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

GENE R. ROMERO, *ET AL.* **Plaintiffs,** **v.** **ALLSTATE INSURANCE COMPANY, *ET AL.*** **Defendants.**	**Civil Action No. 01-CV-3894 (RLB)**
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, **Plaintiffs,** **v.** **ALLSTATE INSURANCE COMPANY,** **Defendant.**	**Civil Action No. 01-CV-7042 (RLB)**
GENE R. ROMERO, *ET AL.* **Plaintiffs,** **v.** **THE ALLSTATE CORPORATION, *ET AL.*** **Defendants.**	**Civil Action No. 01-CV-6764 (RLB)**

ALLSTATE'S REPLY IN SUPPORT OF ITS MOTION FOR A PROTECTIVE ORDER CONCERNING PLAINTIFFS' NOTICE OF VIDEOTAPED DEPOSITION OF DEFENDANTS ALLSTATE INSURANCE COMPANY AND THE ALLSTATE CORPORATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)

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I. INTRODUCTION

There is no disagreement between the parties that the threshold issue for the Court's determination is the validity of the Release that Plaintiffs signed, and that pursuant to the Court's Orders, the parties' discovery efforts at this time are limited to "Release-related" discovery. There is a fundamental disagreement, however, on what constitutes "Release-related" discovery. Allstate asserts that "Release-related" discovery means discovery focusing on the challenges Plaintiffs are asserting to the validity of the Release. Plaintiffs, on the other hand, assert that they are entitled to all-encompassing discovery relating broadly to the Preparing for the Future Group Reorganization Program ("the Program"). Indeed, the only discovery that Plaintiffs have identified as currently beyond the scope of discovery is that relating to issues of class certification and damages.

The parties' disagreement on the proper scope of discovery is at the core of a motion brought by Plaintiffs — Plaintiffs' Motion to Determine the Sufficiency of Allstate's Answers and Objections to Plaintiffs' Second Set of Requests for Admissions (Docket No. 268) — which is currently pending. In the meantime, Plaintiffs have served a Rule 30(b)(6) Deposition Notice. Consistent with their espoused view of permissible discovery, Plaintiffs seek broad "Program-related" testimony from Allstate on approximately ninety (90) separate Topics. Based on the applicable definitions in the 30(b)(6) Deposition Notice, Plaintiffs intend to seek any and all information "***without limitation***," that "constitutes, concerns, records, discusses, mentions, notes, reflects, memorializes, evidences, analyzes, describes, documents, comments upon, refers to, or has any relevance to or connection with the Program." (Declaration of Erica B. Zolner ("Zolner Decl.") Ex. 1, Notice of Videotaped Dep. of Defs. Allstate Ins. Co. and The Allstate Corp. Pursuant to Fed. R. Civ. P. 30(b)(6) ("Pls.' 30(b)(6) Deposition Notice" or "Notice"), (Docket No. 273-4) Definition No. 34, at 10 (emphasis added).)

In their opposition brief, Plaintiffs contend that the Court already has ruled that Plaintiffs are permitted broad discovery at this time but, in any event, they are not "seeking full case-related discovery at this juncture." (Pls.' Mem. in Opp'n to Allstate's Mot. for Protective Order Concerning Pls.' Notice of Videotaped Dep. of Defs. Allstate Ins. Co. and The Allstate Corp. Pursuant to Fed. R. Civ. P. 30(b)(6) ("Pls.' Opp'n Br.") (Docket No. 276) at 21.) Plaintiffs are wrong as to their first argument, and their assertion that they are not "seeking full case-related discovery" is meaningless, because they provide no explanation of how "full case-related discovery" is beyond their definition of "Program-related." Without that explanation, Allstate has no basis to evaluate what "Program-related" or "case-related" discovery may be authorized or sought during the upcoming 30(b)(6) depositions.

Contrary to Plaintiffs' assertions, Allstate has stated unequivocally that it will produce corporate representatives to testify on 30(b)(6) Topics that are appropriately narrowed and focused on the validity of the Release. Depositions are expensive and time-consuming, however, and it makes little sense to head into depositions with full knowledge of the parties' fundamental disagreement over the permissible scope of discovery. Accordingly, Allstate filed its motion for a protective order to seek the Court's guidance on the appropriate scope of Release-related discovery.

II. FACTUAL BACKGROUND

Plaintiffs' opposition brief misstates the factual and procedural history that led to Allstate's Motion.[1] Plaintiffs then suggest that Allstate's Motion for a Protective Order is premature. Plaintiffs are incorrect, as the facts below demonstrate.

