cir. 1994) (finding owner and chief executive of company not liable under ERISA).<sup>3</sup>

Here, Plaintiffs seek to hold Mr. Liddy liable under Section 510 of ERISA “due to his involvement as a corporate officer in Allstate’s group reorganization program.” Second Amended Complaint, ¶¶ 51, 161-167, 168-173. Mr. Liddy is therefore a defendant in this action solely because of his status and actions as a corporate officer, placing him squarely within Solomon’s holding that corporate officers are not “persons” under ERISA. Solomon, 770 F.2d at 353-54. Because Mr. Liddy is not a “person” for purposes of ERISA, Plaintiffs cannot bring a § 1132 civil action under Section 510 against him, which addresses acts taken by “any person,” as defined by the statute. This court, therefore, should dismiss Plaintiffs’ claims against Mr. Liddy with prejudice.

### **III. CONCLUSION**

Plaintiffs’ theory that Mr. Liddy may be personally liable under Section 510 is foreclosed by Solomon and its progeny, which hold that an officer is not a “person” under

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<sup>3</sup> See also Sasso v. Cervoni, 985 F.2d 49 (2d Cir. 1993) (finding officer not liable for corporate ERISA obligations); Scarborough v. Perez, 870 F.2d 1079, 1082-85 (D.C. Cir. 1989) (finding owner and chief executive not liable for corporation’s alleged violations of ERISA); Mass. Laborers’ Health and Welfare Fund v. Starrett Paving Corp., 845 F.2d 23, 24-26 (1st Cir. 1988) (finding that ERISA does not impose liability on corporation’s president and sole shareholder for corporation’s delinquent pension contributions).

ERISA, and therefore cannot be held personally liable for violations of ERISA. Plaintiffs' only claims against Mr. Liddy are those in his capacity as an executive of Allstate. Plaintiffs, therefore, assert no claims that, if true, would entitle them to relief against Mr. Liddy under Section 510 of ERISA. For these reasons, Defendant Edward M. Liddy respectfully requests that this Court dismiss Counts II and III of Plaintiffs' Second Amended Complaint against him with prejudice.

Respectfully submitted,

Dated: August 27, 2010

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**CERTIFICATE OF SERVICE**

I, Christopher T. Cognato, hereby certify that I caused a true and correct copy of the foregoing Motion to Dismiss Defendant Edward M. Liddy Pursuant to Federal Rule of Civil Procedure 12(b)(6) to be served via electronic service on the following counsel for Plaintiffs:

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