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[1] Although styled as "Factual Background," Plaintiffs also use their opposition brief to again make unfounded arguments that Allstate failed to preserve relevant documents, an issue that both parties extensively briefed in connection with Plaintiffs' RFA motion. Again, Plaintiffs rely on isolated assertions and fail to provide their broader context. ***First***, Plaintiffs allege that Allstate failed to produce ESI for 63 agreed-upon custodians, when

On their face, Plaintiffs' 30(b)(6) Deposition Topics seek broad "Program" and "Program-related" testimony as well as duplicative testimony on Topics for which Allstate previously had provided 30(b)(6) witnesses to testify. (*Compare* Zolner Decl. Ex. 5, 1/15/03 R. Lian ltr. to M. Lieder (Docket No. 273-8) *with* Zolner Decl. Ex. 1, Pls.' 30(b)(6) Deposition Notice (Docket No. 273-4).) In Allstate's September 28, 2011 Responses and Objections to Plaintiffs' 30(b)(6) Deposition Notice, while Allstate agreed to produce corporate representatives for many of the noticed Topics, it requested a meet and confer "in order to avoid uncertainty and misunderstandings regarding the scope" of various Topics, and to obtain "further clarity from Plaintiffs' counsel about what information is sought." (Zolner Decl. Ex. 4, Allstate's Resps. and Objections to Pls.' Notice of Dep. Pursuant to Fed. R. Civ. P. 30(b)(6) (Docket No. 273-7).)[2]

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in fact Allstate produced ESI for many of these custodians in hard copy form, in accordance with the parties' previous agreement, and for other custodians Allstate collected relevant documents that have not yet been produced because these documents are not related to the validity of the Release. (Allstate's Opp'n to "Pls.' Mot. to Determine the Sufficiency of Allstate's Answers and Objections to Pls.' Second Set of Requests for Admis." (Docket No. 274) at 16-18.) ***Second***, several custodians who Plaintiffs identify as custodians for whom Allstate has not provided Release-related information left Allstate long before the Preparing for the Future Group Reorganization Program came into existence. (*Id.* at 18). ***Third***, Allstate was not on notice to preserve documents for named Plaintiffs who left Allstate months before Plaintiffs threatened litigation. As for the other named Plaintiffs who remained with Allstate, these Plaintiffs were in possession of their Allstate-issued computers when they anticipated litigation and failed to inform Allstate that these computers contained relevant information. (*Id.* at 23-25). ***Finally***, Plaintiffs' arguments ring hollow as the majority of Plaintiffs themselves have failed to produce any ESI, with accompanying metadata, and have admitted that they did not retain all Release-related ESI relevant to this litigation. (*Id.* at 18-19.) (*See* Zolner Decl. in Support of Allstate's Opp'n to Pls.' RFA Motion ¶ 25 (Docket No. 275); Ex. 20 to Allstate's Opp'n to Pls.' RFA Mot., 10/31/11 Pls.' Resps. to Allstate's Second Set of Reqs. for Admis. (Docket No. 275-20).)

Plaintiffs also argue that the Preparing for the Future Program was "part of an effort to eliminate the payment of benefits to employee agents and to weed out older employee agents" and allege that Allstate "recogniz[ed] that the Program was illegal and violated its agents' rights." (Pls.' Opp'n Br. (Docket No. 276) at 4.) These assertions are incorrect. Allstate did not adopt the Program to eliminate employee benefits or to "weed out" older employee agents. All employee agents, regardless of age or performance, were offered the opportunity to become Exclusive Agents of Allstate. Nor did Allstate believe that the Program was illegal or a violation of employee agents' rights.

[2] Specifically, Allstate agreed to produce a corporate representative on 33 of Plaintiffs' Topics, and agreed, subject to additional clarification, to produce witnesses on an additional 40 Topics. Of the other Topics, Allstate asked for more information about one Topic prior to agreeing to produce a corporate representative, and objected to producing a witness on the remaining 17 Topics (three of which Plaintiffs have withdrawn). (Zolner Decl. Ex. 1, Pls.' 30(b)(6) Deposition Notice (Docket No. 273-4); Pls.' Opp'n Br. (Docket No. 276) at 10 n.7 (confirming withdrawal of Topic Nos. 34, 45, and 46).)

During the parties' subsequent meet and confer, on September 29, 2011, Plaintiffs made it clear that they believed they were entitled to broad "Program-related" discovery and that only class discovery and damages discovery were off-limits at this time. (Zolner Decl. ¶ 10 (Docket No. 273-3).) Thus, the parties "agree[d] to disagree" about the "Program" and "Program-related" definitions. At the end of the meet and confer, Plaintiffs agreed to provide additional dates for a meet and confer to continue discussing Allstate's other Responses. (*Id.* ¶ 11.) Soon after the meet and confer, on October 3, 2011, Plaintiffs filed their Motion to Determine the Sufficiency of Allstate's Answers and Objections to Plaintiffs' Second Set of Requests for Admissions ("Pls.' RFA Motion") (Docket Nos. 268-69), which also concerns the proper scope of Release-related discovery.

Plaintiffs wrote Allstate on October 18, 2011 "to memorialize and supplement" their challenges to Allstate's responses and objections. (Zolner Decl. Ex. 6, 10/18/11 C. Meehan ltr. to S. Smylie (Docket No. 273-9) at 1.) Plaintiffs stated that they did not believe they had an "obligation to provide 'further clarity'" or that they needed to "describe the topics at issue with any greater particularity." (*Id.* at 5). Plaintiffs also "decline[d] Allstate's invitation" to continue to discuss Allstate's request that they do so. (*Id.* at 6.) Thus, rather than propose additional dates to discuss the 30(b)(6) Notice, Plaintiffs asked Allstate to withdraw all of its objections, provide dates on which it would make its corporate representatives available for deposition, and provide the names of such representatives by no later than October 26, 2011. (*Id.* at 2, 4, 5, 6-7, 9, 10.) Allstate responded to Plaintiffs' October 18, 2011 letter on October 26, 2011, acknowledging Plaintiffs' decision not to continue to meet and confer and the parties' impasse. (Zolner Decl. Ex. 7, 10/26/11 E. Zolner ltr. to C. Meehan (Docket No. 273-10).) Thereafter, hearing nothing further from Plaintiffs, Allstate filed its Motion.

III. ARGUMENT

Plaintiffs have taken an extreme position. They contend that the Court's ruling permitting Release-related discovery entitles them to discovery on all aspects of the case except class certification and damages. Allstate is not seeking to avoid giving 30(b)(6) testimony. Rather, Allstate seeks the Court's guidance on what discovery is permissible before the parties proceed with 30(b)(6) depositions.

A. Allstate's Motion For A Protective Order Was Properly Brought Pursuant To Rule 26(c).

Allstate filed its motion pursuant to Rule 26(c), which authorizes courts to issue a protective order to "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c). The party seeking a protective order must establish good cause by demonstrating a need for protection beyond broad allegations of harm. *Furey v. Wolfe*, No. 10-1820, 2011 WL 597038, at *5 (E.D. Pa. Feb. 18, 2011). Allstate has established good cause. Allstate seeks the Court's guidance because Plaintiffs' 30(b)(6) notice does not "describe with reasonable particularity the matters for examination," as required by Federal Rule of Civil Procedure 30(b)(6), and the parties plainly disagree about the parameters of permissible discovery. Without guidance, it is inevitable that the parties will disagree during the deposition about the appropriate scope of questioning.

The procedural posture of this motion is unique. Rather than seeking a complete stay or prohibition on the 30(b)(6) depositions, Allstate seeks direction on an important threshold issue — the permissible scope of Release-related discovery. Allstate requests that it not be required to produce witnesses in response to Plaintiffs' Rule 30(b)(6) Deposition Notice until the Court provides further direction as to the proper scope of Release-related discovery or Plaintiffs limit the scope of the Notice to only Release-related discovery Topics. (*See* Allstate's Mot. for

Protective Order Concerning Pls.' Notice of Videotaped Dep. of Defs. Allstate Ins. Co. and The Allstate Corp. Pursuant to Fed. R. Civ. P. 30(b)(6) ("Allstate's Mot. for Protective Order"), (Docket No. 273) at 2; Allstate's Mem. in Supp. of Mot. for Protective Order (Docket No. 273-2) at 3-4.)

Plaintiffs oppose Allstate's Motion under Rule 26(c) with inapposite cases. The cases either did not involve the type of protective order Allstate is requesting, or involved a total standstill of discovery, which Allstate is not requesting. *See Wright v. Montgomery County*, No. 96-4597, 1998 WL 848107, at *5 (E.D. Pa. Dec. 4, 1998) (party sought a protective order to cease discovery where it was unlikely to lead to admissible evidence); *Smith v. BIC Corp.*, 869 F.2d 194, 201 (3d Cir. 1994) (party sought a protective order to avoid revelation of trade secrets that could result in competitive injury); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 791-92 (3d Cir. 1994) (party sought enforcement of confidentiality order concerning the parties' settlement agreement); *Publicker Indus., Inc. v. Cohen,* 733 F.2d 1059, 1071 (party sought to limit access to court hearing and seal hearing transcript); *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 484 (3d Cir. 1995) (party sought a protective order to enforce a confidentiality agreement); *Pepsi-Cola Metro. Bottling Co., v. Ins. Co. of N. Am., Inc.*, No. 10-MC-222, 2011 WL 239655, at *1 (E.D. Pa. Jan. 25, 2011) (non-party sought a protective order excusing its representative from appearing at a deposition). Notably, Plaintiffs fail to cite any case where a court denied a protective order intended to defer discovery pending resolution of a discovery dispute.

B. Plaintiffs' Position On The Permissible Scope Of Release-Related Discovery Is Contrary To The Court's Orders As Well As To Its Prior Formulation Of Release-Related Discovery.

Allstate believes that Release-related discovery should be tailored to the facts surrounding Plaintiffs' specific challenges to the validity of the Release. (Allstate's Mem. in

Supp. of Mot. for Protective Order (Docket No. 273-2) at 2, 11-12.) In its Responses to Plaintiffs' 30(b)(6) Topics, and during the September 29, 2011 meet and confer, Allstate proposed the following definition of "Release-related" that tracks the language from Plaintiffs' own Complaint as well as the Court's October 21, 2010 Opinion:

> Information relating to the drafting and interpretation of the Release, communications with Employee Agents concerning the Release, information relating to Allstate's compliance with the Older Workers Benefit Protection Act ("OWBPA") in drafting the Release, information relating to Plaintiffs' allegation that Plaintiffs "received no consideration in addition to anything of value to which they already were entitled in exchange for executing the Release" (2d Am. Compl. ¶ 155 [Docket No. 223]), information relating to Plaintiffs' allegation that Plaintiffs signed the Release under "extreme economic duress" (*id.* ¶ 106), Plaintiffs' allegation that Plaintiffs signing of the Release was neither "knowing nor voluntary" (*id.* ¶ 154), and non-privileged information relating to Allstate's knowledge of whether the Preparing for the Future Group Reorganization Program might be retaliatory, unlawful, or otherwise prohibited by law.

(Zolner Decl. Ex. 4, Allstate's Resps. and Objections to Pls.' Notice of Dep. Pursuant to Fed. R. Civ. P. 30(b)(6) (Docket No. 273-7), Gen. Objection No. 1, at 1-2.) Allstate further informed Plaintiffs that it would consider any proposed definition Plaintiffs wished to propose that was narrower than "everything related to the Program" (*see* Ex. 26 to Allstate's Opp'n to "Pls.' Mot. to Determine the Sufficiency of Allstate's Answers and Objections to Pls.' Second Set of Reqs. for Admis.," ("Allstate's Opp'n to Pls.' RFA Mot."), 9/26/11 E. Zolner ltr. to B. Ercole (Docket No. 275-26), at 5), but Plaintiffs declined to articulate any other definition. Rather, Plaintiffs contend that all merits-related discovery (except for discovery relating to class certification and damages) is within the scope of Release-related discovery. Thus, Plaintiffs posit that Allstate should provide wide-ranging 30(b)(6) testimony on the Program, regardless of whether it pertained to the Release. (Zolner Decl. Ex. 6, 10/18/11 C. Meehan ltr. to S. Smylie (Docket No. 273-9).) As explained below, Allstate's position on the scope of current discovery is consistent with the Court's Orders; Plaintiffs' position is not.

Allstate's position is supported by the plain terms of the April 8, 2010 Case Management Order and the Court's October 21, 2010 Opinion, both of which contemplate bifurcated discovery. ***First,*** the Case Management Order states that the "Plaintiffs shall not be required to complete discovery as to their contention that the Releases are void as 'part and parcel' of an illegal scheme until after the Court has ruled on the applicability of the 'part and parcel' doctrine to these cases." (4/8/10 Case Management Order (Docket No. 200) ¶ II.C.) ***Second,*** the Court's October 21, 2010 Opinion states that "in the event the Court finds that the part and parcel doctrine is applicable to this case, Plaintiffs shall have the opportunity to take ***further discovery*** on this theory." (10/21/10 Op. re Pls.' Mot. to Compel Documents (Docket No. 236) at 8-9 (emphasis added).) If the current stage of Release-related discovery entitles Plaintiffs to full discovery on their "part and parcel" theory now, then there would be no need for the further discovery the Court specifically carved out in its April 8, 2010 Case Management Order and October 21, 2010 Opinion.

In opposition to Allstate's Motion, Plaintiffs argue they are "entitled to explore various facets of the Program, including why it was created, how it was structured and implemented, [and] what Allstate said about the Program." (Pls.' Opp'n Br. (Docket No. 276) at 19.) Similarly, in their RFA Motion, Plaintiffs argue they are entitled to all discovery as to whether the Program "was, in application, retaliatory, unlawful, or illegal." (Pls.' Mem. in Supp. of RFA Mot. (Docket No. 269) at 29.) In short, Plaintiffs rely on their "part and parcel" theory to seek all merits-related discovery, with no apparent limitation. Plaintiffs argue that this broad discovery is permitted by the Court's October 2010 ruling on their Motion to Compel Production of Documents. Not so.

When this Court ruled on Plaintiffs' 2010 Motion to Compel Production of Documents, it did so on Plaintiffs' representations as to the scope of its "part and parcel" theory. At that time, Plaintiffs claimed that the doctrine required discovery of Allstate's ***knowledge*** of whether the Program was illegal. (Pls.' Mem. in Supp. of Mot. to Compel Documents (Docket No. 215) at 22.) Indeed, Plaintiffs have consistently couched the information sought regarding their "part and parcel" doctrine in terms of Allstate's alleged knowledge, including the following:

- Plaintiffs sought "documents necessary to show that Allstate ***knew*** that the [Preparing for the Future] Program was illegal, and, therefore, demanded that its employees execute the Release." (*Id.* (emphasis added).)
- Whether "Allstate ***knew*** the Release, which was created as part of Allstate's 'Preparing for the Future' program, was improper, unfair, and intended to insulate Allstate from liability for breaching Plaintiffs' contracts." (Pls.' Reply in Supp. of Mot. to Compel Documents (Docket No. 225) at 12 (emphasis added).)
- "Plaintiffs' challenges to the Release focus, in part, upon what Defendants knew and intended, including whether Defendants ***knew*** the Release was part of an illegal scheme." (*Id.* at 18 (emphasis added).)

Thus, when the Court ruled on Plaintiffs' motion to compel, it was based on a formulation of the discovery sought by Plaintiffs' part and parcel theory that was far narrower than what Plaintiffs espouse today. The Court's ruling simply did not embrace or endorse Plaintiffs' current formulation of Release-related discovery as encompassing a full-blown merits inquiry into the Program.

Plaintiffs also claim that Allstate has already requested that the Court rule on the applicability of the "part and parcel" doctrine to Plaintiffs' claims. (Pls.' Opp'n Br. (Docket No. 276) at 24 n.10.) Again, not true. Pursuant to the Court's October 21, 2010 Order, Allstate intends to seek a dispositive ruling that the part and parcel theory has no application as a matter

of law to the claims at issue here.[3] But Allstate has not brought that motion yet. More to the point, in its October 21, 2010 Order, the Court explicitly stated it was ***not*** ruling on the applicability of Plaintiffs' "part and parcel" theory to their claims:

> [T]he [April 2010 Case Management] Order expressly recognizes that after the discovery on the validity of the Releases is complete, after the Court rules on the validity of the Releases, and ***in the event that the Court finds that the part and parcel doctrine is applicable to this case, Plaintiffs shall have the opportunity to take further discovery on this theory in an effort to prove its underlying claims of an illegal scheme.***
>
> In short, the Court holds that Plaintiffs are entitled to discovery relevant to proving that the Releases are void under a "part and parcel" theory. ***Without offering an opinion as to whether that theory is applicable to this case, is legally viable, or has been proven by Plaintiffs***, the Court grants Plaintiffs' Motion to Compel Responses to these Requests for the Production of Documents.

(10/21/10 Op. re Pls.' Mot. to Compel Documents (Docket No. 236) at 9 (emphasis added).)

Finally, Plaintiffs attempt to escape their prior, more narrow formulation of "part and parcel" discovery by arguing that Allstate has mischaracterized that formulation and provided "a truncated quote from Plaintiffs' General Instruction." (Pls.' Opp'n Br. (Docket No. 276) at 24 n.10.) But Plaintiffs' accusation is unfounded. Allstate provided the entirety of General Instruction No. 2 in its opening Memorandum. (Allstate's Mem. in Supp. of Mot. for Protective Order (Docket No. 273-2) at 10.) That General Instruction stated, ***in full***, that the reach of Plaintiffs' "part and parcel" theory was as follows:

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[3] There is no such doctrine as "part and parcel of an illegal scheme." There is only a doctrine known as "part and parcel of an illegal scheme to violate the antitrust laws." The doctrine is a creature of antitrust law, and is limited to the antitrust context. But even in an antitrust law context, Courts have "rarely discussed and more rarely applied" the part and parcel doctrine. *Fresh Made, Inc. v. Lifeway Foods, Inc.*, No. 01-4254, 2002 U.S. Dist. LEXIS 15098, at *11 n.6 (E.D. Pa. Aug. 9, 2002) (quoting *VKK Corp. v. NFL*, 244 F.3d 114, 125 (2d Cir. 2001)). Indeed, it is far from clear that the doctrine would be accepted at all in most jurisdictions. For instance, the Third Circuit has "expressed grave doubt" about its existence. *VKK Corp.,* 244 F.3d at 126 (citing *Taxin v. Food Fair Stores, Inc.,* 287 F.2d 448, 451 (3d Cir. 1961)). Because there is no precedent applying a "part and parcel" theory to the employment context, there is no helpful guidance in case law on what constitutes permissible discovery as to this theory. Allstate recognizes that its formulation — based as it is on Plaintiffs' previously-articulated formulation of the discovery they believe they are entitled to under this theory — raises challenging privilege issues. Allstate has not waived, nor does it intend to waive, the attorney-client privilege or the attorney work-product doctrine.

> Documents relevant to the argument that the Release is void as part and parcel of an illegal scheme include all Documents relevant to claims asserted by Plaintiffs that the [Preparing for the Future] Program violated certain federal laws and the express or implied terms of the R830 Contact [sic] or R1500 Contract. We do not seek Documents related to the alleged violations at this time based on the understanding that defendants will request that the Court rule on the applicability of the "part and parcel" doctrine to the claims asserted by Plaintiffs before producing any such documents. We do seek Documents relevant to Allstate's knowledge of the legally problematic nature of the [Preparing for the Future] Program.

(Zolner Decl. Ex. 8, Pls.' Document Production Reqs. Directed to the Release, (Docket No. 273-11) Gen. Instruction No. 2, at 2-3.)

In short, Plaintiffs earlier recognized the bifurcated nature of discovery related to their "part and parcel" theory and crafted the instructions to their discovery requests accordingly. Now, however, in connection with their 30(b)(6) Notice, they attempt to abandon that formulation altogether and seek broad merits-based discovery under the hook of their "part and parcel" theory. Plaintiffs' argument is contrary to the Court's Orders and should be rejected.

C. Plaintiffs Incorrectly Argue That Allstate Has Acknowledged That Program-Related Discovery Is Permissible.

Plaintiffs allege that because they have "continuously requested information related to the Program in connection with its challenges to the Release," and Allstate has provided responses to those requests, Allstate implicitly has acknowledged that Program-related discovery is permissible. (Pls.' Opp'n Br. (Docket No. 276) at 24.) This is simply not true, and provides no basis for Plaintiffs' broad 30(b)(6) Deposition Topics.

As Allstate explained in its opening brief, Allstate has answered interrogatories concerning the Program (and not the Release specifically) because those interrogatories requested basic background information concerning the Program. (*See* Ex. 34 to Allstate's Opp'n to Pls.' RFA Mot. (Docket. No. 275-34), Pls.' First Set of Interrogs. and Reqs. for Admis. Directed to the Validity of the Release, Nos. 1(a) & 2(a) (seeking information regarding

individuals knowledgeable about the structure of the Program), No. 3(a) (seeking information regarding documents relating to the Program), No. 13 (seeking information concerning when Allstate "reasonably anticipated the commencement of litigation concerning the [Preparing for the Future] Program and/or the Release").

Plaintiffs' 30(b)(6) Deposition Notice, however, requests testimony on numerous Topics concerning "Program-related" information. The interrogatories seeking discovery as to basic background information, such as 1(a), 2(a), and 3(a), are different from lengthy, comprehensive requests for 30(b)(6) testimony. A 30(b)(6) deposition is inherently burdensome, *see Barron v. Caterpillar, Inc.*, 168 F.R.D. 175, 176-77 (E.D. Pa. 1996), and a corporation is obligated "to prepare its designee to be able to give binding answers" on its behalf. *In re Linerboard Antitrust Litig.*, 237 F.R.D. 373, 382 (E.D. Pa. 2006) (quoting *Ierardi v. Lorillard, Inc.*, No. 90-7049, 1991 WL 158911, at *3 (E.D. Pa. Aug. 13, 1991)). In addition, when Allstate provided its response to Interrogatory No. 13, there was no distinction between Program-related discovery and Release-related discovery, as Plaintiffs had not yet propounded their expansive "Program-related" definition.

Further, Allstate did object to Plaintiffs' interrogatories requesting background information concerning the Program as beyond that permitted in Release-related discovery. (*See, e.g.*, Ex. 34 to Allstate's Opp'n to Pls.' RFA Mot., Allstate's Resps. and Objections to "Pls.' First Set of Interrogs. and Reqs. for Admis. Directed to the Validity of the Release," ("Allstate Interrog. Resps.") (Docket No. 275-34) at Resps. to Interrog. Nos. 1(a), 2(a).) Allstate agreed to withdraw its objection with respect to the interrogatories at issue, not all future and unanticipated discovery. (Ex. 35 to Allstate's Opp'n to Pls.' RFA Mot., 11/5/10 K. Katchen ltr. to C. Meehan (Docket No. 275-35) at 1.)

Finally, Allstate has never conceded that "information related to the validity of the Release necessarily requires discovery of information related to the Program," especially as "Program-related" is defined by Plaintiffs. (Pls.' Opp'n Br. (Docket No. 276) at 25.) Allstate did ask two background interrogatories concerning the identification of Program-related documents. One of these, Allstate's Interrogatory No. 11, was identical to an interrogatory propounded on Allstate by Plaintiffs. (*Compare* Ex. 34 to Allstate's Opp'n to Pls.' RFA Mot., Allstate Interrog. Resps. (Docket No. 275-34) at No. 3(b) *with* Ex. 37 to Allstate's Opp'n to Pls.' RFA Mot., Pls.' Am. and Suppl. Resps. and Objections to Allstate's Third Set of Interrogs. to Pls.: Directed to he Validity of the Release ("Pls.' Interrog. Resps.") (Docket No. 275-37) at No. 11.) Significantly, Plaintiffs objected to Interrogatory No. 11 as overly broad and unduly burdensome because such a request ***"seeks information unrelated to the validity, enforceability and/or applicability of the Release."*** (*See* Ex. 37 to Allstate's Opp'n to Pls.' RFA Mot., Pls.' Interrog. Resps. (Docket No. 275-37) at Nos. 11(a)-(g).) Thus, Plaintiffs have themselves attempted to draw the very relevancy lines to which they are now objecting.

D. Plaintiffs' "Program-Related" Definition Renders Their Notice Overbroad As It Seeks An Indefinite Amount Of Expansive Information.

Plaintiffs' claim that Allstate is "prevent[ing] Plaintiffs from obtaining the deposition testimony they seek" is not true. (Pls.' Opp'n Br. (Docket No. 276) at 2.) Although Plaintiffs claim that Allstate has failed to identify exactly which Topics are improper, Plaintiffs miss the fact that Allstate is concerned that virtually all of the Topics could be taken beyond the confines of Release-related discovery given Plaintiffs' definition of "Program-related." In fact, the issue of "Program" and "Program-related" discovery permeates the entire Deposition Notice. "Program" or "Program-related" is explicitly referred to in no fewer than 32 Topics. (Zolner Decl. Ex. 1, Pls.' 30(b)(6) Deposition Notice (Docket No. 273-4) at Topic Nos. 1, 3, 7, 8, 9, 10,

11, 12(a), 12(b), 12(c), 13(a), 13(b), 13(d), 13(e), 13(f), 15(a), 15(b), 15(e), 15(f), 15(i), 15(j), 15(k), 17, 19, 42(a), 42(b), 42(c), 42(d), 42(e), 42(f), 44, and 46.) But Allstate's concern with Plaintiffs' Deposition Topics is not limited to those that explicitly refer to the Program. Given Plaintiffs' insistence that they are entitled to nearly all case-related discovery, and given the breadth of their "Program" and "Program-related" definitions, even Topics that do not explicitly refer to the Program could exceed the bounds of permissible, Release-related discovery.

As an example, Topic 16, which seeks information related to the "creation, approval, and implementation of the reductions in force made in connection with Allstate's 'expense reduction' initiative or 'new business model' initiative" is appropriate to the extent it seeks information on whether persons holding the positions affected were offered a release or were part of the same Decisional Unit as persons in positions affected by the Program. Should Plaintiffs, however, inquire into the creation, purpose, or implementation of the reductions in force, as they appear to intend to do, the questioning would not be related to the validity of the Release and would exceed the bounds of permissible discovery. Similarly, Topic 33, which requests information related to "the names, circumstances, and identity of Employee Agents who were terminated by Allstate without cause prior to December 30, 2000," does not specifically refer to the Program but effectively inquires about the identities and circumstances of the approximately 6,000 employee agents involved in the Program, thus going well-beyond the current permissible scope of discovery. As these examples demonstrate, the parties' disagreement as to the appropriate scope of discovery and Plaintiffs' position that nearly all case-related discovery is on the table affects the scope of a number of Plaintiffs' 30(b)(6) Topics, even those that do not explicitly reference the Program.

Plaintiffs' "Program" and "Program-related" definitions, combined with Plaintiffs' position that discovery is almost unbounded, are the reason for Allstate's Motion. Plaintiffs respond that although "some of this information relates to the Program," it "does not mean that Plaintiffs are seeking full case-related discovery at this juncture." (Pls.' Opp'n Br. (Docket No. 276) at 21.) This response provides no meaningful boundaries, and nowhere do Plaintiffs explain how "full case-related discovery" differs from their broad definitions of "Program-related" discovery. Moreover, to be sure, Plaintiffs' 30(b)(6) Deposition Notice does not just seek "basic factual information about the Program" (*id.* at 18). The definition promulgated by Plaintiffs speaks for itself: it seeks any information, "***without limitation***," that "constitutes, concerns, records, discusses, mentions, notes, reflects, memorializes, evidences, analyzes, describes, documents, comments upon, refers to, or has any relevance to or connection with the Program," which Plaintiffs define as "the set of actions that, as of November 10, 1999, Allstate called the 'Preparing for the Future' Group Reorganization Program." (Zolner Decl. Ex. 1, Pls.' 30(b)(6) Deposition Notice (Docket No. 273-4), Definition Nos. 33 & 34, at 10 (emphasis added).)

Plaintiffs also include multiple allegations concerning Allstate's responses to Plaintiffs' Deposition Notice that are factually incorrect. ***First***, Plaintiffs provide a list of categories of discovery to which they believe they are entitled — whether the Releases were knowingly and voluntarily signed, whether there was consideration for the Release, whether the Releases were signed under duress, and discovery concerning their Part and Parcel theory. (Pls.' Opp'n Br. (Docket No. 276) at 18-19.) Notably, these are nearly identical to the list of categories contained in Allstate's proposed Release-related definition that Plaintiffs rejected. (Allstate's Mem. in Supp. of Mot. for Protective Order (Docket No. 273-2) at 9.) Plaintiffs' explanations of each of

these categories, however, are excessively expansive. For instance, Plaintiffs argue that in order to "show that Plaintiffs did not sign the Release 'knowingly,'" they must "demonstrate that Allstate made misrepresentations and omissions about the Program." (Pls.' Opp'n Br. (Docket No. 276) at 19.) However, the purported "misrepresentations and omissions" at issue in this case are limited to six specific subjects: (1) the ability of agents to file charges of discrimination; (2) the non-solicitation and non-compete provisions of the R830 and R1500 Contracts; (3) the ability to be rehired by Allstate; (4) whether Allstate was planning to reduce commission rates; (5) whether Allstate was planning to eliminate the "lowest performing agents each year" after June 30, 2000; and (6) Allstate's compliance with the OWBPA. (Pls.' Opp'n to Defs.' Mot. for Summ. Judgment (Docket No. 154) at 14-17.) Allstate has agreed to provide a corporate representative to testify as to the noticed Topics that concern these six specific misrepresentations. (*See, e.g.*, Zolner Decl. Ex. 4, Allstate's Resps. and Objections to Pls.' Notice of Dep. Pursuant to Fed. R. Civ. P. 30(b)(6) (Docket No. 273-7), at Topic Nos. 15(a) – (l), 20 – 23, 24(a) – 24(e), and 25, at 20 – 30, 36 – 43, 46 – 47.).)

Second, Allstate does not "take issue" with Topic Nos. 1 and 11, as Plaintiffs assert. Indeed, Allstate agreed to produce a witness in response to both of these Topics, but requested that the parties come to an understanding about the testimony sought — all in an effort to avoid uncertainty and misunderstanding regarding their scope. Allstate has also identified these two Topics in its Motion as examples of how Plaintiffs' definition of "Program" as well as Plaintiffs' insistence that they are entitled to nearly unlimited discovery during the Release-related discovery phase would be problematic if not resolved prior to commencing depositions.

Third, Plaintiffs also misstate Allstate's concern with Topics 37-38, 42(a)-(f), and 44. As an initial matter, Allstate has agreed to provide a corporate representative to testify on all of

these Topics, except for 42(b), 42(c), 44, which either seek information protected by the attorney-client privilege and work product doctrine (42(b) and (c)), or for which Allstate has no responsive information (44). Thus, Allstate is not seeking to foreclose testimony on these Topics (as in the cases cited by Plaintiffs). Again, the issue is not whether Allstate will produce a corporate representative to provide non-privileged testimony on these Topics, but rather what is the scope of permissible, Release-related discovery.[4]

IV. CONCLUSION

For the reasons explained above, as well as in Allstate's initial Memorandum, this Court should grant Allstate's Motion for Protective Order. Allstate should not be required to produce witnesses in response to Plaintiffs' Rule 30(b)(6) Deposition Notice until such time as the Court provides guidance to resolve the parties' dispute as to the scope of Release-related discovery.

[4] Plaintiffs' speculation that Allstate may bring another motion as to Plaintiffs' 30(b)(6) Notice is just that — speculation — and does not provide a basis to deny the relief Allstate seeks in this Motion. The parties have reached an impasse on the fundamental issue of the permissible scope of discovery. Plaintiffs' position that the depositions should proceed notwithstanding their dispute invites inefficiency — particularly given the likelihood that Allstate will designate a corporate representative for multiple Topics — and a waste of the parties' resources. Moreover, once the Court rules on this Motion and provides the parties with additional direction, Allstate anticipates that the parties will be able to resolve any other disputes regarding the Notice through the meet and confer process. The cases cited by Plaintiffs on this issue are inapposite, as they do not speak to this unique procedural posture. *See Tilcon Minerals, Inc. v. Orange Rockland Utils., Inc.*, 851 F. Supp. 529, 531 (S.D.N.Y. 1994) (denying motions for summary judgment); *IBM Corp. v. Johnson*, No. 09 Civ. 4826, 2009 WL 2356430, at *1-2 (S.D.N.Y. July 30, 2009) (denying motion for leave to file a second motion for preliminary injunction).

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served on December 12, 2011, by the Court's Electronic Case Filing system and by electronic mail on all counsel of record.

/s/ Jordan M. Heinz